HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

MONDAY, MARCH 20, 1961

MONDAY, MARCH 27, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

The Honourable Donald M. Fleming, Minister of Finance; and the Honourable S. H. S. Hughes, Q.C., Chairman of the Civil Service Commission.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

24831-0—1

SPECIAL COMMITTEE ON THE

CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*),
Campeau,
Caron,
Casselman (Mrs.),
Hicks,
Keays,
Macdonnell,
Macquarrie,
MacRae,
Martel,
McIlraith,
More,
Peters,
Pickersgill,
Richard (*Ottawa East*),
Roberge,
Rogers,
Smith (*Winnipeg North*),
Spencer,
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

ORDERS OF REFERENCE

FRIDAY, March 10, 1961.

Resolved,—That a Special Committee be appointed to consider Bill C-71, An Act respecting the Civil Service of Canada, with power to send for persons, papers and records and to report from time to time;

That the Committee have power to print such papers and evidence from day to day as may be deemed advisable or necessary;

That the Committee consist of twenty-one Members to be designated by the House;

That the Committee be empowered to sit during the sittings of the House; and

That Standing Orders 66 and 67 be suspended in relation thereto.

MONDAY, March 13, 1961.

Ordered,—That the Special Committee to consider Bill C-71, An Act respecting the Civil Service of Canada, established on March 10, 1961, be composed of Mrs. Casselman, and Messrs. Bell (*Carleton*), Campeau, Caron, Hicks, Keays, Macdonnell, MacLellan, Macquarrie, MacRae, Martel, McIlraith, More, Peters, Pickersgill, Richard (*Ottawa East*), Roberge, Rogers, Smith (*Winnipeg North*), Spencer, and Tardif.

TUESDAY, March 14, 1961.

Ordered,—That Bill C-71, An Act respecting the Civil Service of Canada, be referred to the Special Committee established to consider the said bill.

Attest

LÉON-J. RAYMOND,
Clerk of the House.

24831-0—1½

MINUTES OF PROCEEDINGS

MONDAY, March 20, 1961.
(1)

The Special Committee on the Civil Service Act met at 12.00 noon this day for organization purposes.

Members present: Mrs. Casselman and Messrs. Bell (*Carleton*), Caron, Hicks, Keays, Macdonnell, MacLellan, Macquarrie, MacRae, Martel, McIlraith, More, Richard (*Ottawa East*), Rogers, Smith (*Winnipeg North*) and Spencer —(16).

Moved by Mr. Bell (*Carleton*), seconded by Mr. Macdonnell,

That Mr. R. S. MacLellan do take the Chair of this Committee as Chairman.

There being no further nominations, Mr. MacLellan was declared duly elected Chairman. He took the Chair, and thanked the Committee for the honour conferred upon him.

The Clerk read the Committee's Orders of Reference.

On motion of Mr. Hicks, seconded by Mr. Martel,

Resolved,—That pursuant to its Order of Reference of March 10, 1961, the Committee print 750 copies in English and 300 copies in French of its Minutes of Proceedings and Evidence.

On motion of Mr. Caron, seconded by Mr. MacRae,

Resolved,—That a Subcommittee on Agenda and Procedure comprising the Chairman and 4 members to be named by him be appointed.

The Chairman proposed that the Committee, at its next meeting, hear statements by the Honourable Donald Fleming, Minister of Finance and the Honourable S. H. Hughes, Chairman of the Civil Service Commission, respecting Bill C-71.

The Chairman further indicated that it would be desirable to hear these statements prior to the Easter recess; and the Subcommittee on Agenda and Procedure was instructed to consult with the Minister respecting the time of such hearing.

The Subcommittee on Agenda and Procedure was instructed to consider the problem of arranging regular meetings of this Committee immediately after the Easter recess, at which time it is expected the staff organizations will be heard.

Members of the Committee also indicated that it would be of assistance to them if copies of staff-side representations were available to Committee members a few days prior to the respective hearings.

Committee members further indicated, for the guidance of the Steering Committee, that they preferred that the meetings of this Committee be held on Tuesdays and Thursdays, whenever possible.

At 12.15 p.m. the Committee adjourned to the call of the Chair.

MONDAY, March 27, 1961.
(2)

The Special Committee on the Civil Service Act met at 11.00 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Mrs. Casselman and Messrs. Bell (*Carleton*), Caron, Hicks, Macdonnell, MacLellan, Macquarrie, MacRae, Martel, McIlraith, More, Peters, Roberge, Spencer and Tardif.—(15).

In attendance: The Honourable Donald M. Fleming, Minister of Finance; *From the Civil Service Commission:* The Honourable S. H. S. Hughes, Q.C., Chairman; and Mr. Paul Pelletier, Commissioner.

The Chairman announced that the following members had been selected to act with him on the Subcommittee on Agenda and Procedure: Messrs. Bell (*Carleton*), Caron, Peters, and Rogers.

He further stated that the following documents would be forwarded to Committee members following today's meeting:

1. The Report on "Personnel Administration in the Public Service" (Heeney Report).
2. Copy of the present Civil Service Act.

The Minister of Finance was introduced to the Committee, and he was asked to explain the general purpose of Bill C-71, An Act respecting the Civil Service of Canada.

He pointed out that extensive study has been given to the proposed changes in the Act as set forth in this Bill. He suggested that he would be in attendance to assist the Committee when controversial clauses are being considered.

The Honourable Mr. Hughes was introduced to the Committee. The Chairman of the Commission then made an extensive statement referring specifically to:

1. The history of the Civil Service Act;
2. The Heeney Report;
3. Material changes to the old act as set forth in Bill C-71;
4. Bill C-71 is divided into 5 parts; and
5. The preparation of regulations under the proposed act.

Committee members questioned Mr. Hughes on the operation of the present Civil Service Act and the general provisions of the Bill under study.

At 12.48 p.m. the Committee adjourned until 11.00 a.m., Thursday, April 13, 1961, at which time it will hear the submission of the Civil Service Federation of Canada.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

MONDAY, March 27, 1961.
11 a.m.

The CHAIRMAN: Gentlemen, I see that we have a quorum. I would like to call this meeting to order.

First of all, I should like to announce, since our last gathering the following persons have consented to act with me on the Agenda and Procedure Sub-committee: Messrs. Bell (*Carleton*), Caron, Peters and Rogers.

The Agenda Sub-committee also has been working hard in an endeavour to find a time after Easter when we can meet on regular days. The Subcommittee has recommended we meet from 11 o'clock to 1 o'clock on Thursdays. Incidentally, we have been able to arrange with the broadcasting committee that their meetings will be over at 11 o'clock so as not to conflict with ours. It is also recommended that we will meet on Fridays from 9:30 until 11 o'clock. If later on this schedule seems to be difficult for any members of the committee, we always can make an adjustment.

We have heard from a number of organizations which would like to present briefs to us. We have heard from the Civil Service Federation of Canada, the Civil Service Association of Canada, the Professional Institute of the Public Service of Canada, the Canadian Postmasters' Association, the Canadian Postal Employees Association, the Canadian Jewish Congress, and the Canadian Labour Congress. Some of these organizations have been notified that we are anxious to hear from them. We propose to advise all the others that we would like to have their briefs or hear their representations, if they wish to make any.

The Agenda Sub-committee has also arranged the first meeting after Easter for Thursday, April 13, at 11 a.m. I believe it has been arranged that, if at that time we are prepared to hear briefs from the staff associations, the first will be from the Civil Service Federation of Canada, followed either by the Civil Service Association of Canada or the Professional Institute of the Public Service of Canada, as they may agree.

After the meeting today, to each member of the committee will be sent a copy of the Heeney Report and a copy of the present Civil Service Act, in order to assist in your studies of the work of the committee. Members are asked to retain the copies which will be sent to them because they are in very short supply; just enough copies have been provided.

To open our hearings this morning we have the Minister of Finance. I will ask him to explain to us the general purpose of Bill C-71.

Hon. DONALD M. FLEMING, (*Minister of Finance*): Thank you, Mr. Chairman. I am very happy to have this opportunity of appearing before this committee at this meeting, at which you are launching consideration of what I regard as a most important legislative measure. I think it would be profitless if this morning I delayed the committee by reviewing or repeating things which I endeavoured to say when moving second reading of the bill on March 7, or in closing the debate on second reading.

What I would endeavour to say this morning would be by way of emphasizing what I regard as the importance of the bill. First of all, it is important from the nature of the subject. The civil service is an element of vital importance in the whole scheme of government under our system. I am sure

no one of us has the slightest disposition to discount in any measure the vital role which the permanent civil service plays in good government under our system.

In the second place, there are elements in this measure which both continue former principles and introduce some new legislative proposals which I think are worthy of the most serious attention of members of the house, and particularly members of the committee.

It has been a very long time since there has been anything approaching a comprehensive review of this legislation. Indeed, forty-three years have passed with very little in the way of legislative change introduced into the historic legislation of 1918. It does mark one of the major landmarks in our Canadian legislation in reference to this important subject.

I think the fact that so much attention has been drawn to this measure, and to the proceedings associated with it, all helps to underline the importance attached to it and to this committee's deliberations by all persons concerned. I feel the more confident in submitting this legislation to the house and to this committee because it has had a very extensive and indeed very intensive preparation. The invitation was extended by Mr. St. Laurent in 1957 to the civil service commission to undertake this searching study, and I believe this is something which has earned the commendation of all parties. Soon after the change of government the commission was requested by the new government to pursue its studies; it did so. I think all members of the committee will recognize the value of that study. It was a remarkable piece of work from many points of view.

The Heeney report, of course, has formed the basis of the legislation now contained in bill C-71. This committee is aware that the recommendations of the Heeney report have not been followed in all respects. There are some quite significant departures from the recommendations in the Heeney report. For instance, the Heeney report did recommend some departures from the veterans' preference. Those recommendations have not been adopted and the bill contemplates the continuation of the veterans' preference unimpaired in any respect whatever. There are other departures from the recommendations of the Heeney report to which attention has been drawn in the debates in the house.

After a study of the Heeney report which continued over something like a year and a half—and I may say that was a very intensive study and one makes no apologies for the length of time spent on it, having regard to the very great importance of the subject—bill C-77 was introduced in the 1960 session of parliament. There followed requests for further time for study. Perhaps some of the requests were made before it was realized how long the 1960 session was going to last. The government readily acceded to the request made that the bill might stand over until the 1961 session. We now have a bill before us again.

I would remind this committee that there are numerous changes in bill C-71 as compared with bill C-77 of the 1960 session. Many of these changes are not changes in substance; they are changes in form; they are textual. There are changes, however, which I think would be regarded as material changes to which I directed attention when I spoke in the house on March 7. One of those changes relates to clause 7 which is a clause to which a good deal of attention has been given from the time of the introduction of bill C-77, and on which opinions had been expressed. I am sure the committee is well aware of the nature of the change contained in clause 7. No doubt more will be heard about that in due course.

So, Mr. Chairman, I think I need say no more by way of reviewing the background of this measure. May I offer a word about what I think might well be regarded, or adopted, as the aim of this committee. I hope that when the bill comes out of this committee and is reported back to the house we will

have the best possible legislation. All members of the committee may not agree on all details of the measure, but I think there will be a united purpose to seek to make of this important legislation the best possible legislative vehicle for giving expression to the will of parliament in relation to the civil service. As you have indicated, Mr. Chairman, you will be hearing from the associations. I presume that it may be your decision to hear first the general representations before you examine the detailed provisions of the bill clause by clause.

I will be very happy, Mr. Chairman, to come to the committee to discuss any of the clauses on which there may be discussion or differences of opinion. I dare say that many of these clauses will not provoke discussion. I would like to offer this suggestion to the committee and, if it meets with approval, in this respect I would be following a precedent set by one of my predecessors some years ago. In connection with the hearings on a legislative measure in a committee such as this, the committee heard deputations, went through the bill clause by clause and then any clauses which presented difficulty were reserved. The amendments were not then voted on. They were held out and, when they were all gathered together, the minister was asked to come back and to state the position of the government with respect to each of these matters or any amendments which might have been suggested.

Mr. Chairman, I only offer that suggestion to the committee in the hope that it may be of assistance to you in connection with this quite long bill. However, it would be my expectation that most of the clauses in the bill would not give rise to any problems. In general, I think they are quite clear and they are well understood. However, that is a matter for the committee's decision. I shall be glad to be of service to the committee in any way in which the committee may think it is possible for me to be of assistance in the important deliberations on which it is about to embark at this time.

Mr. Chairman, I am sure that this committee is qualified to do a very useful service. We have put before the house, and the house has referred to this committee, a bill which has been prepared only after long and patient study and the expenditure of the utmost care and consideration on the legislative proposals it contains. No one pretends that it is perfect. However, I do ask the committee to believe it is the product of the most intensive study of a subject which is of far-reaching importance.

You will have the assistance of the Hon. Mr. Hughes, chairman of the civil service commission. I am certain that his assistance to the committee will be indeed very valuable. Since Mr. Hughes succeeded Mr. Heeney as chairman of the civil service committee, he has devoted the most intensive study to this whole program. Of course, the views of the commissioners who wrote the report, and the views of Mr. Hughes have been available to the government in connection with the drafting of the legislative proposals embodied in bill C-71, and its predecessor, bill C-77.

Mr. Chairman, I was in Washington a fortnight ago, and I was struck and deeply impressed by a placard suitably mounted which stood at the door just inside the main entrance to the new Department of State building. It was there for all members of the public service of the United States who passed, to read. I presume that copies similarly were displayed in other government buildings in Washington. It consists of excerpts from the State of the Union message delivered by President Kennedy on January 30, 1961, and for myself, Mr. Chairman, I would like to adopt, and respectfully submit to the committee as a worthy statement of our goal in this respect, these words of the President:

> I here pledge myself and my colleagues in the cabinet to a continuous encouragement of initiative, responsibility and energy in serving the public interest.

> Let every public servant know, whether his post is high or low, that a man's rank and reputation in this administration will be determined by the size of the job he does, and not represented by the size of his staff, his office or his budget. Let it be clear that this administration recognizes the value of dissent and daring—that we greet healthy controversy as the hallmark of healthy change.
>
> Let the public service be a proud and lively career. And let every man and woman who works in any area of our national government, in any branch, at any level, be able to say with pride and with honor in future years: "I served the United States government in that hour of our nation's need."

If one might paraphrase, Mr. Chairman, these words of the President of the United States—by any standard, very noble words indeed—one would like to say, for Canada: Let every man and woman who works in any area of our national government, in any branch, at any level, be able to say with pride and honour in future years, "I served the Canadian government".

The CHAIRMAN: Thank you very much, Mr. Fleming. We will be glad to have your assistance again when we go into the clause-by-clause study of the bill.

Mrs. Casselman and gentlemen, as the Minister said, we have with us this morning the Hon. Mr. Hughes, Chairman of the Civil Service Commission. Mr. Hughes has a detailed general statement on the bill before us.

Before I call upon Mr. Hughes, is there any particular question anyone would wish to ask of the minister in regard to his statement this morning?

Mr. CARON: You, sir, will be available to this committee, if required, when we are studying the bill, clause-by-clause?

Mr. FLEMING (*Eglinton*): I will be very happy to be at the call of the committee any time you wish me to come.

Mr. CARON: Except when you have a cabinet meeting, and if you are not busy that morning.

Mr. FLEMING (*Eglinton*): Yes.

The CHAIRMAN: At this time I would like to invite Mr. Hughes, the Chairman to the Civil Service Commission, to make a statement to the committee.

I believe that copies of Mr. Huges' statement are available for all members and for the press.

Mr. CARON: Could we have the copies distributed before Mr. Hughes commences? In this way we could follow him much better.

The CHAIRMAN: There are sufficient copies available for the press and anyone else who is interested.

Mr. CARON: Was that brief translated?

The Hon. S. H. S. HUGHES, Q.C. (*Chairman, Civil Service Commission of Canada*): Yes, it is, Mr. Caron. There are 25 copies available in French. However, I must say that I was not responsible for the translation of it.

Mr. Chairman, Mrs. Casselman and gentlemen, the statement I have prepared is more in the nature of an aide memoir which I do not want to adhere to very slavishly. It was prepared originally in English and translated into French by the translation service. I hope sufficient copies are available.

Mr. Chairman, I do not think it would be particularly helpful for me to embark upon a lengthy review of the history of the civil service at this point. That task has been very competently performed by the authors of the Heeney report, and reference to paragraphs 6 to 18 of the main text of that report, is probably all that is necessary in this connection. The present Civil Service

Act, enacted in 1918, is the fourth statute which has been enacted in connection with civil service matters or, at least, dealing specifically with the civil service. The first one was in 1868, followed by the act of 1885, which led in turn to the act of 1908 and finally to that of 1918. The original early acts followed what was the current idea of British procedure—I think that is a fair statement to make—and were expanded as that procedure was changed. Those earlier acts confined the function of the civil service board to examining candidates who were, at least in 1868 and 1885 and thereafter for some years, ministerial nominees; so that the principle of patronage was not seriously disturbed by the early legislation. Then, the act of 1908, which gave to the civil service commission the right of appointment, or responsibility for appointing, was confined to the "inside service", as it was known, and it was not until the act of 1918 that the act was made universally applicable to the civil service.

Throughout its history of 43 years, as the Minister of Finance has said, the 1918 act has not been noticeably subject to amendment, considering its long life, and such amendments as have been made have been confined to questions of detail rather than of principle. In my respectful view it has, at times, been misinterpreted but seldom tested in the courts. Its life may have been prolonged by the super-imposition of the War Measures Act which made it, together with many other statutes, unnecessary to face the task of making its provisions apply to altered circumstances, and the habit of circumventing its provisions, sanctioned by the War Measures Act, tended to persist for many years after the sanction of War Measures Act was withdrawn.

I do not mean to suggest that anything nefarious was done in the course of such circumvention, but procedures which were justified in the atmosphere created by wartime emergency have, in some respects, outlasted the occasion which called them forth and have even produced other procedures conceived in the same spirit of polite evasion. But, I think the main reason for postponing the amendment or evading the effect of provisions in the act which had outlived their usefulness, was the great respect which was felt for the main theme of the act, if I may call it that, which was the establishment and protection of the principle of selection and promotion based upon competitive examination, generally and conveniently referred to as the "merit system". The same feeling of respect has animated all those who have been engaged in the preparation of this bill from the time when its main outlines were considered by the authors of the Heeney report to the time when the draftsman produced the present version, known as bill C-71.

Before proceeding to refer with more particularity to the bill itself, I wish to make one preliminary observation with some diffidence about the relationship between the Heeney report and the bill. The Heeney report has been widely circulated and read, as it deserved to be, and as has been said by the Minister of Finance in the House of Commons, it is the basis of the present bill. However, the authors of the report had a wider conception of their duty in preparing it than that of simply providing the framework for the revision of the Civil Service Act. They ranged widely over the whole field of the public service and provided the government with what, in their opinion, represented the best answers to the many questions affecting personnel policy which they considered. They did not attempt to draft the new act and its regulations, realizing that this process would occur at a later stage of deliberations which would produce a new Civil Service Act.

A good deal of confusion was accordingly created by the inclusion in the report of appendix A, described as a review of the Civil Service Act and regulations which takes the form of a concordance, as it were, of the commission proposals and the related provisions of the present Civil Service Act sections and of the regulations which are appropriate to those sections of the act.

It will be noticed, if appendix A is examined, that the proposals, which are numbered and to which reference will be made hereafter, are distinguished by the appearance of the word "act" and the abbreviated word "reg" for "regulations", where, in the view of the commissioners it was felt that their proposals might be either included in the body of the act itself or else consigned to the regulations. It would, however, be misleading to assume that one could take the commission proposals in appendix A and, by following the signs, as it were, produce a draft bill and regulations. It was not the intention of the commissioners to prescribe in appendix A either the form or the language, or indeed the individual content of the act and regulations, other than in the most general way and subject to the requirements of legal draftsmanship. The draftsman, with his expert knowledge of the canons of interpretation and the legal effect of statutory provisions, must have a free hand in these matters, subject to the requirements and directions of policy. It may well be, therefore, that representations are made to this committee based upon a misconception of the role and purpose of the commissioners in this respect, since appendix A is in point of size the greater part of the volume in which the Heeney report is contained.

It also follows that many of the commission's proposals set forth in appendix A are in form more declaratory than is either necessary or desirable in an act of parliament. The bill, in the manner of bills concerned with the provision and operation of administrative machinery, avoids the statement of principles of the purely declaratory type. These principles are, however, enshrined in the bill in the form of directions and prohibitions, if I may use these terms, the civil service commission and others being charged with the responsibility of performing certain functions while taking into account the necessity of observing certain principles of action. I do not presume to instruct and I am most anxious not to appear didactic but I merely point this out at this time because I think it will be necessary in considering the bill in detail to relate the aspirations of individuals, and groups of individuals, to the more matter-of-fact mechanics of legislation.

The bill may be conveniently examined first in the light of its effect upon the powers and responsibilities of the civil service commission which are crucial to the preservation of the merit system. Subsection (1) of clause 20 preserves the exclusive right of the commission to make appointments to positions in the civil service as in the present act. The powers of the commission in matters of classification, which are as vital to the preservation of the merit system as the power to appoint, are set forth in clause 9 and subclause (1) of section 16.

The power to initiate recommendations on the pay of the civil service is contained in section 10. These are the three pillars, Mr. Chairman, upon which the essential independence of the civil service of Canada rests. They are as fundamental to the bill as they were to the act of 1918.

They provide a somewhat different arrangement of functions and powers from that which prevails in the United Kingdom, where the treasury assumes the responsibility for recommendations on pay and classification and where the civil service commission is primarily the examining body and has, of course, quite an enviable reputation in setting a very high academic standard in its examinations.

Certain additions have been made to the content of the present act, in this bill. Subclause (4) of clause 65 rather unobtrusively establishes the right of civil servants to their pay, a distinct change in the prevailing legal concept that the crown has no obligation to pay its servants but does so as a matter of grace. Then there is the provision for the establishment of appeal boards to hear appeals by employees from the administrative decisions of their superiors, contained in clause 70, and the setting forth of grounds of appeal in clauses 27, 56, 60 and 67.

There is no provision for appeals in the present act except as contained in section 51 dealing with suspension, which the commission is at present empowered to review if it feels that a suspension is unjust or made in error, or that the punishment inflicted was too severe. There I may say that in section 51 there is no separate statement about appeals. It just says that no person shall receive any salary or pay for the time or any part of the time during which he was under suspension unless the commission is of opinion that the suspension was unjust or made in error or that the punishment inflicted was too severe. Such provision as is now made for appeals to the civil service commission is confined to the regulations made under the Civil Service Act. No appeal is now permissible against a recommendation to dismiss or a decision to demote. Parenthetically I should say there is now in this bill provision for such appeal on these grounds.

Again on the positive side in this bill is the elimination of any distinction between permanent and temporary employees in so far as the word "temporary" has come to be applied over the years to employees who have served for many years, but without ever having had their appointments made permanent, with disadvantages of status which have, it should be said, over the years been largely eliminated. Provision for the disposition of those employees who were classified as temporary under the old act is contained in subclause (3) of clause 83 of the bill.

It will be noted there that a certain period of grace is allowed to enable the commission and the departments to examine cases of temporary employees, so that nobody will be automatically deprived of his status by the mere repeal of the old act and the enactment of the bill in this form.

A particular feature of the bill to which I would like to draw attention is the importation of a definition of the public service contained in clause 2 (1) (*b*) (*r*). This section 2 is of course the definition section under the heading "Interpretation", and clause 2 (1) (*b*) (*r*) is at the top of page 3, defining the words "public service". This definition adopts that contained in the Public Service Superannuation Act; and subclause (2) of the same clause, and the bearing which this definition has upon the provisions of paragraph (*a*) of clause 34, has to be borne in mind. These clauses have to be read together.

As you remember, the public service definition in the Public Service Superannuation Act refers to a schedule containing a large number of crown corporations and agencies which immensely widened that part of the public service which is given privileges under this act. For instance, under the present act competitions for appointment are of two kinds: promotional competitions either service-wide or confined to a particular department but in any event not open to persons employed outside the civil service proper; and open competitions which are, as the name implies, open to the public at large including the civil service.

I want to make one qualification there, Mr. Chairman, if I may. There are some acts which have created boards and other agencies which have a section in them stipulating that anybody who has gone to take an appointment as an employee of such a board and who was formerly a member of the civil service enjoys all the benefits to which he might have been entitled if he remained in the service. This has recently been interpreted by the Department of Justice as meaning that he could apply in promotional competitions in those cases where it would have been appropriate had he remained in his own department. But this of course only applies to those persons who were originally in the civil service and have moved over to an agency.

A competition which is not open to the public at large is now defined in this bill as a closed competition and may be entered, subject to a determination made by the commission, by personnel employed in all those crown

corporations and agencies referred to in Schedule I of the Public Service Superannuation Act, plus members of the Royal Canadian Mounted Police and the armed forces of Canada. This provision for promotion and transfer into the civil service from a much wider area of government employment confers substantial rights on a large number of servants of the crown who are not members of the civil service itself, and may be said indirectly to preserve to the taxpayer the investment which he has made in the training received by government employees who might otherwise have been barred from competing with other government employees for a continuing career in the service of the state. Great emphasis was laid upon the desirability of this step in the Heeney report.

A considerable change of emphasis as between the old act and this bill can be observed. I refer to the 1918 act as the old act, Mr. Chairman, because it is so referred to in the bill. There is a provision in one of the earlier sections that where the Civil Service Act, of 1918, is referred to it should be called "the old act", but I say this fully conscious of the fact that this is the act under which we are at present operating.

A considerable change, then, can be observed by comparing section 19 of the old act to clause 47 of the bill. The old act is content with providing, in the case of appointments to a local position, that the employee be qualified in the knowledge and use of the language, be it French or English, of the majority of the persons with whom he is required to do business. Clause 47 of the bill lays upon the commission the responsibility of seeing that this consideration is borne in mind, not only in local positions but in head office positions of departments, and not only in the language of the majority but in terms of the use of both languages where it is considered that their use is necessary to give effective service to the public. This will enable the commission in practice to give preference to applicants for positions and existing employees who are bilingual, as the circumstances may require.

The last point I wish to refer to in considering additional features of this bill is the completely new clause 7, which provides authority for—I will go even further and say obliges—the nominees of the Minister of Finance and the civil service commission to consult with representatives of staff associations about pay and other terms and conditions of employment. The terms of the section are quite general and are designed to allow fashioning either by regulation or by custom the procedures which may be adopted, and which can hardly be successfully instituted without much consultation and definition of the representative function. It is to be expected that the committee will hear a great deal on this subject in the course of its deliberations, from widely varying points of view.

There is one major subtraction from the powers of the civil service commission. The exclusive responsibility for initiating the organization of government departments and changes therein conferred on the commission by section 9 of the old act no longer appears. In accordance with one of the most publicized features of the Heeney report, to provide greater freedom of action for deputy heads in their dealings with the treasury board in matters of establishments, the commission's role becomes advisory only, except in the matter of classification.

The extent to which this has been accomplished may be discerned by an examination of clauses 15 to 19 inclusive of the bill under the sub-heading of "establishments".

There is a similar modification in the commission's position in making recommendations on pay to the governor in council when one compares section 11 of the old act and clause 11 of the bill. It has been held that under the old act the governor in council was precluded from any partial implementation of the commission's proposals and was confined to accepting them or rejecting them in toto.

Apart from the desirability of providing more flexibility in this field and giving the executive freedom of action commensurate wth its responsibilities, persistence in the old course would not be consistent with the state of affairs contemplated in the old course would not be consistent with the state clear that the governor in council "after the commission has had an opportunity of considering the matter and after considering any recommendations made by the commission" is given a relatively free hand.

As the minister has said, recommendations of the Heeney report have not been followed in respect of the preference in appointment in open competitions of veterans with overseas active service and it will be seen by comparison of sections 2 and 28 of the old act and clauses 40 and 41 of the bill that there is little change except in so far as paragraph (c) of subclause 1, and subclause 3 of clause 40 are concerned.

Subclause 3 by reference to the Veterans Benefit Act signalizes the extension of the preference to veterans of the Korean campaign as in the past without requiring a complimentary amendment of that statute.

Paragraph (c) of subclause (1) recognizes the status of Canadian citizens provided by the Canadian Citizenship Act and not hitherto distinguished in the Civil Service Act, and taken together with paragraph (*d*) is a significant modification of the absolute prohibition against the admission of candidates to examination not being British subjects with five years' residence in Canada, except by order in council contained in subsection 1 of section 32 of the old act.

This provision was general, that no person shall without authorization by the governor in council be admitted to any examination unless he is a natural born or naturalized British subject, and has also been a resident of Canada or Newfoundland for at least five years.

Obviously that requires amendment, Mr. Chairman, because it involves the Canadian Citizenship Act, and it must be noted that now Newfoundland is a part of Canada.

I should like to conclude these preliminary observations then, Mr. Chairman, with some general remarks about the scheme of the bill. It will be noted that it is in five parts, exclusive of the interpretation sections which precede them. That part is not numbered, but it is most important.

Part 1 begins with clause 4. It includes clauses 4 to 8, and it deals with the civil service commission itself, the establishment of the commission, and the general powers and duties of the commission, and it includes, of course, clause 7, with the sub-heading, "consultation with staff organizations".

Part 2 deals with the organization of the civil service, beginning with the functions of classification, and carrying on with pay and allowances and establishments, and from clauses 9 to 19 inclusive.

Part 3 deals with appointments. It is a long part, which goes from clause 20 to clause 49 inclusive.

Part 4 deals with terms and conditions of employment, and it runs from clause 50 to 67 inclusive.

Part 5, which contains some very important provisions, is modestly described as "general". It runs from clause 68 to clause 85, which is the concluding clause of the bill.

I would like to suggest that there is a logical progression inherent in these divisions. First of all, we have the commission, emerging as it were from chaos; then the civil service is organized by the creation and classification of positions, and the allocation of positions to establishments.

In this case it is a really important feature of the bill that the draughtsman regarded every movement of a person into a position as an appointment, whether it be by initial appointment by examination, or by promotion. So that

the probationary period in both cases applies, and the commission and the governor in council are left to define by regulation what is promotion, and what is transfer, for instance.

Then the next step is that men and women are appointed to these positions; and finally, they are told, in so far as the statute can properly say, what the terms and conditions of their employment are.

Part 5, general part, tidies everything up, particularly through the instrumentality of clause 68, which is the familiar clause providing for the making of regulations.

The first thing to be noted in subclause 1 of clause 68, Mr. Chairman, is that the regulation-making power conferred on the governor in council in respect of the matters dealt with in the subclause, can only be exercised on the recommendation of the commission.

This constitutes a change in form from the section in the old act which says that the commission will make regulations to be approved by the governor in council. It is just an inversion in form, in my respectful view.

Secondly, regulations may be made generally "for carrying the purposes and provisions of this act into effect".

Thirdly there is a long list of specific subjects upon which regulations may be made contained in paragraphs (*a*) to (*u*) of subclause 1.

This is not all, however, for here and there throughout the bill there are other matters in connection with which the making of regulations is provided for, and which are additional instances of the general power to make regulations provided for the opening words of clause 68(1).

Then finally, there is provision in clause 69 for the governor in council to make regulations independently of any recommendation by the commission in connection with matters in which presumably the commission has no direct interest.

Mr. Chairman, I am making this reference to the regulations, not because, as I understand it, subject to correction, that the committee will be considering the regulations themselves, which will of course be enacted by order in council, but because it seems to me that the committee will be compelled to consider at every stage that very important matters reside in subordinate legislation of the adjectival rather than the substantive type, if I may use those terms.

In order to keep pace with the progress of the bill through parliament, and to avoid long delay between the time of royal assent and proclamation, regulations are now being drawn within the civil service commission on the assumption, which may be falsified of course at any time, that the bill will be enacted in its present form.

These regulations will be given wide circulation for the purpose of obtaining comment and suggestion, and will then be submitted to the Department of Justice for final scrutiny as to form and validity.

The advantage of regulations is that they can be easily enacted and amended to meet the requirements of purely procedural and administrative situations.

The disadvantage is that they are subject to proliferation at a great rate, especially in connection with a comprehensive piece of legislation like this bill.

If it is borne in mind that regulations cannot add to, subtract from, or vary the provisions of the statute under which they are made without running the risk of being held to be ultra vires, all will be well, and a proper balance will be maintained.

Very often suggestions have been made, and sometimes I venture to say implemented, in the form of regulations which do not survive this test. Doubtless they will be made again in connection with this bill as they have been made in connection with the old act. Thank you.

The CHAIRMAN: Thank you, very much, Mr. Hughes. Has anyone in the committee any questions that he or she may wish to ask Mr. Hughes? If so, we would like to hear from him or her.

Mr. McILRAITH: I have a line of questions of a general nature perhaps which would be appropriate to deal with at this time.

I am concerned with the point that the success of the 1918 act was largely based on the independence of the commission itself. It was appointed in a way which, to me at least, seemed to guarantee its independence. Indeed, that was evidenced by the method of appointment of the commissioners, the method of their removal if that became desirable or necessary, and by the method of their reporting to parliament. So far as I know, until very recent years, they were not directly and immediately concerned with the pay problems. As rates of pay tended to increase in Canada in the last number of years they then came into the position where information came to them affecting rates of pay and so on under the authority of the old act as it existed. Then in 1959 there was a period of controversy, if you like, over a question of pay increases. I had presented a motion to the House of Commons asking that a report prepared by the commission for the Minister of Finance as it turned out—I believe it was prepared at his request—be published. I am not concerned with the publication or non-publication of it. I will come to my point in a moment or two. What struck me then was this: so far as I know that was the first time any question arose of the commission reporting directly to a minister or a government and not to parliament. As near as I can find out the problem simply never had arisen in the past because there had been no circumstance to make it arise.

Now we have the new act, the scheme of which seems to preserve this policy of independence of the commission. I think it is elementary that its aim is that the report be made to parliament and the minister answering in the house is a minister designated for the purpose. In section 7, however, which is important in another connection, the Minister of Finance has even more clearly defined power than he had under the old act to require the commission to do certain things, in the field of examining into pay increases and that type of question.

In the new act it seems to me there is a new principle introduced that the commission will to some extent, in some matters, be directly under the order of a minister other than the one to whom it reports to parliament.

Mr. BELL (*Carleton*): No.

Mr. McILRAITH: Just a moment; I want to make my point. Clause 7, and I believe other sections to which we may refer, seem to have that tendency. Presumably the reports obtained at his request would be made to the Minister of Finance, or in other words, to the government as opposed to parliament. Have you ever considered in this context the importance of preserving the independence of the commission and having it receive its direction only from a designated minister and report only to parliament.

Mr. HUGHES: I would say we have always had that principle in mind. Going back to the recommendation of June, 1959, to which I was not a party, as it was made just before I was appointed, my information is it was a recommendation made in the normal way to the governor in council, as section 11 of the old act provides. In future, such recommendations under the new bill will be made to the governor in council in the same way. So, in that particular respect, I do not think there is any encroachment, as it were, upon the independence of the commission.

Turning in clause 7, I would have said that the commission and those members of the public service who are designated by the Minister of Finance have an equal responsibility laid upon them to enter into negotiations with staff associations and other appropriate groups. I would suggest, with great respect, that there is nothing either explicit or implied in that section which would subordinate in any way the commission to the Minister of Finance.

Mr. McILRAITH: In connection with your last remarks about that section, that was not my point. I was using it merely as an illustration of where the Minister of Finance could initiate an instruction to the commission. I was not dealing with the other point.

Mr. HUGHES: I should say there is a change in this authority in section 6.

Mr. McILRAITH: (*b*).

Mr. HUGHES: Yes. Section 4(1)(*b*) of the old act reads:

> Upon the request of the head of a department, to investigate and report upon any matter relative to the department, its officers, clerks and other employees;

Then, subsection (3) reads as follows:

> In connection with, and for the purpose of, any investigation or report, the commission or any commissioner holding an investigation shall have all the powers of a commissioner appointed under part II of the Inquiries Act.

That is the part of the old act which contemplates a request for a report to a minister of the crown. However, I do not think it could be construed as in any way subordinating the commission to a minister. It is just a sort of fact-finding function laid upon them.

Mr. McILRAITH: Well, perhaps I can get at it in another way. No doubt you will have read the argument on the motion for production of papers.

Mr. HUGHES: Yes.

Mr. McILRAITH: In reading it, you will recall that a motion for production of papers is not debatable and, therefore, the argument had to be on the somewhat narrower grounds that could be raised on a point of order. There is no decision taken on that point. Then the question arises as to whether or not the facts will be produced as a separate question which has to come up its own right, and does not deal with the legal aspect of it. There is that handicap. However, bearing that in mind, and bearing in mind section 11 of the old act, where it does not deal with the question of reporting on changes in rates of compensation for existing classes, and so on, you will notice, in looking at section 11(1) of the old act,—

Mr. HUGHES: Yes, I have it.

Mr. McILRAITH: —that it deals with your authority to recommend, but does not deal in explicit language with the authority to whom you recommend directly.

Mr. HUGHES: It is implied in subclause (3), which talks about "upon their approval by the governor in council".

Mr. McILRAITH: That is what happens with the recommendation; but that is a separate point.

Mr. HUGHES: Yes.

Mr. McILRAITH: There is nothing dealing with where or to whom you report these recommendations. Bearing that in mind, in the old act, the fact that the point first arose in 1959-60, and the fact that it did tend to get a degree of publicity which had an influence on public service one way or another, what steps did you take in the new legislation to guard against the same kind of controversy in the future?

Mr. HUGHES: Well, I would not like to point to any steps that would inhibit controversy. I am quite sure there will be controversy in many of the provision of the bill, if they become law. Perhaps I should qualify what I said to you earlier, when I said that the recommendation of June, 1959, was made to the governor in council. That is, of course, in accordance with the terms of the act. In practice and, because of the delegation of authority by the governor in council to the treasury board, it was made to the treasury board.

Mr. BELL (*Carleton*): That has been the universal practice under the act?

Mr. HUGHES: Yes, I understand it has been the practice for a long time and, of course, the Minister of Finance happens to be the chairman of the treasury board.

Mr. MCILRAITH: I do not want to prolong the argument into that aspect of it, but the point had not arisen before because the contents of the reports were well known to the organizations and everyone else concerned—

Mr. BELL (*Carleton*): No, no.

Mr. MCILRAITH:—and that goes back a few years.

Mr. BELL (*Carleton*): I do not think Mr. McIlraith is right.

Mr. MCILRAITH: I do not want to get you into this, Mr. Hughes.

Mr. HUGHES: Perhaps I could answer you this way by saying that no change has been contemplated in the present procedure.

Mr. MCILRAITH: No change and no special clarification on that point?

Mr. HUGHES: No. If the point needs clarification I think, as far as the bill can go, it is clear.

Mr. MCILRAITH: But, if it needs clarification, there is none in the new bill?

Mr. HUGHES: There is no change.

Mr. MCILRAITH: I wish to go one step further. You spoke of the British system in this context, where they keep the functions of pay quite separate. We are now coming to a point under the new legislation where we shall have the question of pay becoming, to a considerable extent, one of the responsibilities of the commission. Will you give an opinion to the committee as to whether the bringing of the controversial question to pay directly under the jurisdiction of the commission, the jurisdiction of which originally was concerned solely and mainly with the establishment and promotion, will weaken or strengthen the ability of the commission to serve the public service well, and to serve the country well in its administration and selection of the public service?

Mr. MACDONNELL: May I suggest that it would be more appropriate to deal with this when we come to examine the bill clause by clause?

The CHAIRMAN: It seems to me that at this particular time we would do better if we concerned ourselves with broad, general questions rather than by delving into particular aspects of the bill. We all know that Mr. Hughes will be available when we are dealing with the bill, clause by clause. However, if he wishes to answer now, he may do so.

Mr. MCILRAITH: This is not under the clause.

Mr. BELL (*Carleton*): The question should be put on the basis of premises which are valid. Mr. McIlraith has been operating here on invalid premises on most of his questions.

Mr. MCILRAITH: Perhaps I can validate my question. If I remember correctly what the witness said, he pointed out very concisely the distinction in the United Kingdom where one authority deals with promotion and hiring matters, examinations and so on, and another authority deals with pay matters. That was largely the case under the old act in this country until comparatively recent years, probably up to the last decade or so. I wish to ask him, has he any opinion to give the committee as to the relative merits of the two systems?

Mr. HUGHES: I may not be sufficiently well prepared in making this answer, but I say that section 11, I respectfully submit, provides for the commission making recommendations to the governor in council, and my own feeling, gained from the effect of reading those subsections together, which were, in

the revision of the Statutes of 1927, while not presuming to say what has been done in the past by the civil service commission in this field, I think it is now well established that the commission, especially in view of its embracing the pay research bureau, has a part to play in digesting the findings of the bureau and making recommendations to the governor in council on matters of pay. Once that point has been reached there may be infinite elaboration, about which I am not anxious to speculate.

Mr. McILRAITH: We are in accord up to that point. I think the commission are infinitely well suited to do this. I think it is an improvement over former practice, but I am concerned with a much narrower aspect of the point. In this proposed legislation have you taken adequate steps to guarantee the independence of the Civil Service Commission having, through practice and through new legislation, been given this task in the field of pay and pay increases?

Mr. HUGHES: As far as the proposed legislation goes, without hesitation, I would say "yes" to that.

Mr. McILRAITH: We have adequate safeguards? You are convinced of that?

Mr. HUGHES: Assuming the task of the Commissioners is discharged with courage and independence.

Mr. McILRAITH: My concern lies in the fact that we have two ministers answerable in the House for a single commission. I have some concern on that point. I would like to see more adequate safeguards. Perhaps we can leave that for the present, as you have given your answer adequately.

Mr. BELL (*Carleton*): It is clearly set out that section 11 at all times placed upon the commission this responsibility of reporting, in respect of pay, to the governor in council; but that has gone on, at least since 1927.

Mr. McILRAITH: No.

Mr. HUGHES: I would think so. I cannot speak from direct experience of what was done, but that was always my impression.

The CHAIRMAN: In practice, that means a report to the Treasury Board, of which the Minister of Finance is Chairman.

Mr. McILRAITH: Would you give us the date of formation of the Pay Research Bureau? Your last answer covers that.

Mr. HUGHES: September, 1957, I understand was the date of formation of the Pay Research Bureau.

Mr. BELL (*Carleton*): That has nothing to do with section 11 in relation to the duty of the civil service commission under the old act. The establishment of the Pay Research Bureau was surely just a technique to enable the civil service commission more adequately to fulfil the function which was given to it under section 11 of the old act.

Mr. McILRAITH: Precisely; it began to move into this field and do work there. The Pay Research Bureau was set up. It moved into the field as the need arose, and in the earlier years it did not do very much of the work under the authority of section 11 of the old act. It has become a new thing. You only have to look at the rate of changes in pay rates since 1918 when they came about rapidly and when they did not; and if you will examine that subject you will see why it became only important in the last decade, since the second war.

Mr. HUGHES: Perhaps I could undertake to get some more explicit information on the role of the commission in past years in making recommendations to council on these matters.

Mr. McILRAITH: I do not think it becomes of importance because it undoubtedly has become a major feature in the past few years. They undoubtedly had the authority under the act.

Mr. HUGHES: Yes.

The CHAIRMAN: Ladies and gentlemen, I think it would be better if each question to Mr. Hughes, at this point, were of a general nature. Has anyone else any question of a general type, something that would be handled better now than when we come to a clause-by-clause survey of the bill.

Mr. MCILRAITH: I have another subject to raise, but I have been taking a good deal of time, so perhaps someone else wishes to raise a point.

Mr. CARON: According to what we have heard of the Commission, it shall from time to time consult the Associations regarding pay increases and conditions of work and shall report to the Governor in Council. Is there any way that the civil service associations may know the recommendations of the Commission to the Governor in Council, so that they can make their objections to the Governor in Council?

Mr. HUGHES: I understood you to refer to section 7, Mr. Caron?

Mr. CARON: Section 11.

Mr. HUGHES: I see; sections 7 and 11. Of course section 7 contemplates discussions on these matters with staff associations. I would not expect in the course of these discussions that the commission would conceal its real views from the representatives of the staff associations as to what their recommendations were likely to be.

Mr. CARON: It does not appear to be very clear to me what the commission has the right to do or not to do. As it appears in appendix "B" of the Heeney report subsection 10:

> An important element in any such regime would be that the commission's recommendations subsequent to the conduct of discussions should be communicated simultaneously to the government and to the staff associations concerned.

In this way it is clear that they have to do so. In the other, while they may do so if they wish to—and as the Governor in Council has ever more power than he had previously—the Governor in Council may order that the recommendations be not given to anybody else but the Governor in Council.

Mr. HUGHES: In this area this is one of the procedures which I referred to, which I would expect to be elaborated after considerable discussion between the Commission, the Treasury Board, and the staff association. These are conventions of behaviour which do not readily spring to mind in devising legislation.

Mr. CARON: If there is no protection within the bill your staff association will not be protected, if it decides unilaterally that a recommendation would be given only through the Governor in Council.

Mr. HUGHES: Let me look at clause 11 on this point. I agree that under clauses 10 and 11 there is provision for the commission reporting to the Governor in Council, and the Governor in Council thereupon considering the report and taking action on rates of pay. I will admit that is as far as clauses 10 and 11 go.

Mr. CARON: It is far from being an answer to a request from the Civil Service Association where they would like to have negotiations.

Mr. HUGHES: Well, I have read the representations of the Civil Service Association, and in my view their version of clause 7 does nothing except add more words to what is already contained in the clause in the bill. The word "negotiation" is merely a matter of doing business by discussion. It may imply things, but it does not provide anything.

Mr. CARON: No, but it provides that a civil service association will know what is going on. Otherwise they will not.

Mr. HUGHES: I would hope that they would know fully what is going on under clause 7, when discussions are taking place.

Mr. PETERS: Does it not mean that in the problem we had last year, where pay increases were granted on a higgledy-piggledy basis, when some got them and some did not, and when there was delay on the part of some in getting them—does it not mean that the associations were not dealing with the commission at all, but were dealing or bargaining in a very remote form with the treasury board? Does it not mean that when the decision was made as to what increase was to be given, from the government's point of view, it should be dealt with by the commission itself, being a child of the treasury board?

Under the bill, negotiations would no longer be held between the associations and the commission, but really, in a broad sense they would be in the public domain, and would be negotiations between the civil service and the government itself? Is this not what this bill is producing, rather than to have negotiations between the commission and staff organizations which, normally, would never have occurred, but which are always—I mean, if they were dealing with you they would get an answer be it yes or no?

In this case I understand that the answer from the commission was that certain recommendations were being made, although they were not, as I understand it, completely public; but these recommendations were being made, and then there were further negotiations between them and the treasury board for the implementing of these recommendations?

Mr. HUGHES: I am quite certain there will be very definite changes in procedure brought about by the enactment of clause 7, if it is enacted. Other than that I cannot say anything, except that I understood you to say that the civil service commission was a child of the treasury board.

Mr. PETERS: Well, a child of the government.

Mr. HUGHES: I would repudiate that suggestion with as much vigor and vehemence as I can muster. The act provides very specific safeguards for the independence of the civil service commission, for example, with respect to the tenure of office of the commissioners, and in its functions of reporting to parliament. I do not think those words are in any sense accurate as a description of the role of the civil service commission in this matter.

Mr. MACDONNELL: May I ask a question of Mr. Peters. I understood him to say that there had been in fact very direct negotiations between representatives of the civil service and the Treasury Board. Is that what he said?

Mr. PETERS: No. It would be indirect, because part of their report was made public, which indicated a certain acceptance of pay increases, with a plan for implementation of certain pay increases, and that these were recommended for the full civil service. But when the increases were made, they were made only to certain classifications of civil servants. Thus there were further additional increases made. And as I understand it, they were made in three or four different batches last year. I would assume that this would mean that continuously the civil service commission would be negotiating for an implementation of these recommendations. But as I understand it, these recommendations are only made indirectly to parliament, in a very roundabout way.

Mr. HUGHES: Oh, they are not made to Parliament. These are recommendations made to Council. I was talking about the general point.

Mr. PETERS: It is a government organization; it is only a child.

Mr. MCILRAITH: There is an important point there as to all matters which affect the whole service. You did report to Parliament on every field except that of pay and allowances. The only other exception is where your report to

Parliament had to do with particular cases in particular segments, where the work was instigated at the request of a deputy head of a department. The problem which bothers many of us now is that with the changed requirements of the times you do work on pay and allowances, which is a very wide and very important field affecting the whole of the service. That is something done or originated by yourselves, the associations, or the government as opposed to parliament, and the reports go to the government. Those reports do not become public; there is no protection of your independence in respect of them at all. They go to the government and you are left in the position where public servants or outsiders may attack the government for what they have or have not done in that particular field. The commission is left in the middle. Nobody knows what its report contained and nobody will ever know. It is not disclosed by the government. There is a point of principle there which concerns many interested in retaining this independence of the commission, to the end that it may do the work it is set up to do and retain the excellent reputation it has built up. That is the point.

Mr. HUGHES: I should make it clear I was not dismissing as of no consequence the point Mr. Peters was raising. I was just dissenting with some vigour from the interpretation he was putting on the role of the Civil Service Commission. These reports are not, in my opinion, merely reports to the Treasury Board, but are recommendations under the provisions of section 11. I want to make it very clear that the commission does not accept suggestions from the treasury board in advance as to what recommendations should be made.

I feel the implications of the question is that our independence might be threatened. Well, if we were to engage in that type of exchange of views with the treasury board on this subject, indeed, it might; but the recommendations proceed entirely *de novo* or *ab initio* from the Civil Service Commission.

Mr. MCILRAITH: I hope you did not think that my remarks were initiated by a suggestion that the treasury board might have told you something, or anything like that.

Mr. HUGHES: No.

Mr. MCILRAITH: I am concerned, however, with this other situation where you would be in the middle of what is a very controversial and important subject—squarely in the middle between the government on one side and a body of public servants on the other. Having done this work, its being known you did it, and its not being made public, there is the implication that it did or did not contain something, and no one ever knows. That is why the United Kingdom so far has seen fit to keep the function in respect of pay and allowances separate from what might be regarded as the major work of the commission.

Mr. SPENCER: And take this out of the control of the commission.

Mr. MCILRAITH: Yes. I am concerned with having a safeguard for the commission in this.

Mr. CARON: I have some questions on another line, if we are through with this.

The CHAIRMAN: Does anyone wish to make any comments on this particular aspect?

Mr. BELL (*Carleton*): I do not think we should be making comments. I think if we examine the witness we will go ahead faster. We are getting into the position where some of us might like to debate the issues raised. I think we will get ahead more quickly if we let the witness continue.

Mr. McILRAITH: I do not think we should be concerned about getting ahead quickly. If we have to put forward a point of view on a particular aspect, I think we should do it so long as it is strictly relevant to the bill before us and related to what the witness has said.

The CHAIRMAN: I think Mr. Bell's point is well taken that, as much as possible, we should seek to obtain as much information as we can from the witness when he is available.

Mr. PETERS: I do not want to be unfair, and if I am it will be only because I do not understand this. I am concerned with what is the Commission's role in this matter of pay and negotiations in relation to the government, whether it be the treasury board or not. It was my understanding they did the negotiating with the association and made a recommendation. I think I express the view of a large number of persons in the civil service itself when I say that if this recommendation was made quietly and nobody knew about it then the public interpretation would be that the civil service really is an agent of the government in its negotiations. If they are not, then they are not serving much of a function in that field. So when the government says that these reports are preferential reports and cannot be disclosed, then obviously this is an admission by the government that they consider them to be so.

I am wondering how it is assumed that the commission can act independently. We all know that somebody else is going to pay the money anyway. It is not a question, necessarily, of how much money the government is to spend on increases, but in view of the need—and I suppose you use the yardstick of labour and other allied fields—that recommendation would be a factual recommendation based on negotiation, and yet the settlement itself will not necessarily be factual. Certainly it will take that into consideration, but it will not necessarily be based entirely on that basis.

Now, if this occurred in an ordinary industry there would be strike action instituted as an ultimate method of obtaining this. I feel that most of the civil servants will feel that the commission is acting as the agent of government in their negotiation and that there is some impartiality expressed in it. But, if the reports of the commission to the government are not made public, then it is only supposition that these reports were either based on a factual evaluation of the evidence that was put before them or, on the other hand, it will be the government's decision as to how much money they have available for that particular settlement. It is my opinion that to be established in this pay and allowance business the commission will have to establish some independence, and I would think that could be established only if the general public was aware of what the commission themselves decided to do about these things, with the recommendations they make.

Mr. HUGHES: Do you want me to make some comment on that?

Mr. PETERS: I am sure that this is an opinion which is shared by quite a number of people. If it is not true, then I think you should say so.

Mr. HUGHES: I could only say that as far as attributing motives are concerned, there never will be any end to the suspicions that people, for good or bad reasons, may express from time to time. All I can say is that as far as the former statute and the present bill are concerned—and the terms in this respect are identical—there is no reason to think that the commission cannot discharge its functions independently in this matter. It may well be that associations and other people have said: "We think that these people are not independent, are not honest, are not industrious." I fail to understand how a statute can protect any public official from that sort of aspersion.

Mr. McILRAITH: But that is not quite the point. I do not think anyone doubts that the commission will perform their functions independently; it is whether the commission, having done that, will be adequately protected and secured in its independence from charges by other consequences of the act that it did not do so. That is the point.

The CHAIRMAN: Mrs. Casselman and gentlemen, I do not want to interrupt you. However, it seems to me that this is a matter which could be gone into more completely when we are discussing the bill clause-by-clause.

I have been receiving notes from a number of people here who have a luncheon engagement. They are now a little late for this engagement. In order to accommodate them, and also because we may lose our quorum suddenly, would it be satisfactory to the committee if we adjourned this meeting, and met again on Thursday, the 13th of April, at 11 o'clock?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Also, I may say that we are hoping that we will be able to meet on Friday, the 14th of April, at 9.30.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

THURSDAY, APRIL 13, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing the Civil Service Federation of Canada:
Mr. Fred W. Whitehouse, President; and Mr. W. Hewitt-White, First Vice-President.

Representing the Canadian Postal Employees Association:
Mr. D. Cross, National President; and Mr. J. E. Roberts, General Secretary Treasurer.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

24883-1—1

SPECIAL COMMITTEE ON THE

CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*),
Campeau,
Caron,
Casselman (Mrs.),
Hicks,
Keays,
Macdonnell,
Macquarrie,
MacRae,
Martel,
McIlraith,
More,
Peters,
Pickersgill,
Richard (*Ottawa East*),
Roberge,
Rogers,
Smith (*Winnipeg North*),
Spencer,
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, April 13, 1961.
(3)

The Special Committee on the Civil Service Act met at 11.10 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Mrs. Casselman and Messrs. Bell (*Carleton*), Caron, Hicks, Keays, Macdonnell (*Greenwood*), MacLellan, Macquarrie, MacRae, Martel, McIlraith, More, Peters, Richard (*Ottawa East*), Rogers and Smith (*Winnipeg North*)—16.

In attendance: From the Civil Service Federation of Canada: Mr. F. W. Whitehouse, President; Mr. W. Hewitt-White, First Vice-President; Mr. E. K. Easter, Research Director; Mr. J. Wyllie, Second Vice-President; Mr. J. Henderson, Fifth Vice-President; Mr. L. R. Menzies, Treasurer; Mr. W. J. Bagnato, Executive Secretary; L. Constantineau; Miss E. Rintoul, J. Dumouchel, K. Green, J. Charlebois, J. Roney, F. Standring, E. Highfield, F. Cole, W. Girey and J. B. Archambault. *From the Canadian Postal Employees Association:* Mr. D. Cross, National President; Mr. W. L. Houle, First Vice-President; Mr. J. E. Roberts, General Secretary Treasurer; Mr. G. Cote, National Secretary; and Mr. R. Otto, Assistant National Secretary.

The Chairman welcomed Dr. Rolf N. B. Haugen and two other faculty members from the University of Vermont, who, accompanied by a group of 14 students, attended the Committee's proceedings.

The Chairman announced:

1. That the Committee would attempt to confine its meetings to 1½ hour sittings.

2. That meetings have been scheduled to hear representations respecting Bill C-71, as follows:

Thursday, April 13—Civil Service Federation of Canada; and Association of Canadian Postal Employees
Friday, April 14—Civil Service Association of Canada
Thursday, April 20—Professional Institute for the Public Service of Canada
Friday, April 21—Canadian Postmasters' Association Federated Association of Letter Carriers
Thursday, April 27—Canadian Labour Congress

3. That a letter respecting Bill C-71 has been received from the Canadian Jewish Congress, copies of which will be made available to Committee members.

The above-mentioned points were approved by the Committee.

Messrs. Whitehouse, Hewitt-White and Easter were called.

Mr. Whitehouse presented a summary of the past history of the Civil Service Federation of Canada; and he read the general statements included in the Federation's submission.

Mr. Hewitt-White read the portion of the brief that sets forth the various amendments to the Act as proposed by the Federation.

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Upon completion of the presentation of the brief the Committee decided to defer questioning of the witnesses. They were thanked and permitted to retire.

The representatives of the Canadian Postal Employees Association were called.

Mr. Cross spoke briefly and introduced his colleagues from the Association.

Mr. Roberts read the prepared submission of the Association.

Members of the Committee questioned the witnesses regarding certain statements contained in the Association's brief.

At 12.35 p.m., on motion of Mr. MacRae, seconded by Mr. Caron, the Committee adjourned until 9.30 a.m., Friday, April 14th, at which time the views and recommendations of the Civil Service Association of Canada, respecting Bill C-71, will be received.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

THURSDAY, April 13, 1961.
11 a.m.

The CHAIRMAN: Ladies and gentlemen, I see we have a quorum. I would like to call the meeting of the committee to order.

First of all, on behalf of the committee, I extend a welcome to some visitors whom we have here this morning—Professor Haugen and Mr. McGowan from the university of Vermont and some seventeen students. These visitors are present in the back of the room and are here as part of their examination of Canadian parliamentary procedure. I would like to welcome them here and hope they can learn something this morning from the meeting of this committee.

You will recall that at our last meeting it was suggested the committee meet from 11 o'clock until one o'clock. It has been suggested to me by some members of the committee and by the agenda committee that possibly our target should be to sit from 11 until 12:30, if that is satisfactory to the committee. We would have a few extra minutes between 12:30 and one o'clock on any Thursday should we need the extra time in order to finish our meeting.

Meetings have been set down for Thursdays betwen 11 and 12:30 and on Fridays between 9:30 and 11.

This morning we will be hearing from the Civil Service Federation of Canada and the Canadian Postal Employees' Association. We have arranged to hear from the Civil Service Association of Canada tomorrow, April 14. Next Thursday, we will have the Professional Institute of the Public Service of Canada which will be presenting their brief to you. On Friday of next week the Canadian Postmasters' Association and the Federated Association of Letter Carriers will appear, and on Thursday, April 27, by arrangement, we will hear representatives of the Canadian Labour Congress who would like to put some views before this committee. I hope this schedule is satisfactory to the members of the committee.

In addition we have received a letter from the Canadian Jewish Congress which makes recommendations in respect of Bill C-71. The Congress has indicated it is not interested in appearing before us with a personal representation. However, copies of the letter from the congress will be sent out to each member of the committee for such action as the committee might see fit to take.

As I have said, our first representation this morning is from the Civil Service Federation of Canada. We have with us Mr. Whitehouse, the president, Mr. Hewitt-White, the first vice-president, and Mr. Easter, the research director. I would ask these three gentlemen to come forward. I believe each member of the committee has a copy of the federation brief.

Mr. F. W. WHITEHOUSE (*President, Civil Service Federation of Canada*): Mr. Chairman and members of parliament, ladies and gentlemen, before commencing the brief I would like to ask your permission to divide this presentation into three parts; that is, I would present the preamble; Mr. Hewitt-White, my first vice-president, will present the clauses as we have them in the brief, and any questions which may be asked by members Mr. Easter, our research director, is here to assist us in the answers.

Before presenting the brief I would crave your indulgence in allowing me to present to the committee very briefly the past history of the civil service federation of Canada. The reason we would like to present this is we feel this is not only a very historical occasion but is history repeating itself in so far as the federation is concerned.

The Civil Service Act of 1908 introduced the merit system to the federal civil service inasmuch as it provided that entrance to the "inside service" (headquarters staff) was by competitive examination.

The Civil Service Act of 1918 extended the merit system to the whole service. Representatives of the civil service federation had several meetings with the Honourable A. H. Maclean, civil service minister, representing the government to consider their amendments and recommendations, an important one of which was the preference to returned soldiers qualifying for entrance to the service.

When the present classification was applied to the service so many anomalies were found that the board of hearing and recommendation, composed of a civil service commissioner, two representatives of the department and two representatives of the federation, was appointed in 1919 to receive representations of the service with respect thereto and recommend action thereon.

A parliamentary committee was appointed in 1923 to consider civil service problems in general, to which the federation made representations on salaries, superannuation and civil service councils. The representations on civil service councils were based on the provisions of Whitley councils in England. Following the report of this committee the Superannuation Act was passed in 1924.

To consider and advise with respect to problems arising in the administration of the act, the advisory committee on the Superannuation Act, composed of five members chosen by the administration and five representatives of civil service organizations, was appointed in December, 1928.

As a result of representations made to the parliamentary committee of 1923 by the federation, an order-in-council providing for the establishment of a national joint council, was passed in May 1930, but was not made effective due to a change in government later that year. Following several further representations by the federation an order-in-council was passed in May 1944, which set up the present national joint council of the public service of Canada originally composed of 8 members of the official side and 8 members of the staff side.

This past history indicates the value of negotiation by both sides. Is is our hope that when this new Civil Service Act receives royal assent it will provide for greater and closer negotiations by employer and employee as we are asking for in the paper we are presenting to you today.

Mr. Chairman, and members of the special committee:

The civil service federation of Canada wishes to thank you and your committee, sir, for the opportunity of appearing before you to discuss the proposed new Civil Service Act, and to lay before you certain recommendations which we believe, if given favourable consideration, will serve to strengthen and improve bill C-71. We are sure that we are mutually desirous of keeping, through this act, a strong and efficient civil service. In order to accomplish this, we feel that it is most desirable to retain the merit principle of appointment to and promotion within the civil service, and are pleased to note that the revised act will continue to provide for this.

The brief we are about to present to you represents the combined thinking of the representatives of the 16 national affiliates of the civil service federation and is presented on behalf of the 85,000 civil servants for whom this organization has the honour to speak. There is one exception to this. Our postal affiliates have a mandate from their members to

seek full collective bargaining under the Industrial Relations and Disputes Investigation Act. As they have their own autonomy within the federation family, they are quite free to make their own representations to you on this matter and we understand they intend to do so. They have asked me to make it clear to you, however, that, in every other aspect of our submission, they are in full agreement.

We are grateful that parliament has seen fit to take action at this time to proceed with this bill, and we are sure that all members of parliament realize the significance and the importance of this action. At the same time, we would like to take this opportunity of expressing our appreciation to the government for its decision last year not to proceed with bill C-77 at that time, considering how late in the session it was introduced. We note one or two improvements in bill C-71 over bill C-77, particularly in clauses 7 and 49. The addition of the words "at the request of such representatives" in clause 7 we will say, quite frankly, was the very minimum change in this clause necessary to make it even tolerable to the civil service federation. And, while we note that the chairman of the civil service commission considers that the words "consult" and "negotiate" are synonymous, we have not been particularly reassured on this point from our own consulting of dictionaries. But we are pleased to note his opinion that the present wording of clause 7 would *oblige* the government to consult with staff associations about pay and other terms and conditions of employment. Mr. Hughes' standing as an eminent jurist lends considerable weight to such an opinion.

Nevertheless, our members feel strongly that clause 7 does not go as far as it should in the direction of true negotiation. They also believe that any negotiating machinery established for the civil service should make provision for arbitration of any matter on which agreement cannot be reached after a reasonable period of negotiation, subject always to the will of parliament. Our brief, contains, therefore, suggested changes to clause 7 designed to provide civil servants with the same rights of negotiations as enjoyed by employees in outside industry. However, there is one significant difference between our proposal and what prevails in outside industry which we feel should be emphasized and that is that we do not request the right to work stoppage or strike. The majority of civil servants do not wish to deprive the people of Canada of their services because of a dispute or disagreement between employer and employee. Simple justice, therefore, requires provision for final arbitration of such disputes. We believe this proposal to be fair and reasonable and that it will, therefore, receive your favourable consideration.

A view strongly held by our members is that negotiation of pay and other terms and conditions of employment, to be effective, must be carried on directly between the representatives of the employer and the employees. We do not feel that an independent civil service commission, whose primary function must be to maintain the merit system, can successfully perform the function of representing our employer in negotiations on matters which may result in increased costs to the taxpayer. We have therefore recommended that clause 10 be deleted from this bill. We feel that the system provided in the United Kingdom for direct negotiation and arbitration between staff side and treasury is the example we should follow here, particularly when such a system has been in successful operation for a great many years. Incidental to this, is our strong belief that the pay research bureau should become entirely independent of any agency or department of government, including the civil service commission and should make its findings available on an equal basis to both the Government and the staff associations,

just as the pay research unit in the United Kingdom is required to do. One of the principal advantages of this is that it obviates considerable discussion between the negotiators, since both parties are negotiating from the same basic data.

The civil service federation is also pleased to note that the chairman of the civil service commission has stated that he would expect the regulations, and particularly those regulations designed to give effect to clause 7, to be themselves negotiated with the staff associations.

We are pleased to see that bill C-71 contains provisions for increased delegation of authority to deputy ministers, particularly in the sphere of departmental establishments. We are of the opinion that this is definitely a step in the right direction and one which should lead to increased efficiency in government operations.

The order in which we present our recommendations on the following pages is the same as will be found in bill C-71.

I would ask Mr. Hewitt-White to present the different recommendations in regard to the various clauses.

Mr. W. HEWITT-WHITE (*First Vice-President, the Civil Service Federation of Canada*): Mr. Chairman, and members of the special committee, the first suggested change is in connection with paragraph (*a*):

Clause 2 subclause (1) paragraph (a)

Several years ago the national joint council recommended that the principle of the payment of shift differentials, which is normal practice in outside industry, should be applied to the civil service. We were informed, however, that it was the opinion of Justice that such payments could not be made under the present act. The following amendment is suggested in order to ensure that the new Act will give the necessary authority for the carrying out of the recommendation of the national joint council:

Therefore, we are suggesting the addition of a new subparagraph (iii) to this subclause.

(iii) by reason of duties having to be performed by employees during any shift other than a straight day shift.

Clause 2 Subclause (1) paragraph (b) subparagraphs (ii) and (iv)

In the opinion of the civil service federation it is desirable that prevailing rate positions be considered as civil service positions. Not only would this obviate the necessity for separate sets of regulations and procedures in the employment of these public servants, but it would also ensure that there would be a uniformity of treatment as between these employees and the civil servants with whom they work side by side. We realize, of course, that there are certain respects in which it is impossible to place prevailing rate employees on precisely the same basis as civil servants. Primarily this is in the recruiting and pay setting aspects of their employment. Our suggested method of taking care of these exceptions is contained in our suggested amendment to subclause (5) of clause 2, hereunder,

to which we will be coming shortly.

In order to ensure that prevailing rates positions will not be excluded from coming under the operation of this act, we are asking that the words "*prevailing rates positions and*" be removed from subparagraph (ii) of paragraph (*b*) of subclause (1) of clause 2.

Similarly, it is the opinion of the civil service federation that positions in or in connection with government ships should also be dealt with in the same way as we have outlined above for prevailing rate

employees. For this reason, we are requesting that the words *"or ships"* be removed from subparagraph (4) of paragraph (*b*) of subclause (1) of clause 2.

I think that subparagraph (4) should be a roman numeral.

Clause 2 subclause (1) paragraph (d)

It is suggested that the word *"public"* be deleted and be replaced by the word *"civil"*. This would bring this paragraph in line with our observations made on subclause (2) of clause 2, hereunder.

The explanation will come later.

Clause 2 subclause (1) paragraph (o)

The clause *"and includes bringing the civil service into disrepute"* should be deleted from this paragraph. Nowhere is there a clear definition of what kind of action would be considered as "bringing the service into disrepute". It is therefore open to abuse or to being used as a threat by unscrupulous supervisors.

We are also of the opinion that the word *"incompetence"* should be deleted from this paragraph. A person's lack of competence to perform duties should not be considered as misconduct.

You won't find that paragraph; we are suggesting that you add it.

Clause 2 subclause (1) paragraph (t)

When we come to deal with clause 69 of this bill, we will be asking for the implementation of one of the recommendations contained in the Heeney report relating to a grievance procedure. We consider, therefore, that the definitions section of this act should contain a definition of the term "grievance". This could be contained in a new subparagraph (*t*) of subclause (1) of clause 2, as follows:

> Grievance means any alleged grounds for complaint.

Clause 2 subclause (2)

We do not think it is fair that members of the R.C.M.P. and the armed forces should be able to compete with career civil servants for promotions within the civil service when the reverse is not permissible. Nor is it permissible for civil servants to compete for positions within Crown corporations, boards, etc. We therefore recommend that subclause (2) of clause 2 be amended to read as follows:

> For the purposes of paragraph (*p*) of subsection (1) of this section and subparagraph (*b*) of section 34, members of the Royal Canadian Mounted Police or Canadian forces shall be deemed to be persons employed in the public service.

It will be noted that, in our proposed amendment quoted above, we have deleted the reference to paragraph (*d*) of clause 1 of the bill and also excluded subclause (*a*) of clause 34 of the bill. This means that the subclause as re-worded would exclude the R.C.M.P. and the armed forces from being able to compete in closed competitions.

This is the intent of our proposed amendment.

Clause 2 subclause (5)

It is our view that prevailing rates classes should be kept to a minimum and that any classes coming under the operation of this act should not be transferred to prevailing rates status until both the

civil service commission and the staff associations concerned have been consulted and agreement reached with the treasury board on the desirability of such action.

We therefore recommend that subclause (5) be replaced by three new subclauses (5), (6), and (7) as follows:

2. (5) Subject to the provisions of section 7 of this act, the governor in council may, on the recommendation of the commission, declare any positions, not being professional, semi-professional, managerial or clerical in character, to be prevailing rates positions, and may revoke any declaration made under this subsection.

You will notice that we have put in there "subject to the provisions of section 7" which would mean that the staff associations would be consulted.

2. (6) Prevailing rate employees shall be employed under this act, subject to its provisions, except

(i) that prevailing rates of pay for these classes shall continue to be set by the treasury board in consultation with the Department of Labour and the staff associations concerned;

(ii) that the employing department shall continue to recruit and appoint qualified persons to these positions and, on advice from the department, the commission shall issue a certificate;

(iii) that overtime, supervisory, and shift conditions and rates shall be set by treasury board in consultation with the Department of Labour and the staff associations concerned.

2. (7) For the purpose of this act, positions in or in connection with government ships shall be deemed to be prevailing rates positions.

Clause 4 subclause (1)

It is our belief that the civil service commission should consist of five (5) commissioners including the chairman. The larger number of commissioners would allow for greater movement throughout Canada assuming that three members would form a quorum, and provide for broader representation of views and experience among the members of the commission. This would develop if some commissioners were appointed from outside the service.

Clause 7

It is the firm conviction of the civil service federation of Canada that civil servants should be given the right to negotiate conditions of employment with their employer. It should be clearly understood that civil servants want the right to so negotiate. This should include the right to go to arbitration. The latter is necessary in view of the position taken by a majority of civil servants that they do not wish to have or use the strike weapon as a means of enforcing their demands. We think it worth mentioning, also, that a system of arbitration of disputes between staff organizations and the treasury has been in very successful operation in the United Kingdom for more than forty years.

We do not believe that clause 7 as it stands at present provides for these rights, which are enjoyed by the great majority of employees outside the civil service, including employees of crown corporations. We therefore recommend that this clause be deleted and the following substituted:

(1) The governor in council, or such minister or ministers, or officer or officers of the Crown that it may designate, shall consult and

negotiate directly with representatives of appropriate organizations and associations of employees of the Crown on all matters of personnel administration in the public service, including remuneration and all other terms and conditions of employment, under regulations and procedures drawn under the provisions of this act. Such direct negotiation and consultation shall be initiated by either the governor in council, its appointees, or the appropriate staff associations and organizations noted above.

(2) Where negotiation does not result in agreement, the matter under dispute may be taken to arbitration by either party to the controversy.

(3) For the purpose of the preceding subsection (2), the governor in council shall make regulations providing for the establishment and operation of an arbitration tribunal, the findings of which shall be binding on both parties to the dispute, subject to the will of parliament.

Clause 10

This clause should be deleted from the act. It is our view that civil service pay should be established as the result of negotiations between the appropriate staff organization and treasury board.

Clause 11

We recommend that this section be replaced by the following:

The governor in council, after consultation, negotiation and agreement with representatives of appropriate organizations and associations of employees, shall,

(*a*) establish rates of pay for each grade, and

(*b*) establish the allowances that shall be paid in addition to pay.

Clause 21

We believe the present wording of this clause is not sufficiently positive and that the word "*public*" should be changed to "*civil*" to conform with clause 2(1) (*d*). We therefore recommend that the following be substituted for the present clause 21:

Except as otherwise provided in this act, appointments shall be made from within the civil service by competition.

Clauses 22 and 23

Similarly, wherever the words "*public service*" are used in these clauses, the words "*civil service*" should be substituted.

Clause 26

In order to protect the employees' rights of appeal where appointments are made under sections 22, 23 and 25, of the proposed act, we think it is important that this right of appeal should be clearly stated in the legislation. We therefore recommend that subclauses (1) and (2) of clause 26 be re-numbered (2) and (3), respectively, and that a new subclause (1) be inserted, as folows:

Right of Appeal.

26. (1) Any appointment made under sections 22, 23 and 25, of this act is subject to appeal by any employee of the civil service who considers he has been denied an opportunity to qualify for the position by virtue of such appointment.

Clause 28

As previously stated, we hold strongly to the view that closed competitions and appointments without a competition, where justified, should be confined to members of the *civil* service. We therefore recommend that sub-paragraph (*b*) of clause 28 be deleted. Clause 28 would then read as follows:

> Notwithstanding anything in this act, a person who is employed in the public service but not in the civil service shall not be appointed to a position in the civil service without competition unless he is appointed under sections 24 or 25.

Clause 34

In conformity with the position we have taken regarding clause 2(1) (*d*), we recommend that the word "*public*" in line 9 be deleted and the word "*civil*" be substituted.

Clause 39

We would suggest that the intent of this clause would be made clearer by the addition of the following words:

> and shall periodically review the exercise of these powers so delegated, to ensure that the provisions of this act are observed.

Clause 45 Sub-Clause (2)

All the words coming after the word "list" in line 9 to the end of the clause should be deleted, as the exception provided therein is in our opinion at variance with the merit principle. If special qualifications are required for a specific position, a separate competition should be held from which a special eligible list of persons possessing the required qualifications could be established.

Clause 49

We are pleased to note that this clause as it appeared in bill C-77, introduced at the last session, has been revised. As it stood in the earlier bill, an employee rejected during his probationary period would simply have ceased to be an employee. We thought that was rather harsh treatment and had intended to ask that provision should be made for such an employee to be considered as a "lay off". We are pleased to see that the government has already made this change.

Clause 52 Sub-Clause (2)

The wording of this clause is somewhat ambiguous and it appears to us that the last two lines are redundant. We therefore suggest that this subclause be replaced by the following two subclauses:

> (2) A resignation is completed when the deputy head has notified the employee, in writing, that his resignation has been accepted.
>
> (3) Notwithstanding subclauses (1) and (2) immediately preceding, an employee may, by an appropriate notice in writing and with the approval of the deputy head, withdraw his resignation at any time before the effective date thereof.

Clause 53

This clause would not appear to make any provision for extenuating circumstances. There may be and, indeed, have been cases where an employee, through no fault of his, is unable either to report for

duty or to report his absence. It is therefore felt that provision should be made for an appeal by the employee against the decision of the deputy head. It is suggested that the present clause 53 be renumbered 53.(1) and the following subclause (2) added:

> (2) An appeal may be lodged with the civil service commission by an employee who, through circumstances beyond his control, has been absent from duty and subsequently declared by the deputy head to have abandoned his position. If the civil service commission is satisfied that there are extenuating circumstances satisfactorily explaining the employee's absence, he will be reinstated in his former position.

Clause 55

For the greater protection of civil servants in the event that lay offs become necessary we suggest that subclause (1) should be reworded as follows:

> 55 (1) Where two or more persons employed in positions of the same *general class* in any unit of a department are to be laid off, or where one person is to be laid off and there are other persons holding positions in the same *general class* in the same unit of the department, the commission shall list the persons holding positions in the *same general class in an order of lay off which takes into consideration both merit and seniority* and such persons shall be laid off in order beginning with the person lowest on the list.

As a further explanation of the reasons for the changes we have suggested in subclause (1), above, appendix (1) of this submission contains a suggested minimum lay off procedure which we feel should be provided for in regulations and which should permit some flexibility as between departments.

I shall now read through the appendix, which can be found at the end of the brief.

APPENDIX I

Lay-Off Procedure

Several departments of government have now a lay-off procedure which has been established by agreement between the deputy head and the staff association concerned and which is working to the satisfaction of both the employees and the department. It is therefore the opinion of the civil service federation that any regulations drawn under section 55 of the new act should delegate authority to deputy heads to establish a lay-off procedure which satisfactorily meets the needs of his department and the desires of his employees, but that the minimum requirements of any lay-off procedure should be laid down as follows:

> "(1) Where two or more persons employed in positions of the same general class in any unit of a department are to be laid off, or where one person is to be laid off and there are other persons holding positions of the same general class in the same unit of the department, the order of release shall be as follows:
>
> (*a*) employees who have reached the age of 65 years,
>
> (*b*) employees who are known to be willing to accept retirement,
>
> (*c*) term or probationary employees,

(*d*) continuing employees having least priority of retention as determined by a departmental rating board.

(2) For the purposes of section (1)(*d*), the departmental rating board shall carry out an assessment, in the units and for the classes of employees concerned, on the basis of

(*a*) for seniority—one mark for each year of continuous service, up to a maximum of 35, and

(*b*) for fitness for continued employment at present classification, to a maximum of 65."

Mr. CARON: Is that intended to replace what you had in clause 5, on page 8?

Mr. HEWITT-WHITE: No, it is not, Mr. Caron. It is intended as a suggested regulation that might be drawn under clause 55.

Mr. CARON: Thank you.

Mr. HEWITT-WHITE: Or under our suggested amendment to clause 55 in the bill. I shall now go back to page 8 of the brief.

We are also of the opinion that provision should be made in this clause for the right of an employee to appeal to his deputy head against the position he has been placed on the order of lay-off by reason of a comparative rating for merit and seniority. We therefore suggest that the following subclauses 3 and 4 be added to clause 55.

"(3) The deputy head shall give, in writing, notice of intention to lay off to each employee concerned, as far in advance of the effective date as may be possible but, in any case, not less than 30 days. This notice will also inform the employee concerned of his right to appeal to the deputy head within 15 days of the notice.

(4) In the event of an appeal against selection for release, the deputy head may require a review of the selection process or take such other action as he deems necessary."

Clause 56 Sub-Clause (2)

For added protection to civil servants we would recommend that the words *"and of his right to appeal"* should be added to sub-clause (2). This would then read as follows:

"(2) The deputy head shall give an employee notice in writing of a decision to recommend that the employee be demoted *and of his right to appeal."*

Clause 60 Sub-Clause (1)

Similarly, we feel the words *"and of his right to appeal"* should be added to sub-clause (1) of clause 60.

Clause 61 Sub-clause (3)

As full protection of the employee or of the deputy head is essential in such instances, it is recommended that the words *". . . and provisions of clause 60 will apply"* be added at the end of this sub-clause.

Clause 62

As boxing day is almost generally observed through the country, we suggest that it be added to the list of statutory holidays.

Clause 63

Several years ago the national joint council recommended four weeks annual leave for employees with 20 years service. However, we were subsequently informed by the civil service commission that the

present act would not permit this. We are concerned, therefore, to ensure that the new act will not place a barrier in the way of implementing the national joint council recommendation. To this end, we recommend that the words *"not less than"* be inserted between the words "of" and "three" in line 26, so that line 26 should read "leave of absence with pay for a period of not less than three weeks in respect of each fiscal year."

Clause 65

The civil service federation is very pleased to note that sub-clause (4) of clause 65 establishes, for the first time, the government employee's right to remuneration. To carry this to its logical conclusion, however, we are of the opinion that the recommendation contained in the Heeney report with respect to the provision for the estate of an employee to receive the monetary equivalent of unused leave at the time of his death should have been incorporated in this clause of the bill. It should be noted that the "Heeney report" (appendix A—p. 48-5603) recommended that this provision should be contained in the act rather than the regulations. We therefore recommend that sub-clause (4) be amended as follows:

> (4) Subject to this act, an employee is entitled to be paid for services rendered the remuneration applicable to the position held by him *and, on the death of an employee, his estate shall be compensated in cash for unused compensatory, annual and retirement leave which stands to his credit at the time of death.*

The civil service federation is also of the opinion that the recommendation contained in the Heeney report with respect to the provision for an employee to receive "the equivalent of one full statutory increase in a new class and grade to which he is promoted" (page 44, appendix A, 5201) should have been incorporated in this section of the new act. The present act provides only that "The rate of compensation of an employee upon appointment to a position in any class in the civil service shall be at the minimum rate prescribed for the class, except that where the appointee is already in the civil service in another position, the rate of compensation upon appointment to the new position through promotion shall be the same as that received before the new appointment, or, if there be no such rate for the new class, then at the next higher rate, but no appointments shall in any case be made at less than the minimum or more than the maximum rate prescribed for a class." (1932 c. 40, s. I) It is our opinion that a so-called promotion is not truly a promotion unless the person promoted receives an increase in his rate of pay. It would appear that the civil service commission was of the same view at the time that it prepared the "Heeney report". We therefore recommend that a new sub-clause 5 be added, as follows:

> (5) An employee, on promotion, shall receive an increase in his rate of pay equal to the annual rate of increase in the employee's new class and/or grade.

Clause 68 Sub-clause (1) Paragraph (n)

There are occasions when employees are required to perform, for varying periods of time, the duties or partial duties of one or more positions in addition to their own. We believe this requirement should be compensated for by added remuneration in the form of acting pay. We recommend, therefore, that, after the word "position" on line 28, the following words be added:

> *or to perform concurrently with the duties of his own position, those of another position.*

Clause 69

There appears to be nothing in bill C-71 which makes provision for the establishment of grievance procedures as recommended in section 16004 of the Heeney report (page 121):

> There shall be established in each department machinery suitable for dealing with employee grievances, in accordance with regulations made by the Civil Service Commission with the approval of the governor in council.

We recommend, therefore, that a new paragraph should be added to Clause 69, as follows:

> (*d*) for establishing in each department machinery suitable for dealing with employee grievances in accordance with an agreement reached between the deputy head and the appropriate staff association representing the employees in his department.

Clause 70

As representations to be made to the board of appeal shall be conducted in the same manner as before a judicial enquiry and as the appellant may challenge the decision of the board before a court of law, we believe that the commission should not confine its section of board members to representatives of the official side only of the public service (i.e., from a panel comprised of civil service commission and departmental officials not connected with the case), but that the panel should comprise, also, members nominated by and acceptable to the staff side, that is to say the associations. We urge, therefore, that the following words be added to sub-clause (2) of this clause:

> ... and selected from a panel of active or retired public servants; one member of the board being a panel member nominated by the recognized staff associations.

We also propose an amendment to clause 70 which would give the employees' representative the right, by law, to see pertinent documents relating to the appeal in advance of the appeal board hearing. Perhaps what is required is a new sub-clause (4), as follows (present sub-clauses (4) and (5) to be renumbered (5) and (6):

> (4) Where an appellant asks to be represented at an Appeal Board hearing by a representative of his staff association, such representative shall
>
> (*a*) be named by the association nominated by the appellant,
>
> (*b*) be considered on duty, if a government employee, during hearings of the Appeal Board, and
>
> (*c*) be given access to the personal files of all candidates together with the report of the proceedings and the findings of the promotion rating board, on a confidential basis, in sufficient time to enable him to prepare his submission to the Appeal Board and, in any case, not less than one week in advance of the Appeal Board hearings.

The civil service federation feels very strongly that provision should be made for the establishment of grievance machinery in the civil service which would have, as its final step, an appeal board of somewhat different composition than that provided for in clause 70 and whose decision would be "final and binding" on the disputants. We therefore recommend the addition of a new clause under "appeals" immediately following clause 70, to be numbered 71. This would necessitate renumbering clauses 71 to 85 in Bill C-71. Our proposed new clause 71 is set out hereunder:

71. (1) This section applies whenever it is considered expedient to establish appeal boards for the final disposition of unresolved grievances in accordance with grievance procedures established under the authority of Section 69 (*d*) of this act.

(2) Appeal boards shall be composed of three members selected by the chairman of the civil service commission from panels of employees' and employers' representatives, and the third, or chairman, shall be selected jointly by these two. If agreement cannot be reached on the selection of a chairman, then the chairman of the civil service commission shall appoint such a person from a previously agreed upon panel.

(3) Appeal boards shall be convened, at the call of the chair, but in no case later than thirty calendar days of the receipt of the application of appeal.

(4) Either parties to the appeal shall have the right to appear before the appeal board.

(5) Copies of all relevant documents pertaining to the appeal shall be provided to each of the members of the appeal board, by the department concerned at least one week prior to the initial hearing.

(6) Appeal boards shall be empowered to call witnesses and/or technical advisors to appear before them and all such persons shall be considered as being on duty for the required time. Reasonable expenses incurred by such persons shall be paid for.

(7) The proceedings of appeal boards shall remain confidential among the members of the Board and an undertaking to this end shall be signed by all concerned with the proceedings.

(8) Appeal boards shall transmit their decisions to the parties to the disputes, in writing, no later than ten working days after their final hearings. All decisions reached by appeal boards shall be final and binding upon the disputants. However, in no event shall an appeal board perform the functions of a rating board, in cases involving promotions.

(9) Appeal board members shall be re-imbursed for all time spent in dealing with appeals.

The CHAIRMAN: Now, ladies and gentlemen, may I express the thanks of the committee to the representatives of the civil service federation of Canada for their clear and concise brief.

If there are any questions you wish to ask about any part of the brief, Mr. Easter is here and ready to answer them.

As we decided at previous meetings, it would probably assist the work of the committee if we confined our remarks to questions rather than to matters of debate; that is to say, if we discussed primarily matters of general principle rather than to deal with items and points which could be discussed more relevantly when we come to consider the bill clause by clause.

Has anyone any questions for Mr. Easter, Mr. Hewitt-White, or Mr. Whitehouse?

Mr. CARON: Mr. Chairman, would it not be better to give the members of the committee an opportunity to study this brief in the light of the explanations we have had given to us, and at a later session to recall these representatives of the federation when we might question them?

The CHAIRMAN: Certainly, if that would be satisfactory to the committee; but I do not want to close off the meeting to questions.

Mr. CARON: Certainly not. I just suggested this procedure.

The CHAIRMAN: I think the point is well taken in this respect, because we also have arranged to hear a brief from the postal employees association today. And while their brief is a short one, we want to save as much time for them as possible. Are there any suggestions from the committee?

Mr. RICHARD (*Ottawa East*): I suggest we go ahead with the other brief right away.

The CHAIRMAN: Is that agreeable to the committee?

Agreed.

Mr. WHITEHOUSE: Thank you very much, Mr. Chairman. We shall be only too happy to come back, if recalled.

Now may I crave your indulgence to say that we hope that our people from the south, in the persons of Professor Haugen, Mr. McGowan and the students have obtained something valuable today in seeing how the civil service deals with employees of the government. I thank you very much.

The CHAIRMAN: Thank you, Mr. Whitehouse.

Mrs. Casselman and gentlemen; on behalf of the Canadian Postal Employees' Association we have with us this morning Mr. Dan Cross, national president, Mr. W. L. Houle, first vice-president, Mr. J. E. Roberts, general secretary-treasurer Mr. G. Cote, national secretary, and Mr. R. Otto, assistant national secretary. I would ask these gentlemen to come forward to present their briefs to the committee.

Mr. DAN CROSS (*National President, Canadian Postal Employees' Association*): Mr. Chairman, on behalf of the Canadian Postal Employees' Assotion I would like to take this opportunity to thank you and your committee for the privilege of presenting our brief to you this morning.

When we have gatherings of this kind, to my mind it means one thing: and that is that Canada is becoming more democratic by the minute.

Mr. Chairman, I think it is only right that I should introduce to you the members of the Canadian Postal Employees' Association who are here this morning.

We have with us Mr. Bill Houle, first vice-president. He is from Montreal. Then we have Mr. Jack Roberts, general secretary-treasurer. He is from Ottawa. Then we have Mr. Godrey Cote, who is seated among the audience. He is our national secretary, and he also is from Ottawa. Stand-up, Godfrey, please.

In addition we have Mr. Rick Otto, assistant national secretary. He is from Ottawa.

My name is Dan Cross and I come from the same place as the gentleman shown in the picture right over my head, that is, Kingston, Ontario.

Ladies and gentlemen, Mr. Jack Roberts, our general secretary-treasurer, will read the brief that we have prepared for you. And if there are any questions to be asked later, you may direct them to any one of the five of us. I might add that two of us—not myself included—but two of the five are bilingual. Thank you, Mr. Chairman.

The CHAIRMAN: Thank you, Mr. Cross.

Mr. J. E. ROBERTS (*General Secretary-Treasurer, Canadian Postal Employees' Association*): First of all I would like to express my appreciation to Mr. Innes, the Clerk of the Committee, who so generously helped us in making proper arrangements to distribute copies of our briefs to the members of the committee in both languages.

Mr. Chairman and Members of the Committee:

1. This submission is made by the Canadian Postal Employees' Association. The association, which is one of the oldest civil service organi-

zations in Canada, represents 10,500 postal employees' from coast to coast. While it is concerned, as any government employees' organization must be, with the effect of Bill C-71 as a whole, it will confine itself to the question of collective bargaining and more particularly to the inadequacies of Section 7 in that Bill. It will leave to its central body, the Civil Service Federation, any more detailed analysis that the federation may consider necessary.

I should add here that we sat on the Federation committee and discussed all the sections of the act in co-operation with the Civil Service Federation, and that we have agreed to all their presentations with the exception of section 7.

2. The right of association is now established in Canada by law and by custom, and bolstered by a Bill of Rights. In the case of most wage and salary earners, it has been supplemented by legislation which provides associations of employees with the right to be recognized by their employers and to engage in collective bargaining with them. More than one and one-half million Canadian wage and salary earners are now covered by collective agreements. Such agreements mean that these employees enjoy the right to have their conditions of employment determined through joint negotiations rather than by unilateral employer decision; that they are protected on the job against arbitrary or capricious employer action, and that they possess orderly machinery within and beyond the collective agreement for the settlement of any disputes which may arise between them and their employers. In other words, there is in every Canadian jurisdiction labour legislation designed to enable workers to bargain with their employers and to set up rules for disputes settlement, including arbitration, conciliation and the strike or lockout, depending on the circumstances. Government employees, except for one jurisdiction, remain the largest single employee group to be denied these rights now considered so fundamental to a free society. Government employees thus continue in an inferior position to other workers. While they enjoy the right of association and have in large measure taken advantage of it, they are not able to participate in the determination of the conditions under which they work. They may propose, they may supplicate, they may advise, they may criticize, but the government which is their employer is not bound to consider their views nor to conclude any formal agreements with them. Government employees accordingly are citizens without franchise in the domain of employer-employee relations.

3. We have sought in vain for sound reasons why government employees should be denied the fundamental right of collective bargaining. We are bound to conclude that there is no more reason behind its denial than irrational prejudice and typical employer unwillingness to surrender a hitherto autocratic position. We are reinforced in our views by the fact that commonwealth and other countries have seen fit to grant their government employees this right (see appendices "A" and "B" attached hereto), so that the argument that the state cannot enter into a bargain with its employees is a spurious one.

4. The situation with regard to collective bargaining by government employees has been examined at two conferences held under the auspices of the Canadian Labour Congress, with which this association is also affiliated. At the first of these conferences, held on May 5 and 6, 1960, the question of the "legal and constitutional aspects of collective bargaining in the public service" was examined by Mr. F. P. Varcoe, Q. C., of

Varcoe, Duncan and Associates, Ottawa, and formerly deputy minister of justice and deputy attorney general of Canada. He gave as his opinion that parliament can and frequently devolves great powers on others. He stated:

> "My understanding of collective bargaining is that the employer is bound to receive representations from a recognized representative of employees who speaks for them, or some of them. The practice is generally throughout Canada for governments to entertain representations on behalf of public servants and I can think of *no legal or constitutional principle which would be abrogated by formalizing this principle and establishing some regular proceeding.* I do not understand that *collective bargaining would in any way affect the right of the crown to select and dismiss its employees.*"

5. As your committee is aware, the province of Saskatchewan since 1944 has granted its employees the same rights as other employees under the Trade Union Act. By virtue of section 2 (6) of that act, "Her majesty in right of Saskatchewan" is included in the definition of "employer". At the same conference referred to above, in a discussion of "The Saskatchewan Experience—an Evaluation", the following statement was made by Mr. Carl Edy, director of the Saskatchewan government finance office and formerly chairman of the provincial public service commission:

(1) I want to make it clear that I have not made remarks on the basis of what I thought you would like to hear. I would make these same remarks to officials of provincial and federal governments.

(2) We are convinced that the Saskatchewan civil service association has been very beneficial not only to the employees, but also the government. It has meant that
   - (*a*) Sound personnel practices have tended to develop more rapidly.
   - (*b*) Personnel practices have been modified and changed in accordance with the wishes of the majority of our employees.
   - (*c*) More satisfied employees have resulted and hence better employer-employee relations have developed.
   - (*d*) No employer can hope to have a more enlightened union than the Saskatchewan government has been privileged to have.

6. While the right to strike is not necessarily implicit in the right to bargain collectively, we would submit that this right is nevertheless one which can be exercised with the same degree of propriety by civil servants as by workers in private industry. On this Mr. Varcoe expressed the following opinion:

> It appears to many persons that the *right to strike is the recognized method of enforcing agreements or the making of agreements.* In fact, the strike is regarded as an incidental feature of collective bargaining. It does seem to be desirable to consider whether a strike by civil servants would be illegal. I know of *no decision of the courts that there is any legal objection to civil servants striking.* The ordinary rule applies that what is not prohibited is permitted.

7. In this regard, Prof. H. D. Woods, director of the industrial relations centre at McGill university, had this to say in a paper on Some problems related to collective bargaining in the public service:

> There seems to be no logical reason why the strike should be available to milk truck drivers and withheld from postal delivery men.

He further stated that:

> Clause 7 of bill C-77 should read: Negotiation between staff associations and government as employer, is a right.

8. At the second conference under Canadian labour congress auspices on Nov. 26th and 27th, 1960, in a paper on Employer-Employee relations in the British civil service Prof. S. J. Frankel, of McGill University, stated that:

> British civil servants are not positively denied the right to strike but neither is such a right affirmed.

He pointed out that when a treasury Circular is issued which implements the arbitration agreement it ends with "subject to the over-riding authority of parliament, the government will give effect to the awards of the court." He points out that this preserves the constitutional supremacy of parliament. He maintains that "the official interpretation is that the government will not itself propose to parliament the rejection of an award once made, and, indeed, there has not been a single case of parliament's over-riding the award of the arbitration tribunal."

9. On the basis of the foregoing, it would seem that there is no reason, constitutional or otherwise, why federal government employees should not be able to engage in collective bargaining with the crown in the right of Canada, nor should they be precluded from strike action if agreement cannot be reached otherwise. This association suggests, therefore, that your committee should report favorably on the right of government employees to bargain and conclude collective agreements, and recommend consequential legislation to that effect. We would urge that consideration be given to an amendment to the Industrial Relations and Disputes Investigation Act as a means of implementing such a recommendation.

10. At the present time, the Industrial Relations and Disputes Investigation Act, by virtue of section 55, does not apply to "Her Majesty in right of Canada or employees of Her Majesty in right of Canada." (By virtue of section 54, however, most crown corporations do come under the act and their employees are able to engage in collective bargaining as a result.)

11. Our association takes the position that section 55 of the act should be rescinded and, if necessary, further changes be made to make it clear that federal government employees enjoy the rights provided by the act. We sponsor this particular measure for the following reasons:

(i) Recognition as a bargaining agent under the act is accorded on the basis of well-established procedures, administered by an independent body, the Canadian labour relations board. Certification as bargaining agent would clearly establish the representative nature of the certified agency, thus reducing if not eliminating the duplication of representation which now exists.

(ii) The act provides for negotiations with a view to the conclusion of a collective agreement in writing setting out terms or conditions of employment.

(iii) The act requires and provides for orderly disputes settlement procedures. These include grievance adjustment machinery and, if necessary, arbitration during the currency of a collective agreement, as well as conciliation and strike action following a breakdown in negotiations.

12. In effect, this association submits that there is no reason for treating government employees any differently from employees in private industry. They have the same problems. They should have the same rights. You may ask why we do not wish to have these rights entrenched under the Civil Service Act and deal with the civil service commission. It is our submission that the Civil Service Act is not a suitable vehicle inasmuch as it is not designed for collective bargaining purposes and employer-employee relations generally as is the case with the Industrial Relations and Disputes Investigation Act. With respect to the civil service commission, it is primarily a body established for the recruitment and classification of civil servants. It is limited in its powers and is subject to decisions by treasury board and the government itself. Recent events indicate that unless the powers of the commission and the terms of the act are substantially altered, the commission cannot engage in negotiations with staff associations and unions of government employees with any reasonable degree of authority on its part.

13. It may be, however, that you may consider your terms of reference bind you to consider bill C-71 only and preclude you from suggesting amendments to other legislation. If so, we would urge you to recommend a substantive change in section 7 of the bill. While representing some slight improvement over bill C-77 of last year, bill C-71 does not in any way establish the principle of collective bargaining.

14. Section 7 merely provides for consultation, even though at the initiative of government employees' organizations. The section itself is ambiguous in that it does not define what is an "appropriate" organization. It dilutes authority even for purposes of consultation, spreading it over the civil service commission and such (presumably senior) civil servants as the Minister of Finance may designate. It offers no assurances that any government action will follow consultation or that such action will be consistent with advice given or representations made by the "appropriate" organizations, nor does it provide any opportunity for redress to an aggrieved organization. In brief, section 7 merely perpetuates the present unsatisfactory system which permits unilateral decisions, restricted data, unpublished reports, protracted delays and all the other characteristics of autocratic rule.

15. This association has no wish to diminish the sovereignty of parliament. Inevitably, any agreement arrived at through collective bargaining in this context must receive the approval—or disapproval—of parliament. We merely argue that parliament can bind itself for a fixed term to certain rules of behaviour vis-a-vis government employees. Already this is being done where crown corporations are concerned. More generally, the crown in right of Canada enters into contracts for a great variety of purposes both at home and abroad. It would therefore be not inconsistent to do so with representative organizations of government employees.

16. A few years after confederation, parliament determined that the organization of workers for the purpose of collective bargaining did not constitute a combination in restraint of trade. Later, elaborate legislation was passed by parliament and in all the provincial legislatures under which trade unions could obtain recognition from employers and require them to engage in collective bargaining. This is the situation today. It is a matter of public policy. The time is long

past due when the same policy should be extended to government employees. This association prefers to see this done under the Industrial Relations and Disputes Investigation Act. But whether done under that act or under the Civil Service Act as amended, it should be done.

Respectfully submitted,
Canadian Postal Employees' Association.

I would like to inform the members of the committee that if there is any further information which is required they can communicate with our association at 88 Argyle street in Ottawa, or any one of us two of whom are bilingual would be prepared to appear before the committee at any future time. Thank you very much.

The CHAIRMAN: Thank you. We might ask you to come back on another day. I understand your home is in Ottawa while Mr. Cross must return to the land of Sir John A. Macdonald.

If there are any questions which any member would like to ask about this brief, I am sure the committee would not mind staying a few moments overtime since Mr. Cross and the other members of the delegation have come from out of town.

Mr. BELL (*Carleton*): I have one comment I would like to make in connection with paragraph 12 of the brief where it speaks of the civil service commission. In fairness to the commission I think objection should be taken to the following statement: "is subject to decisions by treasury board and the government itself". I think it is quite clear that, within the ambit of the authority which parliament has given to the civil service commission, it is fully independent and is in no way subject to decisions of the treasury board and the government itself. I do not think this statement should be on the record without objection taken.

Mr. ROBERTS: I would like to clarify that. I am thinking back to the time when the civil service commission made recommendations regarding salary. They were vetoed by the Minister of Finance representing treasury board. It was stopped. It was a recommendation of the commission, so the commission was not supreme.

Mr. BELL (*Carleton*): They are not supreme in respect of salaries under the act. The act makes the governor in council supreme. The act requires the civil service commission to make recommendations, but what happens to those recommendations is the responsibility of another authority, namely the governor in council.

Mr. ROBERTS: We did not wish to cast any aspersions on the present functions of the civil service commission; definitely not.

Mr. BELL (*Carleton*): On another point, may I ask if the right to strike which this brief seeks would apply to all branches and divisions of the public service without exception.

Mr. ROBERTS: There would have to be some restrictions because of defence measures.

Mr. BELL (*Carleton*): What restrictions?

Mr. ROBERTS: It would be difficult for people employed in national defence to go out on strike when the welfare of the country was at stake.

Mr. BELL (*Carleton*): Would that apply then, say, to doctors and nurses in veterans affairs and to Indian officials?

Mr. ROBERTS: We are not speaking for professional people.

Mr. BELL (*Carleton*): Then what is the distinction in principle between professional persons and others?

Mr. ROBERTS: Even in Saskatchewan professional persons are excluded under the provincial labour laws; the professional people are excluded there. It would only apply to those who want to be included under the act.

Mr. BELL (*Carleton*): Would you exclude the R.C.M.P. from your proposals?

Mr. ROBERTS: They are not civil servants and certainly have to be excluded.

Mr. BELL (*Carleton*): The army would be excluded?

Mr. ROBERTS: Yes.

Mr. BELL (*Carleton*): And doctors and nurses in veterans hospitals?

Mr. ROBERTS: They are professionals.

Mr. BELL (*Carleton*): All professionals. Where and on what principle is the line drawn?

Mr. ROBERTS: Those who desire to come under the act.

Mr. BELL (*Carleton*): So the expression of a desire is what should determine whether or not the right to strike exists?

Mr. ROBERTS: It should be available.

Mr. BELL (*Carleton*): Collective bargaining should exist for all, but the right to strike only for those who ask for it. It that the view of the association?

Mr. CROSS: We cannot speak for everybody. We just speak for the Canadian postal employees association. We are the only organization which wants to come under the Industrial Relations and Disputes Investigation Act. We believe all civil service organizations should feel the same way we do and wish to come under the act.

Mr. BELL (*Carleton*): Including professionals?

Mr. CROSS: Everybody. Up to the present time, however, the Canadian postal employees association, which is just one of three postal organizations, is the only one which goes on record as being in favour of coming under this act and being treated the same as workers in outside industry.

Mr. BELL (*Carleton*): I would like to get the record straight. It seems to me there is some difference of opinion between the president and the general secretary-treasurer of the association. I understand Mr. Cross is saying he believes all branches of the public service without exception should have the right to collective bargaining and, coupled with that, the right to strike.

Mr. CROSS: That is my belief, but I cannot speak for them.

Mr. BELL (*Carleton*): I am asking for your belief.

Mr. CROSS: That is my personal belief.

Mr. BELL (*Carleton*): That is your personal belief?

Mr. CROSS: Yes.

Mr. BELL (*Carleton*): Then that would include the R.C.M.P., as a branch of the public service?

Mr. CROSS: Well, let us put it this way: While we are asking to come under the act, which has included in it the right to strike, you know as well as I do that the fact that the word "strike" is in there does not mean too much, except in the event that negotiations break down, or something of that kind. Is that not right?

Could you tell me how many times in outside industry there have been strikes and when negotiations have been settled amicably?

The fact is that nobody goes on strike unless they are really pushed to do so, because the employee certainly loses a lot of money when there is a strike. There is certainly a lot of hardship, and so forth. We want to come

under the Industrial Relations and Disputes Investigation Act ourselves, because we feel the conditions in the post office are more akin to outside employment than any other branch of the civil service.

In our category in the post office, we work around the clock, do shift work, and so on. We do not work a five-day week and have every weekend off.

The CHAIRMAN: Are there any other questions?

Mr. MCILRAITH: Mr. Chairman, I would like to follow that line of questioning.

The CHAIRMAN: Mr. Peters had his hand up first. Is your question on the same point?

Mr. PETERS: Yes. I should like to congratulate the postal employees on their desire to ask for a formal contract, with grievance procedure, contract settlements respecting pay, and conditions of work. Also, I am pleased that the postal employees recognize the basic principle, which appears to me to be a problem about which Mr. Bell talked, that the employees should have the right to bargain and negotiate with someone, or with some agency, which has the right to make a final decision, whether it is with the cabinet or governor in council. Usually the Civil Service Act refers to the governor in council, which really means the cabinet or one or two of the divisions of the cabinet, such as the treasury board, or other divisions.

Mr. MACDONNELL: On a point of order, Mr. Chairman, are we not here for information, and not for argument at this time?

The CHAIRMAN: I think, Mr. Peters, that it would be more satisfactory at this point if you—

Mr. PETERS: But, Mr. Chairman, if I may interrupt, the previous speaker mentioned that he disagreed that they should make reference to the fact they wanted to negotiate directly with somebody who could negotiate to conclusion. He mentioned that the civil service commission was in this position now. I disagree with that statement, as I know the commission is not in that position now. I am pleased that this organization has seen this and recognizes it as a fact.

The CHAIRMAN: Mr. Peters, at this point I think, for the better working of this committee, it would be better if you could bring this information out by way of putting questions and answers, rather than by argument.

Do you have a question, Mr. McIlraith?

Mr. MCILRAITH: Mr. Chairman, I wanted to follow up with some questions. However, I must say that it will take a few minutes to do so.

Mr. CARON: It is now 12.30.

The CHAIRMAN: We could proceed for a few minutes in order to hear Mr. McIlraith and other members who might wish to ask questions, if that is agreeable.

Mr. CARON: I thought it was agreed that we should sit only until 12.30. I might say that I also have some questions to ask.

The CHAIRMAN: What is the wish of the committee? Would you like to sit another ten minutes?

Mr. PETERS: Agreed.

The CHAIRMAN: To what?

Mr. PETERS: To sitting.

The CHAIRMAN: What is the opinion of the committee?

Mr. MORE: Allow Mr. McIlraith to proceed with his questions.

Mr. MACRAE: I move that we adjourn.

The CHAIRMAN: Is there a seconder for that motion?

Mr. CARON: I second the motion.

The CHAIRMAN: It has been moved by Mr. MacRae and seconded by Mr. Caron that we adjourn. Would all those in favour signify by raising their right hand?

The majority have voted that we adjourn. We will adjourn until 9.30 tomorrow morning.

If we wish to ask Mr. Roberts any further questions at a later date, we will have that opportunity.

The committee adjourned.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

FRIDAY, APRIL 14, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing the Civil Service Association of Canada: Mr. J. C. Best, National President; Mr. E. W. Westbrook, Executive Vice-President; and Mr. T. W. F. Gough, National Secretary-Treasurer.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

24881-5—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*),
Campeau
Caron
Casselman (Mrs.)
Hicks
Keays
Macdonnell
Macquarrie
MacRae
Martel
McIlraith
More
Peters
Pickersgill
Richard (*Ottawa East*)
Roberge
Rogers
Smith (*Winnipeg North*)
Spencer
Tardif

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, April 14, 1961.
(4)

The Special Committee on the Civil Service Act met at 9.50 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Messrs. Bell (*Carleton*), Caron, Hicks, Macdonnell, MacLellan, Macquarrie, MacRae, Martel, More, Peters, Pickersgill, Richard (*Ottawa East*), Rogers and Tardif—14.

In attendance: from the Civil Service Association of Canada: Mr. J. C. Best, National President; Mr. E. W. Westbrook, Executive Vice-President; and Mr. T. W. F. Gough, National Secretary-Treasurer.

The Chairman introduced Messrs. Best, Westbrook and Gough.

The witnesses, read a submission, respecting Bill C-71, as prepared by the Civil Service Association of Canada.

The presentation of the brief was interrupted in order that committee members could attend the opening of the House. This submission will be concluded at a later date.

A letter and supplementary explanations, respecting Bill C-71, from the Civil Service Federation of Canada, was tabled. Copies of that document were distributed to Committee members; and, on motion of Mr. Bell (*Carleton*), seconded by Mr. Peters, the said document was ordered to be printed as Appendix "A" to this day's Evidence.

At 10.55 a.m. the Committee adjourned until 11.00 a.m., Thursday, April 20th, at which time the submission of the Professional Institute of the Public Service of Canada, respecting Bill C-71, will be received.

E. W. Innes,
Clerk of the Committee.

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EVIDENCE

FRIDAY, April 14, 1961

The CHAIRMAN: Gentlemen, we have a quorum. The committee will come to order.

Our representation this morning will be from the civil service association of Canada.

You will recall that yesterday morning we had before us a man from the land of Sir John A. Macdonald.

This morning, the brief will be presented by a man from the land of Sir Charles Tupper and Sir John Thompson, a compatriot of mine, Mr. J. Cal. Best.

With him are Mr. E. W. Westbrook, and Mr. T. W. F. Gough. Would you please come forward, gentlemen?

Mr. J. C. BEST (*National President of the Civil Service Association of Canada*): Mr. Chairman, Members of the Committee:

As national president of the civil service association of Canada I would like to thank you, sir, and the members of this committee for the opportunity to present the views of our members to your committee on this most important piece of legislation. We would deem it rather obvious and verbose to labour at any length the importance of this legislation, not only for civil servants, but also for the country as a whole. This point has been most adequately made by all honourable members speaking in the debate in the House of Commons on second reading.

We would, however, like to emphasize our concern that this legislation will be fair and just to all concerned. It must, in our view, provide for efficient and easy administration, while at the same time protecting civil servants both as individuals and as an entity from maladministration or abuse in personnel matters, and from prejudice or favoritism from any source.

We also believe, as we will develop in our detailed submission, that there must be a more positive form of employer-employee negotiation developed. We only hesitate to use the words collective bargaining because they have been so widely misinterpreted, and we are genuinely concerned that this misinterpretation could develop into arguments regarding the semantics of the issue, unrelated to the merits of our case.

We seek, and unashamedly, a form of negotiation that will suit the peculiar circumstances to be found in the government service. We feel that within this act, there should be broad legislative provisions for such negotiations, permitting a mutually satisfactory system to be worked out between the principals concerned. We favour a form of Whitley council procedure buttressed by legislative provisions specifying the right of negotiation, a binding instrument of agreement, and lastly the right to impartial arbitration where negotiation fails.

As the chosen association of more than 30,000 employees in all departments and agencies of Government, we feel that our direct experience in all areas qualifies us to make these recommendations and suggestions on the bill. We would hope that these will be favourably received by your committee. As the people who must work under the legislation once it is passed, we feel that our views have a most important bearing on the success or failure of the act.

While our own self-interest is obvious, we emphasize that our overriding consideration is that this leglislation will provide the means whereby there can be considerable modernization of personnel practices and procedures in the service, while at the same time preserving the merit principle, and proper control over administration at the level of the civil service commission.

THE CIVIL SERVICE ASSOCIATION OF CANADA

OFFICERS AT MARCH 31, 1961

Executive Committee

National President—J. C. Best, Department of Labour
Executive Vice-President—E. W. Westbrook, Department of Trade and Commerce
National Secretary-Treasurer—T. W. F. Gough, Post Office Department

National Vice-Presidents

T. P. Dunik—Department of Forestry, British Columbia
J. H. Downs—Department of Agriculture, Alberta
L. Hinchsliff—Post Office Department, Saskatchewan
L. S. Shewman—Department of Agriculture, Manitoba
B. Hockridge—Department of Public Works, Ontario West
J. T. Brooks—Department of Transport, Ontario East
Miss A. V. Manion—Department of National Defence, Ottawa-Hull
L. G. Langlois—Department of National Defence, Ottawa-Hull
T. E. Short—Defence Research Board, Ottawa-Hull
Province of Quebec—Temporarily vacant
Maritime Provinces—R. E. Driscoll, Department of National Defence

Research Advisory Committee

E. Westbrook, Chairman
J. A. Norton
V. Johnston
I. L. Thomson
T. W. F. Gough
J. C. Best

Mr. Chairman, with your permission and that of the committee, since our brief is quite an extensive one, we propose to divide up the reading of it, if it is all right with you, between Mr. Gough, Mr. Westbrook, and myself.

I would like to point out that there are certain small typographical errata. On page 18 reference is made to section 1(c). It should read section 1(q). That is in paragraph 58.

And on page 19, in paragraph 59, the word "in" appearing before reciprocal, should read "no". This is a typographical error.

And on page 24, in paragraph 85, the reference there should be to clause XII of the present Civil Service Act, and not to clause II, as it appears in the brief.

One final observation: at the end there has been a transposition of pages. Page 34 should be page 36. I think it is rather obvious that the bibliography should come at the end, rather than in the middle.

We shall be making a two-line insert at the end, but Mr. Westbrook will call your attention to it when he comes to it.

1. Many changes have taken place in the Canadian civil service since the present Civil Service Act was passed in 1918. Basically, these changes have constituted a logical progression parallelling the economic, sociological and political changes that have caused Canada to change from an agrarian, rural society, to an industrial nation with a predominantly urban population.

2. Among the many factors effecting the function and character of the civil service are: improvements in communications, the increase in government regulation, social legislation, World War II, our emergence as a world power with all of the obligations and responsibilities that are commensurate with such an identity; and the post-war problems of economic and industrial development. Another factor that has had an important effect on the civil service is the ever-increasing interest in Canada's northern and arctic areas.

3. The civil service has had to adapt itself to all of these changes in function and character under the provisions of legislation (i.e. the Civil Service Act) passed in 1918, which was basically not well suited to conditions predominating after 1939. The wartime experience in government personnel administration has served to highlight many of the inadequacies of the act, and these became even more obvious as the post-war period with all of its problems emerged.[1] We now find that fundamental changes must be made if the civil service is to maintain its ability to carry out the requirements and functions laid down for it by parliament.

4. The basic concern of the 1918 legislators was to provide a civil service free of all of the evils of political patronage and influence. While this need must still be recognized, there are other areas where equal legislative concern must now be shown. The nature of potential patronage has changed to a considerable degree. We feel strongly that there should now be as much concern over patronage from within the ranks of the service as there was over political influence in 1918.

5. For many years the present Civil Service Act was a model of legislation designed to protect the principle of merit in government employment. However, it is doubtful whether or not in 1961 we can afford the luxury of a civil service act based predominantly on one principle. Our law for the future must be flexible, recognizing both the needs of management to manage, and the fact that even in government employment the time has come for a much greater degree of employee participation in the establishment of terms and conditions of employment.

6. One basic cornerstone of the legislation should be that if management demands and receives greater administrative flexibility, there must be adequate legislative protection to the individual employee to ensure that, consistent with the genuine needs of the service, he can expect and receive fair treatment and consideration, and that he is confident of redress when authority is abused either overtly or covertly.

7. We have indicated that the character of the civil service has changed to a considerable degree. The civil service of today is, in many respects similar to industry. In the beginning there was much of the British idea of a public service career. To a marked degree this still exists, fortunately, in many classes. But it is also true that in many areas such considerations are not practical. Careers, in the true sense, are for the few, and the many must reconcile themselves to the fact that their promotional horizons are limited. This is emphatically not a suggestion that the government service attracts people of limited capacity or ambition, but rather that the very nature of public service often tends to limit career opportunities.[2] Under such conditions there is a feeling that material rewards must be improved and most civil servants feel that their only hope for pay and working conditions at least equal to private employment, lies in direct employer-employee negotiation based on recognized principles, and consistent with conditions within the civil service.

HISTORY OF CIVIL SERVICE LEGISLATION IN CANADA

8. Civil service legislation in Canada can be traced back to 1868 when the first legislation was passed by the parliament of the day. This rudimentary legislation established the "inside"* civil service, and provided a simple classification system. In terms of present day conditions this law would have to be considered as both archaic and naïve. This was the first attempt to establish a career civil service and it was not too successful. In providing for a number of exceptions from its provisions, the act enabled exceptions to be made, and these soon became the rule rather than the exception.

9. In 1882 another act was passed which, by and large, was little improvement over the one it replaced. It was the final result of no less than four investigations in the fourteen years between 1868 and 1882. By 1891 the loss of efficiency and discipline in the civil service had become so widespread and flagrant that the House of Commons appointed a committee of investigation.

I think I should add here, parenthetically, that the reason for this committee is not the same as it was at that time.

10. At the same time another royal commission with much the same terms of reference as the 1869 one was appointed. This commission's investigation revealed many irregularities and illegal practices. The royal commission drafted a bill which proposed the establishment of a new civil service board with a permanent chairman and four deputy heads on a part-time basis, with power to recruit and promote, and to inquire into the management of departments and the official conduct of civil servants. The draft bill also proposed that the board would report annually to parliament.

11. Parliament did not accept all of these recommendations. It did not set up the civil service board, and the act passed in 1891 amended the other recommendations so extensively that they were feeble in the extreme. One writer has described the period between 1891 and 1907 as basically one of patronage, abuses, irregularities, and illegal practices. These were possible because of the general attitude of the government which was typified by a cabinet minister of the day who told a privy council committee, in 1907, that the principles of the act were "satisfactory" though its operation needed inquiry.

12. By this time, however, the situation had deteriorated to such a degree that it became obvious that action had to be taken. A new Civil Service Act, in 1908, established a commission with two full-time members of deputy minister rank, holding office during good behaviour and removable only by the governor-in-council or on a joint address by both houses of parliament. The act reclassified the inside service in three divisions and required competitive examinations for entry to most posts; it also imposed a ban on political activities by civil servants. In practice, however, the commission could do little but hold the entrance examinations; the patronage system survived and flourished in promotions and in many appointments which were soon taken out of the commission's control by parliament; and the existing abuses, privileges, and anomalies remained. The commission had no power over the outside service, in spite of a royal commission in 1912 which recommended that the whole dominion service should come under it.[3]

13. These events set the stage for the passing of the present Civil Service Act which has remained a model for civil service legislation based on the merit principle. The coalition government of 1918 placed the outside civil service under the control of the civil service commission. Together with other sweeping improvements, this new Civil Service Act established the civil

service commission as we know it today; appointed by the government and in law and theory subject only to the will of parliament, and recallable only by joint address of the House of Commons and Senate. This act, with relatively few amendments, has operated until the present day.

14. Few amendments have been made to the Civil Service Act since 1919. Even during the difficult war years when the inflexibility of the act created many problems, methods other than amendment were used to meet them. It is a basic cause of concern that so important a piece of legislation as the Civil Service Act has gone more than 40 years without substantive amendment. Considering the important developments that have taken place in personnel administration and employer-employee relations in all parts of the private sector, the government service has had to work under a severe handicap because the present legislation was geared to the problems of 1918, and not those of the nuclear era. It is interesting to note that despite many original misgivings by those in all political parties the merit principle is now generally accepted.

15. The historical trend in our civil service law, therefore, has been evolutionary. Through such a process we progressed from the patronage ridden era of corruption, low morale and inefficiency to a service operated on the merit principle and free of political interference.

16. The present Civil Service Act is divided into four parts—and here I may say I am referring to chapter 48 R.S.C. of 1952, not to the bill at present under consideration—providing a philosophical and legal basis for the control and direction of the civil service. This includes the powers and duties of the civil service commission and deputy heads, the principles and intentions of organization classification, compensation, appointment and examination, and the general conditions of service. Basically, it is a statement of general legislative principles, the application of which is left to the civil service commission under the regulatory provisions of the act.

17. Prior to 1940 this procedure permitted a reasonably fair degree of flexibility, consistent with existing conditions, in those areas where the act established legal principles. Where it did not do this, there was a tendency toward inflexible interpretation with the consequent result that progress was impeded. Experience has further shown that many of the act's provisions are loosely worded and thus invited a variety of interpretations which have also caused difficulties, and created administrative problems. We seriously hope that the legislation recommended by this committee will provide a fair and workable balance between administrative flexibility and employee rights.

18. Parliament, in the earlier days, maintained an active interest in all matters pertaining to the civil service and until 1908, played a major role in initiating and developing civil service legislation. Most, if not all reforms prior to 1908 were initiated by parliament itself.

19. Since 1940, however, parliament has tended to neglect civil service affairs except for occasional questions and even fewer debates on legislation. These latter have principally dealt with matters of superannuation rather than the other and broader aspects of personnel administration. It is indeed to be hoped that consistent with the needs for a non-partisan, non-political civil service, parliament's interest and concern in the broader aspects of personnel administration, re-awakened by the bill presently under discussion, will, in the future, remain high.

20. One serious deficiency that parliament did not foresee in the present act is the position of treasury board in personnel administration. We would suggest that in the period between 1920 and 1960 treasury board virtually

superseded the civil service commission in determining many conditions of employment in the service. This clearly was not parliament's intent in 1919, and assuming that such treasury control is necessary, then such powers should be formally enunciated in the law, so that employee organizations may deal directly with treasury board in those areas where the expenditure of public funds may be required for improvement in working conditions and salaries.

21. This division of responsibility, and the consequent overlap of functions in administering the civil service, was clearly enunciated by the royal commission on administrative classifications in the public service in 1946, (the Gordon commission). The commission said:

> It is apparent that the respective functions and responsibilities of the civil service commission and the treasury board overlap. The treasury board has the authority in relation to all matters of establishment and organization but not the immediate respsonsibility; the civil service commission has the responsibility but not the authority. This division of duties is the outstanding weakness in the central direction and control of the service and must be eliminated.

22. In our view, the reason that this overlapping of control has come about is directly traceable to the deficiencies of the present act. Staff associations have long maintained the need for a civil service commission as a protection to the merit principle, impartial promotion, and as a central agency to report to parliament on all matters of personnel administration in the service. What we cannot and do not accept is the idea that certain functions of the commission, as laid down in 1918 are necessarily desirable today. Section II of the present act (i.e. chapter 48, R.S.C., 1952) is an outstanding example of an anachronistic outlook toward salary determination in the light of events since the act was passed.

23. At this stage we shall only state general principles. We will indicate in detail those changes we feel are required in our detailed comments on the various provisions of the bill in the second part of our brief. Needless to say our major contention is that in those areas where the commission does not and should not have the power to implement its own recommendations involving financial commitments, staff associations should be in a position to negotiate directly with the treasury board or cabinet who do have constitutional authority to request funds from parliament. We should also have recourse to impartial arbitration, where a satisfactory solution cannot be negotiated.

24. The original purpose of the 1918 act, as we have noted, was to bring an end to the patronage system and replace it by a merit system. This was a high, noble and necessary aim but it resulted in one basic weakness: the act which evolved was a defensive one, designed primarily to prevent abuses and consequently many of its provisions were made rigid. While the act undoubtedly was successful in eliminating political patronage, the purpose it achieved was very limited in scope.

25. A detailed study of the present act would add little to the deliberation of this committee at the present time. Suffice to say, however, that no law designed principally to achieve the best in personnel administration can be based on one principle, and that a defensive one. Even less can we afford today to again pass legislation that is only defensive in nature. This emphasis has been an inhibiting influence on all other aspects of personnel administration, and is perhaps an outstanding argument in favor of the old aphorism that "the best defense is a good offense".

26. If our legislation is progressive and forward looking it will do much to ensure a highly trained, efficient civil service which would in itself make any effort to a return to the patronage system and other abuses almost impossible. It is also safe to say that the public would not tolerate a return to pre-1919 conditions, and this also provides an effective barrier against overt attempts to destroy the merit system.

27. This does not imply that the Civil Service Act must not contain legal protections against merit abuse, but rather that this should be one of the basic concerns of civil service legislation and not the all-pervading influence it is in the present Civil Service Act.

DESIRABLE TRENDS AND DIRECTION FOR NEW LEGISLATION

28. What then do we regard as the basic principles which should influence the new Civil Service Act? As a representative employee organization we do not apologize for maintaining that one of the basic cornerstones of the new act must be adequate provision for direct negotiation between organizations of employees and the employer. In our detailed comments we will indicate categorically that we do not feel that clause 7 of the present bill meets this need to any appreciable degree, and we will offer an alternative clause that would ensure this direct negotiation without, in any way, endangering the rights of parliament to vote money, or the rights of cabinet to perform its proper functions and responsibilities under our constitutional procedures.

29. Secondly, in our view, the new act must provide greater flexibility for those with senior administrative responsibility to carry out their work. However, we also strongly maintain that such flexibility must only be given with adequate legislative safeguards against abuse. It has been suggested that so long as the civil service commission has the power to classify positions, it maintains all the authority necessary over the actions of the departments in handling their own establishments and organizations. With this we cannot fully agree.

30. Our experience has shown that authority once delegated is often difficult to take back. With due respect to the present incumbents of the commission, there has been, in the past a tendency to shy away from exerting more than the power of persuasion in the face of such abuses; even where such power existed. Delegation does not mean merely delegation to the deputy head. He, in his turn, must delegate down through the hierarchy of his department. As this progression of delegation takes place the possibilities and dangers of abuse become even more pressing. Therefore, while we agree that the individual department heads should have greater administrative flexibility under the act, we also feel that there should be a firm directive from parliament as to the course of action that must be taken when abuses are found. Further, such authority should be clearly defined. Should any abuses of this authority occur, the civil service commission should have the power and obligation to intervene.

31. The reluctance of the civil service commission to act where necessary as a "police force" has been a source of great concern to us. While some of this can be traced to deficiencies in the act, other instances resulted from a simple reluctance to take direct action. Our detailed comments will indicate specifically where we feel such delegation could be dangerous, and where safeguards should be provided.

32. We also firmly believe that the recommendations of the Heeney report urging a clearer definition of the rights and obligations of civil servants is a basic requirement of the new act.

33. The act must also provide the means for the introduction and development of sound progressive techniques in personnel administration.

34. We also strongly support the concept that one of the major aims of the act should be to eventually bring about one civil service.

35. Since the present Civil Service Act was passed, we have witnessed almost revolutionary changes in concepts of personnel administration and employer-employee relations in private industry. Most regrettably the government service has followed these trends in most instances, rather than participating in, and helping to influence these developments. We feel that the need for a policy of following is no longer valid, and that the Canadian public is prepared to accept the fact that their employees must have certain rights and privileges, in the same manner as other Canadian citizens.

36. For our part, we recognize that certain of the conditions of government service do not make all provisions of Canadian labour legislation desirable or practical within the government service. However, we again reiterate our view that within the framework of a parliamentary democracy there can be true and meaningful direct negotiation between employer and employee. Unless this is an established principle in the new Civil Service Act, we predict that it will be necessary within a very short period of time to once again substantially amend the act, since it will not be adequate to keep up with progress being made in personnel administration by those in the private sector. A sound system of employer-employee negotiation is a sine quae non of progress.

GENERAL COMMENTS ON BILL C-71

37. It is fair to say that most of those intimately connected with the civil service, either as members of the official side, or as staff organization officers or as working civil servants hailed the announcement that a complete revision of the Civil Service Act was to be undertaken. All concerned looked forward to a new law that would meet needs and conditions of the service in the coming years.

38. We have awaited this Bill with enthusiasm. Without at all implying full agreement with all of its content, the report of the civil service commission in 1958, (i.e. the Heeney report) stated the case for new concepts in the law extremely well. The report said:

> The legal framework within which a public service functions is of importance because of its direct bearing upon quality and administrative efficiency. Law alone cannot guarantee good administration but it can and does have a real effect on the quality and quantity of the personnel who are recruited and it can provide incentives to good performance. As conditions change, there develops from time to time a need to re-examine legislative arrangements so as to determine whether the law is well suited to current needs . . . Not much is gained if the "malign influence" of political patronage is replaced by bureaucratic patronage, which may be less apparent but which can be no less insidious and demoralizing. The effectiveness of the present act in protecting the national service from these traditional abuses is a convincing argument for the preservation of the essential legal safeguards of the merit principle. AT THE SAME TIME, IN THE VASTLY DIFFERENT SOCIAL AND ECONOMIC CONDITIONS WITHIN WHICH PUBLIC ADMIN-

ISTRATION MUST BE CONDUCTED TODAY, IT HAS BECOME EVIDENT THAT A MONOLITHIC MERIT SYSTEM IS NOT IN ITSELF ENOUGH.[1]

39. How then does bill C-71 face up to the challenges it will have to meet? In our considered view it falls short of what is needed. Its primary characteristics are of extreme caution in establishing new concepts. It is too much concerned with establishing a 1961 version of the 1918 act. The bill does not attempt to provide the broad principles of personnel administration and employer-employee relations the service needs. In short it lacks the boldness of initiative and foresight necessary for successful administration.

40. Basically, the bill provides little more than a factual outline of present practices which, all too often, have come about through happenstance. After 42 years of experience we expected a much more exotic legislative meal than we have had presented. We expected caviar and have, instead, been served porridge, and warmed over porridge at that.

41. Perhaps some will say that we have hoped for much more than we could legitimately expect. With this we cannot agree. We want and expect a legislative instrument that will adequately meet the requirements not only of today but for some time in the future as well. Bill C-71 fails to do this.

42. The outstanding example of the bill's failure to meet today's requirements is clause 7. While we appreciate and commend the government's action in making one important change in the clause, as reintroduced in the present bill, we would emphasize that the basic principles we are after have not yet been met. While the right of initiation of discussions has been extended from what it was in bill C-77, it still provides only the right to consult and not to negotiate.

43. The avoidance of any reference to true and meaningful negotiation is the crux of the whole problem of employee-employer relations in the government service.

44. In our lexicon to consult implies no greater obligation than "to seek information from", "to exchange ideas", "to talk things over", "to take into consideration", "have regard for". This falls far short of negotiation which is defined as: "to talk over and arrange terms", "arrange for". Consultation means no more than an agreement to listen, it does not mean that there is any obligation to accept all or part of what is said. No system of consultation, no series of so-called "systematic discussions" can replace true negotiations. We submit with all possible emphasis, that true direct negotiation is completely compatible with our system of government, and could not and would not in any way undermine or lessen parliament's zealously guarded fiscal power.

45. At the risk of appearing prolix we would once again emphasize that we do not oppose "greater authority for decision and action for ministers and deputy heads of departments in matters of managerial concern . . ." We do oppose the failure to provide proper safeguards to the employee. There are few safeguards against abuse in the act for many of these delegations and abdications of civil service commission control and direction to departments. For some years there has been some concern as to the regulatory and control powers of the commission under the present act. Rather than clarifying and strengthening these powers it is proposed to eliminate them. We strongly oppose this trend.

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[1] Personnel Administration in the Public Service, 1958 (The Heeney Report) page 8—underlining ours.

46. Lastly, there is the failure to effectively come to grips with the problem of divided power and responsibility between the commission and treasury board in money matters. From our viewpoint we would prefer to negotiate directly with those who represent fiscal authorities.

47. We would prefer to see this legislation delineate the commission's powers and duties as follows:

1. Sole responsibility for all recruitment.
2. Responsibility for establishing and controlling regulations and procedures for promotion.
3. Responsibility for appeal and grievance procedures and regulations.
4. The final authority on grievances unresolved at the Department level.
5. Responsibility for organization and classification.
6. The statutory obligation to act where there are abuses of any powers delegated to departments.
7. The responsibility to advise the government on economic matters such as salary, leaving the actual negotiation to those with fiscal responsibility and organized employees.

48. These then, are our general comments on bill C-71. Part II of this brief will contain our detailed clause by clause consideration of the proposed legislation.

I would ask Mr. Gough, the national secretary treasurer, to continue.

Mr. T. W. F. GOUGH, (*National Secretary Treasurer, The Civil Service Association of Canada*):

PART II

CLAUSE BY CLAUSE COMMENTS AND RECOMMENDATIONS

CLAUSE 2

Section 1(a)

49. In our view a major cause for concern on the part of classified staff is the absence in the present Civil Service Act (chapter 48 revised statutes of Canada, 1952) of any provision for payments of shift differentials for those required to work on rotation on a regular basis. Such differentials are the regular and accepted pattern in private industry. The principle of such payments for the civil service was accepted by the civil service commission, on recommendation of the national joint council, as one that should be applied under the Civil Service Act.

50. However, the Department of Justice has rendered an opinion that the Civil Service Act would not permit the payment of such shift differentials. We would, therefore, strongly urge this committee to make certain that section 1 (*a*) of clause 2 or another appropriate section provide the necessary legal authority to permit such payments, and the consequent elimination of this deficiency from the Civil Service Act.

Section 1(b)

51. Bill C-71 continues the exclusion from the Civil Service Act of prevailing rate of pay employees and ships' officers and crews. These exclusions are not, in our view, well-founded. Most employees in these categories feel they should enjoy the same rights and privileges under the act as do classified

civil servants. The report on personnel administration in the public service (i.e. the Heeney report) recommended that these and many other categories of government employees come under the provisions of the Civil Service Act.[1]

52. This viewpoint was also expressed in the report of the royal commission on administrative classifications in the public service, 1946, (the Gordon commission) which said:

> The personnel of all departments and of boards, commissions and agencies . . . should insofar as not already so covered, be brought under the provisions of the Civil Service Act. We see no reason why the staffs of all departments, and of all agencies . . . should not come under the general civil service provisions governing recruitment and conditions of employment.[2]

53. One reservation must be expressed here, however, and that is in extending the act to cover such employees, they should not suffer in any way when their positions are classified. However, considering present trends in establishing classified salaries, the time would now seem opportune to bring many of these excluded employees under the act.

54. Wages for prevailing rate of pay employees and ships' officers and crews have long been established on a basis of rates comparable to those generally prevailing in similar job classifications in the private sector. There has been a gradual development towards a similar basis for establishing salary scales for those covered by the Civil Service Act. Successive governments have stated this policy. The machinery to make such comparisons now exists in the pay research bureau. There is no longer, in our view, any valid reason why these employees could not come under the provisions of the Civil Service Act while still retaining the general techniques of wages determination as at present.

55. It is difficult for these employees to understand that while they work in collaboration with, or under the direct supervision of classified employees, they must suffer conditions of employment which are inferior to those of their fellow government employees. As employees of the government, they should not suffer such discrimination, and they should have the same general terms and conditions of employment as those coming under this act.

56. As members of this committee will be aware, prevailing rate of pay employees have provisions for both holidays and sick leave that are inferior to those provided in the act. In addition they have fewer promotional opportunities, less security of tenure and few, if any guarantees of continued or stable employment. We know of many instances where prevailing rate of pay employees have been forced to take annual leave on certain statutory holidays, while classified employees working in the same establishment, and coming under the Civil Service Act, have been granted the holiday with pay and are not subject to losing part of their annual vacation allowance.

Recommendation

> 57. We would, therefore, recommend to this committee that clause 2 section 1(b) paragraphs (ii) and (iv) should be deleted from this act, and a new section inserted which would bring prevailing rate of pay employees and ships' officers and crews under the provisions of the Civil Service Act.

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[1] In 1919 approximately 92% of Federal Government employees came under the Act; in 1929, 70% and the figure today stands at approximately 40%.

[2] Report of the Royal Commission on Administrative Classifications in the Public Service, page 16.

Section 1(q)

58. We welcome the change in wording in this section from its original form in bill C-77. This clarification has removed a grave area of concern from the minds of many classified civil servants who interpreted the original paragraph as opening the way to declassifying their positions.

Section 2

59. The broadening of the interpretation of the Civil Service Act to allow members of the Royal Canadian Mounted Police or the Canadian forces to apply for promotional competition under the Civil Service Act is, in our opinion, unfair and prejudicial to the promotional and career interests of civil servants. It is our considered view that the choice of a career is one for the individual based on aptitude, training and personal preference. To allow those who have chosen carrers in either the Mounted police or the Canadian forces to utilize the training received to the disadvantage, in effect, of those who have chosen civilian pursuits will only lower morale and cause resentment. We have every respect for those who have chosen such careers, but we also feel that priority for promotion should go to those who elected to seek employment in a civilian capacity. When it is recalled that there can be no reciprocal arrangement the inequity becomes even greater.

60. It seems very unfair that military or R.C.M.P. personnel, many of whom have received expert training at the government's expense, should be permitted to prejudice the promotional opportunities of career civil servants. We recognize that specialized training is necessary in the armed services, but we cannot recognize that those who so benefit, often not because of any initiative or sacrifice on their own part should, in effect, gain preferential treatment over civilian personnel.

61. It has been argued that the public service as a whole cannot afford to lose the services of such military or R.C.M.P. personnel because of their skills and training. With this we would agree. But, so long as the armed forces pursue a policy of relatively early retirement of personnel, contrary to general trends in civilian life, we cannot accept the proposition that this must, in effect, be offset by permitting these people to compete in civil service promotional competitions. Before this is acceptable there must be much more extensive training policies in the civil service, and a change in the attitude and practice of the armed forces regarding early retirement policies.

62. In discussing this whole area in our presentation to the royal commission on government organization we pointed out:

> The ultimate objective, of course, bearing in mind that there will always be certain exceptions, should be to place more emphasis on advancement within the service rather than having to continually look outside for people to fill many senior and immediate staff positions.
>
> Business and industry have long looked to training programs as the best means of providing an adequate supply of trained people to fill vacancies and to ensure that there will always be a pool of properly trained people to assume positions of greater responsibility. Unfortunately, the general pattern in the public service has been to train for those areas where there are shortages or, where trained staff cannot be recruited because of the specialized nature of the governmental function. There has been insufficient emphasis on broader developmental training.
>
> Except in a few instances no co-ordinated general administrative and supervisory training programs exist in the public service. This is, in our view, wasteful of manpower resources, and must lead to increased costs in seeking such personnel from outside the government service.

Recommendation

63. "We would, therefore, strongly urge this committee to delete section 2 of clause 2."

CLAUSE 6

Section C

64. Under the present Civil Service Act, (i.e. chapter 48 R.S.C. 1952) the civil service commission has the statutory power and obligation to report upon any matter pertaining to the organization or proposed organization of the various departments. As a protection to the merit principle, this would seem to be a wise provision, and experience over the years would indicate that every possible safeguard to this principle must be maintained in the law.

65. The proposal in Bill C-71 takes from the civil service commission the authority or right to make such reports except at the request of the deputy head. We are opposed to this provision and urge that the right to make such reports still be vested in the civil service commission. While the departments need greater administrative flexibility, parliament and the public should be able to ascertain precisely how the various departments and agencies are organized through reports of an agency such as the civil service commission, which has no vested interest in such organization.

Recommendation

66. We would therefore strongly recommend that clause 6 paragraph (c) be amended by inserting the words "or on its own initiative" after the word "head" in line 1. The amended paragraph would then read:

> (c) At the request of the deputy head, OR ON ITS OWN INITIATIVE, report upon any matter pertaining to organization and employment in the department.

CLAUSE 7

67. The provision of a proper system of direct negotiation for government employees warrants most important and vital consideration by this committee. There can be no question that to the vast majority of federal employees this is the issue of primary concern. We feel that because of the absence of proper negotiating procedures we lack any meaningful participation in the process of determining salaries, wages and working conditions. To most it is more than a matter of material benefits, it is also a matter of morale and dignity. So long as we are denied the basic rights of negotiation and participation, we feel that our employment position is indeed inferior to that of the vast majority of other Canadian citizens.

68. Many arguments have been advanced in opposition to any system of bargaining or negotiation between the federal government and its organized employees. These arguments range over a considerable area. In some quarters it is felt that for some reason, constitutional or otherwise nowhere defined, it would be improper for the crown to engage in collective bargaining or direct negotiation with its employees. These often ill-defined and undocumented arguments are based on the deep-seated prejudice that bargaining is repugnant to essential features of employment by the government or is, for some unknown or vaguely stated reason, incompatible with the principles governing such employment.

69. Another dissenting opinion is based largely on the premise that a strike could not be tolerated in the government service. We strongly emphasize that the strike is not now, nor ever has been an issue. Government employees, with some very minor exceptions, do not wish to strike. Rather we prefer impartial arbitration as a method of resolving differences.

70. Another objection to true negotiating procedures in the government service is the concern that parliament would lose its power to vote or withhold funds, and that the executive arm of government would be fettered and circumscribed in carrying out its constitutional function.

71. All of these arguments conveniently ignore the British, Australian and New Zealand experience in this field. The British government, in treasury circular 6/25 of March 14, 1925 established civil service arbitration for the Whitley system, but clearly stipulated that all awards would be "subject to the overriding authority of parliament."[1]

72. Those who oppose establishing direct negotiation and arbitration in this bill put forward the argument that the British system is not based on statute law, but on precedent and tradition. This is quite correct. However, these opponents apparently forget that the British example has been in existence for many many years, and the opportunity has not been taken or the desire shown to evolve a similar system in Canada during those years. We therefore feel that our only immediate hope of substantial improvement in this field is through properly drawn legislation. So long as that legislation specifically provides for "direct negotiation, arbitration and a proper instrument of agreement," we would be prepared to work out suitable procedures. However, we feel it is distinctly unfair to expect Canadian government employees, to patiently wait for the evolutionary process to establish the necessary tradition and precedents.

73. In the light of the long established and zealously guarded traditions of parliamentary supremacy under the British system, any fears that negotiation and arbitration would in any way invade or lessen parliament's rights are completely unfounded. As a safeguard against any possible threat to the supremacy of parliament, the British long ago settled any question of constitutional concern through the acceptance by all concerned of the following formal agreement:

> The establishment of Whitley Councils (i.e. direct negotiation) cannot relieve the government of any part of its responsibility to parliament and ministers, and heads of departments, acting under the general or specific authority of ministers, must take such action as may be required in any case in the public interest. This condition is inherent in the constitutional doctrines of parliamentary government and ministerial responsibility, and ministers can neither wave nor escape it.[2]

74. The British system, therefore, is based on the realities of constitutional requirements. It represents a happy blend of workable machinery and recognition of the requirements of government and parliament under a system of parliamentary democracy.

75. It should not be assumed that we favor unmodified adoption of the Whitley council system in Canada. Rather, we favor an approach based on the principles of joint negotiation and arbitration suitably designed to fit the needs and requirements of the Canadian Federal Service.

---

[1] *Arbitration in the British Civil Service*, by S. J. Frankel, Autumn 1960 issue of Public Administration published by the Royal Institute of Public Administration, Great Britain, pages 197-8.

[2] Staff Relations in the Civil Service, H. M. Treasury, London, page 14.

76. This, therefore, raises a basic question. Does clause 7 of this bill provide the direct negotiation we require? We must categorically and firmly say no!! Clause 7 is, of our view no more than a statement of what presently exists.

77. Firstly, clause 7 does not provide for negotiation of an even elementary type. Clause 7 is no more than a sugar-coated version of the proposal in the Heeney report for "systematic discussions". Joint consultation is not negotiation. The employer is under no obligation to consider any recommendations received, nor is he required to negotiate in the accepted usage of the word. It is primarily a master and servant relationship whose continuance is an anachronism in employer-employee relations today.

78. We have been somewhat concerned with suggestions that the constant demand of civil service organizations for better bargaining procedures is an expression of the "doctrinaire" beliefs of certain association leaders.

79. For many years now there has been a widespread and genuine desire among the membership of all associations for much improved negotiation procedures. We would be remiss in carrying out our responsibilities if we did not pursue this objective with force, vigour and a sense of responsibility to all concerned.

80. We, as Canadian government employees, feel that we have an undeniable right to play a definite role in negotiations to determine our wages, salaries and working conditions. Clause 7, even in its amended form, does not provide even an elementary basis for direct employer-employee negotiation.

Recommendation

81. We would therefore recommend that clause 7 be amended as follows:

> The commission, and such members of the public service as the Minister of Finance may designate, SHALL NEGOTIATE DIRECTLY with representatives of appropriate organizations and associations of employees with respect to pay and other terms and conditions of employment, at the request of such representatives, or wherever in the opinion of the commission or the Minister of Finance, as the case may be, such NEGOTIATION is necessary or desirable in the interests of the civil service or the government.
>
> IN CASES WHERE NO AGREEMENT IS REACHED AS A RESULT OF NEGOTIATION THE MATTERS IN DISPUTE SHALL BE SUBMITTED BY EITHER PARTY TO A PUBLIC SERVICE ARBITRATION TRIBUNAL.
>
> THE RESULTS OF SUCH NEGOTIATION AND/OR ARBITRATION SHALL BE PROCLAIMED BY A SUITABLE INSTRUMENT, WHERE NECESSARY SUBJECT TO THE APPROVAL OF PARLIAMENT.

82. We feel strongly that such a clause in the new act would provide a solid legislative base for the development of proper negotiation and arbitration procedures. These procedures would be of benefit and value to all concerned, and consistent with our principles of parliamentary government.

CLAUSES 10-14

Pay and Allowances

83. The method of determining pay and allowances in the civil service should have a direct relationship to the provision of adequate direct negotiation procedures. It is in the area of remuneration that the most immediate need for employer-employee negotiation lies. Granted this direct relationship between

clause 7 and clauses 10-14 dealing with pay and allowances, it is indeed difficult to understand how there can be such a complete divorce of the two sections in the legislation. Our comments on sections 10-14 must, therefore, be read in conjunction with our arguments favoring more meaningful direct negotiations presented earlier in this brief.

84. Despite our detailed comments on these clauses we strongly feel that they should not be incorporated in the act, but that our recommendations for satisfactory negotiating procedures should be adopted.

85. The provisions of the draft bill concerning pay determination reflect some of the basic principles of clause XII of the present act but with certain important, and in our view undesirable, changes. Clause XII of the present act says:

1. The commission shall, from time to time, as may be necessary, recommend rates of compensation for all new classes that may be established hereunder, and may propose changes in the rates of compensation for existing classes.
2. In each class there shall be a minimum and a maximum salary rate and such intermediate rates as may be considered necessary and proper to provide increases between the minimum and maximum.
3. Proposed rates of compensation shall become operative only upon the approval by the governor in council, and where any expenditure will result therefrom, when parliament has provided the money required for such increased expenditure. R.S.C. 22, S. 12.

86. The key provisions of this section of the present act are that the civil service commission alone may make recommendations, the governor in council may only approve or disapprove these recommendations and parliament must vote the funds required to increase salaries.

87. The commission's role was determined by the general thinking prevalent at the time of passage, that it was the proper agency to make recommendations on remunerations and to keep salaries out of the political arena. We have indicated in our discussion of clause 7 that we do not agree that this premise is any longer a valid or necessary one. Events during the years must have made changes desirable and necessary.

88. The major weakness in the whole concept of the commission playing such an important role in salary determination is, as we have noted, that the commission lacks any fiscal power whatsoever. We have also indicated that we favor the position taken by the Gordon commission that salary matters are the proper province of that agency of government which has responsibility for matters related to the public purse.

Clause 10

89. The first important change under the proposed act is the addition of the word "or whenever requested by the governor in council". This would be an improvement under the present system since it would make it possible for the government to request the commission to make recommendations if it (i.e. the government) so desired. If the present system were continued this would at least remove the often heard excuse that in the absence of commission recommendations the government could not act.

90. Part two of clause 10 seems to have effectively removed the long established good employer concept of salary comparison by simply ignoring it. If this is to remain as one of the fundamentals of civil service salary determination it should certainly be included in those statutory considerations governing pay determination.

91. Our concern over the desirability and effectiveness of an unamended clause 7 is further heightened when it is noted that nowhere in clause 10(2) is it spelled out that the views of the staff associations must also be factors to be considered. Any conceit we may have had over our own importance is effectively demolished here.

92. As a minimum improvement to this section we would suggest that the words "including recommendations made by staff associations of employees", be inserted after the word "considerations" in line 32 of page 6 of the draft bill.

93. We would emphasize that our suggestions for improvements in this and other clauses of this section should not be construed as approving their provisions or basic concepts. We are firmly opposed to continuing the role of the civil service commission in pay determination as proposed by the legislation, and stand firmly on our position that salaries and allowances should be the result of direct negotiation between the staff associations and the treasury or its officials.

Clause II

94. Clause II seems to provide an escape clause whereby the governor in council is no longer obliged to accept or reject the commission's recommendations it may wish to apply. This means that the employees are left entirely defenceless regardless of how meritorious the case for salary revision may be. Unlike the situation under the present act it would now be perfectly legal for the government to water down or radically change any commission recommendations without fear of censure or even an explanation.

Recommendation

95. The minimum acceptable amendment to clause II, paragraph (a) would be the insertion of the words "as recommended by the civil service commission" after the word "pay". This would mean that the government could accept or reject these recommendations, but not abitrarily change them.

96. The amended clause would then read:

> II (a) establish rates of pay AS RECOMMENDED BY THE CIVIL SERVICE COMMISSION for each grade; and . . .

97. We further believe that all recommendations of the civil service commission should be immediately made available to staff organizations without restriction.

Clauses 15-19

Establishments

98. These five clauses introduce a new principle under which the three functions of organization, classification and establishment are separated. The commission's only responsibility in this area under the new act will be that of classification.

99. These sections gloss over the problems of establishment. The deputy head is made responsible, presumably on grounds of ministerial responsibility for the efficiency and organization of the department. Yet, on the other hand, the governor in council (and, in reality, treasury board) would have the power to alter the establishment at will, presumably on grounds of economy.

100. The commission, meanwhile, is simply required to ensure that the positions in the establishment are properly classified. This creates a dilemma because on the one hand the department may claim that a position is necessary, while on the other hand treasury board may claim it is unnecessary. This split in authority almost ensures complications and even chaos unless there is more centralized control.

101. The commission's experience and expert staff seem to give it preference as the control agency. Ultimate financial control would have to rest with the treasury but all other controls on establishment up to final fiscal approval should rest with the commission. By the use of streamlined administrative procedures most of the present delays in rapidly adjusting establishments could be eliminated. Thus a proper balance between efficiency of operation and considerations of economy could be effectively maintained.

102. Clause 17 (2) also seems to remove from the control of the commission the right to add new classifications and, in effect, could cause the loss of some control, uniformity and equity between the establishments of the various departments. Such central control is most important if the various departmental establishments are to reflect accurately personnel requirements. As the bill now reads the commission has no right to question additions to establishments it can only classify the positions to be added.

Recommendation

103. Clause 19 is the weak link in the establishment process. We would recommend that the clause be amended as follows:

1. The governor in council SHALL REQUEST THE CIVIL SERVICE COMMISSION TO REVIEW THE ESTABLISHMENTS OF DEPARTMENTS AT LEAST EVERY THREE YEARS and may after considering the recommendations for representations from the deputy head and the CIVIL SERVICE COMMISSION, delete positions from or add positions to the establishment of the department;
2. For the purposes of this section, the deputy head shall submit to the CIVIL SERVICE COMMISSION and the governor in council a plan of organization and such further information or material as the commission or governor in council may require.

Mr. Westbrook will continue now, for the final portion of the brief.

Mr. E. W. Westbrook (*National Executive Vice-President, Civil Service Association of Canada*):

Part III

APPOINTMENT

Clause 20

104. There is a direct relationship between the provisions of clause 20 and clause 39. While delegation is obviously necessary to efficient personnel administration, there should be firm control. Specific comment will be made in discussing clause 39.

Clauses 22, 23, 25, 26

105. There should be a general appeal clause added to this section to provide for appeal of appointments made under clauses 22, 23, 25 and 26.

We would recommend the following to be inserted as clause 21 and the following clauses to be renumbered:

"ANY APPOINTMENTS MADE UNDER CLAUSES 23, 24, 26, AND 27 OF THIS ACT ARE SUBJECT TO APPEAL BY THOSE EMPLOYEES OF DEPARTMENT WHO MAY BE DENIED THE OPPORTUNITY OF PROMOTION BECAUSE OF SUCH APPOINTMENT OR APPOINTMENTS."

106. This would then make the conditions of these appointments consistent with the provisions of clause 27 (i.e. 28) covering transfers and appointments.

Clause 39

107. Clause 39 seems to be contrary in principle to the provisions of clause 20 which gives the commission "the exclusive right and authority to appoint . . ." If it is administratively necessary to qualify the exclusive rights of clause 20 there must also be a statutory obligation on the commission to effectively police such delegations.

Recommendation

108. It must be remembered that it is equally impossible for the deputy head to personally exercise or perform these functions delegated by the commission. Clause 39 should therefore have the following added as paragraphs 2 and 3:

2. The civil service commission shall review the exercise of any powers delegated by it every two years or on evidence of abuse and report to parliament in its annual report the details of such review.
3. The commission shall immediately suspend the authority delegated to perform or exercise its powers or functions on proof of abuse of such authority, and shall not restore such authority until it is satisfied that no further infractions will occur.

Clause 45

109. Paragraph 2 of clause 45 seems directly at variance with the merit principle. If special qualifications may be required then the use of a special eligible list or competition would be a fairer and more desirable means of filling a vacancy. The principal danger is that under this provision the exception could become the rule.

Part IV

TERMS AND CONDITIONS OF EMPLOYMENT

Clause 53

110. This clause, as written, makes no allowances for extenuating circumstances such as disaster, amnesia, illnesses, etc.

Recommendation

111. We would recommend that since legitimate absences occur, which may not permit immediate explanation, the period be extended from one week to one month.

DEMOTION AND SUSPENSION

CLAUSE 56

Recommendation

112. We would recommend the addition of the following words to paragraph 2: "and advise that he has the right of appeal".

113. The clause would then read:

> 2. The deputy head shall give an employee notice in writing of a decision to recommend that the employee be demoted and advise that he has the right of appeal.

CLAUSE 57

114. While we agree that there must be disciplinary provisions in the act clause 57 does not differentiate between very serious cases where suspension is obvious and less serious disciplinary breaches. Suspension of upwards of six months is excessive especially when at the time of suspension no charges have been proven.

115. It is difficult to imagine a case other than one involving criminal proceedings that would require this length of time to pass before final disposition of the charges could be made.

Recommendation

116. We therefore suggest that clause 57 be amended and revised as follows:

> Clause 57 (1) — In any case where criminal proceedings against an employee are pending the deputy head may, by an appropriate notice in writing, suspend the employee for a period not exceeding six months or until the charges are disposed of whichever is sooner.
>
> (2) In cases where it is alleged that an employee has been guilty of misconduct, and the deputy head considers it desirable to investigate the allegation the deputy head may, by an appropriate notice in writing, suspend the employee for a period not exceeding two months.

117. This, in our view, is consistent with efficient personnel practice and would ensure reasonably sufficient investigation and disposition of such proceedings.

CLAUSE 59

118. We are opposed to the commission being empowered to extend any suspensions beyond six months. We would therefore strongly recommend the elimination of paragraph 2 of clause 59, and also paragraph 3A (ii). We do not oppose dismissal on justified grounds, but such cases dragging on indefinitely without coming to a reasonably speedy conclusion will not only be bad for the employee directly involved, but for the general efficiency of the civil service.

CLAUSE 61 (3)

Recommendation

119. For obvious reasons we would recommend the addition of the following words to paragraph 3 of clause 61: "and to be represented by counsel at such inquiries".

HOLIDAYS

CLAUSE 62

120. We are in doubt as to the reasons why Saturday it not officially listed as a holiday. The five-day week has now been established in the government service for a number of years, and there would seem to be no reason why this could not be guaranteed in the act. The situation has been highlighted in the present year when two statutory holidays fall on Saturdays.

121. Further, we strongly urge that boxing day be added as a statutory holiday since it is becoming increasingly popular as a holiday in Canada.

Mr. RICHARD A. BELL (*Parliamentary Secretary to the Minister of Finance*): Mr. Chairman, I think it is quite obvious we are not going to finish the brief this morning and I suggest this might be a good place for the committee to break off and take a holiday.

The CHAIRMAN: I think the point is well taken, Mr. Bell. We shall be inviting the association back to answer questions and finish the brief. Possibly we can arrange that with the association for some time next week. Before the meeting adjourns, I should like to point out that there has been circulated to members of the committee, and to the Press, a letter from Mr. Whitehouse, President of the Civil Service Federation of Canada, in which he very kindly expresses his willingness to come back at any time to answer questions. He has also attached an addendum to the brief presented yesterday, setting forth further qualification of one or more points, and mentioning some points that were not brought up. What is the opinion of the committee on this?

Mr. BELL (*Carleton*): I would propose this be made part of the record, certainly as Appendix "A" to to-day's proceedings but, if yesterday's proceedings have not yet gone to the printer, it might conceivably be added as an appendix to yesterday's record.

Mr. PETERS: I second that.

Mr. MARTEL: But this is dated to-day, the 14th of April.

The CHAIRMAN: Even though it is dated the 14th, if it were added to yesterday's report I believe it would be agreeable. Is that agreed?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: We shall now adjourn until Thursday of next week at 11 o'clock.

APPENDIX "A"

CIVIL SERVICE FEDERATION OF CANADA
88 Argyle Avenue
Ottawa

APRIL 14th, 1961.

Mr. R. S. MacLellan, M.P.,
Chairman,
Special Parliamentary Committee on the C. S. Act,
House of Commons,
Ottawa.

Dear Mr. MacLellan:

On behalf of the civil service federation, I want to thank you and your committee for the courteous hearing you gave us yesterday when we presented our brief.

We were somewhat disappointed that there was not sufficient time available to permit the committee to ask us questions arising out of our presentation. In preparing our brief, we naturally assumed that we would be questioned on it and therefore did not attempt to elaborate, as fully as we otherwise might have, on some of the reasoning behind many of our recommendations. We were therefore pleased to note your assurance yesterday that the committee is prepared to call us back again and we look forward to an opportunity to further elaborate on our brief when we again have the privilege to appear before your committee.

In the meantime, it has occurred to us that there is one simple explanation not included in our brief which we think would be very helpful to your committee in studying our recommendations. We failed to indicate to what extent some of the provisions of the new act to which we objected or had reservations were entirely new in principle or merely a carry-over or extension of principles contained in the present or, as it is often referred to now, the old act. We are correcting that oversight by attaching hereto a supplementary appendix to our brief containing this explanation and we would respectfully request that it be distributed to the members of your committee.

If you or any of the committee members wish any further clarification of our brief in the interval before we again appear before the committee, we will be only too happy to supply this. A telephone call to our national office at 88 Argyle avenue (CE 3-8451) will put them in touch with either myself or someone else who will be able to supply the required information.

Yours sincerely,

F. W. Whitehouse,
President.

APPENDIX 2.

A supplementary explanation pertaining to the brief submitted by the civil service federation of Canada on bill C-71.

Clause 2, Sub-Clause (1) Paragraph (b) Sub Paragraphs (ii) and (iv) on page 3, and Clause 2 and Sub-Clause (5) on page 4.

This has the effect of bringing prevailing rate positions and ships personnel under the provisions of the Civil Service Act for all purposes except recruiting and establishing rates of pay and allowances.

At present the conditions of employment for these public employees are governed by three separate sets of regulations, i.e. the prevailing rate employees general regulations, the ships officers regulations and the ships crews regulations.

Clause 2, Sub-Clause (1) paragraph (d) on page 3, Clause 2 Sub-Clause 2 on page 4, Clauses 21, 22 and 23 on page 6, Clauses 28 and 34 on page 7.

These clauses of bill C-71 extend to members of the R.C.M.P. and the armed forces the right for the first time to bid with career civil servants in closed or departmental competitions.

Under the present act this is not permissible and our members feel that the approval of these clauses would seriously jeopardize morale in the civil service.

We emphasize that this *does not* prohibit members of the R.C.M.P. and the armed forces from competing in open competition, nor does it prohibit their appointment in an emergency.

Clause 2, Sub-Clause (1) Paragraph (t) on page 4, and Clause 69 on page 10.

These suggested amendments provide for the establishment of a grievance procedure to be set up in each department. This is not provided for in the present act and we do not believe it is adequately provided for in bill C-71.

Clause 4, Sub-Clause (1) on page 5.

Realization of the fact that only 35,000 of the approximate 200,000 Canadian civil servants are employed in Ottawa makes the reason for this suggested amendment obvious. The present act provides for only three commissioners.

Clause 7 on page 5.

The present act does not provide for any consultation, negotiation or arbitration with representatives of employees and the only official means for consultation at present available to such representatives is the national joint council of the public service of Canada. This council deals with problems of a general nature, but does not discuss remuneration. Recommendations are made only on the agreement of staff and official sides and becomes operative only when accepted by higher authority.

Clause 10 and Clause 11 on page 6.

These clauses as contained in bill C-71 are not significantly changed from existing practice except that under bill C-71 the governor in council may in future modify recommendations received from the civil service commission. Our recommendation read in conjunction with our recommended clause 7,

would have the effect of providing for direct negotiation between staff or organizations and the decision making body rather than with a commission empowered only to make recommendations.

Clause 55 on page 8.

The present act makes no provision for a detailed procedure for lay-off.

Clause 65 on page 9.

The present act does not provide for a deceased employee's estate to be compensated for the benefits earned by the employee prior to death.

Clause 68, Sub-Clause (1) Paragraph (n) on page 10.

Bill C-71 provides for acting pay when an employee assumes the duty of a higher position but does not provide acting pay when an employee assumes the responsibilities and duties of another position in addtion to the duties of his own position. (e.g. A section supervisor may be absent for a prolonged period and a supervisor from another section will be called on to supervise both sections). Civil servants are sometimes required to work in such a dual capacity. The present act does not provide for such extra compensation.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

THURSDAY, APRIL 20, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing the Professional Institute of the Public Service of Canada: Miss Frances E. Goodspeed, President; and Mr. L. W. C. S. Barnes, Chairman of a Committee on Bill C-71.

Representing the Civil Service Association of Canada: Mr. J. C. Best, National President; and Mr. T. W. F. Gough, National Secretary-Treasurer.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

24941-7—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)
Campeau
Caron
Casselman (Mrs.)
Hicks
Keays
Macdonnell
Macquarrie
MacRae
Martel
McIlraith
More
Peters
Pickersgill
Richard (*Ottawa East*)
Roberge
Rogers
Smith (*Winnipeg North*)
Spencer
Tardif

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, April 20, 1961.
(5)

The special Committee on the Civil Service Act met at 11.12 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Mrs. Casselman and Messrs. Bell (*Carleton*), Caron, Hicks, Macdonnell (*Greenwood*), MacLellan, MacRae, Martel, McIlraith, More, Peters, Richard (*Ottawa East*), Roberge and Rogers—14.

In attendance: Representing the Professional Institute of the Public Service of Canada: Miss Frances E. Goodspeed, President; and Mr. L. W. C. S. Barnes, Chairman of a Committee to study Bill C-71; and also Messrs. E. F. V. Robinson, C. F. Gilhooly, C. G. Hickman, T. H. Hawkins, W. L. McBride and J. H. Leroux. *Representing the Civil Service Association of Canada:* Mr. J. C. Best, National President; Mr. E. W. Westbrook, National Executive Vice-President; Mr. T. W. F. Gough, National Secretary Treasurer. *And also* Dr. P. M. Ollivier, Q.C., Parliamentary Counsel.

The representatives of the Professional Institute of the Public Service of Canada were called.

Miss Goodspeed made a few preliminary remarks and Mr. Barnes read the prepared submission of the Professional Institute of the Public Service of Canada, respecting Bill C-71, An Act respecting the Civil Service of Canada.

On completion of this presentation, Miss Goodspeed and Mr. Barnes were permitted to retire.

The representatives of the Civil Service Association were called.

Mr. Best resumed the presentation of the Association's brief. The first part of this submission was received by the Committee on April 14, 1961. (*See Minutes of Proceedings and Evidence No. 3*)

On motion of Mr. Bell (*Carleton*), seconded by Mr. Martel,

Ordered,—That the appendices to the submission of the Civil Service Association be inserted in the Committee's record immediately after the Association's brief.

The presentation of the C.S.A. being completed, members of the Committee questioned the Association representatives, Messrs. Best and Gough answering questions thereon.

At 12.35 p.m. the Committee adjourned until 9.30 a.m., Friday, April 21, 1961, at which time the submissions of the Canadian Postmasters' Association and the Federated Association of Letter Carriers will be received.

E. W. Innes,
Clerk of the Committee.

24941-7—1½

EVIDENCE

THURSDAY, April 20, 1961.
11.00 a.m.

The CHAIRMAN: The committee will come to order, please.

You will recall that we did not quite complete the brief from the civil service association last week. However, since the professional institute of the public service of Canada have been scheduled for some time for this morning and, have made arrangements on that basis, the civil service association has very kindly consented to let them proceed first. Then, with the time that remains, Mr. Best and his officials will complete the brief which they began last day. I may say that there is only a small portion of their brief left to be read.

I would ask the officials from the professional institute of the public service to come forward at this time. We have with us this morning Miss Frances E. Goodspeed, the president of the institute. Miss Goodspeed will take the preamble of the brief, and the major part of the submission will be made by Mr. L. W. C. S. Barnes, who is chairman of a committee which made a particular study of this bill.

I would ask Miss Goodspeed and Mr. Barnes to come forward. Would you proceed, Miss Goodspeed?

Miss FRANCES E. GOODSPEED (*President, Professional Institute of the Public Service of Canada*): Mr. Chairman, and members of the committee. On behalf of all members of the professional institute, may I say that we appreciate very much this opportunity to present our comments on bill C-71, an act of vital interest to us.

An advantage in coming last among the major staff associations is that we know what the others have said. It is rather striking that these independently prepared briefs should stress so many of the same points of principle, and we feel that this, in itself, should emphasize to the committee the importance we attach to these principles and the serious consideration we feel they deserve.

Our brief will be presented by Mr. Barnes, past vice-president of the institute and currently chairman of our committee which is studying bill C-71.

Mr. L. W. C. S. BARNES (*Chairman, Special Committee on Civil Service Act—Professional Institute of the Public Service of Canada*): Mr. Chairman, madam, and gentlemen, the professional institute of the public service of Canada wishes to record its appreciation of the endeavours of all concerned with the preparation of bill C-71, an act respecting the civil service of Canada. The institute, which presently consists of nearly 6,000 members who are professionally qualified and employed in the public service, is incorporated under charter to enhance the usefulness of the public service of Canada, to maintain high professional standards, and to promote the welfare of its members. It is the belief of the institute that these objectives are indivisible and, in that spirit, the following comments are submitted.

Bill C-71, in large part, permissive in form and the detailed implementation of the resultant act will depend, to a significant extent, upon the regulations to be issued under its authority. Lacking reference to the proposed regulations, a study of the bill must, of necessity, be limited to generalities in many important areas.

Before proceeding to comment on specific sections of the bill, it is desired to refer to certain general philosophies which are relevant to numerous sections of the bill.

The first concerns the trend towards delegation or transfer of authority from the civil service commission to deputy heads in matters concerning personnel selection, establishments, etc. The professional institute believes that certain rearrangements along the lines indicated could well result in increased efficiency and, therefore, welcomes the proposals from this viewpoint. It has, however, become increasingly apparent to the institute over recent years that even the existing degree of local autonomy within and between departments has markedly affected conditions of employment. It is felt that any further decentralization of authority in the fields of personnel must be accompanied by a system from monitoring and control much more effective than that presently existing. Lacking such a system, the advantages of increased departmental initiative could be negated by damage to morale and even to the merit system itself.

The second general comment again concerns the trend towards greater departmental autonomy but this time from the viewpoint of organizational pattern. The professional institute, by its very nature, is deeply concerned with the vital role of scientific research and development in the public service. In this matter the institute, having regard to the example of bodies such as the National Research Council in Canada and to comparable experience in other commonwealth and foreign countries, believes that further consideration should be given to the optimum administrative framework for such activities. It is felt that scientific research and development is sufficiently different from other duties of the civil service to justify the further development of autonomous agencies responsible for their own administration within the limits imposed by legislation and fiscal provisions. The basic principle is that government scientific research should be placed under the control of independent scientists. The views of the House of Commons' special committee on Research (second report) on the N.R.C. are strongly endorsed by the institute and it is believed that they are valid in other fields of scientific endeavour.

The third point refers to the future pattern of relationships between the government, in its role of employer, and the recognized staff associations. While this matter is dealt with to some extent in section 7 of the bill, its implications spread widely over the entire legislation. The professional institute, having carried out detailed studies, both of the problems and of the potential solutions, recommends the establishment of a system of negotiation and arbitration for the Canadian public service, in line with long standing practice in many comparable commonwealth and foreign countries. It is further recommended that such a system should have a legislative base consisting of a permissive clause in the new Civil Service Act and that the constitution of the executive machinery should be laid down in an order-in-council to be issued under the authority thereof. It is assumed that section 7 can be taken as the desirable permissive basis.

A constitution for the type of organization which the Institute would recommend is attached as appendix A to this brief. In principle, the proposals are based on the precedents of the British Whitley council and the civil service arbitration tribunal which have been developed as the result of more than forty years' experience (appendix B refers). A small committee is envisaged, consisting of representatives of the government and of the major staff associations supported by subcommittees including representatives of departments, professional classes under review, and any other special interests. This body would be empowered to enter into agreements, subject to the accepted constitutional safeguards. Failure to agree on certain matters within the general field of emoluments could be resolved by reference to an impartial arbitration

tribunal. The committee and the tribunal are considered, in the light of many decades of comparable experience, to be equally essential components of the overall system.

The mutual advantages likely to flow from a system of relationships based on the institute's recommendations will, it is believed, parallel those which have followed the development of similar schemes throughout the commonwealth. In reviewing the contributions made to the efficiency of the British service by the Whitley council, Sir Thomas Padmore, the secretary to the treasury, wrote—

> A significant example is to be found in the very full Whitley discussions which preceded and accompanied the reconstruction of the service after the last world war. In those discussions the staff representatives never forgot the interests of those they represented; they would have been failing in their duty if they had. But they did not interpret these narrowly and they equally did not let their vision and their thinking become confined to them. In fact, I think it is true to say that that part of the constitution of the civil service national Whitley council which includes among the objects of the council the securing of increased efficiency in the pubic service is by no means an empty formula.
>
> Even apart from this, staff consultation which is effective and is carried out in a spirit of co-operation can, by creating a fund of goodwill which flows from action by consent, contribute greatly to the maintenance and raising of general morale; on which in turn efficiency and output so greatly depend. These are perhaps platitudes. And it would be foolish to pretend that we are in sight of perfection in these matters, or, I dare say, ever shall be. But the Whitley system works—and pays more than respectable dividends to all concerned.

It is the considered opinion of the professional institute that equally significant dividends would result from the introduction of a comparable system into the civil service of Canada.

Against the background of the previous proposals, the following comments are submitted in respect of certain individual sections of the bill:

Section 6—General powers and duties of commission

The professional institute considers that the civil service commission's functions in the fields of counselling and personnel research are sufficiently important to warrant their being given statutory authority. The existence and development of professional counselling services have been shown to be important factors in the maintenance of employee morale and efficiency in large organizations. Similarly, personnel research functions could play an increasingly important role in the effective utilization of manpower.

Section 10 to 14 generally—Covering pay and allowances

The acceptance of a system of negotiation and arbitration would require recognition, directly or indirectly, in the paragraphs of the act dealing with pay and allowances. The joint agreement of either both sides of the negotiating committee or the findings of the arbitration tribunal as applicable, would be the recommended basis for action by the governor-in-council in establishing rates of pay and allowance.

The institute would envisage the studies and recommendations of the civil service commission as forming the normal basis for discussion on remunerations in the negotiating committee.

Section 26—Probation

The potential requirement for a probation period for personnel promoted from within the civil service is proposed in this section and the potential consequences provided for in section 49 would appear to be undesirable. Initiative will surely be discouraged if employees are placed in repeated hazard of dismissal as the price of successfully competing in promotion competitions. The uncertainties associated with the selection of an employee by open public competition are sufficient to justify an initial probation period. In the case, however, of an employee who has passed such an initial probationary period and whose subsequent work performance in the service has been assessed appropriately, it would seem that the promotion competition board should be able to make an assessment acceptable to the department concerned. It is suggested that, if the probation period is retained, the maximum penalty should not exceed reversion to the grade occupied immediately prior to the promotion competition involved.

Section 39—Delegation to deputy head

The possibility of the selection functions of the C.S.C. being performed on a departmental basis is an example of the delegation of powers which could offer advantages in terms of rapidity of action. On the other hand, effective monitoring would be essential to ensure that local departmental convenience did not limit the possibilities of career development and advancement in the service as a whole. In limited professional fields, any attempt to restrict selection to small units would ultimately be very undesirable from the viewpoints of both the service and the employees. The establishment of a pattern of staff relations along the lines advocated in the attached appendices would be effective in obtaining the maximum advantage from a delegation of C.S.C. authority as contemplated in this section.

Section 40

In the matter of application of the veteran's preference in open competitions, the views of the professional institute are in agreement with those put forward in the report "personnel administration in the public service". The recommendation is accordingly for a point bonus system to be applied once.

Section 54 (iii)—Lay-offs

The proposal that a lay-off may enter any competition for which he would have been eligible had he not been laid off, for a period of twelve months, is considered to be very sound. To be of practical significance in many of the more limited professional classes, the period of application should be extended to two years. In many professions the number of promotion competitions held per year is extremely limited.

Section 61—Political partisanship

While giving complete support to the basic concept of a civil service free from political partisanship, the professional institute is of the opinion that the proposed paragraph does not provide adequate safeguards in implementation.

Two recommendations are made in respect. Firstly, it is believed that intent and not effect should be the basic criterion for assessing political partisanship. Secondly, it is considered that the form and procedure of any inquiry instituted under subsection 3 should be defined more adequately, possibly with reference to the inquiries act. The institute would further recommend that civil servants should not be liable to suspension on grounds of alleged political partisanship.

Such allegations should be the subject of an immediate and appropriate inquiry as the result of which the employee should be either cleared or dismissed.

In order to avoid any possibility of ambiguity, there is much to be said for the introduction of a further subsection confirming that nothing in section 61 shall be interpreted as debarring a public servant from exercising the right to vote in any election in which he would otherwise have that right.

Section 68

Reference has already been made to the vital role of the regulations in the interpretation and application of a new Civil Service Act. In this connection, it is desired to stress the belief of the institute that significant mutual advantages will flow from the joint study of the draft regulations to be issued under the authority of this section.

The views of Sir Thomas Padmore, on the contribution made by the Whitley council at the time of the reorganization of the British civil service after World War II, have been quoted previously. It is considered that a very reasonable analogy can be drawn between that situation and the opportunity presented by the production of the new regulations which would be required by this bill. We hold strongly to the view that all regulations which have a bearing on the terms and conditions of employment should be subject to negotiation. It is accordingly recommended that all such regulations relevant to this bill be subject to the negotiating procedure.

The professional institute of the public service of Canada desires once more to express its appreciation of the opportunity to present this brief. The members of the institute are confident that the ultimate passage into law of the new Civil Service Act will further enhance the efficiency and well-being of the great Service in which they are proud to play a leading and vital role.

APPENDIX "A"

OUTLINE CONSTITUTION
for
PUBLIC SERVICE NEGOTIATING COMMITTEE

Objects

1. The objects of the public service negotiating committee are to secure the greatest measure of co-operation between the state in its capacity of employer and the general body of public servants in matters affecting the public service with a view to increased efficiency in the public service combined with the well-being of those employed; to provide machinery for dealing with grievances and generally to bring together the experiences and different points of view of representatives of the various classifications of the public service.

Membership

2. The committee shall consist of representatives of the official and staff sides of the public service. The number of representatives of the official side shall not exceed the number of representatives of the staff organizations recognized by the committee, nor be less than fifty per cent thereof. The initial membership of the staff side shall consist of one representative appointed by each of the civil service association of Canada, the civil service federation of Canada and the professional institute of the public service of Canada.

3. It shall be open to the authorities appointing the respective sides of the committee to vary their representatives.

4. Casual vacancies may be filled by the authorities concerned in the same manner as the original appointments. Provided always that where a representative cannot attend a meeting of the committee, an accredited deputy may be appointed by the authority concerned.

Officers and Meetings

5. The chairman, at every meeting of the committee, shall be a member of the official side, the vice-chairman shall be a member of the staff side of the committee.

6. Each side of the committee shall appoint a secretary who may or may not be a member of the committee.

7. The quorum shall be four.

8. The ordinary meetings of the committee shall be held as often as necessary, and not less than once a quarter. An agenda shall be circulated to all members not less than ten days before the meetings of the committee. Business not on the agenda shall be taken only by permission of the chairman and vice-chairman. A special meeting of the committee may be called by the chairman on his own initiative or at the request of the vice-chairman. The business to be discussed at such special meetings shall be limited to matters stated upon the notice summoning the meeting.

9. The committee shall draw up such standing orders and rules for the conduct of its business as it may deem necessary.

Functions

10. The scope of the committee shall comprise all matters which affect the conditions of service of the staff in the public service or any portion thereof, and its functions shall include the following:

(i) Provision of the best means of utilizing the ideas and experience of the staff.

(ii) Means for securing to the staff a greater share in, and responsibility for, the determination and observance of the conditions under which their duties are carried out.

(iii) Determination of the general principles governing conditions of service e.g. recruitment, hours, tenure, superannuation, promotion, discipline, and remuneration and the application thereof.

(iv) The encouragement of the further education of the staff, and their training in higher administration and organization.

(v) The consideration of proposed legislation so far as it has a bearing upon the position of members of the public service in relation to their employment in the public service.

Subcommittees

11. The committee may appoint special subcommittees, classification subcommittees, departmental subcommittees, and other subcommittees as required and may delegate special powers to any subcommittee so appointed.

12. The committee may appoint, to special subcommittees, persons who need not necessarily be members of the committee. Classification subcommittees shall consist of representatives of the staff associations recognized in respect of the class concerned and official representatives, such persons not necessarily being members of the committee.

Decisions

13. The decisions of the committees shall be without prejudice to:

(*a*) the over-riding authority of parliament.

(*b*) the responsibility of the staff side to its constituent bodies.

Decisions shall be arrived at by decision between the two sides, shall be signed by the chairman and the vice-chairman, shall be reported to the governor-general in council and thereupon shall become operative.

14. It shall be the duty of the chairman to ensure that decisions reach the proper executive authority without delay.

15. In the event of a disagreement on a question concerning emoluments, weekly hours of work and leave, it may be remitted to a public service arbitration tribunal constituted in accordance with the attached addendum.

Publication of Proceedings

16. Only statements issued under the authority of the committee shall be published and such statements shall be as full and informative as possible.

Minutes

17. The committee shall keep minutes of its proceedings.

Finance

18. Each Side of the committee shall be responsible for its own expenses; common expenses shall be defrayed in equal proportions by the government and the recognized staff associations. Public servants who are members of the staff side of the committee or its subcommittee shall be given special leave with pay when attending meetings of the committee or its subcommittees.

Amendments to the Constitution

19. The constitution of the committee may be amended only by the governor-general in council. Such amendments shall be made only upon the recommendation of both official and staff sides of the committees.

CANADIAN PUBLIC SERVICE ARBITRATION TRIBUNAL

Objects

1. Failing agreement by negotiation, arbitration shall be open to the government or government departments on the one hand, and to recognized associations of civil servants within the scope of the public service negotiating committee on the other, on application by either party in regard to certain matters affecting conditions of service.

Procedure

2. Where there is failure to agree on a claim falling within the limits set out below, the case may be reported by or on behalf of either party to the dispute to the chairman of the civil service commission for reference to arbitration by a tribunal consisting of an independent chairman and one member drawn from a panel of persons appointed by the chairman of the civil service commission on the advice of the staff side of the public service negotiating committee and one member drawn from a panel of persons appointed by the chairman of the civil service commission on the recommendation of the Minister of Finance for the time being. The chairman of the tribunal shall be a person appointed by the chairman of the civil service commission with the concurrence of the staff and official sides of the public service negotiating committee.

3. Where on any reference, the two members of the tribunal are unable to agree as to their award, the matter shall be decided by the chairman.

Membership of Tribunal

4. Persons appointed to panels of eligible members of the tribunal, shall hold office for a period of three years and shall be eligible for reappointment.

5. Civil servants and officials of civil service staff associations shall be ineligible for appointment as members of the tribunal.

Eligibility of Claim

6. Claims eligible to be dealt with the tribunal shall be claims affecting the emoluments, weekly hours of work and leave of classes or classifications of civil servants.

7. The word "emoluments" for the purpose of the foregoing clause, shall include pay, and allowances of the nature of pay, bonus, overtime rates, subsistence rates, travelling and lodging allowances. The word "class" shall mean any well defined category of civil servants who, for the purpose of a particular claim, occupy the same position or have a common interest in the claim.

8. Claims in respect of grades or classifications carrying salaries of which the maximum is above the maximum of the classification senior officer I, will not be referred to the tribunal without the consent of both parties concerned in the claim.

Promulgation of Awards

9. The awards of the tribunal shall be reported forthwith, by the chairman, to the chairman of the civil service commission who shall thereupon lay the award before the governor-general in council and advise the parties to the claim.

APPENDIX "B"

A NOTE ON THE BRITISH CIVIL SERVICE WHITLEY COUNCILS AND ARBITRATION TRIBUNAL

The formation of the civil service Whitley councils were an eventual outcome of a committee set up by the British government in 1916, under the chairmanship of the Rt. Hon. J. H. Whitley, M.P. "to make and consider suggestions for securing a permanent improvement in the relations between employers and workmen".

The committee's interim report outlined a proposed system for a national and district councils and works committees for the major industries. A second report, issued in 1917, drew attention to the potential applicability of this type of system to state and municipal organizations. The adoption of these recommendations to the civil service commenced in 1918.

The following paragraphs extracted from the constitution of the national Whitley council are indicative of its membership, objects and authority:

(*1*) The council shall consist of 54 members (including four secretaries) to be appointed as to one half by the government (the official side) and as to the other half by groups of staff associations (the staff side).

(*2*) The official side. The members of the official side of the council shall be persons of standing (who may or may not be civil servants) and shall include at least one representative of the treasury and one representative of the ministry of labour.

(*3*) The staff side. The staff side shall consist of persons of standing (who may or may not be civil servants) appointed by the undermentioned groups of staff associations:

(1) Post office associations
(2) Civil service federation
(3) Civil service alliance

(4) Society of civil servants and association of first division civil servants

(5) Institution of professional civil servants

(6) Temporary staff associations

(11) General objects. The objects of the national council shall be to secure the greatest measure of co-operation between the state in its capacity as employer, and the general body of civil servants in matters affecting the civil service, with a view to increased efficiency in the public service combined with the well-being of those employed; to provide machinery for dealing with grievances, and generally to bring together the experience and different points of view of representatives of the administrative, clerical and manipulative civil service.

(12) The scope of the national council shall comprise all matters which affect the conditions of service of the staff.

(16) The decisions of the council shall be arrived at by agreement between the two sides, shall be signed by the chairman and vice-chairman, shall be reported to the Cabinet, and thereupon shall become operative.

Departmental Whitley councils operate under constitutions and philosophies comparable to those of the national council but in fields of interest limited to the specific departments concerned.

The civil service national Whitley council arbitration agreement of 1925, as modified by supplementary agreements, replaced systems of arbitration which first came into being in 1917. The following paragraphs from the civil service arbitration agreement illustrate the nature and scope of the system:

(1) We are agreed that failing agreement by negotiation arbitration shall be open to government departments on the one hand, and to recognized associations of civil servants within the scope of the national Whitley council for the administrative and legal departments of the civil service and of departmental Whitley councils allied thereto on the other hand, on application by either party, in regard to certain matters affecting conditions of service, subject to the limitations and conditions hereinafter defined.

(6) Claims eligible to be dealt with by the tribunal shall be claims affecting the emoluments, weekly hours of work and leave of classes of civil servants as herein defined, and cases of individual officers shall be excluded.

(9) We trust that arrangements may be made to secure that under normal conditions claims should be heard within one calendar month of the remit to the tribunal.

The details of practice and operation of both the councils and tribunal have been developed and modified in the light of experience and with bilateral agreement. The entire machinery has operated with the virtually unanimous and continuous agreement of the major staff associations and of the various British governments concerned. This joint interest in organized negotiation and arbitration between the government and recognized staff associations is reflected in official policy. "A civil servant is free to be a member of any association or trade union which will admit him under its rules of membership. Civil servants are, moreover, encouraged (e.g. in the Handbook for the New Civil Servant, issued by the treasury to new recruits) to belong to associations, for the existence of fully representative associations not only promotes good staff relations but is essential to effective negotiations on conditions of service".*

* "Staff Relations in the Civil Service" published by H.M.S.O. on behalf of H. M. Treasury. Third Edition 1958.

Thank you very much.

The CHAIRMAN: Thank you very much, Mr. Barnes and Miss Goodspeed. I think it would be best if we go ahead now with the balance of the brief of the Civil Service Association of Canada. We hope to ask Miss Goodspeed and Mr. Barnes to come back in order to answer questions about their brief later on today or at another time. Is that satisfactory to the committee?

Agreed.

Mr. MACDONNELL: Mr. Chairman, may I, on what I may describe as a point of order, bring to the attention of the committee the reference on page 10 of the brief of the Civil Service Association of Canada which I will read briefly. This is at page 10, paragraph 15:

> The historical trend in our civil service law, therefore, has been evolutionary. Through such a process we progressed from the patronage ridden era of corruption, low morale and inefficiency to a service operated on the merit principle and free of political interference.

Let me say that no one is more in favour of the legislation which has been presented than I; but I cannot believe that the Civil Service Association wishes indiscriminately to insult either the civil service of those days or the leading figures of those days such as Sir Wilfred Laurier, Mr. Fielding, Sir Robert Borden and Sir Thomas White. I hope the association will see fit to change these words. I cannot believe they seriously wish them to stand. If we had had conditions of that nature in 1914 we never could have performed as we did.

Mr. J. C. BEST (*National President of the Civil Service Association of Canada*): May I point out that this comes up in our reference to the history of the civil service. I think no one, more than the staff, deplores the fact that there was an era of very severe corruption in the government service. It is a matter of historical fact. This certainly is not characteristic of the whole period, but there was a period of corruption in the government service.

Mr. MACDONNELL: There may have been some corruption, but this suggests that it was characteristic. I can only suggest we should not have people making such representations and I hope they will alter them.

Mr. BEST: Certainly we did not intend to leave the impression that this was characteristic. We would like it to stand on the record that we were referring to specific instances and certainly not the general character over the years.

The CHAIRMAN: I think it is possible some other members of the committee would like to discuss this matter, but it is scarcely a point of order. Possibly our best procedure would be to finish with the draft and then go on to any other points the committee wishes to discuss this morning.

Mr. BEST: I believe we concluded on our presentation last week at paragraph 121. That brings us up to part V, the general regulations. I regret that our executive vice-president, Mr. Westbrook, was unable to be here and I will read the brief in his absence. It is on page 30. It is as follows:

General Regulations

122. This clause should be amended by adding the words "at the prevailing premium rates paid by private industry".

Recommendation

123. The clause would then read:

> (d) *for requiring any employee by reason of special circumstances, or any class of employees by reason of the nature of their duties,*

to perform the duties of their positions on any holiday, but any employee who is so required to perform the duties of his position on a holiday shall be paid compensation for overtime in lieu thereof AT THE PREVAILING PREMIUM RATES PAID BY PRIVATE INDUSTRY.

There is an addition thereof one very short clause:

Clause 70, paragraph 2 should be amended by adding the words:

One of whom shall be from a panel nominated by the staff associations.

This refers to clause 70 in the bill itself. The brief continues:

124. These then are the general and specific comments of the civil service association of Canada on the bill before this committee for consideration. In many areas we feel that distinct improvements have been proposed in the legislation. In others, as we have indicated, we feel there are shortcomings and that our recommendations will make for better, more flexible and fairer legislation.

125. We do not propose summarizing our arguments in any detail since we have presented them fully in the earlier pages of our brief. We would, however, draw the committee's attention to the major points we have made in our presentation.

1. *There should be provision for payment for shift differentials.*
2. *The act should be broadened to bring under its terms of reference prevailing rate employees and ships' officers and crews without any loss of pay through classification.*
3. *Promotional competitions should be limited to those in the civil service and any extension of such opportunities to the armed forces or R.C.M.P. is unfair and unjustified.*

May I add here that we are referring specifically to promotional competitions. There is no suggestion that there should be a limitation of competition applying to the armed forces as a whole and it should not apply to other open competitions.

The brief continues:

4. *Clause 7 should be substantially amended to provide for direct negotiation between the proper fiscal authorities and the staff associations with arbitration where necessary.*
5. *There should be extensive changes in the role of the civil service commission and treasury board in pay and other matters requiring fiscal decisions.*
6. *Sections 10 to 14 on pay and allowances are inconsistent with a system of direct negotiations as recommended by this Association.*
7. *The civil service commission should be given wider control over departmental organization and establishments, and the trend towards tripartite responsibility in this field should be eliminated in the interests of uniformity and economy.*
8. *There should be wider application of appeals as outlined in our comments on Clauses 22 to 25.*
9. *Firm statutory control should be established in the act against any abuse of delegated authority.*
10. *Certain of the sections dealing with demotion and suspension should be amended so that excessive time limits for suspensions will be eliminated.*

126. These then are the major highlights of our presentation. We have welcomed this opportunity to present our viewpoint to this committee and we have done so on the basis of extensive experience in handling the group and individual personnel difficulties of more than 30,000 government employees and our conviction that the government service must have legislation that is both flexible and fair. It must provide sufficient control against abuse of the merit principle, and the possibility of discrimination or unfairness against the individual civil servant.

127. We would emphasize that our criticisms and comments are not based on any lack of faith in the integrity of any official or member of the government. However, we do feel that the law must have within it as few loopholes as possible in a field that is as subjective as personnel administration. We feel that our carefully considered recommendations will make this bill an effective act for some time to come.

This is respectfully submitted by the national executive committee.

J. C. BEST,
National President
E. W. WESTBROOK,
National Executive Vice-President
T. W. GOUGH,
National Secretary-Treasurer

We do not propose reading appendix A, or appendix B, with your permission.

We have a further appendix C which will be given to you for purposes of the record but with your permission we will not read it either. It is very short. It just contains some omissions we see in the present bill as compared to the previous Civil Service Act. We think this will be informative as an aide memoire to the committee.

Mr. BELL (*Carleton*): Should not these appendices be part of our record?

Mr. BEST: I am suggesting they might be part of it.

Mr. BELL (*Carleton*): I move that they appear at this point in the record.

[*Editor's Note: The appendices are as follows:*]

APPENDIX "A"

NATIONAL WHITLEY COUNCIL SYSTEM, GREAT BRITAIN

NOTE: It should not be assumed that in providing this resumé of the British Whitley Council system we are advocating its full adoption in Canada. It is presented here as a ready reference for this Committee and to illustrate one method used to make a negotiation and arbitration system work. Canadian conditions would require a system of procedure especially designed to meet our needs and requirements.

The British National Whitley Council is composed of 54 members —half appointed by the Government (the Official Side) and half by the staff associations (the Staff Side). It is open to both sides to vary their representatives.

The Chairman of the Council is a member of the Official Side and the Vice-Chairman a Staff Side member. (If the Chairman is absent, another Official Side member takes his place—thus the position of Vice-Chairman is not utilized in the manner that would be normally attributed to the title).

The Council's *objects* are to secure the greatest measure of co-operation between the State in its capacity as employer, and the general body of civil servants in matters affecting the Civil Service, with a view to increased efficiency in the public service combined with the well-being of those employed; to provide machinery for dealing with grievances, and generally to bring together the experience and different points of view of representatives of the administrative, clerical and manipulative Civil Service.

The Scope of the Council comprises all matters which affect the conditions of service of the staff. Its *functions* are as follows:

(*a*) Provision of the best means of utilizing the ideas and experience of the staff.

(*b*) Means for securing for the staff a greater share in and responsibility for the determination and observance of the conditions under which their duties are carried out.

(*c*) Determination of the general principles government conditions of service i.e. recruitment, hours, promotion, discipline, tenure, remuneration, and superannuation.
With regard to promotion and discipline the National Council only covers general principles. Individual cases are not discussed or taken into consideration.

(*d*) The encouragement of the further education of the civil servants and their training in higher administration and organization.

(*e*) Improvement of office machinery and organization and the provision of opportunities for the full consideration of suggestions by the staff on this subject.

(*f*) Proposed legislation so far as it has a bearing upon the position of civil servants in relation to their employment.

COMMITTEES

Although the Council's Constitution states that its meetings shall be held as often as necessary and not less than once a quarter, in actual fact the full Council has met only on one or two occasions in the past twenty years or so. However, there is provision in the Constitution for delegation of powers to committees and this has been the accepted practice over the years. For example, an agreement was reached recently on arrangements for reviewing the pay of the Non-Industrial Civil Service. The Official Side Committee, which was a *signatory* to this agreement, was composed of nine members. The Staff Side Committee which signed the agreement consisted of ten members.

From the foregoing, it will be appreciated that the Official Side of the Whitley Council has full authority to arrive at conclusive and final decisions. Nevertheless, with regard to the safeguarding of the *Constitutional* position of Government and the supremacy of Parliament, the authority behind Whitley decisions was recognized by an agreement reached by the two sides in the early days of Whitleyism:

> The establishment of Whitley Councils cannot relieve the Government of any part of its responsibility to Parliament, and Ministers and Heads of Departments acting under the general or specific authority of Ministers must take such action as may be required in any case in the public interest. The condition is inherent in the constitutional doctrines of parliamentary government and ministerial responsibility, and Ministers can neither waive nor escape it.

> It follows from this constitutional principle that, while the acceptance by the Government of the Whitley system as regards the Civil Service implies an intention to make the fullest possible use of Whitley procedure, the Government has not surrendered, and cannot surrender, its liberty of action in the exercise of its authority, and the discharge of its responsibilities in the public interest.

In commenting on this agreement, and official publication of the British Treasury "Staff Relations in the Civil Service—His Majesty's Stationary Office—1949" has the following to say:

> In other words, the Official Side has no authority except that of the Government, and the Government cannot be compelled to exercise its authority by way of Whitley procedure. But that is not to say that any Government will willingly or irresponsibly disregard the advantages of acting in Civil Service matters, wherever possible, by consultation and agreement with the representatives of the Civil Service.

Nevertheless, nearly all matters of import to the British Civil Service go through the Whitley procedure. As a final summary of this procedure in Britain, the following is an extract from the introductory section of a British Treasury Regulation:—

> E.C. 63/60 Central Pay Settlement December 30th, 1960
>
> 1. I am directed by the Lords Commissioners of Her Majesty's Treasury to inform you that, as part of a general agreement on pay arrangements, for the Non-Industrial Civil Service, *agreement has been reached with the Staff Side of the National Whitley Council* on an increase effective January 1, 1961, in the pay of all grades of non-industrial civil servants (other than those mentioned in paragraphs 4-7 below) the maxima of whose basic scales or whose fixed salaries do not exceed £2,235 (National Rate).

It will be appreciated that this example covers a major Treasury expenditure. However, the principle of negotiation and agreement is not restricted to such major issues and a continual flow of Treasury Regulations affecting pay and working conditions are issued—all of which indicate negotiation and agreement between the Whitley Council Official and Staff Sides.

If there is disagreement on the final disposition of any matter, then *either* side has the privilege of referring the case to compulsory arbitration.

APPENDIX "B"

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APPENDIX "C"

CIVIL SERVICE ASSOCIATION OF CANADA

Areas of omission in Bill C-71 as compared to the present Civil Service Act.

1. Transfer—The present Civil Service Act, in Section 4 (1) (f), makes provision for transfers within the Service. The only reference to transfer in Bill C-71 appears in Section 68 (1) (e) but only provides power to define the meaning of transfer. There would seem to be insufficient basis for Civil Service Commission authority to initiate a service-wide program of transfer. We feel this is a serious deficiency in the Bill. A program of career development is necessary and a good transfer system is basic to career development. The Civil Service Commission must have legal authority to initiate and control a comprehensive transfer program in co-operation with the various departments.

2. Residency Qualifications—The present Civil Service Act in Section 20 (3) makes provision for local residency qualifications. In that Act Section 32 (1) provides that in order to hold a position in the Civil Service an applicant must be a British Subject resident for five years. While Bill C-71 does make provision for prescribing local residents qualifications in Section 33, there is no provision in the Act for minimum residence in Canada. Such a requirement would seem desirable so long as there is sufficient flexibility in other sections to allow for recruitment if necessary when there are genuine shortages in Canada in any class that cannot be filled by normal recruitment here.

Our greatest concern is that in the absence of such requirements, attempts could be made to recruit in other countries at salary levels below Canadian standards, when the Civil Service salary range for the work is not adequate to recruit suitable Canadians for positions.

3. Sick Leave and Retiring Leave—The present Civil Service Act provides specifically for sick leave (Section 47 (1)) and retiring leave (Section 47 (2)). It would seem that this Committee would find it desirable to investigate why no similar provisions appear in Bill C-71.

We would particularly draw attention to the fact that in the absence of any provision for replacement of someone on retiring leave in the Act, there might be difficulties in filling vacant positions quickly.

4. No provision appears in the present Bill for blanketing-in of positions exempt from the service. The report of the Civil Service Commission (i.e. the Heeney Report) specifically dealt with this subject on page 75, Section 8101. The Report said:

> When any position or group of positions previously exempt from the operations of the Civil Service Act are, by the decision of the Governor in Council, brought under the jurisdiction of the Commission, the incumbents of such positions shall be appointed by the Commission provided in each case that:
>
> (*a*) The incumbent has completed three years satisfactory service in work related to that which he is performing at the time he is appointed under the Civil Service Act, and
>
> (*b*) The Commission is satisfied, after investigation, that the incumbent's qualifications meet the minimum requirements set down by the Commission in the standards for the class in which appointment is proposed.

We strongly urge that similar provision be made in the new Act for such eventualities as they occur.

5. Neither the Civil Service Act nor the Bill under discussion make any provision for standard criteria of efficiency rating in the Government Service. One of the difficulties in establishing fair and equitable service-wide rating standards has been the fact that the Civil Service Commission has no authority under the present law. We would urge that provision be made in this Act to give authority to the Civil Service Commission, in consultation with the Department and Associations to establish uniform rating procedures throughout the Government Service.

6. We would urge that minimum retirement age for the Government Service should be incorporated in the Civil Service Act not in the Public Service Superannuation Act.

7. *Political Partisanship*—Section 61 (3) of the Bill deals with action to be taken when charges of political partisanship are made. However, the section is incomplete in that it does not indicate what agency should hold the inquiries, nor does it require that the accused be present during such hearings. We would strongly urge that the legislation clearly spell out that such charges should be investigated and adjudicated by the Civil Service Commission with the accused present and having the right of legal counsel if he or she so chooses.

April 19, 1961.

Mr. BELL (*Carleton*): If we are going ahead with this brief, there are two very important points on which this brief, it seems to me, is silent. The same thing applied to the brief of the Civil Service Federation of Canada. The first is in regard to veterans' preference and the second is in regard to local preference. I would like if Mr. Best would indicate the views of his committee on both of these points.

Mr. BEST: On the question of veterans' preference there is no established organizational policy and I think it will be recognized that it would be very difficult for the association. There are groups that would be veterans and

non-veterans. Our policy on these matters is established through a democratic process, as a result of resolutions from three different bodies. In the three years in which I have been president this has not become an issue. I would hesitate to make my personal views known, but I would say that some of us look with favour on the recommendations of the Heeney report. This is not association policy. In the absence of association policy I could not go any further than that.

In so far as local preference is concerned, we can see good points and bad points in local preference. The good points are that it brings out people who are known in a particular geographical region and gives them the opportunity for many jobs in such positions—such as the post office, unemployment insurance, and so on, where the establishment of public contact is important. On the other hand it has perhaps a limitation in looking at the overall welfare of the service, in limiting the field of competition to a particular region. That would be about as far as we could go in regard to those two points.

We perhaps neglected these things, as we pointed out, in one of our submissions. We do not deal with the matter of entrance into the service, but only in respect of the five years' qualification which has been dropped, it would seem, in the bill under consideration.

The CHAIRMAN: Are there any other questions?

Mr. BELL (*Carleton*): I would have a number.

The CHAIRMAN: Members have had this brief on hand for some time and have had a chance of going over it. It would facilitate the work of this committee if we did ask Mr. Best any questions this morning. We have forty minutes left and we could put that time to good use by going into parts of this brief with Mr. Best now, rather than calling them back to deal with it at a later date.

Mr. BELL (*Carleton*): I have a few questions and would be prepared to go ahead now.

The CHAIRMAN: I recognize Mr. Bell.

Mr. BELL (*Carleton*): On page 7 there is a phrase that interests me:

> We feel strongly that there should now be as much concern over patronage from within the ranks of the service as there was over political influence in 1918.

Would Mr. Best be good enough to expand that to indicate where there might now be patronage within the ranks of the civil service and, if there is, what form it takes and how it may be dealt with.

Mr. BEST: From our experience in handling many appeals, I do not have it at my fingertips at the moment. As to how many we handled in the run of the year, I would estimate an average of three a week. We find that in fact appeals are sustained, that at many times the successful candidate of the competition becomes successful mainly because he has been given more opportunity to gather experience than perhaps other people in the immediate area where the promotion occurs. I should emphasize that we see nothing invidious or insidious in that. One particular official may feel honestly in his own mind that a particular employee would be better qualified than another. We feel that there often is a subjective decision and that there should be greater emphasis placed on the merit principle and on the principle that all members of the staff should have an equal opportunity to gain promotion. We feel there are definite occasions—and for obvious reasons I do not wish to mention them—where an employee has been given promotion because he had an advantage over other employees because he has gained experience. That gives him that advantage at the time the competition is held.

Mr. BELL (*Carleton*): It is a matter of personal friendship.

Mr. BEST: I would say rather that it could be a quite honest opinion, where someone likes someone better than someone else in a particular job. The word "friendship" might leave a wrong impression.

Mr. BELL (*Carleton*): Or is it just human nature?

Mr. CARON: By increasing the power of deputy heads there is more danger that the power would be practised from within.

Mr. BEST: Throughout our brief you will find that we are concerned with the increase of power of the deputy head, not because we distrust him but because he cannot handle the delegated power himself; he must do so down the ranks. In a situation where you have people relatively low graded I submit the danger of such influence becomes greater as the delegation increases.

Mr. PETERS: In this particular field there is a tendency for temporary promotions where a job is vacant, where someone is put into a job where they do accumulate a certain amount of experience from actually handling the job, which gives him this advantage. Is it widespread in the civil service?

Mr. BEST: I would not endeavour to say how widespread it is. Certainly no one denies that anyone who is put in the position on an acting basis has a definite advantage over his fellow employees; but I think it would be equally fair to say that there are emergency situations where someone has to go into a higher class job. It is not rampant, but we know of cases where it has happened. As to how rampant it is, there are pretty widespread operations and we know of cases such as this which have come to our attention.

Mr. PETERS: This would always be on a preference basis of whoever is in charge of that particular division or his immediate superior.

Mr. BEST: He would make a recommendation through the proper departmental channels which, where acting pay is involved, would be concurred in by the civil service commission; but it is an area where someone could, for personal reasons, delegate someone else, and at other times it could be done strictly on an objective basis—that someone does have—on the basis of his experience, preference for the position.

Mr. GOUGH: Mr. Chairman, it is pretty easy to make sweeping generalizations in this regard because you can inevitably do some injustice to some departments; but I have had a copy of an appeal come across my desk this week and the basis of the appeal is generally to the effect that in this particular office it has been a practice in the past to put someone in the position in an acting capacity for a period, and then when a competition was held the individual in the acting position got the position.

Mr. CARON: That is from within.

Mr. RICHARD (Ottawa East): Would you be thinking of the case where in a competition the candidates have been ranked 1, 2, 3, 4, 5, that a deputy head or someone delegated by him, would be in a position to refuse the candidate who would be submitted to him until he comes to the one he likes?

Mr. BEST: This is rather technical question. I would point out—and I can be corrected on this—that unless the original advertisement indicates that there would be more than one position to be filled or that other appointments could be made, then a promotional competition—and I emphasize "promotional"—would take place, and once the candidate is successful, this would not happen. I recall another appeal which I was reading yesterday, a case in a translation unit where the assistant head of the section was successful in winning the job on the retirement of the chief. He too had only a relatively short period of time left before retirement. The department in question then arranged with the commission, I would presume, that the next ranking candidate would succeed him to save the expense and trouble of going through the competition, because this was for the division chief, and everyone eligible would apply.

Mr. RICHARD (*Ottawa East*): I was thinking of a new position.

Mr. BEST: You mean an open competition? As you know, it is in no way subject to appeal. The department does have some discretion as to who they may choose, and if they make a good appeal to the commission I would suspect they might be able to make it stick. This might be asked of the civil service commissioners rather than ourselves, as we come in contact on an appeal basis.

The CHAIRMAN: It would be helpful to the reporters if all the members of the committee and the witnesses gave their evidence a little more slowly. One question I want to ask, is whether the situation discussed by Mr. Richard is not covered by section 45(2) of the new bill, which makes it mandatory to appoint people from the top of the eligible list?

Mr. BEST: I would suspect it. I am not a legal expert but I would certainly defer to someone who would give a legal interpretation.

Mr. MCILRAITH: In any event, Mr. Best, you only come in contact with civil servants after they are civil servants; you are not directly concerned with the problem of outsiders before they become civil servants?

Mr. BEST: That is quite true, although we do often have requests for information or guidance from people who are not civil servants.

Mr. MACRAE: I have two questions, Mr. Chairman. I want to ask you one, first, for clarification. The qualifications which are listed on the civil service competition poster are drafted by the department concerned, not by the civil service commission; am I correct?

Mr. BEST: Not basically; they are for many classes. The commission is hard at work on the basic specification for the different classes. In other words, there are class specifications laying out typical responsibilities and typical educational requirements. There are even advertising specifications, so the department cannot issue, or should not issue, an advertisement that is not consistent with the requirements of those specifications, and it may be subject to audit by the commission.

Mr. MACRAE: My second question is, I have heard criticism on occasion, somewhat in line with Mr. Bell's comment a moment ago, where a position is available in a department and the qualifications are tailor-made for a particular employee, for, let us say a deputy head. It then goes from there, so that other employees in the service and outside are actually defeated before they are in the competition. I would like you to comment on that, if you can.

Mr. BEST: We have seen cases where we strongly suspect that when the job was set up someone was perhaps in mind for it. It goes back to my original point with Mr. Bell, that I am not suggesting for a moment that the motivation is particularly evil. When it is done the department feels it knows best of all, but there are times when this must be considered to be in conflict with the idea of the principle.

Mr. MACRAE: One final observation. It would seem to me that there is certainly, on occasion, what we might call human nature or civil service patronage.

Mr. BEST: I would say that in an organization as widespread as the government we would be very remarkable if it did not exist.

Mr. MARTEL: On that line of questioning, are you aware, Mr. Best, if they have not sent civil servants to study the contest ahead of time, perhaps outside the service, or on leave without pay? Have you any cases where, for instance, one person has been tipped off or sent ahead of time to get experience?

Mr. BEST: There are very definite regulations for educational leave. I would not say that it would be so much a case of someone being tipped off.

In this case we look at it mostly as the initiative of the individual. If, for example, a man is deputy head of an accounting section in the service and he knows that his immediate superior is 62 years old and is going to retire, and he sees an opportunity to advance his own qualifications and applies for leave, if it happens in the normal way we see nothing particularly wrong. Each case, however, has to be looked at as an individual case.

Mr. BELL (*Carleton*): I wonder if Mr. Best could express his opinion as to whether the conditions he described are more prevalent in the civil service than they would be in the case of a large corporation such as the Bell Telephone Company or C.P.R. or Du Pont of Canada?

Mr. BEST: I would say they would be much less prevalent in the government service. I would say that the possibility of someone protesting in the government service is an inhibiting factor in this. I have no statistical information that would verify this, but I would say that a private company is pretty well a law unto itself.

Mr. BELL (*Carleton*): This leads me to a phrase on page 13.

Mr. CARON: I think there is quite a difference, because the other ones are prescribed by the unions in private industry as they are not in the civil service.

The CHAIRMAN: That would only apply to people employed as workers in industry. It would not apply to executives.

Mr. BELL (*Carleton*): Paragraph number 31, I think, is relevant to the first phrase on page 13, in connection with the reluctance of the civil service commission.

Mr. CARON: Is that a new subject?

Mr. BELL (*Carleton*): This is following immediately:

> The reluctance of the civil service commission to act where necessary as a "police force" has been a source of great concern to us.

And it is spoken of again, I think, in paragraph 45 where it talks about the regulatory control and powers of the commission. Would you expand on that, Mr. Best? I had not been aware of such a thing on the part of the civil service commission, and I would like to know what evidence there is of it, and how you would suggest that the present position be changed.

Mr. BEST: Let me make one thing very clear to you. We are dealing with an act that was not revised over a period of 42 years. Our observations do not specify one commission as opposed to another. I think we have been careful to indicate that we would not refer to the present incumbents. We feel there have been times when organizations have taken a matter of abuse which they found to the proper agency or authority, and when they have not been satisfied that there has been sufficient action taken to ensure that it would not happen again. In other words there just has not been as strong a line taken as might be desired.

I think there has been good reason for it, because the commission under the present act is limited in its police powers, and has had to tread reluctantly, I would say, with due deference, in connection with a department which has a strong opinion on a particular aspect, as to how a regulation or law should be interpreted. It may not be easy for the commission to handle or to influence such a department with a view to their changing their particular interpretation.

One of the weaknesses of the present act is that here is an area for interpretation which is left to the deputy head. This can create difficulties and anomalies, as we well know.

Mr. PETERS: What privilege does the ordinary civil servant have in relation to the act itself for his protection? For instance, suppose a clerk 4 feels that he or she has been discriminated against in relation to the act. Does that clerk have the power to go to the commission, himself as an individual? Must he

operate through your organization, or must he operate through some organization? Suppose the individual does go and receives a favourable award eventually as a decision from the civil service commission. Is this decision binding on the department that is affected, once the commission has made such a decision?

Mr. BEST: I would say generally speaking, that this would depend basically on the particular decision of the commission. Certainly, an individual civil servant may go to the commission if he so chooses. I know of no case where he has been denied this right. We feel that it is preferable, however, that the civil servant should have his case handled through our organization, or another organization, because we have some background and experience in such cases, or in very similar ones, and the result would be that a better job was done.

Often we have cases come to us, after the individual has tried alone to present his case, and we try to assist him. But I know of no case where a person has been openly denied access to the civil service commission, in my experience.

Mr. HICKS: In the middle of the third paragraph of your brief—there is no number on the page, but I take it it is the first page actually, you say:

> We only hesitate to use the words collective bargaining because they have been so widely misinterpreted...

Would you please enlarge on that just a little?

Mr. BEST: Yes, I would be happy to do so.

Mr. HICKS: Perhaps you would not mind defining collective bargaining.

Mr. BEST: I think difficulty comes about in defining collective bargaining in the area of employment in government service. The simple explanation is that too many people, in our experience and in argument, have been opposed to the use of that term, and would favour instead the use of the term "negotiation procedures" as preferable, especially if the question is raised of a strike. It was considered over the past two weeks, following opinions on this matter, and I would say that the predominant opinion is opposed to the strike in government service. So we prefer to refer to negotiating procedures, in the hope that we are not indicating an interest in any aspect of labour legislation which would provide for striking in the government service.

Mr. HICKS: On page 15, in paragraph 40, you say:

> Basically, the bill provides little more than a factual outline of present practices which, all too often, have come about through happenstance. After 42 years of experience we expected a much more exotic legislative meal than we have had presented. We expected caviar and have, instead, been served porridge, and warmed over porridge at that.

Mr. MCILRAITH: Porridge is a good product!

Mr. HICKS: Yes, a lot of us have had it. But I cannot quite see why there was any necessity to put that paragraph in this brief at all.

Mr. BEST: May I say that it is a matter on which you and we differ. There was a great deal of publicity and talk about the review of the Civil Service Act. I think many of us—perhaps mistakenly—expected considerably more. And I think by reason of the bill many of the things that appeared in the Heeney report were regarded as basic.

In referring to the Heeney report let me say that this does not include appendix b, because, as you know, we did not agree with it. But different people have different writing styles, and different people express things in different ways.

I suppose there are things in this brief which might not appeal to other people. But I can only say that they were not intended to be disturbing to anyone. If you disagree with our wording, we regret it; but it was not done

in any attempt to attack any individual. Moreover, in our concluding paragraph we emphasize this point very strongly. We feel that we have a trust to carry out to our members within the resources available to us, and that we have to make our points as effective as possible.

Mr. BELL (*Carleton*): Carrying on with Mr. Hicks' views about caviar. I would like to clarify it. He does not mean to suggest the civil service want something exotic or beyond what was fair play in the community. When I read the brief, I took it that he wanted, or suggested the civil service wanted, something more than roast beef.

Mr. BEST: I come from the maritimes myself, and I have had experience with porridge. I consider it as one of my favourite foods. We are not asking for anything more than is fair and reasonable in relation to the other working people in the country. I do not think that is an unfair position to take. Not where in our presentation, or anywhere else, with one exception, is there a suggestion that the civil servant is asking for more than basic equality with other people.

Mr. BELL (*Carleton*): That has been my experience with civil servants.

Mr. CARON: May I bring up the question of patronage in respect to promotion. Is it a fact that rating is the most important element when it comes to promotion?

Mr. BEST: I hesitate to make a general statement on this, Mr. Caron, because it would depend on the particular position. When you set up a position, or when a promotional rating board is established, the board must apply all the factors available in respect to the examination of the candidate. Rating is a very important factor. If we are given a good merit rating system, or a very good system there would be nothing wrong with it. But I would say in all honesty that there are areas where we are not satisfied with how the rating is carried out.

There are many instances of instance rating. And if an employee did something good or bad within a period of time prior to rating, it would tend to be reflected in that rating. It may be a good thing that he did or it could be a bad thing. So I suggest that the rating alone is not that important, but it is important when considered together with other factors.

Mr. CARON: Has your organization proposed a kind of rating which would be uniform throughout the whole service?

Mr. BEST: I do not think a uniform rating system throughout the service would work. You cannot rate, for example, a radio operator on the same basis as you would rate a file clerk. There have to be different categories within the service. You may come to a point where there would have to be a rating system designed to fit a specific function.

Mr. CARON: Do you believe that in the end we should have different kinds of rating with different departments, according to their needs, and that the ratings should always be submitted to the candidate being rated for his approval, and that if the candidate should feel that he is being unfairly treated, he should have the right to appeal?

Mr. BEST: I would say, most decidedly, that where a rating has been set the candidate should be in a position where he may justify his rating not only to his superiors, but to his own trade, and that if this should come about, ratings would improve considerably.

Mr. CARON: I know of only one department where they place a rating in front of the employee and when he must accept it by signing it, or reject it by refusing to sign it. That is the defence department.

Mr. BEST: He only signs it to show that the rating has been shown to him.

Mr. CARON: Is it the opinion of your organization that every rating should be either accepted or refused, even if it is considered to be a bad rating?

Mr. BEST: Most decidedly, it has been part of our policy for many years. If an employee is denied a salary increase, he has the right of appeal. But I only think it goes that far.

Mr. CARON: But suppose the rating has to do with promotion? Do you think that the candidates should have the right to appeal in respect to his rating?

Mr. BEST: They may appeal. If they are denied promotion, they may appeal the competition, and at the competition board all the ratings and everything all made available.

Mr. CARON: Up to now.

Mr. BEST: Yes, for example, if three people were to apply for promotion, and two are unsuccessful, those two may appeal to an appeal board, when all the relevant facts and the ratings may be used by the board, and all information is made available to the individual or to the organization at that point.

Mr. CARON: In the case of an appeal, are the appellants and the others called together in front of the board?

Mr. BEST: They may appear, if they so wish, and if the appellant wishes to appear he may do so.

Mr. CARON: Who decides if they should be called together or not?

Mr. BEST: If the appellant specifies in his request that he would like to appear before the board, it is almost automatic that he does so. Otherwise, I believe at the proceedings—I think all the evidence is heard, and then the board goes into camera to make its decision.

The CHAIRMAN: That is fully covered by section 70. It gives the right to the civil servant to be heard.

Mr. CARON: I think it would have been covered if the Heeney report had been accepted.

The CHAIRMAN: Clause 70 subclause (3) says:

> The board shall conduct an inquiry into the subject matter of the appeal and shall give the employee who is appealling and the deputy head an opportunity of being heard, either personally or through a representative.

Mr. CARON: That is exactly what I am bringing up. They may call the deputy head alone and the appellant alone. That is what I would like to bring out.

Mr. MARTEL: That is not what the clause says.

Mr. CARON: The clause is not clear in the matter of the appellant having the right to ask questions. What I want to bring out is that he should have the right to question the deputy head.

Mr. BEST: I would say, from my viewpoint, no one would argue that the appellant should not have every possible right. It would depend on the individual appellant whether or not appearing before the board would be the best thing to do. We have seen cases in which an appellant appearing before the board probably has not, from our point of view, done his case too much good. On the other hand, I know of one case recently where an appellant did a very excellent job and his appearance resulted in the appeal being sustained. I think it is up to the appellant and his advisors.

Mr. CARON: Do you think the appellant should be represented by an attorney or lawyer, because he would not always be in a position to do the work himself. He may be a very good employee, but very poor at asking questions.

Mr. BEST: This is a very tricky subject. I would point out that it would depend very much on the nature of the appeal. The present appeal procedure is in no way a judicial procedure; it is an attempt to establish whether or not the right procedures were used, whether or not everyone concerned was objective, and whether or not the administrative procedure in respect of promotion was properly carried out. It may well be that a lawyer would be an advantage, but he would have to have a very strong background in the civil service and have a great deal of knowledge about personnel as well as management. I am not suggesting that they should not appear, but rather that it is an area in which there is good reason to argue on both sides.

Mr. CARON: Do you believe they should have the right to call upon a lawyer if they wish?

Mr. BEST: They do have that right, now. They may have a lawyer appear.

The CHAIRMAN: It is set forth in the act. I am sure the lawyers on the committee will be glad to hear that the pertinent section of the act refers to a "representative" who could be a counsel or a member of a staff association.

Mr. BEST: The present appeal procedure is not based on a section in the Civil Service Act. It was introduced under the regulatory powers of the civil service commission. I think the bill goes a long way towards making this a right rather than a privilege.

Mr. MARTEL: Before we leave this subject, I believe there is a general opinion which exists in the minds of the public, and many civil servants. Is it right to believe that a good number of especially new civil servants or those who apply for promotion, or enter a contest within departments, do not complain in any way or do not go to arbitration or what you call the appeal board of the civil service commission because they are afraid, or do not want to be blackballed in future contests or in further appointments.

Mr. BEST: Obviously, I cannot say what people think who do not use the appeal procedure. I know the reasons of those who do appeal. We have noticed that during the last year and a half the number of appeals has increased; at least our work in this regard has increased over and above the normal growth of the association. Why people do not use the procedure which is available to them is something about which we often wonder. It could be that some of them feel this would be a mark against them. Actually we have known cases where the reverse has been true; by appealing they have come to the attention of persons on the appeal board or in the department, and it has meant subsequent promotion. I would hesitate to make any suggestion in this regard.

Mr. MARTEL: Sometimes those who have appealed have been promoted later on, but do you feel that the proportion is considerable?

Mr. BEST: I do not know the proportion. We only hear from these people at the time of the appeal. They are very quick to appeal, but are not always quick to tell us what happens afterwards. I would be in no position to give any opinion on this at all.

Mrs. CASSELMAN: One point has been bothering me. This is further to the matter raised about the comparison between industry and civil servants. There is the question of the human nature element. A strong organizer can do a great deal in steering or directing people who apply. He can direct them as to what to study, he can arrange departments, and do tremendous things in steering people. I am wondering if this bothers you, or if it is something we just have to accept. Possibly there may be some good in it if he gets a strong group of people around him.

Mr. BEST: Any comparison in this area between private industry and public service may not be too meaningful, because private industry makes no

pretense at adhering to the idea of the merit principle. This has a very great effect on the government service. People are hired and come in on the basis of the merit principle. I am not suggesting that because private industry does not make this as a basic point there is anything wrong with it. I think people who are eligible for membership in unions receive benefits from the grievance procedure.

I think one of the problems in government service is that we lack internal training at a sufficiently high level to give people the opportunity to advance. We made this point to the Glassco commission recently. I have heard no one disagree with it. I think that under the new act there could be more impetus in encouraging civil servants to advance to better jobs. I would hesitate to try to answer the question as to how much could be done because it would require expenditure and additional staff. On open competitions, generally speaking, one of the reasons the positions are opened up is that it is not felt there are people within the service with the proper training. Therefore, they go outside in an effort to recruit from the public generally in industry. I think there should be more opportunity to train people in the service. I think it is the only way to acquire a true career service.

Mr. HICKS: I would like to say a word about paragraph 56, which has to do with prevailing rate employees.

The CHAIRMAN: You are referring to page 56 of the brief?

Mr. HICKS: Yes.

Mr. RICHARD (*Ottawa-East*): On a point of order, at this time I would like to know whether it is the intention of the chairman to proceed by jumping from one subject to another, or whether it is the intention at some time to start at page 1 and run through the paragraphs of this brief, and if there are no questions go right through.

The CHAIRMAN: Are there any other views on this point of order?

Mr. MCILRAITH: I would like to suggest that after a few general questions we adopt the procedure of taking the briefs page by page or paragraph by paragraph, depending on how they are set up, in some orderly way, after a period of some further questioning.

I wonder if it would be more feasible after all the briefs are in, and when we are referring to the bill itself, to consider the representations made by these briefs.

Mr. BELL (*Carleton*): I think it would be desirable before that point arises to examine the brief in some detail. It seems to me that we could, perhaps, get an orderly basis in respect to the brief if you, Mr. Chairman, asked the committee if anyone has any further comment to make in regard to part I, that is, up to page 16, which is the general section of the brief. I suggest we have pretty well exhausted that.

Mr. MCILRAITH: I have a question or two to put on that.

Mr. HICKS: I should like to finish the statement I was making in regard to paragraph 56 of the brief, and I wish to compliment the association for including that paragraph. In days gone by I have had a lot to do with prevailling rate of pay employees and I have never thought they really had justice.

Mr. BEST: Thank you.

The CHAIRMAN: It is now 12.30. I expect that on another day we may have an opportunity to talk to Mr. Best and the other people from the association. Is it agreeable that we adjourn now until to-morrow morning at 9.30 a.m.?

Mr. PETERS: Mr. Chairman, on a point of order, though this may not affect many other members of the committee I personally have a problem in

that to-morrow we shall be meeting at the same time as the agriculture and colonization committee, which is making an inquiry into farm machinery prices. This affects all farm representatives.

The CHAIRMAN: Mr. Caron, would you stay for just a moment while Mr. Peters discusses this point?

Mr. PETERS: This concerns those of us who are representatives of farming areas and who also have an interest in the civil service association. I was wondering if some consideration could be given to the problem of the agriculture committee meeting at the same time as this committee. The problem affects all the farm representatives and, therefore, my problem may be that of others also.

The CHAIRMAN: Thank you very much for bringing that up, Mr. Peters. It is a matter which Mr. Caron and I had discussed this morning, and we had expected to take it up with you and Mr. Bell on the agenda committee. To-morrow morning we shall be in conflict with the agriculture committee and it seems that, if next week the hours of the house are to be lengthened, we are going to have a major problem to discuss. Therefore, possibly it would be better for the agenda committee to watch the situation, have a meeting and see what we could agree to that would be more suitable. But, since there is a meeting scheduled for tomorrow morning at 9.30, and even though it is in conflict with the agriculture committee, if it is possible to go ahead with our meeting I think it would be of great help in getting on with our work.

Mr. PETERS: I only pointed out how it will affect the representatives from farm areas. This committee should have the benefit of some of the rural representatives as well as of some of the urban representatives.

Mr. MACDONNELL: Mr. Chairman, would it be worth while to find out how many will not be available tomorrow morning? I, unfortunately, have to be out of the city and there may be others.

The CHAIRMAN: Tomorrow we shall have the briefs from the Canadian postmasters association and from the federated association of letter carriers, whose representatives are attending from out of town. I very much hope we shall have a quorum to meet these gentlemen and hear their briefs. How many members will be available tomorrow morning at 9.30? Let us have a show of hands.

Then, we shall have 8 of the present group and that looks to me as if we should be able to get a quorum tomorrow. I should also like to point out that in order to make room for the press to-morrow morning's meeting will be held in room 356-S of the Senate.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

FRIDAY, APRIL 21, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing the Canadian Postmasters' Association: Mr. E. L. Hammer, National President; and Mr. F. W. Houchin, National Secretary.

Representing the Federated Association of Letter Carriers: Mr. F. A. Standring, National Secretary-Treasurer.

Representing the Civil Service Association of Canada: Mr. J. C. Best; and Mr. T. W. F. Gough, National Secretary-Treasurer.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

24943-3—1

SPECIAL COMMITTEE ON THE

CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*),
Campeau,
Caron,
Casselman (Mrs.),
Hicks,
Keays,
Macdonnell,
Macquarrie,
MacRae,
Martel,
McIlraith,
More,
Peters,
Pickersgill,
Richard (*Ottawa East*),
Roberge,
Rogers,
Smith (*Winnipeg North*),
Spencer,
Tardif.

(Quorum 11)

E. W. Innes
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, April 21, 1961.
(6)

The Special Committee on the Civil Service Act met at 9.40 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Messrs. Bell (*Carleton*), Caron, Hicks, MacLellan, Macquarrie, Martel, McIlraith, More, Richard (*Ottawa East*), Roberge, Rogers and Tardif—12.

In attendance: Representing the Canadian Postmasters' Association: Mr. E. L. Hammer, National President; and Mr. F. W. Houchin, National Secretary. *Representing the Federated Association of Letter Carriers:* Mr. F. A. Standring, National Secretary-Treasurer; and Mr. J. B. Leduc, Assistant National Secretary-Treasurer. *Representing the Civil Service Association of Canada:* Mr. J. C. Best, National President; Mr. E. W. Westbrook, National Executive Vice-President; and Mr. T. W. F. Gough, National Secretary-Treasurer.

On motion of Mr. Bell (*Carleton*), seconded by Mr. Caron,

Resolved,—That the letter from the Canadian Jewish Congress, respecting Bill C-71, which was tabled in the Committee on April 13, 1961, be printed in today's proceedings. (*See Appendix "A" to today's proceedings*)

The representatives of the Canadian Postmasters' Association were called.

Mr. Hammer introduced Mr. Houchin and then he proceeded to present the brief of the Association. The witnesses were questioned respecting the contents of the brief.

Messrs. Hammer and Houchin were thanked for their submission, and permitted to retire.

The representatives of the Federated Association of Letter Carriers were called.

Mr. Standring presented the submission of the Association; and answered questions thereon.

The witnesses were thanked and permitted to retire.

The spokesmen for the Civil Service Association of Canada were recalled.

Messrs. Best and Gough were questioned respecting the brief which the Association had presented on April 14th and April 20th.

The examination of the witnesses continuing, the Committee adjourned at 10.55 a.m. until 11.00 a.m., Thursday, April 27, 1961, at which time the brief of the Canadian Labour Congress will be received.

E. W. Innes,
Clerk of the Committee.

24943-3—1½

EVIDENCE

FRIDAY, April 21, 1961.
9.30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum. Before we begin this morning I would like to draw your attention again to a letter we have from the Canadian Jewish congress which has been circulated to every member of the committee. It deals with the proposition that the Canadian Fair Employment Practices Act should be extended to civil service employment, which it does not now expressly cover. The congress did not wish to come to make representations to us, although they would certainly do so if we wished, but they asked that this letter be circulated to every member of the committee, and you all have a copy now. I think a motion that the letter be made part of our record would be advisable.

Mr. BELL (*Carleton*): I would so move, that it be made an appendix to today's proceedings.

The CHAIRMAN: Seconded by Mr. Caron. Agreed?

Motion agreed to.

(See Appendix "A")

We have two briefs this morning before us, the first from the Canadian postmasters' association and the other from the federated association of letter carriers. We will hear first the representatives of the Canadian postmasters' association, the national president, Mr. E. L. Hammer, and the national secretary, Mr. F. W. Houchin. Mr. Hammer, the president, will be presenting the brief of the association.

Mr. E. L. HAMMER (*National President, Canadian Postmasters' Association*): Mr. Chairman, members of parliament, ladies and gentlemen, I would first like to introduce our national secretary. The national secretary is the work-horse of any organization, and he has accompanied me today—Mr. F. W. Houchin of Stirling, Ontario. I noticed, in looking over the minutes of the previous briefs presented, that one was presented by someone from the land of Sir John A. Macdonald. I would like to say that I am from the land of Simon Fraser and David Thompson of British Columbia.

Mr. HICKS: Hear, hear.

Mr. HAMMER: I would like to thank the committee for this opportunity of presenting the brief on behalf of my association, the Canadian postmasters' association. We feel that we are fortunate in being given this opportunity at this time. It so happens that we have a meeting of our national executive in progress today. It has been in session ever since a week ago today.

I would like to thank at this time also Mr. Innes for the great assistance he has given to the national secretary and myself. We do not reside here, and he has shown us the way around and been of very great help to us. We appreciate it very much.

We are fortunate, being an association of management, in being able to settle most, or partly, all, of our difficulties at first hand with the Post Office Department. We enjoy our very cordial relationship with the Post Office Department, of which we are very proud.

The Canadian postmasters' association is the only postmasters' organization in Canada. We have a membership of approximately 8,000 members. We have branches from one end of Canada to the other, from Newfoundland to British Columbia and the Yukon. The brief we are going to present this morning has been the subject of resolutions from our branch conventions for very many, many years. After careful consideration year after year we find we are very fortunate in being able to present it to this committee at this time.

I wonder if it is necessary—and I am quite prepared—to present the brief in both English and French?

The CHAIRMAN: It is satisfactory if it is presented in English or French.

Mr. HAMMER: We, the national president and national secretary, in respectfully presenting this brief on behalf of the officers and membership of the Canadian postmasters' association, to the parliamentary committee considering Bill C-71, point out that the postmasters of Canada, through their one and only association, have for many years endeavoured to have a clause of the present Civil Service Act changed.

Such a change or amendment would open many heretofore closed avenues of promotion to postmasters and postal employees generally, would improve staff morale and considerably increase the efficiency of Canada's postal service.

The clause in question is familiarly known as the residence clause.

The following excerpts from Bill C-71 are pertinent:

Section 2 (*d*): " 'closed' competition means a competition that is open only to persons employed in the public service."

(*p*): " 'open' competition means a competition that is open to persons who are not employed in the public service as well as to persons who are so employed."

Section 21 : " Whenever in the opinion of the commission it is possible to do so and it is in the best interests of the civil service, appointments shall be made from within the public service by competition."

Section 23 : " Where, in the opinion of the commission, a suitable appointment cannot be made from within the public service the appointment may be made in accordance with this act from outside the public service."

Section 34 (*b*): " In the case of an open competition (the commission shall) determine the area in which applicants must reside in order to be eligible for appointment."

Section 35 : " Where the duties are to be performed in a local office the commission in making an appointment to that position from outside the public service shall wherever it is practical and in the best interests of the civil service to do so, give preference in appointment to qualified candidates who reside in the area served by the local office over qualified candidates who do not so reside."

This brief refers to a class of medium-sized, numerous, Canadian post offices, known as semi-staff post offices, or post offices in groups 31, 32, 33 and 34. The postmaster is the only civil servant in such post offices, the remainder of the staff being public service employees.

When a postmastership becomes vacant in these semi-staff post offices, it is and has always been policy of the civil service commission, to advertise the position and invite applicants to participate in open competition.

Unfortunate, to our mind, is the area in which applicants must reside in order to be eligible to apply. This is the area served by the post office in question, with applicants also required to be patrons of the post office.

This residential qualification prevents postmasters of smaller post offices applying for such larger post offices by way of promotional competition.

Likewise, this restriction prevents postal clerks of staff post offices or assistants in other semi-staff post offices applying for promotion to postmaster.

This frequently, and in the majority of cases, results in totally inexperienced persons outside the public service obtaining a post-mastership and thereby being placed in full charge of an experienced staff. At the same time possibly hundreds of fully experienced career postmasters, assistants and postal clerks have been prevented from making application for the position.

It has been said that there is some value in having a local resident appointed postmaster in a small city. In our opinion this situation has no more value than an untrained, inexperienced person being made manager of a branch of a bank because he happens to reside in the town where the branch is located and transacts business with the bank in question—or a bus driver being made captain of a ship. Such appointment procedure is unheard of in outside business and industry.

We maintain that recruiting for the postal service should be done at the level of postal assistant, postal clerk and letter carrier for all fulltime personnel, with an unhampered plan of promotion available from bottom to top. Our submission is summarised as follows:

1. While a fundamental principle of the Civil Service Act is promotion on the basis of merit, this principle is not extended in full to semi-staff and revenue postmasters nor to postal clerks or assistants generally.
2. The present application of the residence clause precludes advancement of a semi-staff postmaster to a higher group semi-staff post office.
3. The residence clause constitutes a serious obstacle to efficient postal service by:
   (*a*) encouraging and causing placement of totally inexperienced outsiders in the position of postmaster in preference to trained personnel already within the service.
   (*b*) adversely affecting the morale of career postal employees.
4. It is an anomaly to allow semi-staff postmasters to apply for postmasterships in the largest post offices in Canada (staff post offices) and yet deny them the opportunity to compete for higher group semi-staff post offices.
5. There is obviously a wealth of talent, knowledge, ability, enthusiasm and experience in lower group post offices which is presently latent and unused, that could profitably be used in Groups 31 to 34 semi-staff post offices.

The Canadian postmasters' association, on behalf of Canadian postmasters and postal employees, in the best interests of morale, efficiency, economy and good postal service, urges and recommends that the roadblock on the avenue of promotion, the so-called residence clause, be removed, by changing competitions for postmasterships of semi-staff post offices from open to closed competitions.

I should like to make one or two comments on the brief. Recently the civil service commission is certifying semi-staff post offices. Also, in regard to group 34, I understand since I arrived in Ottawa, within the last couple of days, that group 34 has now been opened for competition by outside staff of other semi-staff post offices and I believe the first competition has already been held in Alberta. This does not, of course, include groups 31, 32 and 33.

As I say, group 34 has just been opened and the first competition has already been held. That, I think, supports the purpose of our brief.

The CHAIRMAN: Thank you very much, Mr. Hammer. Are there any questions from any members of the committee?

Mr. ROGERS: Where is the competition in Alberta?

Mr. HAMMER: I could not say the exact location. I just heard of it.

Mr. ROGERS: It was not Penhold?

Mr. HAMMER: I am not sure.

The CHAIRMAN: As between classes 31, 32, 33 and 34, do I understand that semi-staff starts at group 31 and then increases to group 34?

Mr. HAMMER: Through different classes, according to the revenue and the way they grade the post offices.

Mr. MCILRAITH: It is a case of classes of post offices and not classes of employees—is not that the distinction?

Mr. HAMMER: Yes.

Mr. BELL (*Carleton*): Do you have the difference between these groups?

The CHAIRMAN: Group 34 would be the largest post office?

Mr. HAMMER: Group 34 is the highest category. After that it is known as a staff post office. We are not dealing with staff post offices.

Mr. TARDIF: Are they graded by the number of population they serve?

Mr. BELL (*Carleton*): No, by revenue.

Mr. ROGERS: There are about 30 classifications?

Mr. HAMMER: They start with the revenue offices which are not involved with the civil service; they go up to group 30. The semi-staff, in which we are interested particularly, are groups 31 to 34. After that they are staff post offices where they are entirely civil servants. They start with grades 9, 10, 11 and 12, up to the highest, which is Montreal, grade 15.

Mr. CARON: On section 2 (*d*), does that mean that the postmaster of a small post office is not eligible for promotion if there is an examination somewhere else outside of that district?

Mr. HAMMER: That is right.

Mr. CARON: Not at all? But they are still civil servants, anyway? The postmaster is a civil servant?

Mr. HAMMER: That is right.

Mr. CARON: And he is not eligible?

Mr. HAMMER: They can apply for staff post offices but they are not eligible for larger semi-staff post offices.

Mr. ROGERS: On account of the residence clause?

Mr. CARON: Just on acount of the residence clause? I think I would share your views perfectly on that.

Mr. HICKS: About the classification of postmaster in the civil service, he is a civil servant when he is in a certain grade, is he not?

Mr. HAMMER: Yes, that is right. Mr. Houchin is a good example of a semi-staff postmaster.

Mr. HICKS: I do not take from what you have said that postmasters do not move. There may be a vacancy here in this town and there may be a very good assistant postmaster there; but there are a good many instances, I presume, where postmasters have been brought from other places to fill these positions when these men retire.

Mr. HAMMER: Postmasters are never brought in, sir. In the staff post office to which I belong the promotional competition is there. It is open to them. If Ottawa becomes vacant it will be advertised throughout the postal service and anyone can apply, which is not the case with semi-staff post offices. This is the purpose of our brief. It is to give people an opportunity, if there is a position anywhere throughout the country, to apply for it and to have the privilege of applying for it. If it is a position in Ottawa, anyone throughout the country can apply for it—I doubt very much if they would be able to obtain it, but the opporunity is there throughout Canada.

The semi-staff offices are restricted to the town in which the competition is held. If you have a very good assistant in that semi-staff post office as assistant postmaster, the opportunity is there for the assistant to become postmaster, but it is not there for anyone outside the area.

Mr. HICKS: I know a case where there was a postmaster moved when Hope, in British Columbia, became vacant. There is another town, Mission City, where there was supposed to be a good man, and another in the Fraser valley; and he came from Nanaimo. There was a strong indication for the assistant in Mission City to be appointed.

Mr. HAMMER: There is a good case—and it is open to promotion. People can be appointed for all these offices all over British Columbia, and there is a lot of competition because there are not a great number of postmasterships available.

Mr. MORE: What class would it be? Would it be 34?

Mr. HAMMER: No, semi-staff.

Mr. MARTEL: How much revenue, for instance, would there be in a semi-staff post office? The staff offices come under the civil service. Employees can apply everywhere?

Mr. HAMMER: Yes.

Mr. MARTEL: On the semi-staff post office, that is where the post office revenue is below a certain amount? Do you have the revenue there? Is it classified?

Mr. HAMMER: It is classified according to revenue and also units of work are used as a measurement. It is not only revenue in the last few years, but units of work also.

Mr. MARTEL: How can they determine that? They must have an idea that so much revenue per year is semi-staff and a post office that goes over that amount becomes staff. There must be a line somewhere.

Mr. HAMMER: That is right.

Mr. MARTEL: You do not know exactly where the line is?

Mr. HAMMER: About $35,000, I believe.

Mr. MARTEL: That is general? If it is over that it becomes a staff office? Below that it is semi-staff?

Mr. HAMMER: That is right.

Mr. CARON: Is there any consideration other than the revenue?

Mr. HAMMER: Yes.

Mr. CARON: I think there is more than one consideration before it becomes a staff office.

Mr. HAMMER: The unit of work is the big item right now, combined with revenue.

Mr. CARON: The size of the population of the place comes into it? These are all factors which are taken into consideration?

Mr. HAMMER: That is right.

Mr. MORE: Do I take it that the staff competitions are all closed competitions, with no residence clause?

Mr. HAMMER: Certainly.

Mr. MORE: And semi-staff can be closed or open, or with a residence clause?

Mr. HAMMER: They are open competitions. Grade 34, as I said, has just been made a closed competition.

Mr. MORE: That is what you are asking for? Is grade 34 closed without a residence clause?

Mr. HAMMER: Grade 34 is, and we would like to have it extended to grades 31, 32 and 33. When we prepared the brief, grade 34 had not been made a closed competition, but it has since been made so, and the first competition has been held in Alberta.

Mr. MACQUARRIE: I am still not clear as to what proportion of the staffs of postal establishments your brief refers to. Perhaps you would let us know where class 31 begins in terms of revenue, and we might have a picture of the proportion of the civil service encompassed in the suggestion here.

Mr. HAMMER: I can obtain that information right away, but I do not have it in my files. Mr. Houchin is from a semi-staff office and he may have it.

Mr. HOUCHIN: Broadly speaking, the postal service has three categories. The revenue office begins at class 1 and goes up to class 30. They are graded in 30 groups according to revenue. In addition to revenue there is now the work unit basis, which does help to determine the group. These 30 offices are revenue offices. Appointment to these offices is entirely the prerogative of the Postmaster General.

By the way, the revenue offices, of course, have nothing to do with the civil service.

The second group consists of semi-staff offices, groups Nos. 31, 32, 33 and 34.

The semi-staff offices are partly civil service and partly just public employees. They employ a postmaster, a full-time assistant, a part-time assistant and casual help. The only civil service person in those offices up until the first of this year was the postmaster. Since January 1 of this year, full-time semi-staff assistants are being certified by the civil service commission.

Mr. MORE: In all of the groups?

Mr. HOUCHIN: Yes, in all four groups. Full-time assistants at these semi-staff offices have been certified by the civil service commission. In regard to the revenue of groups 31 to 34, I would say that perhaps the top revenue office is $3,000. In groups 1 to 30 the revenue offices are graded revenue from about perhaps $100 to $3,000. That covers from the very, very small offices up to quite a large office.

Group 31, semi-staff office, goes to $5,000 revenue, roughly speaking. Group 32, semi-staff office, goes to $10,000 or better—a little better, perhaps. Group 33, semi-staff office, goes to $20,000 and above that. In group 34 only a point is reached both in revenue and in work units that warrants the status of a staff beyond that—which is the first of the staff office groups.

Mr. RICHARD (*Ottawa East*): Then grades 9 to 15 are staff?

Mr. HOUCHIN: These are staff offices. We are not at the moment dealing with staff offices. They are entirely civil servants. This is a part-and-part group. The semi-staff offices are groups 31, 32, 33 and 34, as Mr. Hammer has told you. Group 34 is now on a closed competition basis, and that is exactly what we are asking eventually for the other three groups of semi-staff.

The CHAIRMAN: That answers your question, Mr. Macquarrie?

Mr. MACQUARRIE: Yes.

Mr. BELL (*Carleton*): It is evident that that can be done by an administrative act and may not require legislation.

Mr. HOUCHIN: I am not sure.

Mr. HAMMER: I could not say.

Mr. BELL (*Carleton*): In regard to group 34, it has been done by an administrative act, presumably. That is a point on which the committee will have to get some information.

Mr. HAMMER: I would like to point to myself as an example of what we are suggesting. After the war I came home and was appointed as a postmaster at Port Alberni, British Columbia, where I was employed in a British Columbia, provincial office. I simply applied for the position and was very surprised to get it, as I had been at sea all my life. I had to supervise a staff of nine experienced employees and I had no experience whatsoever. Now, there must have been hundreds of postal employees throughout Canada who were experienced and could have held the job far more satisfactorily than I.

Further to point that up, if I may say so, the Post Office Department has a system of supervisory postmasters, where the postmaster of a fairly large office, or medium sized office, supervises and inspects annually surrounding smaller dependent post offices. If you have an outsider who is taken in in this open competition, who is just a resident and a member of the community, but inexperienced, and you make him postmaster for a group 31, 32 or 33 office, or a 34 office, he immediately has to act as a supervisory postmaster and will no doubt be obliged to go out and inspect, advise and superintend generally the surrounding dependent post offices.

In that case, as you can see, you get an inexperienced person off the street supervising a number of postal offices in the surrounding area.

Mr. BELL (*Carleton*): I would like to be clear on exactly what it is the postmasters association wish. Is it the complete deletion of section 35, which provides for local preference; or is it exception from the application of section 35 to the semi-staff offices?

Mr. HAMMER: It is the deletion of the residential qualification for the open competition, where the residents of the area are allowed to apply and are given preference over experienced postal employees in the larger area, whatever the larger area may be—it could be the district, the province or the country, depending on the size of the post office.

Mr. BELL (*Carleton*): I am trying to relate this to the task of the committee in the drafting ultimately of the legislation.

I think that the committee might feel there are cases where the local residence preference is desirable. I want to be sure whether your request is to eliminate section 35 for all purposes of the civil servants local preference, or if you are confining it to the particular situation of the semi-staff offices.

Mr. HAMMER: I would like to have it eliminated as far as the semi-staff offices are concerned, but not entirely for civil servants, because I cannot speak for that portion of the civil service, but only for the postal service.

Mr. CARON: Would it not be better if there were regions where it could be organized with a certain arrangement? Would it not be much better than it is now?

Mr. HAMMER: It would be very good if whoever should apply was a postal employee and not an outsider.

Mr. MORE: You would not object to the semi-staff being put on the same basis as the staff?

Mr. HOUCHIN: Within the service.

Mr. HAMMER: There are many clerks and letter carriers throughout the service who are far more qualified to be postmasters than someone from off the steet who has never even seen the inside of the working space of a post office.

Mr. MORE: You want to have all these post offices put on the same basis as the staff post office?

Mr. HAMMER: That is correct.

Mr. MARTEL: I wonder how they are to recruit new postal employees, if they are to be staffed from the semi-staff employees only? Who could apply? Would it be a closed contest? We have an example, as you mentioned, that when you applied in British Columbia, although you had no experience, it looked as if you gained experience.

Mr. HAMMER: Yes; thank you. I have gained experience. When we get to the semi-staffed post offices which are by far the most numerous group of post offices in Canada, groups one to 30, they are all over Canada, because there are so many small towns. The employees are taken on by the postmaster and by the postmaster general, and they in turn hire assistants to assist them.

As far as staffed post offices are concerned, anyone may apply for the position of a postal clerk in a staffed post office, in an area where the position is being advertised. He may apply to be a letter carrier, for instance.

As stated in the brief, we suggest that recruiting for the postal service should be done at this level, for assistants, postal clerks, or letter carriers. Then they could see ahead of them an unlimited avenue of promotion.

Promotion in the postal service generally speaking is very slow. By far the majority have not gained promotion. But to have a residence clause opened half-way up the ladder of promotion is very bad for morale. I think it would do a great deal of good if it were removed, then, for the semi-staffed positions.

Mr. MORE: This request is made only in regard to postmasterships?

The CHAIRMAN: That is right.

Mr. HICKS: There is nothing said in the brief about the veterans preference.

Mr. HAMMER: I am a veteran myself, and I believe in the veterans preference. These people who are already in the postal service, such as postal clerks and letter carriers, have to take a civil service examination in which due consideration is given to the veterans preference, when they are placed on the eligible list for appointments.

The CHAIRMAN: Are there any more questions of Mr. Hammer?

Mr. ROGERS: I would like to say that I agree.

The CHAIRMAN: I am sure that all the members will be giving very serious consideration to the representations made by Mr. Hammer, and I would like to thank him and Mr. Houchin on behalf of the committee for coming to us this morning and presenting their brief.

Mr. HAMMER: Thank you very much, Mr. Chairman.

The CHAIRMAN: Gentlemen, our next brief is from the federated association of letter carriers.

We have with us this morning Mr. F. A. Standring, national secretary-treasurer, and Mr. J. B. Leduc, assistant national secretary-treasurer of the federated association of letter carriers. They are prepared to present their brief to the committee. Would you come forward please, gentlemen? Everyone

already has a copy of the brief, I believe, and it will be presented by Mr. Standring.

Mr. ROBERGE: Are those copies translated into French?

The CHAIRMAN: Are there copies also in French? I believe there are only copies in English.

Mr. ROBERGE: Would it be possible for us to have copies in French?

The CHAIRMAN: Mr. Standring has said he will send us a translation of the brief and see to it that copies get out to the members of the committee who want them.

Mr. CARON: Is the staff organization within or without the Canadian postal employees association?

Mr. F. A. STANDRING (*National Secretary-Treasurer, Federated Association of Letter Carriers*): Our association is affiliated with the civil service federation. It represents only letter carriers in the postal department.

Mr. CARON: But it is not within the association?

Mr. STANDRING: It is not part of the Canadian postal association, no.

Mr. BELL (*Carleton*): Do some of your members belong as well to the postal employees association?

Mr. STANDRING: No sir, they are members only of the federated association of letter carriers.

Mr. Chairman and Members of the Special Committee: the federated association of letter carriers first expresses to you its thanks for the opportunity of presenting this brief. You will find it deals specifically with clause 7 of bill C-71. In all other aspects of the bill, we concur with the submission of the civil service federation of Canada, of which body we are an affiliate. It should be noted that the only difference in our submission and that of the federation, on clause 7, is mainly the inclusion of mandatory check-off.

The federated association of letter carriers has been an autonomous organization since its inception September 15th, 1891, representing the letter carrier class in the Post Office Department. We believe that after nearly seventy years of harmonious relationship with the department and our employer, the government, we are sufficiently mature to enjoy the right of collective bargaining. In fact, many organizations in outside industry, much junior to ours in years, enjoy that right.

While clause 7 of the bill does outline to some extent a form of consultation, it is not specific enough. As it stands at present, there is no provision to grant rights now enjoyed by the great majority of employees outside the civil service.

We believe that all differences respecting salary, fringe benefits, working conditions, etc., should be dealt with by a board of arbitration, if no agreement can be reached by employer and association. This board should consist of representation from the employer, the association and a third impartial representative. The impartial representation should be designated by the governor-in-council, and should have no connection with the government, civil service commission or association. The findings and recommendations of this board of arbitration should be binding on both the employer and the association, and I might add subject to the over-all authority of parliament.

In short, a modified version of the Industrial Relations and Disputes Investigation Act would be a fair and just method of providing negotiation. This would, of course, be without any clause giving the right of strike or walkout. Our association has indicated many times in the past, by convention mandate, that such action would not be taken. This was also reiterated

at our recent national convention held in Trois Rivières, Que., July 7th to 9th, 1960.

Also, we believe that the mandatory check-off, as outlined in the Rand formula, should be applied to the civil service. It is a fact that many benefits have been obtained over the years as a direct result of representations made by staff associations. All civil servants have enjoyed the benefits so obtained, and while not advocating compulsory union membership, it is only fitting that non-members should share the cost of obtaining such benefits. This check-off could be credited to the staff association representing the unit concerned. This, of course, should only consist of the amount of per capita tax paid by the individual member to his national office, as the non-member would not be eligible for any insurance benefits subscribed to by the members of a local or branch. In effect, this is not a request for a closed shop, but simply mandatory check-off.

In closing, no doubt you are aware that in many countries, both in the commonwealth and out, the right of collective bargaining is enjoyed by civil servants. Many of these countries are not nearly as far advanced socially as our own, but nevertheless, they are further ahead in view of the fact that their public servants can negotiate collectively with government. We would ask your earnest and just consideration of the suggestions herein, and trust that they may be implemented in the new act.

Mr. CARON: How many members do you have in your association?

Mr. STANDRING: We represent roughly seven thousand out of a total of eight thousand.

Mr. CARON: Are the other one thousand members of another association?

Mr. STANDRING: I cannot give you exact figures, but I would say that roughly three hundred at the most are members of another association, and the remainder are unorganized.

Mr. MCILRAITH: Mr. Chairman, I wonder if I could ask this witness if this right, that he would like to see in the legislation, is to be applied to all civil servants or just to the letter carriers.

Mr. STANDRING: Are you referring to the right of mandatory check-off?

Mr. MCILRAITH: Yes.

Mr. STANDRING: We would like to see it applied in such a way that a majority of the members, as shown in a particular class in the association, could have it applied if they so wish. In other words, we represent seven thousand out of eight thousand and think that is a sufficient majority to request mandatory check-off.

Mr. MCILRAITH: But that deals with mandatory check-off for the letter carriers. Would you have mandatory check-off for the assessors in the income tax, for instance?

Mr. STANDRING: If by a majority they expressed their wish to have the mandatory check-off, certainly.

Mr. MCILRAITH: I take it that what you really are recommending at the top of page 2 is compulsory arbitration.

Mr. STANDRING: Yes sir.

Mr. MCILRAITH: With the findings becoming law in a mandatory way, and with no right to strike.

Mr. STRANDRING: Yes sir.

Mr. MCILRAITH: Do you make that recommendation with a view to having it applicable to the whole public service or merely the letter carriers.

Mr. STANDRING: To the whole public service.

Mr. McILRAITH: Thank you.

Mr. CARON: Subject to acceptance by parliament.

Mr. STANDRING: Subject to the overall authority of parliament, as I added when I was reading the brief.

Mr. BELL (*Carleton*): What action do you believe is necessary in order to bring the mandatory check-off into effect? Does it require a provision in the act, or can it be done otherwise?

Mr. STANDRING: I would think provision should be made in the act that the mandatory check-off could be made in the act that the mandatory check-off could be applied in cases where a staff association request it and can show by at least a two-thirds majority of the employees in that class they would like to have the mandatory check-off.

Mr. BELL (*Carleton*): So that if a two-thirds majority of those who belong to the association request it, it would bind all.

Mr. STANDRING: Right.

Mr. McILRAITH: I understood the answer to be two-thirds of the employees in that class.

Mr. STANDRING: Yes; in that class.

Mr. MORE: I think a lot of these recommendations have other implications. Lately I have been reading in the paper about some feeling being generated because of raiding by respective associations, and what the association considers its territory. The indications are that if this keeps on there may be developments if privileges were granted. Where would the government stand in the case of a jurisdictional dispute between associations?

Mr. STANDRING: I can answer that briefly by referring to our own association. We represent one class in the post office department, the letter carrier class, and that only. As I stated before, there are approximately three hundred who belong to another asssociation. Other than that all those who are organized are in our organization.

Mr. MORE: Do you take any steps to try to gain membership from this other three hundred? Are you involved in any exercise of raiding that group.

Mr. STANDRING: Not actual raiding in that sense. Members of our organization probably would try to educate, shall I say, the people of the organization into becoming members of our organization; but there is no compulsion put on them.

Mr. CARON: Pretty well spoken.

Mr. McILRAITH: There is some pretty strong persuasion, maybe, sometimes.

Mr. STANDRING: That could be, sir.

Mr. MARTEL: What happens if you have mandatory check-off? That means that an employee who does not join your association has to pay just the same.

Mr. STANDRING: That is correct. He would just pay the per capita tax that is paid to the national office by each member.

Mr. MORE: What about the three hudred in the other union?

Mr. STANDRING: They already belong to another organization; they are organized and are already paying dues. We recognize this.

Mr. MORE: What if they claim the right to the dues of the other seven hundred who are not organized?

Mr. STANDRING: I do not think there would be any danger of that by mandatory check-off. In our case we have a large majority compared to the potential of those who are unorganized. It would be up to either ourselves or the other association to organize those employees, to bring them into membership. If, of course, they are paying the mandatory check-off to us and they

joined the other association, then naturally their dues automatically would be changed over to that association.

Mr. MORE: In other words your suggestion is that the largest group would have the benefit of the mandatory dues.

Mr. STANDRING: Yes.

Mr. ROGERS: You have done pretty well in your association. You have seven thousand out of eight thousand.

Mr. STANDRING: Yes, sir; but we believe that all members of the letter carrier class benefit by the representations that we make. The representations which we make cost money and, if these unorganized people share in the benefits, so should they also share in the financial expenses.

Mr. CARON: What would be the difference between the check-off for those who are not members of your association, and the check-off plus the membership dues for those who are members?

Mr. STANDRING: That varies according to the branch or local. We have a minimum due, but a branch can set its subscriptions above that, if it wishes. For example, our minimum dues are $1.25 a month per member. Of that $1 is per capita and the remaining twenty five cents is returned to the branch at quarterly periods, but some of our branches pay as much as $3 a month per member.

Mr. CARON: Then it is up to the local to establish their own dues?

Mr. STANDRING: Correct.

Mr. CARON: What would you do about the check-off if it was charged to those who are not members of your association?

Mr. STANDRING: They would be charged the amount per capita which, in this case, is $1.

Mr. CARON: $1?

Mr. STANDRING: Correct, and there is no rebate to the branch from that. It is just the cash contribution going to the national organization.

The CHAIRMAN: Are there any further questions?

Mr. HICKS: You have used the words "collective bargaining". Would you kindly define that?

Mr. STANDRING: Collective bargaining is the right to sit with your employer and discuss any grievances, and so on, that there may be between both parties, with a view to arriving at a solution acceptable to both.

Mr. RICHARD (*Ottawa East*): As of right?

Mr. STANDRING: As of right, and we believe it is a right. However, it goes without saying that all problems would not be solved by bargaining collectively or by negotiation so, therefore, there is need for arbitration also in order that insolvable differences may be solved by an impartial body.

Mr. ROGERS: What would happen to the employees while this arbitration was going on?

Mr. STANDRING: They would still continue to work, as they do normally. There is no strike or walkout involved. It is just the process of bargaining with the employer.

Mr. BELL (*Carleton*): And, by resolution, your association has renounced the right to strike?

Mr. STANDRING: Correct.

The CHAIRMAN: Then, if there are no further questions, thank you very much, Mr. Standring and Mr. Leduc for presenting your very fine brief this morning.

Mr. STANDRING: Thank you, Mr. Chairman, and may I add that if you wish up to appear again during future sessions we shall be only too glad to do so.

The CHAIRMAN: We still have half an hour and we have Mr. Best with us this morning, he having agreed to make himself available to answer questions in respect of the brief presented by the civil service association of Canada. If we can continue with him this morning, is that agreeable?

Some hon. MEMBERS: Agreed.

Mr. RICHARD (*Ottawa East*): I think there was a suggestion made yesterday that we proceed by pages or paragraphs. It was Mr. Bell who suggested yesterday that we should deal first with paragraphs 1 to 16—

Mr. BELL (*Carleton*): Pages 1 to 16.

Mr. RICHARD (*Ottawa East*): —and have a discussion on pages 1 to 16. These pages contain general comments and, unless someone wishes to ask questions, we could pass over them.

The CHAIRMAN: I think that is a very good suggestion, Mr. Richard.

Mr. MCILRAITH: I have one general question which does not relate to a section in the brief.

The CHAIRMAN: Is it agreed in the committee that, since the first 16 pages of the brief are chiefly history and general matters, after completing Mr. McIlraith's question we should move on to part II of the brief and go into it clause by clause?

Some hon. MEMBERS: Agreed.

Mr. MCILRAITH: My question, Mr. Best, has to do with the question of the independence of the civil service commission. I think it is quite clear that the legislation was set up and has been quite effective in keeping the civil service commission an independent body. That is shown in various ways in the legislation and in the fact, among others, that the commission reports to parliament rather than to government as such. That is, while it is technically presented to parliament by a minister, the report is directed to parliament as opposed to a minister; and also it is shown by other clauses, other sections in the existing legislation having to do with the appointment of commissioners and the method of removal of commissioners.

Now, my question has to do with this; it is apparent, I think , that more and more the question of pay and allowances, as opposed to hiring and promotions, will be dealt with by the commission and in that aspect of its work the commission is, of course, answerable directly to the government, to a minister. It makes its report to a minister.

Mr. BELL (*Carleton*): It makes its report but it is not "answerable to".

Mr. MCILRAITH: My question then, is this: You would agree, I think, that the British system is different in this respect in that it separates the two functions and keeps them quite separate. In our new legislation do you see any danger to the independence of the commission, through the fact that the commission is going to have to report to a minister of the government, as opposed to parliament, and have to deal more and more with matters of pay and allowances?

Mr. J. C. BEST (*National President, Civil Service Association of Canada*): That is a rather difficult question, Mr. McIlraith. I do not think you can argue that the independence of the commission has ever been a question in dispute. I think our viewpoints are well known for wishing to negotiate with the people in the treasury board who represent the fiscal authority. The commission may make many recommendations to the government but, under the terms of the present act, the government is not obliged to accept those recommendations. I do not see anything in the new act which would oblige the

government to accept them and, as I read clauses 10 to 14 of the bill, they mean that the government may, on occasion, recommend implementation only in part of the commission's recommendations.

Actually, you could argue this two ways, and if the government ran into fiscal difficulties we could see that it would work to our disadvantage. I do not think we are basically concerned, or too terribly worried about the independence of the commission at this point. Our concern is to deal with the people who have the authority in this particular sphere.

Mr. McILRAITH: My question was directed only to the possibility of the independence of the commission being put in jeopardy and not with the practicality of which is the better method, from the point of view of negotiating or determining the questions.

Mr. BEST: I think you would have to look at the whole thing.

Mr. McILRAITH: It is a very narrow question I am addressing to you.

Mr. BEST: I would say that the possibility of the commission's independence being lost is equally available under the present act as it would be under the bill which we are now discussing. I think this is always a possibility. You have to put a great deal of faith in the people who are the commissioners and I think history has shown, by and large, that they have done their job within the terms of the legislation.

Mr. McILRAITH: Except, Mr. Best, I think one notable difference previously was the fact that the number of employees was considerably smaller, and pay and allowance matters were always dealt with directly by the government and without reference to the commission in most cases, except for particular findings of fact.

Mr. BEST: That has never been our understanding, Mr. McIlraith.

Mr. McILRAITH: I am thinking of the Coon commission, of up to 1940 in recent history and in years prior to that, when work having to do with major pay and allowance matters was done by other agencies of the government.

Mr. BEST: My own experience, of course, only goes back to the post-war period and Mr. Gough may be able to explain this much better than I. Certainly, in all the salary revisions between 1945 and 1960—with the exception of the dispute which occurred in 1959, and that was just a case of the commission's recommendation being turned down—to my own personal knowledge, and Mr. Gough can correct me on this, in the post-war period the work was done by recommendation of the commission.

Mr. McILRAITH: I should have said within the last post-war period—15 years instead of ten.

Mr. BEST: But I think we pointed out in our brief that between 1945 and 1950 the war (emergency) measures act actually superseded the Civil Service Act.

Mr. McILRAITH: But I am concerned with matters like the Coon commission report. I have not got the date of that report here.

Mr. BEST: It does not seem to deal with the question of pay and allowances.

Mr. McILRAITH: Pay increases.

Mr. BEST: So far as pay increases are concerned the commission, so far as my knowledge goes, has always been involved.

Mr. McILRAITH: Would you say that was the case at the time of the Coon commission report?

Mr. T. W. F. GOUGH (*National Secretary-Treasurer of the Civil Service Association of Canada*): I was not intimately involved with the matter at that time but, as I recall it, that was a report which was never published.

Mr. BELL (*Carleton*): Were there such reports in those days?

Mr. MCILRAITH: It was a treasury board study.

Mr. GOUGH: But the report was never published, as I recall it.

Mr. MCILRAITH: That is my whole point. The Coon report was a treasury board report which was never published, and now those reports are to be made by the civil service commission instead of the treasury board. I wondered if you had an opinion on this. I think Mr. Best has made it clear that, in the time he has been in this work, the problem has never arisen. Nothing has happened that would indicate that the independence of the commission was involved and, with that factual statement, I would of course agree. I am quite in accord with that.

Mr. GOUGH: I have been in this work since 1930 and I do not recall that the integrity of the commission has ever been questioned.

Mr. MCILRAITH: I did not say that, and that is not in question. If I could make my point clear—I seem not to have expressed it clearly and I feel I must express it clearly at the moment.

Mr. BEST: The possibility of something happening is always there, but I would be rather reluctant to comment, for the record, on a possibility, unless there was something we could point to specifically as a weakness in the law itself.

Mr. MCILRAITH: Perhaps then I can pass on to a second, logical question from there. As far as you are concerned you are content that the matter of pay increases and pay and allowances should be dealt with by the same independent body as deals with the question of hiring and promotions?

Mr. BEST: Yes, I thought our brief was quite specific in indicating that was the case, in suggesting we want a change in the functions of the civil service commission; but not for one moment are we concerned about the commission's integrity. Our main, basic reason for wanting this change is that we feel, with all due respect to the commission, that we can put our case better than the commission can to the people in control of the money.

Mr. MCILRAITH: I think you have answered my question. I did not suggest for one moment that the integrity of the commission was at issue, but one intimation will appear to be quite apparent at this stage, that the commission cannot preserve its independence and integrity if it has to do certain work with pay increases other than merely the final findings.

The CHAIRMAN: Are there any other points?

Mr. MCILRAITH: But that is a matter of opinion on my part, and I think the witness has given a factual answer as far as he is prepared to do so.

Mr. BELL (*Carleton*): I should like to intervene to point out that in this respect Mr. McIlraith has made assertions on a couple of occasions that during the last decade—and this morning he said in the last decade and a half—there has been some change in the procedure which has been adopted. My information is that there has been no change since the order in council P.C. 194 of February 17, 1925. At the appropriate time we can have evidence in relation to this but that order in council, made on the recommendation of the then acting minister of finance, provides that all reports:

> whether emanating from the civil service commission or from a department, made under or by virtue of the provisions of the Civil Service Act or regulations thereunder—

and that, of course, would include reports dealing with compensation under section 11 of the old act:

> and all reports which concern the organization or compensation of the public service, whether or not made under the provisions of the said

act or regulations, shall be referred by Your Excellency in Council to the treasury board for report.

That procedure of recommendation from the commission and the treasury board for report has been the standard practice from 1925 until the present time.

Mr. McILRAITH: That completely begs the issue. The point is that—and I do not want to elaborate it—surely it is self-evident. We did not have the question of pay increases in sharp focus at a time when the value of the dollar was decreasing, not staying rigid for a long period of years. It has come up at different periods of time only and one of the periods of time was in the post-war period. The problem, simply enough, arose in acute form in the intervening years prior to that, but not in anything like the sharp form it has now.

Mr. BEST: I think I can say in relation to your final point that in 1959—

The CHAIRMAN: Order, please.

Mr. BEST: —when we were concerned in the so-called pay dispute of 1959 and onwards, we had no complaint with the civil service commission. The commission did its job exactly as the law said it should. Our complaint was with the law, not the commission.

Mr. McILRAITH: That is precisely my point. I have no quarrel with the civil service commission on this point whatsoever, but I do have the temerity to point out that if the commission, which all bodies want to remain an independent body and of which I think all bodies are very proud, is to be embroiled in the matter of pay increases directly as the agency concerned, there is a danger that it may, at some time in the future, have its independence questioned.

Mr. BEST: Our reason for wanting this function given to the commission—

Mr. McILRAITH: —is quite different from that?

Mr. BEST: Is quite different to that.

Mr. McILRAITH: That is what I wanted to get from you.

The CHAIRMAN: The point you are making is that you want the commission to have this consultative duty in regard to pay matters, and Mr. Best does not object to that, but that in so far as negotiation is concerned it should be with the treasury board?

Mr. McILRAITH: He has made it quite clear it should be with the treasury board, for a wholly different reason. I did not say it should be taken away from the commission but I just wanted to discuss the point.

The CHAIRMAN: Are there any further questions? Since we are taking up the time of the witnesses this morning, I think it would be better if we were to defer discussion and debate on these points until we come to a clause by clause examination of the bill. Has anyone further questions on the first part of the brief?

Mr. MORE: I think that the wording in paragraph 31, on page 13 of the brief, is, perhaps, unfortunate. I should like to be clear that the intention of this paragraph is to indicate disagreement with the interpretation of the regulations, rather than that there is any indication in it that the commission has not acted properly.

Mr. BEST: Perhaps I should ask Mr. Gough to answer that, with an illustration which I should have given yesterday.

Mr. GOUGH: Some years ago one of the departments of government agreed, after consulting with an employee organization, to allow employees time off with pay to attend conventions. I belonged to an organization at that time and we took exception to this. I need not go into the reasons for that but

we were able to show, pretty conclusively, that the regulations laid down by the civil service commission at that time with regard to leave could not possibly be stretched to allow leave with pay to attend a convention of that sort. It is quite true that there was a section in the regulations which allowed leave with pay for persons to attend professional meetings, but not this sort of thing.

We took the matter up with the civil service commission, and even with the Minister of Finance, but we did not succeed in getting it changed. Subsequently, I think with the changing of the commission, this matter was reviewed and the order was cancelled. I say that if the first commission had stood up to its responsibility and told the department just what it could and what it could not do under the regulations as laid down, the matter would have been solved before that time; but that particular commission did not take that responsibility.

Mr. MORE: That is what I wanted to clarify. Mr. Best gave an explanation at our last meeting, but I did not feel it was clear. At that time there was some criticism of the commission's actions. It was not a matter of your interpretation, but the regulations.

Mr. BEST: Yes.

The CHAIRMAN: One of the members of the committee would like to leave. If he does, we will lose a quorum. If it is agreeable to the committee, I would like to complete the first part today.

Have you a question, Mr. Martel?

Mr. MARTEL: Mr. Chairman, I have one short question, and I think it can be answered very quickly.

I would like to revert to paragraph 4 on page 7. To avoid patronage and influence from within, would you feel arbitration of contest decisions, promotions on the basis of merit or the right to appeal should be separate from the civil service commission, or judged separately by what might be called a quasi-judicial board of appeal?

Mr. BEST: I do not think we are concerned in this matter. The question of internal patronage does not apply to the commission; it rests within the individual departments. You have to link that up with the point which was raised, and ascertain how strong the commission is prepared to be when these things are found. A lot can be said for independent arbitration, but we could get to the point where every matter would be arbitrated independently.

I think one of the problems—and it is a real one—is the position of the commission, perhaps, in having to act as a judge in a competition where it might or might not have played a role originally. I think, in fairness, you have to say that this has been a problem. Although arbitration certainly has its merits, it is not an essential.

Mr. MARTEL: What I mean is this: Suppose a job is advertised, and the commission decides to give it to a certain person, and, say, it is a promotion within the civil service itself. It makes the decision as a result of the contest and, at the same time, an appeal can be launched, if anyone thinks that such should be the case. Perhaps I am not explaining myself very clearly.

Mr. BEST: The final decision in regard to promotion is not made until the appeal has been disposed of. In good number of promotional competitions the commission may or may not appear at the actual hearing. Remember, the appeal goes directly to the three commissioners themselves, or at least to one of them. A good many of them go across the chairman's desk. So, actually, the decision is being made at the highest possible level, whereas the original rating board's decision has been made at a considerably lower level, and there is no reluctance to over-rule a junior officer.

Mr. MARTEL: It is not the same person who decides?

Mr. BEST: Oh, no, they are separate. The operations branch would handle one, and the staff relations and appeals branch would handle the other.

Mr. MORE: It was stated that, by comparison, in his opinion, the number constituted a fairly small percentage.

Mr. BEST: Yes.

Mr. MORE: You do have appeals now and, I take it, you have been successful in appeals in connection with these matters?

Mr. BEST: That would depend on what you mean by success. We look at an appeal as trying to find out what was right. This does not mean that the man who is appealing is necessarily right, except in his own opinion. However, in so far as the right person getting the job is concerned, we feel we have been successful to that degree.

Mr. MORE: We are discussing here a matter which really has not too wide a scope. It would seem to me that there are other matters in connection with the act that are of far greater importance than this.

The CHAIRMAN: Gentlemen, obviously we cannot complete part I today and it is now five minutes to 11, I would suggest that we adjourn and meet again on Thursday of next week in the railway committee room.

—The committee adjourned.

APPENDIX "A"

March 22, 1961.

The Chairman,

Special Committee on Bill No. C-71,

(Civil Service Act),

House of Commons,
Ottawa, Ontario.
Sir:

May we come before your Committee with a request which we addressed last June to the Hon. Donald M. Fleming when he sponsored a similar Bill during the previous session of Parliament. Acknowledgment was received at the time from the Minister, who advised us that the Bill would not be processed before the 1961 session. We are gladly availing ourselves now of the opportunity afforded by the deliberations of your Special Committee, to submit the following for your consideration:

The Canada Fair Employment Practices Act, while having an express provision to the effect that it applies to Crown Corporations, has no similar provision binding the Crown as such as far as Civil Service employment is concerned.

Over the years a number of references were made to this lacuna, but it seemed that there were overriding administrative considerations why the coverage of the Federal FEP Act was not to be extended to the Civil Service.

During the 1960 session of Parliament a private member introduced a Bill (C-19) to amend the Canada FEP Act so as to bind Her Majesty in right of Canada, and servants and agents of Her Majesty in right of Canada. During the debate on that Bill (February 19, 1960), three members accepted the idea of the proposed amendment, but counselled that it be implemented by way of an amendment to the Civil Service Act rather than the FEP Act. Indeed, reference was made by two of these members to the impending revision of the Civil Service Act when consideration might be given to the introduction of this subject matter into that Act. Might we, therefore, come before you at this time with the suggestion to give consideration to an amendment of the present Bill C-71, aimed at introducing into the Civil Service Act the principle of non-discrimination.

We hasten to reassure you that in making this suggestion we are not motivated by an impression that racial or religious discrimination does exist at present. At the same time we are thoroughly convinced that a clause assertive of the principle of non-discrimination in Federal employment should be on the statute books.

Knowing the strength of the Prime Minister's and the Government's convictions in upholding the principle of non-discrimination and the value of legislative enactments in this respect, we are hopeful that you will give favourable consideration to our suggestion.

The inclusion in this kind of specific legislation of a non-discrimination clause will give added meaning to, indeed will be implementary of, the declaratory clause in Part I, Article 1 of the Bill of Rights. It will help to ensure that its purposes and provisions will be fully carried out within an important and clearly circumscribed area.

All of which is respectfully submitted by

THE CANADIAN JEWISH CONGRESS

(signed)
Monroe Abbey, Q.C.
Chairman,
Executive Committee.

(signed)
Saul Hayes,
Executive Vice-President.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

THURSDAY, APRIL 27, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing the Canadian Labour Congress: Mr. Claude Jodoin, President.

Representing the Civil Service Association of Canada: Mr. J. C. Best, National President.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

24975-5—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*),
Campeau,
Caron,
Casselman (Mrs.),
Hicks,
Keays,
Macdonnell,
Macquarrie,
MacRae,
Martel,
McIlraith,
More,
Peters,
Pickersgill,
Richard (*Ottawa East*),
Roberge,
Rogers,
Smith (*Winnipeg North*),
Spencer,
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, April 27, 1961.
(7)

The Special Committee on the Civil Service Act met at 11.05 a.m. this day.

Members present: Messrs. Caron, Hicks, Keays, Macdonnell (*Greenwood*), Macquarrie, MacRae, Martel, McIlraith, More, Peters, Richard (*Ottawa East*), Rogers and Spencer.—13

In attendance: Representing the Canadian Labour Congress: Mr. Claude Jodoin, President; Mr. S. H. Knowles, Executive Vice-President; Dr. E. A. Forsey, Research Director; and Mr. A. Andras, Director of Government Employees.

The Committee was informed that the Chairman was unavoidably absent.

Mr. Rogers moved, seconded by Mr. Richard (*Ottawa East*),

That Mr. Heath Macquarrie do take the Chair of this Committee as Acting Chairman, during the sittings of Thursday, April 27 and Friday, April 28, 1961.

The motion was adopted unanimously and Mr. Macquarrie took the Chair.

On behalf of the members of the Committee, Mr. Caron and the Acting Chairman referred to the recent death of Mrs. R. A. Bell; and they extended the Committee's sympathy to Mr. Bell and to his family.

The Acting Chairman presented a Report of the Sub-Committee on Agenda and Procedure as follows:

"1. That the Committee meet again at 1.30 p.m. Thursday, April 27, to complete the hearing of the Civil Service Association of Canada.
2. That the Committee continue its examination of the submissions of the Civil Service Federation of Canada, and of the Association of Canadian Postal Employees on Friday, April 28, 1961.
3. That the meeting of the Committee previously scheduled for 11.00 a.m. Thursday, May 4th, be advanced to 9.30 a.m. on that day; and that at that time the Professional Institute of the Public Service of Canada be questioned.
4. That the submission of the Conseil de Vie Française de Québec be received by the Committee at 9.30 a.m. on Friday, May 5, 1961."

The Sub-Committee's report was approved.

The representatives of the Canadian Labour Congress were called and they were introduced to the Committee by the Acting Chairman.

Mr. Jodoin read the submission prepared by the Canadian Labour Congress respecting Bill C-71, An Act respecting the Civil Service of Canada.

The Witnesses were questioned on the subject-matter of the brief.

On completion of their examination, they were thanked and permitted to retire.

At 12.20 p.m. the Committee adjourned until 1.30 p.m. this day.

24975-5—1½

AFTERNOON SITTING

(8)

The Special Committee on the Civil Service Act resumed at 1.45 p.m. this day. The Acting Chairman, Mr. Heath Macquarrie, presided.

Members present: Messrs. Caron, Hicks, Keays, Macdonnell (*Greenwood*), Macquarrie, MacRae, Martel, McIlraith, More, Peters, Rogers, Smith (*Winnipeg North*) and Spencer.—13.

In attendance: Representing the Civil Service Association of Canada: Mr. J. C. Best, National President; Mr. E. W. Westbrook, Executive Vice-President; Mr. T. W. F. Gough, National Secretary-Treasurer; and Mr. V. Johnston.

The representatives of the Civil Service Association of Canada were recalled to answer questions on the Association's submission, respecting Bill C-71, which was presented at earlier meetings of the Committee.

The examination of the witnesses continuing, at 2.30 p.m. the Committee adjourned until 9.30 a.m., Friday, April 28, 1961, at which time the representatives of the Civil Service Federation of Canada and of the Association of Canadian Postal Employees will be questioned respecting the proposed legislation before the Committee.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

THURSDAY, April 27, 1961,
11.00 a.m.

The CLERK OF THE COMMITTEE: Due to the unavoidable absence of your chairman, the first order of procedure is the selection of an acting chairman to act today and tomorrow.

Mr. ROGERS: Gentlemen, I would like to nominate Mr. Macquarrie as acting chairman for today and tomorrow.

Mr. RICHARD (*Ottawa East*): With great pleasure, I will second the nomination. He is one of the most able chairmen we could have.

The CLERK OF THE COMMITTEE: It has been moved by Mr. Rogers and seconded by Mr. Richard that Mr. Macquarrie do take the Chair of this committee to act as acting chairman during the sittings of Thursday, the 27th, and Friday, the 28th of this month. All those in favour?

I declare the motion carried.

Mr. CARON: Before we proceed, I would like to express my condolences to Mr. Bell on the occasion of the death of his wife.

The ACTING CHAIRMAN (*Mr. Macquarrie*): I am sure that we all join with Mr. Caron in the expression of our sympathy to one of our highly regarded and very active members, Mr. Bell, who suffered bereavement in the passing of his wife.

May I say that although I am unaccustomed to having greatness thrust upon me like this, I shall do my best in the future meetings ahead, for which Mr. MacLellan shall be laid aside. I would not say that I am temporarily Elisha following his Elijah, because he is not going in that direction, but to hospital for a short time. I am sure that we all look forward to his return.

I see that I have inherited some recommendations of the steering and agenda committee, and I would like to put these before the committee at this time.

At a meeting held yesterday, the sub-committee recommended that the committee meet again at 1.30 p.m. Thursday, April 27th, to complete the hearing of the Civil Service Association of Canada.

As I recall the information given to me, Mr. Best is leaving soon for Nova Scotia. It would be of great convenience to him if he could be with us at 1.30 today.

Another recommendation of the sub-committee was that the committee continue its examination of the submissions of the Civil Service Federation of Canada, and of the Association of Canadian Postal Employees on Friday, April 28th, 1961.

The third recommendation is that the meeting of the committee previously scheduled for 11.00 a.m., Thursday, May 4th, be advanced to 9.30 a.m. on that day, and that at that time the Professional Institute of the Public Service of Canada could be questioned.

The fourth recommendation is that the submission of the Conseil de Vie Française de Québec be received by the committee at 9.30 a.m. on Friday, May 5th, 1961. By that time you again will be at the tender mercy of Mr. MacLellan.

If these recommendations of the sub-committee are agreeable to you, we shall proceed.

Mr. HICKS: Mr. Chairman, in starting at 1.30 today, does that mean that we will finish at 2.30?

The ACTING CHAIRMAN (*Mr. Macquarrie*): It is something devoutly to be wished.

Is the procedure I have outlined agreeable?

Some HON. MEMBERS: Agreed.

Mr. CARON: I understood you to say that the Conseil de Vie Française de Québec is coming Friday next. In case the officials would like to testify in French, could we have a French reporter and translator for that special occasion?

The ACTING CHAIRMAN (*Mr. Macquarrie*): That can be easily arranged, and it will be arranged.

In accordance with our previous arrangement, we will hear today from the Canadian Labour Congress. I shall invite the president, Mr. Claude Jodoin, and the others in his group who would like to present the brief, to come forward.

Mr. CLAUDE JODOIN (*President, Canadian Labour Congress*): Thank you, Mr. Chairman.

At this time I would like to say just a few words in French for the benefit of the French-speaking members of this committee.

(Mr. Jodoin spoke briefly in French, and continued as follows, in English.)

Mr. Chairman, first of all I wish to thank you and your colleagues for giving this opportunity to the Canadian Labour Congress to present a brief before your Special Committee of the House of Commons on the Civil Service Act.

May I just say, for the benefit of the French-speaking members of your committee, that they have at their disposal at the moment a resumé of the main points which we will be delivering to your committee. For your benefit, it has been printed in both languages and we hope if it is necessary, that we will be able to provide a complete text.

First of all, may I congratulate you, as a distinguished member for Queens, in being the chairman for this sitting. I certainly will ask for your patience as well as that of the members of your committee in expressing the views which the Canadian Labour Congress has on this main subject.

I will proceed with the brief:

Mr. Chairman and Members of the Committee:

(1) The Canadian Labour Congress appears before you today because it has a special interest in bill C-71.

Mr. RICHARD (*Ottawa East*): Before you proceed, Mr. Jodoin, would you like to introduce the officials who are with you?

Mr. JODOIN: Thank you, Mr. Member from Ottawa East, for reminding me of a faux pas. It is my great pleasure to introduce to you Executive Vice-President Stanley Knowles of our Canadian Labour Congress; Andy Andras, director of government employees with the Canadian Labour Congress, and Dr. Eugene Forsey, director of our research department.

The ACTING CHAIRMAN (*Mr. Macquarrie*): May I say that I was not being remiss in not introducing these gentlemen on my right and far right, but I expected they would be presenting portions of the brief and would be introduced then.

I would like to say that we welcome all of you here. We have a distinguished author and former politician with us, a distinguished academic

controversialist, an old friend of ours, and we welcome these men, along with Mr. Andras.

Please proceed, Mr. Jodoin, I shall interrupt no further.

Mr. JODOIN: After this great introduction on your part, Mr. Chairman, I hope that the recommendations made will be accepted unanimously, and that there will not be any controversy at all. At least, let us hope so.

Its interest exists on two counts. First, the congress has within its ranks affiliated and directly chartered organizations whose membership in whole or in part consists of government employees, both classified and prevailing rates. Second, the congress, as a major labour organization in Canada with over 1,150,000 members, has a direct stake in any legislation which deals with organizations of employees and their relationships with employers. The fact that in this case the employer happens to be the crown in right of Canada does not, in our opinion, alter the fundamental principles which should be considered when a Bill such as bill C-71 is under review. What is involved here, basically, apart from certain technical aspects of civil service administration, is the question as to whether or not government employees, through organizations of their choice, are to enjoy the same rights as those enjoyed by employees in private industry, by government employees in at least one other jurisdiction and by employees of most crown corporations.

(2) In our representations on bill C-71 we propose to confine ourselves to section 7 although we will make reference to other sections as well. Section 7 is concerned with consultations with staff organizations. It provides that the commission and presumably senior officials of the public service designated by the Minister of Finance shall consult with representatives of "appropriate" organizations of government employees with respect to pay and other terms and conditions of employment either at the request of such organizations or whenever the commission or the Minister of Finance considers such consultation as necessary or desirable.

(3) The first point on which we wish to comment is the reference to "appropriate organizations and associations of employees". In view of the absence of definition as to what is an "appropriate" organization or association, the bill lacks clarity in this respect. There are, as your committee is undoubtedly aware, a large number of organizations representing government employees. Some of them consist exclusively of government employees; some are trade unions only part of whose membership is to be found in the government service. Some of these organizations are national in scope, cutting across departments; some are departmental in scope but otherwise national in character; others are purely local; still others represent relatively homogeneous groups within a department.

(4) Organizationally, some of these organizations may be described as "horizontal", others as "vertical". Some have an industrial union composition and others a craft union type of structure. Accordingly, there are all kinds and varieties of organizations, whether measured in terms of numbers, by type or organization, by geographical extent, or otherwise. Under these circumstances, it becomes highly desirable to know just what is meant by "appropriate" and what the policies of the civil service commission and the Minister of Finance will be with respect to the recognition of "appropriate" organizations of government employees. It is worth noting here that the labour relations legislation of the Dominion and of the provinces, whatever else it may do or fail to do, spells out in reasonably clear terms the procedures whereby an organization of employees becomes the "appropriate" organization so far as relations with an employer are concerned. To define is to limit but the reference to "appropriate" organizations and associations by implication calls for a definition and government employees have a right to know whether or not or to what extent the

organizations that they belong to will be considered "appropriate" for purposes of consultation with the civil service commission and with the Minister of Finance.

(5) While we consider the foregoing important, of far greater importance is the whole relationship between federal government employees and their employer. Section 7 provides for no more than consultation. Admittedly, such consultation must take place at the request of "appropriate" organizations of employees but they remain consultations nevertheless. In other words, it is open to associations of government employees and to the commission or the Minister of Finance as the case may be to engage in discussions on matters of interest to them, but such discussions need not necessarily be conclusive nor need they produce results to the satisfaction of the employees' associations. This is evident not only from section 7 itself but from other sections of the bill which make it clear that the commission or the governor in council may make unilateral decisions. For example, section 10 empowers the commission, "whenever it considers it desirable or whenever requested by the governor in council", to make recommendations with regard to rates of pay. Under section 11, the governor in council has the authority to establish rates of pay and allowances. While presumably the commission may wish to consult with "appropriate" organizations before arriving at its conclusions, there is no assurance of this nor is there any assurance that the criteria established under section 10(2) will be interpreted in a way that meets with the position of the employees' organizations. In addition, there is no procedure set up whereby any dispute between an "appropriate" organization and the civil service commission or the governor in council may be reconciled or otherwise settled in a way which makes for bilateral participation in the disputes settlement procedure. While the chairman of the civil service commission in his appearance before you referred to "negotiations with staff associations and other appropriate groups" (minutes of proceedings and evidence, No. 1, page 17), it is our view that the word "negotiations" was loosely used and was not intended to mean what that word means in the context, for example, of the Industrial Relations and Disputes Investigation Act. Bill C-71, if enacted in its present or a substantially similar form, will leave staff associations and other appropriate groups very much in the position in which they have been hitherto, with this exception that "appropriate organizations and associations of employees" will be able to initiate consultations. At best, section 7 is a no-man's land still to be explored; at worst the perpetuation of the present inferior status of government employees. However much they may be consulted, the staff associations and the trade unions which represent government employees will under this legislation remain what they were before, essentially supplicants.

(6) We make these points because we believe that government employees, whether classified or otherwise, should enjoy the right of collective bargaining. They should furthermore have the right to an orderly disputes settlement procedure when there is a disagreement between such organizations and their employer. At present there are neither collective bargaining nor disputes settlement procedures. What this amounts to is that what is probably the largest single group of employees in Canada employed by the same employer, is deprived of a fundamental right, one complementary to the right of association and without which in this context the right of association loses a great deal of its meaning. Where employees cannot participate with their employer in the determination of their conditions of employment, their right of association and its recognition by the employer provides them merely with an opportunity to express an opinion but no more. Whatever the employer does, he does by virtue of his own authority, whether his acts are benevolent or otherwise. It may be that he will consult frequently and that he will take notice of suggestions made to him by his employees but when all is said and done, the

decision is his alone. This flies in the face of what has been established by law and by custom for most employees elsewhere.

(7) The Industrial Relations and Disputes Investigation Act not only provides, under section 3 (1), that "Every employee has the right to be a member of a trade union and to participate in the activities thereof", but it goes further and states, under section 12, that "where the (Canada labour relations) board has under this act certified a trade union as a bargaining agent of employees in a unit and no collective agreement with their employer binding on or entered into on behalf of employees in the unit is in force, (*a*) the bargaining agent may, on behalf of the employees in the unit, by notice, require their employer to commence collective bargaining..." The act furthermore defines, under section 2(1)(*d*), a collective agreement as meaning "an agreement in writing between an employer... on the one hand, and a bargaining agent of the employees, on behalf of the employees, on the other hand, containing terms or conditions of employment of employees including provisions with reference to rates of pay and hours of work." Substantially similar provisions are to be found in labour-management relations legislation in the various provinces. As a result of the legislation passed by the various jurisdictions, almost all wage and salary-earners in Canada are able to exercise both the right of association and the right to require their employer to engage in collective bargaining with them through an appropriate bargaining agency. Most federal crown corporations have been placed under the industrial relations and Disputes Investigation Act and their employees have therefore been able to avail themselves of the rights under that act. In view of the universally of the right to engage in collective bargaining, we cannot help but conclude that the refusal to grant it to government employees is not so much a matter of principle or of law, but a disinclination to treat government employees as fairly as other categories of employees.

(8) We are at a loss to understand this attitude. The federal public service is no longer, nor has it been for many years, the creature of patronage. It is a respected Canadian institution. The integrity and the measure of devotion given by civil servants to their employer is certainly no less than what is to be found in private employments; their qualifications are as good as those to be found anywhere. It appears to us, therefore, that prejudice rather than reason prevails where staff associations are concerned and we submit it is high time that this prejudice was swept aside and the public service allowed to assume a position of equality with other employments.

(9) It may perhaps be suggested that it is not within the constitutional competence of the parliament of Canada to provide appropriate organizations of government employees with the right to engage in collective bargaining. We can see no evidence for this. As you are undoubtedly aware, government employees in the United Kingdom, Australia and New Zealand all enjoy collective bargaining rights. All three of these countries are members of the commonwealth and all three have a similar parliamentary system of government, even though in the case of the United Kingdom and New Zealand it is a unitary form and in Australia federal like our own. It may be significant that while the Heeney report ("personnel administration and the public service," report of the civil service commission of Canada, 1958) recommended against collective bargaining in the public service, it did not do so on any grounds of constitutionality.

(10) The question of constitutionality was discussed in 1960 by Mr. F. T. Varcoe, Q.C., former deputy minister of Justice and deputy attorney general of Canada. He made the following observations: "My understanding of

collective bargaining is that the employer is bound to receive representations from a recognized representative of employees who speaks for them or some of them. The practice is generally throughout Canada for governments to entertain representations on behalf of public servants and I can think of no legal or constitutional principle which would be abrogated by formalizing this principle and establishing some regular proceeding." (Paper on "Legal and constitutional aspects of collective bargaining in the public service" presented to a government employees' conference under the auspices of the Canadian labour congress, Fredericton, N.B., May 5 and 6, 1960).

(11) On a previous occasion, in appearances before a board of reference appointed by the government of British Columbia to receive and examine representations regarding alterations in the Civil Service Act of that province, statements on the constitutionaliy of collective bargaining procedures for civil servants were made by Professor F. R. Scott, professor of law, McGill university, and by Dr. F. C. Cronkite, dean of law at the university of Saskatchewan. During cross-examination, Professor Scott answered as follows to one of several questions that were put to him:

(12) "Question: Dealing with the third objective, the right to bargain collectively through the medium of any society of workers organized for such purpose provided that such organization represents the majority of employees concerned. In your opinion is this proposal inconsistent with Canadian constitutional practices"?

(13) "Answer: No, I see nothing inconsistent in that proposal with Canadian constitutional practices. In effect, this is being done in varying degrees in different parts of Canada today. In many provinces discussions with representatives of staff associations is undertaken and to my knowledge in the Province of Saskatchewan there is what can be properly called complete collective bargaining, and I see nothing other than a matter of policy here as to whether it should or should not be adopted, I see nothing inconsistent with Canadian constitutional law on that." (Proceedings of Board of Reference Appointed to Receive and Examine Representations Regarding Alterations in the Civil Service Act, Vancouver, July 18, 1958, Page 83.)

(14) On the question whether the Crown could submit to arbitration of disputes with the staff association, Professor Scott stted:

> "I cannot see any breach of any constitutional principle or practice. The Crown not infrequently agrees to arbitration in other forms of disputes; I see no reason why you should not agree in this form of dispute if it is so desired" (ibid., page 84).

(15) Professor Cronkite took a similar position:

(16) "Question: Now the first objective or request by the Civil Servants in this Province was the establishment of an appropriate relationship of employer and employees; and it is suggested that a possible method of implementing that is to adopt a Public Servants Act, constituting the Lieutenant-Governor in Council as employer of all classes of employees, and Her Majesty in the right of the Province of British Columbia, other than employees of certain commissions and boards. Now in your opinion is that proposition, or request, inconsistent with Canadian constitutional practices?"

(17) "Answer: Well, my answer is that I can see nothing in the request, or in the suggestion, that is inconsistent with Canadian constitutional practice . . ."

(18) With respect to the right of association and the right to bargain collectively, his position was the same (ibid., page 112-113).

(19) We accordingly have no less than three eminent constitutional authorities who agree that there is no constitutional obstacle standing in the

way of collective bargaining between the Crown and its servants. We submit, therefore, that this argument must fall by the wayside.

(20) If there is no constitutional bar, it would appear that the refusal to grant federal government employees the right to engage in collective bargaining is nothing more than a restriction of the civil rights of such employees. They are simply being denied that right. In the United States, federal government employees are in a similar position and it is worth noting that the American Civil Liberties Union, in a statement issued on April 13, 1959, took issue with the policy of the United States Government in this respect. The "Policy Statement of Civil Liberties in Government Employment of the American Civil Liberties Union" states that "Government employees should have the right to form or to join labor organizations through which to negotiate with their superior officers concerning terms and conditions of employment, or through which the employees may seek legislative or other public consideration of their desires. Government employees, like other members of the community, are entitled as a matter of civil liberties to protect their interests through self-organization." It is a matter of interest that not only does the Civil Liberties Union support the right to organize and to negotiate but also justifies, in the name of civil liberties, the right to strike and the right of a government employees' association to have that form of union security known as the union shop. Obviously, in order to have a union shop, there will have to be a relationship different from the existing one, for the staff association is now limited merely to the making of representations.

(21) It is worth noting that in the United Kingdom rights of association and of collective bargaining are not merely tolerated but are expressly encouraged. We draw your attention to an official government publication entitled "Staff Relations in the Civil Service" first published in 1949 and subsequently republished as recently as 1958. This publication states: "A civil servant is free to be a member of any association or trade union which will admit him under its rules of membership. Civil servants are, moreover, encouraged (e.g. in the *Handbook for the New Civil Servant*, issued by the Treasury to new recruits) to belong to associations, for the existence of fully representative associations not only promotes good staff relations but is essential to effective negotiations on conditions of service" (page 3). Accordingly, there is extensive machinery for the negotiations of conditions of employment of the British Civil Service including arbitration machinery for the settlement of disputes. It may be of interest to you to have a brief description of negotiating and arbitration machinery as contained in the Report of the "Royal Commission on the Civil Service, 1953-1955". We quote paragraphs 34 to 39 inclusive of that report:

(22) "Negotiating machinery is very highly developed in the Civil Service and, since this inevitably affects questions of rates of pay and conditions of service, we think it proper briefly to mention the main features of the present system. These are negotiations between Departments and staff associations, negotiation through the medium of Whitley Councils composed of representatives of the government and of staff associations, and arbitration.

(23) "Civil servants are free to be members of any association or trade union which will admit them to membership. (For convenience we shall use the term "association" to cover both "associations" and "unions" in the Civil Service, unless the context requires a distinction.) Moreover civil sevants are encouraged to belong to such organizations. Most associations cater for particular grades or classes. Some are small, with memberships of but a few hundreds, but others very large; the Civil Service Clerical Association had a membership at the end of 1954 of 144,268 and the Union of Post Office Workers one of 161,481. The Civil Service Clerical Association is part of the Civil Service Alliance, a federation whose other members are the Inland

Revenue Staff Federation, the Ministry of Labour Staff Association and the County Court Officers' Association. There are several other associations with five figure memberships, for example the Institution of Professional Civil Servants and the Civil Service Union.

(24) "We wish to draw attention to three points which are significant for our purposes. First, recognized associations have certain definite rights—the right to be brought into consultation on proposals affecting their members, the right to be parties to formal agreements made on the conditions of service of their members and the right to go to arbitration (subject to the limitations to which we refer in Section III of Chapter IX). Secondly, the large majority of civil servants belong to recognized associations, so that there can be no doubt as to the representative capacity of these bodies. Thirdly, recognized associations include among their members the highest ranks of Service.

(25) "In 1919 the National Whitley Council was set up and Departmental Whitley Councils have since been established in practically all Government Departments. For our purposes the distinction between the two methods of negotiation may be summarized by saying that the National Council is used for dealing with general questions affecting all civil servants, for example hours and leave or provincial differentiations, whereas the association is the medium for negotiation when questions arise that affect a particular class or grade, for example the scale of pay for a clerical officer. We shall refer to the former method as "central" and to the latter as "sectional".

(26) "We are impressed by the strength and vitality of the civil service associations, by the scope of Whitley Council discussions and by the concept of a united Service such discussions imply.

(27) "In addition to these facilities for negotiation there is an agreement providing for independent arbitration. We set out the main features of the arrangements in Section III of Chapter IX and it will suffice here to note two points. First, arbitration for the greater part of the Service is compulsory in the sense that the Government cannot refuse to allow claims within the scope of the agreement to be submitted to arbitration unless these raise issues of major policy. Secondly, the Government agreed to be bound by the awards of the Tribunal; the Treasury Circular of 1925 which announced the Arbitration Agreement contained the words 'Subject to the overriding authority of Parliament the Government will give effects to the awards of the Court'."

(28) We do not think it is necessary to labour the point. Quite obviously, the Parliament of the United Kingdom does not consider it an invasion of its sovereignty, let alone contrary to constitutional practice, for the Crown to enter into negotiations with staff associations or to submit itself to an arbitration award in the event of a disagreement arising out of such negotiations. (For a review of "Arbitration in the British Civil Service" by Professor S. J. Frankel, we refer to you the Autumn 1960 issue of "Public Administration".)

(29) Our brief up to this point has been largely concerned with pointing out the denial of collective bargaining rights to Government employees is discriminatory treatment in view of its availability to other employees. We have asserted and produced evidence to the effect that there is no constitutional obstacle to the enactment of a statute which would among other things make possible negotiations between the Crown and appropriate staff associations. We have pointed out that other countries within the Commonwealth, notably the United Kingdom, have a collective bargaining relationship with their public service. We have also drawn your attention to the statement by a recognized authority on civil liberties which supports not only the right to engage in collective bargaining but even in strike action. We could further have produced evidence showing the existence of collective bargaining rights

for government employees in various countries but we do not consider this necessary as it is already known to you through other representations and in any event, even if no other country had reached this point, it would still not deny the justice of the principle which we advocate here today. We propose, therefore, at this point to discuss some aspects of the collective bargaining machinery.

(30) In view of the considerable diversity of organization and the variations in approach to them, some formalized procedures for recognition would appear to be necessary. Presumably this could take the form of certification as is appear to be necessary. Presumably this could take the form of certification as is now the case under the Industrial Relations and Disputes Investigation Act and under similar provincial legislation. This is not necessarily the only way of doing so. In the United Kingdom, it is sufficient for an association to show that it is representative of the category of staff concerned (see "Staff Relations in the Civil Service", paragraphs 13, 14 and 15.) The point that we are trying to make here is that the mandatory recognition which results under the Industrial Relations and Disputes Investigation Act need not be the objective here since we may assume the willingness on the part of the Government to recognize any bona fide organization that can demonstrate its representative character on behalf of any category of employees. Quite clearly, what is required is some effective machinery that will operate fairly and objectively and will be sufficiently flexible to allow for changes in staff associations both numerically and otherwise.

(31) In our view, however, the question of recognition is only the initial step in the process of collective bargaining. What is even more important is the process itself. Negotiating machinery, to be effective, should satisfy the following criteria:

(32) 1. The representatives of the principals must possess sufficient authority to negotiate, to strike a bargain and to conclude an agreement. In this respect, it must be recognized that the lines of authority are different in a Government and in staff association. Where the latter is concerned, it may be necessary to refer such an agreement to the membership by appropriate means for ultimate ratification.

(33) 2. The parties should be able to negotiate on the basis of data available to both and to establish their own standards as to comparability of occupations, rates of pay and other conditions of employment where such comparability is a determining factor. We have in mind here the Pay Research Bureau and its function as an agency of the Civil Service Commission. At the present time, the data compiled by the Bureau are privileged information. This we consider to be contrary to good personnel policies and we would urge that such data be made freely available to the staff associations and to the public at large, to the former for purposes of negotiations and to the latter as a matter of public interest. It is worth noting here that in Great Britain there is a pay research unit which serves a function similar to that of the pay research bureau but that in the case of the former the data form the basis for negotiations rather than remaining confidential source material.

(34) 3. There must be good faith. By this we mean simply the willingness of the parties to enter into the negotiations with a view to the conclusion of a collective agreement. This does not necessarily mean that the parties will see eye to eye on every subject in negotiations or that they will ultimately arrive at an agreement. It does mean that they will make an earnest effort to reach an agreement. We consider the ingredient of good faith an indispensable prerequisite of collective bargaining and of sound labour management relations generally, and we include it here among our criteria even though it is difficult

of precise definition. Without it, however, no amount of information and no amount of clarity as to definitions and criteria are of much value.

(35) 4. The area of bargaining should be comprehensive. In other words, the parties should be able to negotiate on all those matters which directly affect government employees and also the relationship between the government and the staff associations. Unless the terms of reference of the negotiators are sufficiently broad, that is, unless the area of potential agreement is extensive, the result is likely to be an agreement which is merely marginal to the main interests of government employees and the result will be self-defeating insofar as stable labour-management relations are concerned. As a minimum, we would submit that the area of collective bargaining should include all those matters which are now the subject of representations by staff associations and trade unions in the public service. This would include: rates of pay, hours of work, overtime, leave, holidays, discipline, transfers, promotions and demotions, living allowances, superannuation, group insurance and health care benefits, and related matters. In terms of the relations between the government and the staff associations or trade unions, we believe provision should be made for a body of representatives, committeemen, or shop stewards as they are commonly known in private industry, for the processing of grievances; for a grievance procedure which includes the right of the employee organization to initiate and process grievances on its own behalf as well as on behalf of aggrieved employee or group of employees; and for an arbitration clause for the final and binding settlement of grievances. Other matters which might properly come within the framework of a collective agreement and therefore subject to collective bargaining are: the right of union or staff association representatives to visit a place of employment on union business; the right of the union to have bulletin boards and to post notices for its purposes; the right to participate with the employer on joint committees dealing with such matters as occupational health and safety, parking privileges, and the like. There are in addition those matters which are commonly known as union security. Those staff associations which are members of the national joint council of the public service of Canada at present have access to the check-off. We would assume that not only would this be included in the collective agreement and thereby entrenched but that it would be extended to all other organizations representing government employees which are granted recognition for collective bargaining purposes. It may well be also that the associations will seek a degree of union security more comprehensive than the voluntary revocable check-off. There are, as you are aware, various forms of union security, such as the union shop, the closed shop, the preferential shop, the modified union shop, the Rand formula and so on. We believe that whatever form of union security an organization seeks properly becomes a matter for collective bargaining.

(36) 5. Not only must there be appropriate machinery for the negotiations themselves but also for the resolution of disputes which might arise as a result of breakdown of such negotiations. One of our criticisms of Bill C-71 is the omission of some recognized and orderly means of settling disputes accessible to both parties. We have in mind here something beyond the conciliation process of the sort provided under the Industrial Relations and Disputes Investigation Act. The third party intervention which that act provides through a conciliation officer and, if necessary, a board of conciliation, has been subject to some criticism. While it has been extremely useful in a good many cases, in others it has been merely a stage through which the parties were compelled to go before they would be freed for other action. In some instances, the board of conciliation has become nothing more than a fact-finding tribunal; the conciliation process has become in effect non-existent. It is quite evident, for example, that the boards of conciliation established in recent years in the

railway industry have served to examine issues and make recommendations rather than to conciliate the parties in disputes. The Congress is thus in favour of the conciliation process, although not necessarily of the prevent system.

(37) There are, generally speaking, two principal devices available to labour and management for the settlement of disputes; the strike (or lock-out) and the arbitration board. In so far as the strike is concerned, this has for long been the recognized instrument of workers in disputes with managements. It is a right which is entrenched in our various labour relations legislation, federal and provincial, though subject to some restrictions. We do not think we need to elaborate here the arguments in favour of the right to strike. It is an essential civil right and must be respected as such. We can justify it for government employees. We would draw your attention to the fact that government employees in the province of Saskatchewan, covered under the Trade Union Act, enjoy the right to strike in the same way as all other employees governed by that statute. We would also point out to you that there has never been a srike of government employees in that province. In our view, the absence of a prohibition against the right to strike by civil servants would not lead to a rash of strikes on the part of government employees' associations. It must be altogether clear to you that trade unions in private industry use the strike only as a last resort and statistics on strike action over a long period of time indicate their incidence is small compared to the number of unions in existence and the number of collective agreements which are signed through successful negotiations or following the conciliation process. It is absurd to conclude that the existence of the right to strike produces strike-happy employees either in public or private employment. Access to strike action would therefore not be as great a risk as might appear to be the case to the insufficiently informed layman. It may be on the one hand a desirable restraint on an otherwise intransigeant employer and on the other the last legitimate resort of an otherwise frustrated trade union. It is above and beyond that an elementary right in a free society and its continued availability is one of the calculated risks that must be faced up to by any viable democracy. This is not to say that we are advocating strike action as the only means of dispute settlement for government employees. Government employees' associations have a right to express their own views and to make their own policies. It may be known to you, for example, that the International Association of Fire Fighters, essentially an association of government employees, has by constitutional provision eliminated the strike as one of its means of dealing with employers. In your considerations of disputes settlement procedures, when strike action comes before you, we urge you to think of it not in terms of some dire and calamitous emergency but as one of the legitimate means of settling a difference between an employer and employees.

(38) You have had before you the canadian postal employees association, an affiliate of this Congress. In its submission, it proposed, among other things, that the right to strike should be afforded to government employees. It is evident from the foregoing that the Canadian labour congress is sympathetic to that viewpoint. The association submitted to you evidence in support of its position, showing that in a number of other countries postal employees were linked with others in the field of communications and that this group as a whole—postal, telegraph and telephone—were not restricted in this respect. It is noteworthy that in Canada both telephone and telegraph workers are equally free to strike, although the crucial nature of their services is beyond any doubt. It would appear, therefore, that the right to strike can exist in strategic industries, as it has for many years, without any dislocations of any consequences. It is well to bear in mind also that strike action is an effect rather than a cause, a fact which is frequently overlooked when a strike occurs.

The trade union has all too often been a convenient whipping boy when the recalcitrant employer should have been the object of sanctions.

(39) The alternative method of disputes settlement is through arbitration. The use of arbitration is wide-spread in Canada in labour management relations although it is confined very largely to the disposition of grievances arising during the currency of a collective agreement, that is, it is invoked as a result of disputes arising out of alleged violations or misinterpretations of an agreement. Otherwise it is relatively restricted as a means of obtaining a settlement. It has already been drawn to your attention that arbitration is the long established device used in the United Kingdom, Australia, New Zealand, and other countries. Its method of application is, of course, known to you and we do not think that we should burden your patience with any lengthy description of it. It is sufficient to observe that the basic principle of arbitration is that it should fulfil two functions: first, that of determining the issues and their merit; and second, that of making an award which is final and binding. It has the obvious advantage of providing a final settlement to a dispute while leaving the parties free to press their unsatisfied demands on some future occasion. In practical terms, there are some problems that the parties are likely to encounter but which are not beyond solution. One of these is the necessary expertise in the preparation of the case and in its presentation to the arbitrator or the arbitration board. The other is the very real difficulty in finding a panel of arbitrators with the necessary familiarity with the subjects that are likely to be involved, not to say the necessary disinterestedness as members of a tribunal. In time, however, both of these problems can be overcome. In view of this successful experience in the United Kingdom, there is good reason to believe that both the government and the appropriate organizations representing government employees can jointly develop arbitration procedures that would work out satisfactorily for both. We would be disposed to argue for procedures that put formalities at a minimum and provide both parties with full opportunity to state their case. We are not advocates of labour courts. With regard to suitable arbitrators, we believe there are in the universities and elsewhere people of knowledge and integrity who can be counted upon to become members of arbitration boards or to act as single arbitrators, depending on the structure which is evolved.

(40) There is one note of caution which we would like to inject here. We do not think that arbitration should become a substitute for negotiations in good faith. We believe that the parties should devote their every effort to reaching agreement on as many issues as possible; on all issues if possible. Arbitration should be used sparingly. It should be used for the few issues that remain unresolved after there has been genuine collective bargaining. It may perhaps be asked why there should be collective bargaining at all and why the parties should not simply submit all their proposals and counter-proposals to a board of arbitration. Our reply to this is that arbitration has only a limited value, however desirable it may be as a means of settling a dispute. It is not a good substitute for an agreement reached voluntarily by the parties in the light of their own intimate knowledge of the circumstances relating to the issues and on the knowledge that they must continue to live and work together after the settlement has been reached. The essence of collective bargaining is that it leaves room for compromises and understandings. Its strength lies in the fact, as we have already suggested, that the parties know their conditions better than any third party could and that therefore they can more accurately measure the effects of any agreement that they reach. The arbitrator, on the other hand, is not likely to be as well acquainted with most conditions. He may not be, indeed he should not be, prompted by any desire to effect a compromise. There is a vast difference between ar award based essentially on equity and an

agreement reached on the basis of the give and take to be found in the collective bargaining process. Over the long haul, the latter is the more effective instrument with which to bring about stable and mature labour management relationships. Arbitration without the intervention of genuine collective bargaining will simply breed irresponsibility on either side and the arbitrator will simply become a convenient cat's paw to pull the chestnuts out of the fire for one side or the other, or for both. We have pointed out to you that strike action is taken as a last resort and we believe that arbitration should be similarly treated.

(41) There is one aspect of collective bargaining to which we think we should refer directly, although we have already done so by indirection above. We have suggested to you that the parties who engage in the bargaining process should be armed with sufficient authority to strike a bargain. We have in mind at this time the representative who will bargain on behalf of the crown. Under section 7 of bill C-71, both the commission and "such members of the public service as the Minister of Finance may designate" are empowered to initiate or otherwise engage in consultations with appropriate organizations and associations of employees. It must be observed, however, that where pay and allowances are concerned, the commission may make recommendations but the decision in the final analysis lies with the governor in council. Quite apart from bill C-71, the present situation is that the authority to effect changes in rates of pay and other major changes and conditions of employment rests with the Minister of Finance himself or with treasury board. This, we think, is as it should be. Responsibility for decisions which involve expenditures of public funds must necessarily be vested in those who are responsible to parliament. We believe therefore that with the introduction of a collective bargaining system for government employees, those who engage in bargaining on behalf of the crown should be either of ministerial rank or in sufficiently senior positions in the public service as to represent the managerial function on behalf of the crown. With much respect, we believe that the civil service commission should be reserved for the functions which it has for so many years fulfilled, namely, the functions described in broad terms in section 6 of this bill. Under such circumstances, we would further suggest that the pay research bureau be separated from the civil service commission and set up as an independent agency to serve the purpose that we have outlined above.

(42) There is one question which has been asked on occasion: how can parliament bind itself in advance to an agreement or to an arbitration board award? The answer is it can if it chooses to, and it need not if it chooses not to. We cannot for a moment imagine a situation where parliament ceases to be sovereign. Assuming that parliament passed a statute making possible collective bargaining for civil servants, parliament still can amend or even rescind such a statute on some later date. Similarly, it will rest with parliament to give final consent to a bargain made by its representatives with the representatives of staff associations, and the same would apply even to an arbitration award. Under ordinary circumstances, with ordinary employers affected, arbitration awards properly should be binding but where parliament is concerned we regard as eminently proper the proposition that an arbitration award should be subject to the overriding authority of parliament. This is the condition which exists in the United Kingdom and there is every indication that it has worked successfully there (See par. 94, "Staff Relations in the Civil Service"). But above and beyond these formalities we are assuming something which we think must be assumed in any circumstances where trade unions and staff associations will bargain with the crown, namely, a substantial amount of that ingredient known as common sense on both sides of the table. The

government employees are not wild-eyed revolutionaries rushing to the barricades every time their proposals are resisted. They are respected and respectable Canadian citizens, with a large sense of responsibility and with a realistic approach to the relationship which exists between government employees and the government as their employer. They are quite well aware of the fact that their demands, particularly economic demands, must be translated into large sums of money which must in one way or another come from the public purse. This alone is bound to serve as a brake on excessive zeal on behalf of their members. Accordingly, the initiation of collective bargaining does not mean embarking on some wild adventure but merely making another forward step in the long evolution which is taking place in the relationship between the government and its public service.

In conclusion, Mr. Chairman, and members of the committee, we wish to reiterate our view that the extension of the collective bargaining process to the public service is a measure long overdue. It is consistent with the approach to what constitutes the principles of a free society. It is in keeping with the constitutional framework of our parliamentary system of government. It is in practical terms a workable proposition as indicated by the evidence from other countries, including countries within the Commonwealth with a long and successful experience in this field. The process itself is wide enough to offer a variety of alternatives as to procedures. The nature of the parties is such that a full measure of responsible attitudes may be anticipated on either side. For all these reasons, we urge upon you a recommendation calling for either a suitable amendment to bill C-71 or alternative legislation that will accomplish this purpose.

This is respectfully submitted by the Canadian Labour Congress to your committee, Mr. Chairman, with our thanks.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Thank you, Mr. Jodoin, for that impressive and informative presentation.

Is there a member of the committee who wishes to direct a question to Mr. Jodoin or his associates based upon this brief?

Mr. MACRAE: Mr. Chairman, I would like to ask Mr. Jodoin a question:

He mentioned that the Canadian postal employees association is an affiliate of the Canadian labour congress. Could Mr. Jodoin tell us roughly how many other associations belong to the congress? Of the one-third million in the government service, how many are affiliated with the congress?

Mr. JODOIN: We will give you that in a moment, sir, after we have looked it up.

Mr. MACRAE: I had another question, and perhaps I can ask it while you are looking up the information.

I think you will agree that, for the most part, government employees are white-collar workers. I might say that I am not attempting to be impertinent at all, but I understand from what I have read that white-collar workers are resisting the blandishments of union organizers to join labour unions and so on. Would you care to comment on that?

Mr. JODOIN: We have definitely three associations which you would call civil service associations. We have the postal employees, the letter-carriers, and the railway mail clerks and, on top of that in the various trades and crafts in the prevailing rates, we have quite a number that I would say are affiliated in the overall picture. At this stage it would be about 21,000.

In connection with your other question, I think, Mr. Member, that you are asking me the $64,000 question again. I do not know the reasons why there might be, as some say, problems in this field. I would not even call them difficulties. We have the so-called white-collar workers, and now we are having

the white smocks coming in, in industry, and so forth, who also join our association or unions. There are very important white-collar people in this country, like the members of the Canadian Bar Association, and so forth, who certainly are white-collar workers. They have an association and, if I may say so, a very effective one. I am unable to give you any official reasons at the moment in connection with the white-collared workers. However, I presume that in many cases their working conditions have been readjusted in comparison with what has been acquired through collective bargaining in the various industries. Although you and I may not agree, I am sure you would not have had statutory holidays by law, or two weeks vacation with pay, the 40-hour week and things of that nature in unorganized industry if, first and foremost, it had not been acquired or gained through collective bargaining in the industrial branch. I can assure you of one thing, and answer your question in a vague fashion, by explaining that although we have in many industries quite an amount of so-called white-collar workers, it is not sufficient and we will certainly pursue our efforts in that field for their own benefit and the benefit of the Canadian people as a whole.

Mr. KEAYS: I believe some public servants have the right to strike. I am thinking of those working for the power companies or those in the communications branches. If the employees of the telephone companies went on strike it is evident that you could always have a message sent by bicycle or some other mode of transportation. Mr. Jodoin, however, says he is in favour of strike action by the postal employees. What is the alternative in respect of getting mail if they did happen to go on strike?

Mr. JODOIN: First of all there is a slight difference between what I have been saying and the interpretation you have just given. I did not say I am in favour of strike action. I said I am in favour of the right to strike. There is a big difference between the two. It does not mean we are advocating, because they would have that right, that tomorrow morning all postal employees should go out on strike. I will agree with you on that. I think in the overall question the right itself in a democratic way of life should be permissible. I believe, however, that in many instances these matters can be settled and preferably at the negotiation table.

In respect of the statement made by the person who spoke previously, I would like to add that the C.L.C. as such is not at this moment urging that all civil servants should be members of or affiliated with the C.L.C. I hope they will eventually. We are speaking of the overall principle in respect of employees and workers in Canada. If it is good according to the Industrial Relations and Disputes Investigation Act, and is good for free enterprise, any government, in my estimation, should set an example by practising it itself. I think this, in my estimation, would be the right way to do it.

Mr. SPENCER: I have a question which follows along on that line. You have said you believe they should have the right to strike, but you do not say that they should necessarily strike. Do you not agree that if they have the right to strike of course they might strike?

Mr. JODOIN: Yes.

Mr. SPENCER: Do you not think that in this day and age with the advances we have made in relationships between labour and management that some other means should be found of doing justice and equity between labour and management, other than the resort to a strike which perhaps is synonymous with the principle of might being right?

Mr. JODOIN: I would like very much for you to suggest to me what other economic power the workers would have apart from that one. It would certainly not be the overall financial one, I am sure. So that right has to be

maintained. The records, not those produced by the Canadian Labour Congress but rather by the Labour Department, show that a very small percentage of strike action has been taken every year to arrive at a collective bargaining agreement. This action is infinitesimal in proportion to the work force, and the overwhelming majority of collective bargaining contracts are obtained through straight negotiation. When a strike action is taken it seems to be news; whereas a settlement by negotiation across the table seems to be a very very normal situation.

Coming back to your second question, at the moment I do not see any alternative to the right of strikes as an economic force for the workers and employees in Canada.

Mr. SPENCER: You do not think there can be an arbitration proceeding set up that in the end would be fair and just to both sides?

Mr. JODOIN: That is practised all the time; it goes on continously. However, on a matter of principle or a matter of fair adjustment, and things of that kind, I think in a democracy such as ours there should be that right; but I think the percentage is very small.

Mr. MACDONNELL: Do you think the right to strike should apply to all government employees including the police?

Mr. JODOIN: On principle we would always maintain that right. In many instances, however, I presume that certain matters can be discussed. I understand the argument in respect of the police force; but still, in my estimation, the principle has to be considered. A little while ago I mentioned the fire fighters and their own voluntary decision to have a no-strike clause.

Mr. PETERS: Would it be agreeable to your organization and your affiliates in the civil service if they were transferred from the jurisdiction of the Civil Service Act to the jurisdiction of the Industrial Relations and Disputes Investigation Act for purposes of negotiation?

Mr. JODOIN: I might answer by saying that the Industrial Relations and Disputes Investigation Act is the one under which free enterprise and trade Unionism in crown corporations is effective. Perhaps on an overall basis it should be the same for civil servants. In the brief which we have just placed before you for consideration I think we have indicated various ways in which it could be processed.

Mr. MORE: I would like to say that Mr. Jodoin has a strong clear-cut and rather forceful brief. In view of the assertions made on page 23 in respect of the sovereignty and over-riding authority of parliament, do you not think those assertions are inconsistent with representations for the right to strike?

Mr. JODOIN: No. This is the right of parliament. We are not quibbling with, or discussing, that; but at the same time there is the right of the employee under the law, the enactment of which you gentlemen will contribute to. Where the responsibility of parliament comes in is to say yes, and we hope they would say yes to all the reasonable and legitimate demands their employees would make. They have the right to say no, and then, of course, I presume they would be open to constructive criticism—we do not go for destructive criticism. I do not see the difference there. I do not see why the right of the employees to strike could not be maintained, even with the sovereignty of parliament. The sovereignty of parliament is in granting or not granting justifiable claims or demands.

Mr. MORE: You have not convinced me. I feel it is inconsistent, and that a strike would be against the sovereignty of parliament and the action it might or might not take. I find it hard to view it in any other way. Do you not think there is some significance in the fact that the only representations we have had asking for the right to strike have been from one of your affiliates.

I do not know whether or not we can conclude from that that they had consultation with you and help in preparing their brief. It seems to me that the overwhelming opinion of the civil servants, as given to us through the briefs presented, is that they are not seeking the right to strike. I think it is perhaps significant that your own affiliate is the only one presenting that view.

Mr. JODOIN: I am sure that affiliate has a democratic process and that it was through the opinion of their association they asked for this. That is what we put forward according to the principles and policies of trade unionism. We are not advocating it should be done, but we are saying the right should be maintained in a democratic way of life.

Mr. MACDONNELL: But you did not categorically say you recommend strike action for the police.

Mr. JODOIN: Again, Mr. Macdonnell, on the overall picture we say it is the right of everybody to do that in associations. As I said, this matter could be discussed. Perhaps, instead of imposing it, the associations themselves could discuss it on its merits as was the case in respect of the fire fighters.

Mr. SPENCER: I have one last question. Do you believe that the present bill C-71 is an improvement over the present Civil Service Act and is more palatable to you than the present act?

Mr. JODOIN: I would say that with the constructive criticism we have brought in that it might be a very slight one by the fact that you will now at least consult. I understand this was not in the former act. Now you must consult. We say there should be a grievance procedure and there should be collective bargaining. I would consider this a slight improvement.

Mr. SPENCER: That is a concession.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Since we are going to be back in session at 1:30 I think we might adjourn now. Mr. Jodoin, I thank you, also Mr. Knowles, Mr. Andras and Dr. Forsey for being with us.

—The committee adjourned—

AFTERNOON SESSION

THURSDAY, April 27, 1961.
1.30 p.m.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Would you, Mr. Best and your group, come forward?

We will call the committee to order and ask the representatives of the civil service association to come forward.

Mr. J. C. BEST (*National President Civil Service Association of Canada*): Perhaps I could draw the committee's attention to the fact that the national council of my association has been meeting in the city during the week, and they are all present today to lend us some additional support on the points that we have to make before you. They represent the elected officers of the association whose names appear at the front of our brief, and they are here from all parts of the country.

Mr. CARON: Mr. Chairman, I think it was decided we would go on with the general discussion until we reach part II, which is on page 17. I have a question on page 16 of the brief, article 45. We read there:

> We do oppose the failure to provide proper safeguards to the employee. There are few safeguards against abuse in the act for many of these delegations and abdications of civil service commission control and direction to departments.

Could you explain, Mr. Best, what you mean exactly by this?

Mr. BEST: I think we mean that there is nothing in the act that specifically says that any of these delegated powers oblige the commission to take back these powers if they feel they have been abused. In a sense, as we read the act, it is discretionary; the commission may or may not say to a department: you have consistently evaded the spirit or intent of the act and therefore we feel we must reassume our powers. In the particular sections governing this particular section 39 in our brief, we suggest there be obligation implied on the commission to reassume any delegation of power they feel has been abused or brought to their attention by us.

Mr. CARON: Is section 47 on the same page treated in some other parts of your brief?

> We would prefer to see this legislation delineate the commission's power and duties as follows.

Mr. BEST: It comes later on. They are inherent in the observations and suggestions we made for changes in the actual wording of the legislation. We are not suggesting these seven points be spelled out as a section of the act. We are suggesting that perhaps the act go no further in establishing the commission's power than these seven major points we made.

Mr. CARON: On section 47(4) you have:

> The final authority on grievances unresolved at the departmental level.

Would you prefer that this be changed?

Mr. BEST: That is right; we would prefer to see, in all cases where you have a grievance procedure, that rather than the final disposition of the grievance be within a department, if you did not get satisfaction within the department, the employee or his association could then take the grievance before the commission for final and binding adjudication of the dispute.

Mr. CARON: Would you rather have a tribunal set up especially for grievances, such as they have for the Unemployment Insurance Act?

Mr. BEST: I do not think we would like to use the word "tribunal". We would like to say that there are appeals as we know them, and there are matters which are grievances which are not necessarily under the appeal procedure, and that for ease of administration and for quick resolution of them we would rather see two different procedures. But I do not think we would want to be recorded as saying we would want to see a tribunal, in any sense.

Mr. CARON: You would rather not have a tribunal?

Mr. BEST: Not if it implies a legal procedure. If it means that you have a judicial or quasi judicial procedure, then I think we have some strong reservations about that particular type of procedure. The difficulty is—and it was a point made when they appeared—that without having regulations which are going to regulate and put forward procedures followed under an act of authority, it is difficult to make any observations whatever. While the regulations are not within the prerogative of this committee we feel we will have to reserve our specific comments on machinery until we see the regulations and have an opportunity to discuss them with the commission and with those who will be responsible.

Mr. CARON: I see.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Is there any other question on part I of the submission? If not, we will move to part II.

Mr. PETERS: Before we leave page 16, there is section 46:

> Lastly, there is the failure to effectively come to grips with the problem of divided power and responsibilty between the commission and treasury board in money matters. From our viewpoint we would prefer to negotiate directly with those who represent fiscal authorities.

In what manner would we set up an organization under this act that would be in a position to represent the government in its final analysis?

Mr. BEST: I think our concern is, we would say, that the government would, under the legislation leave to us the right as to whom we would choose, rather than we would leave it to the government. The point is that the people who do represent the government have a degree of authority consistent with the rights of parliament to vote money, and we know these people and what the limits of their authority are.

As to whom we are suggesting, if you read underneath in clause 7 you will see it leaves it open to the government to choose whom it wishes to represent it. I think it is perfectly clear that we do not mean the commission in paragraph 46, that we would never be so presumptive as to say whom the government should get to represent it in negotiating with us or with any other association.

Mr. PETERS: In the last pay increase which civil servants received last year, with whom were the negotiations conducted at that time; and why was there not a pay increase arrived at, that would cover all civil servants—why was not a satisfactory system arrived at last year?

Mr. BEST: There were no negotiations. There were recommendations by the civil service commission under the terms of clause 11 of the present act. Presumably these recommendations were to the appropriate authority in the cabinet, the Minister of Finance, in a matter such as this. It must be kept clearly in mind that the present act only requires the commission to make recommendations. It does not say that they must be accepted. It leaves this authority with the governor in council. There were no negotiations; we made many points, we held discussions; we started with the civil service commission and we finally wound up the discussions with the Minister of Finance; but at the point the increases were announced, they were accepted by arrangement with the commission. We only knew what was involved in dollar terms for the various classes some 12 to 24 hours before it was released for public information. There were no negotiations in the true sense of the word.

Mr. PETERS: Does the new act we have before us contain any formal or more satisfactory arrangements in regard to pay, hours of work and other types of negotiation than were in the previous act?

Mr. BEST: I assume you are referring to the draft which is before us, and we have to say we do not think so—and that is the reason for the basic submission in certain of the points we have made there. We do not say that this is a better system than is shown in the other one. It may formalize certain procedure or permit that to be formalized, but it is certainly very loose and open to interpretation, by whoever has to or wishes to interpret it, in whatever way he chooses.

Mr. PETERS: In what respect? You say you first negotiated in this case and made suggestions to the commission, and then finally you did have some negotiations with the finance minister and the treasury board.

Mr. BEST: I would not characterize them as negotiations. We discussed everything, there were no negotiations involved whatever, in the true sense of the word. We told Mr. Fleming what we thought should be done, we told the government this during the summer and in the early fall of 1959; and as

you know, regardless of what we said, there was no increase. We kept making presentations, representations and what have you, throughout the winter of 1959 and early in 1960. The first we knew of the government's salary policy was when the Minister of Finance announced in his budget that certain increases would be coming through and that the effect would be to cover practically the whole service by the fall of 1960—which, I might add, was lived up to.

Mr. PETERS: If the committee saw fit to put in a formalized procedure for negotiations on working conditions, hours of work, fixed pay, et cetera, is your association in a position to present representations on the basis of a settlement—in other words, if agreement were arrived at, if the machinery were available, is your organization in a position to accept or—

Mr. BEST: Are you referring to the internal constitution and procedures of the organization, or are you referring to the machinery itself?

Mr. PETERS: I am referring to the machinery itself.

Mr. BEST: First of all, we have been very careful in dealing with clause seven to indicate that what we wanted to have incorporated in the law are certain basic fundamentals such as the right to arbitration, where no agreement could be reached.

I submit that it would be most unwise—and I ask the committee's indulgence—to have a discussion of the machinery itself at this particular time. What we are interested in at this time is not the machinery itself, because there are many other people involved besides ourselves; what we are interested in is having sufficient power to allow a workable procedure obviously modelled on the British procedure, to be worked out here in Canada.

We feel it would be presumptive on our part at this time to speak of the machinery, because there are other organizations in addition to our own to be considered.

Mr. MACDONNELL: Without getting involved in a piece of semantics, I am not quite clear as to how the witness defines the word "negotiation". It would occur to me that when you have communications going back and forth, that that in a sense, is negotiation.

Mr. BEST: In our view we feel that negotiation means that when two interested parties have an issue at stake, they sit down and discuss it.

Let us assume that the salary for a clerk of a certain grade is $3,000. The Minister of Finance, or his representative, may say to us: "We do not feel that an increase is required." We might say: "We feel the person should be paid $3,300."

Perhaps after we have put forward a certain evidence which might suggest that $3,100 was an agreed upon amount, eventually between the $3,000 and the $3,300 we might come to an agreement between the government and ourselves, that, in view of all the factors, this is a fair amount; and it might be said that the government would then undertake to pay to the grade in question that particular salary.

Our point is that we never know what consideration is given to our viewpoint until there is a time of public negotiating. If it may be accepted in part, or in whole, or not at all, we do not feel that that is a system of negotiation.

Mr. KEAYS: On page 14, paragraph 36, I read:

> —we again reiterate our view that within the framework of a parliamentary democracy there can be true and meaningful direct negotiation between employer and employee.

Am I to understand by this that the civil service association differs with the views that have been expressed—in a few other briefs which have been presented before this committee? And if so, may we have the reasons why?

Mr. BEST: I am not aware of our differing with other presentations.

Mr. KEAYS: You would not go as far as others have expressed?

Mr. BEST: Well, I think our presentation stands on its own feet. We are aware of what other organizations were asking. But our view is that we can have a system of negotiations and arbitration which, in our considered view, would be most acceptable if worked out properly for the civil service of the country.

We can express the viewpoint for that category, but we cannot go beyond it. We cannot say anything more than we have said there. But as to other representations, of course I feel that they have their viewpoints to put forward, while we have ours. We stand for a system of negotiation and arbitration.

Mr. KEAYS: I think the committee would wish to be informed as to the views of the different groups who appear here. You are in defence of your views, while others have their own viewpoints. That is why we would like to have an explanation as to why you would not wish to go as far as others have asked to go.

Mr. BEST: First of all, I think we are in quite good company. I think, from the viewpoint of the civil service, the representations made on behalf of the organized civil service are quite clearly allied to our own views. We may differ from them in detail, but not as to principle.

As to the others, I think we were asked the other day about our feeling concerning work stoppage, or withdrawal of service, and we indicated this was not in issue so far as we were concerned. Our membership never made it an issue and therefore it did not in any way impose an obligation on us. In view of this we did not feel it was a basic issue for us to discuss. It was not a matter of our organizational policy and we framed our submission on the basis of our organizational policy.

Mr. PETERS: Would your organization have any difficulty operating if instead of the Civil Service Act we implemented the Industrial Relations and Disputes Investigation Act which now applies to many of the allied fields of the civil service such as the crown corporations.

Mr. BEST: I do not profess to be an expert on the Industrial Relations and Disputes Investigation Act. I am reasonably familiar with it, however, as an employee of the Department of Labour. I would submit that the Industrial Relations and Disputes Investigation Act first of all provides for clear definitions of those for whom you may or may not bargain. I would submit that in a highly classified and stratified civil service that it would be very difficult to decide who is a proper person to come under a bargaining unit. Secondly, I would say that when it came to an issue of trying to carve out bargaining units the government could challenge who would come under the bargaining unit. Some persons higher up are not necessarily supervisory employees and do not perform the management function they would in industry, and yet other persons at quite a low level actually are in a position to recommend the retention or advancement of those who come under them.

I think our concern, first of all, is that the Industrial Relations and Disputes Investigation Act was designed for areas where you can cut out clear cut bargaining units and can get your supervisory and confidential employees separated. I do not think that can be done in a civil service. I do not think this is workable legislation for the civil service.

Mr. MORE: In paragraph 31 there was some criticism of the commission's failure to accept responsibility. I take it that the recommendations in paragraph 47 are to lay out the responsibility of the commission and to provoke them to action. Would that be on representation by either party? Would you expect them to accept your representation without judging whether there had or

had not been failure at the departmental level? Would you make it obligatory as a matter of representation. If in your judgement there had been a failure, do you want the power to be such that they must act if you make a representation?

Mr. BEST: No. I think the only obligation they would have in respect of our representation would be to investigate it and attempt to bring forth the true facts of the situation. We might flatter ourselves by thinking we are right, but like everybody else I suspect there are times when we are wrong in our facts. If the commission discovers there have been abuses, regardless of who brings it to their attention they will have these powers. It is not a question of doing it without an investigation.

Mr. MORE: There was no mention of investigation.

Mr. BEST: It was such an obvious factor to us that we did not feel it needed to be specified in the brief.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any questions on part II commencing at page 17 and running through to page 27?

Mr. MACRAE: Mr. Chairman, I would like to ask Mr. Best a question in respect of section 52 on page 17 in which he quotes a paragraph from the royal commission on administrative classifications in the public service, 1946. It says "we see no reason why the staffs of all departments and of all agencies . . . ". I presume Mr. Best has given this considerable thought. Do you mean there just agencies of corporations or do you have in mind the agencies of proprietary corporations and other agencies in this particular case.

Mr. BEST: I would say that we are not at all concerned with many of the proprietary corporations, although I should point out that we actually hold, under the Industrial Relations and Disputes Investigation Act collective bargaining agreements with five of those proprietary corporations, and that we represent some or all of their employees in specific areas. We feel that as wide as possible an application of the Civil Service Act should be made. Over the years I think there has been a tendency to exclude from the provisions of the act certain of the operations of the government service which do not require such exclusion. We would go along with the recommendations in that section of the Heeney report. There are many of these agencies. They are not proprietary corporations, and they do not operate in the normal business way. If we are going to have the concept of one civil service, and if you are going to allow or suggest that these people be allowed to participate in civil service promotional competition, the reverse should be true, and the act should have everyone working on the same basis.

Mr. MACRAE: I must say I agree completely with what you have said, but,—and I am sure you will accept this in the spirit in which it is meant—I think you could have expressed it much more directly in your brief.

Mr. BEST: Well, all I can say to that is that we have been quite strong in some of our points and, perhaps, we should lean a little on the side of leniency in connection with this particular point.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Have you a question, Mr. Keays?

Mr. KEAYS: In connection with 49 and 50, are there many people who are affected, or who do work on a rotation basis?

Mr. BEST: Yes. May I at this point correct an impression that was left this morning? The impression was made that the civil service is made up of white-collared clerical employees. Although this is something that might have been true many years ago, it is not true today. Today, you probably have every industrial category known. There are many operating staffs. The postal employees are all operating staff, and they are the largest single

group. Employees in many hospitals are on shift rotation basis, as are many employees in the Department of Transport, such as radio operators or traffic controllers. There are many categories which must work around the clock on a shift basis, three shifts 24 hours a day at 8 hours each, or whatever the requisite hours are. I am unable to give you a breakdown of the percentages, but there certainly would be many thousands of employees who do work on a rotational basis. There certainly are a large number of people involved.

Mr. KEAYS: There are a considerable number.

Mr. BEST: Yes, considerable.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Has any other member a question to ask?

Mr. CARON: Yes, Mr. Chairman.

May I refer to (1)(Q) on page 3 of the bill which reads as follows:

> "Prevailing rates positions" means positions declared by the governor in council under subsection (5) to be prevailing rates positions.

Do you not think that this should be more clarified as to what kind of positions should be prevailing rates positions, rather than being declared by the governor in council?

Mr. BEST: I would suggest that the reason we are happy about the change in that clause is because it is directly related to clause 5, and it gives to the civil service commission the sole right of recommending what positions should or should not be designated. As it appeared originally in bill C-77, there was some concern on the part of many that this could lead to the classification of positions without justification. We would feel that the commission is the responsible agency for establishing classifications and, if other improvements in the bill, particularly consultation and negotiation, followed through, there would be adequate protection in clause 5. I do not think you can read one in isolation from the other. It gives the power to the commission. The governor in council may act only on the recommendation of the civil service commission, and we would have the right to make representations under that section.

Mr. CARON: You are satisfied the way it is?

Mr. BEST: I think we would be. We complained about the original clause, and it has been changed in bill C-71.

Mr. KEAYS: Under paragraph 50 you claim that the Department of Justice has rendered an opinion that the Civil Service Act would not permit the payment of such shift differentials.

Mr. BEST: That is correct.

Mr. KEAYS: What do you suggest?

Mr. BEST: The Department of Justice decision was based on the Civil Service Act we are working under presently. We want to request that the committee be satisfied that there is an adequate section in this act to provide it. We are not certain that it has been suggested that there is such a section.

Mr. KEAYS: You do not think that section 5 of the act covers it sufficiently?

Mr. BEST: There are two different issues here. One is payment of shift differentials to classified employees. Section 5 deals with the designation of people who are on prevailing rates as classified employees, which brings them under the act. Mr. Caron was referring to section 1(Q) of the bill, and not 1(Q) of our presentation.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Have you a question, Mr. Martel?

Mr. MARTEL: I would like to ask a question in connection with your paragraph No. 60 on page 19. I will read the part I have in mind:

> It seems very unfair that military or R.C.M.P. personnel, many of whom have received expert training at the government's expense, should be permitted to prejudice the promotional opportunities of career civil servants.

My question is this: Have you examples, or are you aware of certain cases where there has been some kind of specialized training for civil servants at government expense for promotional opportunities outside the R.C.M.P. or military service?

Mr. BEST: There are very definite regulations laid down for educational leave in the government service, but as to how many people are granted this privilege, I do not know. However, the basic factor that must be kept in mind is that the provisions of the regulations stipulate that such leave, with or without pay, or with partial pay, may or may not be granted, depending upon whether the course the person wishes to take is of advantage to the government service. Our point is that it is a regular and normal part of the operations of the military service that people are sent on courses. In this regard, the services are far ahead of us, and, until there is this equating of the system, I think it would be unfair to allow people who have had the advantage of this, because of a condition of employment, to compete with others. However, if you moved the government service's training up to their level and provided the same opportunity as in the armed services, it would weaken our argument considerably.

Mr. MORE: This is a completely new section, and is not just maintaining an already vested right.

Mr. BEST: It is completely new. At the moment, the armed forces, as well as other personnel, are not considered to be civil servants for promotional competitions. However, they have the same right as others in connection with an open competition.

Mr. MARTEL: If I understood correctly, there are not very many civil servants who go for training at government expense. Of course, I suppose they might go at their own expense. However, they would require permission to go on leave.

Mr. BEST: It is my opinion that the number is quite small.

Perhaps I should add one more thing here. Such training usually is not outside standard university courses which, of course, means that it is restricted to a relatively small number of people—those who have university qualifications or a degree.

Mr. HICKS: In connection with these university students who go there to obtain further training on part-time pay, no pay or full pay, is it not right that when they come back they are supposed to start in their old position again; in other words, they promise that they will return to Canada and work after they have gone to the United States?

Mr. BEST: I believe that if all or part of their salary is paid, they must give an undertaking to return for a certain length of time to the government service.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any further questions on part II of the brief before proceeding to part III?

Mr. PETERS: What percentage of the R.C.M.P. is in the civil service?

Mr. BEST: I am afraid I could not tell you that. There are many categories in the R.C.M.P.

Mr. GOUGH: The clerical and stenographic staff in the R.C.M.P. already come under the Civil Service Act. The uniformed personnel of the R.C.M.P. do not and there is, I believe, another category which is also excluded from the act at this particular time.

Mr. BEST: I might add that they are presently in the process of offering positions to certain people, and I do not know if this is what was behind Mr. Peters' question. Normally, the R.C.M.P. would have a percentage of civil servants.

Mr. PETERS: I am very interested in the fact that there is a problem in relation to the training of civil servants because of the lack of premises. What suggestion are you making, Mr. Best, that would make it possible for us to provide further training for civil servants so that it would be more on a par with the training that is given in other organizations, like the military and R.C.M.P.?

Mr. BEST: I would not be so certain that this is particularly a need which is appropriate to the Civil Service Act. I think, first of all, the biggest drawback to many of these training courses is that the funds for training courses are limited at the moment. In our presentation to the Glassco commission we suggested one thing: that there should, perhaps, be serious consideration given to forming a civil service staff college. In doing that, we are not referring to college in the university sense. We are referring to it in the sense of a college where, perhaps, you could have one or two-year courses for people to attend specialized instruction in such things as supervisory training, management training, and administration. I am speaking about administration in general terms, in the sense of government administration and, in particular, we stressed that admission to such a college should be competitive, on the basis of examination. As part of its setting up, at least a goodly percentage of the people admitted should not fall too far below university level.

I also think one of the things we failed to mention, and which we feel, is an important requirement, namely, that the government should get involved in an apprenticeship program for its own employees. There is no such program now and this is important, particularly if one looks at the case of prevailing rate employees. The government employs hundreds of them, but it will employ none but trained men.

If a man is working as a labourer and wishes to become a carpenter he would have to leave the government service in order to get the necessary training to qualify as a carpenter. We have had the same situation with stationary engineers. In that category, it may be necessary for a man if he wants to reach a higher grade to leave the service, get the necessary training in private industry and then get re-admitted to the service at a higher level. The government sets out the professional standards for the classes of workers it employs, but it does not necessarily provide the opportunities for persons to qualify for these jobs.

Mr. CARON: On page 3 of the bill, Mr. Best, section 3, subsection 2, states:

> The deputy head may authorize any person employed in his department to exercise any of the powers, functions or duties of the deputy head under this act.

Do you believe that would be better if it were left to the civil service commission rather than to the decision of the deputy head?

Mr. BEST: The point here concerns delegation of authority and I think you have to leave the right to the deputy head. He is the one who will know best how to handle any particular problem of delegation and I do not think

you can bring that to the civil service commission. The deputy head knows who is best qualified to handle a certain function.

Mr. CARON: What would you say to the matter being submitted to the commission before the deputy head, before it is decided upon?

Mr. BEST: I would have some concern about that from the administrative point of view. You see, quite frankly, you have 27 departments and it would be quite a job for the commission to approve in each case the delegation of the functions of an officer.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any further questions?

Mr. HICKS: I should like to go back to number 60, on page 19 of the brief, where it states:

> It seems very unfair that military or R.C.M.P. personnel, many of whom have received expert training at the government's expense, should be permitted to prejudice the promotional opportunities of career civil servants.

Do you not think that some of these military men, who have received this expert training, should be settled in some of these positions? Do you not think that expert training is the very reason why this is done?

Mr. BEST: I would say that would be a fair observation, conditional on the points I made about providing equal opportunities for people who join the civil service and make it their career. In fact, this expert training is one of the factors which should be considered for retaining officers in the armed forces. I do not think the country or the armed forces can afford to lose these people, especially when they have got to the point where they are experts. In these days the forces require highly skilled technical men. That leads to the point where the physical requirements for soldiers and airmen are not so high as they were, but yet every week we read in the Ottawa papers of colonels retiring at the ages of 45 or 46. Until there is some change in the system, the forces should give consideration to retaining their senior officers at least, and they may change their viewpoint on this.

Mr. MARTEL: In part II, page 23 of your brief, you refer to negotiations. In the brief presented by the Canadian labour congress someone took objection to the use of the words "appropriate organizations of government", and especially to the word "appropriate". I find that on page 5 or 6 of their brief, and then they went on to try and define the word but, in fact, they have used it themselves later on in their brief. On page 13 they state:

> In view of the considerable diversity of organization and the variations in approach to them, some formalized procedure for recognition would appear to be necessary.

As I said, they use the word "appropriate" themselves even though they have taken objection to it. This refers to the different associations that could take part in negotiations.

Mr. BEST: We are being presumptious in assuming something, but we feel we are an appropriate organization to be included under this clause. As members of the national joint council and having the right of check-off we feel the clause, as it is, includes us, but perhaps the organization this morning felt they were being excluded. I would hesitate to presume to suggest to them, but we feel we are an appropriate organization and we think the point has been fully demonstrated.

Mr. MARTEL: Then you think the word "appropriate" is all right?

Mr. BEST: We think it covers the situation and we would not recommend that it be changed.

The ACTING CHAIRMAN: Are there any further questions on part?

Mr. CARON: Clause 6 of your brief, Mr. Best, on page 20, paragraph 65, says:

> The proposal in Bill C-71 takes from the civil service commission the authority or right to make such reports except at the request of the deputy head.

Would you explain what you meant by that?

Mr. BEST: We would like to see the civil service commission in a position to make any report, if it so chooses, on the organization of the department to the governor in council and probably, and more important, particularly to parliament. It means that the commission, even if it knew that the organization of the department was improper or had not been set up in the proper manner under this clause, and could not make such a report in any formal way whatsoever, that the only way would be to be invited by the deputy minister of the department. We think this is a very bad principle; it is quite contrary to the whole idea of an independent civil service commission.

Mr. CARON: In accordance with 1001 of the Heeney report—maybe I am making a mistake—but I found somewhere in the Heeney report it is said that they should make a report every five years, not necessarily on request.

Mr. BEST: We feel very strongly that there should be reports made by the civil service commission. We would submit that the only departments that might be concerned about this are those which might have something wrong with their organizational structure. Whether or not there are any of these I would not be prepared to say now, but there seems to be no reason why, as long as it does not impede the administrative efficiency of the department, the civil service commission could not make any report if it so chooses. The Heeney report did recommend that a report be made every five years, but it is not included in the bill.

Mr. CARON: Would you support that?

Mr. BEST: We certainly would support 3006, with the suggestion that it be reduced to two years instead of five years.

The ACTING CHAIRMAN: Are there any other questions? Mr. Best is going down to Nova Scotia. Are there any questions?

Mr. CARON: I have quite a few more questions which might come up, and I do not think we could finish it today. What do we have tomorrow?

The ACTING CHAIRMAN: We have a meeting laid on for tomorrow at 9.30.

Mr. CARON: Clause 7 will be a long one to discuss.

Mr. BEST: We would be available to the committee any time next week at their discretion, if that is satisfactory. I shall be back early in the week.

Mr. MORE: I think, Mr. Chairman, we should adjourn at this time and leave it for the steering committee to arrange a further meeting.

The ACTING CHAIRMAN: Thank you, Mr. Best.

—The committee adjourned.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

FRIDAY, APRIL 28, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing the Civil Service Federation of Canada: Mr. F. W. Whitehouse, President; Mr. W. Hewitt-White, First Vice-President; Mr. E. K. Easter, Director of Research.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

24977-1—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*),
Campeau,
Caron,
Casselman (Mrs.),
Hicks,
Keays,
Macdonnell,
Macquarrie,
MacRae,
Martel,
McIlraith,
More,
Peters,
Pickersgill,
Richard (*Ottawa East*),
Roberge,
Rogers,
Smith (*Winnipeg North*),
Spencer,
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, April 28, 1961.
(9)

The Special Committee on the Civil Service Act met at 9.30 a.m. this day. In accordance with a decision of the Committee on Thursday, April 27th, Mr. Heath Macquarrie presided as Acting Chairman.

Members present: Messrs. Caron, Hicks, Keays, Macdonnell (*Greenwood*), Macquarrie, MacRae, Martel, McIlraith, More, Richard (*Ottawa East*), Rogers, Spencer, and Tardif—13.

In attendance: Representing the Civil Service Federation of Canada: Mr. F. W. Whitehouse, President; Mr. W. Hewitt-White, First Vice-President; Mr. Wm. J. Bagnato, Executive Secretary; Mr. E. K. Easter, Director of Research; Messrs. W. Girey; E. Highfield; D. V. Paterson; J. Roney; J. Henderson; G. Charlebois; J. Belland; and F. Standring.

Representing the Association of Canadian Postal Employees: Mr. J. E. Roberts, General Secretary-Treasurer; Mr. G. Coté, National Secretary; and Mr. R. Otto, Assistant National Secretary.

The Committee continued its study of submissions received respecting Bill C-71, An Act respecting the Civil Service of Canada.

Representatives of the Civil Service Federation of Canada were recalled.

Messrs. Whitehouse, Hewitt-White and Easter were questioned respecting the subject-matter of the Federation's submission, which was presented on April 13, 1961. (See *Minutes of Proceedings and Evidence No. 2*).

The examination of the witnesses continuing, at 11.00 a.m. the Committee adjourned to the call of the Chair.

E. W. Innes,
Clerk of the Committee.

24977-1—1½

EVIDENCE

FRIDAY, April 28, 1961.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Gentlemen, the meeting will come to order. I will ask the representatives of the civil service federation of Canada to come forward. If any member of the committee has any questions to ask of Mr. Whitehouse, Mr. Hewitt-White or Mr. Easter, this is the golden opportunity.

Mr. CARON: Yesterday, Mr. Macdonnell did not quite think that the difference between "consult" and "negotiate" was clear enough. Would you explain what you mean by this?

Mr. FRED W. WHITEHOUSE (*President, Civil Service Federation of Canada*): Mr. Chairman, Mr. Hewitt-White is what we call our expert in the federation in respect of the Civil Service Act. This is one of the matters with which he is very familiar. I would ask him to answer the question.

Mr. HEWITT-WHITE (*First Vice-President, Civil Service Federation of Canada*): Mr. Chairman and members of the committee, I am sorry my president has referred to me as an expert, because you know the old definition of an expert—"ex" is a has-been, and "spurt" is a drip under pressure. I feel under pressure.

We consulted the dictionary on the difference between the words "consult" and "negotiate". The following is from the dictionary:

> Consult: to ask the advice of; to have regard to; consider; to compare views; to take counsel with.
>
> Negotiate: to treat for, obtain or arrange by bargain, conference or agreement; to treat or bargain with others; to accomplish or cope with successfully.

So we think there is a difference between consult and negotiate.

I think it is interesting that in Professor S. J. Frankel's very recent study of arbitration in the British civil service he notes there is a distinction. In the reprint from the issue of *Public Administration* of the autumn of 1960 he states that there is a distinction between the agreements of non-arbitrable matters in the United Kingdom—and he puts "consult" in brackets—and those of arbitrable issues—and he puts "negotiation" in brackets. There does seem to be some distinction in practice under the British system between consultation and negotiation.

Mr. CARON: Are you under the impression that clause 7 of bill C-71 just gives you the right to consult more than to negotiate.

Mr. HEWITT-WHITE: Yes. We are under this impression because of our understanding of the word "consult". There is consultation going on all the time so far as that goes, to a certain extent at any rate; particularly in the national joint council. We do not feel reassured, by what is in here, that this envisions any extension of that.

Mr. MORE: I take it that you would be satisfied if the word meant what the chairman of the commission interpreted it as meaning.

Mr. HEWITT-WHITE: As I recall it, the chairman of the commission indicated that in his view there was very little difference between the words "consult" and "negotiate". The question in our mind is: does he interpret "negotiate" as "consult" in the dictionary definition, or does he interpret "consult" as "negotiate" in the dictionary definition. If it is the latter, we would feel more reassured.

Mr. MORE: You want it clearly indicated that you have the right to negotiate.

Mr. HEWITT-WHITE: That is right.

Mr. CARON: Would you explain what you mean by the following words in the second paragraph on page 2:

> ... the civil service commission ... should make its findings available on an equal basis to both the government and the staff associations.

Do you mean by that parliament, or just the government?

Mr. HEWITT-WHITE: I certainly do not see any objections to the findings of the pay research bureau being made available to parliament, because I think this is a matter in which the taxpayer is very interested. Our feeling was that it would make for a better basis of negotiation if the findings of the pay research bureau were made equally available to the employer on the one side and the employee representatives on the other as a basis for negotiation. They would then be negotiating on the same basic data. We felt that if this pay research bureau was completely independent there could never be any question there was any bias on the part of the findings of the bureau.

Mr. CARON: Would you be inclined to believe that the civil servants are employed by the government or by parliament? There is quite a distinction between the two.

Mr. HEWITT-WHITE: That is a pretty technical question. I do not know that I am qualified to answer it. I would think it is rather a legal question. It appears to us, however, that civil servants are employed by the government; that while parliament makes the laws and certainly has to approve of any fundamental changes in the laws which affect civil servants, the real employer is the government since it is the body which must decide what it can afford to pay, subject of course to the will of parliament, because parliament has to pass these estimates which include the salaries. But we look upon the government as management.

Mr. CARON: As the real employer?

Mr. HEWITT-WHITE: As management.

Mr. MACDONNELL: I would like to ask a question about the pay research bureau and what is said about it on page 2. Reference is made to the pay research bureau becoming entirely independent of any agency of government. I find that difficult to understand. Research is research: you are looking for facts. What do you mean by its being independent? There is a reference to the findings of the pay research bureau. I am not sure what exactly is meant by "findings". That would seem to suggest that not only were they doing research as to facts, but were making recommendations for action. Do they, in fact, do both?

Mr. HEWITT-WHITE: No, Mr. Macdonnell. By "findings" we simply meant the results of their research.

Mr. MACDONNELL: A report of facts?

Mr. HEWITT-WHITE: Facts.

Mr. MACDONNELL: Then would you say a word as to the phrase "becoming entirely independent of any agency or department of government". Surely people who are doing research are looking for the facts?

Mr. HEWITT-WHITE: Yes, but—

Mr. MACDONNELL: In what sense could they be dependent?

Mr. HEWITT-WHITE: In the sense of being directed as to what to look for.

Mr. MACDONNELL: Is that the case now?

Mr. HEWITT-WHITE: Well, at the present time, I do not think I could answer—

Mr. MACDONNELL: I mean it seems almost like a contradiction in terms. You have a research bureau and then you tell them what to look for. Is that the suggestion?

Mr. HEWITT-WHITE: At the present time we have a committee on which the staff side is represented, an advisory committee which we certainly think helps so far as this is concerned.

Mr. E. K. EASTER (*Secretary of Direct Affiliates, Service Federation of Canada*): I should like to explain to Mr. Macdonnell that at the present time the pay research bureau is independent in so far as the gathering and processing of data is concerned. However, they are under the establishment of the civil service commission and they are directed as to their projects on a priority basis by an advisory committee. Now, what we should like to see is something like what they have in the U.K., that is, that they become an independent bureau with their director responsible to the Prime Minister as is the case in the U.K. The Prime Minister actually appoints the director in the United Kingdom and the bureau is a completely independent unit in the sense that it does not belong to any establishment. I think that just about gives you what we are looking for at the present time.

Mr. WHITEHOUSE: And the findings of that body are available not only to the government but to the representatives of the employees.

Mr. EASTER: That is so at the present time but we must look at it from the point of view of protecting the findings of the pay research bureau. There cannot be any suspicion on either side that the pay research bureau is not independent. I am convinced that the pay research bureau is independent at the present time but it would be in a much better position if it were taken out from under any agency or body.

Mr. WHITEHOUSE: There is no reflection on the pay research bureau as presently established, in so far as its integrity is concerned, but it is under the establishment of the civil service commission and it turns its findings over to the civil service commission. I may say that it has done a wonderful job.

Mr. MACDONNELL: To the civil service commission only?

Mr. WHITEHOUSE: That is right.

Mr. ROGERS: Are the findings turned over to the staff associations also?

Mr. EASTER: Yes, they are. There are certain bodies designated by the Minister of Finance and they receive copies of the pay research bureau's reports.

Mr. MORE: Then the reports are turned over to both parties?

Mr. HEWITT-WHITE: That is the practice at the present time.

Mr. MORE: Do I take it that the research bureau is independent and both bodies receive its reports?

Mr. EASTER: We feel it is independent but we would like to have it under another establishment.

Mr. MORE: But both bodies do receive their reports now?

Mr. HEWITT-WHITE: On a confidential basis.

Mr. WHITEHOUSE: The point is that we are not able to negotiate on the findings.

Mr. HEWITT-WHITE: That is the point we want to make. We are not able to negotiate on the basis of these findings. They are given to us on a confidential basis.

Mr. MORE: But that has nothing to do with the establishment of the pay research bureau?

Mr. WHITEHOUSE: Except it would be all part of the picture if we obtained what we want to get in the future that would be direct negotiation with the Minister of Finance and the treasury board and also have the pay research bureau establishment in such a position that its information would be available to both sides.

Mr. MORE: I think there has been some misunderstanding about this. In my mind I felt the great objection during the past year or two had been that reports of the pay research bureau were not available to staff associations.

Mr. HEWITT-WHITE: I think I can clear up that difficulty, Mr. More. The report of the pay research bureau—or the reports, because very often they have reports on various different classes—are made available on a confidential basis to us and are also made available to the civil service commission. I believe they are also made available to the treasury board. Then, the civil service commission, on the basis of a pay research bureau report and other considerations makes a confidential report to the government recommending salary scales. That report, however, is the one which is not made available to us and in 1959 that was one of the big objections we had. We were not able to see what the recommendations were and, in fact, that report was not even tabled in parliament.

Mr. MORE: Just to make it clear, if you remove the civil service commission from between the pay research bureau and the government and get the right to negotiate direct, as you are seeking in your brief, then you will be perfectly satisfied with the pay research establishment and with the work it has done and is doing? Am I correct in assuming that you have no other criticism of the pay research establishment or the work it is doing. It is the intermediary form of report and not being able to negotiate on their findings to which you object?

Mr. HEWITT-WHITE: Yes.

Mr. WHITEHOUSE: That is what I tried to clear up a few minutes ago.

Mr. MCILRAITH: The pay research bureau report to the commission. You do not get that at all, as I understand it, at the present time?

Mr. HEWITT-WHITE: Yes, we get the findings of the pay research bureau.

Mr. MCILRAITH: You get them?

Mr. HEWITT-WHITE: They are made available to us, on a confidential basis.

Mr. MCILRAITH: And they are separate from the recommendations of the civil service commission to the government as to pay?

Mr. HEWITT-WHITE: That is correct.

Mr. MCILRAITH: Do you get the recommendations of the civil service commission to the government later?

Mr. HEWITT-WHITE: No, not unless the government feel they should be made available. In 1958, when the commission recommended against any increase, its recommendation was made available.

Mr. MCILRAITH: That is my point.

Mr. HEWITT-WHITE: But in 1959, when there were recommendations for increases that report was never made available.

Mr. MCILRAITH: Not made available to you or to the public?

Mr. HEWITT-WHITE: That is correct.

Mr. McILRAITH: My understanding of what you are saying now is to have the pay research bureau report—the first one which we are discussing —made available to both parties so that it could be used as the basis for your negotiations?

Mr. HEWITT-WHITE: That is perfectly correct.

Mr. McILRAITH: There is one other part of your brief, arising out of this, on which I want to question you. It has to do with page 2 where you go on to say:

> We do not feel that an independent civil service commission, whose primary function must be to maintain the merit system, can successfully perform the function of representing our employer in negotiations on matters which may result in increased costs to the taxpayer.

I take it that your concern is the concern of maintaining at all times the independence of the civil service commission, which it has now but which may be in jeopardy in the future if the practice now existing in relation to pay research bureau matters and pay increase recommendations persists over a period of time in the future. Is that the area of your concern?

Mr. HEWITT-WHITE: I think that is correct. Certainly I think it is rather difficult, in a situation such as we had in October, 1959, where the commission makes a report and it is not made available, for the commission, under these circumstances, to maintain the appearance of complete independence before everyone. Now, I am not saying that they are not independent. All I am saying is that it becomes a little difficult.

Mr. McILRAITH: Difficult to maintain the appearance of independence?

Mr. HEWITT-WHITE: Yes; and I think this is borne out by a discussion that took place just ten days after that day, October 13, 1959, when the government informed us that there would be no increase.

Now, I am going to quote from the proceedings of the eleventh annual conference of the institute of public administration of Canada, held in 1959. This conference took place in Toronto and it incorporated a very interesting discussion period at which two papers were presented on the Heeney report. I certainly would recommend this as good reading for members of the committee, because we had Mr. Pelletier of the civil service commission explaining the background to the Heeney report, and Colonel Lalonde, the Deputy Minister of Veterans Affairs, pointing out certain difficulties from the administrative point of view.

Mr. MORE: What is the name of the report?

Mr. HEWITT-WHITE: It is "Proceedings of the eleventh annual conference of the institute of public administration of Canada."

Mr. WHITEHOUSE: The conference of 1959.

Mr. HEWITT-WHITE: The pages of reference are 63 to 86. A very interesting discussion took place. I refer to this show that this concern was not just all on our side. At this conference there were representatives at all levels of government, municipal, provincial and federal. Also, universities were represented.

In the discussion period, I asked this question—and remember that this took place just ten days after the decision of the Minister of Finance, and that the matter was fresh in everybody's mind. I asked:

> Mr. W. Hewitt-White: What bearing on the merit system have the recent decisions of the government with regard to the recommendations of the civil service commission pertaining to civil service salaries?

Mr. Pelletier replied:

> Mr. P. Pelletier: The principles involved are quite simple and they have been applied in the recent dispute. The civil service commission is by law responsible for making recommendations on pay. It has made those recommendations on criteria which are familiar. It is exclusively and should be the prerogative of the government to decide whether they will or will not accept the recommendations—

That was perfectly true under the Civil Service Act as it then was. Then a little later, Mr. W. J. Bagnato, Executive Secretary of the Civil Service Federation, asked this question:

> Mr. W. J. Bagnato: Is the employee participation recommended by the commission in determining salary and conditions of employment sufficient to ensure the acceptance of any subsequent recommendation by the government?

From our point of view this was a very crucial question. Mr. Pelletier replied:

> Mr. P. Pelletier: No. Once the commission's recommendations have been made, it is simply up to the government to make the decision and this is perfectly right and must continue because they are responsible for the conduct of the affairs of this country and if they decide, for reasons that have nothing whatever to do with the factors that we have taken into account, that an increase in pay is not warranted or indeed that a decrease is warranted, that is their affair, not ours.

That is why we think we should negotiate with the people who do make the decisions. Later on Professor J. R. Mallory, Chairman, Department of Economics and Political Science, McGill University, said this:

> Prof. J. R. Mallory: It seems to me that, except under conditions that are impossible to expect in this country, the civil service commission cannot in the mind of the public or the civil service seriously play the role of a dispassionate third party in discussions between the civil service and government.

And Mr. P. Pelletier said:

> Mr. P. Pelletier: In the first place, the civil service commission I will admit, is an arm of government in the widest sense of that word, but the civil service commission is not an arm of the cabinet of the executive. We are an arm of parliament not an arm of cabinet, which makes a vast difference. Second, it is quite true we have rejected, rejected is perhaps a strong word, but we have not recommended collective bargaining for a number of reasons. Third, in the search for a neutral party to determine facts, I fail to see under the present set up, how there can be a body more neutral than the civil service commission, except perhaps the Auditor General and the members of the bench.

Mr. H. L. Barton then asked this question:

> Mr. H. L. Barton: Would it be wise to publicize the recommendations of the civil service commission, in order to assist the commission in maintaining an independent position vis-à-vis the cabinet?

And Mr. Pelletier said:

> Mr. P. Pelletier: Under present law the civil service commission is required to make recommendations to government on pay which we do, but the recommendations then become the property of the government, not ours.

The question was not directly answered as to whether or not it would be wise to publicize the recommendations.

Mr. MORE: That is spoken like a politician.

Mr. MCILRAITH: There is admittedly a necessary counterpart to the point your federation has been discussing, and that is that members of parliament who represent taxpayers in voting the pay likewise did not have this report, and could not get it.

Theoretically I think the civil service commission reports to parliament, not to the government. That, of course, is in the political field, and it is probably not fair to ask you about it; it is in a field which belongs to the politicians.

But there is precise difficulty to either side, and that precise difficulty is that neither side is able to have this information which is supposedly prepared by an independent body—neither the employees concerned, nor the representatives of the taxpayers who must vote the money.

Mr. WHITEHOUSE: That is the situation as at present, and I repeat that we are quite happy with the pay research bureau. We recognize its functions. We even play a part in the operation of that pay research bureau by sitting on the advisory committee, where our staff has representatives.

We receive confidential reports on the result of surveys conducted by the pay research bureau, for our confidential information. But we have no opportunity to negotiate either with the civil service commission, before it makes its recommendations to the government, or with the government after it gets the recommendations from the civil service commission. That is just the point. We want to be in a position where we can discuss it with our employer.

The employer has been designated as the government. But there are people who will say that the employer comprises the citizens of this country, and that they are the employers of the public service. Be that as it may, we want an opportunity to discuss with our employers such questions as salaries and working conditions, just as it is possible outside the government service. We do not think it good enough that while we participate in the advisory committee to the pay research bureau, and that as a result evidence is presented to the civil service commission which, after studying this evidence, makes recommendations to the government—we do not know what those recommendations are. Our employer will not tell us what they are, but simply makes an arbitrary decision that there will be no salary increase. I do not think this is a kind of negotiation—if you could call it negotiation in any sense of the word—which should apply to the Canadian civil service, which is looked upon as being second to none in the world. This country is a democracy, and we ask to be given the same treatment that people in other countries enjoy.

Mr. MCILRAITH: On that point, as to the availability of the report by the pay research bureau, and by the civil service commission as to pay increases, there is no change in the bill which is now before us from the existing legislation, from the point of view of publication?

Mr. EASTER: There probably is a significant change in that respect. At the present time the report from the civil service commission goes to the government, and they may either accept or reject it. They cannot modify it. But this new bill allows the government to modify recommendations of the civil service commission.

Mr. MCILRAITH: My point was as to the publication of recommendations concerning changes. There is no change as to the publication, such as requiring publication?

Mr. EASTER: No.

Mr. SPENCER: I must apologize if this information has come before the committee previously, but I wish to go back to the reference that was made previously this morning, that is, to the independence of the pay research bureau. I would like to know, first of all, who appoints the pay research bureau, and who they are? Can any of the witnesses answer that question?

Mr. EASTER: The staff of the pay research bureau was appointed by the civil service commission, who are responsible for the appointment of all staffs in the government service. As to the names of the individuals concerned, I think that could better be asked, probably, from the chairman of the civil service commission. I do not know them all, but I could name some of them.

Mr. SPENCER: The members of the pay research bureau are appointed in exactly the same way as our other civil servants?

Mr. EASTER: That is true.

Mr. SPENCER: And you would consider the members of the pay research bureau as being civil servants in all respects?

Mr. EASTER: They are civil servants.

Mr. SPENCER: If they are, in fact, civil servants, and they are dealing with matters affecting the civil service, how do you suggest then that they are independent? I suggest to you that if there is any dependency, then it would be on the side of the civil servants.

Mr. EASTER: The pay research bureau is made up of research officers whose integrity in research I do not think can be questioned in any way, shape or form, as to being biased.

Mr. SPENCER: If there were any bias, I would expect it to be on the side of the position in which they find themselves.

Mr. EASTER: They collect data, and they do it on a basis of integrity.

Mr. SPENCER: How about this advisory committee to the pay research bureau? I understood Mr. Whitehouse to say that he was a member of it. Am I right on that?

Mr. EASTER: The advisory committee to the pay research bureau is made up of representatives on the official side, that is, representatives of the government, and it is shared by a civil service commissioner. It is also made up of representatives of what we call the staff side, that is representatives of government employees.

Its function is merely to advise the pay research bureau as to what projects they should take under consideration and perform, and also to advise them as to the priority of these projects. That is the function of the advisory committee to the pay research bureau.

Mr. SPENCER: You say that the government is represented on the advisory committee. At what level is the government so represented?

Mr. EASTER: I think the secretary of the treasury board represents the treasury board on the advisory committee.

Mr. SPENCER: But the secretary to the treasury board is not a member of the government in any sense. He is a civil servant the same as everybody

Mr. EASTER: Yes.

Mr. WHITEHOUSE: Let us get the record straight. The question is who comprises the pay research bureau, and what status do they have within the civil service. As far as the advisory committee is concerned, there are representatives on the official side, and officials on the staff side. Yes, I sit on that board as a representative of the civil service federation, and my alternate is Mr. Hewitt-White. Mr. Easter also attends in an advisory capacity.

I would not want anything to creep into this record which would cast a reflection on the people in the pay research bureau. We have the highest regard for them. We know that they are 100 per cent, as far as integrity is concerned. I know they are doing a very good job.

Mr. SPENCER: Have you any criticism to offer?

Mr. WHITEHOUSE: I have no criticism of the pay research bureau whatsoever. Our criticism is levelled at our employer, for not giving us the kind of negotiation we feel we are entitled to have.

Mr. TARDIF: You feel that the pay research bureau should act as advisors to all bodies which have to do with negotiations where pay is concerned?

Mr. WHITEHOUSE: Yes.

Mr. SPENCER: Incidentally, you say that it is your strong belief that the pay research bureau should become entirely independent of any agency or department of government, including the civil service commission. As I read that, I take it to be a criticism of the pay research bureau. Am I wrong in that thought?

Mr. WHITEHOUSE: It is not criticism of the pay research bureau. It is criticism of the way in which it has been set up. Perhaps the wording has been interpreted in a different way from what we meant it. We want the pay research bureau to be set up, and its information made available to the people who want that information, namely, the people on the staff side, our employer, and the government.

Mr. SPENCER: You say independent of any agency or department of the government. Would you say what agency or department of the government the pay research bureau is not independent of?

Mr. EASTER: In our brief I think there might possibly be the possibility of reading something into it which is not there. We are asking that the pay research bureau become independent in so far as the establishment only is concerned. At the present time it is part of the establishment of the civil service commission.

We believe that this would tend to create greater confidence in the civil service if it was not a part of any other agency or body.

Mr. SPENCER: How would it be appointed?

Mr. EASTER: It could be entirely on its own, and its director could be appointed—as it is in the United Kingdom—by the Prime Minister.

Mr. RICHARD (*Ottawa East*): Would he be the deputy minister?

Mr. EASTER: Yes.

Mr. HEWITT-WHITE: I might say that we were looking to the example of the United Kingdom in this respect where the director of the pay research unit there is appointed directly by the Prime Minister and it is a body entirely to itself.

The ACTING CHAIRMAN: Are there further questions?

Mr. RICHARD (*Ottawa East*): Somewhere down page 2 you say:

> We are pleased to see that Bill C-71 contains provisions for increased delegation of authority to deputy ministers, particularly in the sphere of departmental establishments.

But in section 7, which we just discussed you are in favour of consultation in almost everything. I cannot understand it, unless you elaborate what you mean by "pleased in giving more power to deputy ministers" without limiting it to establishments. That is a restriction on the powers you are asking on consultation and negotiation.

Mr. HEWITT-WHITE: This is only to do with establishments.

Mr. RICHARD (*Ottawa East*): You did not say "only establishments", you said in your brief "particularly".

Mr. HEWITT-WHITE: I think it is correct to say that it is in the field of establishment that the new act does delegate authority to the deputy minister.

Mr. RICHARD (*Ottawa East*): The act does, but I am talking about your brief.

Mr. HEWITT-WHITE: We were glad to see this development.

Mr. RICHARD (*Ottawa East*): Are you in favour of more power than is given in the new act now, because you say you are pleased, and you only make it particularly in connection with establishment?

Mr. WHITEHOUSE: The answer is that we are pleased the new act has allowed for more authority to be granted to deputy heads, and I think that follows particularly with regard to establishment. I could cite many instances where the deputy head has been thwarted—and this with all due respect to the civil service commission. Part of their function is to see if the establishments are needed, and when a recommendation is put forward it is for them to make the decisions whether or not it should be done. I could cite many examples we have experienced over the years—I am not choosing the Post Office Department because it is one of the revenue-producing departments, but some years ago the postmaster of a Toronto post office, who was a man who came up through the ranks and knew the postal service from A to Z, and was looked upon as one of the best in the field, recommended to the deputy minister that he needed many more mail handlers to eliminate the overtime situation that was prevailing. The deputy minister approved this and recommended accordingly.

A survey was made by he civil service commission and the finding was that the recommendation was not warranted. The postmaster did not get the men he felt he should have. It is this kind of thing that causes us to be pleased to see more authority given to the deputy head. It is not confined to any one department, I assure you, but on the other hand we realize that the deputy head, if he is given this extra authority, if he is a good executive, is naturally going to delegate that authority. It is his job to watch that this delegated authority is not abused. That is why we hoped there would be some part of this act which would give the civil service commission the right to look into these departments periodically to see that this authority was not being abused. Mr. Hewitt-White would agree with me when I say that when any authority is vested with anyone, it naturally follows that that authority can be revoked if necessary.

Mr. RICHARD (*Ottawa East*): I would like to ask the witness once again whether it is his understanding that it is not in our power to extend the powers of the deputy minister further than to establishments—it has nothing to do with promotions?

Mr. WHITEHOUSE: Promotions are conducted by the civil service commission, and I hope they will always be within their jurisdiction.

Mr. RICHARD (*Ottawa East*): I do not know why you particularize. All you had to do in your brief was to say that you were satisfied—not pleased—with the provision of the section which gave more power to the deputy minister as to establishments.

Mr. HEWITT-WHITE: At the present time, at any rate, we are not recommending any further extension than appears in this act. Does that answer your question?

Mr. CARON: Do you not think that at the present time the present act increases the power of the deputy heads for transfer, promotion, suspension and dismissal more than it has in the previous act?

Mr. WHITEHOUSE: You may read that into it.

Mr. EASTER: That would be very difficult to discern from the act itself. I think that when the regulations come out—which we have not got at present—we would be in a much better position to speak on that.

Mr. CARON: When the regulations come out?

Mr. EASTER: I understand we will be consulted when the regulations are drawn up and we will be vigilant on that part of it.

Mr. CARON: In this sphere of transfer, promotion, suspension and dismissal, do you not believe there should be a special board where everybody can appeal, especially when we know that most of the promotions are made on the ratings more than on anything else, and sometimes the rating is not according to the real value of the man?

Mr. HEWITT-WHITE: We certainly feel very strongly that the appeal provisions in this new proposed act should be there, and we think that they should be extended to give even more protection in this regard. You will note that we have very strongly recommended that there should be provision for a grievance procedure, because we feel that only by a properly constituted grievance procedure can the employee have full protection where delegated authority has been abused. This would act as a protection and as a watchdog.

Mr. WHITEHOUSE: Mr. Caron—through you, Mr. Chairman—is it your opinion that under the present act, every candidate for promotion is rated fairly?

Mr. CARON: Some have been rated fairly and others unfairly in the past, and I know that this has been the case. Up to now there has been no appeal on the rating. They could have appealed if promotion was refused, but no appeal was granted on the yearly rating. The only department where it was submitted to the employee was in the Department of National Defence where they looked at the rating before it was official. In the other departments the rating was just sent to the civil service without being shown to the employee. I believe that the rating should be placed in front of the employee every time there is a rating made. He should accept it or refuse it. If he refuses it he should have the right to appeal on that rating if he thinks it is not fair.

Mr. HEWITT-WHITE: That is my opinion, but I should clear up one thing, Mr. Caron. If an employee has an adverse rating, so that he is refused his statutory increase as a result of this adverse rating, he certainly has the right to appeal in that case. I would agree with you too that there is considerable variation in the personnel practices between departments as to the extent to which they show and discuss ratings with employees. We feel very strongly that all ratings should be shown to the employees and discussed with them in terms that are intelligible to them.

Mr. CARON: I am ready to admit that sometimes the rating is right and the employee is wrong in claiming that the rating is not fair, but until there is an appeal so that he can have complete proof of the rating—that the rating is well made—I think he is justified in believing that he has been cheated.

Mr. HEWITT-WHITE: I certainly think that, if the provision for grievance procedure under the proposed section 71 we have suggested were incorporated in the act, the employee would have all the protection he would require in that instance, because you will note we have defined "grievance"—

The ACTING CHAIRMAN: It would be helpful if members, when asking their questions, would refer to the part of the brief which they base their question so that other members and witnesses can find it easily.

Mr. CARON: It appears on page 2. It was following the same idea as Mr. Richard (Ottawa East).

Mr. HEWITT-WHITE: We have defined grievance on page 4 of our brief as "any alleged grounds for complaint". That would certainly include, in our view, a grievance against a given rating. In our suggested procedure they would be fully protected up to an appeal to the commission, and we think that there ought to be provision for an appeal board as the final authority where these grievances may go, whose decisions would be final and binding.

Mr. MACDONNELL: My question is on the same paragraph. It is the paragraph on page 2. I want to preface it by saying that I understand the desire for negotiations in the manner which has been described this morning, and I hope that can be arranged to the satisfaction of the civil servants; but I now want to read from the second sentence of this paragraph, which does not seem to me to follow:

> We do not feel that an independent civil service commission, whose primary function must be to maintain the merit system, can successfully perform the function of representing our employer in negotiations on matter which may result in increased costs to the taxpayer.

Let me say in passing that the statement was made that the civil service commission was an arm of parliament and not an arm of government. I am not able to make that distinction. To me the government represents parliament and it is the government which has to act.

To come back to this phrase, "can successfully performs the function of representing our employer in negotiations": Someone has to represent the government. No one is going to suggest that a representative of the civil service should spend hours with the Prime Minister or hours with the cabinet. There has got to be some representative. The government has selected as its representative the civil service commission, a highly respected and efficient organization. If I read that correctly, I am not able to follow the argument that the civil service commission is not a proper agent of the government. It has got to have an agent.

Mr. HEWITT-WHITE: Mr. Macdonnell, do you not feel that there is a paradox here? Either the commission is an agent of the government or it is an independent body, one or the other. We have been informed many times of its independence, and the present act has been set up to ensure the independence of the civil service commission. That is why we say that if it is independent it cannot represent our employer.

Mr. SPENCER: As a desirable factor, as far as the civil service is concerned —would it not be better to have an independent body like the civil service commission representing the employer, than have somebody else representing the employer who is biased on the side of the employer.

Mr. HEWITT-WHITE: Look at what happened in 1959 with an independent commission. They made a recommendation to the government as to pay, as to increases in pay in the civil service, and the government took no action.

Mr. SPENCER: Wait a minute. Let us not get into an argument as to that. It may not have taken action, but not because they may not have had confidence in the findings of the civil service commission. There is another aspect to the findings of the commission and that is whether or not money can be found to carry it out. So, there may be a lot of other things that the government had to take into consideration.

Mr. HEWITT-WHITE: We very much agree.

Mr. SPENCER: I am just talking about the matter of negotiations at the present time, and whether the civil service commission is not a very desirable negotiator for the civil service.

Mr. MACDONNELL: Let me interject before the answer is given to that. If you had satisfactory negotiations—in your opinion satisfactory—in 1959, would that not have altered the situation? Was it not because you did not feel you had had satisfactory negotiations that you were not satisfied with the procedure?

Mr. HEWITT-WHITE: We had no negotiations at all.

Mr. MACDONNELL: Very well. That has answered my question.

Mr. HEWITT-WHITE: If I may answer Mr. Spencer's question, the simple fact of the matter is that it is obvious that the commission cannot render a decision. This is what you have stated yourself, that is, they can recommend. Certainly, we have no objection whatever to the government asking the advice of the civil service commission. It can ask advice from whoever it pleases. If it feels that the civil service commission as a personnel agency should advise them, we certainly have no objection. But, in order to negitiate with someone, you have to negitiate with someone who can make a decision. Any negotiations with the civil service commission is like shadow boxing because they cannot give us a decision. We want to negotiate with the people who could render a decision and we can discuss these other factors you have mentioned, such as financial ability and all the rest of it.

Mr. SPENCER: As far as the practice goes, negotiations are not normally carried on with the people who make the decision. Is not that true of all negotiations?

Mr. HEWITT-WHITE: Oh no.

Mr. SPENCER: You do not negotiate with the president of the corporation; you negotiate with some employees.

Mr. HEWITT-WHITE: Whoever it is, these representatives of the employer certainly must be in constant communication with the people who make the decision so that they are in a position to negotiate. They would have to be in a position to make decisions.

Mr. SPENCER: But they do not make decisions.

Mr. HEWITT-WHITE: To see the decision is made.

Mr. RICHARD (*Ottawa-East*): You do not negotiate with the employer either

Mr. SPENCER: You usually negotiate with someone closer to the employer than that.

Mr. HEWITT-WHITE: If you take the United Kingdom, the negotiations there certainly take place between representatives of the government who are in a position to come to a decision, because we know that when an agreement is reached it is reported to the cabinet and thereupon it becomes operative.

Mr. MACDONNELL: Automatically?

Mr. HEWITT-WHITE: Yes.

Mr. SPENCER: Whom do you suggest as an alternative that you would like to negotiate with, other than the civil service commission?

Mr. CARON: The treasury board? The Minister of Finance?

Mr. SPENCER: You want the Minister of Finance to spend his time negotiating with the civil service?

Mr. CARON: No, but he can have someone to represent him.

Mr. HEWITT-WHITE: I do not think that we are going to say here and now precisely whom we are prepared to negotiate with. All we are concerned about is that they are representative of the employing authority, of the financial authority, and are in a position to negotiate. Now, if the Minister of Finance wants to delegate this to certain treasury officers we are perfectly happy about that.

Mr. WHITEHOUSE: Which would be the natural procedure.

Mr. SPENCER: Do you feel that the one to negotiate should be also the one to make the decision? Is that where we seem to be unclear?

Mr. EASTER: Technically, the government has to make the decision in so far as salaries are concerned. They have to vote the money, technically. What we want to do is to be able to negotiate with people who are authorized to come to a decision.

Mr. MACDONNELL: Would you like the civil service commission to be given that authority?

Mr. EASTER: I do not think it could remain independent if it were given that authority.

Mr. HEWITT-WHITE: That is where we argue that the commission could not fulfil the functions of negotiation. If it is to remain independent how could we negotiate with them? Furthermore, under the present system if we negotiated with the civil service commission we could come to no definite conclusion with anyone because the civil service commission being an independent body would have to recommend to the employer, and the employer would than have to make the decision, and we would be in the same situation as we are in today. We want a board set up negotiating power representative of our employer and naturally we would think that the general opinion would be a representative of the treasury board, people directly under the Minister of Finance, who make the decision in these matters—of course keeping in mind always that this has to be by approval of parliament.

Mr. KEAYS: I want to ask Mr. Whitehouse whether he contends that the members of the pay research bureau should be civil servants.

Mr. WHITEHOUSE: No, to be quite truthful, we have not given that any serious consideration whatever, because we are quite happy with the personnel at the pay research bureau. We have no suspicion whatever of them. We trust them in energy sense and would be quite happy that they should remain as they are.

Mr. KEAYS: Do you recommend that the members of the pay research bureau should be members of the civil service commission?

Mr. WHITEHOUSE: Would you clarify that question? Do you mean civil service commissioners or employees?

Mr. KEAYS: First of all are they civil servants?

Mr. WHITEHOUSE: Yes they are.

Mr. KEAYS: Secondly, I want to know whether they should be members of the commission's staff.

Mr. WHITEHOUSE: We have not given that any consideration and accept them as they are; and if they are employed by the civil service commission we are satisfied.

Mr. MCILRAITH: Are we not at cross purposes in regard to question and answer? I think the question was related back to the earlier point as to whether these members who now comprise the pay research bureau should be members of the civil service commission staff, or should be members of some other staff.

Mr. WHITEHOUSE: If they are an independent body, naturally it would follow they would not be employed by the civil service commission.

Mr. MCILRAITH: That is the point.

THE ACTING CHAIRMAN (*Mr. Macquarrie*): Are you satisfied that you have the thinking of the witness on that? If so—now, Mr. Rogers?

Mr. ROGERS: I think my point was covered here. The argument is that you want to negotiate with the government or a representative of the government. That, in effect, is with parliament.

Mr. MACDONNELL: No.

Mr. ROGERS: Yes.

Mr. HEWITT-WHITE: Could I answer that by making reference again to what happened in the United Kingdom. I am sure the parliament in the United Kingdom is just as jealous of its prerogatives as the parliament here. I am reading a passage from a book by O. Glen Stahl, a very authoritative work on "Public Personnel Administration". It is from page 293 where he reals with Whitley councils in the British civil service. It says:

> The procedure of the national whitley council, a body of 54 members appointed half by the Chancellor of the Exchequer and half by the recognized staff unions, requires that decisions be arrived at, not by a majority vote of the whole group, but by agreement between the two sides. Before becoming effective, such decisions must be signed by the chairman and the vice-chairman, representing the two sides, respectively, and the agreement submitted to the cabinet. Under the procedure followed, "silence gives consent", and the agreement becomes immediately operative unless the cabinet acts. It should be noted, however,—

and I underline this—

> —that the full authority of parliament and the cabinet is preserved by this means.

Mr. MARTEL: My question is almost covered by that answer. I would like to get a little more information on the way this operates in the United Kingdom. You mention in the brief:

> We feel that the system provided in the United Kingdom for direct negotiation and arbitration between staff side and treasury is the example we should follow here, particularly when such a system has been in successful operation for a great many years.

Would you say how many years?

Mr. WHITEHOUSE: Forty years.

Mr. HEWITT-WHITE: In 1916 they set up the first negotiation. In 1922 the government arbitrarily cancelled it. In 1925 it was brought back in. It was cancelled in 1922 and brought about a terrible howl of rage. In 1925 it was brought back. At that time it was under the industrial arbitration court they had in England. In 1936 they set up a special arbitration tribunal just for the civil service, and they have been working under that since then very satisfactorily.

Mr. MARTEL: How is the pay research bureau in the United Kingdom appointed. Is it appointed by the civil service, or is it independent?

Mr. HEWITT-WHITE: It is independent. They go to great pains to make sure it has all the appearance of independence. The Prime Minister appoints the director of the pay research bureau. He is an appointee directly of the Prime Minister. As to where he gets his staff, I am sorry I cannot answer that question. As to whether the civil service commission recruits it for him or not, I do not know.

Mr. MARTEL: Are they civil servants? Is the director a civil servant?

Mr. HEWITT-WHITE: The director is not, in the sense that he is appointed directly by the Prime Minister. I am sorry I cannot give the details of that.

Mr. EASTER: I do not know how the staff is appointed, but I expect they would be appointed the same as all other civil servants.

Mr. MARTEL: By the civil service.

Mr. MORE: Do I take it from what you quoted from Mr. Stahl's book that the authority of the cabinet still exists to reject the findings, even though they are negotiated?

Mr. HEWITT-WHITE: That is correct, though in practice it is never exercised because they have confidence in the system.

Mr. MORE: It is an agreed report. It is not a majority report at all. It is by agreement of the two sides.

Mr. HEWITT-WHITE: That is correct; it is by agreement of the two sides.

Mr. MORE: And, if there is not complete agreement at that stage, is there arbitration?

Mr. HEWITT-WHITE: Yes.

Mr. MORE: And the cabinet has the power to reject the arbitration?

Mr. HEWITT-WHITE: Yes.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Have you a question, Mr. MacRae?

Mr. MACRAE: I have not a question on this subject, Mr. Chairman. My question refers to clause 2, subclause (2) on page 4.

Mr. CARON: In looking at the brief, I see something mentioned about a board of arbitration and the way you would like to see it composed.

Mr. HEWITT-WHITE: I am not sure of your question, Mr. Caron.

Mr. CARON: You were speaking of the board of arbitration, if negotiations did not succeed.

Mr. HEWITT-WHITE: Yes.

Mr. CARON: Is there anything in your brief later on which would cover that?

Mr. HEWITT-WHITE: No, we did not elaborate on that. We feel it is something which could be negotiated. However, we certainly look very favourably upon the British precedent. We think that something that has been in operation there for over forty years and which has worked satisfactorily should serve as a very good model.

Mr. CARON: Do you not think that the way the board should be formed or established should be included in the bill?

Mr. HEWITT-WHITE: I do not think that that is necessary.

Mr. CARON: I asked that question because in some places the board could be composed of one representative of the employee, one representative of the employer, and then, if they do not get together to choose the third one, it will be the governor in council. This would mean that there would be two on the same side against one on the other side. Do you not think it would be fairer for the employees if, instead of the nomination by the governor in council, it would be a judge from the Supreme Court or the Exchequer Court?

Mr. HEWITT-WHITE: I would not be prepared to say that, sir.

Mr. EASTER: I do not think we visualize any great difficulty in the establishment of the mechanics of the negotiation. What we are requesting here is that the right to negotiate be included in the bill. I am sure that we can agree upon the mechanics and procedures.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Have you a question, Mr. Macdonnell?

Mr. MACDONNELL: Naturally, I have been greatly impressed by the references made to the British system, and naturally I want to study it further.

It is proposed that the civil service commission should not be allowed to act as agent, but that a new body should be set up.

Mr. HEWITT-WHITE: Yes.

Mr. MACDONNELL: What I am concerned about is whether this is not going to be a bit illusory and whether that body will not have to rely wholly on the civil service commission.

Mr. SPENCER: The pay research bureau.

Mr. MACDONNELL: Someone said the pay research bureau. I suggest that the pay research bureau reports only facts, and that this body is going to have other difficulties laid on it—in other words, to make decisions and recommendations. I still suggest that the inevitable place for them to turn to and rely upon will be the civil service commission, which has the facts and knowledge necessary to reach a conclusion. It is almost inconceivable that any other board could, at first hand, get all the facts which the civil service commission acquires in its day-to-day work.

Mr. EASTER: Our brief is not including the civil service in that respect. The civil service commission is available at all times to the government for advice.

Mr. MACDONNELL: That does not quite meet my point. I should like to know what you think in regard to the inevitability, as it seems to me, of a new body practically having to say to the civil service commission: Look, what is the story. That is what I think they would have to do.

Mr. HEWITT-WHITE: All I would say, in that connection, is that this is not what happened in the United Kingdom.

Mr. MACDONNELL: Well, I will try to keep an open mind until I read that. However, I do suggest that is a very serious point.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any further questions?

Have you a question, Mr. MacRae?

Mr. MACRAE: Mr. Chairman, my questions are on clause 2, subclause (2), at page 4 of the federation's brief. Is it in order now to question on that clause?

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any further questions on the preamble?

Mr. CARON: I have only the one question. We have two briefs which have been presented to the committee asking for the right to strike. I note that in your brief—and there is another one—you do not request the right to work-stoppage or strike. Could you explain the reasons why you are not asking for that?

Mr. HEWITT-WHITE: Well, in the first place, there is actually nothing in the present act—or the old act, if you prefer—or the new act that prohibits strike. Actually, there is nothing in there that says specifically that civil servants, as ordinary citizens, have not the right to strike. However, of course, there is no protection for them if they do. That is just by way of comment.

We have not asked for the right to strike because the mandate that we have—you see, we have a parliament too; it is our convention—simply says that we are to work to achieve a system of negotiation and arbitration, and it

is perfectly clear to us that our members feel—at the present time, at any rate—that because of the kind of work that they are engaged in—we have people in national defence, and I happen to represent people working in D.V.A. hospitals—that they should not put this imposition on the people they serve of withdrawing their labour. However, they do feel very strongly that, in return for this—shall we say, voluntary giving up of the ordinary right, as the Canadian labour congress said yesterday, possessed by employees in outside industry—they should have the protection of an independent arbitration tribunal, where we have not been able to reach an agreement with our employer.

Mr. WHITEHOUSE: I think, also, Mr. Chairman and Mr. Caron, that with one exception our convention has gone on record as not wishing to provide any strike action and, of course, it has referred to their loyalty to the crown. Basically, though, it is their loyal service to the public of Canada, which they feel it is their privilege to serve, as Mr. Hewitt-White has pointed out, that while we have done this over the years and will continue to be prepared to do that, we do feel that we should be treated the same as all other workers in this country and that we should not be treated differently simply because we are servants of the crown.

Mr. MACDONNELL: Do civil servants feel that they have certain advantages, by way of security and so on, in their employment, as against other workers?

Mr. WHITEHOUSE: Perhaps at one time they did, but today the picture is entirely different.

Mr. MACDONNELL: Why?

Mr. WHITEHOUSE: If you make surveys and do research, such as we have done, you will find that the fringe benefits we enjoy today—and this was one of the big things which appealed to people in coming into the civil service —usually are granted in all other walks of life in any large companies. I am sure you are aware of that.

Mr. MACDONNELL: Including security of tenure of position?

Mr. WHITEHOUSE: Well, to some extent there is that. However, I would not want the wrong impression to get abroad that civil servants are secure in their position from the time they enter until they choose to retire, because the fact remains that if they do not measure up to the job they are expected to perform, they can be let out—and very fast.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Gentlemen, before we proceed further, I would like to avoid the nerve-wracking episode which comes at 11 o'clock.

Your agenda committee, of which I was not a member, suggested at its meeting that we hear the submissions from the civil service federation and the Canadian postal employees. I think it is not over-exercising realism to suggest that we will not be able to hear from the Canadian postal employees today, and, I presume that you would like the agenda committee to make suggestions as to when they could be heard.

Mr. CARON: As chairman, you are a member.

The ACTING CHAIRMAN (*Mr. Macquarrie*): I am now, but I was not at that time.

I take it, there are further questions to be directed to these officials. Mr. MacRae will be given priority.

Mr. CARON: Mr. Chairman, I was not through. I wanted to say why I asked that question. This is my last question on that point. Supposing that some of the briefs tried to impress upon us that we should put into the bill the right to strike, would your association oppose that?

Mr. WHITEHOUSE: Mr. Chairman, I can only answer that by saying this —and I know your reference is to one of our affiliates. That being so, every affiliate of the civil service federation of Canada retains its autonomy to conduct its own business and mould its own policy, and if such an affiliate decides, in its wisdom, to take certain lines of action, that is their business and we are not going to try to tell them what to do.

Mr. MARTEL: Mr. Chairman, I should like to correct an impression which I think has been left on the record. Mr. Caron stated that there were two briefs presented by the civil service association, recommending strike action. One of the briefs concerned is the postal carriers. The other brief was the Canadian labour congress. As far as I know, they have no civil servants in their organization.

Mr. CARON: I never said that at all. On a point of order, Mr. Chairman, I did not say two briefs from the civil service; I said two briefs were presented, and I did not mention that they were from the civil service commission.

Mr. MARTEL: I understood you to say that two briefs were presented by the civil service association recommending strike action.

Mr. CARON: I did not say from the civil service. I said two briefs were presented.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Have you a question, Mr. More?

Mr. MORE: I wanted to ask one question: Although I do not know what staff facilities you have available, would it be possible, for simplification, to chart out for us the course of action taken by these different bodies—the government, the pay research bureau, and so on. Could you chart out the tie-ups which you envisage in your brief, if it was adopted, and the functions that each of these bodies performs. It seems to me that if you briefly covered this for us, it might assist us.

Mr. WHITEHOUSE: You are referring to the negotiation machinery?

Mr. MORE: The negotiation and arbitration procedure—the things envisaged in here. The cabinet and parliament are at the top. Perhaps you could tell us where the civil service commission fits in and what duties you think they should perform, as well as that of the pay research bureau, and so on.

Mr. HEWITT-WHITE: Well, we have some reluctance to do this, Mr. More, because, as we have said, we do not want to be too hide-bound in our approach to a negotiation procedure. In other words, we are flexible. We want to maintain a flexible approach to this and come up with a procedure which is satisfactory both to our employer and to us. We feel it might be just a little dangerous for us to blue-print something now.

Mr. MORE: I will accept that.

The ACTING CHAIRMAN (*Mr. Macquarrie*): You will be getting notice as to the next meeting.

The committee adjourned.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

MONDAY, MAY 1, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing the Civil Service Federation of Canada: Mr. Fred W. Whitehouse, President; Mr. W. Hewitt-White, First Vice-President; and Mr. E. K. Easter, Director of Research.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25033-2—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)	Macquarrie	Richard (*Ottawa East*)
Campeau	MacRae	Roberge
Caron	Martel	Rogers
Casselman (Mrs.)	McIlraith	Smith (*Winnipeg North*)
Hicks	More	Spencer
Keays	Peters	Tardif
Macdonnell	Pickersgill	

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

MONDAY, May 1, 1961.
(10)

The Special Committee on the Civil Service Act met at 2.10 p.m. this day.

Members present: Messrs. Bell (*Carleton*), Caron, Hicks, Keays, Macdonnell (*Greenwood*), Macquarrie, MacRae, Martel, McIlraith, Richard (*Ottawa East*), Roberge, Rogers and Tardif.—(13)

In attendance: From the Civil Service Federation of Canada: Mr. Fred W. Whitehouse, President; Mr. W. Hewitt-White, First Vice-President; Mr. W. J. Bagnato, Executive Secretary; and Mr. E. K. Easter, Director of Research.

The Committee was informed that the Chairman was unavoidably absent.

On motion of Mr. Bell (*Carleton*), seconded by Mr. Caron,

Resolved,—That Mr. Heath Macquarrie do take the Chair of this Committee as Acting Chairman for the balance of this week or until the Chairman returns, whichever be the earlier.

Mr. Macquarrie took the Chair as Acting Chairman and expressed the hope of the Committee for the speedy recovery and early return of the Chairman.

The representatives of the Civil Service Federation of Canada were recalled.

Mr. Hewitt-White clarified certain statements made at the last meeting of the Committee; and he explained the attitude of the Federation respecting certain points previously raised.

Mr. Hewitt-White tabled a Selected Bibliography prepared by the Civil Service Federation of Canada as an appendix to the original brief presented to the Committee on April 13, 1961.

On motion of Mr. Bell (*Carleton*), seconded by Mr. Roberge,

Resolved,—That the above-mentioned Selected Bibliography be incorporated in the Committee's record. (*See Appendix "A" to this day's Minutes of Proceedings and Evidence*).

Messrs. Whitehouse, Hewitt-White and Easter were further questioned respecting the Federation's brief and on points arising therefrom.

Upon completion of their examination, the witnesses were thanked and permitted to retire.

At 4.05 p.m. the Committee adjourned until 9.30 a.m., Thursday, May 4, 1961, at which time the Committee will consider the submission presented by the Professional Institute of the Public Service of Canada, which was presented to the Committee on April 20, 1961.

E. W. Innes,
Clerk of the Committee.

25033-2—1½

EVIDENCE

MONDAY, May 1, 1961.

The CLERK OF THE COMMITTEE: Gentlemen, due to the unavoidable illness of Mr. MacLellan, the first procedural step is the election of an Acting Chairman.

Mr. BELL (*Carleton*): It is obvious how well satisfied the committee was last week with the acting chairman at that time, and I would like to propose that Mr. Heath Macquarrie be the chairman of the committee for the balance of this week or until the chairman returns, if that be an earlier time. I think we would all like to express to the chairman our sincere wishes for a very speedy recovery from his illness.

The CLERK OF THE COMMITTEE: Moved by Mr. Bell (*Carleton*) and seconded by Mr. Caron that Mr. Heath Macquarrie be Acting Chairman of this committee for the balance of this week or until the Chairman returns, whichever be the earlier.

The ACTING CHAIRMAN (*Mr. Macquarrie*): May I thank the members of the committee for their renewed mandate. I am reminded of the homely story of the gentleman who was told that he must cut his dog's tail off, and he was so kind that he did it bit by bit, rather than do the whole thing by a stroke. However, we do hope Mr. MacLellan will be back with us before very long. I made inquiries the other day and he seems to be coming along quite well. You may not be at my tender mercies for very long.

Gentlemen, we will continue with the representatives of the civil service federation who, I might say, were well interrogated at the last meeting, and I think conducted themselves most capably. I would ask the same group to return if they are all here today—the president and first vice-president, the director of research, and Mr. Bagnato, the executive secretary. I believe Mr. Hewitt-White wishes to make an extension of one of the replies that he made the other day. I am sure you would like to hear from him at this stage.

Mr. HEWITT-WHITE (*First Vice-President, Civil Service Federation of Canada*): Mr. Chairman, members of the committee, at the last meeting of the committee on Friday Mr. Caron referred to the second paragraph on page 2 of our brief as follows, and I am reading from an unrevised copy of the transcript of the proceedings:

> Mr. CARON: Would you explain what you mean by the following words in the second paragraph on page 2.

He quotes as follows:

> The civil service commission...should make its findings available on an equal basis to both the government and the staff associations.

I want to correct what may be a wrong impression here, that this partial quotation from our brief might possibly give. We did not say that the civil service commission should make its findings available on an equal basis to both the government and the staff associations, but rather that the pay research bureau should make its findings available, and so on.

Mr. Caron asked:

> Do you mean by that Parliament or just the government?

And in my reply I said:

> I can see no objection to the information being made available to parliament.

Ideally I think it should, but I neglected to explain the reason given by the pay research bureau for desiring its report to be kept confidential at the present time, and this is that it is only by this means that they are able to obtain the required information from outside employers. Unless provision is made in the act which will compel employers to supply the required information, their sources would be cut off, and hence it is necessary to maintain this confidentiality of the report. Now we understand that the dominion bureau of statistics does have statutory authority for its fact-finding activities, and the thought occurs to us that if it is considered desirable that the pay research bureau's report should be made available to parliament and the public, it seems to us that a provision should go into this act requiring private employers to supply the required information to the pay research bureau.

By way of a general explanation, I would like to say that our recommendations with regard to taking pay matters out of the hands of the civil service commission and establishing a pay research unit as a completely separate entity, were offered as constructive suggestions and do not imply that we are questioning the present independent operation of these two bodies. However, we believe that like Caesar's wife, it is very important that these two bodies should be above any possible suspicion of the appearance of not being in an absolutely independent position. We should add that, if, as has been suggested, the civil service commission should be named as the agent of the government to negotiate matters of pay and other terms of employment with employee's representatives. It seems to us that it would be very difficult for the civil service commission to maintain the appearance, let alone the substance, of independence, and if, under these circumstances, the pay research bureau were to remain attached to the civil service commission, I am sure that staff associations would feel obliged to set up their own pay research bureaux because they would feel that in these circumstances the pay research bureau would be a tool of management.

At our last meeting, I think it was Mr. Spencer who was very much concerned, or seemed concerned, lest we were asking to carry on negotiations directly with the Minister of Finance. I believe he felt that that gentleman would not have the time to devote to this. I think we made it clear that we would be quite happy to negotiate with anyone who has the confidence of the Minister of Finance and who could eventually enter into an agreement with us subject to the overriding authority of parliament. However, I do not think it is too unusual for the president of a corporation to take a direct part in negotiations. I seem to remember seeing in the paper recently that Messrs. Gordon and Crump met with Mr. Hall in talks having to do with the non-operating employees of the railways. I would think that there was some negotiating, or at least some attempt at negotiating, going on at those talks.

In this connection, I would like to refer very briefly to a work on collective bargaining, a very authoritative work by Selwyn H. Torff, lecturer in industrial management at Northwestern university. The title of the book is *Collective Bargaining—Negotiations and Agreements*, McGraw-Hill Book Company, Inc., New York, Toronto, 1953. The reference is to the bottom of page 36 and the top of page 37 where it says:

> There is no standard practice regarding the presence or absence of top employer executives or officials at collective bargaining negotiations. In some cases, the president and/or other high executives of the business enterprise participates in the bargaining sessions; in large-scale enterprises, the management representative in charge of personnel may be a top executive, e.g., the vice-president in charge of labour relations. In other cases, it is established employer practice that top executives

may not participate in bargaining negotiations. In either event,—and I underline this—employer representatives must have the authority to bargain and reach agreements.

I might add that the same thing applies to the employee representatives as well. I agree however, that it is probably more usual, in the public service at any rate, for negotiations to take place between representatives of both the employer and the employees. This is certainly what happens in the United Kingdom where negotiations are carried on within the framework of the Whitley council, where there are official side members representing the employer and staff side members representing the employees. The important thing is that whether you consider the ultimate employer to be the cabinet, parliament or taxpayer, sufficient confidence is placed in the official side to enable them to bargain in good faith and eventually in most instances reach agreement. Where agreement cannot be reached, there is provision for a decision by arbitration. That is all we are asking, and I might say in passing, that we do have here in Canada a national joint council patterned in the first instance after the Whitley council in the United Kingdom. It could be given the same authority no doubt as possessed by its original model. One of the advantages of Whitleyism, which I feel sure will appeal to the members of this committee, is pointed out by James Callaghan, M.P., in his excellent little pamphlet on *Whitleyism*. The reference is to the bottom of page 34 and the top of page 35 where he refers to the gentlemen's agreement that staff side will not attempt to improve its position through parliamentary agitation. You all recall the unhappy situation that occurred in the fall of 1959, but lacking negotiations in arbitration machinery, what were staff associations supposed to do? We had to appeal to someone. We were in somewhat the same position as a little boy who got severely chastised for using bad language, and as a result he packed his little bag and trundled off down the street. It was not too long later when the doorbell rang and his father went to the door and found the boy was on the doorstep. The father welcomed him with open arms and said: "I am glad to see that you have repented son, and have come back." The boy looked at his father and said: "It was like this, Dad, I did not know where the blankety-blank to go."

We do not know where to go either. That is why we are suggesting—in fact, suggesting is not a strong enough word—we are pleading that you write into this act provision for negotiation and arbitration.

If you establish the principle, that is all we are asking. We are not too concerned, at this point, about the details. We feel that we can work those out with our employer by negotiation.

Mr. Chairman, we have noted that other organizations' briefs contained a bibliography. This was lacking in our brief. At various times we have referred to various authorities and we thought it might assist your committe if we made available to you a bibliography as appendix III to our brief. In order that there would not be any overlapping or possible confusion, we have excluded from our bibliography any of the authorities or references contained in the previous bibliographies attached to other briefs. This is an additional bibliography.

For those who may be interested in studying the historical development of this question in Canada over the past 17 or 18 years, we have compiled a chronological series of articles which have appeared in the *Civil Service Review* dealing with the matter of negotiation and with the national joint council here in Canada. These details will be found grouped at the end of our bibliography, starting on page 2.

Mr. BELL (*Carleton*): Mr. Chairman, is it considered proper that these should be printed as an appendix? Perhaps we should see it first.

The ACTING CHAIRMAN (*Mr. Macquarrie*): When members have seen this document, they can decide about that.

Mr. HEWITT-WHITE: Questions were asked on Friday regarding the staff of the pay research unit set up in the United Kingdom and its relations with government and staff associations, and so on, and we were not at that time able to give too precise information. However, we have been doing some research over the weekend. I would ask Mr. Easter to deal with this point.

Mr. EASTER: Mr. Chairman and members of the committee, if you will recall, we were dealing at that time with setting up of the pay research unit in the U.K. I am quoting here from Her Majesty's treasury booklet "'*Staff Relations in the Civil Service*". It says on page 40:

> In order to give effect to the primary principle—

This has to do with pay determination—

> —the commission recommended that the task of finding the facts on which comparisons might be based should not be undertaken by the interested parties to negotiations, but should be divorced from the process of negotiation and assigned to a special body which would command the confidence of departments on the one hand and staff associations on the other.

It goes on:

> They agreed upon the setting up of a fact-finding organization to be called the civil service pay research unit, with the following conditions:
>
> (*b*) Day-to-day control of the unit would be vested in a director, who would be appointed by the Prime Minister. The director would be responsible to the committee for carrying out the program of inquiry and observing the priorities laid down by it.
>
> (c) The director would be assisted by a staff drawn mainly from the civil service.

Mr. BELL (*Carleton*): In regard to the bibliography, I propose that we print it as an appendix.

Agreed. [See appendix.]

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any questions on the statements made by either of the gentlemen, Mr. Hewitt-White or Mr. Easter, at this time? is there any question on any other aspect of the federation's brief? Although we do not hold ourselves to narrow geographic limits, it occurs to me that we did consider only the preamble.

Mr. CARON: On page 3 there is a suggestion regarding clause 2, subclause 1, paragraph (a), to add a new subparagraph (iii):

> (iii) by reason of duties having to be performed by employees during any shift other than a straight day shift.

You would suggest that this be added to clause 2 as it is now?

Mr. HEWITT-WHITE: Yes.

Mr. CARON: Are there many of these cases in the civil service at the present time, as far as you know?

Mr. WHITEHOUSE: Yes, Mr. Caron, there are many cases. We have departments who work seven days a week, 24 hours a day, naturally divided into shifts. These employees do quite a lot of what we call night work. If I may use a classic example, both the revenue departments, the customs and the

post office, do this. In the post office, particularly, nine-tenths of the work is done during night hours because the mail is prepared during the day by the business houses and, as you know, commences to be collected about 5 o'clock in the afternoon, and it has to be manipulated from then until perhaps 2 o'clock in the morning, sorted, bundled up, dispatched all over the country and all over the world. I think you can check these figures and you will find that the actual day staff in a large post office is about one-tenth of the establishment for that kind of work. These men do perform night work.

It is the same in Customs. You also know how they work in Immigration, hospitals and so on. We think it is only right that a right differential should be accorded to these people. It is not only the matter of having to do night work; there are other sacrifices in regard to domestic life, family life and social activities. A lot of our people throughout the country are practically barred from social activities. I know a great many hundreds of people who see their children at weekends only because they are on night duty continuously. I say that in these cases a differential should be accorded.

Mr. BELL (*Carleton*): I take it that if the draftsmen of the bill were to give you an assurance that under the present bill this could be provided, you would have no further question on it?

Mr. WHITEHOUSE: If we could be given an assurance in such a way that there is no mistake about it, that we could not take three or four meanings from a given word. If we get that kind of assurance, we would be happy.

Mr. MACRAE: The other day, I believe Mr. Whitehouse in some part of the discussion mentioned that it was reasonably easy under certain circumstances for an employee in the government service to be discharged. I believe it was Mr. Whitehouse who made that statement. That is not my impression; I have always believed that once a man or woman has won a competition, served a term of probation, six months or whatever it is, and is then permanently in the civil service, it is quite difficult to discharge him—quite often there are two or three chances before discharge. I wonder if that is quite so, and I would be glad if we could be enlightened on that.

Mr. WHITEHOUSE: My reference to the question was this. People in the public service who commit something that would warrant their dismissal from the service similar to what applies in industry—in that case there is no question of not recommending their discharge. We have a saying: "You cannot be discharged. As long as you keep your nose clean, you do not have to worry about your job."

Mr. MACRAE: That is what I thought.

Mr. WHITEHOUSE: That does not pertain to-day.

Mr. MACRAE: You say he can be recommended for dismissal from the service?

Mr. WHITEHOUSE: I was using the thing that is usually used if the employee falls down on the job, to the extent that it is felt that his services should be dispensed with. Then, of course, a recommendation has to be made to the deputy for his dismissal.

Mr. MACRAE: And he is dismissed?

Mr. WHITEHOUSE: I beg your pardon?

Mr. MACRAE: And then he is dismissed?

Mr. WHITEHOUSE: I cannot answer for every question. We have appeal machinery and we hope there will be more appeal machinery established in this act. We would not like to think that an employee just can be summarily dismissed from the service without an opportunity to appeal.

Mr. MACRAE: Then he is not easily dismissed.

Mr. WHITEHOUSE: I would not agree to that at all. Let us say that he is fairly dismissed.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Do you wish to carry on further, Mr. MacRae?

Mr. MACRAE: I am not satisfied, but that is quite all right. I have been given an answer.

Mr. HEWITT-WHITE: I do not know whether I can help Mr. MacRae or not. I do not think that anyone would advocate that employees would be in a position where they could be summarily dismissed by an immediate supervisor. I do not think that this happens in outside industry. I think you will find that in outside industry employees are pretty well protected against this sort of thing by their union, and we would be happy to be protected in the same way by grievance procedure in the civil service. I would like to make it clear that as a staff organization we do not hold any brief for employees not pulling their weight. We certainly do not feel they should be retained in the civil service if they are not doing a proper job.

Mr. WHITEHOUSE: I thought that was always understood, Mr. Chairman, and we certainly preached that from one end of the country to another. I am leaving this afternoon for a three week trip in the maritimes and Newfoundland, and certainly I am going to put that to our people. However, just as an example, I may say that last Saturday morning I had a telephone call at my home when I had planned to do many other things. However, this chap who phoned was in very deep trouble and asked me to go to my office. I cannot give the details except that I can say the deputy head had requested him to sign a resignation, without any reason whatever. I advised him not to sign until we went into the case.

Mr. MCILRAITH: With reference to the bottom part of page 3 of your brief, dealing with clause 2, subclause (1)—

Mr. BELL (*Carleton*): We have not got that far. I know Mr. McIlraith has a great interest in proceednig in an orderly way. I think we might go on paragraph by paragraph, and I want to ask a couple of things about the prevailing rates on paragraph *b*. I am not clear about the proposals with respect to recruitment in respect to prevailing rates employees that the Federation proposes. Does the Federation propose that the recruitment be made by the civil service?

Mr. EASTER: No. In fact, we think it would be impracticable for the civil service people to make initial appointments. The prevailing rate people are required at very short notice and to go through a competition and through all the machinery of the civil service commission, in the case of an oiler, very badly needed to board a tug boat or a dredger, would not be practicable. For this reason we believe that the appointments to the prevailing rate category should carry along in the same manner as at the present time. However, on certification from the department that the employee is performing the duties in an efficient and capable manner, we think the commission, then, should be able to issue a certificate.

Mr. BELL (*Carleton*): With what effect?

Mr. EASTER: To the effect that he would then come under the Civil Service Act for all purposes, except pay.

Mr. BELL (*Carleton*): And gain all the fringe benefits of a classified employee?

Mr. EASTER: He is in most cases a public servant working alongside civil servants. They are both doing pretty much the same thing. It is not the same type of work, but he is giving the same service to the government as an employer.

Mr. BELL (*Carleton*): I would like to be clear on this because it seems to me there may be some inconsistency in this as between this proposal and the general proposals of the Federation which, over the years, has advocated that pay and other conditions of employment for servants of the government should parallel those established for similar employment. I am putting to you that the suggestion you are making is that the prevailing rates people are different from those which are comparable in private employment.

Mr. EASTER: No, Mr. Bell. This is not what we are suggesting. As you will see we are asking that they be excluded from the Civil Service Act in order that they can continue to have their rates of pay established according to what prevails in industry. I might point out here that the prevailing rate employee and the ship's officers and ship's crews are employed and work under three sets of regulations which are different from those of the civil service.

Mr. BELL (*Carleton*): Would this involve any additional burden on the treasury—the proposal that you make?

Mr. EASTER: I do not think so.

Mr. BELL (*Carleton*): These additional benefits would not cost anything more?

Mr. EASTER: At the present moment, those costs that I can think of would probably be an extension of their leave privileges. That would be an indirect cost. As regards direct cost, I do not think it would cost anything more.

Mr. HEWITT-WHITE: If I may add to that, there would be an addition, as Mr. Easter says, through indirect cost, through these somewhat better fringe benefits that the civil servant enjoys as compared with the prevailing rate employee. However, I suggest that the improvement which would be got in the morale of these employees would more than offset any additional cost. At the present time these people are working side by side with civil servants. I see a great deal of it in my own department, the Department of Veterans Affairs, where they are working in hospitals side by side with civil servants. For example, if a prevailing rate employee is away sick, then he is charged a day's wages for the first day that he is sick. This does not happen to the civil servant. Just this one thing has been a real bone of contention, and a real burr under the hide of the prevailing rate employee. I may also say that it has been a continuous thorn in the flesh of the staff association.

Mr. BELL (*Carleton*): I appreciate that. I want it to be understood I am not expressing an opinion one way or another. I just want to be clear about this. It seems to me that there may be an inconsistency when you want for the prevailing rate employee that which exists in industry, yet once he is appointed you seek to have him not have the conditions of employment which prevail in industry, but those which prevail in the civil service generally. May there not be a basic inconsistency in your presentation in that respect? May I just add that at the present time, as I understand it, in respect of conditions of employment, they are those which prevail for equivalent positions in industry and you now suggest that once these people are appointed they depart from those basic prevailing conditions and go to another set of conditions which apply to a different type of employee. I think this is the crux of what the committee will have to determine when they come to deal with your presentation and with other presentations and, therefore, I would like you to deal with it as fully as possible.

Mr. HEWITT-WHITE: I think there are probably some inconsistencies in the civil service. I believe it would be very difficult to administer an organization as large as the civil service, having in it about 180,000 to 200,000 employees, without there being inconsistencies in some places. I suggest to you that there are inconsistencies, even in the classified services. You see, these prevailing

rates and fringe benefits are based on what is prevailing in outside industry, and the whole thing would be very difficult to do since these prevailing rate employees embrace a great many different categories.

Let me give you an example of which I know in the Department of Veterans Affairs. We have a prevailing rate class there, known as hospital maids. Because they are prevailing rate employees these maids have their first day of sickness deducted, that is to say, they lose a day's wages. They do not get as much sick leave as their civil service counterparts, and they do not get as much other leave as their counterparts. Yet, from surveys that were made in outside hospitals, the same category of person working in an outside hospital has much better conditions, and in no case does such a person have one day's pay deducted for sickness.

Mr. BELL (*Carleton*): That is just a criticism of the Department of Labour.

Mr. HEWITT-WHITE: You see, the difficulty is that because they are prevailing rate employees and come under the prevailing rate employees' general regulations, those regulations apply to all prevailing rate employees willy-nilly, no matter what work they may do. There are craftsmen, plumbers, carpenters, painters and so on working as prevailing rate employees in the Department of National Defence, but there are also carpenters, electricians and plumbers working under the classification of maintenance craftsmen in the Department of Veterans Affairs and they come under the Civil Service Act. For all I know that may be true also in some other departments. Here is a case where we have two groups of people, one coming under a set of regulations and the other under the act.

Mr. WHITEHOUSE: I do not know if I caught Mr. Bell's question correctly but he seems to think there is an inconsistency in our brief, in that prevailing rate people naturally have their rates of pay set on what pertains in industry in a given area.

Mr. BELL (*Carleton*): And their conditions of employment.

Mr. WHITEHOUSE: And their conditions of working; but I think you will note, Mr. Bell, that over the last seven or eight years prevailing rate people in the public service have been granted fringe benefits which they never enjoyed before, and we can only come to the conclusion that these fringe benefits have been granted to their counterparts in industry. We know also that in large businesses and industries across the country, fringe benefits in many instances are equal to what pertain in the public service and even surpass some of our fringe benefits. Such was the case in the employers' contributions for surgical medical care, but that has been remedied and we give the government full credit for it. We have looked at this and, while we can appreciate that in years gone by the prevailing rate meant rates of pay in a given area, and the working conditions pertaining thereto, the government has since seen fit to grant fringe benefits to our prevailing rate people, and now they are enjoying fringe benefits which, though not as great as the classified people, are benefits which we never would have expected them to enjoy some years ago. In that time working conditions in industry have changed.

Mr. MCILRAITH: Just to clarify that answer, is it not a fact that some of those benefits for prevailing rate men came before they came in industry? You have tagged on a rider to your answer, and it seemed to me that you went further than what you were asked to answer.

Mr. WHITEHOUSE: I would not be prepared to answer that without refreshing my memory. My memory is not that good.

Mr. BELL (*Carleton*): I think Mr. Whitehouse was making an argument for keeping prevailing rates in the way they are and, if industry passes on benefits, we should pass them on too.

Mr. WHITEHOUSE: This business of keeping them comparable to industry is a very broad instrument indeed.

Mr. BELL (*Carleton*): I have found this a very troublesome aspect of your argument on which to make up my mind.

Mr. HICKS: There is another point in connection with prevailing rate employees. Do they not get an hourly rate time, and is it not a fact that the rate may be set in such a way that when they work a little overtime which, in certain cases, they have to do—in fact, quite frequently—then at the end of the month they get a bigger takehome check than the civil servant who may be their supervising boss? Is that not correct? What do you do in that case?

Mr. WHITEHOUSE: We try to get the boss's salary increased.

Mr. HICKS: And that is not as easy as it is to say.

Mr. EASTER: That could be true in some cases but, however, the reverse can be true also. When the boss takes a statutory holiday which is not allowed to the prevailing rate employee, the prevailing rate employee has to take a holiday also.

Mr. HICKS: Or maybe he does the boss's job and gets overtime.

Mr. CARON: Is there anything in the Heeney report supporting your point of view on this?

Mr. EASTER: I do not think so.

Mr. HEWITT-WHITE: Except there was something about unifying the service. Mr. Caron, I must confess that it is a little time since I read the report. All I would say at this point is that appendix "C" deals with positions in the public service exempt from the Civil Service Act, and I do seem to recall that they made some recommendations with regard to unifying the service, that is, bringing everyone under the Civil Service Act. Perhaps that is a question which might better be discussed with the commission.

Mr. KEAYS: I should like to ask Mr. Hewitt-White if there is any determination of the length of time that must be given as notice to an employee if he is to be discharged under prevailing rates? Is there any length of time in respect to his notice of dismissal?

Mr. HEWITT-WHITE: I am sorry. I could not answer that question without referring to the regulations.

Mr. EASTER: Not to my knowledge.

Mr. KEAYS: If there was no length of time required and he became a civil servant, then he would have to have a notice of dismissal for a certain period of time before being dismissed?

Mr. WHITEHOUSE: If he were classified as a civil servant.

Mr. KEAYS: Therefore, that answers Mr. Bell's question. Would there be any additional expense involved, since you would need more people on the commission to look after these prevailing rate employees in such circumstances?

Mr. HEWITT-WHITE: I doubt if you would require any more commission staff. The proportion of prevailing rate employees is fairly small compared with the number of classified employees. According to the report from the dominion bureau of statistics, dated January 1961, there are approximately 160,000 civil servants and approximately 24,000 prevailing rate employees. So I doubt whether the addition of that number, spread around through the various departments, would make any difference, at least any appreciable difference.

Mr. KEAYS: Do you think the commission in its present set-up could look after that 24,000?

Mr. HEWITT-WHITE: They are looked after primarily in their own departments.

Mr. KEAYS: But the commission would have to say somtthing if they came in under the Civil Service Act?

The ACTING CHAIRMAN (*Mr. Macquarrie*): Do any of the witnesses wish to say anything further on this question?

Mr. MACDONNELL: If the prevailing rate employee gets the conditions, fringe benefits and comparable status to outside industry, and then becomes a public servant, could a situation arise where he would be entitled to something extra? In other words, he may fiind there is something which he has not got in outside industry and to which he is entitled, and a situation would arise in which another civil servant would find that this individual is doing better than he is? Have I made my question clear?

Mr. WHITEHOUSE: You are afraid if a prevailing rate employee is brought under the civil service commission for all things other than pay, it would naturally follow that the prevailing rate employee would get all fringe benefits and that in turn, shall we say, would give rise to friction between the prevailing rate employee and classified people.

Mr. MACDONNELL: That is my point. In other words, he would be able to make the best of both worlds.

Mr. HEWITT-WHITE: I doubt whether this would happen because the prevailing rate employees are employed on different jobs. I think it could happen if you had a prevailing rate employee and a classified employee doing the same thing but certainly, in the department with which I am most familiar, veterans affairs, this could not happen because the prevailing rate employees are doing a separate kind of work. The hospital maids are doing something that no one else is doing, so I do not see there could be any friction develop with regard to pay, but it certainly could develop with regard to fringe benefits.

Mr. MACDONNELL: What is the answer if that happens?

Mr. HEWITT-WHITE: If what happens?

Mr. MACDONNELL: Is there any difficulty by reason of the principle, of which we are talking, operating so that the prevailing rate employee actually is better off than his neighbour because he is getting the conditions of outside industry and also the fringe benefits given to civil servants inside? I do not wish to be raising mares' nests, but I do not know if this is a practical proposition.

Mr. WHITEHOUSE: As Mr. Hewitt-White has stated, I cannot see any danger that this thing might exist. If we take the prevailing rate employees such as electricians, carpenters and plumbers, working in the service at their own particular jobs in a large building, then they come in very little contact with the classified people. I cannot see the danger of it. We have felt that these prevailing rate people should receive what we are asking for them.

Mr. MACDONNELL: I am only asking if that situation might arise?

Mr. HEWITT-WHITE: I am sorry if I misled you, Mr. Macdonnell. I am not quite sure what your difficulty is but, as I understand it, you are concerned about the fact that possibly, as prevailing rate employees come under the Civil Service Act for fringe benefits and retain the present system of setting pay for them at outside rates, then they may have the best of both worlds. Is that your question?

Mr. MACDONNELL: Yes.

Mr. BELL (*Carleton*): That is right.

Mr. HEWITT-WHITE: I can only say what I said before. I do not see any difficulty with regard to the pay factor because these people are paid for doing a certain job. If there were a classified employee and a prevailing rate employee doing exactly the same thing, say, they were both sweeping the floor, then I could see some difficulty arising over pay because the prevailing rate employee might be better off. This is your point?

Mr. MACDONNELL: Exactly.

Mr. HEWITT-WHITE: But that will not happen because the prevailing rate employee is in a separate classification.

The ACTING CHAIRMAN (*Mr. Macquarrie*): If there is nothing further on this, we shall move on.

Mr. ROGERS: Mr. Chairman, may I ask the witness, what advance notice have you to give the prevailing rate employee of termination of his services?

Mr. HEWITT-WHITE: I cannot answer the question without looking at the regulations. I think perhaps there is an expert in the room but I am not he.

Mr. WHITEHOUSE: I did not get the question.

Mr. HEWITT-WHITE: The question is "how much notice have you to give a prevailing rate employee before he can be dismissed from the service?"

Mr. WHITEHOUSE: I have never seen any.

Mr. CARON: Are they not considered "regular" after six months employment?

Mr. ROGERS: I do not think you have to give them any time.

Mr. CARON: I think there is a special regulation under which they are considered "regular" after six months in permanent employment.

Mr. BELL (*Carleton*): I think that is right. I have the regulations here but I have not got a chance to go through them in detail.

The ACTING CHAIRMAN (*Mr. Macquarrie*): The question was merely for information, and was not one which raised a matter of principle. We can go on and have the question answered later.

Mr. BELL (*Carleton*): I am advised there is no requirement of notice for a prevailing rate employee or a classified civil servant.

Mr. CARON: No requirement at all?

Mr. BELL (*Carleton*): No.

Mr. CARON: On clause 2, subclause 5, you have a recommendation—

Mr. MCILRAITH: I have one further question.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any further questions on page 3?

Mr. MCILRAITH: I want to ask a question on page 3, the one I started a moment ago. It has to do with subclause 1, paragraph (*o*) and the brief asks to have certain words in that subclause deleted. I shall read the subclause:

> "misconduct" means misconduct, incompetence or negligence of an employee in the performance of his duties, and includes bringing the civil service into disrepute;

In your brief you recommend that the words "and includes bringing the civil service into disrepute" be deleted and apparently that is because there is no clear definition of what that phrase means. My question is this: Assuming you have some rather serious offence outside of the performance of the duties of the civil servant, and a repetition of the offence in such a way that it does bring the civil service into disrepute, and it tends to reflect upon the fitness of the

civil servant to perform the duties to which he is assigned in the civil service, is your proposition that misconduct, as defined, and with the consequences that flow from misconduct in the act, should be overlooked altogether, or is it a better definition you want here, some more precise definition?

Mr. HEWITT-WHITE: Well, I certainly think that if this were to be left in we would want to have a more precise definition. It seems to us that misconduct as defined in "*o*" is broad enough, without including in it the words "bringing the civil service into disrepute". That is such a vague and general phrase that it reminds me of a section in *K.R. and Air*, under which you could get an airman for anything. This reminds me of that *K.R. and Air* reference, as being a sort of catch-all.

Mr. MCILRAITH: I think the words "bringing the civil service into disrepute" should be left out. I agree with you on that. But I wonder if something should not be substituted for them which would involve conduct outside of the things done in the performance of a civil servant's duties?

Mr. HEWITT-WHITE: I am afraid that I cannot help you very much, because we have not really thought about it that deeply I guess.

Mr. BELL (*Carleton*): Do you not think that the fact that there is a clear-cut appeal procedure should remove any particular concern that you have?

Mr. EASTER: Bringing the service into disrepute would have a different meaning to different people. There are some people who would take a very narrow meaning out of that term; and as Mr. McIlraith has said, if you could substitute something which was more specific for it, all very well, but I do not know how you could do it. We would certainly agree with it.

Mr. BELL (*Carleton*): I would like to, but I do not know how. I think the committee would like to have a specific suggestion from the federation concerning it. My specific question was whether you did not feel that, despite the generality of these words, there was ample protection through the fact that there was an appeal procedure.

Mr. HEWITT-WHITE: Let me say this: I think we would feel it was more protected if the committee were to agree that there should be a grievance procedure established by this act. I think there would be a good deal of added protection in that.

The ACTING CHAIRMAN (Mr. Macquarrie): Is there anything further on page three? Or on page four?

Mr. CARON: With respect to clause two, subclause (5), you said "we therefore recommend that subclause (5) be replaced by three new subclauses 5, 6, and 7 as follows".

Do you believe that this would be satisfactory clarification to express your views on that matter of prevailing rate employees?

Mr. HEWITT-WHITE: Yes, Mr. Caron. I do not think we are so conceited as to believe that we have perhaps worded it in the best possible way. Perhaps there are better framers of legislation than we are; but certainly this does say what we wanted to say, and what we think would satisfy the situation.

Mr. CARON: Do you not think there should be a provision there that after a certain time the prevailing employee rate should be definitely considered—if we do not use the word "permanent", we could use the word "regular"—so that he would have a better chance to live his life according to the security of the position? I do not think there is anything at the present time in the bill for it, or in the previous bill.

Mr. HEWITT-WHITE: Possibly you are right, Mr. Caron. I think that perhaps we thought—I am not sure about it, but we thought there that by bringing them under the act for everything except hiring and pay, they would have

the same protection on this score that the civil servants have. I must say once again—speaking only from the personal experience I have had in the Department of Veterans Affairs—that we have never had any case. I do not know of any case. I have been connected with this work for 11 years, and I do not know of any case where a prevailing rate employee was summarily dismissed.

I do recall in one instance where a prevailing rate employee was dismissed, when the department leaned over backwards and gave him hearings. We were represented at the hearings, and there was no question that the individual should not have been dismissed.

Perhaps with that experience we did not have the same concern on that point.

Mr. CARON: Thank you.

Mr. BELL (*Carleton*): My understanding is that a prevailing rate employee may become a contributor under the Public Service Superannuation Act only after two years employment.

Mr. HEWITT-WHITE: Yes.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any further questions on clause 2 subclause (5)?

Mr. MacRAE: My question is on clause 2, subclause (2). Would the chairman mind calling for questions on the various paragraphs and not just on the pages?

The ACTING CHAIRMAN (*Mr. Macquarrie*): I appreciate the suggestion. I had an ulterior motive in taking the page. But from here on in I will do exactly as you suggest.

Mr. MacRAE: When the civil service association was here there was some question directed to them concerning clause 2, subclause (2) which dealt with the permissibility of the R.C.M.P. and servicemen to compete in a closed competition. Perhaps the witness will not be able to answer this question for me, but I would like to know what would now happen to a soldier, or to a member of the R.C.M.P., who tries a competition?

I could hardly see many of them trying a competition unless they first retired from the service. But what now would happen to them as far as their pension rights are concerned, and so on? Perhaps Mr. Hewitt-White could answer?

And another question in line with it is this: when you refer to the R.C.M.P. and to the Canadian forces, you are referring to those who are actually in the service, and not after they retire. I want to be sure you are referring to them while they are in the service, and that they should not be permitted to enter a closed competition.

Mr. HEWITT-WHITE: It is our understanding that that is the way the act refers to them while they are in the service.

Mr. MacRAE: That is your only concern?

Mr. HEWITT-WHITE: If they were out of the service, I think they would have to enter only through an open competition.

Mr. MacRAE: There would be no chance for them to enter through a closed competition whatsoever. I saw many soldiers doing this, because they retire from the army at an early age. This was at the end of the last war. Those who entered at the end of the last war are retired now as comparatively young men. What happens to a soldier who is still in the service and he enters an open competition, and wins that competition and is offered a position in the government service? What happens to his pension, and so forth?

Mr. EASTER: I am no expert on that, but it is my understanding he would have to buy his way out of the service in order to enter the civil service. He signs up when he joins the armed forces for a certain period of time, and if he does not serve that time, he has to buy his way out.

I do not know how the R.C.M.P. would transfer a man over as far as his pension is concerned; but I believe that it is transferable. Surely there are people in this room who are much more expert on it than I am, and who could give you an answer. But I believe he is transferable to the superannuation fund.

Mr. MacRAE: Thank you.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Have you any questions on clause 2 subclause (1)? If not, clause 4, subclause (1)?

Mr. CARON: On clause 4 subclause (1) you suggest a commission of five commissioners. Would you explain what advantage it would be in having five, instead of three?

Mr. HEWITT-WHITE: One advantage, from our point of view, would be that they would be able to spread their work around a little more—evenly, is not the right word because it could be spread just as evenly among three —but each one would not perhaps have quite as big a field to cover as he has now.

We also feel that the civil service is a very large operation, and we think it is good for civil service commissioners to get around the country and see how the civil service is actually operating in the field and in the departments; and therefore if you had five, with a quorum of three, you would continue to operate, and it would mean that they could get around the country far more.

Mr. CARON: And always leave three in Ottawa, so you would have a quorum if they had to decide something?

Mr. HEWITT-WHITE: That is what we were thinking of. And then we also thought it might make it a little easier to broaden the background of experience of the commissioners, so that they could come from various walks of life. We certainly think it is a good idea that some of them, at any rate, should come up through the service so that they may know it intimately. But on the other hand we think it is a good idea if perhaps there were representatives from outside the civil service.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any questions on this particular clause?

Mr. MACDONNELL: Clause 4 subclause (1) of bill C-71 reads:

> 3. A commissioner is on the expiration of his first or his subsequent term of office eligible to be reappointed for a further term not exceeding ten years.

Does a subsequent term of office mean just one, or could it mean more than one?

Mr. HEWITT-WHITE: Where is this?

Mr. CARON: It is on page four of the bill.

Mr. BELL (*Carleton*): I think that "A" has the meaning of "any".

Mr. CARON: Yes.

Mr. ROBERGE: The first part of the clause indicates that there might be more than two terms.

Mr. BELL (*Carleton*): When we come to that we might see what the draftsman has to say about it.

The ACTING CHAIRMAN (*Mr. Macquarrie*): None of the witnesses has anything in particular on it at this time. Is there anything under clause 7 of the federation's brief? I mean with respect to clause 7?

Mr. BELL (*Carleton*): It has been discussed in a pretty detailed way, has it not?

Mr. CARON: You have a recommendation at the end of page five, in paragraph three which we have also found in the submission made by the civil service association of Canada on the very same clause.

Have you studied both, the one recommended by the civil service association, and the one recommended by the federation? There are a few differences there, and it might mean a lot when we come to decide upon a formula.

Mr. HEWITT-WHITE: I must confess that I have not actually studied the civil service association recommendation, so I do not know.

Mr. CARON: I shall not insist upon the question. I asked it because I thought you could enlighten me about it.

Mr. HEWITT-WHITE: If you were to particularize, perhaps I could but I would not care to make any general comment.

Mr. CARON: No, it was only because I wanted some more details.

Mr. HEWITT-WHITE: Just glancing over it quickly I do not see any difference in principle between their approach and ours.

Mr. CARON: In principle there does not seem to be; but because of the way it was written I wondered if we could choose one rather than the other or if it could include a little of both. I do not want to press it.

In respect of subclause 4 of clause 7 you have not suggested anything in respect of the kind of arbitration board you would like to have.

Mr. HEWITT-WHITE: No, because as we have said a number of times we find it difficult to envision anything better than the arbitration tribunal which exists in the United Kingdom. There you have a tribunal which is composed of a chairman, a representative who is taken from a panel nominated by treasury, and another member from a panel nominated by the staff side. This, to us, seems to be a very sensible arrangement for a tribunal.

Mr. CARON: Suppose they do not come to an understanding as to the third representative. Do you think it would be fair that he should be nominated by the governor in council or that it should be stated in the bill that he should be a judge of the Supreme Court or the Exchequer Court. This would give a certain guarantee that the majority would not be on one side.

Mr. HEWITT-WHITE: I could answer that this way. Perhaps we are being too trusting or naive, but at this point we feel we can depend on the government to appoint a really impartial chairman. I feel sure that if the government is prepared to provide for an arbitration procedure that they are prepared to go all the way and see that it works properly. I think that they would be just as interested in making sure that the person appointed as chairman was truly impartial. I do not think he would have to be a judge. I think he could be, for example, a university professor.

The ACTING CHAIRMAN: Is there anything further? Is there anything based on the reference in the brief to clause 10?

Mr. CARON: I am just looking at clause 10. I believe that has been answered.

The ACTING CHAIRMAN: Is there anything in respect of the brief's reference to clause 11, 21, 22, 23 or 26

Mr. CARON: Is this for the right of appeal?

Mr. HEWITT-WHITE: Yes. This asks that the right of appeal be provided for under sections 22, 23 and 25 of the act, where at the present time the act does not specifically state that an employee's right of appeal is provided. We feel that in order to adequately protect all employees who could possibly be affected by decisions taken by the commission or the deputy head there ought to be a right of appeal specifically provided.

Mr. CARON: You said the commission or the deputy head.

Mr. HEWITT-WHITE: What I said was that the decisions might be made by the commission or the deputy head, and that there ought to be some provision for appeal.

The ACTING CHAIRMAN: Is there anything further? Would you turn to page 7, gentlemen. Are there any questions on any of the suggestions on that page?

Mr. CARON: Why do you recommend that the word "public" should be replaced by the word "civil" in respect of clause 34?

Mr. HEWITT-WHITE: This is just in line with our general position that closed competitions should not be extended beyond the border of the civil service itself.

Mr. CARON: Thank you.

The ACTING CHAIRMAN: Is there anything further on that page?

Page 8.

Mr. CARON: In respect of clause 39 you say:

> We would suggest that the intent of this clause would be made clearer by the addition of the following words: 'and shall periodically review the exercise of these powers so delegated, to ensure that the provisions of this act are observed.'

Would it not be better for us to do away with clause 39 completely?

Mr. HEWITT-WHITE: No, I do not think so. We see no objection to the commission deputizing certain of their powers to a deputy head, provided the commission periodically reviews the exercise of those powers and is prepared to take the powers back if they are abused. That is why we have suggested the addition of the words we have.

Mr. MARTEL: Do you strongly oppose section 39 as it is now?

Mr. HEWITT-WHITE: No, we do not. All this is just an additional safeguard. Perhaps it is not necessary, but to us it seems it would be better if the act did say they will review these powers. We just feel that to be specific here and say that they will review the way the department uses these powers is an additional safeguard; that is all.

Mr. ROGERS: But they do have the power right now?

Mr. HEWITT-WHITE: At the present time under the present act? I am not prepared to say whether they have the power under the present act or not, because I am not that much of a legal expert. All I know is that they do. I know the departments run their own promotion competitions pretty much under the overall authority and suzerainty, if you like, of the commission.

The ACTING CHAIRMAN (*Mr. Macquarrie*): That is quite a fancy word.

Mr. HEWITT-WHITE: I don't know whether I could spell it.

Mr. MARTEL: These powers that are given to the deputy head under clause 39 refer not only to functions in the headquarters of the department, and I suppose these functions are decided in what you call closed competitions.

Mr. HEWITT-WHITE: I am afraid I do not understand the question, Mr. Chairman.

Mr. MARTEL: In relation to the selection of candidates for a position, there is a special authority given here to the deputy minister, according to clause 39. Is that right?

Mr. HEWITT-WHITE: Yes.

Mr. MARTEL: It does not say what powers. It just says:

> The commission may authorize a deputy head to exercise and perform any of the powers or functions of the commission under this act in relation to the selection of candidates for a position.

That is related to all competitions?

Mr. CARON: There is no question of competition in that.

Mr. HEWITT-WHITE: It just says:

> In relation to the selection of candidates for a position

Perhaps someone else could answer that question better than I. What was in the minds of the framers? It looks to me as if it could apply even in closed competitions.

Mr. MARTEL: If I may refer to the initial sheet, we were given the past history of the civil service. I think that was given by your federation where it states that the Civil Service Act of 1908 introduced the merit system to the federal civil service, inasmuch as it provided for entrance to the inside civil service by competitive examination. I would expect you referred that to closed competition.

Mr. HEWITT-WHITE: No, this reference to the inside service goes back to the days before the present act when there was a distinction made between headquarters staff, which were called inside service, and staffs out in the field, which were called outside service. That goes back beyond my time and apparently the first step in the direction of appointment by merit was in the inside service, that is, to headquarters staff and it, presumably, would be by open competition. Does that answer your question?

Mr. MARTEL: It makes my mind clear but, as I understand it, clause 39 does not give extra powers, other than what were already available in the old act, to the deputy minister. You are suggesting that you have something extra in that?

Mr. HEWITT-WHITE: I am not prepared to say whether it gives extra powers in comparison with the old act. I am not just sure how much power the old act gives. I know, however, in practice deputy heads are given a great deal of authority in the field of promotions and competitions, but still it is under the authority of the commission. My feeling is that this does provide a statutory authority, perhaps for something that was being done anyway.

Mr. MARTEL: But not in the old act.

Mr. HEWITT-WHITE: I doubt if it was in the old act, but there are other people present who can answer that better than I.

Mr. MARTEL: In short, the deputy minister has to make the selection of candidates for a certain position but sometimes, if the commission wants to delegate their powers, they can do so?

Mr. HEWITT-WHITE: I think it would be very unusual if the deputy head was not consulted as to the filling of a job in his department.

Mr. MARTEL: Consulted, but he is not to make an appointment alone by himself?

Mr. HEWITT-WHITE: No.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Any further questions?

Mr. CARON: On clause 45, your brief and the brief presented by the civil service association, seem to indicate that you feel there is something included in it which is not quite up to the merit system. Especially from the ninth line in the bill:

> Except that where in the opinion of the commission. . .

and so on. In the brief presented by the civil service association they say, in the last two lines:

> The principal danger is that under this provision the exception could become the rule.

And you seem to have the same anxiety in your brief.

Mr. HEWITT-WHITE: That is correct; we feel this is a possible loophole and that it might be used as an excuse for someone to appoint someone that they wanted to appoint by saying that he had special qualifications.

Mr. CARON: Would you have any suggestion as to how they could replace those words in clause 45(2)?

Mr. HEWITT-WHITE: We do not think they need to be replaced, Mr. Caron, because, as we have said in our explanation I believe, if special qualifications are required for a specific position, then a separate competition should be run for that position.

Mr. CARON: Yes, but as it is written in the bill, it is not that way.

Mr. HEWITT-WHITE: No, but if you put a period after the word "list" it would not prevent the commission from running a separate competition whenever it needed.

Mr. CARON: Just delete the last six lines?

Mr. HEWITT-WHITE: Everything after "list".

The ACTING CHAIRMAN (*Mr. Macquarrie*): Clause 49.

Mr. CARON: Do you believe that there should be an appeal on those?

Mr. HEWITT-WHITE: Do we think there should be an appeal?

Mr. CARON: On those occasions? When a man is rejected during the probationary period, does he cease to be an employee? Do you think a person who is in that position should have the right of appeal on this?

Mr. EASTER: According to Mr. Caron he would become involved in rather a lengthy procedure because you could find an employee who could not measure up to a job to which he was appointed. During this probationary period if you find that he is not satisfactory, the act provides that he go on lay-off, and I presume he would be appointed when a suitable person comes along. I think that is sufficient.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Anything further?

Mr. ROGERS: Is that accepted?

Mr. HEWITT-WHITE: Since the addition of those words.

Mr. TARDIF: There is no limit to the period of lay-off until he is considered as not being employed anymore. If they do not find a position for him within a certain period of time, is he considered as being without a job? If that were the case, an appeal would be the right thing.

Mr. HEWITT-WHITE: Under lay-off this is covered under section 54 at the top of page 19:

> A lay-off is entitled for a period of twelve months after he was laid off to enter any competition for which he would be eligible had he not been laid off.

We have not considered that it would be necessary. It seems to us to be a reasonable period of time.

Mr. CARON: Because in this case it is only one man who decides that this man is not competent for the job, and in certain cases—and it has been proved before—the man can be mistaken. He should at least have a right to have proof that he is not competent for the job. The only way they could do that would be by having a right of appeal on that decision.

Mr. HEWITT-WHITE: All I can say, Mr. Caron, is that we were not overly concerned about that.

The ACTING CHAIRMAN (*Mr. Macquarrie*): There seems to be nothing further on 49. What about clause 52?

Mr. CARON: In regard to clause 52, the decision is taken by the deputy head again. You submit a subclause to replace what is in the bill. You suggest that this subclause be replaced by the following subclauses 2 and 3.

> (2) A resignation is completed when it is accepted in writing by the deputy head, but it may, by an appropriate notice in writing and with the approval of the deputy head, be withdrawn at any time before the effective date thereof, if no person has been appointed or selected for appointment to the position to be vacated by the resignation.

This is always in the end of the period. Do you not think that the commission should be concerned with those demissions if the person resigns his job, that it should go to the commission instead of being accepted only by the deputy head, so that the commission will have control on everything?

Mr. EASTER: The deputy head would be the only one in a position to know whether or not it would be desirable to accept the resignation at that particular time.

Mr. CARON: Could the deputy head send it over with his explanation to the commission?

Mr. MACDONNELL: Is it not still a free country? Why cannot the man resign if he wants to do so?

Mr. CARON: I believe he should have the right to resign but it should still be in the hands of the commission instead of the deputy head. I believe there is too great a power in the hands of the deputy heads at the present time, and with the new law this will be increased.

Mr. MACDONNELL: This does not occur to me as a power. They give him a chance to resign if he wishes.

Mr. HEWITT-WHITE: I do not have any comment to make on that, Mr. Caron.

Mr. MACRAE: On clause 55 I would like to ask Mr. Hewitt-White a question. The chief difference between what is in the bill and the submission of the federation is that you use the words "general class" instead of "same grade". Would you mind explaining the difference between the two? It is not quite clear.

Mr. HEWITT-WHITE: We have used the term "general class" purposely because there can be many grades within a class, and there can be actually a number of classes that are very closely related in a function. For instance, in the department of customs and excise they have customs examiners and they have appraisers. I think this is correct. These are fairly closely related in the work that they do. If a port is closed down and there has to be a lay-off of a number of people, it seems to us that all these related classes should be considered, so that you do not lay off people who may have had long and meritorious service simply because they happen to be doing a function now that is going to be dispensed with. They should have an opportunity to be considered, at any rate, in regard to being kept in another function. Somebody

else with less service perhaps might be let go. That is why we purposely used the term "general class". We purposely made it vague so that it could be covered by regulation.

Mr. MACRAE: That is all.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Is there anything further on clause 55 on the merits of vagueness, or on clause 56 subclause (2)? Are there any questions?

Mr. MARTEL: I would like to return to clause 55. There was something additional at the end of the brief, in appendix 1. I would like to make one point there. You suggested a limit for the employee of 65 years of age.

Mr. HEWITT-WHITE: That is the normal retirement age.

Mr. MARTEL: Do you not feel that in certain cases there might be a person who had reached the age of 65 and who could still do a good job? I am thinking of possibly an area far from Ottawa, for instance, where it would be possible to extend this age period?

Mr. HEWITT-WHITE: I am not sure what distance from Ottawa has to do with it.

Mr. MARTEL: In certain cases you may have a qualified person readily available where the population is not as big. There may be a person who has reached the age of 65 who can do a good job for another five or ten years.

Mr. HEWITT-WHITE: I do not think you want to discuss at the moment the question of when termination of employment should take place. What we are discussing here is lay-offs, and what we are suggesting is that if there is going to be a number of people laid off, the first person to go should be the person who had reached the normal retirement age.

Mr. BELL (*Carleton*): Possibly there are members of parliament who could like to give evidence on this subject, Mr. Chairman.

Mr. HICKS: I believe that is a slam at me. I quit working at 65, and I am a better man now than I ever was—and that was not much.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Hear! Hear! Is there anything further before we launch into the comparative field? What about clause 56 subclause (2), or clause 60, subclause (I)? Or clause 61 subclause (3)? Is there any comment about boxing day in clause 62? Clause 63?

Mr. CARON: In clause 63 you said that something has been taken away from the old bill. You say:

> 63. "Several years ago the national joint council recommended four weeks annual leave for employees with 20 years service. However, we were subsequently informed by the civil service commission that the present act would not permit this..."

This has been taken away?

Mr. HEWITT-WHITE: No, no. Let me explain the situation. The former act restricted leave to three weeks, and we were informed that under that act it was impossible for the recommendation of the national council to be implemented. Now, we are not legal experts, but we cannot see for the life of us how this act would make it any easier. So that is why we have suggested the interpolation of these words, just to make sure that it would not prevent this recommendation.

Mr. BELL (*Carleton*): Are you not overlooking the provisions of clause 68 subclause 1 paragraph (a) which enable regulation to be made:

> (a) providing for the grant of vacation leave in excess of three weeks in respect of any fiscal year in special circumstances,

Surely that enables provision to be made exactly of the type you suggest here?

Mr. EASTER: We were a little concerned. All we wanted to do was to make it clear in clause 63 that it would be covered, and that the commission could grant an excess of three weeks. That is why we had the words "not less than".

Mr. BELL (*Carleton*): I think all we need to do is to draw your representations to the attention of the draftsmen, and if he is satisfied, all right.

Mr. HEWITT-WHITE: I think that is the point. We are not just quite sure whether one part of the act can do something which another part of the act does not say that it can do.

Mr. CARON: You suggest after the word "period" that you add the words "not less than three weeks".

Mr. HEWITT-WHITE: That is our suggestion.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Is there anything further on clause 65? Are there any questions of the witnesses on this, or on clause 68 subclause (1) (n)? Is there anything on that, gentlemen? Or on clause 69?

Mr. CARON: Would you just explain what you mean on page 4 "grievance means any alleged grounds for complaint"?

Mr. HEWITT-WHITE: Yes.

Mr. CARON: By way of clarification.

Mr. HEWITT-WHITE: We felt if we were going to have a section on grievance, it was necessary to define it. That is why we defined it previously.

Mr. BELL (*Carleton*): Do you think it is necessary to spell out the rules of procedure to be followed in a grievance matter, or would you be satisfied if it were provided in the bill that by regulation a grievance procedure should be set up?

Mr. HEWITT-WHITE: It is a little difficult to answer the question whether we would be satisfied. I think we should say that what we would like would be to see it spelled out in the act, because we feel that that would give the maximum of protection. I can certainly say that if it were considered by the committee that this was not necessary, we would be pleased to see that provision is made in the act. But we think that for maximum protection it would be better if it were spelled out fully in the act.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any further questions?

Mr. ROGERS: There is no confusion on that matter now, is there, about grievances?

Mr. HEWITT-WHITE: There is no provision in the act or in this bill for grievance procedure to be established.

Mr. ROGERS: But they are carried out, are they not?

Mr. HEWITT-WHITE: In a very hit or miss fashion. In some departments they have a very unofficial grievance procedure; other departments have none at all. I suggest it depends largely on how good an organization there is of staff employees in the particular department. Certainly, however, there is nothing that makes any provision anywhere for a grievance to go finally to an appeal board or arbitration board, whatver you would call it, to render a decision. There is nothing like that at all—certainly nothing outside the department. That is why we would like to see this kind of grievance procedure established which would provide for an appeal within the ambit of the commission itself, which could render a final decision which would be binding.

The ACTING CHAIRMAN: Is there anything further in respect of the brief's comments on clause 69?

Mr. CARON: Clause 70 of the bill does not cover that?

Mr. HEWITT-WHITE: No. Clause 70 deals with appeals in all those cases where appeals are authorized in this bill; but there is no provision for grievance procedure, let alone appeal.

Mr. MACRAE: In respect of clause 70(4)(c) you say:

> Where an appellant asks to be represented at an appeal board hearing by a representative of his staff association, such representative shall be given access to the personal files of all candidates.

I imagine the witness is prepared to justify everything in the brief. Do you not feel this is a violation of the basic right of an individual to privacy, inasmuch as the documents of all candidates, in this case, would be available to a man, for instance, who is disgruntled because he has not received the promotion.

Mr. HEWITT-WHITE: Mind you, we put in the words "on a confidential basis". The departmental representative on the appeal board has access to all these personal files and therefore has information which the appellant's representative does not have. This puts the appellant's representative at a disadvantage. This was our point. We certainly agree that it should be on a confidential basis. I am sure that the confidentiality would not be violated.

Mr. CARON: In respect of clause 71 subclause 7 you say:

> The proceedings of appeal boards shall remain confidential among the members of the board and an undertaking to this end shall be signed by all concerned with the proceedings.

Does that mean that the appellant will not have the right to know what is going on? It says "among the members of the board".

Mr. HEWITT-WHITE: I guess the answer to that is yes. The appellant would not, under that sub-clause, have the right to know everything that went on. He would have the right to have the decision. It was felt that this was needed in order to make it possible for the appeal board to delve fully into all aspects of the appeal. It was felt that if the proceedings of the board were made available to everyone it might not be able to get as full and frank testimony from witnesses as they might otherwise get.

Mr. CARON: Do you not think that all those interested in the case should know what is going on as would be the case in an ordinary court?

Mr. HEWITT-WHITE: This is a matter of opinion.

Mr. CARON: When a judgment is rendered in a court it is rendered for both parties.

Mr. HEWITT-WHITE: I suppose we thought that the appellant had sufficient protection.

Mr. ROGERS: He has equal representation on the board.

Mr. EASTER: It would be rather strange if, as a member of an appeal board, you were allowed direct information which you gathered from other persons to be filed with the appellant. There is the case Mr. MacRae brought up with regard to information which might be contained on someone's file becoming the property of a disgruntled employee, I believe he called him. In no case should you be in a position where you can discuss such information with an appellant which pertains to another person.

Mr. CARON: If he is to be condemned, he has the right to know.

Mr. EASTER: I think in most cases he does. I think in a general sort of way he is informed why he loses the appeal. If his representative is bound by the confidential nature of the appeal board, there are certain aspects of it which is discussed with the appellant.

Mr. CARON: According to your submission you deny him the right to know, because it stays among the members of the board, unless the words "signed by all concerned" at the end include the appellant.

Mr. HEWITT-WHITE: We certainly did not intend that it be signed by the appellant.

Mr. MCILRAITH: The question is what is to be kept confidential. You use the words "the proceedings of the appeal boards shall remain confidential". Mr. Caron was asking about the findings of the board.

Mr. HEWITT-WHITE: The findings certainly would not remain confidential, because in (8) it states that the decision, or the findings, will be transmitted to both parties.

Mr. MCILRAITH: Do the findings have reasons attached? It does not say so. Is that not the problem?

Mr. HEWITT-WHITE: It may be. To be perfectly frank here I am not absolutely sure that when we said "shall be signed by all concerned with the proceedings" we were necessarily excluding the appellant from that. I am not sure on that point.

Mr. MARTEL: Would you be in favour of setting up a permanent appeal board in areas where civil servants are concentrated? There could be a representative of the employee association, a representative of the government, and they, together, could choose a chairman. Would you suggest that this appeal board be there permanently?

Mr. HEWITT-WHITE: Yes, I think that is a very good suggestion. We think, in large centers particularly, that there ought to be permanent panels available. We certainly agree with the idea of the decentralization of the hearing of appeals. We are very much in favour of that. We do not think they should all be here in Ottawa.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Gentlemen, it remains for me, now, to thank the witnesses and explain why Mr. Whitehouse pre-apologized for his departure at 3 o'clock this afternoon. Like so many of our witnesses, he is going to Nova Scotia. I do not know whether it is because of the constant reference to Sir John Thompson, Sir Charles Tupper, and Sir Robert Borden, but he has gone down there.

Our next meeting will be on Thursday, and the program will be as outlined by your acting chairman, when he was acting last week.

APPENDIX "A"

The Civil Service Federation of Canada
88 Argyle Avenue
Ottawa

Brief to Parliamentary Committee on the Civil Service Act

Appendix III—Selected Bibliography

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HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

THURSDAY, MAY 4, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing the Professional Institute of the Public Service of Canada: Miss Frances E. Goodspeed, President; and Mr. L. W. C. S. Barnes, Chairman of a Committee of the Professional Institute on Bill C-71.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25035-7—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*),
Campeau,
Caron,
Casselman (Mrs.),
Hicks,
Keays,
Macdonnell,
Macquarrie,
MacRae,
Martel,
McIlraith,
More,
Peters,
Pickersgill,
Richard (*Ottawa East*),
Roberge,
Rogers,
Smith (*Winnipeg North*),
Spencer,
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, May 4, 1961
(11)

The Special Committee on the Civil Service Act met at 10.10 a.m. this day. In accordance with a decision of the Committee on Monday, May 1st, Mr. Heath Macquarrie presided as Acting Chairman.

Members present: Mrs. Casselman and Messrs. Bell (*Carleton*), Caron, Hicks, Macdonnell (*Greenwood*), Macquarrie, MacRae, Martel, Richard (*Ottawa East*), Rogers and Spencer.—(11)

In attendance: Representing the Professional Institute of the Public Service of Canada: Miss Frances E. Goodspeed, President; and Mr. L. W. C. S. Barnes, Chairman of a Committee of the Institute to study Bill C-71.

The Acting Chairman tabled, for inclusion in the Committee's record, a letter from the Civil Service Federation of Canada. (*See Appendix "A" to this day's proceedings*).

Mr. Martel requested that certain corrections be made in Minutes of Proceedings and Evidence Number 6. (*See this day's Evidence*).

The representatives of the Professional Institute of the Public Service of Canada were recalled.

Miss Goodspeed and Mr. Barnes, in reply to questions, supplied additional information respecting the brief presented by the Institute on April 20, 1961.

Upon completion of the questioning, Mr. Macquarrie thanked the witnesses for their assistance; and they were permitted to retire.

At 10.50 a.m. the Committee adjourned until 9.30 a.m., Friday, May 5, 1961, at which time the representatives of Le Conseil de la Vie Française en Amérique will be heard.

E. W. Innes,
Clerk of the Committee.

25035-7—1½

EVIDENCE

THURSDAY, May 4, 1961
9:30 a.m.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Mrs. Casselman and gentlemen, the meeting will come to order. I shall ask the members of the Professional Institute of the Public Service of Canada to come forward.

Mr. MARTEL: Mr. Chairman, before we start, I would like to make a correction in the minutes for Thursday, April 27 meeting. It is not a big correction. On page 154 of report number six, I am reported to have said:

> I find that on page 5 or 6 of their brief—

What I meant to say was:

> I find that on the first five or six pages—

And further on, instead of the quotation which is taken from the C.L.C. brief—apparently this is not the section that I quoted. I have it here. It is on page 13 of the C.I.C. brief, starting at the third line as follows:

> We have ascertained and produced evidence to the effect that there is no constitutional obstacle to the enactment of a statute which would among other things make possible negotiations between the crown and appropriate staff associations.

That is more in line with the question, because in the next line I repeated the word "appropriate".

The ACTING CHAIRMAN (*Mr. Macquarrie*): Thank you very much. I am very sorry the committee is late in commencing, but it is because of a number of other committees which our members have to attend.

I welcome Miss Frances E. Goodspeed, the president of the professional institute of the public services of Canada, and Mr. Leslie W.C.S. Barnes, who is the chairman of the special committee on the new Civil Service Act, bill C-71.

Have you any preliminary statement you wish to make?

Miss FRANCES E. GOODSPEED (*President of the Professional Institute of the Public Service of Canada*): Mr. Chairman, I hope that the delay was indicative of some agreement with our proposals.

Mr. CARON: Mr. Chairman, on page two of the brief of the professional institute of the public service of Canada, you speak of monitoring and control as follows:

> It is felt that any further decentralization of authority in the fields of personnel management must be accompanied by a system of monitoring and control much more effective than that presently existing.

Would you please explain exactly why you put that in, and what is its purpose?

Mr. LESLIE W. C. S. BARNES (*Chairman of the Special Committee on the New Civil Service Act*): Mr. Chairman, we feel that the need for a system of monitoring and control is almost automatically implied with the decentralization of these particular responsibilities to departmental levels, if one is not to start to develop multitudinous civil services.

Within the existing limited departmental autonomy, there are differences of interpretation. If the scope for differences of interpretation grows much wider, then of course there is reason to believe that the interpretations themselves would get wider.

For that reason we feel there should be some form of monitoring, so that the advantage of decentralization would not be compromised by the production of radically differing conditions of service.

Mr. BELL (*Carleton*): What form of monitoring do you contemplate?

Mr. BARNES: We have suggested, Mr. Bell, that under a system of negotiation and arbitration there would be departmental negotiating sub-committees rather in line with the British departmental Whitley councils. They would serve, we think, as a very effective method of solving problems of this nature which might occur at departmental level. In our proposed constitution for the negotiating committee we have made allowance for departmental sub-committees.

Mr. BELL (*Carleton*): Then this is not monitoring controlled by the civil service commission? That was the inference I took from the statement.

Mr. BARNES: There is a field in which we feel that regulations should be explicit and clear; but when one gets into fields which are not covered by regulations, then we think that a departmental sub-committee or departmental Whitley council is an effective method of dealing with it.

Mr. BELL (*Carleton*): What fields should be covered by regulation?

Mr. BARNES: Broadly the fields which are covered in the regulations in the draft act. We feel that these fields are adequate and we have not proposed any additions or subtractions from the list in the act.

Mr. MACDONNELL: I do not think I quite understand the significance of the phrase "a system of monitoring and control". I wonder if a word could be said on that. Monitoring and control—by whom and on whom?

Mr. BARNES: Monitoring would be at two levels. One would be on a service-wide level by the joint committee which we have proposed and which would cover matters of service-wide interest. Then, matters of departmental interpretation would be dealt with by the departmental sub-committees. This is broadly following the Whitley council approach to the matter. We feel that that is a fairly effective way of giving departmental scope for initiative without the possibility of radically divergent lines of development.

Mr. HICKS: This departmental level would be headed by the deputy minister?

Mr. BARNES: It would be constituted very much as the national committee—a staff side and an official side. The staff side of course would be representative of those staff associations who had membership in the department. The official side, would be a matter for the department setting it up. If the deputy minister himself wished to chair it, I am sure it would be excellent. The constitution of the official side would be the responsibility of the official side.

Mr. ROGERS: You indicate that there is a trend to greater departmental autonomy. Do you think that is growing in the civil service?

Mr. BARNES: I think the indication which we were trying to get across was that the new act would permit much greater departmental autonomy—not that it exists at the moment, but that the act would permit it if it came into law in its present form.

Mr. HICKS: Which you agree with?

Mr. BARNES: Yes. We feel there is a great deal of advantage to be found in it, provided there are those controls which would prevent the development of multitudinous civil services.

Mr. RICHARD (*Ottawa East*): I thought you felt it was much more desirable in the case of scientific departments rather than other departments.

Mr. BARNES: In the case of scientific departments we have recommended further than that. It has been institute policy for some time to support the scientific control of scientific organizations, this is typified by the national research council and the attitude that the House of Commons committee on research has stressed.

Mr. CARON: Do you mean that in the scientific research field they should be outside the civil service commission, or within? It is not clear here.

Mr. BARNES: We considered that in the fields comparable to those covered by N.R.C. a structure comparable to N.R.C. is the best type of approach.

Mr. BELL (*Carleton*): In what divisions? Would you name a few of the divisions you have in mind?

Mr. BARNES: In the field of government operations basically concerned with scientific research and development.

Mr. BELL (*Carleton*): Would you name just a few?

Mr. BARNES: One might have mines and agriculture, those sections of those departments which are basically concerned with scientific research and development.

Mr. HICKS: In other words you would like to have the research man enjoy freedom to go ahead as he sees what his problem is, and not have him controlled too much be regulation?

Mr. BARNES: Basically I think we could say that the institute favours the direction of scientific research by scientific personnel within the broad framework that is laid down by fiscal control and legislation. I think the analysis of the situation which the special committee on the N.R.C. gave is an excellent reflection of the institute's thinking.

Mr. CARON: Then you think they should be left free to choose their own personnel, to bring in someone without going through the civil service commission?

Mr. BARNES: They should have the degree of freedom which is essential to scientific work.

Mr. CARON: Up to what degree should they have that freedom.

Mr. BARNES: Comparable to that which the N.R.C. has at the moment.

Mr. CARON: They just choose their own officers or personnel without going through the civil service commission?

Mr. BARNES: Yes, just as the N.R.C. does.

Mr. BELL (*Carleton*): Does it apply to classification and organization, as well as recruitment within the scientific branches?

Mr. BARNES: We favour a degree of scientific organization and establishment which is typified by the N.R.C. approach.

Mr. MACRAE: Mr. Bell has explored the questions I had in mind.

Mr. MACDONNELL: There are scientific personnel in what I may call operating departments, if that is permissible, as compared with a research council which I understand is a research department. Is that a fair description, and if it is let me ask this question: do you feel that in the operating departments there should be the same scientific observation and even interference or collaboration, if you put it that way, as there is in the N.R.C.? Do you recognize any difference between research committees in the N.R.C. and operating departments of mines and resources?

Mr. BARNES: What we visualize is very largely applicable to basic research organizations. It is not advocated for line or control type of organization. It is basically to be applied to fundamental research organizations.

Mr. BELL (*Carleton*): In a department such as agriculture, would you not have confusion if there were three types of employees working side by side—the research man, who presumably under your proposal would be appointed by the director, who would have full autonomy; the clerical help, who would be appointed by the commission; and the labouring help which would be appointed under the prevailing rate system. Are you not getting into a situation where it would be completely lacking in feasibility of operation?

Mr. BARNES: I do not think it would be any more confusing, Mr. Bell, than in N.R.C. They have clerical help.

Mr. BELL (*Carleton*): They are completely outside.

Mr. BARNES: This would be so. This would be the context.

Mr. BELL (*Carleton*): So that in any research branch of government, all employees would be completely outside for all purposes—organization, classification and recruitment.

Mr. BARNES: Yes, we were really suggesting the question of organization, classification and recruitment more than the others.

Mr. ROGERS: That is the point.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Are there any other questions on this point?

Mr. CARON: In your brief you do not speak about clause 7. In the brief you speak of it on page 2, I believe, but you have nothing on item 7 of the bill, I believe, in the brief.

Mr. HICKS: Yes, the bottom paragraph.

Mr. CARON: It is on page 2 in the first part, but not in the study of the bill as it is.

Mr. BARNES: In effect, Mr. Caron, all comments in appendices are largely comments on paragraph 7. We envisaged the possibility that paragraph 7, as written, could be the permissive clause which we feel is needed. Given confirmation of that presumption, then the sort of machinery which we would hang on that permissive clause is what we have recommended in the appendices.

Mr. RICHARD (*Ottawa East*): Are you satisfied with the language of section 7, that it is permissive in regard to negotiation and arbitration?

Mr. BARNES: We feel that it is marginal and that it might be so interpreted. We do not feel very strongly on this point, because we do not recommend building into the act itself a detailed machinery. We merely seek a legal hook on which to hang this machinery. We do not recommend including in the act long and detailed negotiation and arbitration machinery. We feel that that is far better left to be built on a much less rigid level than in legislation.

Mr. CARON: In page 2 you speak of the establishment of a system of negotiation and arbitration, and this does not appear in the bill.

Mr. BARNES: This we recommend should be issued as an order in council. You will see that at the top of page 3. It would be issued under the authority of the permissive clause, which might be clause 7.

Mr. BELL (*Carleton*): You would like this developed along the line of the Whitley council? Basically, your submission is for a modified form of Whitley council.

Mr. BARNES: A Whitley council, adopted to Canadian circumstances and Canadian conditions.

Mr. ROGERS: Then you recommend it in Appendix A.

Mr. SPENCER: I take it that inasmuch as you approve the principle of negotiation and arbitration, you are not asking, and you do not contemplate any right to strike?

Mr. BARNES: A right to strike is quite incomprehensible in terms of professional ethics and we represent only professional members. The question just does not arise.

The ACTING CHAIRMAN (*Mr. Macquarrie*): We are still on the first eight pages of this brief. Are there any more questions?

Mr. BELL (*Carleton*): I would like Miss Goodspeed or Mr. Barnes to expand just a little in regard to page 5, reference 26.

Miss GOODSPEED: The possibility exists that if you win a promotional competition or a promotion, you go on probation. On probation there is always the possibility of being rejected. Now, it is possible—it is probably not the intent, but it is possible—that you could be up and out. If a person is promoted who has done satisfactory work in a previous position, that person should certainly not lose that standing which he held prior to the promotion.

Mr. BELL (*Carleton*): You think that they would have a right at least to revert to their former status if they were unsatisfactory in the promoted position.

Mr. ROGERS: Is not that true now?

Mr. BARNES: As it stands; but in the new act, taken literally as it is written, there is no differentiation between probation applied to an existing civil servant who is promoted, and probation applied to a new entrant who comes into the civil service for the first time. The former man may have 20 years' satisfactory service, and he may then win a promotion competition; but then he could be rejected on probation and, as the act stands, when that happens he could be discharged without the right to revert to the position he held for 20 years.

Mr. MACDONNELL: You speak of a promotion competition board which you say should be able to make an assessment. You apparently distinguish that quite sharply from an examination.

Mr. BARNES: Yes, because a promotion board, of course, can perform in various ways—it can have an oral examination, or it may conduct a written examination. The intention there was to draw attention to the difference in material available to a board conducting a promotion competition and a board conducting an open competition. The board conducting the promotion competition has a man's service history available to it.

Mr. MACDONNELL: You do not seem to exclude the possibility. You seem to argue in favour of more than one promotion competition, and then you are going to leave it to the promotion board to have whatever they like, including examinations. Is that correct?

Mr. BARNES: Absolutely. Our point was that the board conducting promotion competitions knows more about a candidate and his service than a board conducting an open competition, as there could be 20 years of service records behind him with efficiency reports and other material.

Mr. MACRAE: I would like to ask the witnesses if, to their knowledge, there was ever known an example where someone took a competition in place of what they were doing, only to find in six months they were not satisfactory and had then been discharged and did not go back to the previous position. You use that point here. You suggest that if the probation period is retained, the maximum penalty should not exceed reversion to the grade occupied immediately prior to the promotion competition involved. Can you give an example of where someone found himself out of a job?

Mr. BARNES: Not under the present act, but as we read the new act it could happen.

Mr. MACRAE: You know of no example of this at all?

Mr. BARNES: No, but as we read the new act it could happen.

Mr. MACRAE: That is the wording of it.

Mrs. CASSELMAN: Are there many people discharged after a probation period in the open competition?

Miss GOODSPEED: That is possibly a question that would be better directed to the commission. We do not have figures.

Mrs. CASSELMAN: You do not have figures?

Mr. BARNES: We have not figures which would enable us to give a significant answer on that point.

Mr. BELL (*Carleton*): In page 6, section 40, you say you would adopt the Heeney report in respect of veterans' preference in open competitions?

Mr. BARNES: The institute policy is to support the Heeney proposition.

Mr. BELL (*Carleton*): As an institute matter, has your institute any views in connection with local preference?

Mr. CARON: That is a good question.

Mr. BARNES: It has not been raised, Mr. Bell. I think it is a point which does not have very much impact on professional classifications.

Mr. BELL (*Carleton*): I am not sure that I understand your expression on page 7 when you say it is believed that intent and not effect should be the basic criterion for assessing political partisanship. Would you deal with that? I am not sure that I understand your point.

Mr. BARNES: This is a point which the annual general meeting of the institute considered at some length a year ago. The feeling was put forward quite strongly that before a person could be discharged for political partisanship, it should be shown, beyond reasonable doubt, that it was intended, that in other words it was not an accident, that he definitely intended to favour a specific political party or candidate. In other words, he set out with intent and forethought to do it and it was not some accidental ricochet or an accident. This was discussed at length.

Mr. BELL (*Carleton*): I would find it very difficult to understand how it could be by accident. Would you like to deal with that?

Mr. BARNES: It is obviously an extreme marginal case that it would be by accident, but some hypothetical cases were advanced.

Mr. BELL (*Carleton*): Where a man might wander into a political meeting, when he intended to wander into a tent revival.

Mr. BARNES: We felt that extreme cases may exist, and we thought it well to make this point.

The ACTING CHAIRMAN (*Mr. Macquarrie*): You do not have any glaring examples?

Mr. RICHARD (*Ottawa East*): Would not that be one point that Mr. Bell mentioned, that he would not wander into a temple thinking he was wandering into a political meeting. He might decide to go to a political meeting of every party, and he should not be discharged on that account, unless it was shown that he intended to become active in that political meeting, and he was also doing other acts from which intent could be gathered, but not just judged by outward acts without showing some intent or really having an intent to take part in political activities.

Mr. BARNES: That is why we added the last paragraph. In order to avoid any possibility of ambiguity we recommended the addition of a clause

clarifying the right of a civil servant to vote in an election, because, after all, in extremis, one would say that is the most active form of political partisanship in which one could indulge.

The ACTING CHAIRMAN (*Mr. Macquarrie*): I suppose if he went in to a meeting with a couple of dozen eggs you would say that would be definite intent?

Mr. BARNES: Yes.

Mr. CARON: At the present time, is it considered by the civil service commission that they could attend a meeting as long as they do not participate in the meeting?

Mr. ROGERS: Certainly.

Mr. SPENCER: Do you not believe that conduct is very strong evidence of intent?

Mr. BARNES: Yes, I think so.

Mr. SPENCER: So that the presence of a person at political meetings is pretty strong evidence of intent to participate?

Mr. CARON: No.

Mr. BARNES: If he goes to two political meetings, organized by opposing parties, it might be difficult to decide on that basis. It might be curiosity.

Mr. HICKS: Surely they form one of the cheap forms of entertainment.

Mr. BELL (*Carleton*): Surely attendance at political meeting should not be so interpreted. In my riding I would not be able to have a meeting if civil servants did not attend.

Mr. CARON: That would occur in most cases in Ottawa.

Mr. SPENCER: I do not mean the attendance, but participation in the meeting.

The ACTING CHAIRMAN (*Mr. Macquarrie*): You do not mean a public meeting advertised by the political party?

Mr. SPENCER: I do not mean the political meeting, but just determining the general meaning of intent. I do not know what way to determine what is in a person's mind except by his conduct. I think the strongest evidence of intent is to be drawn from the conduct. I do not know of any better evidence to use to determine a person's intent than his conduct, and I wonder if you have any other yardstick by which to measure intent?

Mr. BARNES: I think conduct is very largely a measure; but it is a matter of interpretation, and it is not amenable to a straight test. This is the thing that we feel, that this point of intent should be borne in mind in interpreting the particular clause.

Mr. BELL (*Carleton*): Do you feel very strongly about your suggestion, that it should be put in the act that the civil servant has a right to vote? I confess I have very great reluctance in adopting that suggestion. I think it appears to put civil servants in a different class from anyone else. Surely this is something that must be taken so completely for granted that it is almost an insult to put it into legislation.

Mr. BARNES: I would say that is very reasonable, Mr. Bell. We merely draw attention to the possibility, and we wanted to saw the thing up. Civil servants are possibly the only general class who have limits on their political activities and, hence, they are special, in that respect, since voting at a general or other election is a political activity. That was our only reason for drawing attention to this—because they are peculiar in that respect.

Mr. HICKS: I certainly agree with Mr. Bell that it is so perfectly evident that every civil servant has the right to vote that it should not be put in the act at all.

Mr. ROGERS: Or to attend a meeting, too?

Mr. HICKS: Or to attend a meeting. It is a wonderful form of entertainment out in our country, and I know that they always take it as such.

Mr. MACRAE: You say on page 8 that you hold strongly to the view that all regulations which have a bearing on the terms and conditions of employment should be subject to negotiation. That is going quite a long way. I do not know whether any of the other briefs that we had suggested that or not. Would the witness say whether that would be contingent upon some form of board or Whitley council being formed. You do not suggest that at the moment, with all the different staff organizations getting into the act and trying to negotiate this point? Perhaps I have not made it clear. You have in mind the formation of something like the Whitley council. One must follow the other, and not as it stands now.

Mr. BARNES: That was definitely on the presumption that, when a concerted negotiating body is formed, one of the things with which it should be empowered to deal with would be regulations having a bearing on the conditions of service.

Mr. MACRAE: A body which we do not have now?

Mr. BARNES: Oh yes.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Immediately after page 8 you give appendix A. If there are no further questions on the first eight pages, I will ask the committee now to have a look at the draftsmanship in Appendix A, dealing with an outline of the constitution for a public service negotiating committee.

Mr. BELL (*Carleton*): I think we have the views of the institute on this act clearly, and this is only a matter of draftsmanship.

Mr. BARNES: We felt that we should put in an outline constitution as an illustration of the sort of machinery against which we would expect the act to be worked.

The ACTING CHAIRMAN (*Mr. Macquarrie*): What would be the size of the constituency, if I may use the political term, represented by the three people you have mentioned as being, roughly, representatives on the staff side?

Miss GOODSPEED: There would be one member from each on the committee.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Yes?

Mr. BARNES: There would be one representative from each of the three major associations. It would be a committee of three.

The ACTING CHAIRMAN (*Mr. Macquarrie*): I was thinking of whom they would represent.

Miss GOODSPEED: I believe the federation have a membership of 80,000, the association amount to 30,000—these are figures I have heard while I was attending those meetings—and we have around 6,000.

The ACTING CHAIRMAN (*Mr. Macquarrie*): I thought of the possibility of proportional representation. That was going through my mind.

Mr. BARNES: Our recommendation is that it should be by unanimous staffside agreement. That is the way the Whitley council is formed. Some associations run into hundreds of thousands, and some only into hundreds.

The ACTING CHAIRMAN (*Mr. Macquarrie*): I was wondering if you might have some views on this matter but, as you say, this is just a draft, and if there is anything on this constitution it will come up later on.

Mr. CARON: Further on in this brief, just before appendix B—there is no number on the page, but it is headed Canadian public service arbitration tribunal—you say:

> Where there is failure to agree on a claim falling within the limits set out below, the case may be reported by or on behalf of either party to the dispute to the chairman of the civil service commission for reference to arbitration by a tribunal consisting of an independent chairman—

What do you mean by an independent chairman?

Mr. BARNES: Again we envisage following the Whitley precedent, that there would be a standing chairman for the arbitration committee. The U.K. have one who is appointed by order in council. The staff side and the official side representatives would be drawn from panels of personnel. The British experience has been that a great deal is to be gained by having one chairman who serves over a long period of time. He naturally becomes thoroughly familiar with the whole picture.

Mr. BELL (*Carleton*): What type of person is the chairman?

Mr. CARON: Do you not think that if it were a judge it would ensure more independence than anybody nominated by an order in council or by any government?

Mr. BARNES: Actually the British chairman is an eminent Q.C., Mr. G. G. Honeyman, who has been chairman for about ten years. Looking down the official side panel I see there are two or three who are also Q.C.'s. On the staff side panel there is Mr. Beales who is a professor in the University of London. He is one of the staff side members. They have a Q.C., as chairman, and people of that type and standing on the staff side and official side. There are seven members on the official side panel, and five on the staff side panel.

Mr. MACRAE: The witness attached a great deal of importance to Q.C. I do not know whether they are a dime a dozen over there like they are here.

Mr. RICHARD (*Ottawa East*): He was thinking more of his profession.

The ACTING CHAIRMAN (*Mr. Macquarrie*): I notice reading down this list that the majority in the group are from the ranks of the professors. So they went to the very top, I would say, in the U.K. Are there any further questions members of the committee would like to direct?

Miss Goodspeed and Mr. Barnes, I would like to thank you for your comprehensive and well written brief, and for your lucid explanations thereto. You have given us a very fine presentation of your views.

Mr. HICKS: I would like to congratulate them on this very fine brief they have presented. It is certainly tops.

Mr. ROGERS: I second that motion.

Mr. BARNES: Thank you very much.

The ACTING CHAIRMAN (*Mr. Macquarrie*): I would like to remind you that tomorrow at 9.30 we will hear from Le Conseil de la Vie Française. There will be an interpreter here.

—The committee adjourned.

APPENDIX "A"

THE CIVIL SERVICE FEDERATION OF CANADA

May 3, 1961.

Mr. H. Macquarrie,
Acting Chairman,
Parliamentary Committee on the Civil Service Act
Room 220, West Block,
Parliament Buildings,
Ottawa, Ontario.

Dear Mr. Macquarrie:

Near the end of last Monday's session of the Parliamentary Committee, Mr. Caron raised a question on sub-clause (7) of our proposed Clause 71. He was concerned lest the undertaking by those participating in a grievance appeal board hearing to keep the board's proceedings confidential would prevent the appellant from being informed of the reasons for his appeal being denied.

I have consulted with the members of the Civil Service Federation sub-committee which drafted this proposed Clause 71 and have been informed that this was certainly not their intention. It was assumed that the decision transmitted to both parties of the dispute (see sub-clause 8), would contain reasons for the decision. Perhaps, however, the wording of this sub-clause should be more specific on this point. We would be agreeable, therefore, to having the words "together with the reasons therefor" inserted after the word "decisions" in line 1 of our sub-clause (8) of Clause 71.

I am also informed by the sub-committee that it was intended that the words "by all concerned with the proceedings" at the end of sub-clause (7) would apply to all those taking part in the proceedings of the appeal board hearings. It is assumed that this would include the appellant.

I hope this will clarify the Civil Service Federation position on this question.

Yours sincerely

W. Hewitt-White,
1st Vice-President.

WHW/b
cc: C.S.F. Executive Committee.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

FRIDAY, MAY 5, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing Le Conseil de la Vie Française en Amérique: Mr. Paul Gouin, Q.C., President; and Monsignor Paul-E. Gosselin, Secretary.

Representing La Fédération des Sociétés Saint-Jean-Baptiste du Québec: Mr. Gaston Rondeau, President; and Mr. Roger Cyr, Chief of Secretary's Office.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25085-2—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)	Macquarrie	Richard (*Ottawa East*)
Caron	MacRae	Roberge
Casselman (Mrs.)	Martel	Rogers
Hicks	McIlraith	Smith (*Winnipeg North*)
Keays	More	Spencer
Lafreniere	Peters	Tardif.
Macdonnell	Pickersgill	

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, May 4, 1961.

Ordered,—That the name of Mr. Lafrenière be substituted for that of Mr. Campeau on the Special Committee on the Civil Service Act.

Attest.

LÉON-J. RAYMOND,
Clerk of the House.

25085-2—1½

MINUTES OF PROCEEDINGS

FRIDAY, May 5, 1961.
(12)

The Special Committee on the Civil Service Act met at 9.40 a.m. this day. In accordance with a decision of the Committee on Monday, May 1st, Mr. Heath Macquarrie, presided as Acting Chairman.

Members present: Messrs. Bell (*Carleton*), Caron, Hicks, Lafrenière, Macdonnell (*Greenwood*), Macquarrie, MacRae, Martel, McIlraith, Peters, Richard (*Ottawa East*), Spencer and Tardif.—(13)

In attendance: Representing Le Conseil de la Vie Française en Amérique: Mr. Paul Gouin, Q.C., President, Montreal, P.Q.; Monsignor P. E. Gosselin, Secretary, Quebec, P.Q.; Mr. Florian Carrière, Ottawa, Ontario; Mr. Emery Leblanc, Moncton, N.B.; Mr. Albert Leblanc, Valleyfield, P.Q.; Mr. Gérard Turcotte, St. Hyacinthe, P.Q.; Mr. Aimé Arvisais, Ottawa. *Representing La Fédération des Sociétés Saint-Jean-Baptiste du Québec (Federated St. John the Baptist Societies of the Province of Quebec)*: Mr. Gaston Rondeau, President; and Mr. Roger Cyr, Chief of Secretary's office.

The representatives of the two organizations mentioned above were welcomed by the chairman, and invited to the head table.

Mr. Gouin read a short introductory statement referring to two booklets that were distributed to members of the Committee.

On motion of Mr. Martel, seconded by Mr. Caron,

Resolved,—That the following documents, filed with the Committee by the witnesses, be printed in the Committee's record:

1. Mémoire du Conseil de la Vie Française au Premier Ministre du Canada—"Les Canadiens français dans le fonctionnarisme fédéral" dated 1960. (*See Appendix "A" to this day's proceedings*).
2. "Brief on the Department of External Affairs of the Dominion of Canada" dated 1960. (*See Appendix "B" to this day's proceedings*).

The witnesses, Mr. Gouin and Msgr. Gosselin, were questioned respecting the contents of the submission of the "Conseil."

Mr. Rondeau was introduced to the Committee and he presented on behalf of the Federation, a brief setting forth its views respecting bilingualism in the Federal Civil Service.

On motion of Mr. Martel, seconded by Mr. Richard (*Ottawa East*),

Resolved,—That the above-mentioned submission be included in the Committee's record. (*See Appendix "C" to this day's proceedings*).

Mr. Rondeau emphasized certain points in his submission and, assisted by Mr. Cyr, answered questions thereon.

Members of the Committee thanked the witnesses for their submissions and expressed their appreciation of the manner in which the Interpreter had performed his duties.

At 11.00 o'clock a.m. the Committee adjourned until 9.30 a.m., Thursday, May 11, 1961, at which time the representatives of the Civil Service Association of Canada will be examined further.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

FRIDAY, May 5, 1961.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Messieurs, nous pouvons commencer. Nous sommes heureux d'accueillir les représentants du Conseil de la Vie française en Amérique, monsieur l'abbé Paul-E. Gosselin, messieurs Paul Gouin, Florian Carrière, Emery LeBlanc, Albert Leblanc, Gérard Turcotte, Roger Cyr et Aimé Arvisais.

Au cas où les témoins, ainsi que mes collègues du comité, pourraient craindre d'être affligés de mon français rudimentaire, permettez-moi de vous rassurer tout de suite en signalant la présence d'un interprète très compétent. Après ces quelques remarques, vous admettrez que personne plus que moi n'a besoin de ses services.

Maintenant que je me suis exécuté—avec beaucoup de maladresse il va sans dire—dans l'autre langue reconnue au Parlement, je passe à celle que je parle plus couramment sinon mieux.

After that murderous assault upon your language, gentlemen, will you come forward to the table?

Mr. PAUL GOUIN, Q.C. (*President, Le Conseil de la Vie Française en Amérique*): Monsieur le président, messieurs, le Conseil de la Vie française en Amérique a été fondé le premier juillet 1937 pour promouvoir les intérêts économiques et culturels des Canadiens de langue française, s'employer à atteindre une meilleure entente entre les divers groupes ethniques et servir le Canada en général. Il est composé de cinquante membres au maximum. Ceux-ci sont choisis dans les diverses provinces du Canada. Ils représentent les groupes français de ces provinces ou des organismes culturels canadiens-français. Quelques délégués de ces sociétés ont bien voulu se joindre à nous pour la présente audience.

Le Conseil a toujours porté un vif intérêt à l'administration du Canada, en particulier à ce secteur important qu'est le fonctionnarisme. Il est honoré de se présenter devant ce comité. Au nom de mes collègues et en mon nom propre, je vous remercie, monsieur le président, de l'empressement avec lequel vous avez accueilli notre demande d'audience, malgré qu'elle fût tardive. Je tiens à souligner la cordialité de la réception que vous nous faites et à vous dire que nous l'apprécions.

Nous savons que votre tâche est lourde, votre temps précieux. Aussi voulons-nous en venir immédiatement au sujet de cette rencontre. Nous vous avons fait tenir deux mémoires contenant nos vues sur un point important: celui de la place faite aux Canadiens de langue française dans le service civil, en un sens plus large celui de la considération accordée par le service civil à l'une des langues officielles en ce pays.

Je n'ai pas l'intention de résumer ni de commenter les documents que nous vous présentons. Vous avez bien voulu les verser au dossier de cette enquête, de même qu'un mémoire de la Fédération des sociétés Saint-Jean-Baptiste du Québec qui est représentée au sein de notre Conseil ainsi que dans cette délégation. Je veux seulement souligner que la question soulevée par notre présence ici n'est pas uniquement d'ordre linguistique.

Le rôle des fonctionnaires dans la vie de la nation canadienne devient de plus en plus important. A cause de la complexité de l'administration, les gouvernants doivent recourir de plus en plus aux lumières de ces fonctionnaires pour l'élaboration de la législation et s'en remettre à eux dans l'ordre de l'exécution.

Par ailleurs, le Canada est formé officiellement de deux groupes ethniques parlant chacun leur langue propre, dont les traditions, les coutumes, le mode d'existence diffèrent sur plusieurs points. Si la haute administration du Canada veut donner justice à tous les citoyens, répondre à leurs besoins spirituels et

matériels, elle doit, dans l'élaboration et l'application des lois, tenir compte de ces divergences. On le constate en ce moment sur un point crucial, celui de l'impôt; mais elle ne pourra le faire que si les serviteurs de la nation sont en mesure de saisir ces nuances de pensée, ces modalités différentes de vie.

Autrement, il est inutile de parler d'un Canada bi-ethnique, bilingue et bi-culturel. Il ne sert à rien de répéter que l'une des grandes richesses de la nation canadienne réside dans son pluralisme culturel. Si l'on veut conserver et accroître cette richesse, comme on le fait pour le potentiel économique du Canada, il faut prendre hoonêtement et résolument les moyens qui s'imposent. Et l'un des moyens les plus importants est de faire en sorte que la civilisation et la culture canadiennes-françaises marquent de leur empreinte l'administration de notre grand pays.

Nous constatons avec regret que ce n'est pas le cas pour l'instant, du moins pas au gré où ce devrait l'être. La situation présente nous achemine vers une simplification qui sera un appauvrissement, alors qu'elle devrait être un effort de construction d'une nation respectueuse de ses origines, soucieuse d'y chercher ses règles d'inspiration pour le présent et l'avenir.

Messieurs, je m'arrête. J'ai voulu essayer de vous marquer à quelle hauteur se situe, dans notre esprit, cette rencontre. Encore une fois elle dépasse largement le domaine de la linguistique et celui de l'économique.

Je vous remercie de l'attention que vous m'avez accordée. Nous sommes maintenant à votre disposition, mes collègues et moi, pour répondre aux questions que vous auriez à nous poser.

The CHAIRMAN: Any questions from the committee may be presented in either of our official languages on any documents which have been presented by Le Conseil de la Vie française en Amérique.

Mr. MARTEL: Are you asking that these documents be included as an appendix to our proceedings of today, or can I propose this?

The CHAIRMAN: Certainly, please propose it.

Mr. MARTEL: I would like to have the documents—the one on Les Canadiens français dans le fonctionnarisme fédéral, and the one on the brief of the Department of External Affairs, included in today's proceedings.

The CHAIRMAN: All members have copies of these two documents, if not, they can be distributed.

Mr. MARTEL: They were sent in December to every member.

The CHAIRMAN: They are not directed precisely to the committee, but they would be welcome as part of our record. This is agreed.

(*See Appendices "A" and "B"*)

M. MARTEL: Monsieur le président du Conseil de la Vie Française, nous sommes heureux de vous avoir ici aujourd'hui. J'aurais certaines questions à vous poser.

Je comprends, comme vous le dites si bien dans votre mémoire, que le problème dépasse le domaine de la linguistique, qu'il s'agit du domaine de l'économie.

Nous devons nous considérer comme des gens adultes et discuter de ces questions délicates peut-être, mais qui deviennent de plus en plus complexes avec le fonctionnement de notre gouvernement à son état actuel.

Si je me permets certaines expressions, je pense bien que je puis le faire sans avoir l'intention d'aller trop loin et sans entretenir de desseins démagogiques.

Je voudrais vous poser une question qui concerne les normes dont on se sert lors des examens du Service civil.

J'imagine que déjà vous avez fait l'étude de cette question et j'aimerais avoir votre opinion sur le sujet.

Croyez-vous que les normes dont on se sert actuellement pour la préparation des examens sont favorables aux Canadiens français? Est-ce que vous ne croyez pas qu'ils tiennent plutôt compte des façons d'agir de nos compatriotes anglo-saxons et que ceux-ci, lorsqu'il y a des examens pour une nouvelle situation au Service civil ou lorsqu'il y a des promotions, sont mieux placés pour subir ces examens?

M. GOUIN: Voici, je dois avouer, monsieur Martel, que c'est Mgr Gosselin qui peut répondre à cette question. C'est lui, en effet, qui a étudié le problème.

Msgr. GOSSELIN (*Secretary of Le Conseil de la Vie Française en Amérique*): Pour répondre à la question de M. le député Martel, je crois que, d'une façon générale, les questionnaires d'examens du Service civil ainsi que la façon de disposer des points ne correspondent pas aux normes des systèmes d'éducation aux degrés primaire, secondaire et universitaire de la province de Québec.

Je crois que cette situation crée un grave problème pour nos jeunes canadiens-français qui veulent entrer dans le Service civil.

Le Service civil «base» ses questionnaires sur les systèmes d'éducation qui ont été érigés dans la majorité des provinces.

Il me semble donc qu'un effort plus considérable encore devrait être fait dans le but d'harmoniser les questions et de les rendre plus accessibles aux Canadiens français de la province de Québec.

On constate qu'il y a plus de Canadiens français des autres provinces qui réussissent dans le Service civil qu'il y en a dans le Québec. Ce fait semble indiquer qu'ils sont plus près de la majorité anglaise, de l'éducation anglaise et que, par conséquent, ils sont mieux préparés pour s'adapter aux normes de l'examen.

M. MARTEL: Monseigneur, si vous me le permettez, je vais vous poser une autre question.

Je comprends que le système actuel des examens, en ce qui concerne l'élément canadien français, pourrait certainement s'améliorer.

Sans vouloir déprécier toute autre province ou tout autre pays dans le domaine de l'éducation, croyez-vous que les systèmes scolaires, éducatifs de la province de Québec puissent se comparer avantageusement aux autres?

Mgr GOSSELIN: Monsieur Martel, je suis d'origine normande. Aussi vais-je vous répondre en normand.

Si l'on s'en tient à la question de la préparation aux examens du Service civil—et je n'ai pas l'intention de trancher ici la question d'un système ou des systèmes d'éducation—si l'on tient, dis-je, à la question de préparation à l'examen du Service civil, je crois bien qu'il y aurait un effort à faire dans la province de Québec, surtout dans le secteur universitaire et peut-être aussi secondaire pour préparer davantage les jeunes aux fonctions civiles.

M. MARTEL: Une autre question, si vous me le permettez. Je pense bien, tout de même, qu'avec le système d'éducation actuel on peut s'attendre à obtenir d'aussi bons hommes, et ce à tous les niveaux, dans le Québec, dans les divers domaines technique, secondaire, universitaire.

Peut-être aussi, comme le dit Mgr Gosselin, une meilleure préparation s'impose-t-elle auprès des jeunes Canadiens français qui veulent se diriger vers le Service civil.

On oublie très souvent que la situation actuelle des Canadiens français à l'égard du Service civil dépend du fait que les gradués de nos écoles techniques, de nos écoles secondaires ou universitaires, qui «font application» pour subir les examens du Service civil, n'ont pas la préparation requise pour s'affirmer comme ils devraient. Est-ce là, monseigneur, ce que vous aviez dans «la pensée», ce que vous vouliez dire?

Mgr GOSSELIN: Je crois que c'est là une des raisons. Il y en a d'autres, cependant.

Le système d'éducation de la province de Québec est actuellement en voie de réorganisation. Les salaires sont plus élevés, les normes d'examens plus sérieuses. De plus, les industries se développent dans la province de Québec et le nombre de nos techniciens augmente.

En fait, les finissants de nos écoles de mines ou de génie trouvent des emplois sur place.

Alors, si nous voulons que nos Canadiens français se dirigent vers Ottawa, il va falloir changer beaucoup de choses.

M. ALEXIS CARON: Monsieur le président, je désire d'abord féliciter M. Robichaud de son excellente mémoire et de la perfection de son bilinguisme.

Ma question est plutôt courte. Est-ce que vous avez pris connaissance du rapport de la commission du Service civil, datant de décembre 1958, que l'on appelle le rapport Heeney, au sujet des exigences relatives au bilinguisme?

Mgr GOSSELIN: Oui, j'ai vu ce document. Je l'ai lu évidemment avec intérêt. Il témoigne certes d'un effort digne de mention au point de vue du bilinguisme, dans les recommandations qu'il offre.

Cependant, je crois que ceci n'est pas suffisant. Si vous considérez le mémoire que nous avons déposé, le mémoire de couleur jaune, qui porte sur les Affaires extérieures du Canada, vous constaterez que la représentation de nos diplomates, de nos chargés d'affaires, de nos consuls est extrêmement pauvre au point de vue linguistique, surtout si on la compare à celle des pays étrangers.

Cette question ne touche pas seulement l'élément canadien-français, mais le Canada tout entier.

Je crois que la connaissance des deux langues constitue ici un enrichissement nécessaire.

C'est là aussi un moyen indispensable pour connaître la mentalité des gens avec qui l'on fait affaire. Comme le sisait M. Gouin, il est temps de songer à préparer une législation et à la mettre en exécution de façon à satisfaire la population.

M. CARON: Avez-vous soumis un plan qui pourrait être inclus dans le nouveau bill C-71 du Service civil pour prévoir ces cas de bilinguisme nécessaire et utile?

Mgr GOSSELIN: Nous avons fait certaines recommandations, mais nous n'avons pas précisé parce que la Fédération des sociétés Saint-Jean-Baptiste, qui est représentée ici par monsieur Rondeau, l'a fait quelques mois avant nous dans un mémoire actuellement déposé sur un bureau du Comité.

M. CARON: Monsieur Rondeau doit-il témoigner pour la Fédération des sociétés Saint-Jean-Baptiste dans quelques minutes?

Mgr GOSSELIN: Oui.

M. CARON: Dans ce cas, je retarderai mes questions de quelques minutes.

M. RICHARD (*Ottawa-Est*): Je veux demander ceci à monsieur l'abbé Gosselin. Il a mentionné tout à l'heure des difficultés que les élèves de la province de Québec éprouvent à subir les examens pour le Service civil; ne croit-il pas qu'il serait plus facile pour la majorité de ces étudiants de subir ces examens de comprendre les questions si le bilinguisme était plus en faveur dans la province de Québec, si l'anglais était enseigné comme deuxième langue un peu plus «largement» dans nos écoles de la province de Québec?

Mgr GOSSELIN: La langue peut jouer un rôle dans la compréhension des questions, mais je crois que ce n'est pas son rôle essentiel. De fait, nous sommes en présence de deux conceptions différentes de la vie et, par conséquent, nous sommes en présence de deux systèmes d'éducation différents. Il s'en suit que des questions sont préparées selon une conception de la vie, un système d'éducation qui ne correspond pas exactement aux aptitudes, au développement, aux préoccupations de l'élève canadien-français et surtout à l'élève de la province de Québec.

M. RICHARD (*Ottawa-Est*): Monsieur l'abbé Gosselin, vous ne voulez pas dire par là que vous n'êtes pas en faveur de développer le bilinguisme dans la province de Québec?

M. GOUIN: Pas seulement dans la province de Québec, mais à travers tout le Canada!

M. RICHARD (*Ottawa-Est*): C'est bien cela, parce que nous, les canadiens français, réclamons le bilinguisme dans les autres parties du Canada. C'est ce que l'on réclame. Par cela, je ne veux pas dire qu'il faut réclamer le bilinguisme uniquement dans la province de Québec. Mais croyez-vous que les élèves seraient «qualifiés» avec une langue seulement?

M. GOUIN: Une des provinces les plus bilingues est certainement la province de Québec. Il faut l'admettre. Nous ne sommes pas contre le bilinguisme, au contraire.

M. RICHARD (*Ottawa-Est*): Monsieur Gouin, pour revenir à votre mémoire, comme en fait foi la page 3, vous dites:

> Si l'on veut conserver et accroître cette richesse, comme on le fait pour le potentiel économique du Canada, il faut prendre honnêtement et résolument les moyens qui s'imposent.

Pourriez-vous développer un peu cet énoncé?

M. GOUIN: Nous le développons dans notre mémoire. Ceci est, nécessairement, un résumé.

Mgr GOSSELIN: Si vous faites allusion aux recommandations, ou plutôt cela se rapporte aux recommandations; par conséquent vous tombez là dans le domaine de M. Rondeau.

M. GOUIN: Au ministère des Affaires extérieures, cela est clair, nous prétendons que tous les représentants du Canada devraient parler les deux langues officielles du pays. Cela n'est pas difficile à comprendre; cela découle des constatations que nous avons faites.

M. RICHARD (*Ottawa-Est*): Il n'est pas question de proposer d'avoir un certain nombre de Canadiens français dans le Service civil. Ce que vous prétendez c'est que nous devrions avoir suffisamment de Canadiens français dans le Service civil pour continuer l'esprit de l'autre culture, afin de disséminer dans le Service civil l'autre culture qui vient de la langue française et de l'esprit français au Canada.

M. CARON: Pour prouver que les avancés de M. Gouin sont justes et que le bilinguisme existe surtout chez les Canadiens français, nous n'avons qu'à lire la page 10 du mémoire sur les Affaires extérieures du Canada. Nous y voyons que sur le nombre total des employés dans le department des Affaires extérieures, soit 217, le nombre des Anglo-canadiens est de 174, dont 7.5 p. 100 sont bilingues tandis que 1.1 p. 100 sont trilingues; nous voyons également que les Canadiens français sont au nombre de 43, dont 100 p. 100 sont bilingues et 18.6 p. 100 sont trilingues. Donc, ces données statistiques ne sont pas au désavantage du groupe minoritaire canadiens français, au Canada.

C'est tout ce que j'ai à demander. Pour ma part, je suis satisfait des réponses de M. l'abbé Gosselin, de M. Gouin et de M. Rondeau. Mais toutefois, quant viendra le tour de M. Rondeau, je pourrai lui poser d'autres questions.

M. TARDIF: Monsieur le président, souvent, quand on fait enquête sur ces questions-là, on prétend que beaucoup de gens du Québec sont «qualifiés» pour occuper des positions dans le Service civil mais qu'ils n'y sont pas intéressés. Par ailleurs, on prétend que beaucoup de Canadiens français de la province de Québec sont «qualifiés» pour remplir des positions au Service civil mais sont unilingues.

M. GOUIN: Je vous avoue franchement que je n'ai jamais entendu parler du deuxième argument, celui de l'unilinguisme des Canadiens français. Pour ce qui est du premier, j'en ai entendu parler. Évidemment, cela ne nous a pas été rapporté souvent, mais cela peut se produire. Pourquoi? C'est que les Canadiens-français ne se sentent pas particulièrement attirés par Ottawa, sans doute c'est parce que le climat n'est pas favorable. A mon avis, c'est la vraie raison.

M. TARDIF: L'expérience veut que quand ils viennent à Ottawa, ils veulent y demeurer.

M. GOUIN: Je crois que c'est une question de climat, encore une fois.

M. CARON: Mr. Chairman, it has opened a new field. Je désire poser une question et je ne sais pas si Mgr Gosselin peut y répondre. La voici: Je me rappelle que, lorsque M. Potvin était à la Commission du Service civil, il a initié un mouvement auprès des universités, afin de savoir si elles étaient intéressées à préparer du personnel pour le Service civil.

L'Université d'Ottawa a consenti à accepter la suggestion, mais les universités Laval et de Montréal s'y sont refusé.

Est-ce que vous vous rappelez de cet évènement?

Mgr GOSSELIN: Je ne puis répondre pour l'université de Montréal, mais seulement je puis le faire pour l'université Laval. En effet, j'ai été professeur à Laval pendant 22 ans. J'étais là à ce moment-là.

J'ai vu M. Potvin, j'ai causé avec lui et c'est en partie à la suite de sa visite que j'ai créé le collège universitaire, qui fonctionne encore aujourd'hui.

Un des buts de ce collège universitaire était de préparer des baccalauréats, que je dirais spécifiques, adaptés aux exigences du Service civil.

Il y a eu au moins cela de fait. Je crois cependant comprendre l'attitude qu'ont adoptée les universités. C'est qu'elles étaient pas mal prises pour répondre adéquatement aux demandes de M. Potvin. Je crois même qu'il y a eu des offres de faites dans ce sens-là.

Mr. BELL (*Carleton*): May I ask if the university college, of which Monseigneur Gosselin spoke, is engaged in a field of public administration or does it specialize in arts?

Msgr. GOSSELIN: Actually, it specializes in science.

Mr. BELL (*Carleton*): Is there a course at Laval now in public administration?

Msgr. GOSSELIN: I do not think so.

M. MARTEL: Monsieur le président, vous nous avez donné, tout à l'heure, la raison que vous croyez être dominante, qui serait à la base de cet état de choses, qui fait que les Canadiens français ne viennent pas à Ottawa.

N'y aurait-il pas aussi une autre cause? Est-ce qu'ils ne viendraient pas à Ottawa parce qu'ils ne s'y sentent pas chez eux ou qu'ils ont l'impression qu'il n'y a pas pour eux de chances d'avancement?

Auriez-vous des suggestions à faire, au sujet des remarques formulées sur le sujet, qui puissent contribuer à améliorer cette situation?

M. GOUIN: Voici, vous aurez la recommandation faite à la page 6 du mémoire sur le ministère des Affaires extérieures du Canada, où nous disons:

> Le gouvernement canadien devrait, dans un assez court délai, exiger de tous ses représentants à l'étranger la connaissance des deux langues officielles du pays.

Cela évidemment attirerait davantage les Canadiens français.

Mgr GOSSELIN: Monsieur le président, me permettrez-vous de répondre ici à la question de M. Martel?

A la page 6, il y a une recommandation qui nous paraît importante en ce qui touche les Affaires extérieures. C'est que le français soit considéré comme langue de communication à l'intérieur même du ministère. Si nous voulons, en effet, que les diplomates apprennent le français, il est nécessaire qu'ils le pratiquent. Ce serait là une excellente occasion de parfaire ou d'intensifier leur culture française.

Évidemment, ce point soulève un problème qui tient à cœur aux Canadiens français. On sait que l'anglais à l'intérieur du ministère est la langue d'usage et que le français n'est pratiquement pas toléré dans plus d'un ministère.

M. MARTEL: Est-ce que vous «référez» à tous les ministères ici?

Mgr GOSSELIN: Absolument. Mais je crois que celui des Affaires extérieures est le plus important.

M. MARTEL: Vous «référez» tout de même à tous les ministères.

Mgr GOSSELIN: Oui.

M. CARON: Monsieur le président, je désire poser une autre question à Monseigneur Gosselin.

Ne croyez-vous pas que dans certains ministères, comme celui du Revenu national, il serait important que ceux qui traitent avec le public soient également bilingues? Je pense ici particulièrement aux Douanes canadiennes.

J'ai personnellement eu l'occasion de débarquer à Vancouver, à Windsor et tout près d'ici, à Cornwall. J'ai éprouvé de la difficulté à avoir un Canadien français pour m'accueillir ou à tout le moins un employé bilingue.

Mgr GOSSELIN: Je remercie M. Caron d'avoir soulevé cette question. En somme, il s'agit ici du problème de l'accueil réservé aux visiteurs et aux immigrants.

Actuellement, cet accueil s'effectue uniquement en anglais. Pourtant, beaucoup de gens passent par notre pays et conservent, hélas, l'impression qu'il n'y a qu'une langue en usage.

Je crois que si vraiment on veut donner une représentation ethnique juste, il faudrait voir à ce que le bilinguisme soit mieux servi.

Mr. MACRAE: I have decided, Mr. Chairman, not to follow your example wherein you spoke in a language which was neither that of the witnesses nor your own.

Mr. CARON: That is bad. Mr. Chairman, you should protest at this.

An hon. MEMBER: He does not understand the Gaelic.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Continuez M. MacRae.

Mr. MACRAE: With regard to the figures which are given on page 9 in the English section of the brief on the Department of External Affairs, outlining the language knowledge of Canadian representatives outside, particularly with regard to those who attended the fifteenth general assembly of the United Nations last year, it has occurred to me that foreign service officers who were bilingual, and those who had a knowledge of French, were at an advantage over everybody else. I found no example there or anywhere else, and I have been often on these forays to NATO conferences and others, I have seen no example—I will be very frank—of where we are at any disadvantage because, for example, our people spoke in English. We always had adequate French-speaking officers and French-speaking personnel to carry on our own part. That would be my observation there.

I have a question—I am sorry to go on so long for the interpreter—I would like to ask: how many of the people of Quebec, is it considered, cannot speak any English whatsoever of the 5 million people in the province—how many do not speak English?

Mgr GOSSELIN: Il n'y a pas de données statistiques là-dessus.

Mr. MacRae: The census would show it, I presume.

M. Caron: Monsieur MacRae dit que nos Canadiens de langue anglaise ne sont pas désavantagés aux assemblées de l'OTAN.

J'ai personnellement assisté à une assemblée de l'OTAN, à Paris. J'ai remarqué que seules deux délégations sur 15 représentées ne parlaient pas deux langues: celles des américains et celle des Canadiens de langue anglaise.

Mgr Gosselin: Monsieur le président, ce point est très important. Il ne s'agit pas seulement de l'impression que laissent nos représentants à l'étranger, il s'agit, à proprement parler, d'une question de prestige.

Le Canada est un pays bilingue. Ses représentants devraient alors s'exprimer dans les deux langues, le français et l'anglais, pour justifier ce prestige canadien.

M. Caron: Ne croyez-vous pas qu'il serait aussi très avantageux pour le Canada que nos représentants à l'extérieur puissent montrer d'une façon non équivoque leur connaissance des deux langues et jouer, par conséquent, un rôle de premier plan dans la solution des problèmes qui surgissent entre, par exemple, la France et l'Angleterre? Est-ce que ce caractère bilingue ne pourrait pas être utile?

Mgr Gosselin: Sans aucun doute. Il y a aussi le cas des relations américaines et françaises. Les États-Unis sont tout près de nous et nous connaissons la culture française.

Mr. Peters: Would the witness be agreeable if we were to give, as a compulsory part of the employment after the people were employed in these various departments, bilingualism, training them in French and English, whichever the case might be? I suggest that this should be part of the department's responsibility rather than an entrance responsibility, that this should be for training of bilingualism rather than as a hiring basis.

M. Caron: Voici, est-ce que votre sentiment n'est pas à l'effet qu'on pourrait poser comme condition d'entrée au ministère des Affaires extérieures, l'obligation de suivre des cours, de subir un examen de français?

Il me semble que cette initiative permettrait au personnel des Affaires extérieures de pratiquer un meilleur bilinguisme.

Mgr Gosselin: Évidemment, la formule que vous présentez là est très avantageuse. Je crois tout de même qu'il serait préférable qu'un candidat, avant même d'entrer au Service des Affaires extérieures, fût déjà bilingue.

Mr. Peters: It is a terrific limitation on people from any other part of the country except Quebec. It seems to me, and I will agree that probably we should be a bilingual country, but I am very much opposed to tying all our interests for entrance for a civil service examination to bilingual entrants, but I would be in agreement to having the civil service perform our function of making our people bilingual after they are in it. I would agree to that. But coming from Ontario, and a part that has a large French section in northern Ontario that does not speak any English in some cases, I think this should not be a condition of entrance, but our service should help to broaden this scope of making everyone bilingual.

Mr. Gouin: In all the services or only in this service?

Mr. Peters: I would say in all the services.

Mr. Gouin: There I agree with you entirely. I thought you referred only to this department.

The Chairman: Are there further questions from these witnesses?

M. Martel: J'aurais une autre question à poser; je ne suis pas certain s'il ne serait pas préférable que j'attende. Je crois que M. Rondeau, président de la Fédération de la société Saint-Jean-Baptiste du Québec, a un mémoire à

présenter. Ma question se rapporte au bill C-71 qui concerne le Service civil, la revision de la loi que nous sommes en train d'étudier et, plus spécifiquement, à l'article 39... Est-ce que vous avez pris connaissance de ce projet?

Mr. GASTON RONDEAU: (*President of Federated St. John de Baptist Societies of the Province of Quebec*): Je n'ai pas le texte ici.

M. MARTEL: L'article 39 se lit comme il suit:

> La Commission peut autoriser un sous-chef à exercer et accomplir l'un quelconque des pouvoirs ou fonctions, dont elle est investie par la présente loi, relativement au choix à faire parmi les candidats à un emploi.

Ceci veut dire que l'on donne, en vertu de ce texte de la loi, une autorité absolue, presque du moins, ou plutôt que la Commission du service civil peut donner cette autorité absolue au sous-ministre en charge d'un ministère, dans le choix des candidats. Évidemment, c'est la Commisison qui délègue ces pouvoirs ou qui donne cette autorité au sous-ministre.

M. RONDEAU: Comme nous allons le dire tantôt, nous croyons qu'il est dangereux qu'on laisse à ces fonctionnaires autant de discrétion.

Mr. MARTEL: In that case we might have here Mr. Rondeau's brief.

Mr. CARON: Before we call upon Mr. Rondeau, it may be that Mr. Rondeau has experts here to help him with his answers.

M. RONDEAU: Voici, M. Cyr peut me rendre service.

M. LAFRENIÈRE: Avant de passer à la question de M. Rondeau, je veux tout simplement faire observer ici que le bilinguisme, au Canada, est plutôt à sens unique, c'est-à-dire que les Canadiens d'expression française parlent l'anglais. Aussi, je voudrais faire, aux Canadiens de langue anglaise, le reproche qu'ils sont un peu paresseux et qu'ils ne font pas, pour apprendre le français, l'effort que nous faisons pour apprendre l'anglais. Alors, je veux leur faire tout simplement un petit reproche, ce matin, et leur demander de faire un effort pour apprendre le français. La population du pays est de 18 millions d'habitants et elle compte environ 6 millions de Canadiens français. Cela veut dire un Canadien français sur trois Canadiens anglais. Alors, il faudrait que les Canadiens de langue anglaise fassent un petit effort pour apprendre le français.

M. MARTEL: Mais, M. Lafrenière veut sans doute signaler que cette remarque ne s'applique pas au président de notre Comité.

M. CARON: Pour être également juste envers l'élément anglo-canadien, il faut admettre que nous vivons non seulement au sein d'une population de 18 millions d'habitants car, avec ceux qui nous entourent, soit les Américains, c'est une population de 182 millions de personnes qui ne parlent que l'anglais.

La nécessité n'est pas aussi grande pour l'élément anglais d'apprendre le français que pour le français d'apprendre l'anglais. C'est sans doute pour cette raison-là que les Anglo canadiens ne font pas un aussi grand effort. Ce n'est pas parce qu'ils ne veulent pas, mais bien parce qu'ils n'en sentent pas le besoin. Pour nous, c'est un besoin absolu comme dans tout pays où il y a une population minoritaire.

M. LAFRENIÈRE: J'ai dit cela sans amertume, sans animosité. Je sais qu'ils n'ont pas le même avantage.

Mr. MACDONNELL: I welcome what Mr. Caron has said. I am one of those people who has not made enough effort. When I was young I could speak French fairly adequately, and then for years and years I had no occasion to do so, since I descended into politics. I tried several times by making visits to the

province of Quebec to get back to speaking French, but I never made a complete job of it. I always had my head a little below water. I do want to accentuate what Mr. Caron has said, that we do not have day-to-day occasion for using French, much as I regret it.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Perhaps this is a good time for the Chair to point out that the Saint-Jean-Baptiste Federation have brought along their brief in both languages, so those whose heads are below water may have an opportunity of reading it in either language. I think that it is a very useful document, and it should be made part of our report.

Mr. MARTEL: I move that it be made part of the report.

The ACTING CHAIRMAN: Agreed.

(*See Appendix "C"*)

The ACTING CHAIRMAN (*Mr. Macquarrie*): It will become part of the record and some of us will read it in both languages and do our best, but in any case we shall all appreciate having these views.

Now, if Mr. Rondeau has any comment on his brief, I would call upon him and then we may have questions from any members of the committee.

M. CARON: M. Rondeau, avant que vous ne commenciez vos commentaires, lesquels vont prendre un certain temps, auriez-vous l'obligeance d'arrêter, de temps à autre, afin de donner une chance à notre interprète M. Robichaud.

M. MARTEL: Il ne s'agit que d'un résumé, ici.

M. RONDEAU: Monsieur le président, messieurs les membres du comité, la Fédération des sociétés Saint-Jean-Baptiste du Québec qui représente toutes les sociétés Saint-Jean-Baptiste de la province de Québec, c'est-à-dire au moins 225,000 membres, a présenté au début de 1959, soit exactement le 22 avril, au très honorable premier ministre du Canada, M. John Diefenbaker, son mémoire sur le bilinguisme dans l'administration fédérale. A ce moment, ce mémoire avait reçu un excellent accueil. Nous croyons présentement que ce document réflète également, en 1961, la pensée de nos sociétés sur la question et nous croyons que vous l'accueillerez favorablement.

Nous apprécions être entendus par vous ce matin et, comme vous avez le texte en anglais et en français, je vais me contenter de résumer ou de vous rappeler plutôt les quatre conclusions que nous avons dans notre mémoire.

Les conclusions sont à la page 10 du texte français et à la page 9 du texte anglais.

La première conclusion que nous tirons de notre mémoire, c'est la reconnaissance officielle du bilinguisme comme une des «qualifications» pouvant être exigée des candidats ou fonctionnaires publiques.

Dans son projet de refonte de la loi et des règlements du Service civil du Canada, soumis par M. Heeney en décembre dernier, la Commission du service civil recommandait qu'on accorde aux anciens combattants un boni de 5 p. 100 du total possible des points, lors d'un examen, au lieu d'une préférence absolue comme c'est le cas actuellement.

Nous croyons que le bilinguisme est devenu assez important pour qu'on accorde aussi un boni de 5 p. 100 à tous les candidats possédant une connaissance convenable de la langue seconde (l'anglais ou le français, selon le cas).

La deuxième conclusion touche le remaniement de la loi sur le service civil du Canada, sur les questions relatives au bilinguisme. Le rapport Heeney, que nous avons mentionné ci-dessus, a déjà proposé une refonte complète de la loi et des règlements du Service civil.

Nous croyons que les termes de la nouvelle loi ne devraient prêter à aucune equivoque sur les privilèges accordés aux bilingues ni accorder de pouvoirs discrétionnaires aux fonctionnaires supérieurs de la Commission ou aux ministres du cabinet, selon le cas.

Notre troisième recommandation va évidemment plus loin que notre situation actuelle et accorde une préférence absolue aux candidats bilingues dans les bureaux de la capitale et dans les bureaux régionaux situés en des endroits où 20 p. 100 ou plus de la population ne parle pas la langue de la majorité.

Dans les bureaux de la capitale, des exemptions pourraient être consenties en faveur du personnel affecté aux recherches et qui, par conséquent, n'a pas de relation directe avec le public. Par contre, nous sommes d'avis qu'un groupe de dix mille personnes ne parlant pas la langue de la majorité, même s'il ne constitue que 5 p. 100 de l'ensemble, constitue une masse suffisamment importante pour nécessiter qu'au moins une partie du personnel affecté au bureau régional soit bilingue.

Notre quatrième sujet a trait à la réévaluation des examens d'admission. Ce point a déjà été mentionné tantôt: Réévaluation des examens d'admission aux postes du Service civil en fonction des deux cultures officielles du pays.

A l'heure actuelle, les examens d'admission sont conçus en fonction de l'éducation donnée dans les écoles de langue anglaise, lesquelles ont développé leur programme d'étude en relation avec la culture et la mentalité anglaises, lesquelles n'ont rien de commun avec la mentalité et la culture françaises. De telle sorte que les candidats de langue et de culture françaises sont desservis dès le départ, puisqu'ils ont à participer à des examens qui ne tiennent aucun compte de la formation qu'ils ont reçue.

Nous comptons sur vous, monsieur le premier ministre et messieurs les membres du comité pour amener le gouvernement et la Commission du service civil, à qui nous adressons une copie du présent mémoire, à réaliser ces réformes. Nous sommes assurés que vous aurez ainsi contribué à accroître encore l'efficience reconnue des services fédéraux, en même temps que vous aurez resserré l'union de tous les Canadiens en rendant justice à la minorité, sans causer préjudice à la majorité.

Nous vous remercions, messieurs, et si vous avez des questions à poser, nous y répondrons avec plaisir.

J'ai, à mes côtés, M. Roger Cyr qui s'est occupé de la préparation du mémoire et qui n'a cessé d'étudier la question. Il pourra sans doute nous rendre service à l'occasion.

M. CARON: Monsieur Rondeau, je crois que votre suggestion, que l'on pourrait qualifier de quasi-idéale, ne serait peut-être pas facile d'application.

Ne croyez-vous pas que la suggestion présentée par M. Peters, il y a un instant, laquelle touche de très près à la situation du bilinguisme ne devrait pas être acceptée?

Je la résume: Une fois entrés au Service civil, les gens pourraient avoir gratuitement une série de cours de langues.

Avec les années, nous pourrions obtenir probablement un bilinguisme beaucoup plus parfait que celui que nous avons présentement.

M. RONDEAU: Est-ce que la suggestion s'applique uniquement au ministère des Affaires extérieures ou à tous les services?

M. CARON: Non, la suggestion de M. Peters s'appliquait à tous les services, à l'exception peut-être des Affaires extérieures, où les gens jouissent d'une culture beaucoup plus prononcée et devraient posséder l'une et l'autre langues.

La suggestion faite par M. Peters touche tous les services qui engagent des employés qui ont terminé leurs études à tout le moins en 9e année.

Je crois, pour ma part, qu'il serait assez difficile d'exiger de la partie anglo-saxonne qu'en entrant, elle possède une langue seconde.

M. RONDEAU: Je crois que la suggestion améliorerait la situation. Mais est-ce que cela correspondrait exactement à ce que nous avons dans l'idée? Je me le demande.

M. CARON: Voici, M. Rondeau, comme je l'ai dit, votre suggestion est quasi parfaite. Mais nous sommes en face d'une situation existante et pas facile à corriger.

Nous devons procéder par étapes. Car, à mon avis, exiger la perfection dès le début ne nous apporterait rien.

Pour ma part, je comprends l'attitude de l'élément anglo-canadien, qui se sent dans un état d'infériorité au point de vue culturel.

Nous savons que dans tous les pays où il y a plusieurs langues, l'élément minoritaire a besoin d'être supérieur intellectuellement pour devenir l'égal de la majorité. Cela, c'est un fait.

A cause de cela, je crois que nous nous devons de procéder par étapes, si nous voulons obtenir de plus grands succès.

Dans la vie d'un peuple, dix ans, quinze ans, ou 20 ans, c'est peu de chose. Par ailleurs, dans la vie d'un individu, c'est énorme.

Il faut considérer la question sous l'angle de la vie d'un peuple, et non pas sous celui de la vie d'un individu.

M. MARTEL: J'aurais une question à poser à M. Rondeau.

Je pense que vous admettrez avec moi, bien que je ne sois pas à Ottawa depuis si longtemps, que la situation faite aux Canadiens français au Service civil n'est pas nouvelle, qu'elle existe depuis nombre d'années, comme vous le disiez d'ailleurs dans vos différents mémoires.

Je crois que le mémoire du Conseil de la Vie française élabore ce point.

Je crois comprendre que le mémoire que vous nous avez remis déclare que la situation, bien loin de s'améliorer, se détériore.

Je désirerais poser cette autre question. Vous parlez de sous-ministres, vous parlez des pouvoirs discrétionnaires accordés aux sous-ministres ou aux ministres.

Croyez-vous que cette question soit normale, surtout en ce qui concerne les haut fonctionnaires, ceux qui n'ont pas à rendre compte de leurs actes ou de leur mandat au public électeur? Est-ce que vous ne croyez pas qu'ils ont trop de pouvoir?

M. Roger CYR (*Chief of Secretary's Office*): Monsieur Martel, vous avez tantôt posé une première question à laquelle je désirerais répondre. Vous demandez si la situation s'améliore ou se détériore. Je vais vous répondre que l'exemple tout récent qu'a donné le ministère des Forêts n'indique certes pas une amélioration.

M. MARTEL: Les fonctionnaires qui ont été nommés à des postes supérieurs dans le ministère des Forêts, comme vous le savez sans doute, sont en fonction depuis de nombreuses années. Ce sont des fonctionnaires «qualifiés», il n'y a aucun doute là-dessus.

Mais, comme vous le dites, cet exemple illustre le fait que, pour les Canadiens français, la situation ne s'améliore pas.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Thank you very much gentlemen. We have a siren this morning to which we are not expected to give attention, but a bell is ringing which we must obey.

Mr. MACDONNELL: I wish to express my thanks to the interpreter for his admirable service and to express my own admiration for his bilinguability, if there is such a word, and for his admirable memory.

The ACTING CHAIRMAN (*Mr. Macquarrie*): Thank you, Mr. Macdonnell. The meeting is adjourned.

THE FOLLOWING IS AN ENGLISH TRANSLATION OF THE DELIBERATIONS CARRIED ON IN FRENCH ON THIS DATE

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The ACTING CHAIRMAN (*Mr. Macquarrie*): We can now start, gentlemen. We are pleased to welcome the representatives of the *Conseil de la Vie française en Amérique,* Abbé Paul E. Gosselin and Messrs. Paul Gouin, Florian Carrière, Emery LeBlanc, Albert Leblanc, Gérard Turcotte, Roger Cyr and Aimé Arvisais.

In case the witnesses and my colleagues of the Committee fear that I may inflict my rudimentary French on them, let me reassure you right away that a very competent interpreter is in attendance. After hearing these remarks you will admit that no one needs the help of the interpreter more than I do.

Now that I have made this attempt, admittedly a very awkward one, in the other language recognized by Parliament, I will revert to the one I speak more fluently, if not better.

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(page 223)

Mr. Paul GOUIN: Mr. Chairman, gentlemen, the Conseil de la Vie française en Amérique was established on July 1st, 1937 to promote the economic and cultural interests of French-speaking Canadians, to endeavour to achieve better understanding between the various ethnic groups and to serve Canada in general. It comprises a maximum of fifty members. These are selected in the various provinces of Canada. They represent the French groups in those provinces or French-Canadian cultural organizations. A few delegates of these associations have been kind enough to join us for the present hearing.

Our organization has always taken a keen interest in the government of Canada and particularly in that important sector, the civil service. It is honoured to appear before this Committee. On behalf of my colleagues and on my own behalf, allow me to thank you, Mr. Chairman, for having so kindly received our request for a hearing although it was made at a late date. I wish to emphasize the cordial reception you have given us and to tell you that we highly appreciate it.

We are aware that your task is a difficult one and that your time is valuable, so let us turn immediately to the subject of this meeting. We have handed you two briefs containing our views on an important point, namely that of the place given to French-speaking Canadians in the civil service or, in a more general sense, that of the consideration given by the civil service to one of the official languages of this country.

I do not propose to summarize or to comment on the documents we are submitting. You have been kind enough to include them in the file on this enquiry together with a brief from the Federation of Saint Jean Baptiste Societies of Quebec which is represented within our Council and also in this delegation. I simply wish to emphasize that the question posed by our presence here is not only one of linguistics.

The role of civil servants in the life of the Canadian nation is becoming increasingly important. Owing to the complexity of government our leaders must call on the knowledge of those civil servants to an ever increasing extent for the preparation of legislation, and must count on them for its enactment.

On the other hand, Canada is officially composed of two ethnic groups, each speaking its own language, whose traditions, customs, and way of life differ in many respects. If the senior governing body of Canada wants to do justice to all the citizens of the country and meet all their spiritual and material needs it must, when drafting and enacting legislation, take these differences into account. This can be seen just now with regard to the crucial matter of income taxes. But it can only do so if those who serve the nation are able to grasp the slight differences that exist in the way of thinking and the different way of like of the two groups.

It is useless, otherwise, to speak of a bi-ethnic, bilingual and bicultural Canada. It is useless to keep repeating that one of the great riches of Canada resides in its cultural plurality. If we want to retain and develop this wealth as we do the economic potential of our country, the necessary measures must be taken honestly and resolutely. And one of the most important measures is to take steps so that the French-Canadian civilisation and culture are apparent in the administration of our vast country.

We notice with regret that such is not the case at the present time, or at least not to the degree one might expect. The present situation is leading us to a simplification that will amount to impoverishment, whereas, an effort should be made to build a nation respectful of its origins, and anxious to find therein its rules of inspiration for the present and the future.

That is all I have to say, gentlemen. I have endeavoured to show you the high level this meeting occupies in our minds. I repeat once again that it goes far beyond the sphere of linguistics and economics.

Thank you for your kind attention. My colleagues and I are at your entire disposal and will be glad to answer any questions you may wish to ask us.

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Mr. MARTEL: We are happy to have you here to-day, sir, as president of the Conseil de la Vie Française. I have some questions to ask you.

I understand, as you have so ably stated in your brief, that the problem goes beyond the scope of linguistics, that it falls within the realm of economics.

We must regard ourselves as adults and discuss these questions which are touchy, perhaps, but which are becoming increasingly complex with the operation of our government as it is to-day.

If I take the liberty of using certain expressions, I think I can do so without any intention of overstepping the mark and without entertaining any demagogic designs.

I should like to ask you a question concerning the standards used for Civil Service examinations.

I imagine you have already made a study of this question and I should like your opinion regarding it.

Do you think that the standards now used for the preparation of examinations are favourable to French Canadians? Do you not think that more account is taken of the ways of our Anglo-Saxon countrymen and that the members of that group are in a better position to try those examinations for new positions and promotions in the Civil Service.

Mr. GOUIN: Well I must confess, Mr. Martel, that Msgr. Gosselin is the one who can answer that question. It was he, as a matter of fact, who studied the problem.

Msgr. GOSSELIN: To answer Mr. Martel's question, I think that, generally speaking, the question papers of the Civil Service examinations, and the way in which the marking is arranged do not correspond to the norms which apply in the elementary, secondary, and university systems of education in the province of Quebec.

I believe that this situation creates a serious problem for our young French Canadians who wish to enter the Civil Service.

The Civil Service bases its questionnaires on the systems of education that have been set up in the majority of the provinces.

It seems to me, then, that a still greater effort should be made to make the questions more relevant and better suited to the background of French Canadians from Quebec.

We find that more French Canadians from the other provinces succeed in the Civil Service than from Quebec. This would seem to indicate that they are closer to the English majority, to English education, and that as a result they are better prepared to adapt themselves to the requirements of the examination.

Mr. MARTEL: Monsignor, if you will permit me, I shall ask you another question.

I understand that as far as the French-Canadian element is concerned, there is certainly room for improvement in the present examination system.

Without wishing to disparage any other province or country with respect to education, do you think that the school and education systems of the province of Quebec can compare favourably with the others?

Msgr. GOSSELIN: Mr. Martel, I am of Norman origin, therefore I am going to answer you as a Norman (i.e. shrewdly).

If we confine ourselves to the matter of preparation for Civil Service examinations—and I do not intend to choose here between one or more systems of education—I do believe that an effort should be made in the province of Quebec, especially at the university level, and perhaps also at the secondary level, to prepare our youth better for civil service careers.

Mr. MARTEL: One more question, if you will allow me. I do think, nevertheless, that with the present system of education we can expect to obtain just as good men in Quebec at all levels and in the various fields—technical, secondary, and university.

Perhaps, too, as Monsignor Gosselin says, a better preparation is essential for young French Canadians wishing to go into the Civil Service.

The fact is very often overlooked that the present situation of French Canadians with respect to the Civil Service is due to the fact that the graduates of our technical schools, secondary schools, or universities who make application to try the Civil Service examinations have not the preparation required to assert themselves as they should. Is that what you had in mind, Monsignor? Is that what you meant?

Msgr. GOSSELIN: I believe that is one of the reasons. However, there are others.

The system of education of the province of Quebec is being reorganized at the present time. Salaries are higher and examination standards more rigorous. In addition, industry is expanding in the province of Quebec and the number of our technicians is increasing.

As a matter of fact, the graduating students from our mining or engineering schools are finding jobs in their home province.

Now, if we want our French Canadians to go to Ottawa, a great number of things will have to be changed.

Mr. ALEXIS CARON: Mr. Chairman, I wish first of all to congratulate Mr. Robichaud on his excellent brief and on his perfect bilingualism.

My question is fairly short. Have you studied the report of the Civil Service Commission, dating from December 1958, the one that is called the Heeney Report, concerning the bilingualism requirements?

Msgr. GOSSELIN: Yes, I have seen that document. I read it with interest, of course. It certainly displays a noteworthy effort in the recommendations it offers with regard to bilingualism.

However, I do not believe that this is enough. If you consider the brief we presented, the yellow one, which deals with Canadian external affairs, you will find that the representation of our diplomats, of our chargés d'affaires, and our consuls, is extremely poor from the language standpoint, especially if we compare it with the representation of foreign countries.

This question does not concern the French-Canadian element only, but all Canada.

I believe that a knowledge of both languages constitutes a necessary enrichment in this field.

Such a knowledge is also an indispensable means of getting to know the mentality of the people with whom you are dealing. As Mr. Gouin said, it is time to think of preparing legislation and putting it into effect so as to satisfy the population.

Mr. CARON: Have you submitted a plan which could be included in the new bill C-71 of the Civil Service to provide for these cases of necessary or useful bilingualism?

Msgr. GOSSELIN: We made a few recommendations, but we have not gone into details, because the Federation of the Saint John the Baptist Societies, which is represented here today by Mr. Rondeau, did it a few months before in a submission filed with the Committee.

Mr. CARON: Will Mr. Rondeau appear today for the Federation of the Saint John the Baptist Societies?

Msgr. GOSSELIN: Yes.

Mr. CARON: In that case I will postpone my questions.

Mr. RICHARD (*Ottawa East*): I would like to ask Msgr. Gosselin a question. He mentioned a while ago the difficulties encountered by the students from the Province of Quebec when they try the Civil Service examinations. Would not those students find it easier to understand the questions if bilingualism were more in favour in the Province of Quebec, if the English language were taught a little more as a second language in the schools of the province?

Msgr. GOSSELIN: Language may be a factor in the understanding of the questions, but I don't think it is the main factor. In fact we are in the presence of two different conceptions of life and consequently two different systems of education. It follows that the examination questions are prepared according to a conception of life and a system of education which does not correspond exactly with the aptitudes, the mental development, the interests of the French-Canadian student, the student of the Province of Quebec in particular.

Mr. RICHARD (*Ottawa East*): Monsignor Gosselin, you do not mean by that that you are not in favour of the development of bilingualism in the Province of Quebec?

Mr. GOUIN: Not only in the Province of Quebec, but throughout Canada.

Mr. RICHARD (*Ottawa East*): Exactly. Because we French-Canadians proclaim the necessity of bilingualism in the other parts of Canada. That is what we demand. I do not mean that we must advocate bilingualism for Quebec only. But, do you think that the students would be qualified if they knew only one language?

Mr. GOUIN: Quebec is certainly one of the most bilingual provinces. That must be recognized. We are not against bilingualism, far from it.

Mr. RICHARD (*Ottawa East*): Mr. Gouin, coming back to your submission, you say on page 3: "If we want to keep and develop that asset, as we do for the economic potential of Canada, we must honestly and resolutely take the necessary means." Could you develop that statement a little?

Mr. GOUIN: We have developed it in our submission. This is necessarily a summary.

Msgr. GOSSELIN: If you are referring to the recommendations, you will find them in Mr. Rondeau's submission.

Mr. GOUIN: As regards the Department of External Affairs, the question is clear. We claim that all the representatives of Canada abroad should speak the two official languages of the country. This is easy to understand; it is a consequence of the facts we have ascertained.

Mr. RICHARD (*Ottawa East*): You do not propose that there should be a definite number of French-Canadians in the Civil Service. What you claim is that there should be in the Civil Service a sufficient number of French-Canadians to safeguard the existence of the other culture which derives from the French language and French mentality.

Mr. CARON: In order to see that the statement made by Mr. Gouin is correct, we have only to refer to the section of the submission, on page 10, dealing with the External Affairs Department. We can see there the following facts. The total number of employees is 217; the number of English-Canadians is 174, 7.5 per cent of whom are bilingual and 1.1 per cent trilingual; the number of French-Canadians is 43, 100 per cent of whom are bilingual and 18.6 per cent trilingual. Consequently, these data do not show the French-Canadian minority at a disadvantage.

That is all I have to ask. I am satisfied with the answers given by Msgr. Gosselin, Mr. Gouin and Mr. Rondeau. As for Mr. Rondeau I may have other questions to ask him.

Mr. TARDIF: Mr. Chairman, when those questions are examined, it is being stated sometimes that many Quebec people are qualified to occupy positions in the Civil Service but are not interested. It is also stated that many French-Canadians from the Province of Quebec are qualified to fill positions in the Civil Service but are unilingual.

Mr. GOUIN: I confess that I have never heard anything about the second reason, the unilingualism of the French-Canadians. As for the first reason, I heard about it. Evidently, this is not often mentioned, but it can happen. Why? No doubt, because the French-Canadians are not particularly attracted by Ottawa, because the atmosphere is not congenial. I believe this is the true reason.

Mr. TARDIF: Experience shows that, when they come, they decide to stay.

Mr. GOUIN: As I said before, I think it is a question of atmosphere.

Mr. CARON: Mr. Chairman, it has opened a new field. I wish to ask a question but I do not know if Msgr. Gosselin will be able to answer. Here is my question: When Mr. Potvin was with the Civil Service Commission, I remember that he got in touch with the Universities in order to find out if they were interested in training personnel for the Civil Service.

The Ottawa University was willing to follow up the suggestion but Laval University and the University of Montreal refused.

Do you recall the events I am referring to?

MSGR. GOSSELIN: I cannot answer for the University of Montreal but only for Laval University. In fact, I was a professor at Laval for 22 years; I was there at the time the events you mention took place.

I saw Mr. Potvin, I talked with him and it is partly because of his visit that I established the Collège universitaire which still exists to-day.

One of the aims of this department was to prepare sudents for a bachelorship, I would say a special bachelorship, to meet the needs of the Civil Service.

There was that at least that was done. I believe that I can understand the attitude adopted by the Universities. They were in a rather awkward position to give an adequate answer to Mr. Potvin's requests. I believe that there were offers made to that effect.

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Mr. MARTEL: Mr. Chairman, you gave us, just a moment ago, the reason which, to your way of thinking, is the main reason for this state of affairs, for the fact that French-Canadians do not come to Ottawa.

Would there not also be another reason for this situation? Is it not possible that French-Canadians do not come to Ottawa because they do not feel at home there or because they feel that there are no chances for promotion for them?

Would you have any suggestions to offer, with regard to the comments made on the matter, which would contribute to improve the situation?

Mr. GOUIN: There is the recommendation which appears on page 6 of the brief on the Department of External Affairs where we say:

> The Canadian Government should, within a fairly brief delay require that all its representatives abroad know the two official languages of the country.

That would obviously attract a larger number of French-Canadians.

Msgr. GOSSELIN: Mr. Chairman, would you allow me to answer Mr. Martel's question?

On page 6, there is a recommendation which we consider important with regard to External Affairs. This recommendation is to the effect that French be considered as a language of communication within the Department itself. If we want our diplomatic personnel to learn French, they must have a chance to use it. This would give them an ideal opportunity to improve and add to their knowledge of the French culture.

Obviously, this brings up a problem which is a sore point with French-Canadians. It is known that English is the language used within the Department and that, in practice, French is not tolerated in many Departments.

Mr. MARTEL: Are you referring to all departments here?

Msgr. GOSSELIN: Absolutely. But I think the Department of External Affairs is the most important.

Mr. MARTEL: You are still "referring" to all departments.

Msgr. GOSSELIN: Yes.

Mr. CARON: Mr. Chairman, may I ask another question to Canon Gosselin.

Would you say that in some departments, National Revenue for instance, it would be important that those dealing with the public should also be bilingual? I am referring particularly to the Canadian Customs.

My own experience in going through Customs at Vancouver, Windsor, and nearby Cornwall, was that I had some difficulty finding a French Canadian, or at least a bilingual employee, to get through the Customs.

Msgr. GOSSELIN: Thank you Mr. Caron for raising that point. In short, this brings up the problem of the reception given to tourists and immigrants.

Actually, people are dealt with in English only. Yet, a great many people stop over in Canada and they get the unfortunate impression that one language only is spoken here.

I think if we really want to give an equitable representation from an ethnical point of view, we should see to it that bilingualism is better served.

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(page 229)

Msgr. GOSSELIN: There are no statistics on that.

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(page 230)

Mr. CARON: Mr. MacRae said English-speaking Canadians are not handicapped at NATO meetings.

I personally attended a NATO meeting held in Paris and I have noticed that out of fifteen delegations represented, there were only two where delegates could not speak two languages: the American delegation and our own English-speaking delegation.

Msgr. GOSSELIN: Mr. Chairman, that is an important point. It is not a question of the impression that is being left abroad by our delegates, it is really a question of prestige.

Canada being a bilingual country, Canadian delegates should be able to speak both French and English in order to justify such a prestige.

Mr. CARON: Do you believe that it would be a great asset for Canada if the delegates that we send abroad could show unequivocally their knowledge of the two languages and could they not, therefore, play a leading part in solving problems which arise between France and England, for instance? Would such a bilingual characteristic be useful?

Msgr. GOSSELIN: Undoubtedly. There would also be the case of American and French relations. The United States territory is next to ours and we know the French culture.

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Mr. CARON: Now, do you feel that in order to enter the Department of External Affairs applicants should have to follow a course in French and undergo an examination?

It seems to me that such a step would give the personnel of External Affairs the opportunity to make a better use of both languages.

Msgr. GOSSELIN: Your suggestion has no doubt a great deal of merit. However, I think it would be preferable if applicants knew both languages even before entering the Department of External Affairs.

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(page 230)

Mr. MARTEL: I would like to ask another question. I wonder if it would not be better for me to wait a little. I think that Mr. Rondeau president of the Fédération des Sociétés Saint-Jean Baptiste du Québec wishes to present a memorandum. My question refers to bill C-71 concerning the Civil Service, the amendment to which we are now studying here . . . It deals more specifically with article 39. Are you aware of that project?

Mr. RONDEAU: I have not got the text with me.

Mr. MARTEL: Article 39 reads as follows:

> The Commission may authorize a deputy head to exercise and perform any of the powers or functions of the Commission under this Act in relation to the selection of candidates for a position.

Which means that according to that extract of the law absolute authority is granted, almost any way, or better: that the Civil Service Commission may grant that absolute authority to the deputy minister in charge of the department in connection with the choice of the candidates. Evidently it is the Commission which delegates those powers or which grants the authority to the deputy minister.

Mr. RONDEAU: As we will soon see, we believe that it is dangerous to invest so much power into those officials.

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(page 231)

Mr. RONDEAU: This is it, Mr. Cyr can help me.

Mr. LAFRENIERE: Before coming to the point raised by Mr. Rondeau, I simply wish to note at this stage that bilingualism in Canada is rather one-way, which means that Canadians of French descent speak English. I also wish to blame the English speaking Canadians because they are lazy and they do not try as hard to learn French as we do to learn English. So, I simply put a mild blame on them this morning and I ask them to learn French. The population of the country amounts to 18,000,000 people, 6,000,000 of them being French Canadian. Which means that there is one French Canadian for each three English Canadians. Then the English speaking Canadians should try a little to learn French.

Mr. MARTEL: But Mr. Lafreniere wishes, without any doubt to point out that such a remark does not apply to the chairman of our Committee.

Mr. CARON: To be equally fair toward the English speaking Canadians, we must admit that we are living not only among a population of 18,000,000 people because with all those who are surrounding us, and I mean the Americans, it amounts to a population of 182,000,000 peoples who speak nothing but English.

It is not as necessary for the English speaking people to learn French as for the French ones to learn English. It is presumably for that reason that the English Canadians do not try as hard as we do. It is not because they do not want to do it but because they do not see the need for it. In our case, it is of an absolute necessity as in all other countries where there is a minority group.

Mr. LAFRENIERE: That I said without any harshness, without fighting spirit, I know that they do not have the same advantage.

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(page 232)

Mr. CARON: Mister Rondeau, before you start making your comments, which should take quite some time, would you be kind enough to pause from time to time in order to facilitate the work of Mr. Robichaud, our interpreter.

Mr. MARTEL: It is only a gist.

Mr. RONDEAU: Mister Chairman, members of the Committee, at the beginning of 1959, to be exact on April 22nd, the Fédération des Sociétés Saint-Jean Baptiste du Québec which represents all the Saint-Jean Baptiste Societies in the province of Quebec, that is at least 225,000 members, has presented the Prime Minister, the Right Honourable John Diefenbaker, with its memorandum on biligualism in the Federal Civil Service. At that time, the memorandum got a warm welcome. We believe now that the present document represents also, in 1961 the true thinking of our societies on that problem and we hope that you will accept it favourably.

We appreciate very much the fact of appearing before you this morning and since you have in hand both the French and English texts, I will be satisfied with giving you a gist or in calling to your attention to the four conclusions included in our memorandum.

You will find the conclusions on page 10 of the French text and on page 9 of the English one.

The first conclusion that we draw in our memorandum is the official recognition of bilingual knowledge as a qualification that could be required from candidates to public functions or duty.

In the proposed revision of the Civil Service Act and regulations as submitted December last by Mr. Heeney, it was suggested that a 5 per cent bonus, in the total of points for an examination, be granted to Army Veterans, instead of an absolute preference as it is presently done.

In the face of this, we believe that bilingual proficiency has now become so important that a like 5 per cent bonus should apply to candidates possessing a proper knowledge of a second language, be it French or English, as the case may be.

Our second recommendation is concerned with the revision of the Civil Service Act in connection with the different aspects pertaining to bilingualism.

The Heeney report just mentioned has already suggested a complete revision of all legislation pertaining to the Civil Service. It is our humble opinion that there should be no possible uncertainty in the new texts, as to the privileges allowed to bilingual candidates, and that high officers of the Civil Service Commission, or even Cabinet Ministers, should have no discretional power in such matters, as may be the case.

Our third recommendation contemplates a situation quite removed from the existing one because we claim absolute preference for bilingual candidates in the capital's Government offices, as well as in regional offices established in localities where 20 per cent or more of the population do not speak the language of the majority.

In the offices located in Ottawa, some exceptions could be made for personnel engaged in research work, men of this calling having no direct contact with the public. On the other hand, we believe that a group of 10,000 persons not using the language of the majority, even if it should represent only 5 per cent of a whole, is important enough to justify a bilingual personnel at least in part, in a regional office.

Our fourth recommendation deals with the re-evaluating of competitions held for recruiting employees. This topic was mentioned a moment ago: Re-evaluating of examinations for admission in the Civil Service, in regard to the two official cultures in the country.

At the present time, examinations for admission to the Service are based on education such as given in English speaking schools, where programmes naturally take into consideration English culture and way of thinking, this having nothing in common with French way of thinking and culture. With this result that candidates of French extraction and education are at a disadvantage from the start, the examinations to be passed giving no heed to the general formation they have acquired.

We look forward to you, Mr. Prime Minister, for engaging the Government and the Civil Service Commission to bring about reforms such as humbly suggested, and we wish to say that copies of the present document have been addressed to both the Government and the Commission. It is our sincere belief that in taking such action you would help to increase the recognized efficiency of Federal services, while contributing to better unity between Canadian citizens, and bringing forth more justice to a minority, without causing prejudice to the majority.

We thank you, gentlemen, and we will be glad to answer any question you may wish to ask.

Seated besides me is Mr. Roger Cyr, who has worked on the drafting of our brief and who is thoroughly familiar with the whole problem. He will undoubtedly be able to help us in this.

Mr. CARON: Mr. Rondeau, I believe your suggestion which could be considered as being almost ideal might not be easy to apply.

Don't you thing the suggestion Mr. Peters made a moment before is closely related to the situation of bilingualism and should not be accepted?

I summarize. Once people have entered the Civil service, they could be given free language courses.

Over the years, we could probably arrive at a much higher level of bilingualism than the one we have now.

Mr. RONDEAU: Does the suggestion apply only to the Department of External Affairs or to all services?

Mr. CARON: No. Mr. Peters' suggestion applied to all services, with the exception of the External Affairs, maybe, where people enjoy a higher degree of culture and should be able to speak both languages.

Mr. Peters' suggestion concerns all services where the employees who are hired have completed at least grade ninth.

As far as I am concerned, I believe it would be difficult to require of an anglo-saxon employee who enters the service that he should know a second language.

Mr. RONDEAU: I think the suggestion would improve the situation. But would it correspond precisely to what we have in mind? I wonder.

Mr. CARON: Mr. Rondeau, as I said before, your suggestion is almost perfect. But we have to face an existing situation that can not be easily corrected.

We have to proceed by stages, because we would not gain anything by aiming at the perfection at the beginning.

In my opinion, I understand the situation of the Anglo-Canadian who has an inferiority complex on the culural point of view.

We are aware that in all countries where many languages are spoken, those who belong to the minority must be superior intellectually, to be equal to the majority. That is a fact.

That is the reason why I believe we have to go by stages, if we want to obtain a bigger success.

Ten, fifteen or twenty years do not count much in the life of a nation, but in the life of a person, it is the contrary.

This question has to be considered on the point of view of the life of a people and not on the point of view of an individual.

Mr. MARTEL: I should like to ask a question to Mr. Rondeau.

I think you will admit as I do, although I have not been in Ottawa for such a long time, that the French Canadian position in the Civil Service is not new, that it has been going on for a number of years, as you said in your different briefs.

I believe the brief of the *Conseil de la Vie française* develops this point.

I understand that the brief which you handed us states that, far from improving, the situation is becoming worse.

I would like to ask this other question. You speak of deputy ministers, you speak of discretionary powers given to deputy ministers or to ministers.

Do you think that is a normal question, specially as far as Government officials are concerned, those who do not have to account to the electors for their actions and then mandate? Don't you think they have too much power?

Mr. Roger CYR: Mr. Martel, a moment ago, you asked a first question which I should like to answer. You are asking if the situation is improving or becoming worse. I shall answer that the very recent example given by the Minister of Forestry certainly does not indicate an improvement.

Mr. MARTEL: The officials appointed to those high positions in the Department of Forestry, as you undoubtedly know, have been in office for many years. They are "qualified" officials. There is no doubt about it.

But as you say, this example illustrates the fact that the situation is not improving for the French Canadians.

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APPENDIX "A"

Mémoire du Conseil de la Vie française

au Premier Ministre du Canada

LES CANADIENS FRANÇAIS

DANS LE FONCTIONNARISME FÉDÉRAL

Les Éditions Ferland
Québec
1960

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LES CANADIENS FRANÇAIS DANS LE FONCTIONNARISME FÉDÉRAL

Monsieur le Premier Ministre,

Le problème de la représentation des Canadiens de langue française dans le service civil canadien et plus largement du bilinguisme dans ce même service a fait l'objet de nombreux mémoires au Gouvernement canadien. L'un des derniers en date est celui de la Fédération des Sociétés Saint-Jean-Baptiste du Québec.

Le Conseil de la Vie française n'a pas jugé opportun d'exposer à nouveau les motifs qui militent en faveur du bilinguisme dans le service civil canadien. Il estime que ces motifs sont connus et qu'ils s'imposent par eux-mêmes à tout citoyen canadien soucieux du bien général et des exigences de la justice. Il a cru plus utile de faire une analyse de la situation. C'est cette analyse qu'il soumet respectueusement à l'attention du cabinet fédéral et des dirigeants du service civil canadien.

Comme 90% des bilingues employés dans les services fédéraux sont Canadiens français, comme d'autre part la représentation des Canadiens français dans le fonctionnarisme fédéral n'est que la moitié de ce qu'elle devrait être, il s'ensuit que le bilinguisme est inexistant dans de larges secteurs de l'administration publique, à tel point que la langue de communication à l'intérieur des services est l'anglais et que le contribuable canadien-français a souvent peine à être servi dans sa langue.

Une conséquence encore plus grave, à notre humble avis, découle de l'influence exercée par le fonctionnarisme sur l'administration du Canada et sur la vie même de la nation. Parce que la majorité des fonctionnaires ignorent complètement l'une des langues et l'une des cultures officielles au pays, les citoyens de langue française sont régis selon des normes de pensée exclusivement anglaises. Faut-il s'étonner que de plus en plus ils se trouvent exclus de l'administration fédérale, et dans les services publics et dans les forces armées et dans les grandes compagnies émanant de la Couronne? Bref, ils se voient privés de la place qui leur revient dans leur propre pays.

Des réformes radicales s'imposent si l'on veut que le Canada continue d'être un pays bilingue et bi-culturel, un pays où les Canadiens d'ascendance française se sentent chez eux. Ces réformes ont également été suggérées à diverses reprises. Nous n'y revenons pas aujourd'hui. On comprend facilement que, dans les circonstances, les Canadiens français ne soient guère attirés vers le fonctionnarisme fédéral, vu que les normes d'admission sont d'inspiration exclusivement anglaise et qu'il leur faut, dans l'exercice même de leurs fonctions, renoncer à leur langue maternelle.

Nous n'ignorons pas que l'usage du français au même titre que l'anglais à l'intérieur des services fédéraux constituerait un changement radical. Nous sommes d'avis cependant que c'est l'une des conditions essentielles à l'instauration d'un véritable bilinguisme dans le service civil. Par ailleurs, les migrations de groupes anglais et français à travers le Canada et notre participation de plus en plus grande à la vie internationale posent avec acuité ce problème du bilinguisme.

En vous remerciant de l'attention que vous voudrez bien porter au présent mémoire, nous vous prions, monsieur le Premier Ministre, d'agréer nos hommages et l'assurance de notre entière collaboration.

Le Conseil de la Vie Française
Par:
PAUL GOUIN,
président.

Au Très Honorable John Diefenbaker,
premier ministre du Canada,
Hôtel du Gouvernement,
Ottawa, Ontario.

Honourable Prime Minister:

The question of French-speaking Canadians getting their fair share of employment in the Federal Civil Service as well as the broader problem of securing the bilingual character of this Service have been brought to light in many a brief submitted by the Quebec Federation of the St. Jean Baptiste Societies.

The *Conseil de la Vie Française* thought it would not be advisable to repeat here all the reasons why the Canadian Civil Service should be a bilingual organization. These reasons are well known and are imperative in each and every Canadian citizen who care for the common good and for the promotion of fair-play. Rather, they thought that a survey of the whole situation would be more valuable. It is the results of this survey which are hereby respectfully submitted to the Cabinet of Ministers and to the top management of our Canadian Civil Service.

Considering that 90 per cent of all bilingual civil servants in the federal administration are French Canadians and considering on the other hand that French Canadian participation in the federal civil service amounts to only half of what it should be, it follows that the bilingual character is completely ignored in large sections of this administration to an extent that the English language is the only working language within these sections and that French-speaking taxpayers often find it hard to be served in their own language.

Still worse, in our humble opinion, are the consequences brought about by the influence exercised by our civil servants not only over the management of Canadian public affairs but also over the very lige of this nation. Because the greater number of our civil servants are totally ignorant of the other official language, or known nothing whatever of our culture, the French-speaking population of Canada is ruled by standards of thinking which are exclusively English. No wonder then that French Canadians are gradually excluded from our federal administration, whether the civil service as such, or the Armed Forces, or the big Crown Companies! In short, they are denied the part which is theirs to play in their own country.

Drastic reforms are required if Canada is to remain a bilingual and a bicultural country where Canadians of French ascent may tryly feel at home. Time and time again, these reforms have also been suggested, but we have no intention of laying them again before you to-day. Under such circumstances, it will be readily understood why French Canadians do not appear to be much interested in joining the civil service considering that qualifications for admission are determined from standards which are exclusively English in their conception, and that after they are appointed, they have to give up their own mother tongue.

We realize that the use of the French language on an equal footing with the English language within the federal public service would constitute a radical change-over. However, we feel that it is one of the essential conditions for the establishment of genuine bilinguism in the civil service. Besides, the migration of English—and French—speaking groups all over Canada and the growing influence of our country in its international affairs unveil in all its vividness this question of the bilingual aspect of our cvil service.

We appreciate the consideration you shall give this brief and beg to remain.

Respectfully yours,

LE CONSEIL DE LA VIE FRANÇAISE,
per PAUL GOUIN, *President.*

Tableau comparatif du nombre de canadiens-français recevant $5,000 ou plus pour l'année fiscale finissant le 31 mars 1951, et $6,500 ou plus pour celle finissant le 31 mars 1958 en regard du nombre total de fonctionnaires fédéraux recevant ces salaires ou plus.

Ministère	1951 Nombre de $5,000 ou plus			1958 Nombre de $6,500 ou plus			Écart
	Total	C.F.	%	Total	C.F.	%	
Affaires des anciens combattants	404	36	8.9	479	58	12.1	3.2
Ministère	376	35	9.3	424	54	12.4	3.1
Loi d'établissement des soldats, etc	28	1	3.5	55	4	7.4	3.9
Affaires extérieures	113	23	20.3	236	47	19.9	− .4
Ottawa	46	6	13	97	16	16.4	3.4
Hors du Canada	67	17	25.3	139	31	21.3	− .4
Agriculture	219	18	8.2	824	77	9.3	1.1
Administration	10	1	10	25	3	12	2
Services Scientifiques	68	2	3	237	14	5.9	2.9
Fermes Expérimentales	51	4	7.8	160	12	7.5	− .3
Services de la production	45	8	17.6	254	38	14.9	− 2.7
Service du contrôle de la vente	25	1	4	60	4	6.7	2.7
Services spéciaux	20	2	10	88	6	6.8	− 3.2
Auditeur Général	13	0	0	30	3	10	10
Citoyenneté Immigration	45	7	15.6	154	20	13.1	− 2.5
Administration	4	1	25	12	4	30	5
Citoyenneté	4	2	50	23	5	21.7	−28.3
Immigration	16	4	25	42	5	11.9	−13.1
Affaires indiennes	21	0	0	77	6	7.8	7.8

Tableau comparatif du nombre de canadiens-français recevant $5,000 ou plus pour l'année fiscale finissant le 31 mars 1951, et $6,500 ou plus pour celle finissant le 31 mars 1958 en regard du nombre total de fonctionnaires fédéraux recevant ces salaires ou plus.—*suite*

Ministère	1951 Nombre de $5,000 ou plus			1958 Nombre de $6,500 ou plus			Écart
	Total	C.F.	%	Total	C.F.	%	
Commerce	164	11	6.7	318	13	4.1	− 2.6
Administration	110	4	3.6	206	6	2.8	− .8
Lois des grains	18	0	0	40	0	0	0
Hors du Canada	36	7	19.5	75	7	9.3	−10.2
Commission du Service Civil	30	7	23.4	182	38	20.8	− 2.6
Conseil National des Recherches	123	3	2.4	473	7	1.5	− .9
Défense nationale	88	10	11.3	502	51	10.1	− 1.2
Finances	99	8	8.2	183	14	7.6	− .6
Administration et divers	43	4	9.3	75	4	5.3	− 4.0
Services du contrôleur du trésor	56	4	7.1	108	10	9.2	2.1
Gendarmerie Royale du Canada	111	12	10.8	142	17	11.9	1.1
Impressions et papeterie	4	2	50	27	8	29.7	−20.3
Justice	50	13	26	89	18	20.2	− 5.8
Ministère	32	8	25	52	11	21.2	− 3.8
Service du Commissaire des pénitenciers	18	5	27.8	37	7	18.9	− 8.9
Ministère des Mines et des Relevés techniques	124	7	5.6	307	15	4.9	− .7

Pêcheries	52	1	1.9	126	4	3.2	1.3
Ministère des pêcheries	20	0	0	52	0	0	0
Conseil des recherches sur les pêcheries	28	1	3.5	69	4	5.8	2.3
Office de soutien des prix des produits de pêche	4	0	0	5	0	0	0
Postes	62	16	25.8	158	22	13.9	−11.8
Ressources et développement économique	110	5	4.5	213	4	1.9	− 2.6
Revenu national	181	17	9.4	871	96	11	1.6
Division des douanes et de l'accise	108	14	12.9	288	45	15.7	2.8
Division de l'impôt	73	3	4.1	583	51	8.7	4.6
Santé Nationale et Bien-être Social	189	31	16.4	423	44	10.4	− 6
Administration	6	0	0	24	2	8.4	8.4
Division de la Santé	173	28	16.2	353	39	11.	− 5.2
Division du Bien-être	10	3	30	46	3	6.5	−23.5
Secrétariat d'Etat	34	15	44.2	101	54	53.5	9.3
Transports	199	20	10	671	53	7.9	− 2.1
Administration et divers	22	6	27.3	56	6	10.8	−16.5
Service des canaux	18	1	5.5	27	7	26	20.5
Service de la marine	28	4	14.3	118	11	9.3	− 5
Service de l'air	81	2	2.5	392	16	4.1	1.6
Commission des Transports aériens	7	1	14.3	12	2	16.6	2.3
Commission des Transports du Canada	43	6	13.9	66	11	16.7	2.8
Travail	71	14	19.8	154	32	20.8	1
Ministère	32	5	15.6	65	11	16.9	1.3
Commission d'Assurance-chômage	39	9	23	89	21	23.6	.5
Travaux publics	72	20	27.7	275	30	10.9	−16.8
Administration	7	1	14.2	24	2	8.3	− 5.9
Division de l'architecture	22	6	27.2	79	11	14	−13.2
Division du génie	43	13	30.5	172	17	9.9	−20.6
Office national du film	19	1	5.3	118	17	14.4	9.1

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COMMENTAIRES

Afin d'obtenir une idée de la répartition et du nombre de canadiens-français dans les cadres moyens et supérieurs (en anglais «middle and top management») du gouvernement fédéral, nous avons eu recours aux listes de noms de fonctionnaires et de leurs salaires établis pour chaque ministère fédéral dans le rapport du ministre des Finances intitulé «Comptes publics du Canada». Ce rapport publié vers le mois de janvier de chaque année couvre l'ensemble des dépenses des ministères fédéraux pour l'année fiscale précédente.

Nous nous sommes proposés dans ce travail d'établir si, de l'année fiscale finissant le 31 mars 1951 à celle finissant en 1958, le nombre des canadiens-français faisant partie des cadres de l'administration fédérale avait augmenté ou diminué et dans quelle proportion. Pour ce, nous avons pris, pour l'année fiscale 1950-1951, le nombre de canadiens-français ayant reçu $5,000 ou plus en regard du nombre total de fonctionnaires ayant reçu ce salaire ou plus, et pour l'année fiscale 1957-1958, les canadiens-français ayant reçu $6,500 ou plus par rapport au total ayant reçu ce salaire ou plus. Le choix du salaire de base de $6,500, en 1597-1958 s'imposait afin de comparer entre eux des groupes homogènes parce qu'un fonctionnaire recevant en 1950-1951 un salaire de $5,000 recevait en 1957-1958, $6,500 et en raison des augmentations de salaires consenties entre ces deux dates. Nous avons donc compté pour chaque ministère le nombre de canadiens-français ainsi que le nombre total de fonctionnaires recevant ces salaires et établi par ministère (et division de ministère lorsque possible) le pourcentage de canadiens-français en regard du total, pour chacune de ces années fiscales, ainsi que l'écart, en plus ou en moins, entre ces pourcentages. Ceci apparaît dans le tableau ci-annexé. Nous nous proposons, dans les pages qui vont suivre, d'analyser ces données et d'en tirer les conclusions pertinentes.

Le tableau couvre 24 ministères, commissions et organismes fédéraux. Certains organismes ne sont pas mentionnés, soit qu'ils n'existaient plus en 1958 ou soit qu'existant en 1958 ils n'avaient pas encore vu le jour en 1951. Pour l'ensemble des ministères (à moins d'indications contraires, ce mot couvrira dorénavant les commissions et autres organismes fédéraux), le nombre total de fonctionnaires recevant $5,000 ou plus en 1951 se chiffrait à 2,576. En 1958 le total recevant $6,500 ou plus était 6,988, une augmentation de plus du double. En 1951, les canadiens-français étaient au nombre de 297, soit 11.6 pour cent du total, tandis qu'en 1958, tout en augmentant à 729, ils ne représentaient plus que 10.5 pour cent du total, soit une diminution de 1.1 pour cent (1.1%) en l'espace de sept ans.

I

Neuf ministères ont accusé une augmentation de 2.3 pour cent dans le nombre de Canadiens français par rapport au total entre 1951 et 1958. En 1951, dans ces ministères les Canadiens français formaient 10.3 pour cent du total et en 1958 leur nombre avait augmenté à 12.6 pour cent. Examinons maintenant chacun de ces ministères.

1. *Affaires des anciens combattants:* Ici l'augmentation est encourageante. Les Canadiens français passent de 8.9 à 12.1%.

2. *Agriculture:* Dans ce ministère l'augmentation est minime, soit 1.1%. Dans le détail nous avons amélioration dans l'administration, les services scientifiques et les services du contrôle de la vente, contrebalancée par une diminution des Canadiens français dans les fermes expérimentales, les services de la production et les services spéciaux. Dans ces derniers services, les Canadiens français passent de 10% en 1951 à 6.8% en 1958, ce qui commence à être inquiétant.

3. *Auditeur Général:* L'ensemble du personel a triplé, mais là où il n'y avait aucun Canadien français il s'en trouve trois. Pas tous haut-gradés sans doute, mais c'est un département pour lequel les nôtres peuvent assez facilement se qualifier (il suffit d'être comptable agrégé) et une fois admis, ils devraient pouvoir accéder aux plus hauts postes.

4. *Gendarmerie Royale:* Légère augmentation. Ici aussi les Canadiens français devraient pouvoir se qualifier en plus grand nombre.

5. *Pêcheries:* L'augmentation des Canadiens français n'apparaît que dans le conseil des recherches pour les pêcheries où de 1 Canadien français sur 28 employés en 1951 le chiffre passe à 4 sur 69 en 1958. Mais ces 4 représentent les seuls Canadiens français dans tout le ministère. Au ministère lui-même, il n'y en a aucun non plus quà l'office de soutien des prix des produits de la pêche. Parce que le nombre total de fonctionnaires au ministère est passé de 20 à 52, et de 4 à 5 à l'office du soutien des prix, on peut dire que la situation par rapport à la représentation canadienne-française a empiré. En raison de l'importance de cette industrie dans le Québec, il semble surprenant, pour dire le moins, que les Canadiens français ne soient pas mieux représentés dans ce ministère. Ce n'est pas dû, sans aucun doute, au manque de compétence.

6. *Revenu national:* Si l'ensemble du ministère n'accuse pas une très grosse amélioration, il y a lieu de signaler l'augmentation dans les deux principales divisions du ministère. A la division de l'impôt, cependant, il y aurait raison de croire que les Canadiens français pourraient facilement accéder à plus de postes d'envergure.

7. *Secrétariat d'État:* Parce que le bureau des traducteurs forme la division la plus nombreuse de ce ministère, la participation canadienne-française est la plus élevée de tous les ministères.

8. *Travail:* Amélioration assez sensible pour le ministère lui-même. État presque stationnaire à la Commission d'assurance-chômage, où, cependant, la représentation canadienne-française est plus satisfaisante. Comme au Revenu national, il faut tenir compte que nous avons affaire ici à un ministère qui possède des bureaux à travers le Canada et la proportion des nôtres dans l'assurance-chômage comme au Revenu national devrait être plus proche de la proportion des nôtres dans l'ensemble de la population canadienne.

9. *Office national du film:* Amélioration très substantielle dans un organisme où les Canadiens français peuvent apporter une contribution intéressante. Les années qui vont suivre verront probablement un accroissement de notre participation.

II

Par contre dans 15 ministères, il y a eu diminution de la participation des Canadiens français. L'écart est de 3.6 pour cent. Il est curieux de constater que, pour les ministères où le nombre des Canadiens français a augmenté, leur participation, qui était en 1951 de 10.3 pour cent, est passée à 12.6 en 1958; dans ceux où il y a eu diminution elle est passée de 12.5 en 1951 à 8.9 en 1958, proportions quasi inverses. Si nous examinons ces 15 ministères, voici ce que nous trouvons.

1. *Affaires extérieures*: Dans l'ensemble, participation assez forte et la diminution de 20.3% à 19.9% n'est pas alarmante. Signalons que la proportion des Canadiens français à Ottawa a même augmentée de 3.5%. Cependant, le bilinguisme des Canadiens français devrait nous faire espérer une plus forte participation dans nos ambassades et autres postes à l'étranger.

2. *Citoyenneté et immigration:* Diminution assez sensible pour l'ensemble du ministère puisqu'elle se chiffre à 2.5%. S'il y a légère amélioration dans les services administratifs où les Canadiens français ont leur juste proportion et si nous devons signaler un gain aux affaires indiennes où nous passons de zéro à 6 Canadiens français, la diminution des Canadiens français, surtout l'immigration, doit nous causer une forte inquiétude dans l'ensemble.

3. *Commerce:* Un des organismes importants de ce ministère est le Bureau fédéral de la statistique qui entre pour une bonne part sous la rubrique «Administration». Ici nous constatons une diminution de 0.8% dans une représentation qui, déjà en 1951, n'était que de 3.6%. Par contre dans les services hors du Canada, c'est-à-dire nos commissariats de commerce, la proportion des Canadiens français est tombée de 19.5 en 1951 à 9.3 en 1958. Le nombre absolu des Canadiens français est demeuré stationnaire tandis que le total passait de 36 à 75.

4. *Commission du service civil:* Dans cet organisme, les Canadiens français représentaient en 1951 23.4% du total. Malgré une substantielle augmentation du nombre de Canadiens français, il y a eu recul en regard de l'ensemble puisque maintenant ils ne représentent que 20.8% du total

5. *Conseil national des recherches:* Ici la proportion des Canadiens français, déjà faible en 1951 où ils représentaient 2.4 du total, a diminué à 1.5%. Il semblerait que la proportion de scientifiques sortis ces dernières années de nos universités canadiennes-françaises eût été suffisante pour remplir un plus grand nombre de postes qui ont été créés au Conseil national des recherches au cours de ces sept dernières années.

6. *Défense nationale:* La proportion des Canadiens français, déjà pas si élevée en 1951, a regressé de 11.3% à 10.1% en 1958.

7. *Finances:* Les services du Contrôleur du trésor accusent une augmentation de 2% dans le nombre des Canadiens français. Par contre les Canadiens français dans l'administration même du ministère sont demeurés au même nombre, c'est-à-dire 4, tandis que le total passait de 43 à 75. Une diminution pour les Canadiens français de 4%.

8. *Impressions et papeterie:* Ceci n'est que la division du ministère de l'Imprimeur de la Reine dont les employés tombent sous la loi du Service civil. Malgré que le nombre des Canadiens français aient quadruplé, nous devons encaisser ici une diminution de 20.3%.

9. *Justice:* Voici un ministère où la proportion des Canadiens français en 1951 pouvait être considérée comme satisfaisante. 1958 en revanche accuse une assez forte diminution, surtout dans le service du Commissaire des pénitenciers.

10. *Mines et Relevés techniques:* Diminution assez sensible si l'on regarde le petit nombre de Canadiens français par rapport à l'ensemble du ministère, même en 1951

11. *Postes:* Ici la situation est alarmante. De 25.8% en 1951, proportion bien satisfaisante, chute en 1958 à 13.9%.

12. *Ressources et développement économique* (maintenant Nord canadien et des Ressources nationales): Dans ce ministère, nous constatons une régression très nette puisque de 5 Canadiens français sur un total de 110 employés, le chiffre est tombé à 4 sur un total presque double, c'est-à-dire 213.

13. *Santé nationale et Bien-être social:* Il y a une amélioration nette dans les services administratifs, mais une régression considérable dans les deux principales divisions du ministère. Elle est moindre dans la division

de la santé; 16.2% en 1951; 11% en 1958, qu'à la division du Bien-être où le 30% devient 6.5: le nombre de Canadiens français étant demeuré stationnaire, c'est-à-dire à 3.

14. *Transports:* Il y a une amélioration appréciable dans le service des canaux où les Canadiens français passent de 5.5% à 26%. Le pourcentage a baissé considérablement dans les services administratifs où le nombre des Canadiens français est demeuré stationnaire. Les légères améliorations tant à la Commission des transports aériens qu'à la Commission des transports n'ont pas suffi à compenser les pertes.

15. *Travaux publics:* Régression sur toute la ligne dans ce ministère. Passage pour l'ensemble du ministère d'une proportion acceptable de 27.7% à 10.9%. Les pertes les plus considérables ont été dans la division du génie.

COMMENTARIES

To get a good idea of the rates of apportionment and of the numbers of French Canadians which appear in the middle and top brackets of our federal administration, we consulted name lists of high officials and salary schedules drawn for all federal departments and published in the Finance Minister's report entitled « Public Accounts of Canada ». This Blue Book comes out of press in or about January of each year and covers the overall expenditures of the various federal departments for the previous fiscal year.

We shall endeavour in this submission to establish whether from the fiscal year ending on March 31st, 1951, to the fiscal year ending on March 31st, 1958, inclusive, the number of French Canadians partaking in the management of federal affairs has increased or decreased and in what ratios. To that purpose, we considered for the fiscal year 1950-51 the number of French Canadians who were paid salaries of $5,000.00 or over in relation to the total number of civil servants who were paid comparable salaries, and for the fiscal year 1957-58, the number of French Canadians who were paid salaries of $6,500,00 or over in relation to the total number of civil servants who were paid similar salaries. To compute ratios within homogeneous groups, it was necessary that for the year 1957-58 we take the $6,500.00 level as basic salary for the reason that civil servants who in 1950-51 were getting salaries of $5,000.00, were paid salaries of $6,500.00 in 1957-58 due to salary increases granted during the intervening years. Therefore, within each department, we computed the number of French Canadian employees against the total number of employees being paid the same salaries and we figured out, by departments (and departmental branches wherever possible) and for both fiscal years involved, the ratios of French Canadians to the total employees, and the difference, plus or minus, between such ratios. The data are shown on the attached schedule. We intend on the following pages to analyse these figures and to draw the relevant conclusions.

The schedule covers 24 departments, commissions, boards and other federal organizations. A few of them were omitted either because they no longer existed in 1958 or did not yet exist in 1951. For all departments (unless otherwise stated this term will apply from now on to all federal commisions, boards, and organizations), employees who were paid salaries of $5,000.00 or over in 1951 numbered 2,576. In 1958, some 6,988 employees were getting salaries of $6,500.00 or over. Right there we have an increase of over a hundred per cent. In 1951, French Canadian officials numbered 297 or 11.6% of the entire staff whereas in 1958, while they numbered 729, they accounted for only 10.5% of the grand total. A decrease of 1.1% has thus taken place within a period of seven years.

I

From 1951 to 1958, nine departments have shown a 2.3% increase in the ratio of French Canadians to the total personnel employed. In 1951, in those nine departments, French Canadians accounted for 10.3% of the total; in 1958, this ratio had gone up to 12.6. Now, let us have a look at each of these departments individually:

1. *Agriculture:* Here the gain has been very small, i.e. 1.1%. More specifically, we note an increase in Administration, Science, and Marketing services against a loss in the Experimental Farms, Production, and other services. In the latter, French Canadian personnel has dropped from 10% that it was in 1951 to 6.8% in 1958. Such a decrease should be considered as alarming.

2. *Auditor General's Office:* The establishment has increased threefold and where our participation was nil in 1951, we have three French Canadians in 1958. While the three of them are not all top-ranking officials, this is a department where we may quite easily qualify (the only requirement is a C.A. degree) and where after appointment one may have the opportunity of reaching the highest ranks.

3. *Fisheries:* The increase in French Canadian personnel is only noticeable in the Fisheries Research Board where in 1951 there was only one French Canadian out of a staff of 28. In 1958, there were 4 out of 69. owever, these four persons are the only French Canadian officials in the entire department. In the department itself, and in the Fisheries Prices Support Board, our participation is nil. Considering establishment increases of from 20 to 52 and of 4 to 5 for the department and for the Prices Support Board, respectively, it may be said that the French Canadian position has deteriorated. Considering also how important this industry is in the Province of Quebec, the fact that so few French Canadians participate in the management of this department is staggering, to say it mildly. The reason is certainly not the lack of qualified personnel.

4. *Labour:* There has been a considerable gain in the department itself. As far as the Unemployment Insurance Commission, is concerned, the situation is practically unchanged. In this organization, French Canadian participation is higher. As in the case of National Revenue, one must take into account the fact that Labour is a department which operates offices all across Canada. Therefore, the ratio of French Canadian personnel within the Unemployment Insurance Commission should match more closely the ratio of the French Canadian population to that of the whole of Canada.

5. *National Film Board:* A most substantial increase is shown in this organization in the management of which French Canadians can contribute considerable talent. The years to come will probably witness a further gain in our participation.

6. *National Revenue:* If there is no great increase in the department as a whole, a gain in both the main branches of the department is worth mentioning. In the Income Tax Division, however, we have reason to believe that French Canadians could easily get to the top.

7. *Royal Canadian Mounted Police:* Small increase here. This is another organization in which many more French Canadians should qualify.

8. *Secretary of State:* Because the Bureau for Translations is the largest branch in this department, French Canadian participation here is the highest for all departments.

9. *Veterans Affairs:* In this department, there has been an encouraging increase. The ratio of French Canadian employees to the total staff has gone up from 8.9 to 12.1%.

II

On the other hand, we list here 15 other departments within which the number of French Canadian officials has dwindled. We note a loss of 3.6%. However, this phenomenon has something peculiar. In departments where French Canadian personnel has increased, their number in relation to that of all employees has climbed from 10.3% that it was in 1951 to 12.6% in 1958; and in the departments which show any decrease, the 12.5 percentage which prevailed in 1951 has dropped to 8.9 in 1958, a loss which just about corresponds to the gain in the former. Now, here is an analysis of the situation in each of these 15 other departments:

1. *Citizenship and Immigration:* A somewhat appreciable decrease shows in this department generally; our share of higher positions has come down to 2.5%. Despite a slight set-back in the administrative services where French Canadians are in fairly good proportion and despite a gain in the Indian Affairs Branch where French Canadian personnel increased from nil to 6, our losses, especially in the Immigration Branch, should on the whole give us good cause for concern.

2. *Civil Service Commission:* In this organization, the ratio of French Canadian participation in 1951 amounted to 23.4% of the total staff. In spite of a considerable increase in the number of French Canadian officials, there has been a drop in relation to the overall personnel for to-day our number has dropped down to 20.8% of the total.

3. *External Affairs:* Generally speaking, our participation is more or less adequate and the decrease from 20.3% to 19.9% should cause no concern. A fact to be taken into account is the 3.5% gain in the number of French Canadian officials in Ottawa. However, the bilingual status of French Canadians should lead to a broader representation in our embassies and other offices abroad.

4. *Finance:* In the office of the Comptroller of the Treasury, there has been a rise of 2% in the ratio of French Canadian personnel to the total staff. On the other hand, in the Administration service of the department, the number of French Canadians has remained unchanged, that is 4, while the establishment was brought from 43 to 75. This represents a loss of 4.% for French Canadians.

5. *Justice:* In this department, in 1951, the ratio of French Canadian personnel might have been considered adequate. However, in 1958, the ratio in the Penitentiaries Branch has substantially dropped.

6. *Mines and Technical Surveys:* There has been a noticeable decrease here which is obvious from the small number of French Canadian employees in relation to the entire staff. This situation goes as far back as 1951.

7. *National Defence:* The ratio of French Canadians holding top positions was already at a low of 11.3% in 1951. It dropped further down to 10.1% in 1958.

8. *National Health and Welfare:* The situation is better off in the administrative services but the loss is high in the two main branches of the department. The drop has been smaller in the Health Division: from 16.2% in 1951 to 11% in 1958; in the Welfare Division, the ratio which was at a high of 30% in 1951, has dropped to 6.5% in 1958; there are still only three French Canadian officials with this department.

9. *National Research Council:* Here the ratio of French Canadians in management which in 1951 was already down to 2.4% of the entire staff has decreased further to 1.5%. Seemingly, the supply of scientists graduating from our French Canadian Universities in recent years could have been relied upon to fill a greater number of positions created by the National Research Council during the intervening seven years.

10. *Northern Affairs and National Resources (formerly Resources and Development):* In this department, there has been a definite drop. Actually in 1951 there were 5 French Canadians holding good positions out of a total staff of 110; in 1958, the number is only 4 out of a total staff of 213 which is Nearly twice the 1951 figure.

11. *Post Office:* Conditions in this department are startling. From a ratio of 25.8% which was considered quite satisfactory in 1951, there has been a drop to 13.9% in 1958.

12. *Printing and Stationery:* This is the branch of the Printing Bureau whose employees come under the Civil Service Act. Notwithstanding the fact that the number of French Canadians has increased fourfold, a 20.3% loss is reported in this group.

13. *Public Works:* We deplore a general drop in this department. The ratio for the entire department has gone down from an acceptable percentage of 27.7 to a low of 10.9. Our greatest losses are reported in the Engineering Branches.

14. *Trade and Commerce:* One important organization falling under the jurisdiction of this department in the Federal Bureau of Statistics. The greater part of the Bureau comes under the heading "Administration" and here we note a loss of 0.8% in a ratio which already in 1951 was only 3.6%. On the other hand, in the Foreign Service, that is in our Trade Commissioner Service, the ratio of Franch Canadian personel which was 19.5% in 1951 has dropped to 9.3% in 1958. The number of French Canadians has remained unchanged while the total staff went up from 36 to 75.

15. *Transport:* Quite a gain is reported in the Canal Services Branch where the ratio of French Canadian employees has climbed from 5.5% to 26%. However, the ratio has dropped considerably in the Administration services where the number of French Canadians has remained unchanged. The slight gains in the Air Transport Board and in the Board of Transport Commissioners could not compensate for losses elsewhere.

II

L'ADMINISTRATION FÉDÉRALE DU CANADA

C'est le titre d'une brochure publiée par l'Imprimeur de la Reine. Elle donne une idée d'ensemble sur l'administration de notre pays dans le triple domaine législatif, exécutif et judiciaire. Nous avons extrait de la publication d'octobre 1959, quelques chiffres sur la participation des Canadiens français à l'administration de leur pays. Nous n'avons pas fait entrer dans cette compilation les députés non plus que les sénateurs et les ministres. Nous y avons inclu les juges, les membres de diverses Commission gouvernementale ainsi que les hauts fonctionnaires.

Nous arrivons à un total de 1,069 personnes. Les Canadiens français sont au nombre de 166, soit 16%. Fait remarquable: ils sont à peu près absents de toutes les Commissions et départements d'ordre financier, industriel et commercial. On ne les rencontre à peu près pas dans les sociétés de la Couronne, comme les chemins de fer nationaux, les transports aériens, la Banque du

Canada, les Arsenaux, la Banque d'Expansion industrielle, l'Atomic energy of Canada, le Département des Assurances. Ils sont inexistants au ministère du Commerce et à celui des Finances.

Cette situation appelle de sérieuses réflexions. Nous nous bornons à suggérer qu'elle devrait faire l'objet d'une recherche approfondie de la part du Gouvernement sur les causes de cet espèce d'ostracisme. Il ne nous paraît pas normal que le tiers de la population d'un pays soit pratiquement écarté de la directoin de sa vie économique.

* * *

This is the title of a booklet published by the Queen's Printer and in which are outlined the three areas of our federal administration: the legislature, the executive, and the judiciary. Certain data have been extracted from the October 1959 issue of the book inasmuch as they reflect French Canadian participation in the management of our country's affairs. Are excluded from this compilation all members of the Lower and Upper Houses of Parliament and all Ministers. However, justices, members of various Government committees and high officials are included.

Altogether, 1,069 persons have been surveyed. Of these, 16% or 166 are French Canadians. The strangest fact that was unveiled is the infinitely small number of French Canadians in the higher brackets of Commissions and Departments involved in finance matters, industrial development, and trade practices. Their participation is practically nil in the top management of Crown Companies such as the Canadian National Railways, Trans-Canada Airlines, the Bank of Canada, Canadian Arsenals, the Industrial Development Bank, the Atomic Energy of Canada and the Insurance Department. We are no better off in the Departments of Trade and Commerce and Finance.

This situation calls for serious consideration. We only suggest that it be carefully examined by the Government and the causes for this ostracizing attitude investigated. Is it normal that a third of a country's population should be practically kept off the management of its economy?

	Total	*Can-frs*	*Pages*
Le pouvoir législatif			
Fonctionnaires du Sénat	7	2	19
Chambre des Communes	20	8	30
Le bureau de l'auditeur général	6	0	36
La bibliothèque du Parlement	6	3	38
Le pouvoir judiciaire			
La cour Suprême du Canada			
—Juges	9	2	43
—Fonctionnaires	7	3	
La Cour de l'Échiquier			
—Juges	6	2	46
—Fonctionnaires	4	2	
Le pouvoir exécutif			
Le bureau du Conseil Privé—Fonctionnaires	6	2	55
Ministère des Anciens combattants	16	2	60
Ministère des Affaires extérieures	6	1	65
Ministère de l'Agriculture	35	3	71
Les Archives publiques	9	3	76
Le Département des Assurances	5	0	79
La Commission d'Assurance-Chômage (Commissaires et fonctionnaires)	15	4	82

Le pouvoir exécutif—Suite

Le pouvoir exécutif—Fin

	Total	*Can-frs*	*Pages*
Le Conseil des Ports Nationaux	16	3	218
Le Ministère des Postes	10	2	220
Le Ministère de la Production de défense	19	1	223
La Société Radio-Canada	44	7	227
Le bureau des Gouverneurs de la Radiodiffusion	13	4	233
Le Conseil national de Recherches	14	1	236
La Commission de Réclamations de guerre	9	4	241
Le Ministère du Revenu national	25	3	245
Le Ministère de la Santé nationale et du Bien-Être Social	40	2	250
Le Secrétariat d'État du Canada	11	4	258
Le Bureau du Séquestre des biens ennemis	2	2	262
La Commission du Service civil	9	2	264
La Société centrale d'Hypothèques et de Logement	23	4	268
La Commission du Tarif	8	1	271
La Société canadienne des télécommunications marines	5	0	274
Le Conseil du Territoire du Yukon	12	0	276
Le Conseil des Territoires du Nord-Ouest	8	0	277
Les lignes aériennes Trans-Canada	8	0	278
Le Ministère des Transports	51	4	280
La Commission des Transports aériens	9	1	287
La Commission des Transports du Canada	19	5	290
Le Ministère du Travail	23	1	293
Le Ministère des Travaux publics	14	1	298
L'administration de la Voie Maritime du Saint-Laurent	22	5	302
	7,069	165	

APPENDIX "B"

NOTE,—*An English translation of the following brief appears immediately after the French text.*

MÉMOIRE SUR LE MINISTÈRE DES AFFAIRES EXTÉRIEURES DU CANADA

par

LE CONSEIL DE LA VIE FRANÇAISE EN AMÉRIQUE

PRÉAMBULE

Le Ministère des Affaires extérieures du Canada est relativement jeune. Il a été créé en mai 1909. Pendant plusieurs années, son rôle fut des plus modestes. En effet, les affaires extérieures de notre pays continuèrent d'être gérées par le gouvernement impérial de Grande-Bretagne, par l'intermédiaire du Colonial Office et de son représentant au Canada, le Gouverneur général.

En 1926, un accord conclu à la Conférence impériale stipula que le Gouverneur général devenait le représentant non du Royaume-Uni, mais du Souverain. A la suite du traité de Westminster, la Couronne était fractionnée et le Souverain du Royaume-Uni devenait pour nous le Roi du Canada. Cet accord entraîna des changements profonds dans la structure politique de notre pays, notamment aux Affaires extérieures. A partir du premier juillet 1927, la correspondance provenant des Dominions et des Gouvernements étrangers fut adressée au Secrétaire d'État aux Affaires extérieures, non au Gouverneur général.

Cette modification eut aussi des réprecussions sur notre représentation à l'étranger. Jusque-là notre pays n'avait été représenté qu'à Londres (1880), par un haut-commissionnaire, à Paris (1887), par un agent général. Ces envoyés n'avaient aucun status diplomatique. Un ministre canadien fut nommé à Washington dès 1926, un à Paris en 1928, et un troisième à Tokio, en 1929. Les États-Unis, la France et le Japon ouvraient, en même temps, des légations à Ottawa. Le Canada entrait dans le monde diplomatique.

La première Guerre mondiale avait fait sortir notre pays de son isolement. La deuxième le mit en relations officielles avec un grand nombre de nations. Le Ministère des Affaires extérieures prit une expansion considérable. Il est maintenant dirigé par un ministère, assisté d'un sous-secrétaire d'État et de cinq sous-secrétaires adjoints. Il comprend vingt-deux divisions, employant treize cent soixante-cinq fonctionnaires. Près de six cents personnes, recrutées sur place, sont à l'emploi des missions canadiennes à l'étranger.

Si l'on considère la seule représentation diplomatique, on constate que notre pays compte des ambassades dans trente-trois pays, des légations dans six, des hauts commissariats dans neuf. Il a aussi une mission militaire à Berlin, un mission permanente aux Nations-Unies, tant à New York qu'à Genève, une délégation permanente au Conseil de l'Atlantique Nord et à l'Organisation européenne de coopération économique. Enfin il participe aux Commissions internationales pour la surveillance et le contrôle au Cambodge et au Vietnam. Par ailleurs, soixante-huit pays sont représentés à Ottawa.

Les tâches assignées au ministère des Affaires extérieures du Canada sont nombreuses et importantes. Il oriente les relations entre le Canada et les autres pays, participe au travail des organismes internationaux et protège les intérêts canadiens à l'extérieur. Il coordonne et analyse les renseignements qui peuvent influer sur les relations internationales du Canada. Il négocie et conclut des traités et autres accords internationaux. Enfin, il représente le Canada dans

les capitales étrangères et aux conférences internationales. Un tableau publié par la division de l'information de ce ministère donne une idée assez complète du labeur accompli par les Affaires extérieures. Il est reproduit en annexe au présent mémoire (I).

Ce ministère si important est en pleine expansion. Il est vital pour le Canada qu'il soit organisé avec soin. Il représente en effet notre pays officiellement à l'étranger. Il oriente notre politique extérieure et il exerce une influence notable sur notre politique intérieure. Or, il est un point où il nous paraît déficient: c'est celui de la langue et de la culture. Le présent mémoire porte sur ce point particulier. Une première partie constitue un examen de la situation. Une deuxième renferme des conclusions et des recommandations.

Dès l'abord, nous tenons à situer le problème tel que nous l'entendons. Il est radicalement d'ordre linguistique, mais il dépasse les frontières des langues. Pour des raisons faciles à comprendre, le présent mémoire porte à peu près uniquement sur l'aspect linguistique. Le Canada est officeillement bilingue. Ces deux langues ne sont pas des fictions juridiques, sans fondement dans la réalité. Elles s'enracinent au contraire dans l'histoire et dans la vie du peuple canadien. Elles sont les expansions de deux civilisations et de deux cultures. Ces cultures et civilisations constituent la physionomie spirituelle de notre pays. Un fonctionnaire, à notre humble avis, ne peut prétendre représenter vraiment le Canada à l'étranger ou auprès des missions diplomatiques à Ottawa que s'il maîtrise les deux langues officielles et que s'il connaît les deux civilisations et les deux cultures du Canada.

Il doit, de plus, posséder la langue, avoir étudié la civilisation, la culture, les institutions du pays où il est envoyé s'il veut vraiment connaître ce pays et y faire connaître ce pays et y faire connaître le Canada. Autrement il se voit privé de tout contact direct avec le peuple au milieu duquel il est appelé à représenter le Canada. Or, quelle est la compétence des officiers et employés de ce ministère au simple point de vue linguistique?

LA SITUATION

Une brochure publiée en juin 1958 et intitulée *L'Administration du Canada* nous donne, aux pages 65-67, quelques renseignements de base sur le ministère des Affaires extérieures. Nous y trouvons notamment la liste des «principaux fonctionnaires». Ils sont au nombre de huit. Nous y relevons deux Canadiens français.

Nous avons pu procéder à un relevé des fonctionnaires du ministère en raison de leur origine ethnique (canadienne-anglaise ou française) ou de la langue (anglaise ou française ou autre, anglaise et française). Nos chiffres sont de septembre 1959. Le ministère des Affaires extérieures comptait alors à Ottawa même 217 fonctionnaires. De ce nombre, 43 étaient Canadiens français. Ces derniers étaient tous bilingues. Huit d'entre eux, soit 18.6%, étaient trilingues. Les fonctionnaires anglo-canadiens ne comptaient que treize bilingues et deux trilingues, soit 7.5% et 1.1%

Notre enquête a aussi porté sur 387 représentants du Canada à l'étranger: ambassadeurs, chefs de missions, consuls, vice-consuls, attachés, secrétaires, conseillers. Nous avons pris comme texte de base une brochure publiée par le ministère des Affaires extérieures et intitulée: *Représentants du Canada à l'extérieur et représentants des autres pays au Canada.* Sur ces 387, 296 ne connaissent que la langue anglaise. Ils sont tous d'origine canadienne-anglaise ou britannique, sauf peut-être deux ou trois cas. Une quinzaine parlent le français et l'anglais, six le portugais et l'anglais, quatre l'anglais et l'espagnol, deux connaissent le russe et l'allemand, un le chinois. Un diplomate anglo-canadien possède l'anglais, le français, l'espagnol, le portugais et le russe.

Les Canadiens français sont au nombre de 62. Tous parlent les deux langues officielles du Canada, 17 connaissent en plus l'espagnol, 3, l'italien, 2 le portugais, 2 l'allemand, un le russe. L'un deux parle couramment six langues vivantes. Notons que la plupart des diplomates canadiens-français ont fait des études classiques et donc appris le latin ainsi que des rudiments de grec ancien.

Si l'on examine ces données d'une autre façon, on arrive aux pourcentages suivants: 100% des diplomates canadiens-français sont bilingues, 30% sont trilingues. Du côté anglo-canadien, 5% à peine connaissent le français. Seulement 25 fonctionnaires possèdent trois langues, soit moins de 10% de la représentation canadienne dans les services du Canada à l'étranger. (Annexe II)

Si nous montons à l'échelon supérieur, celui des ambassadeurs et hauts commissaires ainsi que des consuls, nous recensons une cinquantaine de postes. Trente sont occupés par des Canadiens anglais ou des Britanniques canadianisés. Quatorze sont confiés à des Canadiens français. Quelques uns n'avaient pas de titulaires au moment où ces chiffres ont été compilés. Les quatorze Canadiens français, chefs de missions, sont bilingues, sinon trilingues. Des trente Anglo-Canadiens, vingt-cinq ignorent l'une des deux langues officielles du pays qu'ils représentent.

CONCLUSION

Le tableau que nous venons de tracer n'est pas rigoureusement exact dans tous ses détails. On comprendra qu'il n'est pas facile de tracer une carte linguistique d'un ministère comme celui des Affaires extérieures. Nous croyons que l'ensemble de ce tableau correspond à la réalité. Avons-nous raison d'être satisfaits? Nous estimons que la réponse doit être négative et au point de vue national et au point de vue international.

Au point de vue national d'abord, trente pour cent de la population canadienne est d'ascendance, de langue et de culture françaises. Officiellement le pays est bilingue. Or les trois quarts de nos représentants à l'étranger ne peuvent nous réprésenter convenablement parce qu'ils ignorent l'une des deux langues officielles du Canada. A Ottawa même, le département des Affaires extérieures ne peut prétendre assurer au pays une administration adéquate alors que les cinq sixièmes de ses fonctionnaires ne parlent pas le français et sont pratiquement coupés de communication avec la civilisation et la culture françaises. (Annexe III)

La situation n'est pas plus satisfaisante du point de vue international. Une enquête nous a permis de constater que la plupart des pays exigent de leurs diplomates la connaissance d'au moins deux, sinon trois langues vivantes. La Belgique demande à tous ses diplomates la possession des langues officielles du pays: le français et le néerlandais. Les diplomates suisses doivent parler au moins deux des trois langues officielles de leur patrie. (Annexe (IV.)

Les États-Unis d'Amérique se sont longtemps désintéressés des connaissances linguistiques. Leurs dirigeants se rendent compte, depuis quelques années, de l'importance des langues. Actuellement le gouvernement américain fait campagne pour inciter ses citoyens à acquérir une langue seconde. Il a même délimité des zones d'enseignement de ces langues en fonction de l'origine ethnique de la population américaine: le français en Nouvelle-Angleterre et en Louisiane, l'espagnol dans tous les États du Sud, l'allemand dans ceux du Centre. Enfin il vient d'adopter une mesure législative obligeant les représentants du pays à l'étranger à connaître la langue du peuple auprès duquel ils sont accrédités. (Annexe V)

RECOMMANDATIONS

Le Gouvernement canadien devrait, dans un assez court délai, exiger de tous ses représentants à l'étranger la connaissance des deux langues officielles du pays. A cette science linguistique de base, chaque diplomate devrait ajouter la connaissance d'au moins une langue vivante. Pour en arriver là, des mesures imminentes s'imposent.

Le recrutement

L'une des conditions d'entrée dans le service est la suivante: «seuls sont admissibles les sujets britanniques qui ont résidé au moins dix ans au Canada». Ce vestige de l'époque où nos relations extérieures étaient gérées par le Colonial Office de Londres doit disparaître. Qu'on exige logiquement de ces candidats la citoyenneté canadienne puisqu'une telle citoyenneté existe légalement et qu'on cesse d'accorder aux Britanniques un privilège qu'on refuse, par exemple, aux Français qui vivent au Canada depuis dix ans.

Dans le passé, beaucoup de postes élevés ont été accordés à des citoyens distingués, choisis hors des cadres des Affaires extérieures. Cette latitude s'expliquait au moment de l'élaboration de notre représentation à l'étranger. Elle a de moins en moins sa raison d'être. La carrière—sauf de rarissimes exceptions—ne devrait s'ouvrir que devant ceux qui subissent les examens et qui gravissent les échelons.

L'examen d'admission

Actuellement la connaissance des langues vivantes ne figure qu'à l'épreuve orale. Il n'est d'ailleurs pas question de connaissance des langues, mais d'aptitude à les connaître, ce qui laisse passablement de latitude aux examinateurs et qui peut ouvrir la porte aux abus. Les candidats devraient subir une épreuve écrite portant sur les deux langues officielles au Canada. Ils devraient posséder en plus la connaissance, au moins rudimentaire, d'une langue étrangère et manifester des aptitudes convenables pour l'acquisition des langues. Ils devraient d'ailleurs être encouragés à cette étude pendant leur stage au ministère. Un moyen pratique de stimuler l'étude du français, langue officielle du Canada et langue de la diplomatie, serait d'en faire une langue de communication à l'intérieur du ministère, au même titre que l'anglais.

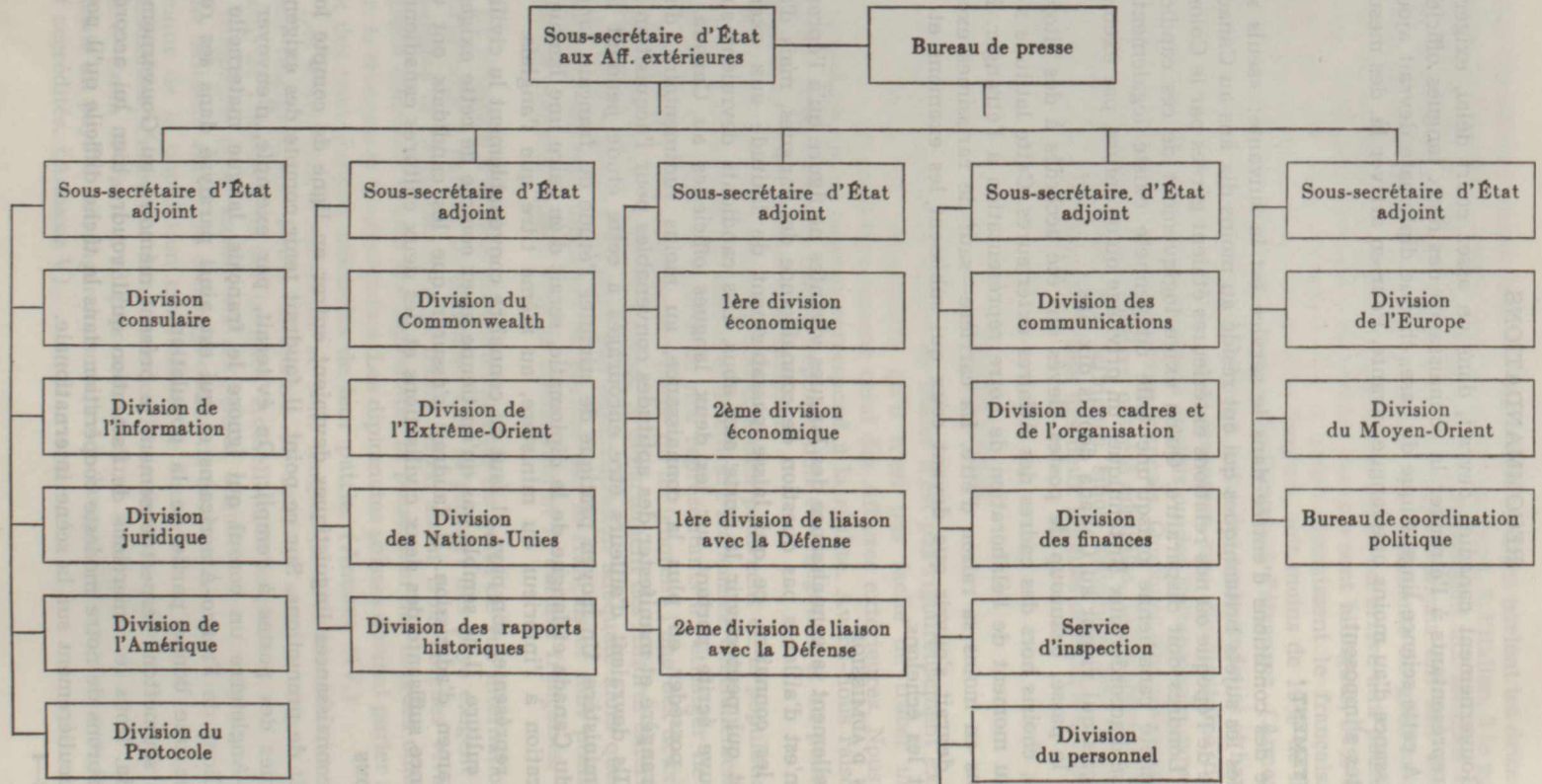
Pour représenter son pays, il faut en connaître convenablement la civilisation et la culture. Il ne semble pas qu'on tienne assez compte de cette exigence dans l'examen d'admission. Il faudrait s'assurer que les candidats ont une connaissance suffisante des deux civilisations et des deux cultures canadiennes.

Promotions

Les connaissances linguistiques devraient entrer en ligne de compte lorsqu'il s'agit de promotions. Sur ce point, il faudrait tenir compte des exigences linguistiques des postes à remplir. On éviterait, par exemple, d'envoyer en Nouvelle-Angleterre un consul qui ignore le français, langue maternelle de deux millions de Franco-Américains et qui est ainsi paralysé dans ses relations avec une bonne partie de la population.

Nous soumettons respectueusement le présent mémoire au Gouvernement du Canada. Nous le remercions de l'attention qu'il voudra bien lui accorder. Nous l'assurons de notre modeste coopération dans la tâche difficile qu'il poursuit, particulièrement sur la scène internationale.

Annexe I — **MINISTÈRE DES AFFAIRES EXTÉRIEURES** — **(Octobre 1958)**



NOTE: Il n'y a pas actuellement de Sous-secrétaire d'État suppléant aux Affaires extérieures. Cette situation n'est donc pas désignée au présent tableau. Quand cette vacance sera remplie, il y aura une redistribution des responsabilités entre les Sous-secrétaires d'État adjoints.

Annexe II

CONNAISSANCES LINGUISTIQUES DES EMPLOYÉS DU MINISTÈRE DES AFFAIRES EXTÉRIEURES À OTTAWA

		Bilingues	*Trilingues*
Nombre total:	217	56(25.7%)	10(4.6%)
Anglo-Canadiens:	174	13(7.5%)	2(1.1%)
Canadiens français:	43	43(100 %)	8(18.6%)

CONNAISSANCES LINGUISTIQUES DES REPRÉSENTANTS CANADIENS À L'ÉTRANGER

Nombre total:	387	92(23.8%)	25(6.9%)
Anglo-Canadiens:	325	30(10 %)	3(1.0%)
Canadiens français:	62	62(100 %)	22(30 %)

CHEFS DE MISSIONS À L'ÉTRANGER

Nombre total:	44	19(43 %)
Canadiens anglais:	30	5(17 %)
Canadiens français:	14	14(100 %)

Annexe III

ADMINISTRATION DU PERSONNEL DANS LE SERVICE PUBLIC

Exigences relatives au bilinguisme

53. La Commission recommande que des dispositions bien précises soient prévues dans la nouvelle loi et son règlement pour assurer que les Canadiens de langue anglaise et de langue française soient servis par les fonctionnaires de l'État dans leur propre langue.

De l'avis de la Commission, la présente loi et son règlement ne sont pas tout à fait satisfaisants à cet égard. Ainsi, même si le cas ne s'est probablement pas présenté dans la pratique, la stricte application de l'article 19 de la loi actuelle rendrait possible que les fonctionnaires ne parlant que le français aient à traiter avec le public dans une localité dont 40% de la population parlent l'anglais, ou vice-versa. De plus, l'article 32A du présent règlement du service civil charge les sous-ministres d'indiquer à la Commission si la connaissance de l'anglais et du français est requise dans telle ou telle localité. Cette disposition a donné lieu à des pratiques fort différentes d'un ministère à l'autre.

54. Là où les usagers de tout service gouvernemental comptent, à la fois des personnes de langue française et de langue anglaise, nous estimons que la meilleure solution serait de disposer d'un personnel bilingue et non pas d'un personnel «connaissant et parlant la langue de la majorité». En conséquence, nous recommandons que les bureaux qui traitent avec un nombre considérable de Canadians de langue anglaise et française soient, dans la mesure du possible, pourvus d'un personnel de fonctionnaires possédant une connaissance convenable des deux langues. Nous recommandons en outre que, dans les cas où les usagers de langue anglaise ou de langue française sont moins nombreux, le nombre de fonctionnaires bilingues soit suffisant pour assurer au public un service efficace dans l'une ou l'autre langue, selon les besoins. En dernier lieu, nous recommandons que les sous-chefs fournissent à la Commission les renseignements nécessaires pour que cette dernière puisse déterminer le degré minimum de compétence en matière de langues que les fonctionnaires de l'État

doivent posséder pour occuper un emploi donné, à peu près de la même manière que la Commission détermine les autres qualités nécessaires à l'obtention d'un poste au sein du service civil.

Annexe IV

CONNAISSANCES LINGUISTIQUES EXIGÉES DES DIPLOMATES

Royaume-Uni:

«...On peut dire qu'une connaissance des langues étrangères est une condition de base et tous les candidats qui se présentent aux grades supérieurs du service (administrative or senior branch of the Foreign Service) doivent posséder au moins une langue choisie ordinairement parmi les suivantes: français, allemand, espagnol, italien, russe».

France:

«...Quant à l'École Nationale d'Administration, dont la vocation est plus générale, ceux de ses élèves appartenant à la section diplomatique doivent, lors du concours de fin d'études et avant de pouvoir être reçus au Ministère, subir une épreuve portant sur deux langues étrangères. La première d'entre elles est, obligatoirement, l'allemand ou l'anglais et la seconde doit faire partie des langues suivantes: allemand, anglais, russe, italien, portuguais, espagnol, arabe. En outre, toute langue autre que les deux qui sont obligatoires peut faire l'objet d'une épreuve facultative susceptible de valoir au candidat qui s'y soumet des points supplémentaires».

Italie:

«...D'une façon générale, les candidats à la carrière diplomatique doivent posséder une connaissance assez poussée de l'anglais et du français».

Belgique:

«...Me référant à votre lettre du 13 de ce mois, j'ai l'honneur de vous informer que les candidats belges qui se présentent aux examens de la carrière diplomatique en Belgique, doivent posséder entre autre la connaissance, parlée et écrite, des trois langues suivantes: français, néerlandais et anglais; en outre, ils doivent pouvoir lire et comprendre une quatrième langue: l'allemand ou l'espagnol.»

Suisse:

«...En règle générale, tous les diplomates suisses parlent l'allemand et le français, et l'anglais ou l'espagnol. Nombreux sont toutefois ceux qui connaissent également l'italien—la troisième langue officielle—ou une autre langue étrangère. D'ailleurs, les autorités suisses encouragent l'étude des langues dans toute la mesure du possible soit en mettant des disques de gramophone Linguaphone à la disposition des intéressés qui se trouvent à la centrale, soit en contribuant au paiement de cours pris avec des professeurs, soit en attribuant un agent à un poste dans lequel il pourra se perfectionner dans une langue dont il n'a encore que des notions superficielles. Il résulte de ce qui précède, que le diplomate suisse possède des connaissances linguistiques assez étendues pour être facilement déplacé de l'une à l'autre des cent cinquante-neuf représentations diplomatiques et consulaires suisses dans le monde.»

République fédérale d'Allemagne:

«...Il me fait plaisir de vous informer que nous exigeons de tous les candidats des connaissances suffisantes en français et en anglais et que nous leur faisons passer des examens correspondants.»

Hollande:

«...J'ai bien reçu votre lettre du 14 avril 1959. La réponse à votre question est donnée dans le 5e paragraphe de l'article no 30 du règlement concernant le service diplomatique des Pays-Bas. Le texte en question dit que les candidats doivent posséder une connaissance approfondie des langues française et anglaise, ainsi que la capacité de s'en servir oralement et par écrit et de traduire correctement dans ces langues un passage de pose néerlandaise. En outre une connaissance suffisante soit de la langue allemande, soit de la langue espagnole est exigée.»

Autriche:

«...En me référant à votre lettre du 13 avril, je voudrais vous informer que notre département des Affaires étrangères exige des candidats à la carrière diplomatique la connaissance de la langue française et anglaise.»

Annexe V

A—86th Congress, 1st Session Senate—Report No. 880

Foreign Service Act Amendments of 1959

Sept. 2, 1959

Mr. FULBRIGHT, from the Committee on Foreign Relations, submitted the following.

REPORT

(to accompany S. 2633)

(*Extract*) Calendar No. 907, page 5.

7, Section 9—*Policy on Language and Other Qualifications for the Assignment of Chiefs of Mission and Roreign Service Officers in Foreign Countries*—Section 9 of the bill would add a new section 500 to the act stating the policy that chiefs of mission and Foreign Service officers shall have to the maximum practical extent a knowledge of the language, culture, history, and institutions of the countries in which they are to serve.

Probably the only reason this policy is not now a part of the Foreign Service Act is that it was thought to be self-evident. The policy is, however, either not self-evident or else implementation of the policy has failed in a disturbing number of cases. Such failure is inexcusable on the part of the U.S. Government. The richest country in the world can afford to employ, train, and send well-qualified Foreign Service officers wherever they are needed. The importance of their work demands no less.

The Committee continues to be disappointed from time to time about nominations for ambassadorial posts. There are too many nominees, career and noncareer, who are merely so-so, not bad enough to reject but not really first rate.

Whether or not the policy statement in the proposed section 500 becomes a part of the law, the Committee on Foreign Relations intends to continue its practice of measuring nominees for chiefs of mission against the standard expressed in the new section 500 and will apply the standard with increasing particularity.

B—86th Congress, 1st Session.

(Extract of S. 2633, page 12.)

IN THE HOUSE OF REPRESENTATIVES

Sept, 11, 1959

Referred to the Committee on Foreign Affairs

An Act to amend the Foreign Service Act of 1946, as amended, and for other purposes.

«FOREIGN LANGUAGE KNOWLEDGE PREREQUISITE TO ASSIGNMENT»

Sec. 578. The Secretary shall designate every Foreign Service Officer position in a foreign country whose incumbent should have a useful knowledge of a language or dialect common to such country. After December 31, 1963, each position so designated shall be filled only by an incumbent having such knowledge: *Provided,* That the Secretary or Deputy Under Secretary for Administration may make exceptions to this requirement for individuals or when special or emergency conditions exist. The Secretary shall establish foreign language standards for assignment abroad of Officers and employees of the Service, and shall arrange for appropriate language training of such officers and employees at the Foreign Service Institute or elsewhere.

BRIEF ON THE DEPARTMENT OF EXTERNAL AFFAIRS OF THE DOMINION OF CANADA

by

LE CONSEIL DE LA VIE FRANÇAISE EN AMÉRIQUE

PREAMBLE

The Canadian Department of External Affairs is relatively young. It was created in May 1909. For several years, its role was very modest. In fact, the imperial government of Great Britain continued to manage our external affairs through the Colonial Office and its representative in Canada, the Governor-General.

In 1926, an agreement signed at the imperial conference stipulated that the Governor-General was to be the representative not of the United Kingdom, but of the sovereign. Following the Treaty of Westminster, the Crown was divided and the sovereign of the United Kingdom became the king of Canada. This agreement brought about profound changes in the political structure of our country, especially in our external affairs. Starting July 1st, 1927, correspondence from the Dominion and foreign governments was addressed to the Secretary of State for External Affairs, instead of the Governor-General.

This change also affected our representation abroad. Until then, our country had been represented only in London (1880) by a High Commissioner, in Paris (1887) by a general agent. These emissaries had no diplomatic status. A Canadian minister was appointed to Washington in 1926, another to Paris in 1928 and a third one to Tokyo in 1929. At the same time, the U.S.A., France and Japan opened their legations in Ottawa. Canada was making her debut in the diplomatic world.

The first World War had drawn this country out of its isolation. World War II resulted in the establishment of official relations with a host of nations. The Department of External Affairs expanded considerably. It is now directed by a minister, who is assisted by an under-secretary of state and five assistant under-secretaries. It has 22 divisions employing 1365 persons. Nearly 600 persons recruited on the spot are in the employ of Canadian missions abroad.

If we consider diplomatic representation alone, we note that Canada has embassies in 33 countries, legations in six, and high commissioners in nine. She also has a military mission in Berlin, a permanent mission at the United Nations in New York and in Geneva, a permanent delegation to the North Atlantic Treaty Organization and to the European Economic Pool. Finally, Canada takes part in the activity of International Commissions for Surveillance and Control in Cambodge and Vietnam. On the other hand, 68 countries are represented in Ottawa.

The tasks assigned to Canada's Department of External Affairs are numerous and important. It directs relations between Canada and other countries, takes part in the work of international organizations and protects Canadian interests abroad. It coordinates and analyses information which may influence Canada's international relations. It negotiates and signs treaties and other international agreements. Finally, it represents Canada in foreign capitals and at international conferences. A table published by the information division of this department gives a rather complete picture of the work done by the Department of External Affairs. It is attached to this brief as appendix (I).

This department is important and in full expansion. Its careful organization is vital to Canada. Indeed, it represents Canada officially in foreign countries. It steers our foreign policy and has considerable influence on our domestic policy. Hence, it appears to be deficient in one respect, language and culture.

This brief is concerned with that particular point. The first part reviews the situation. The second part contains our conclusions and recommendations. At the outset we must state the problem as we understand it. It is basically a language problem, but goes beyond the scope of language. For reasons which are easy to understand, this brief is almost exclusively concerned with the language problem.

Canada is officially bilingual. These two languages are not legal fiction without any basis in reality. On the contrary, they are rooted in the history and life of the Canadian people. They are the expressions of two civilizations, two cultures. These cultures and civilizations are the spiritual features of our country. In our humble opinion, a civil servant cannot profess to really represent this country abroad or at the diplomatic missions in Ottawa unless he has a mastery of the two official languages and a knowledge of both civilizations and cultures in Canada.

Moreover, he must possess the language and must have studied the civilization, culture and institutions of the country where he is delegated in order to get to know that country and familiarize it with Canada. Otherwise, he is deprived of all direct contacts with the people among which he must represent Canada. How competent, then, are the officers and employees of the department from a purely linguistic standpoint?

THE SITUATION

A booklet published in June 1958 under the title Canada's Administration gives us, on page 65-67, some basic information on the Department of External Affairs. Among other things, we find a list of the principal officers. They are eight in number, including two French-Canadians.

We are able to make a survey of the officers of this department on the basis of their racial origin (Anglo-Canadian or French) or their language (English, French or others, English and French).

Our figures are for September 1959. The Department then had 217 officers in Ottawa itself. Of this number, 43 were French-Canadians. These were all bilingual. Eight of them, or 18.6% were trilingual. Among the Anglo-Canadian officers, there were only 13 bilinguals and two trilinguals, 7.5% and 1.1%.

Our survey also concerned itself with the 387 representatives of Canada abroad: ambassadors, mission heads, consuls, vice-consuls, attachés, secretaries, counsellors. We chose as basic material a booklet published by the Department of External Affairs under the title, "Representatives of Canada Abroad and Representatives of Other Countries in Canada". Of the 387, 296 know only English. They are all of Anglo-Canadian or British extraction with the possible exception of two or three. About 15 Anglo-Canadians speak French and English, six, Portuguese and English, four, English and Spanish. Two of them know Russian and German, one, Chinese. One Anglo-Canadian diplomat has mastered English, French, Spanish, Portuguese and Russian.

There are 62 French-Canadians. All of them speak the two official languages of Canada. Besides that, 17 know Spanish, 3 Italian, 2 Portuguese, 2 German and 1 Russian. One officer speaks six modern languages fluently. We note that most French-Canadian diplomats have studied the humanities and hence learned Latin and the rudiments of ancient Greek.

If we examine these facts from another angle, we get the following percentages: 100% of the French-Canadian diplomats are bilingual, 30% are trilingual. As for the Anglo-Canadians, hardly 5% know French. Only 25 officers have three languages, or less than 10% of the Canadian representatives in Canada's foreign service (Appendix II).

Moving to the top echelon, that of ambassadors and high commissioners as well as consuls, we count about fifty posts. Thirty of them are occupied by Anglo-Canadians or Canadianized Britishers. Fourteen have been entrusted to French-Canadians. A few of them were unoccupied at the time of this compilation. The 14 French-Canadians who are heads of diplomatic missions are bilingual and even trilingual. Of the 30 Anglo-Canadians, 25 ignore one of the two official languages of the country they represent.

CONCLUSION

The picture we have just drawn is not meticulously exact in all its details. It is understandably difficult to draw a linguistic chart of a department such as External Affairs. However, we believe that this picture corresponds on the whole to reality. Should we be satisfied? We believe we should answer in the negative from the national and international standpoint.

First, from the national standpoint, 30% of the population of Canada is of French origin, culture and expression.

The country is officially bilingual. Hence, three-quarters of our representatives abroad cannot represent us suitably since they ignore one of the two official languages of Canada. In Ottawa itself, the Department of External Affairs cannot profess to administer the country adequately as five-sixths of its officers do not speak French and are practically cut off from French culture and civilization. (Appendix III)

The situation is no better from the international standpoint. A survey revealed that most countries require their diplomats to know at least two, if not three living languages. Belgium requires all her diplomats to master the official languages of the country: French and Flemish (Dutch). Swiss diplomats must be able to speak at least two of the three official languages of their country. (Appendix IV)

The United States were for a long time uninterested in linguistic achievements. However, American leaders have come to realize during the past few years the importance of languages. The American government is now campaigning to urge its citizens to learn a second language. It has even mapped out teaching areas for these languages on the basis of the racial origin of the

population: French in New England and Louisiana, Spanish in all southern states, German in the central states. The U.S. government recently adopted a bill requiring its representatives abroad to learn the language of the people where they are accredited. (Appendix V)

RECOMMENDATIONS

The Canadian government should without too much delay require all its representatives abroad to know the two official languages of this country. To this basic knowledge, each diplomat should add at least one living language. To reach this stage, prompt measures are necessary.

Recruiting

One of the conditions for admission to the diplomatic service is that "only British subjects who have resided in Canada at least ten years are eligible". This left over from the era when our external affairs were directed by the Colonial Office in London must disappear. It is logical that the government should require Canadian citizenship since this citizenship has a legal existence. Let us stop however granting to British nationals a privilege which we refuse, for example, to Frenchmen who have been living in Canada ten years.

In the past, many high positions have been entrusted to distinguished citizens chosen outside the framework of the Department of External Affairs. This latitude could be justified at the time our representation abroad was established and developed. There is less and less reason for its existence. With very few exceptions, the diplomatic career should be open only to those who pass the examinations and who work their way up.

Entrance examination

Actually the knowledge of living languages is a requisite only of the oral examination. Candidates are not required to know these languages, but only to show their aptitude for learning them. This gives the examiners too much latitude and leaves the way open for abuse. Candidates should take a written examination on the two official languages of Canada. In addition, they should have at least a rudimentary knowledge of a foreign language and show suitable aptitude for learning languages.

They should be encouraged to study languages during their training period with the Department. A practical means of encouraging the study of French, one of the official languages of Canada and the language of diplomacy, would be to use it for communication inside the Department on a par with English.

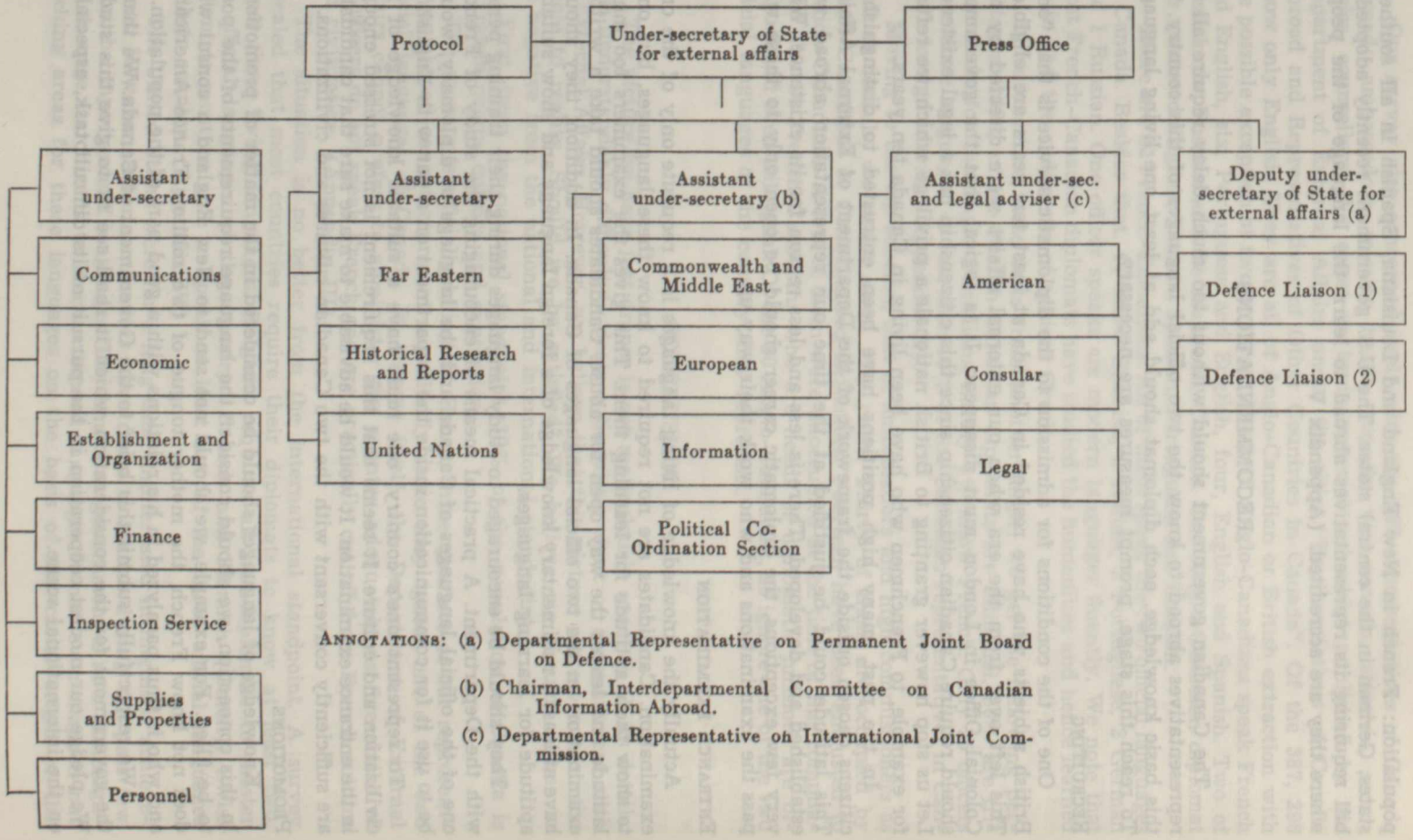
To represent one's country, one must have a suitable knowledge of its civilization and culture. It seems that this requirement is not stressed enough in the entrance examination. It would be advisable to make sure that candidates are sufficiently conversant with the two Canadian cultures and civilizations.

Promotions

Knowledge of languages should be considered in the matter of promotions. In this connection, we should consider the language requirements of the posts to be filled. For example, we should not send to New England a consul who does not know French, the mother tongue of two million Franco-Americans, and who is thus paralyzed in his relations with a good part of the population.

We respectfully submit this brief to the Government of Canada. We thank the government for the consideration which it shall see fit to give this study. We pledge our modest cooperation in the pursuit of its difficult task, especially on the international scene.

DEPARTMENT OF EXTERNAL AFFAIRS



ANNOTATIONS: (a) Departmental Representative on Permanent Joint Board on Defence.

(b) Chairman, Interdepartmental Committee on Canadian Information Abroad.

(c) Departmental Representative on International Joint Commission.

Appendix II

LANGUAGE KNOWLEDGE OF THE EMPLOYEES OF THE DEPARTMENT OF EXTERNAL AFFAIRS AT OTTAWA

		Bilinguals	*Trilinguals*
Total number:	217	56(25.7%)	10(4.6%)
Anglo Canadians:	174	13(7.5%)	2(1.1%)
French Canadians:	43	43(100 %)	8(18.6%)
LANGUAGE KNOWLEDGE OF CANADIAN REPRESENTATIVES OUTSIDE			
Total number:	387	92(23.8%)	25(6.9%)
Anglo Canadians:	325	30(10 %)	3(1.0%)
French Canadians:	62	62(100 %)	22(30 %)
HEADS OF FOREIGN MISSIONS			
Total number:	44	19(43%)	
Anglo Canadians:	30	5(17%)	
French Canadians:	14	14(100%)	

Appendix III

PERSONAL ADMINISTRATION IN THE PUBLIC SERVICE

8074 Language Qualifications

8074.1 (ACT)

In order that English-speaking and French-speaking persons may do business with the civil service in their respective languages, the Civil Service Commission shall, by regulation or otherwise, provide, in so far as practicable,

(*a*) that, all employees who have contact with the public shall be qualified in the knowledge and use of both English and French where the persons with whom they are required to do business include substantial numbers of both English and French speaking persons.

(*b*) that, where the numbers of either English-speaking or French-speaking persons served by any civil service office are less substantial, the number of bilingual employees in that office shall be sufficient to give effective service to the public in either language as required.

8074.2 (ACT)

The Commission shall, by regulation or otherwise, provide that, in units of the civil service which include significant numbers of both English-speaking and French-speaking employees, those in charge of such units shall, so far as practicable, be qualified in the use of both English and French to the extent necessary to supervise the work thereof in both languages.

8074.3 (ACT)

In order that the Commission may be in a position to make suitable provision for the implementing of section 8074.1 and 8074.2, deputy heads shall provide whatever information may be required by the Commission to determine the minimum language qualifications which employees should possess.

Appendix IV

KNOWLEDGE OF LANGUAGES REQUIRED OF DIPLOMATS

United Kingdom:

" . . . It can be said that a knowledge of foreign languages is a basic requirement and all candidates who wish to enter the administrative or senior branch of the Foreign Service must have mastered a language usually chosen among the following: French, German, Spanish, Italian, Russian.

France:

As for the National School of Administration, which has a broader task, those of its students who belong to the diplomatic section must take a test on two foreign languages at the final examinations and before they can be admitted to the Ministry. The first of these languages in German or English on a compulsory basis and the second language must be one of the following: German, English, Russian, Italian, Portuguese, Spanish, Arabic. In addition, any language besides the two compulsory ones can be the subject of an optional test which can mean additional points for the candidate who takes it.

Italy:

Generally speaking, candidates for the diplomatic service must have a very advanced knowledge of English and French.

Belgium:

Referring to your letter of the 13th inst., I have the honour to inform you that Belgian candidates who take the examinations for the Belgian diplomatic service must have among other things a speaking and writing knowledge of the following languages: French, Dutch and English. In addition, they must be able to read and understand a fourth language, German or Spanish.

Switzerland:

As a rule, all Swiss diplomats speak German and French, as well as English or Spanish. Many diplomats also know Italian, the third official language, or another foreign language. Swiss authorities encourage the study of languages as much as possible by putting phonograph records (Linguaphone) at the disposal of interested parties at the head office, by helping to defray the lessons which officers take from professors or by assigning an officer to a post where he can improve his knowledge of a language of which he has only a smattering. As a result, the Swiss diplomat has an extensive knowledge of languages and can easily be transferred from one to the other of the 159 diplomatic and consular posts representing Switzerland throughout the world.

West Germany:

I am pleased to inform you that we require all candidates to have a sufficient knowledge of French and English and that we give them examinations in these languages.

Holland:

I have your letter of April 14, 1959. The answer to your question is contained in the fifth paragraph of section 30 of the regulations of the Netherlands diplomatic service. According to the text, candidates must have a thorough

knowledge of French and English as well as the ability to speak and write them and to translate correctly into these languages a Dutch passage in prose. In addition, they must have a sufficient knowledge of German or Spanish.

Austria:

Referring to your letter of April 13, I would like to inform you that our Department of Foreign Affairs requires diplomatic service candidates to know French and English.

Appendix V

A—86th Congress, 1st Session SENATE—Report No. 880

Foreign Service Act Amendments of 1959

Sept. 2, 1959.

Mr. FULBRIGHT, from the Committee on Foreign Relations, submitted the following

REPORT

(to accompany S. 2633)

(*Extract*) Calendar No. 907, page 5.

7, Section 9—*Policy on Language and Other Qualifications for the Assignment of Chiefs of Mission and Foreign Service Officers in Foreign Countries.*—Section 9 of the bill would add a new section 500 to the act stating the policy that chiefs of mission and Foreign Service officers shall have to the maximum practical extent a knowledge of the language, culture, history, and institutions of the countries in which they are to serve.

Probably the only reason this policy is not now a part of the Foreign Service Act is that it was thought to be self-evident. The policy is, however, either not self-evident or else implementation of the policy has failed in a disturbing number of cases. Such failure is inexcusable on the part of the U.S. Government. The richest country in the world can afford to employ, train, and send well-qualified Foreign Service Officers wherever they are needed. The importance of their work demands no less.

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In the House of Representatives

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Referred to the Committee on Foreign Affairs

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"Foreign language knowledge prerequisite to Assignment"

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APPENDIX "C"

Note—An English translation of the following letter and submission appears immediately after the French text

Aux membres du Comité spécial
chargé d'étudier la loi concernant
le service civil.

Messieurs,

La Fédération des Sociétés Saint-Jean-Baptiste du Québec présentait au début de 1959 au très honorable premier Ministre du Canada, M. John Diefenbaker, un mémoire sur le bilinguisme dans l'administration fédérale. Ce mémoire avait reçu un excellent accueil. Tous les journaux, tant de langue anglaise que française y avaient fait une large publicité.

Nous croyons devoir vous présenter le même document qui réflète toujours la pensée des Sociétés Saint-Jean-Baptiste sur la question, assurés que vous l'accueillerez favorablement.

LA FÉDÉRATION DES SOCIÉTÉS
le 5 mai 1961. SAINT-JEAN-BAPTISTE DU QUÉBEC

Très Honorable Premier Ministre,

La Fédération des Sociétés Saint-Jean-Baptiste du Québec, dont les effectifs humains dépassent aujourd'hui les 200,000 membres, répartis en 750 sections paroissiales et seize Sociétés diocésaines ou régionales, et qui s'est donné pour mission de travailler à la promotion des intérêts culturels et autres des Canadiens français disséminés dans les dix provinces du pays, se préoccupe depuis toujours des progrès du bilinguisme dans l'adminitration fédérale. Nous savons que cette question ne vous est pas non plus étrangère. Nous nous rappelons les gestes que vous avez posés depuis le début de votre carrière parlementaire, et de façon plus particulière, depuis que vous dirigez les destinées de notre pays.

C'est pourquoi notre Fédération a jugé opportun de formuler un certain nombre d'observations relatives au bilinguisme dans le service public. Elle vous sait gré d'avoir accepté d'entendre ses représentants et vous remercie à l'avance du cas que vous ferez de ses suggestions dans la prochaine refonte de la loi du Service civil.

Pour des raisons d'efficacité administrative et de justice à l'endroit de la population entière du pays, la question de bilinguisme ne peut plus se poser en 1959 dans les mêmes termes qu'il y a une vingtaine d'années.

L'industrialisation rapide de notre pays a eu pour conséquence immédiate de déplacer un nombre considérable d'agriculteurs ou de ruraux vers les centres urbains où l'industrie s'était tout naturellement installée. La Commission royale d'Enquête sur les Perspectives économiques du Caanda prévoit même que d'ici peu, la moitié ou presque de la population canadienne vivra dans des agglomérations urbaines de cent mille habitants ou plus, c'est-à-dire des centres cosmopolites par définition.

Dans une analyse intitulée «Certains aspects régionaux du développement économique du Canada» et préparée aux intentions de la Commission susmentionnée, M. R. D. Howland a d'autre part publié des chiffres très révélateurs sur les migrations inter-provinciales. Selon lui, quelque cinq mille familles quittent chaque année la province de Québec pour aller vivre dans les autres provinces du pays, la majorité d'entre eux choisissant de s'établir en Ontario. (Nous sommes autorisés à penser que parmi ces familles, il s'en trouve un bon nombre où le français est d'usage courant.) Par ailleurs, le Québec reçoit un nombre à peu près égal de personnes qui vivaient jusque là dans les

autres parties du pays, en particulier dans l'Ontario et les provinces de l'Atlantique. Le même ouvrage affirme encore que les migrations inter-provinciales, depuis la fin de la deuxième guerre mondiale, se chiffrent par quelque 40,000 familles par année, soit 160,000 personnes si l'on tient compte que chaque famille déplace avec elle une moyenne de quatre individus. Ces statistiques ne tiennent pas compte des déplacements individuels, les chiffres ayant été établis à partir des dossiers du service des Allocations Familiales.

Il ne faudrait pas oublier, dans le même domaine, que les communications se sont beaucoup améliorées depuis une couple de décennies et que, par conséquent, un nombre de plus en plus considérable de personnes voyagent d'un bout à l'autre du pays, par automobile, chemin de fer ou avion, ou bien communiquent entre elles par téléphone.

Ces faits prouvent de façon péremptoire que les deux groupes ethniques qui ont présidé à la formation du Canada ne peuvent plus désormais vivre isolément l'un de l'autre, ni se replier chacun dans son coin en faisant mine d'ignorer le voisin. De plus en plus, Canadiens d'origine française ou d'ascendance anglo-saxonne seront appelés à se coudoyer quotidiennement, à partager le même sort.

Le Service Civil du Canada est appelé à jouer un rôle de premier plan en vue de faciliter l'adaptation de tous les citoyens aux transformations que nous venons de signaler. Mais il ne pourra le faire que dans la mesure où il s'adaptera lui-même aux conditions nouvelles, c'est-à-dire, dans la mesure où il fera profession de bilinguisme pour servir une population bilingue.

La Commission du Service Civil du Canada, dans sa revue de la législation s'appliquant au service public publiée en décembre dernier, a fait elle-même en des termes non équivoques grand état de la nécessité du bilinguisme.

A notre avis, la pratique du bilinguisme dans le service civil ne deviendra une réalité que si les autorités compétentes acceptent de corriger la situation actuelle sur les trois points suivants:

1.—*Nomination d'un personnel bilingue* aux endroits où les fonctionnaires sont appelés à communiquer avec des personnes des deux origines ethniques. Rien n'est plus désagréable, lorsque les circonstances nous amènent en contact avec un représentant du Gouvernement canadien, que d'avoir à s'exprimer dans une langue qu'on ne maîtrise pas parfaitement. Nous croyons que ce n'est pas au contribuable qu'il appartient de faire des efforts pour se faire comprendre, mais au fonctionnaire dont c'est le rôle de servir le public.

A notre avis, deux catégories de fonctionnaires ne devraient recruter que de parfaits bilingues: ceux qui travaillent dans les bureaux de la capitale et que leurs occupations appellent à transiger chaque jour avec des personnes de l'une ou l'autre culture; ceux qui travaillent dans les bureaux régionaux et qui ont à traiter avec une minorité importante. Nous croyons que dans ce dernier cas, on ne devrait employer que des fonctionnaires bilingues si la proportion de ceux qui ne parlent pas la langue de la majorité atteint les vingt pour cent (20%). Par ailleurs, les bureaux régionaux devraient recruter une partie de leur personnel parmi les bilingues si un groupe de dix mille (10,000) personnes ne parlent pas la langue de la majorité et ce, même s'il ne s'agit que de cinq pour cent (5%) de la population desservie. Un groupe de dix mille personnes constitue en effet une entité assez importante pour qu'on la serve dans la langue qui lui est familière.

2.—*Chances égales pour tous les fonctionnaires* dans l'accès aux fonctions supérieures, quelles que soient les origines des candidats. Nous sommes en mesure d'affirmer que les fonctionnaires de langue française ont été longtemps et sont encore tenus à l'écart d'un certain nombre de postes, qu'ils n'ont pas chance d'avancement au même titre que leurs confrères d'autre origine. Il suffit pour s'en convaincre de jeter un coup d'œil sur les Comptes publics du Canada.

On y constate que les Canadiens français ne détiennent pas leur juste part des emplois commandant un salaire annuel de $5,000 et plus. Pourtant la compétence des nôtres ne fait pas de doute dans bien des cas. Souvent, lorsqu'on nomme des Canadiens-français aux postes supérieurs, ou bien on favorise des anciens politiciens ou bien on nomme des gens qui n'ont de canadien-français que le nom. Les uns et les autres sont des usurpateurs et nous font redouter ou mépriser des collègues anglo-canadiens choisis pour leur compétence. Plusieurs des nominations, depuis un certain nombre d'années, ont été de cette nature peu enviable.

Nous affirmons de plus, Monsieur le Premier Ministre, que s'il y a si peu de candidats canadiens-français aux examens de la Commission du Service Civil, c'est que les jeunes se sont laissé dire que leurs chances d'avancement seraient limitées, soit qu'on les ignore, soit qu'on leur préfère un ancien politicien ou un «militant» politique.

3.—*Repenser la législation et les règlements* concernant le service civil du Canada en ce qui a trait à la pratique du bilinguisme. A l'heure actuelle, les textes législatifs sont plus qu'avares sur cette question, et lorsqu'ils daignent s'y arrêter, ils laissent beaucoup trop de latitude aux officiers supérieurs de la Commission du Service Civil ou aux ministres intéressés.

A l'appui de nos positions, on peut invoquer de nombreux arguments. Vous voudrez bien permettre que nous en fassions valoir quelques-uns:

a) *le respect de la démocratie.* Les citoyens qui ne connaissent qu'une langue ont le droit strict de s'adresser aux administrateurs de la chose publique dans leur propre langue en considération du caractère bilingue du pays. Ils ont le droit de recevoir le même service, quelle que soit la langue qu'ils emploient, et cela n'est pas possible lorsque la majorité des fonctionnaires sont unilingues. Le recours aux traducteurs est une cause de retard et d'erreurs, et une accusation d'infériorité.

b) *la justice envers les bilingues.* Les candidats ou fonctionnaires qui se sont donné la peine d'apprendre les deux langues officielles afin de mieux servir l'État ont mérité que l'on reconnaisse leurs efforts en leur accordant une préférence raisonnable. Et cela ne vaut pas que pour les candidats de langue française ayant appris l'anglais, mais aussi pour ceux d'origine anglaise qui se seraient familiarisés avec le français.

c) *l'efficacité de l'administration.* On sait que ce sont les fonctionnaires, et de façon spéciale les hauts fonctionnaires qui rédigent les lois ou en inspirent la rédaction. Ce sont eux qui interprètent ces lois. Il leur est donc nécessaire de connaître dans la majorité des cas les particularismes des deux cultures du pays, de façon à en tenir compte.

d) *l'uniformité dans l'administration.* A l'heure actuelle, il est des ministères où les Canadiens français obtiennent à peu près satisfaction tandis que la situation dans d'autres ministères est intolérable. Cela est dû au fait que les exigences ne sont pas les mêmes partout et qu'il suffit bien souvent d'un sous-ministre qui ne veuille pas tenir compte du caractère bilingue ou pas. S'il était établi que la connaissance des deux langues officielles constitue une qualification pour le postulant, les opinions personnelles des dirigeants des divers ministères n'influenceraient plus les résultats.

Pour toutes ces raisons, la Fédération des Sociétés Saint-Jean-Baptiste du Québec croit que des réformes urgentes s'imposent pour assurer à chaque Canadien la possibilité de s'exprimer en une langue qui lui est familière lorsque les

circonstances l'amènent à transiger avec les organismes fédéraux. Elle estime que ces réformes pourraient s'effectuer sans heurt et sans trop de complication si l'on donnait suite aux propositions qu'elle soumet aujourd'hui et qui peuvent se résumer comme suit:

1.—*La reconnaissance officielle du bilinguisme comme l'une des qualifications* pouvant être exigées des candidats aux fonctions publiques. Dans son projet de refonte de la loi et des règlements du Service Civil du Canada soumis par M. Heeney en décembre dernier, la Commission du Service Civil recommandait qu'on accorde aux anciens combattants un boni de cinq pour cent (5%) du total possible des points lors d'un examen, au lieu d'une préférence absolue comme c'est le cas actuellement. Nous croyons que le bilinguisme est devenu une nécessité assez importante pour qu'on accorde aussi un boni de cinq pour cent (5%) à tous les candidats possédant une connaissance convenable de la langue seconde (l'anglais ou le français selon le cas).

2.—*Remaniement de la loi du service civil du Canada* sur les questions relatives au bilinguisme. Le rapport Heeney, que nous avons mentionné ci-dessus, a déjà proposé une refonte complète de la loi et des règlements du Service civil. Nous croyons que les termes de la nouvelle législation ne devraient prêter à aucune équivoque sur les privilèges accordés aux bilingues ni n'accorder de pouvoirs discrétionnaires aux officiers supérieurs de la Commission ou aux Ministres du Cabinet selon le cas.

3.—*Préférence absolue aux candidats bilingues* dans les bureaux de la capitale et dans les bureaux régionaux situés en des endroits où vingt pour cent (20%) ou plus de la population ne parle pas la langue de la majorité. Dans les bureaux de la Capitale, des exemptions pourraient être consenties en faveur du personnel affecté aux recherches et qui, par conséquent, n'a pas de relation directe avec le public. Par contre, nous sommes d'avis qu'un groupe de dix mille (10,000) personnes ne parlant pas la langue de la majorité, même s'il ne constitue que cinq pour cent (5%) de l'ensemble, constitue une masse suffisamment importante pour nécessiter qu'au moins une partie du personnel affecté au bureau régional soit bilingue.

4.—*Réévaluation des examens d'admission* aux postes du service civil en fonction des deux cultures officielles du pays. A l'heure actuelle, les examens d'admision sont conçus en fonction de l'éducation donnée dans les écoles de langue anglaise, lesquelles ont développé leur programme d'étude en relation avec la culture et la mentalité anglaises, lesquelles n'ont rien de commun avec la mentalité et la culture françaises. De telle sorte que les candidats de langue et de culture françaises sont desservis dès le départ, puisqu'ils ont à participer à des examens qui ne tiennent aucun compte de la formation qu'ils ont reçue.

Nous comptons sur vous, Monsieur le Premier Ministre, pour amener le Gouvernement et la Commission du Service civil, à qui nous adressons une copie du présent mémoire, à réaliser ces réformes. Nous sommes assurés que vous aurez ainsi contribué à accroître encore l'efficience reconnue des services fédéraux en même temps que vous aurez resserré l'union de tous les Canadiens en rendant justice à la minorité sans causer préjudice à la majorité.

LA FÉDÉRATION DES SOCIÉTÉS
SAINT-JEAN-BAPTISTE DU QUÉBEC

Le président	M^e^ Gaston Rondeau
Les vice-présidents	M^e^ Richard Rioux
	M^e^ Albert Leblanc
	D^r^ René Vanasse
Le secrétaire	M. Arthur Rioux
Le trésorier	M. Georges-É. Daignault
Le chef du secrétariat	M. Gérard Turcotte

To the Members of
The Special Committee on the Civil Service Act

Gentlemen:

Early in 1959, La Fédération des Sociétés Saint-Jean-Baptiste du Québec submitted to the Right Honourable John Diefenbaker, Prime Minister, a brief on bilingualism in the federal public service which was very well received. All the newspapers, English as well as French, gave it their wholehearted support.

Convinced that you will consider it favourably, we believe we should submit the same document to your Committee for it is still the expression of the Saint-Jean-Baptiste Societies' views and beliefs in the matter.

LA FÉDÉRATION DES SOCIÉTÉS
SAINT-JEAN-BAPTISTE DU QUÉBEC

May 5, 1961.

Right Honourable Prime Minister,

La Fédération des Sociétés Saint-Jean-Baptiste du Québec (Federated St. John the Baptist Societies of the Province of Quebec), whose objective it is to promote cultural and other interests of the French-Canadian people throughout the ten Canadian Provinces, has always been much concerned with bilingual progress in Federal administration services. It has to-day a membership of more than 200,000 people, distributed in 750 parish sections and 16 regional or diocesan Societies. We are aware that language or bilingual problems are not foreign to you, and we equally appreciate certain attitudes of yours in relation to them, from the first moment of your parliamentary activities, and especially since you have been called to the helm of Canadian affairs.

This justifies in part the decision of the aforesaid Federation to submit to your attention and appreciation certain ideas and facts, in connection with the bilingual aspect in public services. Our Federation is very grateful for your having accepted to receive and hear its representatives, and its Officers wish to thank you in advance for whatever initiatives its suggestions may bring forth in the planned revising of the Civil Servants' Law.

Because of administrative efficiency and justice toward the entire population of the country, the bilingual problem cannot be viewed at this time, in 1959, in the same light that seemed to be proper some twenty years ago.

Rapid industrial progress throughout the country had many consequences, one of which was the displacing of countless farmers or rural citizens from agricultural districts to urban centres where industries naturally sprung out. The Royal Commission on Canada's Economic Prospects goes so far as to conclude that, within a rather short time, half of the Canadian population or about will be living in urban communities of 100,000 people or more, that is in cosmopolitan agglomerations.

In the course of a study entitled "Some regional aspects of Canada's economic development", prepared for the aforesaid Commission, Mr. R. D. Howland gave much revealing figures as to inter-provincial migrations or movements. According to his conclusions, some 5,000 families depart every year from the Province of Quebec to establish themselves in other Canadian

Provinces, the majority of them electing Ontario for their new homes. (We are justified to believe that in many of these families the French language is that of daily communications). In the face of this situation, Quebec receives a somewhat equal number of persons who previously lived in other parts of the country, most of them in Ontario and the Atlantic Provinces. According to the same analysis, the yearly move from Province to Province, since the end of the second world war, affects 40,000 families or 160,000 individuals, be it accepted that every family displaces an average of four persons. Statistics do not take into consideration the displacing of individuals as such, based as they are on the files of the Family Allowances Division of the National Health and Welfare Department.

In this light, one must not overlook that transportation facilities have much improved during the past two decades, and that many, in ever increasing numbers, now easily travel from coast to coast by motor, railroad or plane, or communicate with each other using the telephone.

These facts tend to prove in a peremptory manner that the two ethnic groups which laid the foundations of Canada cannot in the future live in isolation from each other, nor retire each in a given space, affecting to ignore the other. More and more in the future, Canadians of French extraction and their fellow-countrymen of British origin will be called to daily elbowing and sharing of a same fate.

Civil Service in Canada will play an important part in helping citizens to adapt themselves to the conditions now prevailing. But its task will be rendered easier, and more effective, by its own acceptation of changes as they have presented themselves. In other words, in giving a true bilingual service to a bilingual population.

In the course of its review, as of December last, of the legislation pertaining to public services, The Civil Service Commission of Canada itself stressed in no equivocal terms the high necessity of bilingual action.

It is our opinion that in the Civil Service as a whole, bilingual practices will not become a reality, as long as the proper authorities have not brought corrections on the three following points:

1—*Appointment of a bilingual personnel,* in all offices or locales, where civil servants are called to communicate with citizens of both ethnic origins. Nothing is more embarrassing, when one comes into contact with a representative of the Canadian Government, to express himself in a language he does not master. We believe it does not belong to the individual to make effort to make himself understood, but rather to the civil servant whose duty it is to come to the aid of the public.

In our opinion, civil servants in two categories should be perfectly bilingual: those on duty in the Government offices in the capital of Canada, who are in daily contact with persons of one culture or the other; those in regional offices, who have to deal with an important minority. In the latter case, we believe bilingual employees only should be at hand, in communities or surroundings where the people ignoring the language of the majority are in the proportion of about 20 per cent. Furthermore, regional offices should have part of their staff bilingual, wherever a group of 10,000 people do not speak the language of the majority, and even if this group represents but 5 per cent of the population concerned. A group of 10,000 citizens is an important enough entity to justify service in the language they are familiar with.

2—*Equal chances for all civil servants,* in appointment to higher responsibilities, whatever be the candidates' origins. We are in a position to say that civil servants of French descent were in the past, and are still, denied the opportunity to acceed to a certain number of superior functions, or offices; that they have not, equally with their fellows of other origin, the chance to better their lifelong standing. It is enough to glance at the Public Accounts of Canada to be convinced of such a situation. Figures will tell that the French Canadian employees have not their equitable share of appointments justifying an annual salary of $5,000 and more. There are many instances, when French Canadians are called to high offices, that former politicians have been favored, or that nominees have nothing French but their name. Those in each category are usurpers, and only tend to provoke apprehension or contempt toward English-Canadians who might have been promoted for their real competency. Many nominations or appointments, within a certain number of years, had thus an humiliating character.

We are also ready to say, Mr. Prime Minister, that a very small number of French-Canadian candidates try to pass the examinations of the Civil Service Commission, because our young men have been told that their chances would be much limited in the Civil Service, that they would be ignored in many cases, that former politicians or even active political men would be preferred to them.

3—*Reforms in the legislation and by-laws* pertaining to the Civil Service in Canada, in respect to bilingual practices. For the time being, acts and other law texts contain very little about the question, and whenever they do, they permit too much latitude to superior officers of the Civil Service Commission, or to interested Ministers.

Many arguments and reasons may be invoked to justify our stand. May we be permitted to recall a few? That is:

(a) *due respect to democracy.* Citizens only fluent in one language possess the strict right to address themselves in that language, when communicating with administrators of State affairs, this right being a consequence of the biligingual character of the country. They are entitled to the same service as other citizens, whatever the language employed, but this becomes an impossibility when the majority of civil employees are themselves unilingual. Recourse to translators is often a cause of delays and errors, and also implies an inferiority.

(b) *justice to bilingual citizens.* Civil servants and candidates who have taken the trouble to learn the two officials languages of the country, in order to better serve the State, deserve a recognition of their efforts and should be given a reasonable preference. This not only to apply to French language candidates who have learned English, but equally to citizens of British origin who should be fluent in French.

(c) *administration efficiency.* It is a known fact that civil servants, and especially those in high office, are charged with the drafting of legal texts, or called upon to inspire such drafting. The same men will next interpret the law. It is then most important for them to know, in the majority of cases, the particularisms of both cultures in the country, so to be able to judge accordingly.

(*d*) *uniform administration*. At this time, there are Departments where French-Canadians are taken care of to their satisfaction, but in others the state of things is unbearable. This is due to the fact that demands cannot be the same everywhere, and that in many instances a deputy minister will not admit the bilingual character of the country. If it were established that the knowledge of the two official languages constitute a qualification for a candidate, the personal opinion of high ranking officers, in many Departments, would not influence results.

For all these reasons, *La Fédération des Sociétés Saint-Jean-Baptiste du Québec* believes that reforms are urgent, so that every Canadian may be free to express himself in the language more familiar to him, when circumstances bring him in contact with federal organizations. These reforms should be brought about without clash or complications, providing attention were given to the suggestions it begs to submit, those being summarized as follows:

1—*Official recognition of bilingual knowledge* as a qualification that could be required from candidates to public functions or duties. In the projected revising of the Civil Servants' Act and by-laws, such as submited December last by Mr. Heeney, it was suggested that a 5 per cent bonus, in the total of points for an examination, were granted to Army Veterans, instead of an absolute preference as it is presently done. In the face of this, we believe that bilingual proficiency has now become so important that a like 5 per cent bonus should apply to candidates possessing a proper knowledge of a second language, be it French or English, as the case may be.

2—*Revising of the Civil Servants' Act of Canada*, in connection with the different aspects of bilingual ability. The Heeney report just mentioned has already suggested a complete revision of all legislation pertaining to the Civil Service. It is our humble opinion that there should be no possible equivocation in the drafting of new texts, as to the privileges allowed to bilingual candidates, and that high officers of the Civil Service Commission, or even Cabinet Ministers, should have no discretional power in such matters, as may be the case.

3—*Absolute preference to bilingual candidates* in the capital's Government offices, as well as in regional offices, in localities where 20 per cent or more of the population do not speak the language of the majority. In the capital some exceptions could be made for personnel engaged in research work, men of this calling having no direct contact with the public. Furthermore, we believe that a group of 10,000 persons not using the language of the majority, even if it should represent only 5 per cent of a whole, is important enough to justify a bilingual personnel in part, in a regional office.

4—*New estimate of examinations* for acceptance in the Civil Service, in regard to the two official cultures in the country. At the present time, examinations for admission to the Service are based on education such as existing in English speaking schools, were programmes naturally take into consideration English culture and way of thinking, this having nothing in common with French way of thinking and culture. With this result that candidates of French extraction and education are from the start in a false position, the examinations to be passed giving no heed to the general formation being theirs.

We look forward to you Mr. Prime Minister, for engaging the Government and the Civil Service Commission to bring about reforms such as humbly suggested, and we wish to say that copies of the present document have been addressed to both the Government and the Commission. It is our sincere belief that in taking such action you would help add to the known efficiency of Federal services, while contributing to better unity between Canadian citizens, and bringing forth more justice to a minority, without causing prejudice to the majority.

LA FÉDÉRATION DES SOCIÉTÉS
SAINT-JEAN-BAPTISTE
DU QUÉBEC

M[e] Gaston Rondeau, President

M[e] Richard Rioux,
M[e] Albert Leblanc,
D[r] René Vanasse, M.D.
Vice-Presidents

Arthur Rioux, *Secretary*

Georges-E. Daignault, *Treasurer*

Gérard Turcotte, *Chief of Secretary's Office.*

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

THURSDAY, MAY 11, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing the Civil Service Association of Canada: Mr. J. C. Best, National President; and Mr. T. W. F. Gough, National Secretary-Treasurer.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25093-6—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)	Macquarrie	Richard (*Ottawa East*)
Caron	MacRae	Roberge
Casselman (Mrs.)	Martel	Rogers
Hicks	McIlraith	Smith (*Winnipeg North*)
Keays	More	Spencer
Lafreniere	Peters	Tardif.
Macdonnell	Pickersgill	

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

CORRECTION—(English Copy Only)

PROCEEDINGS No. 10—Friday, May 5, 1961

On the front cover, and *in the Minutes of Proceedings and Evidence*—Mr. Roger Cyr, who appeared on behalf of *La Fédération des Sociétés Saint-Jean-Baptiste du Québec,* should be identified as Mr. Roger Cyr, Publicist of the Fédération.

In the Minutes of Proceedings—The name of Mr. Gérard Turcotte, Chief of the Secretary's Office of *La Fédération des Sociétés Saint-Jean-Baptiste du Québec,* should be added to the list of those *in attendance.*

MINUTES OF PROCEEDINGS

THURSDAY, May 11, 1961.
(13)

The Special Committee on the Civil Service Act met at 9.45 a.m. this day, the Chairman, Mr. R. S. MacLellan, presided.

Members present: Messrs. Bell (*Carleton*), Hicks, Lafrenière, MacLellan, Macquarrie, MacRae, Martel, McIlraith, More, Richard (*Ottawa East*), Roberge, and Spencer.—(12)

In attendance: Representing The Civil Service Association of Canada: Mr. J. C. Best, National President; Mr. T. W. F. Gough, National Secretary-Treasurer; and Mr. V. Johnston.

Mr. Bell (*Carleton*) expressed the Committee's satisfaction that the Chairman was again able to carry out his duties following his convalescence. At the same time Mr. Bell expressed appreciation on the manner in which Mr. Macquarrie had conducted the Committee's proceedings during the absence of Mr. MacLellan.

The representatives of the Civil Service Association of Canada were recalled.

Messrs. Best and Gough expanded on the contents of the Association's submission and answered questions thereon.

The Chairman thanked the witnesses for their assistance and they were permitted to retire.

At 10.50 a.m. the Committee adjourned until 9.30 a.m. Friday, May the 12th, at which time the representatives of The Canadian Postal Employees Association will be questioned.

E. W. Innes,
Clerk of the Committee.

25093-6—1½

EVIDENCE

THURSDAY, May 11, 1961.

The CHAIRMAN: I see a quorum, gentlemen, and I will ask the committee to come to order.

Mr. BELL (*Carleton*): Mr. Chairman, before you proceed, I am sure all members of the committee would wish to extend to you a very warm welcome on your return from your bout in the hospital and to express the hope that that bout has been fully successful in all particulars and you are fully restored to health. Our sadness in your absence was mitigated by the efficiency with which the role of chairman was filled by the hon. member from Queens, to whom all members of the committee would like to express their appreciation as well.

The CHAIRMAN: Thank you very much, Mr. Bell, and members of the committee. I would certainly like to apologize for the fact that circumstances required my missing a few of the meetings. I would also like to express my thanks to Mr. Macquarrie for taking my place while I was away. I hope he has not set a standard that is too high for me to keep up to.

I understand that last Friday, or at the last meeting where the committee had the advantage of Mr. Cal Best's evidence, part I of the civil service association brief was completed and that the committee was working on part II. I would like to ask Mr. Best to come forward this morning for further evidence in connection with the association's brief.

Gentlemen, are there any further questions on Part II of the brief of the civil service association?

Mr. BELL (*Carleton*): Where are we starting in relation to that, Mr. Chairman? I think we went as far and including clause 6 on page 20—did we not?

The CHAIRMAN: Yes, Mr. Innes tells me that we have completed clause 6 and that we were to start today on clause 7. Are there any questions for Mr. Best or his association on clause 7, page 20?

Mr. BELL (*Carleton*): It appears that clause 7 is one that has been fully discussed by the committee, Mr. Chairman, and unless Mr. Best wants to make some further representations, perhaps we could go ahead.

Mr. J. C. BEST (*National President, Civil Service Association*): The only thing we would like to add to this, Mr. Chairman, is the fact that we stand very solidly behind our recommendations in paragraph 81 of our brief. We believe it to be a very definite improvement. The clause as it now appears, with all due respect—and certain other eminent legal opinions may not agree with us—would provide the basis for a negotiating system in the government service that we feel very strongly would not only meet the approval of the government employees but would do a meaningful job in establishing wages and working conditions for the service as a whole, while preserving the basic characteristics of the Civil Service Commission. We have no desire to destroy that, but we would like to see alterations in its functions regarding working conditions.

The CHAIRMAN: We have been over this very thoroughly. I wonder if you would like to go ahead with clauses 10 to 14 beginning on page 24. Are there any questions on clause 10?

Mr. BELL (*Carleton*): Would you like to expand on paragraph 88, the last sentence, Mr. Best?

> ...we favour the position taken by the Gordon commission that salary matters are the proper province of that agency of government which has responsibility for matters related to the public purse.

Mr. BEST: You will recall, Mr. Bell, that the Gordon commission pointed out very strongly the fact that in the establishment of wages and salaries there was an overlap of responsibility. I believe it was actually phrased that the commission has the responsibility and none of the power, and treasury board has the power but none of the legal responsibility, in a matter of establishing salaries and wages. In other words, while the civil service commission may recommend, they can go no further than a recommendation, and the government under the present act is not bound to do anything more than either accept or reject. We feel that if there is going to be anything approaching proper negotiation, you have to deal with the agency of government, which in this case would be treasury board or its representatives, who are in a position to make policy on money matters or at least to recommend policy on money matters. The weakness is that the commission is not in a position to go any further, no matter how much work may be done, in making their recommendations. First of all, they cannot have anything to say in their implementation, secondly we cannot have anything to say on those recommendations as we never know what they are. I think the series of events in 1959 more than amply proved the situation which was totally unsatisfactory from our viewpoint.

Mr. BELL (*Carleton*): Is there any inconsistency with the point of view you expressed in relation to salary matters and the point of view you expressed later on in paragraph 93 in respect of organization matters? Organization surely is a question related to the public purse, to use the language in paragraph 88, just as much as salaries. Yet in relation to salaries you argue very strongly against the commission's role, but in organization you argue very strongly for the commission's role.

Mr. BEST: It is not inconsistent because our concern in paragraph 93 dealing with organization is the juggling, if you will, of staff or assigning individual staff members to the function or to jobs that are probably inconsistent with the classification or their grade. If I were to illustrate it, I would do so with a phrase that appears in all statements of duties for all positions "other related duties" and this, I would say, is one of the sorest points with many civil servants. It is a catch-all that permits under certain circumstances anyone to be asked to do just about anything. If there is no control or no impartial agency to look at the use and placement of staff, then we are very much concerned about this. I do not think we are being inconsistent in the least in this regard.

The CHAIRMAN: Are there any other questions on clause 10? Perhaps we could move on to clause 11. Are there any questions on clause 11?

Mr. BELL (*Carleton*): In relation to clause 10, paragraph 90, you say:

> Part two of clause 10 seems to have effectively removed the long established good employer concept of salary comparison by simply ignoring it.

Is it not true that the good employer policy to which every government has subscribed has never been established in any way by a statute?

Mr. BEST: This may be argued for tradition's sake, but to us it is a point of concern because within the last year and a half we have attempted to have

a restatement of the good employer policy and we suggested that in an address which the Prime Minister made to our own merger convention he had referred to this policy without the word "good" having been mentioned. We tried to find out if this had been a casual omission or a deliberate one, and frankly we have never been satisfied that we were given a definite answer.

Mr. BELL (*Carleton*): It was so well established that there seemed to be no need to state the obvious.

Mr. BEST: I would say to you that in some of the salary provisions that were made last year in some classes we had some doubt, when we saw certain of the amounts given, that the policy was operative. There were several classes where we were very much concerned about this, because the new salaries did not, in our view, bring the classes into relative juxtaposition with the salaries paid for that work by good employers. We see nothing wrong, if this is a matter of the policy of the government, a matter of public employment policy—I cannot see why there should be any objection to it being stated. It is a minimum guarantee that employees should have.

Mr. BELL (*Carleton*): The only objection is that you are suggesting that it has been effectively removed, which I would certainly challenge.

Mr. BEST: We said it was removed by omission; it may not be deliberate, but it does not appear in any statement of the legislation.

Mr. BELL (*Carleton*): In paragraph 97 you say that the recommendations should be made available without restriction. Do you mean available for immediate publication by the staff association if they choose to publish them?

Mr. BEST: The staff associations are in a particularly awkward position. We are not, or at least officers of the association are not, in themselves a power, although it has been suggested we are—I would publicly deny that. We are subject to the control of the executive body, but our membership—and this is particularly true in the case of the national joint council—is put in this position because we feel there is excessive use of the confidential aspect. We are put in the position where we cannot effectively consult our members regarding matters that are of basic concern and interest to them. I see no reason why, once the civil service commission has made its recommendations, that cannot become public knowledge—it is a matter of public funds being involved, and I would suggest that parliament would be as interested in having these recommendations as we would. I see no reason why they could not be tabled in parliament or made available through whatever means possible.

The CHAIRMAN: If there is nothing further, we could move on to clauses 15 to 19 on page 26 of the brief. Are there any questions on clauses 15 to 19? If not, we can move on to part III. Does anyone want to question Mr. Best on clause 20, paragraph 104? Are there any questions on clauses 22, 23, 25 and 26, paragraphs 105 and 106?

Mr. BELL (*Carleton*): I would like to try and clarify Mr. Best's thinking in relation to appeals—whether the employee's right of appeal would apply to the commission's decision to hold an open competition?

Mr. BEST: I would say that we have seen many cases, and we have to say we would certainly like to see the original decision become subject of appeal. Basically, the commission does make the final decision, but it is usually on the recommendation of the department, and there are times when the department recommended an open competition because they made a flat statement that none of its employees were qualified for the position, and then one of its employees applied in the open competition and won it.

Mr. T. W. F. GOUGH (*National Secretary-Treasurer, Civil Service Association of Canada*): It went farther than that—three eligible employees on open competition were already employees of the department.

Mr. BELL (*Carleton*): If such were the belief, what would be considered to be proper grounds of appeal in such a case?

Mr. BEST: The basic one would be that there had not been sufficient recognition given to the qualifications of employees of the class in which they are eligible to compete. In other words, there had not been proper adjudication of their performance in the jobs they were doing.

Mr. BELL (*Carleton*): Do you think that that might lead to delays in handling competitions?

Mr. BEST: Rather I would think, before the department made a planned statement that none of their employees are qualified, they must be certain they are on good solid ground. I do not see that it is necessary, because when we speak of open competition we are not referring to competitions to bring people in at a basic recruiting level. We are talking about a case where you have a clerk 4 position in the department and you open it up to the public at large rather than making it a promotional competition within the service and in effect denying all people who are at clerk 3 level the chance to compete on the basis of promotional opportunity.

Mr. BELL (*Carleton*): Is the decision to open a competition determined by the department or the commission?

Mr. BEST: It is determined by the commission on the recommendation of the department.

Mr. BELL (*Carleton*): How would you define the phrase you use there "employees of department who may be denied the opportunity of promotion because of such appointment or appointments"?

Mr. BEST: I think it would have to be decided by regulation.

Mr. BELL (*Carleton*): That is what I was going to ask. Do you mean by regulations under section 68 (1) (p)?

Mr. BEST: I would assume if this clause we suggest be added to the act, then the regulations could be drawn under that clause under the general regulatory powers of the commission.

The CHAIRMAN: If there are no further questions, we shall move on.

Mr. BELL (*Carleton*): I assume that would apply as well to section 25 where there is authority, if urgent need arises and special circumstances, to appoint persons without competition.

Mr. BEST: That is right.

Mr. BELL (*Carleton*): May I ask where the power under section 25 is being exercised, do you seek to have that made subject to appeal as well?

Mr. BEST: I think it would have to be, in order to be consistent.

Mr. BELL (*Carleton*): Then perhaps that may frustrate section 25 completely?

Mr. BEST: From the association's point of view, we would not be too concerned about that section being frustrated. I would say that our grave concern is that the exception could become the rule, if there is an escape clause, such as section 25. Where that is the case, it is subject to abuse and we feel strongly any element of possible abuse should be controlled.

Mr. BELL (*Carleton*): Do you not think the requirement under section 76 (2), providing for a report to parliament setting forth the appointments made under section 25, would be a safeguard?

Mr. BEST: I would submit, Mr. Bell, that by the time the report got to parliament the person would have been in the job so long that nothing could be done if he had been improperly appointed.

The CHAIRMAN: Shall we move on to clause 39?

Mr. RICHARD (*Ottawa East*): That clause is one of concern to you?

Mr. BEST: Yes.

Mr. RICHARD (*Ottawa East*): And you recommend that two paragraphs should be added to it? Could you enlarge on that?

Mr. BEST: As we have indicated in paragraphs 107 and 108 of our brief, we are concerned about the absence of any effective control over the misuse of any of these powers of delegation. That is a point of rather considerable concern to us. As I said earlier, not for a moment do we impute any bad motives to any deputy minister, but it is a fact that delegation does not stop at the level of the deputy minister or the senior officials. It goes further down the line, especially in larger departments and, as it goes down the line it increases the possibility that there may be some form of abuse. These two sections together would impose upon the commission the obligation to review regularly and periodically what is happening to the powers it has delegated to the deputy heads and, through them, to their officials down the line.

Mr. RICHARD (*Ottawa East*): Do you feel the stipulation "every two years" is sufficient?

Mr. BEST: I think we have to make a compromise between what we would like to see and what is administratively possible. If this was a known factor, that such a review was a legal requirement, it would have an inhibiting effect against any abuse. The deputy minister concerned would want to be certain that the people delegating the powers would be acting in a proper manner. In effect, if this is included in the act it does not necessarily mean that it will be applied but everyone will know that, if necessary, it can be applied. In any event, we should like to see it in the act.

Mr. BELL (*Carleton*): Do I correctly take the implication from your statement that you think, as the clause now stands, the commission would have no right to revoke a delegation of powers?

Mr. BEST: It is not a question of rights; it is a question of formal obligation.

Mr. BELL (*Carleton*): Then you think they now have the right to revoke? I gathered from your remarks that you thought they did not have the right to revoke.

Mr. BEST: This goes back to earlier remarks made during a sitting of this committee. We feel that something a little stronger than what is implied in the law should be there. It is our feeling that there should be an obligation to inspect and investigate this delegation on a regular basis, for the protection of a vast number of government employees. I may say, though I cannot be specific as the incident only happened within the last week or so, that something took place which could have an effect on certain individuals within a department. Something happened which is very much of concern to us. I can tell you it was a case where we felt there were rather excessive penalties, at least in our view, of what happened and that incident has only confirmed our strong view that there should be closer scrutiny in this matter of delegation.

Mr. BELL (*Carleton*): Do you not think that your suggested clause 3 is too restrictive in that it provides for a mandatory obligation to suspend immediately the delegated authority, and that it shall remain suspended until the commission is satisfied no further infractions occur? For instance, there might

be one minor infraction, and having this mandatory obligation to suspend the delegation might bring the process of appointment under the delegation power to a complete halt?

Mr. BEST: If it were a minor infraction I would submit it could be cleared up within one or two days, or a week at the most; but, Mr. Bell, there can be a series of minor infractions which can have a major effect. I do not think that is basically the point. The point is that if an unjust infraction occurs it could have an effect upon the career and future development of a government employee and this is a matter of sufficient concern that, in our view, there should be very strong restrictions in the act.

Mr. MARTEL: Under the former act would a deputy head have as much power?

Mr. BEST: I think it is generally felt that he would not have as much power under the present act as he would under the new Civil Service Act. However, I would suggest that probably the civil service commissioners themselves would be in a better position to discuss this matter with the committee. Generally speaking, from all the comments I have heard and discussions I have had, I gather it is felt that the powers of a deputy head would be enhanced under the new act, as opposed to the old one.

Mr. MARTEL: It is not written in the old act, is it?

Mr. BEST: As I understand it, the commission has always had the power to delegate someone to carry out its functions. It is a matter of the degree of delegation which concerns us.

The CHAIRMAN: It seems to me that in clause 39, where there is authority to delegate, there is also responsibility to see that the authority delegated is properly carried out, and I do not think that any amendment to that clause is necessary. I wonder what other members of the committee think about that. At any rate, it is clear to me that where the clause says: "may authorize" then the responsibility is there to see that the delegated power is properly carried out at all times.

Mr. BEST: But that would place it in the position of becoming a discretionary matter and would put the association in a position of being a police force, a position which we do not want to occupy. In such a case, if we did not make a clamour about certain things and they were not brought to right, then they might go by the board by default. We are suggesting by our amendment that it would have the effect of putting the policing function in the hands of the civil service commission. It seems to us that there should be this demand in the law, rather than that we should be always on the lookout. We do not particularly like the role of a police force but sometimes we have to perform that duty to fight for the legitimate rights of our members.

The CHAIRMAN: It seems to me, Mr. Best, that a very important thing about a bill like this is to maintain its flexibility and, so long as the responsibility is on the commission to check a delegation of authority then there is, in effect, a double check upon the deputy head in that the commission has the responsibility to watch him and also the staff associations have a responsibility. In a case where it is brought to the attention of the commissioners that something is going on which is not quite right, then the commissioners would have to check on it. So long as that general responsibility is there, I do not think the act would be improved by a special clause requiring the commission to make definite regular checks.

Mr. LAFRENIERE: Taking clause 39 and relating it to clauses 24 and 25, do you not think they do not leave much power to the commission? I ask this question because who is going to be the judge in a case of urgency and who is going to be the judge in a case of exceptional circumstances? It seems to me that with these three clauses there is not much power left to the commission. What is your argument about that?

The CHAIRMAN: You are asking Mr. Best, I presume?

Mr. LAFRENIERE: Yes.

Mr. BEST: I would be inclined to argue with the gentleman quite forcibly and I would point out a few generalities. For instance, in a service such as the government service, you have the merit system as one of its principal bases, and I would submit that because these two clauses might appear in the new act it is no indication the commission would have to invoke them every day of the week. Indeed I would hope very sincerely this would not be the case but their presence would, perhaps, be an inhibiting factor, as it were, against abuse and would have the effect of effectively controlling it, if not eliminating it. With due respect to the opinions expressed in clause 39, I do not think it is forceful enough.

The CHAIRMAN: Are there any other questions on clause 39? If not, we shall go on to clause 45, paragraph 109 of the brief. Are there any questions on clause 45?

Mr. MACQUARRIE: I do not know whether the people who prepared the brief are interested in such things as grammar, but that is a knotty sentence in paragraph 2 of clause 45. I have just been reading it and I hope that the draftsman will take another look at it and break it up into two or three sentences.

Mr. BEST: Should we have the pleasure of appearing before the committee again, I assure you we will try to put the matter to rights.

The CHAIRMAN: We shall go on to clause 53.

Mr. MACRAE: The recommendation of your association says, in effect, that the period be extended from one week to one month. What you are saying is that where an employee is absent without leave from duty for a period of one month, he or she should not have his or her position suspended. How can you justify that?

Mr. BEST: The present clause, 33, says "one week". We submit it should be one month in place of one week.

Mr. MACRAE: What do the regulations say at the present time in connection with absences? My reason for asking the question is that I feel you are being a bit unreasonable in arguing that a deputy head must go a full month without being able to do anything about an absentee, and it seems to me that in this particular day of rapid communications, outside of amnesia which would be a legitimate but extremely rare occurrence, very rare indeed, you are asking for a great length of time before a deputy head can declare a position to be vacant.

Mr. BEST: I would submit there would be many other things besides amnesia which would make it impossible for a person to be able to notify the deputy head of the reasons for his absence. In this region you have men who often go hunting and fishing and they could get lost for a period

of more than a week. I would submit that under circumstances such as that, summary dismissal would be very harsh. Then there is air travel to be considered and the question could crop up there, as anyone who flies so much as myself will realize. I would hate to think if I were flying, either on business or for my own personal reasons, if the plane got lost for two weeks, that I would come back and find I would be out of my job as president of the association. Indeed, I would submit there are many extenuating circumstances in the present day, and many difficulties such as this could arise.

Mr. MACRAE: But does not the word "may" in clause 57 take care of that? If an employee got lost for two weeks would not the word "may" take care of the situation? In other words, it is not mandatory on the part of the deputy head to declare the position vacant. He may, or he may not and therefore I think there is sufficient protection without extending the period to a month. In other words, I do not think there is any necessity for a month to be specified. That is my feeling.

Mr. BEST: The old period was two weeks. The act which we are working now specifies a period of two weeks.

Mr. BELL (*Carleton*): I think you may have overlooked the provision in clause 68 (1) (*k*), which provides for regulations prescribing the period of absence from duty after which employees may be declared to have abandoned their positions.

Mr. BEST: I think that here I can make the observation I made earlier, that one of the difficulties we are facing is that we are in a position where we must make comments on an act while we do not know the regulations. I do not think it is safe for us to say anything about the regulations when we have not seen them. If this particular regulation modifies the clause then we would be the first to admit it but, until we know what is within the regulations, we have to make our comments on the basis of what the act says and not on what could appear in the regulations.

The CHAIRMAN: If there are no further questions, may we take up clause 56?

Mr. MARTEL: On clause 56, is an employee advised now of his right to appeal?

Mr. GOUGH: Yes, an employee is advised of his right to appeal in such circumstances, at the present time.

Mr. MARTEL: But it is not written in the act?

Mr. BEST: Nothing in connection with the right of appeal is written in the present act. The appeal process, as I pointed out earlier, was made under the general regulations of the commissioners and was not mentioned specifically in the act. It is now incorporated in the act so we are just suggesting that wherever there is the right of appeal it should be put in the act.

Mr. MARTEL: Do you feel that the employees know about that right?

Mr. BEST: I would say they are aware of it. Whether they exercise it or not is another question.

Mr. SPENCER: On clause 61, you asked that they have the right to have counsel at such inquiries. Is there any suggestion that they would not be allowed to have counsel at inquiries. Would it not come under the bill of rights?

Mr. BEST: I am not an expert on the bill of rights, but dealing with the Civil Service Act we feel that it should be clearly established that the person

has the right to counsel; whether the counsel is in the association or is an independent lawyer is a matter for the individual himself to choose. In the absence of being an expert about it—it is quite possible that the bill of rights may provide that—if it is there it is there, and to put it in the Civil Service Act is the simplest way of expressing where the rights really are, rather than have to consult other legislation.

Mr. MORE: On clause 59, in regard to suspension beyond six months, have there been cases where suspensions have exceeded six months without the cases being disposed of?

Mr. BEST: Offhand I cannot quote you any, but the point we are making is that if there is legitimate need for suspension—and we readily admit there are legitimate needs—dragging the case over a period in excess of six months is bad for everyone concerned, both the department and the employee.

Mr. MORE: I would agree.

Mr. BEST: I know of one case that comes to mind. I am not sure what the limit of time was, but I know it went on for a very long period of time and, in fact, the bad effects are still there in the office where that employee works. He was finally returned to duty, but it was not a happy situation. The quicker these cases can be properly disposed of, the better the situation for everyone. That is one of our complaints. There have been long delays and everyone waiting to find out what the final disposition of the matter is to be. It is a nerve wracking sort of business for everyone concerned.

Mr. LAFRENIERE: To go back to clauses 56 and 57, I would like a definition of the term "misconduct".

Mr. BEST: I would assume that the intent was that misconduct would be defined in the general regulations under the act.

Mr. MACQUARRIE: I wonder what was meant, under section 62, by the highlighting of the fact that the statutory holidays governed Saturday. What was in mind?

Mr. BEST: It is a highly complex problem which affects particularly people who are operating staffs. It affects their regulations for the payment of overtime. This year July 1st and November 11th, which may or may not be considered as a holiday, both fall on Saturdays. The present Civil Service Act says that these days shall be statutory holidays. It does not say that there shall be a certain number. It does not define a statutory holiday as necessarily being a working day. I think this is the way it lies with the operating staff. Perhaps Mr. Gough can elaborate on it.

Mr. MACQUARRIE: I thought it was a case of bad luck—non-cooperation of the calendar.

Mr. BEST: That is one aspect. With office personnel not working on a shift arrangement or in operation, it is just a matter that the holiday falls on a Saturday, but for people in the post office and other such departments there is a complicated system that says on certain days a person is off, there are days off and there are rotation days. It is a highly complicated and technical system, and I could not detail it off the cuff. There is some feeling that these people will not be paid for those two particular days this year. When you have the commissioners before you, they could deal with that better than I can on an off-the-cuff basis at this time.

Mr. SPENCER: If the first of January falls on a Sunday, New Year's day is celebrated on the following Monday, so the civil service get that day off.

Mr. BEST: It is not a question of the day off. It is a question of people who have to work on a seven-day-week basis. They are entitled to certain premiums for doing this. If the holiday falls on one day and not on another day, they may or may not get it. As I have indicated, it is a complicated question, and I am not in a position to deal with it in detail now.

Mr. SPENCER: The calendar date is not used as a holiday. They describe it as New Year's day, and New Year's day to my mind would be the day which, by statute, is required to be celebrated as New Year's day, even though it may not be the first of January.

Mr. GOUGH: Generally in such an instance as that the government issues a regulation which moves the holiday from the Sunday to the Monday.

Mr. SPENCER: Yes, and that becomes New Year's day.

Mr. GOUGH: At the government's discretion in the matter of New Year's day and Christmas day. There are several statutory holidays which, by statute, are now moved to the nearest Monday. You will probably recall some of them. There are some of these which fall in this class, and in this particular instance the two statutory holidays that fall on the weekend this year, are not in that class.

Mr. BEST: Our concern is not just to get an extra day off for the people who are working. It is genuine concern over their premium rates paid for working on rotating days or days off.

Mr. SPENCER: I do not know what the regulation is.

Mr. BEST: It is not a particular problem when the holiday falls on a Sunday, but it is of concern when the holiday falls on a Saturday as it does this year.

Mr. GOUGH: July 1 and November 11 are not movable holidays.

The CHAIRMAN: We will pass on now to part V, general regulations.

Mr. MACRAE: Are these regulations such as may become immediately available to an association and all other staff associations?

Mr. BEST: Yes.

Mr. MACRAE: Immediately?

Mr. BEST: Once they are accepted and operative.

The CHAIRMAN: Is there any question on the summary? If not, that completes the formal part of the brief.

Mr. BELL (*Carleton*): There may be some question in respect of appendix C which is not in the brief but which appears at page 93 of the minutes.

Mr. BEST: May I make one observation about appendix C from our viewpoint. These were areas where to our minds we were uncertain as to whether they were properly covered in the new bill. We drafted appendix C so that the committee would get to a close study of the bill and could satisfy itself and, of course, us, that these matters should be covered under the act. I have been informed that at least two of the points here are covered in the bill in a way that is not the same as in the present act and I am quite satisfied. This was the reason for appendix C.

Mr. BELL (*Carleton*): What is the point that is different? Would you point this out?

Mr. BEST: This was a telephone conversation some time ago, and I am not quite sure now. One had to do with our comment on the residence qualification.

Mr. BELL (*Carleton*): In regard to the residence qualification that you speak of being in clause 41 (*c*), it seems to me that perhaps it is fairer and more efficient than in the old act under section 32 (1).

I want to be certain in respect of this whether you now feel that clause 41 (*c*), which gives the Canadian citizen a preference on appointment at all times, is sufficient to meet the question that you raise under item 2, on page 93.

Mr. BEST: This is the point to which we are drawing attention, that the five-year clause has been dropped. If you read the whole paragraph you will find we are not questioning it but raising certain observations about the fact that the five-year clause does not appear anywhere in the phraseology in the new bill.

Mr. BELL (*Carleton*): Would you say what your concern was in regard to sick leave? It seems to me that the new bill in clause 68(1) (b) and (c) gives powers which are identical to the old act, section 47 (1) and (2). In each case it makes regulations for sick and retiring leave.

Mr. BEST: As I read the section in the new bill, it is just a general regulatory provision. Again we were just wondering why, if the concept is to be maintained, as I understand it is, it is spelled out in the present bill and is definite. I do not think the present act is as restrictive. Certainly there could be flexibility in the new bill.

Mr. BELL (*Carleton*): There is certainly no intention to interfere with it.

Mr. BEST: I am quite well aware of that, but we are wondering why it was removed from the act.

Mr. BELL (*Carleton*): It would seem to me that because of the nature of the language in the new act it is certainly covered and the question, in effect, becomes academic. I think it is something the draftsman of the act should take a look at.

Mr. BEST: That was our whole intention in appendix C. All it is designed to show is that we would like to get some answers on the record.

The CHAIRMAN: Are there any questions on clause 4 of appendix C?

Are there any questions on clause 5?

Mr. BELL (*Carleton*): Clause 5 raises a very difficult question, does it not, Mr. Best? This deals with the provision of standard criteria for efficiency rating.

Mr. BEST: By "standard criteria" we are referring to certain minimum basic factors when you are rating people on a basis of efficiency. As I indicated the other day I do not know that there can be any one effective rating system to cover all classifications of employees in government service but there should be some more definite overall criteria, at least according to our views. This, I may say, is a matter of some concern to the association.

Mr. BELL (*Carleton*): Would you like to spell out some of these basic criteria?

Mr. BEST: Well, I shall have a try, though I am sometimes accused of being a little impetuous. In this context, I believe that the employee should have a perfect right to know precisely what his rating is, and where he stands. I think he has a right to have a copy of his rating form. I think the objective of the rating system should be, first of all, to get a general picture, and I do not put too much faith in numbers in a rating system. A number can have a meaning if it is related to some standard, but our concern with the rating process at the present time is that it is considered to be a yearly chore, that it has to be got through as quickly as possible in order to get back to more important work.

But, generally speaking, we are not clear as to what the objectives of the present rating system are, whether a rating should be considered as a factor in determining whether a person qualifies for a salary increase or whether it is to provide a standard when it comes to the time for his promotion. Trying to spell out criteria off the cuff is not an easy matter, but what we do suggest is that in the act it be indicated that the employee has certain rights and that he is entitled to know where he stands. That is the best I can do today.

The CHAIRMAN: Are there any further questions? If not, we shall move on to clause 7 which deals with political partisanship.

Mr. BELL (*Carleton*): May I ask, Mr. Best, is not this a little academic?

Mr. BEST: It is not, Mr. Bell.

The CHAIRMAN: You are now speaking of clause 6?

Mr. BELL (*Carleton*): Yes.

Mr. BEST: Practically every department handles this question of extension beyond the minimum retirement age in a different manner, and we should like to see a little more standardization. Some departments absolutely refuse to grant any extensions; some other departments give extensions if the employees accept a downgrading, all other things being equal, and in some cases it is relatively easy to get extensions. Indeed, this is a bone of contention amongst government employees.

Mr. BELL (*Carleton*): But would it be of assistance to have the paragraph in the public service superannuation act put into the Civil Service Act also. Could you have any uniformity?

Mr. BEST: By incorporating it in the Civil Service Act it would provide some central direction and control for the civil service commission.

The CHAIRMAN: We shall now go on to clause 7, political partisanship.

Mr. MACRAE: I should like to ask Mr. Best a question which may not seem absolutely fair. He has been an excellent witness and has presented the brief in a very capable manner, but I should like to ask him what does he mean by political partisanship, and I do not want a dictionary definition.

Mr. BEST: Perhaps again that is something which it is easier to say what it is not. I think a civil servant has a perfect right to attend political rallies. As much as he has a right to vote he has a perfect right to go to meetings and hear what is happening. If he could not do that, then the regulation should logically be applied to political broadcasts and television shows and should govern them also. This, I may say, is a personal opinion and perhaps other members of my association may not agree. Possibly some of my colleagues may differ with me. I, as a civil servant, do not believe I have any right nor, have I any desire, to participate, in the sense of being an active worker for any political party, and I do not think I myself would want to contribute funds to a political party, being an employee of the government. Nor do I think I should act in any way which could be interpreted as my actively advancing the interests of one political party or candidate above another. However, below that, I think every civil servant should have every right to vote, to discuss politics and become informed on them in the same way as other citizens. Above that I would not want to go further.

Mr. MACRAE: I think that is all right.

The CHAIRMAN: I think most of us would agree with that statement. Are there any further questions on clause 7?

Mr. BELL (*Carleton*): You would like the investigation in all cases to be carried out by the civil service commission.

Mr. BEST: If the civil service commission is competent to ensure against political partisanship in recruitment then I think it is competent to provide the personnel for boards of inquiry if someone has been acting in a manner contrary to the act.

Mr. BELL (*Carleton*): Do you think that would be preferable to the procedure outlined in the Inquiries Act.

Mr. BEST: You think the commissioners come under the Inquiries Act as well?

Mr. BELL (*Carleton*): I think there is a section which gives the commissioners that power.

Mr. BEST: I would suggest that in a matter such as this it would be desirable for the investigating body to be set up by the civil service commission, rather than have one group of people do it one time and another group the next. In fact, I think this should be a continuing function of the civil service commission. I do not think our suggestion is in contradiction with the intention of the legislation.

Mr. BELL (*Carleton*): I believe the question of representation by counsel is taken care of by the act itself. Does the Inquiries Act not provide for representation by counsel?

Mr. BEST: I am quite happy to know that.

The CHAIRMAN: Are there any further questions on clause 7? If not, I believe that completes the evidence of Mr. Best, Mr. Gough and Mr. Johnston, and I should like to thank them on behalf of the committee for the extensive time they have contributed to our work.

Mr. BEST: Perhaps, Mr. Chairman, I might say on behalf of the association, my colleagues and myself, how much we have enjoyed appearing before you. I also want to express our view of how eminently fair we found all members of the committee to be, and we only hope that any suggestions we have made will be of some assistance to the committee in its deliberations.

The CHAIRMAN: Gentlemen, we shall meet again to-morrow in room 253D, when we hope to have some representatives of the postal employees association with us to discuss some of the points which were made in their brief. They will also be available to answer any questions. Is there anything else members would like to raise at this time?

Mr. BELL (*Carleton*): Do you think that will occupy the whole morning and, if not, do you contemplate going on to a clause by clause consideration of the bill, or adjourning and doing that next week?

The CHAIRMAN: I understand Mr. Sam Hughes will be available to-morrow, if members wish to ask him any questions. I feel we would do better if we just covered the brief of the postal people to-morrow and then, next week, moved on to a clause by clause consideration of the bill. In that we shall have the advantage of Mr. Hughes' help. Is that satisfactory to the committee?

Some HON. MEMBERS: Agreed.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 12

FRIDAY, MAY 12, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

Representing the Canadian Postal Employees Association:
Mr. D. Cross, National President; and Mr. J. E. Roberts, General Secretary-Treasurer.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25097-7—1

SPECIAL COMMITTEE ON THE

CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)
Caron
Casselman (Mrs.)
Hicks
Keays
Lafreniere
Macdonnell
MacRae
Martel
McIlraith
More
O'Leary
Peters
Pickersgill
Richard (*Ottawa East*)
Roberge
Rogers
Smith (*Winnipeg North*)
Spencer
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, May 11, 1961.

Ordered,—That the name of Mr. O'Leary be substituted for that of Mr. Macquarrie on the Special Committee on the Civil Service Act.

Attest.

Léon-J. Raymond,
Clerk of the House.

25097-7—1½

MINUTES OF PROCEEDINGS

FRIDAY, May 12, 1961.
(14)

The Special Committee on The Civil Service Act met at 9.35 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Mrs. Casselman and Messrs. Bell (*Carleton*), Hicks, Macdonnell (*Greenwood*), MacLellan, MacRae, Martel, McIlraith, O'Leary, More, Richard (*Ottawa East*), Rogers, Spencer, and Tardif.—(14).

In attendance: Representing the Canadian Postal Employees' Association: Messrs. Dan Cross, National President; W. L. Houle, 1st Vice-President; J. E. Roberts, General Secretary-Treasurer; G. Côté, National Secretary, and R. Otto, Assistant National Secretary.

The representatives of the Canadian Postal Employees' Association were recalled. Mr. Cross reintroduced Messrs. Houle, Roberts, Côté and Otto.

The president of the Association then made a further statement respecting the Association's brief presented on April the 13th, 1961.

The witnesses were questioned on their submission respecting Clause 7 of Bill C-71.

Upon completion of their examination, the witnesses were thanked and permitted to retire.

Mr. Bell (*Carleton*) tabled an index, which has been prepared by Treasury Board officials, showing the clauses of Bill C-71 on which representations have been received. In addition this index indicates the pages of the *original* submissions wherein the individual clauses are referred to.

On motion of Mr. Bell (*Carleton*), seconded by Mr. Richard (*Ottawa East*),

Resolved,—That the above-mentioned index be printed in today's record. (*See Appendix "A" to this day's evidence*)

At 10.25 a.m. the Committee adjourned until 9.30 a.m. Thursday, May the 18th, 1961.

E. W. Innes,
Clerk of the Committee.

NOTE—Following the meeting, additional information was submitted by the Canadian Postal Employees' Association. (*See Appendix "B" to this day's evidence*)

EVIDENCE

FRIDAY, May 12, 1961.

The CHAIRMAN: We have a quorum and I would ask the committee to come to order. You will recall that on April 13 we received a submission from the Canadian postal employees association. Mr. Cross, Mr. Roberts and other members of the association have agreed to come back this morning because some members of the committee wanted to ask them questions about the brief. I would ask Mr. Cross and other members of the association to come forward.

I believe Mr. Cross has an opening statement. I will ask him also to introduce once again the men who are with him this morning.

Mr. D. CROSS (*National President, Canadian Postal Employees Association*): Thank you very much, Mr. Chairman. Before saying anything, I shall follow out the instructions and introduce the other members of my committee. They are Mr. Jack Roberts, General secretary-treasurer, Canadian postal employees association; Mr. Godfroy Coté, national secretary; Mr. William L. Houle, from Montreal, national vice-president; and Mr. Eric Otto, assistant national secretary.

All but Bill Houle and myself reside in Ottawa. Bill Houle comes from Montreal and, as I said on a previous occasion, I am from the same place as Sir John A. Macdonald,—Kingston, Ontario.

The last time I was in Ottawa I had a very pleasant reception; so, also, had my committee. I want to thank you and the members of this parliamentary committee very much for the manner in which we were treated on that occasion. I would like to feel that I am at home among friends, fair-minded individuals who are appointed to go into the various briefs that have been presented by the various civil service organizations, and probably to come up with something that might be a little better than what we have had in the past relative to negotiation and bargaining rights.

In view of the fact that the Canadian postal employees association is asking for something that no other civil service organization is asking for, I hope that you do not think we are a bunch of renegades. Mr. Chairman, we are simply asking for our rights as first-class citizens of this most democratic country in the world today, Canada.

Some people outside have taken occasion to call us rebels or proletariats, etcetera; but I can assure you that the Canadian postal employees association is the most loyal branch of the service in this dominion of Canada. While we are asking for something which no other civil service association is asking for, it is only that we are asking for it as a right because we feel that we should have the same rights and privileges as every other worker in this dominion. That is the only reason we are asking for this particular right, the right to strike.

It does not necessarily mean that we are going to go on strike. We want that in there and that is why we are asking you fair-minded individuals, ladies and gentlemen of this parliamentary committee, to take our plea into consideration. Because we are taking the first step in this matter, judge us not on this one particular word alone, but judge us on the sincerity of purpose with which we are pressing our views in this particular regard.

I might say that Mr. Roberts will answer the questions that are directed to us—unless one of the other four of us feels like interjecting a few remarks, if that is satisfactory to the committee, Mr. Chairman?

The CHAIRMAN: Certainly.

Mr. CROSS: I would like to thank you again very kindly.

The CHAIRMAN: Thank you. We might begin with the first page of the association's brief. Are there any questions for Mr. Roberts or Mr. Cross, or anyone else as regards the first page? If not, are there any problems on page 2? Does everyone have a copy of the brief?

Mr. SPENCER: Unfortunately, I was not in at the meeting at which this brief was presented, and I do not know to what extent Mr. Cross was questioned. I have glanced through the evidence, and I would like to refer for a moment to the representation of the right to strike. You said in the brief that it is recognized as a method of the making of agreements. I think Mr. Jodoin, when he was here, expressed the view that if you do not have a right to strike, you should have some other economic power. In the case of the postal employees, do you think that a right to strike would have any economic power in arriving at an agreement as to wages; and if you did strike, the injury would rest upon the public, would it not, in that their mail would not be delivered. What are your comments in regard to that?

Mr. JACK ROBERTS: (*General Secretary-Treasurer, Canadian Postal Employees Association*): I might point out that if you look at the first page of the brief you will see we refer to appendices A and B. This points out that a great many other democratic countries have this right. Postal employees, as part of the communication workers, have this right in other countries. It does not interfere with the transportation of mail or communications in those countries, except in rare instances, such as in cases like Colombia, Peru or places like Spain where they have dictatorship governments or autocratic governments. If you look over that list you will see there are quite a few countries, newly established as democratic countries, which have afforded this right to postal workers and communication workers, the same as they have to all other workers in those countries. Even some of the older countries, such as Belgium, France, Great Britain, Holland and Italy have given them this right. It does not interfere with the service there, but they have the right to strike, and they do not use it in most instances.

It is the right to strike that we are after, it is not the carrying out of the strike. This has been something that influenced a decision of the government, or their representative, in those countries. Does that answer your question, sir?

Mr. SPENCER: Well, I do not think it answers the question. I have indicated to you that I thought it was the public that would be injured by a strike. Now, do you think that a thing to work for, if you agree with it,—that you should have the right to strike when you injure people who are not those negotiating with you, who are not the cause of the strike in any way?

Mr. CROSS: Mr. Chairman, I can understand this gentleman's point of view. The word "strike" seems to be a word which scares people off, and so forth and so on. I do not see why it should, any more than the railways who threatened to go on strike here just recently. Mr. Chairman, I would like to answer this gentleman here. It is just that we want this as a right, like any other decent first-class citizen of this dominion of Canada.

For too long all civil servants have been treated as second-class citizens. That is something which the Canadian postal employees do not like. We like to go first class, if we are going to go at all. We feel—and you know yourself, sir, that the only time that any union strikes, is when negotiations break down, and an impasse is reached, and the union can get no place.

I state to you that the only reason the Canadian postal employees wish to come under the Industrial Relations and Disputes Investigation Act and to have the right to strike is because we want to have it as our right whereupon we will be considered as first class citizens and not just a bunch of public

servants, as we have been in the past. That is the only reason. It does not mean that because the word "strike" is in there that the Canadian postal employees are going to strike. As I said in my opening remarks, the postal employees are, I dare say, the most loyal branch of the entire civil service.

Mr. SPENCER: I have one more question. You seem to be in the minority, as you admit at the outset, in terms of representation from other branches of the civil service. Others have suggested as an alternative—perhaps not as an alternative—but they have suggested and asked for some type of arbitration. I would like to have your views as to whether or not you think we have advanced far enough in good labour-management relationships to be able to devise means of arbitration which would result in justice to your branch of the civil service, if that is what you want.

Mr. CROSS: Mr. Chairman, I know that we are dealing with a body of fair-minded individuals here, when we are in front of this parliamentary committee. Certainly we are asking for this particular method of negotiating our various problems and so forth and so on. I am not going to stand here and say that I am going to be satisfied with less.

Mr. SPENCER: Less than what?

Mr. CROSS: With less than what we are asking for.

Mr. HICKS: I think somewhere in the proceedings somebody made the statement—and I think everybody would agree to it—that the brief of the postal employees association agrees 100 per cent with that of the civil service association, except on the point which is being discussed. Is that right?

The CHAIRMAN: Do you not mean the brief of the civil service federation?

Mr. HICKS: Oh yes, excuse me. So that as we have gone through it, this is the only point we are listening to, this morning, I presume. The president mentioned the point just a minute ago, about civil servants being second-class citizens. I certainly cannot agree with Mr. Cross. I was a civil servant for pretty nearly 40 years myself, and I never considered that I was a second-class citizen.

The CHAIRMAN: Are there any other questions on page one?

Mr. MACDONNELL: I would like to make a comment, and follow it by asking a question. I think it is unrealistic to say that "we would like to have the right to strike, but we will never use it". That seems to me to be just fooling ourselves. If I am fighting with someone of about the same strength as myself, and I have a nice big club behind my back, it seems to me it becomes quite unrealistic for me to say: "of course I will never use this, but I want you to concede to my demands".

That is my view. I think it would be quite unrealistic, because either the right to strike means something, or it means nothing. I think it means something, and I think we should be prepared to have it used. I would not see it on any other basis than on the expectation that it would be used, and quite properly so, if the right to strike is there.

I think that even those of us who are accustomed, as we all are, to strikes, have the view that when you come to the public service there is a different element that derives. It arises in certain cases. I do not think anyone would argue that military forces have the right to strike. I think the question was asked in this committee some time ago if the police should have the right to strike? I think that was asked when Mr. Jodoin was here, and as I recall it, Mr. Jodoin certainly did not say yes. I think he did what is sometimes done in the house: he just did not answer the question directly. But I hope I am not being unfair to me.

I think we ought to be entitled to have that question answered by these civil servants who are coming forward and asking for the right to strike. Do they not concede that in the government service there is a difference, and if so,

how far does that difference go. I repeat my question: if you are prepared to say that the police and military forces have the right to strike, then you are being perfectly logical. But if you say they have not the right to strike, it seems to me the question arises very clearly whether a public service so essential as yours, and so disruptive if you exercise the right to strike, should have the right to strike.

Mr. CROSS: I would like to throw this question back: that the railways are essential services to this country also.

Mr. MACDONNELL: That is right enough, but there are degrees of essentiality. I repeat my question: I put the question with regard to the military forces and the police. I pick those two out as being at the top with respect to essentiality. I admit quite frankly that in the case of the railways, the question arises. But there we have become used to it. The custom has grown up, and I do not think we can turn back the clock. But here we are being asked to put the clock forward in a way which many of us—and I speak for myself—are very doubtful about.

Mr. CROSS: I shall ask Mr. Roberts to answer your question. I know what my answer is.

Mr. MACDONNELL: May I make this addition and quote from the views or recommendations of the civil service association, as they appear in paragraph 69 of their brief. As I read this, it assured me, and I hoped it would be a univeral view. I shall read part of paragraph 69:

> We strongly emphasize that the strike is not now, nor ever has been an issue. Government employees, with some very minor exceptions, do not wish to strike. Rather we prefer impartial arbitration as a method of resolving differences.

I had hoped that that would be the universal view of the civil service. I think it is desirable that we should understand very clearly why your association wishes to be separate.

Mr. ROBERTS: I think, first of all, that I should agree with you, that the postal services are an essential service, but I do not think they are any more essential than telegraph workers or telephone workers or communication workers.

In other countries outside of Canada and North America they are all considered as the same communication workers. I think this is the reason why postal employees feel that they should have this right to strike, because they are so akin to other communication workers. In this country other communication workers have the right to strike. The government has allowed the employees of crown corporations full bargaining rights. I cannot understand why, in some of these other essential services such as crown corporations and other communication services, they should allow them the right to strike and there should be a difference of opinion whether they should allow postal workers this.

Regarding this brief you read there, I am proud to say, that this organization from which you quoted does not represent the majority opinion of the civil service. They do not speak for the majority of the civil service, and I do not know how they can assume that the majority of the civil servants do not want the right to strike. They are going from their own membership which is not nearly as large as the other organization, and for them to assume that they are speaking for other civil servants, I think, is a great assumption on their part; any more than we would assume to speak for civil servants outside the postal employees. We are speaking for them; we are not speaking for police, firement or anyone else. We feel that because we are akin to communications workers that we are entitled as they are to the right to strike.

Mr. MACDONNELL: I do not wish to take time to underline the fact that you and I differ on this point. I would have though—to make this last final comment—looking at the postal workers along with all other communications workers, that it might be argued that even if telegraph, telephone and so on had been tied up I would have the knowlege that as long as you still have the post office working, we can communicate; communication is not entirely out. However, I am not going to press the matter further. We might agree or disagree, but I would like you to know my own feeling at the moment.

Mr. MORE: Mr. Chairman, I think there has been some unfortunate language used here in some of the statements made by the committee members. I did not expect that we would get into any arguments about the merits of particular associations, and I would take it, from what Mr. Roberts said, that he is proud that the civil service association of Canada to date has not been successful in representing the majority of these civil servants of Canada. I do not really know what that has to do with the representations.

Then, I would like to ask Mr. Cross if I can take it from his statement that in his judgment there are different degrees of loyalty in the civil service of Canada. My own feeling and my own experience has been that civil servants are loyal, whether they belong to the Canadian postal association or otherwise. I do not think that one group can be the most loyal group, as compared to another. I think that statements of that kind are not helpful.

In regard to Mr. Roberts' statement, I would like to pose this question: that although the civil service association of Canada's brief has been referred to and they do not represent the majority of the civil service and have no right to make a statement in their brief, it seems to me that the Canadian postal association does not represent the majority of the civil service. They are the only people who have presented demands for the right to strike. So that I think we can conclude that the majority of the civil service are not asking for the right to strike. I think that was the point Mr. Macdonnell was trying to make.

The CHAIRMAN: Do you subscribe to that, Mr. Roberts?

Mr. ROBERTS: No, unless the gentleman has a specific question to ask.

Mr. CROSS: I would like to say something on the remark made by the gentleman about loyalty. The only reason I brought that up was in view of the fact that we are asking for full collective bargaining rights, and it could be assumed that the postal employees might be considered disloyal. I did not try to get the point across that the Canadian postal employees were more loyal than any other branch of the service.

Mr. MORE: You said it, Mr. Cross.

Mr. CROSS: What I am saying is this: we are asking for a definite right which no other body of the civil service has asked for, and because of the fact that we are asking for full collective bargaining rights—for the right to strike—this might be taken by some individuals as a matter of disloyalty, or something else. That was the point I was trying to get across. I was saying that even though we did get this right, we are a loyal body of civil servants, and because of the fact that we would get this right to strike and full bargaining rights does not mean we are disloyal. I am not trying to separate postal employees from other employees.

Mr. SPENCER: Do you mean loyalty to the people of Canada?

Mr. CROSS: Certainly.

Mr. MACDONNELL: In view of the question I asked, no question of disloyalty from postal employees arose in my mind at all. They are asking for something that they in their judgment approve, they express their own views. There is no question of loyalty or disloyalty here.

The CHAIRMAN: Mr. Roberts, I notice that on page 2 of the brief of the civil service federation of Canada, which is the parent association to which the postal employees belong, it states that "the majority of civil servants do not wish to deprive the people of Canada of their services because of dispute or disagreement between employer and employee." Do you agree that the majority do not wish the right to strike?

Mr. ROBERTS: This is the only part where we disagreed with the civil service federation brief. On this particular point we could not agree because we had a mandate from our membership that we must seek full collective bargaining rights. This is why we presented our brief. It was on that particular point that we disagreed with them.

Mr. MARTEL: We are still on page 2 of the postal employees association brief, I understand. At the bottom of the page you refer to a statement made by the Canadian labour congress meeting on November 26 and 27, 1960. There was a paper on employer-employee relations.

The statement is on the bottom of page 2 as follows:

> British civil servants are not positively denied the right to strike but neither is such a right affirmed.

From that sentence I understand that they do not have the legal right to strike. It is not in the British Civil Service Act that they can strike. Is that correct?

Mr. ROBERTS: I can enlarge on this from another bulletin which goes into this a little further and which explains this particular paragraph. This is taken, by the way, from a conference of all the postal, telephone and telegraph unions from across the country, meeting in Vienna. This is the way they describe the rights in Great Britain:

> All government employees, including P.T.T. workers, have the same right of organization as other workers. There is no legal prohibition to the exercise of trade union rights including the right to strike. This also applies to the P.T.T. workers except that it is clear that striking even if not illegal is a disciplinary offence on the part of the civil servants.
>
> Moving the second reading of the 1946 trade disputes and trade unions bill the attorney general said: "The 1927 act did not forbid civil servants to strike and nothing that we propose to do now will make it more legal than it is today for civil servants to take strike action. I take the opportunity of making it quite clear that the government, like any other employer, would feel itself perfectly free to take any disciplinary action that any strike situation demanded."

There have been one or two stoppages of work and there was no disciplinary action taken. So we can assume that they have the right to strike if it is exercised properly.

Mr. MARTEL: It is not written in the law, is it?

Mr. ROBERTS: It is not written against or for.

Mr. MARTEL: The same applies in Canada I would say. There is nothing, even in the new act, to forbid it.

Mr. ROBERTS: That is correct. There is nothing to prevent it or to allow it.

Mr. RICHARD (*Ottawa East*): Mr. Cross, do you feel this way, that supposing it was established that the majority of civil servants did not want the right to strike, should it be kept for your group particularly? Suppose it was established—and I do not say it has been—that the great majority of civil servants did not want to strike, do you still think the right to strike should

be maintained for you, or would you abide by the majority? You, as a majority group, go by democratic principles in the union.

Mr. CROSS: In answer to the question, I have no alternative. I am a labor man; I am proud of that fact; and regardless of what the other bodies of the civil service want or what they are satisfied with, I am not going to be satisfied unless I get this one thing—full collective bargaining rights.

Mr. SPENCER: You are not prepared to abide by the majority of the civil service?

Mr. MORE: Mr. Chairman, I would just like to be clear about appendix A referred to earlier, and ask: you have form of negotiations and extent of negotiations, complete, and then in that column you have an X. Does that X indicate the right to strike in the agreement in each of those countries?

Mr. ROBERTS: Not entirely. I can give you the list of the ones that have the right to strike.

Mr. MORE: I would appreciate it if you could give it. Do I take it that this is where it appears in their agreements and is provided by their agreements?

Mr. ROBERTS: Or else under a government act. The list is: Austria, Belgium, Brazil, British Guiana, Cyprus, Denmark, France, Great Britain, Holland, Italy, Korea, Malaya, Sweden, Tanganyika and Tunisia.

The CHAIRMAN: I wonder if before we come to that, we should finish the formal part of the brief?

Mr. SPENCER: Could I get an answer to my question? I do not recall getting an answer to the question I posed. I asked whether this organization is prepared to abide by the wishes of the majority of the civil servants.

The CHAIRMAN: Mr. Cross said no, that the postal employees would prefer to have a right to strike.

Mr. CROSS: In answer to the gentleman's question, in democratic country you have to abide by the majority vote—that's for sure—but that does not necessarily mean that Canadian postal employees are going to be satisfied.

Mr. ROGERS: Mr. Chairman, I would like to ask the witness this: if you were given the right to strike, how do you think it would affect public opinion?

Mr. CROSS: Mr. Chairman, I think the people of this country are behind the postal employees more so than they are behind anyone. We are the people who deliver the mail.

Mr. ROGERS: I agree with that wholeheartedly; but to follow along, do you think that our democracy, our parliament, is dependent upon public opinion? As a consequence, the civil service is also. As a civil servant for many years, I have a deep sense of loyalty and I certainly do not think that a strike would help them one bit. That is my own humble opinion.

The CHAIRMAN: Would you like to move on to page 3 of the brief?

Mr. BELL (*Carleton*): Mr. Roberts, paragraph 12 has a rather intriguing statement. In effect this association submits that there is no reason for treating government employees any differently from employees in private industry. Do you confine that particular statement exclusively to this matter of collective bargaining, or would you apply it generally to all conditions of employment?

Mr. ROBERTS: This is a collective bargaining brief, so it is confined to collective bargaining.

Mr. BELL (*Carleton*): So there may be in other aspects of employment situations where you would agree that civil servants have a right to different treatment from private industry?

Mr. ROBERTS: I am only dealing with collective bargaining.

Mr. BELL (*Carleton*): I only want to say that I would not concede that in other matters and have civil servants give up their satutory safeguards in existing legislation, and in forthcoming legislation. I would fight as vigorously as I could to preserve those safeguards for civil servants.

The CHAIRMAN: Is there any other question on page 3? Is there any question on page 4?

Mr. RICHARD (*Ottawa East*): How many postal employees are part of your association—what percentage?

Mr. ROBERTS: We represent 10,500 of the working staff inside. I think all the inside staff comes to around 14,000, so we represent roughly 80 to 85 per cent.

Mr. BELL (*Carleton*): In that respect I was interested in Mr. Cross' statement. He said: "We deliver the mail". My understanding was that this is not the association that delivers the mail.

Mr. CROSS: If we do not sort the mail, it does not get delivered.

Mr. MARTEL: I would like to get some clarification. As I see it, you are affiliated with the Canadian labour congress.

Mr. CROSS: That is right.

Mr. MARTEL: But the civil service federation is not. Only your group is affiliated with the labour congress.

Mr. CROSS: The three postal groups are affiliated—the C.P.E.A., the C.P.A. and the F.A.L.C.

Mr. MARTEL: That includes the mail carriers and your own?

Mr CROSS: All postal groups are affiliated with the labour congress.

Mr. MARTEL: How many does that involve?

Mr. ROBERTS: 18,000 organized.

Mr. MARTEL: Would it be right to assume that the idea not only of collective bargaining but of the strike would then come from the fact that you are affiliated with the Canadian labour congress?

Mr. ROBERTS: It is supported by our conventions of our members across the country, regardless of whom we are affiliated with.

Mr. MACDONNELL: The right to strike is being asked, not by letter carriers, but by the office staff who deal with letters? Would it be correct to say that the letter carriers not only have not asked for it, but have indicated that they do not want it? Are they properly included in this section?

Mr. ROBERTS: They presented a brief.

The CHAIRMAN: I suppose the answer to the question can be found in the brief of the letter carriers. I do not think they asked for the right to strike. Is there any other question on the brief, or would you like to ask questions on the appendices?

Mr. MACDONNELL: I am quite content to let the other brief speak for itself.

The CHAIRMAN: There is one thing I am wondering about regarding the appendices. There are a number of countries listed here, and information is given as to whether or not they have collective bargaining rights, or the right to strike. I wonder in how many of those countries postal workers are employees of the government. Are they Government employees in all cases?

Mr. ROBERTS: I could not answer that correctly, but in the majority of cases I would say they are. All over the European continent, in most of South America, most of the former commonwealth countries—even Newfoundland at one time had the postal, telegragh, telephone under the government, and in most cases, they had bargaining rights.

I am sure the members of the committee would find this particular report I have here of very great interest. If any member wants to know what is going on throughout the world, I can give the address from which this book may be obtained. I am sure members of the committee would find this particular report of great interest as it gives the trade union rights of P.T.T. unions throughout the world, and there is an additional part on collective bargaining in the P.T.T. service. This booklet can be obtained from the secretary, Postal Telegraph and Telephone International, Fritzgmur, Schwartztorstrasse 7, Berne. Your question would be answered there if you go through it. It gives the pertinent information, and it is very comprehensive, covering all countries outside the iron curtain. It would be very informative to you as it shows that these countries, including the newly formed democratic countries, have given the same rights to postal workers as to outside workers.

Mr. MACDONNELL: I have here now the brief of the letter carriers, and to make the matter clear I would like to put on the record the first paragraph, beginning on page 2. I read as follows:

> In short, a modified version of the Industrial Relations and Disputes Investigation Act would be a fair and just method of providing negotiation. This would, of course, be without any clause giving the right of strike or walkout. Our association has indicated many times in the past, by convention mandate, that such action would not be taken.

The CHAIRMAN: Is there any other question on the brief? If not, I would like to thank Mr. Cross and the other members for coming this morning to help us in this part of our problem.

Mr. CROSS: Mr. Chairman, on behalf of my committee and association I would like to thank you and the members of your committee for the very pleasant reception we have had here this morning.

Mr. BELL (*Carleton*): Before we adjourn, may I mention that Mr. Mackenzie, the assistant secretary of the Treasury Board, has had prepared an index of the act setting forth the pages in each of the briefs which we have received, which relate to that particular section of the act. I would point out in this that the page numbers are those of the original briefs, rather than of our proceedings. It seems to me that this is a most useful document for the committee, and I would like to propose that it be printed as an appendix to our proceedings today. I think it will greatly facilitate our study of the act, if we know exactly what page to go to in each brief when we are dealing with a particular section.

Mr. SPENCER: I second the motion.

Agreed. (See appendix.)

The CHAIRMAN: Since we have finished with the representation from the associations, we hope next Thursday to begin our clause by clause consideration of the bill.

APPENDIX "A"

Respecting Bill C-71

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APPENDIX "B"

ASSOCIATION OF CANADIAN POSTAL EMPLOYEES
L'ASSOCIATION DES EMPLOYÉS DES POSTES DU CANADA

Office of General Secretary-Treasurer

OTTAWA, May 12, 1961.

Mr. R. S. MacLellan, M.P.,
Chairman,
Special Committee on the
Civil Service Act,
House of Commons,
Ottawa, Ont.

Dear Sir:

During the proceedings this morning there seemed to be some question as to the change our Association feels is necessary in Clause 7 of Bill C 71.

In order to clear up our stand on this Clause, we would propose that Clause 7 of Bill C 71 be worded as follows:

"NEGOTIATION BETWEEN STAFF ASSOCIATIONS AND GOVERNMENT AS EMPLOYER, IS A RIGHT."

Sincerely hoping that your Committee will give due consideration to this request.

Respectfully submitted on behalf of

The Canadian Postal Employees' Association,

J. E. Roberts,
General Secretary Treasurer.

JER:LB

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 13

THURSDAY, MAY 18, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

From the Civil Service Commission: Honourable S. H. S. Hughes, Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners.
From the Department of Finance-Treasury Board: Mr. C. J. Mackenzie, Assistant Secretary.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25173-6—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)
Caron
Casselman (Mrs.)
Hicks
Keays
Lafreniere
Macdonnell
MacRae
Martel
McIlraith
More
O'Leary
Peters
Pickersgill
Richard (*Ottawa East*)
Roberge
Rogers
Smith (*Winnipeg North*)
Spencer
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, May 18, 1961.
(15)

The Special Committee on the Civil Service Act met at 9.55 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Messrs. Bell (*Carleton*), Keays, Lafreniere, Macdonnell (*Greenwood*), MacLellan, MacRae, Martel, McIlraith, O'Leary, Richard (*Ottawa East*), Roberge, Rogers, and Spencer. (13)

In attendance: From the Civil Service Commission: The Honourable S. H. S. Hughes, Q. C., Chairman; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners. *From the Department of Finance, Treasury Board:* Mr. C. J. Mackenzie, Assistant Secretary.

Mr. Bell (*Carleton*) tabled an *Index, by Clauses, to References in Committee Proceedings (English Text).*

On motion of Mr. Bell (*Carleton*), seconded by Mr. O'Leary, *Ordered,*— That the above-mentioned Index be included in the Committee's record. (*See Appendix "A" to this day's proceedings.*)

The Committee proceeded to the clause-by-clause consideration of Bill C-71, An Act respecting the Civil Service of Canada.

The Civil Service Commissioners and Mr. Mackenzie were called.

Clause 1 was adopted.

On Clause 2:

Sub-clause (1) (*a*) (i) was considered and allowed to stand.

Sub-clause (1) (*a*) (ii) was adopted.

Sub-clause (1) (*b*) was adopted *on division.*

During the consideration of paragraphs (*a*) and (*b*) above, the Commissioners suggested that certain alterations be made therein.

Paragraphs (*c*) to (*n*) inclusive of sub-clause (1) were adopted.

Paragraph (*o*) of sub-clause (1) was considered and allowed to stand.

The Committee reverted to paragraph (*k*), and discussion continuing thereon, at 11 a.m. the Committee adjourned until 9.30 a.m. Friday, May 19, 1961.

E. W. Innes,
Clerk of the Committee.

25173-6—1½

EVIDENCE

THURSDAY, May 18, 1961.

The CHAIRMAN: I would ask the committee to come to order.

Mr. Bell (*Carleton*): Before we proceed, I have a communique to make regarding a correction to be made in our proceedings. In appendix A at page 319, footnote (1) reads:

(1) Canadian joint congress.

This should read:

(1) Canadian Jewish congress.

Might I also, Mr. Chairman, mention that Mr Mackenzie, assistant secretary of Treasury Board, has had prepared an index by clauses in the bill with references to pages in the committee proceedings, English text. So by reference to the clause in the bill, one can see which page in our complete proceedings it was discussed by the different briefs. This would admirably supplement the appendix setting out references to the original briefs, and I would propose that this might be made an appendix to today's proceedings. Mr. Chairman, I so move.

The CHAIRMAN: Is there a seconder to Mr. Bell's motion, that the evidence be amended as suggested on page 319? Seconded by Mr. O'Leary. It is agreed the evidence be amended as suggested by Mr. Bell.

Further, it is seconded by Mr. Rogers that an appendix to today's evidence be included. We have the index offered by Mr. Bell.

Motion agreed to.

This morning we come to our consideration, clause by clause, of bill C-71. Our informants, who will be available to us and who I will ask to come forward, are the three members of the civil service commission, Mr. Hughes, Miss Addison and Mr. Pelletier, and also Mr. Charles J. Mackenzie, assistant secretary to treasury board. Would you come forward, please?

Mr. RICHARD (*Ottawa East*): Mr. Bell, could that index be mimeographed today?

Mr. BELL (*Carleton*): I am sorry, there was no time.

The CHAIRMAN: Gentlemen, clause 1. Should clause 1 carry?

Clause 1 agreed to.

Clause 2—consideration of subsection 1(*a*) as to allowance. Are there any comments or questions to be put to any one of our informants on clause 2 (1) (*a*)?

Mr. BELL (*Carleton*): Mr. Chairman, I think both the federation and the association suggested that this is a required amendment in order to bring about a shift differential under this particular clause. I wonder if Mr. Mackenzie would be prepared to comment as to whether, in his opinion, any amendment is necessary or whether in fact shift differentials are covered by the language as presently set forth?

Mr. C. J. MACKENZIE (*Assistant Secretary, Treasury Board*): The position which has been taken is that allowances which are payable in respect of duties

should be authorized under the Civil Service Act, those in respect of circumstances in which duties are performed, should be authorized under the Financial Administration Act, section 7(c) which reads:

> The treasury board may make regulations subject to any other act prescribing rates of compensation, hours of work and other conditions of employment of persons in the public service.

The present Civil Service Act precludes the possibility or regulation making under 7(c) of the Financial Administration Act by reason of a prevision in section 16 which states:

> In the absence of special authority of parliament no payment additional to the salary authorized by law should be made to any deputy head.

and so on. Section 14 modifies that restriction and provides:

> —unless authorized by or under this act or any other act of parliament, no payment additional—

and so on. Section 7(c) of the Financial Administration Act therefore may be relied upon to authorize payment of the shift differentials, which in our view are compensation for the circumstances in which duties are performed and not for the performance of duties themselves.

The CHAIRMAN: I understand your position to be, then, that the amendment as suggested by the civil service association is not necessary because the authority is there.

Mr. BELL (*Carleton*): Is that the opinion of the draftsmen of the act?

Mr. MACKENZIE: Yes, sir.

The CHAIRMAN: Any further questions?

Mr. RICHARD (*Ottawa East*): You say you have the opinion from the department of Justice?

Mr. MACKENZIE: This is the opinion of the draftsmen, given orally in the course of drafting.

Mr. RICHARD (*Ottawa East*): Because the brief of the Civil Service Association said:

> However, the Department of Justice has rendered the opinion that the Civil Service Act would not permit payment of shift differentials.

They feel that this one does not do any better. You have the opinion of the draftsmen?

Mr. MACKENZIE: If I may draw your attention to section 14, subsection (1), which I will quote:

> unless authorized by or under this act or any other act of parliament, no payment additional may be made. Such authority is contained in section 7(c) of the Financial Administration Act. There will be no restriction in the Civil Service Act against the making of differentials, once this bill is approved in its present form.

The CHAIRMAN: Have you any comments, Mr. Hughes, on clause 2(1)(*a*)?

Mr. MACDONNELL: If we are going to relate all these things, is it not wise to have it in writing? Should we not have a written opinion on a matter of substance like this?

Hon. S. H. S. HUGHES, Q.C., (*Chairman, Civil Service Commission*): I was going to say that—and this may be supplementary to the opinion that the draftsman gave to Mr. Mackenzie, and the opinion that he gave to me—that clause 12 would cover it. Clause 12 reads:

> The rates of pay for grades shall consist of minimum rates, maximum rates and one or more intermediate rates, or such other rates as may in any special cases be appropriate.

There would be additional difficulty if the shift differential were mentioned specifically here. We would have to define "shift".

I must bring up one other point on which my colleagues and I are agreed; that is the words "or circumstances", appearing after the word "duties" in subparagraph (i), of paragraph (*a*) of subclause (1). This would cover the case for the civil service alone, of excessive radiation hazards, and cases of that kind, where it would be desirable to have the commission make a recommendation to the governor in council. I am bearing in mind that Mr. Mackenzie said about the desirability of doing this under the Financial Administration Act; and I should point out that under clause 11 of this bill it would be possible for the governor in council to exercise discretion as to the amount that might be paid under paragraph (*b*) of clause 11.

The CHAIRMAN: Have you any comments, Miss Addison?

Miss RUTH ADDISON (*Commissioner, Civil Service Commission*): I think it would make it a little clearer if the words "or circumstances" were put in. Then it would be perfectly clear that the authority was under this act instead of under the Financial Administration Act, as far as the civil service is concerned. I think we would also feel it would be clearer in connection with recruiting allowances which we might have to make from time to time. I know that the lawyers think it is clear in this act, but occasionally you may have to give an extra allowance for recruiting purposes.

The CHAIRMAN: Mr. Pelletier?

Mr. PAUL PELLETIER (*Commissioner, Civil Service Commission*): Mr. Chairman, I have nothing much to add to what the chairman and Miss Addison have said. I agree with them entirely. However I would stress the fact that if you are referring only to duties, you may have two civil servants performing precisely the same duties, but under vastly different circumstances. You could have a chemist doing a professional chemical job in one department, and another chemist in another department doing precisely the same type of job, but one would be subject to radiation while the other was not. In such a situation, the duties would be identical but the circumstances quite different.

Mr. MCILRAITH: I notice that the three commissioners use the words "or circumstances". Is it "or circumstances" that you want added, or is it "and circumstances"? I mean circumstances relating to the two? Have you given thought to that point?

Mr. HUGHES: I would say "or", in this act.

Mr. MCILRAITH: That means you may make allowances for circumstances alone, without any duties comparable.

Mr. HUGHES: That is right.

Mr. MCILRAITH: Surely you do not mean that. Surely the basis of the allowance is the duties performed. Surely the duties are necessary before you make any allowance.

Miss ADDISON: You have to keep in mind that the basic pay covers the duties performed. The allowance ought to be additional to the basic pay.

Mr. McILRAITH: That is my very point. So it would be "duties and circumstances", which is additive; it is not substituting for a word; it is an added sort of thing.

Mr. PELLETIER: I think not, because duties under certain circumstances may not themselves require an additional allowance; while in other circumstances duties, such as in the hypothetical examples I cited, may be identical, but the circumstances may be quite different. In that situation the allowance would be paid strictly for the circumstances. Therefore I agree with the chairman and Miss Addison that it seems to me the words should be "or circumstances", not "and circumstances".

Mr. MACKENZIE: The treasury board staff, at any rate, Mr. Chairman, and I think the chairman of the treasury board, would object to the addition of the words "or circumstances" on this ground primarily. Mr. Hughes and Miss Addison and Mr. Pelletier have used the words "or circumstances" in respect to the type of allowance paid for duties which are performed. One of the examples given was that of duties performed under a radiation hazard. But there are several which are more important and more widespread, which are allowances paid under the authority of section 7 of the Financial Administration Act, and which are appropriate to the public service as a whole, and not just to the civil service. This would include, for example, isolated post regulations which authorize the payment of isolation allowance, foreign service allowance, and allowance for transportation to and from work, among other examples.

It is a cardinal principle of the board's policy that the treatment accorded to members of the public service outside of the civil service should be the same as that accorded to members of the civil service under the jurisdiction of the civil service commission. For that reason the board believes that its powers conferred under section 7 to make regulations authorizing payment to persons in the public service, of an allowance in respect of circumstances, are adequately authorized at the present time, and that it is undesirable to have duplications in the law which might lead to confusion and conflict.

The CHAIRMAN: Are there any other questions or comment in regard to this?

Mr. BELL (*Carleton*): I think we are talking here solely of allowances which are, of course, different from pay. This has nothing to do with pay at all. I think I am correct in saying, in respect to these allowances, that heretofore they have related to circumstances; they have been within the jurisdiction of the treasury board and not within the jurisdiction of the commission. Am I correct in that?

Mr. HUGHES: Yes sir.

Mr. BELL (*Carleton*): So if we put in this act the words "or circumstances", we will have conferred upon the civil service commission by this action a jurisdiction which they do not now have, and we shall be depriving the treasury board of that jurisdiction. Is that a fair statement?

Mr. PELLETIER: May I reply to that, Mr. Chairman?

The CHAIRMAN: Yes, certainly.

Mr. PELLETIER: I think, Mr. Bell, that the statement is true in so far as the present act is concerned, but not the present bill. One must always go back to section 11 of the present act, which allows the governor in council to refuse to accept, or to modify, or even to increase any recommendation made by the civil service commission. In many circumstances allowances must be part of the pay, even though they are paid, or given, or granted for something quite different. These allowances must be considered as part of the total remuneration of a civil servant; but these allowances cover only members of the civil service who come under the Civil Service Act.

Mr. Mackenzie mentioned that it was desirable to avoid confusion. I could not agree more as to that, but if ahe civil service commission is to make recommendations on pay and allowances, as I think it should, then the governor in council is perfectly free to alter those recommendations, to modify them, and in so doing to keep order within that part of the public service which does not come under the jurisdiction of the civil service commission.

Mr. MACKENZIE: I am reluctant to contemplate circumstances under which the governor in council would reject or modify a recommendation of the civil service commission. I would hope that the circumstance would not arise; and the solution which I have suggested would certainly eliminate the possibility in so far as this type of allowance is concerned, which it has been said is payable not for duties, which everyone agrees are properly the responsibility of the civil service commission, but for the peculiar circumstances under which some civil servants or some public service employees work; and this is a different thing.

The CHAIRMAN: Your point is that the authority is already in the Financial Administration Act, and that we do not have to put it in here—we do not have to make provision for it?

Mr. MACKENZIE: That is right.

Mr. BELL (*Carleton*): What is sought here is to take some jurisdiction away from the treasury board and give it to the commission. It seems to me that the procedure has been working reasonably satisfactorily, and I have heard no complaints about it. None of the associations raised this point when they came before us, so I do not think we should interfere in that respect with what has been satisfactory.

Mr. RICHARD (*Ottawa East*): Should not a recommendation come from a central body such as the civil service commission? Whom does it come from now? Who makes the recommendation to the treasury board?

Mr. BELL (*Carleton*): The treasury board staff.

Mr. RICHARD (*Ottawa East*): I think they are hardly in a position to judge the case. That is why I think it belongs under the Civil Service Act.

Mr. MACKENZIE: With respect to practically all the allowances I have given as examples, that is, the foreign service, isolated posts, transfer and removal regulations, and so on, the treasury board is advised by interdepartmental committees on which there are representatives from the departments which use this form of allowance.

Mr. RICHARD (*Ottawa East*): I thought Mr. Bell said it was done by the treasury board, but you say it is done by a departmental committee?

Mr. MACKENZIE: The committee is made up of representatives of the major departments involved in the administration of the particular allowance.

Mr. RICHARD (*Ottawa East*): I would still like to see it added.

Mr. BELL (*Carleton*): I would have to take exception to its being added.

The CHAIRMAN: As a matter of procedure, it seems to me that we would get along better, when we run into a section which gives us difficulty, particularly when we might want to hear the opinion of the Minister of Finance, or of anyone else we might want to call, if we should stand the section until we have gone through the non-contentious sections of the act. If there are no other questions on this matter of allowance, maybe we should let it stand and move along.

Mr. SPENCER: I think this is a matter of such importance that it should be reserved. I agree very much with what has been said by the official of the treasury board. These are allowances of a very special nature, and I think the

jurisdiction which is now given to the civil service commission under section 21 as it stands now is ample for all ordinary purposes. I think if this were extended, we would have conflict with the powers given under the Financial Administration Act.

If you are going to make any change here you would normally consider a change in the Financial Administration Act, which is not before the committee. So, on the basis of conflict alone, or of possible conflict, we should leave this as it is; and certainly, as far as I am concerned, I think we are going to have plenty of sections, starting out with the very first one now, to reserve, which are of greater import than this, particularly having regard to the fact that there have been no representations made before the committee thus far, except the one this morning, for the alteration of this section.

Mr. McILRAITH: I would point out in connection with Mr. Spencer's remarks that this does not involve amending the Financial Administration Act. The Financial Administration Act would still govern those cases which did not come under the civil service commission. The point for decision is whether we are going to give this jurisdiction to the commission in respect of those employees who are under their responsibility. I would like to see the section stand for the time being, for further discussion.

Mr. SPENCER: I admit there would be conflict, too.

Mr. McILRAITH: No, there would not be conflict. There would be two authorities dealing with public employees, as is the case now.

Mr. SPENCER: There would be two authorities having the right to make allowances in special circumstances.

Mr. MACDONNELL: Am I right in my understanding that things have been moving along satisfactorily under the existing law, particularly the Financial Administration Act, or is there some actual difficulty which is sought to be remedied by putting in these words, which obviously are questioned by some of those most close to the administration?

Mr. HUGHES: All I can say about it is that there are a number of things in this act which will involve changes from positions which have been operating smoothly in the past. With great respect, I do not think that should be the criterion applying to changes made here, but I think it is probably fair to say that your understanding is correct.

The CHAIRMAN: Are there any other comments?

Mr. ROGERS: I think the matter has been pretty well discussed, and I think it should be decided right here.

The CHAIRMAN: Is the committee ready for the question now?

Mr. McILRAITH: I would prefer that we let the matter stand. We have gone quite quickly this morning, and I think we would make faster progress if we let it stand. We could discuss it later.

Mr. BELL (*Carleton*): I think it might be well to let the matter stand. I know Mr. McIlraith is most cooperative in these matters.

The CHAIRMAN: Is it agreed that clause 2 (1) (*a*) stand?

Mr. RICHARD (*Ottawa East*): Let it be understood that one of the reasons I pressed this is because this is a recommendation from the civil service commission itself, and it comes to us for the first time this morning. I think we should dispose of it on that account. The commissioners have expressed views directly on this point, and I think we should consider them.

Clause 2(1)(*a*)(i) stands.

The CHAIRMAN: On clause 2(1)(*a*)(ii), are there any questions for any of the commissioners?

Clause 2(1)(*a*)(ii) stands.

The CHAIRMAN: Clause 2(1)(*b*) as to civil service. Are there any questions?

Mr. RICHARD (*Ottawa East*): I guess this is the time to ask the commissioners what they think of the submissions put before us that the prevailing rate employees should be included under the Civil Service Act.

Mr. PELLETIER: I would like to say something on that point. I think the subparagraphs beginning with (i) should all be deleted. In the first place it seems to me that it is dangerous in any statute to attempt to establish a list which purports to be exhaustive but may well not be.

Secondly, it may be that, in the future, some of the groups mentioned in these subparagraphs may be found to be better included under the act. I would, therefore, suggest that this section be reworded somewhat as follows. The first part of (*b*) right down to "except" in line 15 should remain, and then everything else stricken out and replaced by words along these lines:

> "except positions which have been excluded totally or partially from the provisions of this act, either by the act itself—"

that would be for example the case of commissioners

> "— or by regulations made thereunder."

This would have the effect of achieving the desired result.

Mr. BELL (*Carleton*): Would you mind repeating that?

Mr. PELLETIER: Yes. After "except" add the words:

> —positions which have been excluded totally or partially from the provisions of this act, either by the act itself, or by regulations made thereunder.

The reason for this suggestion is that when the act is proclaimed it would be an easy matter to establish regulations which would, I suppose, initially at least maintain the status quo; but these regulations could be amended from time to time, and the list of exemptions could be extended or reduced as circumstances warranted.

The CHAIRMAN: You have no objection to 2 (*b*) except that you think the exception should be done by regulation rather than by a section of the act?

Mr. PELLETIER: That is right.

Mr. RICHARD (*Ottawa East*): Then it would be possible under regulations to include the prevailing rate employee, or any other class?

Mr. PELLETIER: Correct.

Mr. MACKENZIE: If the commission were prepared to make such regulations.

May I say that the definition of "civil service" as contained in the bill comprehends the civil service as it is in the present act, in its entirety. The groups mentioned under subparagraphs (i) to (v) are at present totally excluded from the operation of the act. This bill merely clarifies and specifies that exclusion which now exists. In the case of the commissioners, and the positions listed in 73 (1)—the clerk of the Privy Council, the clerk of the Senate, the Clerk of the House of Commons, the secretary to the Governor General—such exclusions clearly are necessary.

The prevailing rate positions in some 1,200 classes have now been totally exempted from the act.

The positions of persons locally engaged outside Canada who are not Canadian nationals for the most part, the staffs of the high commissioner in Delhi, and so on, are exempt by recommendation of the civil service commission, approved by the governor in council.

The provisions in relation to positions in or in connection with government railways or ships are a transfer from the present act. This exclusion is specified in the present act. Likewise the exclusion of the positions of postmasters of any revenue post office, the revenue of which does not exceed three thousand dollars per annum, is transferred from the present act.

In the view of the staff of the treasury board, in the Civil service Act it is clearly necessarry to have a specific definition of what the civil service is.

Mr. RICHARD (*Ottawa East*): Would not Mr. Pelletier's amendment be satisfactory to you, as there is no difference in spelling it out that way and the way it is in the present bill.

Mr. MACKENZIE: I would think it much more advantageous to have the definition contained in the bill in detail.

Mr. RICHARD (*Ottawa East*): It is just made up of a number of exceptions—

Mr. BELL (*Carleton*): No, no.

Mr. RICHARD (*Ottawa East*): —which everybody excepts—which are enumerated. Why go on to enumerate by exception?

Mr. SPENCER: No matter which way you do it, you have to spell it out.

Mr. HUGHES: If you look at the first few lines of the definition, you will see it makes provision where there is no other act of parliament which has anything to say about the status of public servants—and there are some, as you know, which exclude employees from the operation of the Civil Service Act and make provisions peculiar to their own employees. Therefore, this act will provide for the definition of the civil service. That is the general proposition.

Then there are some additional exceptions. I must say that I think that one subclause, (i), is definitely necessary, and this is the opinion of the draftsman because, although the present bill provides for the appointment of commissioners, it does not provide for their exclusion from the civil service, and I think it is only proper they should be outside the civil service. That also does not apply, as Mr. Mackenzie says, to the clerk of the Senate, the clerk of the House of Commons and the secretary to the Governor General as set forth in clause 73. I quite see Mr. Mackenzie's difficulty about the rest of the subparagraphs there.

If Mr. Pelletier's suggestion were adopted, I think we would all have to rely on the civil service commission to do what is required to exclude prevailing rate groups. I think it is necessary in the act to state it clearly.

On the whole, I agree with Mr. Mackenzie in this particular matter, although I appreciate the force of Mr. Pelletier's view that, as a matter of neatness in drafting, it would be nice to have it in the way he suggests. However, I am afraid of the practical results.

The CHAIRMAN: I wonder if there is authority under the present bill to bring under the operation of the act some of the groups which are now excluded by the definition of "civil service"?

Mr. HUGHES: I think not.

The CHAIRMAN: What about clause 69, that the governor in council can include other groups?

Mr. HUGHES: Oh, yes, clause 69. I was thinking of the commission. The commission has no power to bring any of the excluded groups inside. Under clause 69 it would be possible for the governor in council to make an order under the act bringing in any of the groups now excluded.

Mr. BELL (*Carleton*): So the enumeration of any of these groups by way of exclusion does not prevent them from being brought under the act?

Mr. HUGHES: No. I think that is specifically stated in section 69.

Mr. BELL (*Carleton*): The reason, I think, for Mr. Pelletier's point of view is that, for example, one would have to rely on the civil service commission to enact regulations excluding people like the Clerk of the Senate and the Clerk of the House of Commons. I do not think Parliament want to put the commission in that position. I think we have to have some exclusions specific. Otherwise, even Parliament itself has handed itself over to the commission.

Mr. PELLETIER: If I may reply to Mr. Bell's observations, which were very well taken, and also follow up on the remarks made by Mr. Hughes—in so far as the immediate servants of parliament are concerned, I personally would not be averse to seeing parliament insert in the Civil Service Act anything it wishes, to tie our hands,—in other words, not to give the commission discretion to decide that the clerk of the Senate, or the clerk of the House of Commons, or indeed any other immediate servant of Parliament be bound by the terms of the Civil Service Act.

Getting out of the realm of the immediate servants of parliament, and to address myself to a remark made by our chairman, Mr. Hughes, I think there is one thing we should keep very much in mind. As Mr. Hughes said, there are acts of parliament which exclude certain employees completely from the provisions of the Civil Service Act. In these cases, parliament has spoken, and as parliament has spoken, the Civil Service Commission has no business dealing with these cases. On the other hand, I think it would be extremely dangerous to provide general exclusions in advance which may or may not be exhaustive and may or may not be justified. Public servants other than those covered by special statutes should come under the Civil Service Act unless excluded by the governor in council on the recommendation of the commission.

Now, to turn to prevailing rates employees, which are included in this list, this of course must be looked at in conjunction with, I think it is section 82 (4) of the bill. There are at the present time—and Mr. Mackenzie will correct me if I am wrong—certain groups of prevailing rate employees,—for example the printing trades,—which are only partially excluded from the Civil Service Act at the present time. As the bill now stands with clause 2(1)(b) and section 82(4), these partially exempted employees, upon proclamation of the act would automatically become totally excluded.

Mr. RICHARD (*Ottawa East*): I quite agree with you. I think the method of excluding certain classes which may or may not be an exhaustive list, a complete list, is the wrong one; and in view of the fact that already certain acts do provide exclusion—parliament has provided to exclude certain classes by acts of parliament—I think your suggestion is the best, that the civil service commission should be in a position to define by regulation who are civil servants and who are not.

Mr. MACKENZIE: If I may make an observation, subclauses (iv) and (v) are excluded by the action of parliament at the present time. Parliament has made up its mind on subclauses (iv) and (v) as the present Civil Service Act indicates.

Mr. MCILRAITH: If that is so, why are subclauses (iv) and (v) enumerated?

Mr. MACKENZIE: The Civil Service Act is rescinded on the proclamation of this act.

Mr. MCILRAITH: I see; I am sorry. I thought it might be something done by another statute.

Mr. ROBERGE: I know that subsection (5) as it is now is related somewhat to section 40 (4). Subsection (5) (*b*) names the positions of postmasters of any revenue post office, the revenue of which does not exceed $3,000 per annum. Section 40 (4) says:

> This section applies to the selection and appointment of any person mentioned in subparagraph (v) of paragraph (*b*) of subsection (1) of section 2.

That seems to me to be a little contradictory and I would like some explanation of it.

Mr. HUGHES: Does it not mean that they get the veterans' preference?

Mr. ROBERGE: Just the veterans preference, or all the rest?

Mr. HUGHES: The rest.

Mr. ROBERGE: Section 40 does deal only with the veterans' preference?

Mr. HUGHES: No, with the preference given to Canadian citizens over others in the establishment of eligible lists.

The CHAIRMAN: Are there any other points on clause 2 (1) (*b*)?

Mr. MCILRAITH: I proposed raising a point on clause 72 which might involve coming back to 2 (1) (*b*), if any changes are made in 72. I think it would be better discussed under 72.

Mr. BELL (*Carleton*): I know the point my learned friend has in mind, and I think that point can be settled without reopening 2 (1) (*b*).

Mr. MCILRAITH: I merely wanted to mention it now in case it should be dealt with when we come to clause 72, and it should then be considered advisable to make a change in 2 (1) (*b*).

The CHAIRMAN: Did you feel that it can be dealt with when we are discussing clause 72?

Mr. MCILRAITH: I do not think we need hold this over. We can come back to it if necessary. I merely want to mention the point now.

The CHAIRMAN: Are there any other points on clause 2 (*b*)?

Mr. RICHARD (*Ottawa East*): Mr. Pelletier mentioned something about employees of the printing bureau. What would their situation be under this new bill?

Mr. PELLETIER: If I understand Mr. Richard's question, and unless I misread this bill, clause 28 (4) means that all persons who are subject to the general prevailing rate employee regulations of 1960, upon the passing of this act shall continue to be so subject. In the case of the printing trades, virtually all of them in the printing bureau are exempt from the act at the present time with respect only to pay and leave; that is, their pay is based on the prevailing rates, and their leave is based on the leave conditions in outside, similar employment. But for all other matters, they are subject to the Civil Service Act. If this bill is left unchanged, as I read it, the printing trades would be totally exempt from the Civil Service Act, quite regardless of what their wishes may or may not be. I do not know what they are. It seems to me it would be unwise to do this with one stroke of the pen in an act which may stand for quite some time, and which cannot readily be changed.

Mr. HUGHES: I think that perhaps the matter could be settled if the committee deems it appropriate under clause 82, and that some words might be added to subclause (4) just to the extent that they are now applicable or something of that kind.

Mr. BELL (*Carleton*): I would agree with you.

Mr. MACKENZIE: This is the wording which occurs in the order in council exempting such staffs at the present time. Recently a consolidation of exempting orders was prepared. The printing trade classes are referred to in schedule B of that order, and they are persons to whom the prevailing rate employees general regulations 1960 are applicable to the extent of this exclusion. The exclusion is only in so far as compensation and working conditions are concerned.

Mr. BELL (*Carleton*): I agree that when we come to subclause (4) of clause 82 we should ask the draftsman if he thinks a clarifying clause should not go in so as to preserve the status quo of the printing bureau employees and of any others there may be.

The CHAIRMAN: I think we can handle it under clause 82. Are there any other questions on clause 2 (1) (*b*) to be brought forward? If not, shall the clause carry?

Mr. RICHARD (*Ottawa East*): On division.

The CHAIRMAN: Very well.

Clause 2 (1) (*b*) carried on division.

Mr. MACRAE: I would like to ask the chairman of the civil service commission about something which is not clear to me. The word "classified" as used in relation to a position, and it means to assign a class and grade to a position. Mr. Hughes, is it not also possible to use the word "classified" in regard to a group of employees in the government service who are not civil servants, and who do not have the protection of the act? We have full-time civil servants, with all the obligations and disadvantages, so-called, and there are in addition prevailing rate employees, and casual employees. But is there a prevailing rate employee known as classified employees, and who are not civil servants, and who do not have the protection of the act as to permanence or anything else? Am I right or wrong in that?

Mr. HUGHES: No. At the present time classified employees applies only to those employees who are under the Civil Service Act, and are properly described as civil servants. I do not know if you are thinking about the present distinction between the permanent classified employees and the temporary classified employees.

Mr. MACRAE: Please let us have that distinction.

Mr. HUGHES: I am speaking subject to correction, but if you look at clause 37 of the present act you will find that through temporary pressure of work, I think the expression is, temporary employees may be recruited for not more than six months, and that that period of six months may be renewed from time to time. There has grown up in the service a considerable body of long-term temporary employees holding classified positions. I make no comment on what I think the original intention of the Civil Service Act was. I will only say that the distinction between these employees and permanent employees will be removed if this bill is adopted.

Mr. MACRAE: It is the long-term temporary employees idea that I was trying to get at.

Mr. HUGHES: In almost every case now they have the protection of the Civil Service Act. I think the only difference now possibly is that they may be dismissed without the passage of an order in council.

Mr. MACRAE: Yes, that is true, thank you.

The CHAIRMAN: Shall clause 2(1)(*c*) carry?

Carried.

Clause 2(1)(*d*)? Are there any questions?

Mr. MARTEL: Had it been the practice in the public service that the public service would be included when it comes to those eligible to enter a closed competition? Are not those who work on government railways or ships, or postmasters of post offices below a revenue of $3,000 not excluded at the present time?

Mr. HUGHES: You would have to look at the definition of public service, Mr. Martel, under paragraph (*r*), which reads:

> (*r*) "public service" means the public service as defined in the Public Service Superannuation Act; and—

—those who are contributors under that act in effect. So, for the purpose of a closed competition, as you will see in clause 2, it would include members of the R.C.M.P. or the Canadian forces.

Mr. MARTEL: It would not include railway employees?

Mr. HUGHES: It would include the prevailing rates group. I am afraid I do not have the act here. But I would say it would not include possibly postmasters in post offices with a revenue of less than $3,000, unless they are contributors under the Public Service Superannuation Act.

Mr. MACKENZIE: Would you like me to give you the definition?

Mr. HUGHES: Yes, if you please.

Mr. MACKENZIE: According to section 2(1)(*c*) of the Public Service Superannuation Act:

> "Public service" means and includes the several positions in or under any department, branch, or portion of the executive government of Canada and, for the purposes of this act, the Senate, House of Commons and library of parliament—And any board, commission, or corporation or portion of the public service of Canada specified in schedule A;

and there is a long list of individual agencies. With respect to the postmaster referred to in 2(1)(*b*) and, 5, in so far as these postmasters meet the minimum salary requirement of the Public Service Superannuation Act, they may be designated as contributors.

Mr. PELLETIER: Might I add a comment which I think is relevant to the discussion. I suggest that the committee look at clause 28 of the bill, which says:

> 28. Notwithstanding anything in this act, a person who is employed in the public service but not in the civil service shall not be appointed to a position in the civil service without competition unless
>
> (*a*) he is appointed under section 24 or 25; or
>
> (*b*) he has been employed in the public service for at least three years.

The CHAIRMAN: Shall clause 2(1)(*d*) carry?

Carried.

Clauses 21(*e*) and 21(*f*) carried.

Clause 2(1)(*g*)? Is there any objection?

Mr. MCILRAITH: Is this a lengthy schedule?

Mr. MACKENZIE: It lists the departments. I could read it if you wish.

Mr. MCILRAITH: Yes, I think it should be read.

Mr. MACKENZIE: Agriculture, citizenship and immigration, defence production, external affairs, finance, fisheries, insurance, justice, labour, mines and technical surveys, national defence, national health and welfare, national revenue, post office, public works, public printing and stationery, resources and

development—that is now the northern affairs and national resources department; secretary of state of Canada, trade and commerce, transport, and veterans affairs.

The CHAIRMAN: Are there any further questions on clause 2(1)(*g*)?

Carried.

Clauses 2(1)(*h*) to 2(1)(*l*) carried.

Clause 2(1)(*m*)?

Mr. KEAYS: Might I go back to clause 2(1)(*l*) for a moment, and ask Mr. Hughes if the commission might not appoint, without competition, a lay-off to another position in the civil service, and if there is not danger there that the tendency would be to keep people in the civil service at times when they are no longer required, or to deprive someone else of a position when he is qualified?

Mr. HUGHES: There is an important qualification to the obligation of the commission to appoint a lay-off to another position in the civil service, and it is that he must be qualified for the position to which he is appointed. In practice this restricts very markedly the number of positions to which a lay-off can be appointed. This is a precaution which is in the present act and it is well understood in the service. The abrogation of it would, I think, cause serious dislocation.

The CHAIRMAN: It would seem to me that all that is done by 2 (1) (*l*) is to define lay-off. When we come to clause 54 there will probably be considerable discussion on it, and it might be satisfactory to the committee to postpone discussion of this matter until then.

Clause 2 (1) (*l*) to clause 2 (1) (*n*) carried.

Clause 2 (1) (*o*)?

Mr. ROBERGE: If I may be permitted to express a personal opinion, I do not at all like the word "misconduct" to apply to negligence or incompetence. It seems to me that misconduct is one thing, while negligence and incompetence are something else.

The CHAIRMAN: This is a matter of language in the drafting.

Mr. ROBERGE: Yes, I know it is a drafting matter; but I would like to have Mr. Hughes' comments.

Mr. HUGHES: I can only say, Mr. Roberge, that this is a draftsman's device to avoid repetition in subsequent clauses of the bill, the full definition, or shall I say the repetition of the reasons for which a person can be demoted or dismissed or suspended. It may look absurd on the face of it, but misconduct may take in a lot of things. It is quite usual, as no doubt you are aware.

Mr. ROBERGE: I concede that it is a matter of drafting, but it seems to me that when we come to other clauses of the bill which deal with misconduct or incompetence, when it gets to be known by the public it might be misleading.

Mr. HUGHES: I suppose you would have to decide in your own mind whether negligence or incompetence is a justification for demotion or, under certain circumstances, dismissal; and if it is, I submit it should be there.

Mr. ROBERGE: I would agree that incompetence and negligence may be a ground for dismissal or suspension, but at the same time it is not misconduct. And in the later clauses of the bill the manner of dealing with these people who misconduct themselves, and those who are incompetent or negligent may be different.

Mr. HUGHES: Well, I think if you are concerned about public reaction to reading the word "misconduct" in a connotation where it would not appear to

be appropriate, if that is the question, this is bound to happen when the public look at any act of parliament. If they do not look at the definition section, they are going to be in trouble. And I think that applies to lawyers too.

The CHAIRMAN: I wonder if you can tell us if a man were to be demoted because of incompetence, whether the matter could be referred to as misconduct in the demotion records or would it not?

Mr. HUGHES: I would suspect that in the documentation of the demotion the specific nature of his defect would be mentioned. It would not be merely referred to under the generic heading of misconduct.

The CHAIRMAN: It seems to me there is something about this which we had better discuss with the draftsmen. It may be that we could suggest an amendment which would give the draftsmen particular trouble as regards other sections of the bill. Would the committee like to have this matter stand until we have a chance to hear the professional opinion of the man who drafted the bill?

Mr. ROBERGE: I suggest that this subsection stand until such time as we have the draftsman before us. It could be discussed at the same time as clause 56 and others which deal with the power of demotion and suspension. We might have a clearer picture at that time.

The CHAIRMAN: What does the committee think of that suggestion?

Mr. ROGERS: I think there was a lot of contention over the word "disrepute".

The CHAIRMAN: That, of course, is a different point. But I suggest that if we have finished discussing misconduct, we might pass on to other clauses.

Mr. BELL (*Carleton*): I think we could at least have a preliminary discussion about the words "and includes bringing the civil service into disrepute.

The CHAIRMAN: Do you have any views on this, Mr. Rogers?

Mr. ROGERS: I have not been a civil servant for a number of years, so I am not too concerned about the phrase.

The CHAIRMAN: Are there any further comments on this?

Mr. RICHARD (*Ottawa East*): Are you not concerned about what it means? What does it mean?

Mr. ROGERS: I think somebody else had better explain it, rather than me. I suppose it could mean a lot of things. It could mean the misappropriation of money.

The CHAIRMAN: Have you any comment to make, Mr. Hughes?

Mr. HUGHES: There are obviously offences and courses of conduct entirely out of keeping with the employment of a civil servant, and which could not be overlooked by a deputy head, as a subject for disciplinary action. This phrase is designed to cover them. I think that some staff organization representatives have indicated that this would give some unscrupulous supervisors tremendous power. It seems to me dangerous to test provisions of this kind in terms of a reduction to utmost villainy. If this is done, then it must be recognized any act may be repealed or amended in an atrocious form. It may be that some other phrase could say the same thing, but I think there must be some provision for action to be taken in a case of conduct which is flavoured by an aspect of moral turpitude, quite apart from the employment of the civil servant involved.

Mr. BELL (*Carleton*): Would you not think that the appeal procedure provided in this act is so broad that any injustice there may be in this clause would be bound to be the subject matter of appeal?

Mr. HUGHES: I think that is quite right; and perhaps I should have said that since all the disciplinary actions which may be taken in connection with misconduct involving the civil service in disrepute are appealable to the com-

mission, I think that the commission would be in a position to protect the civil service against any such dangers as contemplated in the submissions already made to us.

Mr. ROGERS: In a number of these cases I think there are many who resign involuntarily.

Mr. HUGHES: Yes.

Mr. ROGERS: So these do not come up at all.

Mr. HUGHES: No. Under certain circumstances an employee may be better advised to resign rather than to be dismissed.

Mr. ROGERS: I have found that to be so.

The CHAIRMAN: As I understand it, the purpose is to cover the situation where a man may be bringing the whole civil service into disrepute, by besmirching its reputation. Authority is required not to punish him for anything he may be doing, but only to remove this sort of irritation from the ranks of the civil service and to keep up its good record. Is it the wish of the committee that we carry this clause now?

Mr. RICHARD (*Ottawa East*): I think it should be left to the draftsman.

The CHAIRMAN: I am in the hands of the committee. I have simply suggested it.

Mr. MCILRAITH: I think your suggestion is excellent.

The CHAIRMAN: You mean to let it stand until we can have a further clarification?

Mr. ROBERGE: And we may speak to further clauses of the bill at that time.

The CHAIRMAN: Agreed that subclause (*o*) stand for the present. Clause 2(1)(*p*)?

Mr. MACDONNELL: May I be allowed to go back to clause 2(1)(*k*) for a moment? I want to repeat these words:

> (*k*) "government railways or ships" means . . . or the cost of which, or any portion of the cost of which, has been defrayed out of the consolidated revenue fund;

Does that mean ships being built with the assistance which was given in the last few years, and which would be government ships? It has been pointed out to me that the same wording is found in clause 57 of the present bill. It seems to me to be a rather inescapable conclusion. Perhaps the chairman of the commission could say that the bridge has been crossed.

Mr. HUGHES: All I can say is that it bears an exact relationship to the existing provisions, but this type of consideration which you have brought up is completely beyond my capacity to resolve.

Mr. BELL (*Carleton*): Perhaps the Chairman of the Commission would look up Mr. Macdonnell's point before the next meeting.

The CHAIRMAN: Let us now adjourn until tomorrow morning at 9:30 in this same room.

APPENDIX "A"

INDEX, BY CLAUSES, TO REFERENCES IN COMMITTEE PROCEEDINGS (ENGLISH TEXT)

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 14

FRIDAY, MAY 19, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

From the Civil Service Commission: Honourable S. H. S. Hughes, Q.C., Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners.

From the Department of Finance—Treasury Board: Mr. C. J. Mackenzie, Assistant Secretary.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25175-1—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)
Caron
Casselman (Mrs.)
Hicks
Keays
Lafreniere
Macdonnell
MacRae
Martel
McIlraith
More
O'Leary
Peters
Pickersgill
Richard (*Ottawa East*)
Roberge
Rogers
Smith (*Winnipeg North*)
Spencer
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, May 19, 1961.
(16)

The Special Committee on The Civil Service Act met at 9.40 a.m. this day; the Chairman, Mr. R. S. MacLellan, presided.

Members present: Messrs. Bell (*Carleton*), Caron, Keays, Macdonnell, MacLellan, MacRae, Martel, McIlraith, More, O'Leary, Richard (*Ottawa East*), Roberge, Rogers, Spencer, and Tardif. (15)

In attendance: From the Civil Service Commission: The Honourable S. H. S. Hughes, Q.C., Chairman; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners. *From the Department of Finance—Treasury Board:* Mr. C. J. Mackenzie, Assistant Secretary.

The Committee resumed its clause-by-clause consideration of Bill C-71, An Act respecting the Civil Service of Canada.

On Clause 2:

Paragraph (*k*) of Sub-Clause (1) was allowed to stand.
Paragraphs (*p*) to (*s*) inclusive of Sub-Clause (1) were adopted.
Sub-Clauses (2), (3), (4) were adopted.
Sub-Clause (5) was adopted, *on division.*

On Clause 3:

Sub-Clause (1) was adopted.
Sub-Clause (2) was allowed to stand.

On Clause 4:

Sub-Clauses (1), (2), (3), (5), (6), (7), (8) were adopted.
Sub-Clause (4) was allowed to stand.

On Clause 5:

Sub-Clause (1) was allowed to stand.
Sub-Clauses (2) to (5), inclusive, were adopted.

On Clause 6:

Paragraphs (*a*), (*d*), (*e*) and (*f*) were adopted.
Paragraphs (*b*) and (*c*) were allowed to stand.

On Clause 7:

Following discussion, the Clause was allowed to stand.
Clause 8 was adopted.

On Clause 9:

Sub-Clauses (1) to (4) inclusive and (6) were adopted.
Sub-Clause (5) was allowed to stand.

Clauses 10 to 14, inclusive, were allowed to stand.

At 11.00 a.m. the Committee adjourned until 9.30 a.m. Thursday, May the 25th, 1961.

E. W. Innes,
Clerk of the Committee.

25175-1—1½

EVIDENCE

FRIDAY, May 19, 1961.

The CHAIRMAN: Gentlemen, we have a quorum. Would the committee come to order, please.

I would ask the civil service commissioners and Mr. Mackenzie to come forward.

Mr. BELL (*Carleton*): Mr. Chairman, yesterday Mr. Macdonnell raised a question in connection with clause 2(1)(*k*), as to whether that brought under the act those ships which will be built under the recent subsidization. From the study that I have given to this and consultations that I have had, I think this is a matter which certainly should be referred to the draftsmen for consideration. I do not think it becomes a real practical problem because such ships are not likely to be manned by civil servants. However, there certainly is a drafting problem, which I think we should have clarified by Mr. Driedger.

The CHAIRMAN: Is that suggestion agreeable to the committee?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: When we closed yesterday we had completed clause 2 (1)(*o*). (*o*) had been set aside for further consideration of our request for clarification by the draftsman of the bill.

Clause 2 (1) (*o*), stands.

Clause 2, (1)(*p*) to (1)(*s*), inclusive, agreed to.

Mr. CARON: Mr. Chairman, there was a suggestion by one of the associations that after (*s*) there should be defined the word "grievance".

Mr. BELL (*Carleton*): I think that is something which ought to have some detailed study, Mr. Chairman.

If we are to do anything in connection with grievance, I think the appropriate place would not be to define it, by adding (*t*); the draftsman would have to do some alterations.

I personally believe that we ought to have some provision in the bill which would govern grievances and the technique in dealing with grievances.

I am not clear in my own mind as to what the best procedure would be. It might well be to include in section 68, which is the regulation-making section, provision for the governor in council to make regulations on the recommendations of the commission, establishing a formal grievance procedure for the service as a whole and, as well, for each individual department, and that the type of grievance which would be the subject of the procedure be defined.

The suggestion I would like to make is that we ask the draftsman to take a look at this whole problem of grievance procedure and to report to us any specific suggestions which we then might study.

Mr. CARON: To define the way a grievance procedure works is all right, but this should include at this point only a definition of what the word is. They suggested that grievance means alleged grounds for complaint, and they wanted only a definition supplied for the word "grievance". Then, later on, they can find a way, as they suggested in one of these briefs, to deal with them. The suggestion was just to add the definition for the word "grievance".

The CHAIRMAN: Do you agree with Mr. Bell, Mr. Caron, that some form of grievance procedure should be established by the bill?

Mr. CARON: Yes, but I believe that the definition of the word should be put with the definitions. These are all definitions.

Mr. KEAYS: Mr. Chairman, could not that matter stand until we come to it later?

Mr. CARON: I will be happy with that.

The CHAIRMAN: If that is suitable, I think it would be best to let the matter rest until we receive a suggestion from the draftsman as to the manner in which this might best be done. Is that satisfactory?

Mr. BELL (*Carleton*): Mr. Chairman, the committee seems to be unanimous in its desire to establish a form of procedure, and it is only a matter of getting technical advice as to the best means of doing so.

The CHAIRMAN: If necessary, we can add (*t*) to (1), in order to provide a definition.

Mr. CARON: When we get to the question of grievance, we can revert back, and add a definition.

Mr. MACDONNELL: Mr. Chairman, I wanted to raise a question in regard to (*s*). I was mightily surprised to see allowances included in remuneration. Is there any possibility it might cause an unexpected situation under the Income Tax Act? I do not know the act well enough to know whether or not the word remuneration would be applicable there. Is "allowances" fairly described as "remuneration"? I would not have thought so.

Mr. C. J. MACKENZIE (*Assistant Secretary, Treasury Board*): Yes. The type of allowances contemplated by this section are those defined in 2(1)(*a*) which are compensation for duties, and these, of course, are taxable. The allowances which the committee were discussing yesterday, namely, isolation allowances, are of course already taxable income. The type of allowance which is not taxable income are travelling allowances, which are accounted for, and the allowances paid in respect to the staffs outside Canada.

Mr. MACDONNELL: I just wanted to draw that to your attention.

Clause 2,(2) to (4), carried.

On clause 2(5).

Mr. CARON: Mr. Chairman, this is where it was suggested in one or two of the briefs that this subclause (5) should be changed, and that subclause (6) and subclause (7) be added. It is suggested that it should read as follows:

> 2. (5) subject to the provisions of section 7 of this act, the governor in council may, on the recommendation of the commission, declare any positions, not being professional, semi-professional, mangerial or clerical in character, to be prevailing rates positions, and may revoke any declaration made under this sub-section.
>
> (6) prevailing rate employees shall be employed under this act, subject to its provisions, except
>
> (i) that prevailing rates of pay for these classes shall continue to be set by the treasury board in consultation with the Department of Labour and the staff associations concerned;
>
> (ii) that overtime, supervisory, and shift conditions and rates, shall be set by the treasury board in consultation with the Departemnt of Labour and the staff associations concerned.
>
> (7) For the purpose of this act, positions in or in connection with government ships shall be deemed to be prevailing rates positions.

This is quite an addition to the clause as it now stands.

The CHAIRMAN: I wonder if Mr. Hughes would comment on that.

Hon. S. H. S. HUGHES (*Chairman, Civil Service Commission*): Mr. Chairman, I think that since the status of an employee is part of the condition of his employment, this could be made the subject of consultation and discussion under clause 7, either in its present form or whatever form would emerge. It is not necessary to make a special case of this particular type of transaction.

Mr. BELL (*Carleton*): You would think the amendments really unnecessary?

Mr. HUGHES: I would, Mr. Bell.

The CHAIRMAN: Any other questions on this point?

Mr. CARON: It seems to be the desire not only of the federation but also of the association that this point should be clarified in the bill, that it would be much better if it were clarified. The federation stated this that at the bottom of page 4, and the association have it, in the English text, at the bottom of page 19.

Mr. ROGERS: Are you referring to page 33?

Mr. CARON: I have it in front of me only for the federation.

Mr. BELL (*Carleton*): It is only the federation—I may be wrong in that.

Mr. CARON: I think you are right. The only suggestion that was made was made by the federation, but the civil service association speaks of it also somewhere, although they do not have any proposal to suggest.

The CHAIRMAN: At any rate, Mr. Caron, Mr. Hughes suggested that this point is already covered in the bill, and that amendments are not necessary.

Mr. CARON: I do not believe it is covered in the bill clearly enough to make an amendment unnecessary.

The CHAIRMAN: Any further comments?

Mr. CARON: It is unnecessary to clarify too much, but it is always dangerous not to clarify enough.

Mr. BELL (*Carleton*): I would personally be satisfied with Mr. Hughes' assurance that what is sought by the amendment can be accomplished by the existing act, and the amendment is therefore unnecessary.

Mr. CARON: But we are studying the act for the benefit of hundreds of thousands of civil employees, more than for the commission itself. It is the employees we are looking after.

Mr. MACKENZIE: I agree entirely with Mr. Hughes that the amendment is not required.

The CHAIRMAN: We have the expression of Mr. Mackenzie and Mr. Hughes that the amendment is not required. The point is already covered in the bill.

Mr. CARON: Where?

The CHAIRMAN: Under clause 7 of the bill.

Mr. CARON: This amendment is to clarify clause 7.

Mr. HUGHES: The point is that the commission would be the body to make the recommendation to the governor in council on this subject, and clause 7, as I say, in its present form provides for discussion on conditions of employment. I agree that because of the general importance of the pay question those words may have been overlooked, but they do include discussion on conditions of employment. Since the status of employees is quite obviously a condition of their employment, I am satisfied that this discussion could take place before the commission would make any recommendation.

Mr. CARON: I quite understand that you are satisfied, but they do not seem to be and that is the main point.

The CHAIRMAN: Of course they might well be satisfied when they have this explanation.

Mr. CARON: Because the changes had been made in accordance with the expected changes in clause 7. We may as well leave it aside until we reach clause 7 and then come back to it.

The CHAIRMAN: What is the feeling of the committee? It seems to me, Mr. Caron, that the committee in general is satisfied with the clause as it is now written, and we have the advice of the chairman of the commission and of the secretary of treasury board that the clause does provide what the civil service federation asks, and I am inclined to ask that the clause shall carry. Shall the clause carry?

Mr. CARON: I oppose it.

The CHAIRMAN: On division. Clause 3?

Mr. MCILRAITH: Mr. Chairman, on clause 3, I am not happy with clause 3, subclause (2). It is quite obvious that the deputy head must have a right to authorize any persons and delegate his authority; that is clear. But this clause is in the widest possible language, as I read it; and if the chairman of the commission has any views he would care to express about it, I would be happy to hear him.

The CHAIRMAN: Perhaps first we might pass clause 3, subclause (1), if there are no questions on it.

Clause 3, subclause (1) agreed to.

As to clause 3, subclause (2), Mr. Hughes, have you any comment?

Mr. HUGHES: Mr. Chairman, I confess that I have not considered it in the light that Mr. McIlraith suggested. As to whether this is not too general and sweeping an authority for delegation, of course this type of delegation happens every day in government departments; otherwise they could not be operated. I know it is not my business to ask Mr. McIlraith questions but perhaps—

Mr. MCILRAITH: I am quite happy if you want to.

Mr. HUGHES: Perhaps if Mr. McIlraith could state what he thinks might be a reasonable limitation on powers to delegate—

Mr. MCILRAITH: That is my problem. I think the difficulty is going to come here through improper delegation. I see no way of putting an effective check on improper delegation.

Mr. HUGHES: Except to hold the deputy head responsible, I suppose.

Mr. BELL (*Carleton*): Is the check not the common sense and reasonableness of the deputy head? I confess I was troubled by this very point when I read the act first, and I tried to think of some reasonable limitation that you could put on the delegation. Certainly none has occurred to me in such consideration as I gave to it.

Mr. MCILRAITH: I have not been able to come up with a reasonable limitation, but I am concerned with the problem, and over some time I have had some observations of improper delegation. If you have improper delegation you can set at nought most of the legislation with which we are dealing.

The CHAIRMAN: I would think that in a case like this the most effective check upon the deputy head to see that his authority is delegated to the proper and responsible persons, is provided by the appeal provisions in the bill.

Mr. MCILRAITH: The appeal is only on the part of the civil servant, and the civil servant obviously cannot argue that the particular officer to whom they delegated authority is not the officer in the department who should have the authority. That is where the trouble comes.

The CHAIRMAN: It would seem to me that with the appeal provisions in the bill a good many of the powers given to the deputy heads and to the management side under the bill will have to be used very carefully. I think

the deputy head will be careful to whom he delegates authority which could conceivably get him into trouble, when appeals can be sought from all of his decisions.

Mr. McILRAITH: That is exactly the kind of problem we have here. During the war years when there were difficulties over the protection of the right of promotion to men who were absent overseas we had some extraordinary situations in some departments through improper delegation of authority, something quite out of line with the policy as laid down, quite offensive to all concerned. I just do not see a method of controlling this improper delegation of authority, and it concerns me a good deal.

Mr. Paul PELLETIER (*Commissioner, Civil Service Commission*): On the point made by Mr. McIlraith, I would reiterate quite strongly one of the points made by Mr. Hughes, and that is that in order to operate effectively, particularly in the large departments, there must of necessity be delegation of power.

Mr. McILRAITH: I agree with that.

Mr. PELLETIER: But in the final analysis, no matter who delegates the power, the person who has the power is responsible. In the case of the deputy head, if the deputy head is vested with certain powers then he is responsible for any infractions or misuse of delegated powers that might occur, in the same way that the Commission is responsible for any misuse of the powers it might delegate to any department.

Mr. McILRAITH: Could you confine your comment just to one part of my remarks, Mr. Pelletier? You say the deputy head remains responsible; is not the deputy head's duty under this clause ended when he has delegated the authority? That is what we are going to be confronted with, that is what is going to be argued and what is where the trouble is going to come.

Mr. PELLETIER: But you will agree, Mr. McIlraith, that this subclause reads:

> The deputy head may authorize any person employed in his department to exercise any of the powers, functions or duties of the deputy head under this act.

He may authorize the exercise of those powers, but the act of parliament says that the deputy head in the first instance is the person who has authority to exercise those powers. I think that responsibility rests with the deputy head for anything that happens in any department, any action that is done by any employee of that department.

Mr. McILRAITH: Then Mr. Pelletier if your argument is correct on that, this subclause is quite unnecessary. The deputy head has the authority you have now described under the act creating his department, and this becomes unnecessary.

Mr. HUGHES: I was wondering, Mr. McIlraith, if there was not some check under clause 6, subclause (*b*). The commission has the authority to report to the governor in council on such matters arising out of or relating to the administration or operation of this act and the regulations as the commission considers desirable and, at the request of the governor in council upon any matter pertaining to organization and employment in the public service.

Mr. McILRAITH: Yes, there is some talk of it there. The weakness in the check, of course, is that the commission might well be told: "You are reporting on certain internal matters about the administration of the department which are outside of your field." That would be the difficulty there, but there is some check in that respect.

The CHAIRMAN: Has it not been your experience that when a man has authority to delegate he is also responsible for the use of the power he delegates?

Mr. McILRAITH: This subclause (2) seems to be very wide. Ordinarily he would have that responsibility, yes.

Mr. MORE: Is not subclause (2) just the practice that has existed, and the responsibility that the deputy head has now? There is no change, is there, to clause 2 in the present set-up?

Mr. HUGHES: I shall just look at the old act on that subject.

Mr. SPENCER: While the Chairman is looking up the reference, may I refer the committee to the evidence on page 153 of our printed proceedings, where Mr. Best of the civil service association dealt with this matter. He had this to say in regard to the subsection:

> The point here concerns delegation of authority and I think you have to leave the right to the deputy head. He is the one who will know best how to handle any particular problem of delegation and I do not think you can bring that to the civil service commission. The deputy head knows who is best qualified to handle a certain function.

The CHAIRMAN: It seems to me that this sort of thing could only be done with wide flexibility.

Mr. McILRAITH: That is my point. Is there not sufficient authority in the legislation setting up the department without putting it in this act?

Mr. HUGHES: There might conceivably be. I take it that the draftsman did not think so. I know he consulted the departmental acts before putting anything in about the powers of the deputy head. I should say that this provision is not in the present act in this form, but that it is provided for in the Heeney report. The draftsman used it as a guide, and no doubt was influenced to make the specific provision for the authority to delegate.

Mr. MACKENZIE: There is one further point the committee might care to take under consideration. I assumed from the earlier discussion that the committee felt that some form of grievance procedure should be embodied in the bill. If the definition of "grievance" as suggested by the civil service association were adopted, the grievance might be any alleged ground for complaint.

The CHAIRMAN: It seems to me that this is a case where wide flexibility is necessary, and commonsense on the part of the deputy head is requisite.

Mr. McILRAITH: I am not satisfied that it is circumscribed by the grievance procedure yet, but we can deal with it under the other section. I am not clear as to the necessity of putting it into the wide language in this act. We may be stepping into a difficulty which does not now exist—I mean unnecessarily stepping into it. The ordinary power of delegation is there now.

Mr. RICHARD (*Ottawa East*): I do not see that subsection (2) has any use at all. I would be satisfied to leave it with subsection (1).

Mr. MACDONNELL: I would question the wording in subection (2). I am becoming almost like a lawyer, and I ask whether the deputy head in subsection (2) includes an acting deputy head? It does not say so. I take it that "deputy head" means only "deputy head".

Mr. HUGHES: I might direct your attention to clause 2, subclause (1), paragraph (*h*) which provides that the governor in council may designate as the deputy head for the purpose of this act, *inter alia*, an acting deputy head. I think the definition of deputy head could embrace such a person.

Mr. BELL (*Carleton*): In principle I do not disagree with anything Mr. McIlraith has said. However, when I first read this clause, as I have already indicated, the extent of the delegation rather troubled me. But as I sought to find some limitation to put on the delegation, this occurred to me, and I think Mr. McIlraith found himself in the same quandary. Therefore, I think a clause permitting delegation is necessary in the act, and until we can come up with a reasonable limitation I think we must leave it in its present form.

Perhaps we might ask the chairman of the commission to consult with the draftsman of the bill to see whether he has any suggestion as to any limitation; and Mr. Mackenzie might consult and report to us at a subsequent meeting as to whether there is any limitation.

Having said that, I do not suppose I need to express my own view, but it is that the real safeguard is good commonsense and reasonableness on the part of deputy heads. I think the mere fact that Mr. McIlraith has raised the question this morning may have, in itself, a salutary effect.

The CHAIRMAN: Is it your suggestion, then, that clause 3, subclause (2) should be carried, or that it be put aside?

Mr. MCILRAITH: I would like to ask that it stand this morning, so that the draftsman may be consulted about it. We may find out if he thinks it is necessary. I have nothing further to say.

The CHAIRMAN: Then the committee is agreed that clause 3, subclause (2) will stand at the present time. Let us go now to clause 4, "Commission Established".

Mr. BELL (*Carleton*): Did we not have representations on this?

The CHAIRMAN: It seems to me there were representations from the federation on clause 4. Yes, the federation suggests:

> It is our belief that the civil service commission should consist of five (5) commissioners including the chairman. The larger number of commissioners would allow for greater movement throughout Canada assuming that three members would form a quorum, and provide for broader representation of views and experience among the members of the commission. This would develop if some commissioners were appointed from outside the service.

Are there any questions or views on this? I wonder if possibly the views of some of the civil service commissioners, who must know more about this than anybody else, would be of assistance to us.

Mr. ROGERS: What do you think, Mr. Hughes?

Mr. HUGHES: I think there are arguments on both sides. Undoubtedly three is a more manageable number than five. On the other hand, with the very much increased expectation of work in appeals, we could certainly use additional commissioners to do that kind of work. One of our difficulties in that area is, of course, that it is difficult to provide people of sufficient seniority in the commission's staff to handle appeals in the appropriate manner.

The CHAIRMAN: Are there any views from other members of the commission?

Miss ADDISON (*Commissioner, Civil Service Commission*): I feel quite strongly that three is really the right number of commissioners, because I think the civil service commission is rather different from other boards and commissions, in that it was set up to bring three people together to express a group opinion on matters relating to the civil service. It is this combined opinion which I think is important.

In other words, there are three members who are more or less equal in responsibility in this field. If you keep on adding to them, you just cannot work as a group, and it would mean that you would, to a great extent, have divided authority. I can see Mr. Hughes' point about appeals, but this is a separate field. If commissioners were appointed just to do that, it would be all right. As far as the general work of the commission is concerned, this group of three is very important. In considering this point, one has to stop and think: why was this commission set up? It was for a definite purpose, namely, to preserve the merit system, and to carry out the terms of the Civil

Service Act, which affects the civil service so directly. Therefore I think it is most important that we should work as a group, and three seems to me to be a workable number.

Mr. CARON: Do you not think if there were an increase in grievances to be studied, that an increased number of commissioners would make it easier, so that some might be able to travel and look after things?

Mr. PELLETIER: Following Mr. Caron's comment, and the comments made by Mr. Hughes and Miss Addison, I am also inclined to agree that three is better than five, or seven, or nine, and for a number of reasons, some of which have been enumerated by Mr. Hughes and Miss Addison.

I can see, as Mr. Hughes pointed out, that with the probable increase—perhaps quite a large increase—in the number of appeals we may have to hear, an additional commissioner, or two additional commissioners, might be useful. On the other hand, it must not be forgotten—and I am referring now to a subject which was discussed a moment ago, namely, the question of delegation—that there is not only the question of appeals in the civil service, but also that of appointments, demotions, transfers, and so on, for which the commission is responsible.

If the commissioners themselves had to do all this work, we would not need five commissioners: we would probably need 25. We obviously have to delegate this work to our officials, yet in the final analysis we, the commissioners, are responsible. That is one important point, but I think the most important point was made by Miss Addison when she said that the three commissioners are appointed to apply the provisions of the act set up by parliament, and that it is much easier to work with three commissioners than it is with five or with seven. Two would be too few, and I think five would be too many.

The CHAIRMAN: One thing that appears to me which might be accomplished by increasing the commission to five is that it would give a sort of regional representation, to some extent, to the commission. Would that assist your work in any way, Mr. Pelletier?

Mr. PELLETIER: Mr. Chairman, I did not hear your complete question.

The CHAIRMAN: Would it assist your work in any way if wider representation was available to the civil service commission; for example, possibly more people to represent different regions of the country. If it were increased to five, it then would be possible to have representation from each of the five principal regions of the nation. Of course, as I come from the maritimes, that is always of interest to me.

Mr. PELLETIER: That is a most embarrassing question, if I may say so, to pose to anyone, particularly to a civil service commissioner. However, I shall attempt to answer it in the most general possible terms.

It has been the practice in this country, not only with regard to the civil service commission but with other boards and agencies, to try to have representation of the two major ethnic groups of this country, My own belief is that, in so far as the kind of work the civil service commission is bound to do under statute, that is probably as far as we should go.

Mr. RICHARD (*Ottawa East*): God help us if we try to make it like the C.N.R. board or the C.B.C. This commission has a job to do which has nothing to do with regional or geographical factors. It is an act dealing with all civil servants.

The CHAIRMAN: Of course, regional representation is a very common Canadian practice. We have it on the Supreme Court bench. It is not unusual.

Mr. RICHARD (*Ottawa East*): It would be unusual, in discussing an act of this type.

Mr. PELLETIER: This has not to do with the question you have posed directly, but with the composition of the civil service. I believe strongly that the civil service, in its complex, should reflect the whole nation; but in so far as the commissioners themselves are concerned, I think their job is to see to it that this is done. The reason we have so many so-called national competitions, is in order to try to have the maritimers, the man from St. John's, Newfoundland, and the man from Victoria, B.C., and all points in between, represented in the civil service as a whole. I think that is more important than the composition of the commission itself.

The CHAIRMAN: Are there any further comments?

Mr. MARTEL: Mr. Chairman, in connection with clause 4, evidence is given by the Civil Service Federation, at page 34 of the evidence, when they refer to that question of appointing five commissioners instead of three. I will read it for you:

> The larger number of commissioners will allow for greater movement throughout Canada assuming that three members would form a quorum and provide for broader representation of views and experience among the members of the commission. This would develop if some commissioners were appointed from outside the service.

I would like to have a comment on that from one of the officials. What would your feeling be in regard to having somebody from outside the service? If I understood their suggestion correctly, they would like to have someone as commissioner from outside.

Mr. BELL (*Carleton*): The Chairman is from outside; he is a very distinguished former judge.

Mr. MCILRAITH: We always have had that.

Mr. CARON: Yes, we have.

Mr. MARTEL: I believe what they mean there is in connection with the increase; they want two more.

Mr. CARON: Well, once they are in, they are no more from the outside.

Mr. MARTEL: Of course, if it remains at three, there is no problem.

Mr. HUGHES: Mr. Martel, I appreciate the force of that argument. It would provide new blood and additional points of view, and certainly greater resources for keeping in touch with various parts of the country and different parts of our work.

Mr. MCILRAITH: Mr. Chairman, I think that since the commission has been set up it has in the main, carried out the general purpose for which it was created very well with the three-man board.

Mr. CARON: Two men and a woman.

Mr. MCILRAITH: I have not been impressed with the weight of any argument for increasing it. They must have a single opinion or judgment on most of these matters that come under their responsibility, and they do that very well with a three-person board. It seems to me that if we enlarge that board, without having some very adequate reason for doing it, we are in danger of having a greater part of their time taken up with internal meetings among themselves and with two or three opinions being put forward in the name of the commission all the time. Unless someone has a very strong reason, which has not yet been put forward, I would hesitate to do anything but strongly oppose any increase in the number of members from three.

The CHAIRMAN: Are there any further comments on this matter?

Mr. MCILRAITH: In connection with the matter of regional representation, it is a notorious fact that the civil service itself is filled with people from the

prairies and the maritimes. They have handled their work very well, and I think everyone is happy with that arrangement. I do not see any real problem, Mr. Chairman.

Clause 4, subclause (1), agreed to.

Clause 4, subclauses (2) and (3) agreed to.

On clause 4, subclause (4).

Mr. MACDONNELL: Mr. Chairman, I want to raise a question in regard to subclause (4).

I belong to an organization where, at the age of 65 we are entitled to continue on up until the age of 70. However, we do not have to do it all in one jump. I am wondering, Mr. Chairman, if there is any magic in saying that there can be only one extension. That seems to have the disadvantage of appearing to have quite a strong feeling that we do not want to arrest it under five years. There may be real difficulty in saying five years. Would there be any objection if it read for two years, or three years, and then they could act on the circumstances which existed at that time. I think that has a certain convenience. I know it has, because I have seen it in action.

There may be some arguments against my suggestion, but I have not heard them.

The CHAIRMAN: Are there any other comments on this?

Mr. MACDONNELL: Could we have an opinion from the commission on that?

Mr. HUGHES: I was just referring to my colleagues, Mr. Macdonnell, to see if the Heeney report had anything further than is incorporated here. This is identical to what the law now stipulates on the subject.

Mr. CARON: It is the very same thing.

Mr. HUGHES: Yes. However, I could see easily why five years could be too long, say if it became desirable to encourage the resignation of a commissioner between the age of 65 and 70.

Mr. PELLETIER: Could I add something to that?

I can see the force of the point raised by Mr. Macdonnell but, on the other hand, it must not be forgotten that under the section of the bill, as it now reads, the extended term shall not be in excess of five years.

Mr. MACDONNELL: I realize that.

Mr. PELLETIER: I take it that your point is that perhaps even at age 70 it should be made possible to extend it another five years.

Mr. MACDONNELL: No, no. My point is that at the age of 65, you do not have to determine whether you may appoint a man for a further period of five years; you may hesitate to do that, but you might find it desirable to extend it for a period of, say, two years and, at the end of that time, he might be going strong and you might extend it again.

Mr. MCILRAITH: Mr. Macdonnell is suggesting that we extend it for a a five-year period of extension.

Mr. MCILAITH: Mr. Macdonnell is suggesting that we extend it for a period, rather than one period not exceeding five years.

Mr. SPENCER: What would be wrong in changing it to read: one or more periods, not exceeding in the aggregate, five years.

Mr. CARON: It says in subclause (4):

> except that where the governor in council is of opinion that it would be in the public interest to extend the term of office of a commissioner beyond that age.

Mr. BELL (*Carleton*): I agree with Mr. Macdonnell. I think we ought to let this subclause stand and let the draftsmen come up with the words which will accomplish Mr. Macdonnell's point of purpose.

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: Subclause (4), then, shall stand pending the work of the draftsmen.

Clause 4, subclause (4), stands.

Clause 4, subclauses (5) to (8), inclusive, agreed to.

On clause 5, subclause (1).

Mr. HUGHES: In connection with this particular clause, Mr. Chairman, we would like to have consideration deferred for consultation with the draftsman in order to make a change in the wording, which would be more expressive of the actual situation which prevails in the commission.

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: Is it agreeable that we allow subclause (1) to stand?

Mr. MACDONNELL: Are you standing the whole clause, or just the subclause?

Mr. HUGHES: Just subclause (1).

Clause 5, subclause (1), stands.

Clause 5, subclauses (2) to (5), agreed to.

On clause 6, (*a*).

Mr. BELL (*Carleton*): It was the professional institute which suggested that this might be extended to include counselling and personnel research. Would the chairman comment on that?

Mr. HUGHES: The chief difficulty about this question is a definition of the word "counselling", and if you can define it, then you find that most of the cases requiring some type of therapy, by discussion, as it were, verge on the responsibilities of the Department of National Health and Welfare which, under section 5 of its act, has direction over the administration of health matters in the civil service. We have found it very difficult even to contemplate cases which require advice of a serious and sustained nature, other than those which may be properly described as cases of mental disturbance, and should be reserved for the health authorties.

The second point I would like to make on that, Mr. Chairman, is that departmental personnel officers now are in very close touch with this type of situation.

I am wondering if the erection of an additional supervisory function by the commission is not an unnecessary elaboration of their duties as they exist now?

The CHAIRMAN: Are there any other questions on this particular point regarding counselling and personnel research that was raised by the professional institute? No comment.

Shall paragraph (*a*) of clause 6 carry?

Agreed.

Shall paragraph (*b*) of clause 6 carry?

Agreed.

Mr. PELLETIER: Mr. Chairman, may I before this clause is carried, make a comment on 6(*b*)?

The CHAIRMAN: Certainly.

Mr. PELLETIER: This paragraph now reads that

The commission shall

(*b*) report to the governor in council upon such matters arising out of or relating to the administration or operation of this act and the regulations as the commission considers desirable.

My comment, Mr. Chairman, addresses itself to the rest of this paragraph which reads:

and, at the request of the governor in council, upon any matter pertaining to organization and employment in the public service.

Now, Mr. Chairman, I think members of the committee will recall that the basis of the Heeney report was that we tried to keep the civil service commission strictly a final authority in those matters where maintenance of the merit principle was involved, and indeed to divest the commission or recommend that the commission be divested of final authority in all those areas which were primarily of managerial concern or where significant fiscal considerations were involved.

Those are the reasons for which we recommend in the report that the commission should only exercise an advisory function with regard to organization. We recommended in that report, and I think rightly so, that in the field of organization the final and exclusive authority should be the executive, but that the commission should, on a regular and mandatory basis, make regular reports on the organization of all departments, and indeed make reports of its own volition at any time. The paragraph as it now reads means that the commission cannot make a report on organization unless it is requested so to do by the governor in council.

Mr. BELL (*Carleton*): No, I do not think that is there at all, Mr. Pelletier, and I put that specific point to the draftsmen of the bill, who would agree with me and not with you, I think, that the first part of paragraph (*b*) is sufficiently broad in its operation to permit the commission to undertake on its own initiative, exactly the type of investigation and report that you contemplate.

The CHAIRMAN: In other words, your interpretation is that the first part of the paragraph gives wide authority to the commission to make any reports and investigations it wants, but the second part will provide that the commission, at the request of the governor in council, must make reports?

Mr. BELL (*Carleton*): My understanding is that the second part of it in no way restricts the generality of the first part.

Mr. CARON: It would appear that it does over here. The first part says that you report to the governor in council upon such matters, but later on it says:

At the request of the Governor in Council, upon any matter pertaining to organization and employment in the public service.

Mr. BELL (*Carleton*): That latter part in no way restricts the generality of the first part.

Mr. MACKENZIE: The important words in the second part of the paragraph are the words "public service", which the committee will recall includes considerably more than civil service, and the intention of the paragraph as drafted was that the civil service commission, for example, should not investigate the organization of the national research council—an exempt body—unless it has the authority of the governor in council to do so. The commission has complete freedom under the first part of the paragraph, as Mr. Bell has said, to make such investigations in the civil service, and the second part would extend to the governor in council the facility and expertise of the civil service commission in organization matters as applied to agencies which are not in the civil service, but are in the public service.

Mr. MCILRAITH: Your point is covered in that; but does not the real problem turn on the use of the word "and" in the second line from the top of page 5?

If the clause means what you suggest it does, should not some other phrase be used, or some other words instead of "and"? It should be "and also" or some words of that nature, or maybe the word "or" or "and also"; but that is where the difficulty comes.

Mr. BELL (*Carleton*): I can say very specifically that the draftsman gave me positive assurance in relation to this that in its present language it did accomplish exactly what Mr. Pelletier has been describing. If there is a wish to have it stand for further opinion from him, I certainly have no objection to that being done.

Mr. RICHARD (*Ottawa East*): I am not very interested in the draftsmen—they are paid to do a job.

Mr. MACDONNELL: I must say I do agree with what Mr. Caron said. This second paragraph seems to be something that can only be done at the request of the governor in council.

Mr. BELL (*Carleton*): The second part can—it is the first that we are discussing.

Mr. MACDONNELL: It would seem to me—here is where I may be wrong—that the first and the second parts are not exclusive, and when you say "at the request of the governor in council" what follows appears to me to overlap to some extent with the first part.

Mr. BELL (*Carleton*): The first part is the general part.

Mr. RICHARD (*Ottawa East*): Why not make it clear? We are all agreed, but apparently it is only a matter of draftsmanship.

The CHAIRMAN: That is the point.

Mr. CARON: If it could be divided into two paragraphs instead of being one, it might clear it up.

Mr. MCILRAITH: It should be made clear by some means.

The CHAIRMAN: We should refer this to the draftsmen because we do not think the clause says exactly what we think it intends to say. If it is agreeable then, we will let the matter stand and come back to it at a later date when we have the draftsmen's opinion on the paragraph.

Shall paragraph (c) carry?

Mr. CARON: I think there was a suggestion made by the civil service association that we should add between the words "deputy head" and "report" the words "on his own initiative, the commission shall". It would read this way:

> The commission shall at the request of the deputy head or on its own initiative report on any matter pertaining to organization and employment in the department.

Mr. BELL (*Carleton*): Again it is a situation, I have been assured, that is covered by the first part of paragraph (b), and that there can be no doubt of it.

Mr. CARON: If it is covered, there is no harm in adding the words "or on its own initiative".

Mr. SPENCER: There is harm. If we start adding to paragraph (c), then it might be interpreted as being restrictive of the generality of paragraph (b).

The CHAIRMAN: It seems to me, Mr. Caron, that the first part of paragraph (b) gives wide authority to the commission to investigate and report upon all matters which the commission thinks should concern it. Besides that, the latter part of paragraph (b), and paragraph (c) also provides certain things that

the commission must do, not of its own volition but either at the request of the governor in council or of the deputy head. It would not do to narrow this down.

Mr. CARON: But even paragraph (*b*) is not clear enough. I do not think we can go ahead with paragraph (*c*) before we have a new draft on paragraph (*b*). If paragraph (*b*) stands as it is, it will not be clear that they have the power to report on their own initiative. I would move that it stand with paragraph (*b*) until we can deal with both together.

Mr. HUGHES: If I might just underline what Mr. Pelletier said about the scheme of the Heeney report on this matter, this refers, I think, to the request for the advisory function of the commission to be exercised in a matter of internal and departmental concern.

The CHAIRMAN: Is that satisfactory?

Mr. CARON: I would like to leave it there until we decide on paragraph (*b*) and deal with both together.

The CHAIRMAN: What is the wish of the committee in that respect? Is it agreed, that paragraph (*c*) also stand over until we have the draftsman here?

Agreed.

Paragraph (*d*) agreed to.

Paragraph (*e*) agreed to.

Paragraph (*f*) agreed to.

Gentlemen, Miss Addison would like to make a comment on the addition of a further paragraph to clause 6, if that is satisfactory to you.

Miss ADDISON: I would like to draw the committee's attention to this whole section. This is a section which sets out in very general terms the duties of the commission. Throughout the act these duties are set out in more detail, but this is where the broad duties of the commission are stated, and there is one very important responsibility that is not enumerated in this clause.

I think it would be helpful in clarifying the administration of the rest of the act if this could be included. This is the responsibility of the commission to classify positions. It seems to me that if we had a section here which clearly stated that the authority to classify positions rested with the commission, it would make the interpretation of the rest of the act very clear. I know that in clause 9 it seems to say this. But the clause we are discussing is the one that sets out the general duties of the commission, and I would like to suggest that since we do recruitment and promotion and so on, selection of qualified people, reporting on organization and so on, as stated in this section, it would be useful to also state that the commission has exclusive authority to classify positions in the civil service.

Mr. BELL (*Carleton*): I do not see how that could be set forth with greater precision than it is in clause 9(1)? Is seems to me that if you are going to take all the duties of the commission and put them into clause 6, then clause 6 will have to be very considerably expanded beyond its present form. Is there not the greatest precision in clause 9?

Miss ADDISON: I feel there is a fair amount of precision in 9, but there is precision in other sections of the bill that deal with the first part of 6 (*a*), and yet it was felt necessary to mention the fact that the Commission is responsible for appointments.

Mr. BELL (*Carleton*): If you brought the provisions of 9 up, would you not have to bring up the provisions of 10?

Miss ADDISON: In 10 we do not have exclusive authority. Classification is an area in which we have exclusive authority just as we have in appointment, which is set out in 6(a). It would clarify the administration of the new Act if classification were also in this clause of the bill.

The CHAIRMAN: Any other comments? It seems to me that this suggestion is that we do something which is now being done by the bill in a different way than the draftsman has suggested here. He has provided this organization, and if there are no good reasons why we should change that organization—possibly we should allow the authority to remain as it is in clause 9. Are there any further comments on this point? Shall we more on to clause 7?

Is clause 7 agreed to?

Mr. CARON: No, that is the crucial point.

Mr. KEAYS: Mr. Chairman, in our discussion yesterday, Mr. Bell brought up the suggestion that we should ask the draftsman to bring in some suggestions and then we could sit down and discuss them with him.

The CHAIRMAN: Any other points on clause 7?

Mr. RICHARD (*Ottawa West*): Mr. Chairman, there is no doubt that we agree that the clause is not sufficient. The word "consult" did not carry the thinking, at least of the association and the civil service generally, and that some form of negotiations should be instituted, and that the clause, as I said before, was not sufficient. I think most members are agreed that it has to be amended. But whether we should wait until we have the draftsman with us, I do not know. I do not think there is any suggestion that the clause should be carried in its present form.

The CHAIRMAN: It might be better then. I know that other members of the committee have opinions to express on this; quite possibly Mr. Richard's and Mr. Keays' suggestions are well taken, and that we should stand this clause until we have the draftsman with us, and then of course we could go into the whole thing. What is the view of the committee in that regard?

Agreed.

Now we are on clause 8, access to records, assistance, etc.

Mr. PELLETIER: May I make a comment?

The CHAIRMAN: We thought we would let clause 7 stand until we have the draftsman here. We are putting aside all things which we think are major matters and which will require a lot of discussion at the end of our proceedings, when we will handle them with the appropriate staff here.

Mr. PELLETIER: My point is very much related to this clause and I would like to say a word about it, if I may.

The CHAIRMAN: Does the committee wish to hear Mr. Pelletier?

Mr. CARON: I think that if this is not settled, how can we go ahead with the bill, when everything turns on that section? Most of the bill turns on that section, and there are quite a few suggestions and proposals which have been made by the different organizations which would relate to clause seven later on in the bill.

The CHAIRMAN: The question is one of procedure, whether or not we are going to stop now and devote the time that would be required at this point to a very important clause, clause seven, or to stand it and go ahead with clauses that we can deal with and discuss, and perhaps carry; then we might go back later and deal with clause seven in detail.

Mr. CARON: If we stand this clause, we will have to stand clauses 11 to 14, because they all relate to the same thing. Therefore all the other clauses would have to be stood.

Mr. BELL (*Carleton*): Any clause which relates to this would have to stand automatically.

The CHAIRMAN: If that is satisfactory we could hear Mr. Pelletier at the time we go to work on this clause.

Mr. MCILRAITH: We have just about five minutes left. Perhaps we could hear him now, then deal with clause eight, and then adjourn. I hope we could adjourn before 11 o'clock this morning.

Mr. PELLETIER: I do not want to take up the time of the committee, if it is the wish of the committee to stand all these clauses.

The CHAIRMAN: Very well. In five minutes we could perhaps carry clause eight, unless there are some partciular points to be brought forward requiring considerable discussion.

Clause 8 agreed to.

Clause 9 subclauses (1) to (4) agreed to. On clause 9, subclause (5):

The CHAIRMAN: Now, shall clause 9 subclause five carry?

Mr. PELLETIER: Mr. Chairman, this is relevant to the comment made by Miss Addison a moment ago. It concerns the addition of a subclause on the question of classification. Subclause five of clause nine provides as follows:

> (5) The commission may divide, combine, alter or abolish any classes or grades, but no alteration in the establishment of a department shall be effected by anything done under this subsection without the approval of the governor in council.

Now, Mr. Chairman, I agree that this may be a question of drafting, but if this means what it might conceivably mean, and that is, for example, that the civil service commission cannot re-classify a position, let us say, from clerk grade III to clerk grade IV, without the approval of the governor in council, then I do not think it is quite right. I agree entirely, of course, that the governor in council should be the final authority on all matters such as organization, and indeed on all matters of monies recommended to parliament for any given department. But within this limit, it seems to me that the commission should be the final and exclusive authority to classify positions. This may be a question of draftsmanship.

Mr. BELL (*Carleton*): That is the way I interpret this section, as accomplishing precisely what Mr. Pelletier has in mind, and that the overall purpose of the conjunctive clause is to make clear that the commission does not have the power in respect to the overall establishment, which is a matter for the governor in council. But as to the classifications within that establishment, I interpret subclause five as giving the commission the exclusive power. It is a matter of interpretation of the clause. Certainly the intention is to achieve what I think Mr. Pelletier has in mind.

Mr. CARON: If it is a matter of interpretation, obviously it would need clarification in my opinion.

The CHAIRMAN: Does the committee think that this clause needs clarification? It seems clear to me.

Mr. CARON: We would stand this clause.

Mr. HUGHES: Perhaps it might be approached in this way: by adding some words to clause 2(1)(*j*), to make it clear that establishment does not include the classifications of the positions. After the word "positions" there might be added some words such as "but not their clas or grade". If these words were inserted, it might have the effect that Mr. Pelletier wishes to put into subclause five.

Mr. PELLETIER: I am sure that would accomplish it.

Mr. MACKENZIE: The essential point in the conjunctive clause in sub-clause five is to ensure that in the civil service charges against the Consolidated Revenue Fund will not be increased without the approval of the governor in council. I would cite Mr. Pelletier's example of re-classification of a clerk grade III to grade IV. The effect of such an action would be to involve an additional expenditure of possibly $300 or some similar sum. On a large scale this might involve the crown in substantial expenditure. Under the present law increases of staff by re-classification of establishment require the approval of the governor in council, and sub-clause five continues the present practice.

Mr. BELL (*Carleton*): If there were in the establishment a clerk grade 4, then there would be no problem at all.

Mr. MORE: No problem whatsoever.

Mr. CARON: Would it not be better if an addition was made to sub-clause five as follows: "if it involves additional expenditure", after the word council?

Mr. MACKENZIE: I think almost invariably re-classification does involve additional expenditure, Mr. Caron.

Mr. CARON: It would not cover the case of a demotion or a change to a higher or a lower grade.

Mr. PELLETIER: I could not agree more that the Civil Service Commission should never be placed in the position where it can increase the charges. Obviously not. But my whole point is that a department may have a salary vote of so many dollars, and has authority to have so many positions. Then the civil service commission should be free to re-classify those positions within those limits. I mean that within the limits of the overall number of positions that a department is authorized to have,—and this is something we do not decide—then within the overall limit of the salary vote of that department, the civil service commission could be free to re-classify those positions.

Mr. MACKENZIE: This might have the effect, if I might say so, of completely altering the character of the function of a unit. Assuming an establishment of personnel officers, whose positions have been classified by the commission as grades one to six, then the re-classification, let us say, of personnel officer to that of engineer, grades I to VI, would completely alter the character of the unit and its functions. This certainly, it seems to me, is a matter of government responsibility.

Mr. CARON: That is why I suggested the addition of what was said a while ago, if it includes additional expenditure then.

Mr. MACKENZIE: In this particular case it could involve no additional expenditure to change, for example, the classification of a personnel officer to that of engineer. But it would certainly change the function of the unit.

Mr. CARON: But if it does not add any higher expenditure; I do not think that would affect the government's policy at all.

The CHAIRMAN: What is the wish of the committee in regard to this? Shall the clause carry?

Mr. BELL (*Carleton*): I think it is clear enough now.

Mr. CARON: Can we not study the drafting of the subclause to see if there is a possibility of making it clearer?

The CHAIRMAN: Mr. Caron would like to have further comment on this from the draftsman. So we might stand the subclause at this time.

Subclause 5, stands.

Subclause 6 agreed to

Mr. BELL (*Carleton*): Then clauses 10 to 14 should stand, and we should start next time with clause 15.

The CHAIRMAN: Shall clauses 10 to 14 stand until we have further consideration?

Agreed.

Then we shall begin next day with clause 15.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 15

THURSDAY, MAY 25, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

From the Civil Service Commission: Honourable S. H. S. Hughes, Q.C., Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners.

From the Department of Finance—Treasury Board: Mr. C. J. Mackenzie, Assistant Secretary.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25177-7—1

SPECIAL COMMITTEE ON THE

CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)
Caron
Casselman (Mrs.)
Hanbidge
Hicks
Keays
Lafreniere
Macdonnell
MacRae
Martel
McIlraith
More
O'Leary
Peters
Pickersgill
Richard (*Ottawa East*)
Roberge
Rogers
Spencer
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

ORDER OF REFERENCE

WEDNESDAY, May 24, 1961.

Ordered,—That the name of Mr. Hanbidge be substituted for that of Mr. Smith (*Winnipeg North*) on the Special Committee on the Civil Service Act.

Attest.

LÉON J. RAYMOND,
Clerk of the House.

25177-7—1½

MINUTES OF PROCEEDINGS

THURSDAY, May 25, 1961.
(17)

The Special Committee on The Civil Service Act met at 9.50 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Messrs. Bell (*Carleton*), Caron, Hicks, Macdonnell (*Greenwood*), MacLellan, Martel, McIlraith, More, O'Leary, Peters, Richard (*Ottawa East*), Rogers, and Spencer.—(13).

In attendance: From the Civil Service Commission: The Honourable S. H. S. Hughes, Q.C., Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners. *From the Department of Finance—Treasury Board:* Mr. C. J. Mackenzie, Assistant Secretary.

The Committee resumed its clause-by-clause consideration of Bill C-71, An Act respecting the Civil Service of Canada.

Clauses 15 to 18, inclusive, were adopted.

On Clause 19:

The clause was adopted subject to further review, if necessary, when Clause 6(*b*) has been considered.

Clauses 20 to 23 inclusive were adopted.

On Clause 24:

Sub-Clauses (1) and (2) were adopted and Sub-Clause (3) was discussed and allowed to stand.

Clause 25 was considered and allowed to stand.

The Chairman announced that a letter containing recommendations regarding grievance procedure has been received from National Defence Employees' Association.

On motion of Mr. Bell, seconded by Mr. Caron,

Resolved,—That the above-mentioned correspondence be included in today's record (*see Appendix "A" to this day's Minutes of Proceedings and Evidence*).

At 10.55 a.m. the Committee adjourned until 9.30 a.m. Friday, May the 26th, at which time the Commitee will continue consideration of Bill C-71.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

THURSDAY, May 25, 1961.

The CHAIRMAN: Gentlemen, I see we have a quorum and I will ask the meeting to come to order. Miss Addison, Mr. Hughes, Mr. Pelletier and Mr. Mackenzie will come forward please. At our last meeting we had proceeded as far as clause 14 and had set aside clauses, 7, 10, 11, 12, 13 and 14 for further study, or until we have the draftsmen here.

Clauses 15 and 16 agreed to.

On clause 17—Classification of new positions:

Mr. MCILRAITH: There is a reference to this clause in the Civil Service Association brief, as given at page 70 of our proceedings. I refer to paragraph 102 there, where they say:

> Clause 17(2) also seems to remove from the control of the commission the right to add new classifications and, in effect, could cause the loss of some control, uniformity and equity between the establishments of various departments.

And then they go on with the paragraph from there. Through you, Mr. Chairman, I would ask the chairman of the commission or either of the commissioners if they have any comment to make on the point raised in that paragraph.

Hon. S. H. S. HUGHES, Q.C. (*Chairman, Civil Service Commission*): The civil service association makes a general attack on clauses 15 to 19 on the ground that they remove from the control of the commission its former supervisory function in connection with organization of government departments as provided for under the present act. This is quite true. This is consistent with one of the main recommendations of the Heeney report that in the interests of flexibility the deputy head should be, in so far as the organization of the establishments is concerned, master in his own house, subject, of course, to the approval of the governor in council. I think that comment could apply specifically to the provisions of clause 17.

The CHAIRMAN: Any further questions on clause 17?

Clause 17 agreed to.

On clause 18—report to treasury board.

Clause 18 agreed to.

On clause 19—establishment review.

Mr. CARON: On clause 19 there is a recommendation by the civil service association to add to the bill:

> Shall request the civil service commission to review the establishments of departments at least every three years.

Would Mr. Hughes or any other member of the commission say whether they believe it is to the advantage of the commission to have to report on the organization of the departments every three years?

Mr. HUGHES: My colleague, Miss Addison, wants to make a comment about this, Mr. Chairman, but I would say this from my own personal view; I think that any routine review of departmental organization would have a restricting effect upon the operations of the commission, particularly if it had to be done at the end of any particular period. I realize that this comment is in conflict with the recommendation of the Heeney report on the subject, but in my short

experience I find that the demands upon the commission's advisory services—and it must be remembered that this review of organization would be discharged by the advisory services of the commission—are so great, and the business of establishing priorities is so difficult, that any purely regularly recurring commitment as far as organization is concerned, would have an unfortunate effect on the regular work of the commission.

Mr. CARON: But if there were no limitations on the way it should be presented to the governor in council, is there not a danger that it would be left without recommendations being made? If the commission is forced to make a recommendation every three, four or five years, it is clear that they have to do so and that they have to supervise.

Mr. HUGHES: I would sooner defer in this case to one of my colleagues.

Miss RUTH ADDISON (*Commissioner, Civil Service Commission*): I had another point besides the one under discussion, but on this question of review we felt that it would be an advantage if it were done on a regular basis because then the work could be planned ahead of time. This was one of the reasons why we suggested a five-year period. I would feel that three years was much too frequent; it would not be possible to cover the service in that time. If the review were done over a five-year period, the work could be planned ahead on a fairly regular basis, recognizing that from time to time you would break in on this schedule and do some things that are urgent and have to be done ahead of the regular schedule.

Mr. MCILRAITH: Just on that point, would not the fact that it was known that you had to review a department within a five-year period, have a beneficial effect on the personnel staff in that department?

Miss ADDISON: I think it could.

Mr. MCILRAITH: The knowledge that their actions were certain to be under review, would that not be of benefit in the administration of the department?

The CHAIRMAN: In line with that, Mr. McIlraith, clause 6(b) requires that the commission shall examine and report from time to time to the governor in council. The authority to examine and report is provided, but there is no definite report period set forth. I suppose there is the danger that if a certain period were set forth in the statute it might be taken to mean that the commission had no authority, except in these regular intervals, to examine the department, whereas at the present time they have authority from time to time as they see fit.

Mr. MCILRAITH: Would that not be a matter of draftsmanship, making it clear that having a time limit was no excuse?

Mr. PAUL PELLETIER (*Commissioner, Civil Service Commission*): Mr. Chairman, Clause 6(b) to which you have just referred was discussed at some length a few meetings ago. I think that if anything is done in so far as giving the commission authority—which I think it should have—either of its own volition or on a mandatory basis within a described period to make reports, clause 6(b) is the place where it should be incorporated, and I do not think clause 6(b) as presently worded achieves that.

The CHAIRMAN: We have in mind making 6(*b*) a little clearer than it is.

Mr. MACKENZIE: The committee should be aware that the review of the establishments on behalf of the governor in council is carried out annually and will continue to be carried out annually since positions are reviewed in order to determine the amount of money required for the forthcoming year. The establishment review process is an annual process. The civil service commission has in the past been associated with that closely, and it is assumed it will be associated closely with it in the future.

Mr. RICHARD (*Ottawa East*): That is not the work of the civil service commission, that is only as regards estimates and rates of pay. It is not the work of the civil service commission every year.

Mr. MACKENZIE: The civil service commission must certify to the classifications contained in the establishments under the proposed bill.

Mr. CARON: Is there any disadvantage to having a special review made every three, four, or five years? It may be a repetition, but sometimes repetition is useful for clarification.

Mr. MACKENZIE: I would agree entirely, and I think, as Mr. Hughes said, clause 6 is the point at which to provide the authority under which such a review could be made.

Mr. CARON: It does not preclude putting it in clause 19 as well.

The CHAIRMAN: Except that any change you make in clause 6 applies to the work of the commission under the act.

Mr. CARON: Clause 6 stands for more clarification. We can stand clause 19 until clause 6 is brought back with a new draft.

The CHAIRMAN: I wonder if it would be satisfactory to pass clause 19 and make certain of what we wanted in clause 6?

Mr. CARON: I would rather have clause 19 stand in case we have not got what we want in clause 6.

The CHAIRMAN: What is the view of the committee on this?

Mr. MCILRAITH: Since I raised the matter, I would agree that the proper place for the amendment—if the committee agrees to an amendment—is on this clause 6, but perhaps we should leave clause 19. I have nothing more to say on clause 19 now.

Mr. BELL (*Carleton*): The fear which I would have, Mr. Chairman, is that if we write into the statute a mandatory period for review, we will reduce rather than increase the review which does take place. The statutory period of review will be taken as the regular period, and the result would be that we would not have as regular and as uniform a type of establishment review as now exists.

Mr. PELLETIER: I think you are right, Mr. Bell, except that the concept in this bill, and indeed in the Heeney report, is that the commission only exercises an advisory function. Treasury would always carry the responsibility and authority to conduct regular reviews of establishments.

Mr. BELL (*Carleton*): Which they do in association with the commission.

Mr. PELLETIER: At the present time.

Mr. MCILRAITH: They do not need to call in the commission at all.

Mr. MACKENZIE: As I pointed out, the question of classification is still wholly within the jurisdiction of the commission, and the commission must be consulted. An establishment is inconceivable apart from the classification of the positions contained in it.

Mr. MORE: I take it from Mr. Mackenzie that without classification there would be no positions. Is that the correct interpretation?

Mr. MACKENZIE: Certainly, the position would be meaningless.

Miss ADDISON: I had a comment on this point. This ties in with the remarks I made in connection with section 6 on the right of the commission to classify. In section 19 I feel the act is not as clear as it might be because it says that the governor in council may delete or add positions to the establishment of the department, but it does not say that the commission shall classify positions so added. And yet in other clauses of the bill, such as in clause 17,

it is clearly stated that the commission shall classify. This was why I thought that, if the overriding authority to classify were set out in clause 6, it would help to clarify points such as the one in clause 19.

The CHAIRMAN: In other words, you think the wide authority of clause 6 is a better way of arranging it?

Miss ADDISON: It makes it perfectly clear.

The CHAIRMAN: It has been suggested by Mr. Caron that we let clause 19 stand. I do not want to see every section stand.

Mr. CARON: In relation to clause 6, we have to wait until we have a new draft of clause 6 before we can decide on this one.

Mr. BELL (*Carleton*): Suppose we pass it on the understanding that if Mr. Caron feels, after looking at 6, that it needs to be re-opened, the committee will do so.

Mr. CARON: It is another way of standing it.

The CHAIRMAN: If it is carried, we will not come back to it unless you agree we should.

Clause 19 agreed to.

On clause 20—exclusive right to appoint.

Clause 20 agreed to.

On clause 21—appointments to be by competition with public service.

Mr. CARON: There is a recommendation there on clause 21 by the civil service federation of Canada:

> We believe the present wording of this clause is not sufficiently positive and that the word "public" should be changed to "civil" to conform with clause 2(1)(d). We therefore recommend that the following be substituted for the present clause 21:
>
> Except as otherwise provided in this act, appointments shall be made from within the civil service by competition.

The CHAIRMAN: That is not a matter of clarification but a matter of principle—whether closed competitions should be open to the public service.

Mr. RICHARD (*Ottawa East*): What are the views of the commission?

Mr. BELL (*Carleton*): It is a matter with which we dealt under clause 2.

Mr. CARON: But it comes back here.

Mr. BELL (*Carleton*): This point comes back in several sections, but having dealt with it in clause 2, it should carry all the way through.

The CHAIRMAN: Clause 21 agreed to.

On clause 22—appointment from within public service.

Mr. CARON: Clauses 22 and 23 have the same thing, public service and civil service, but it is dealt with in clause 2.

The CHAIRMAN: Clause 22 agreed to.

Mr. MCILRAITH: The recommendation made by the civil service association governing clauses 22, 23, 25 and 26 is dealt with on page 71 of the evidence of the committee. I wonder if there is any comment to be made on that?

Mr. BELL (*Carleton*): This was on the point of appeal.

Mr. MCILRAITH: They recommend that a clause be inserted and consequent renumbering be made so that the new clause would read:

> Any appointments made under clauses 23, 24, 26, and 27 of this act are subject to appeal by those employees of departments who may be denied the opportunity of promotion because of such appointment or appointments.

Mr. HUGHES: I might suggest, Mr. McIlraith, that the right of appeal is contained in clause 27, subclause (b). Persons whose opportunity for promotion has thereby been prejudicially affected shall have the right of appeal where an appointment is made without competition. As I understand it, that would apply to all the foregoing clauses.

Mr. MCILRAITH: Do I understand you, Mr. Hughes, that that right of appeal is sufficiently broad to include the right sought by the civil service association under this suggested addition to the act?

Mr. HUGHES: I would think so. I would not like to attempt to give a considered view as to what the staff association mean, but I think that this would probably be an excess of caution if the right of appeal were to be repeated in every case.

Mr. MCILRAITH: Could you give me the reference to the section on the right of appeal?

Mr. HUGHES: Clause 27, and in this case it would be subclause (b).

Mr. MCILRAITH: Where it refers to persons whose opportunity for promotion has been prejudicially affected?

Mr. HUGHES: Yes, and the commission must establish by regulation what "prejudicially affected" means.

The CHAIRMAN: That would seem clear to me.

Clause 22 agreed to.

On clause 23—when appointments from outside public service authorized.

Clause 23 agreed to.

On clause 24. Appointment by deputy.

Mr. PELLETIER: Quite apart from the fact that this clause as it is now worded restricts, to a certain extent, the power now enjoyed by the deputy heads under the present act, I think subclause 3 of clause 24 would in some cases be impractical. Subclause 3 says:

> The remuneration that may be paid to persons appointed under the authority of subsection (1) shall be the remuneration established by the governor-in-council for the class and grade within which a position having comparable duties and responsibilities is included or such higher rate as may be fixed by the governor in council, or where there is no such position, the remuneration established by the governor in council. My main point is that under the previous subsection it is quite clear that emergency appointments cannot be made by the deputy head in excess of two months in Canada and three months outside of Canada. Therefore, I suggest that there should be no requirement to refer to the governor in council and that the deputy head, on his own, should be allowed to make these emergency appointments at local prevailing rates. It is quite clear by the previous subsection that if the appointment exceeds two months in Canada, or three months outside Canada, the normal Civil Service Act provisions come into play. In the circumstances, it seems wasteful of time and money to provide that Governor-in-Council approval must be obtained before these short term emergency appointments may be made.

Mr. RICHARD (*Ottawa East*): I think you have a very good point.

Mr. CARON: The clause does not seem to have any practical use.

The CHAIRMAN: Mr. Mackenzie, have you a point you would like to make on this?

Mr. MACKENZIE: The basic point I would like to make is that Mr. Pelletier's suggestion might lead to inequities of treatment as between different depart-

ments, which is a matter of serious concern to the staff associations. If the deputy head is granted authority to fix rates of pay, Mr. Pelletier referred to local rates and it is often difficult to determine those. As you are aware the government uses the Department of Labour for the purpose of determining prevailing rates for the prevailing rates classes, and the possibility exists that two deputy heads employing the identical type of employee in one locality may pay different rates to each.

The reason for empowering the governor in council to fix remuneration I think is fairly clear. First, if the emergency position is of a standard type, one of the 900 or 1,000 classifications in the civil service, then the deputy head must pay the approved rate for the classification. The reason for authorizing the governor in council to pay a higher rate is that often it is necessary to pay a bonus for short-time employment, for two or three months as the case may be. The general scheme of the act is that remuneration must finally be determined by the governor in council.

Mr. PELLETIER: I would draw the committee's attention to the word "emergency" in the first few lines of 24(1). I agree entirely with Mr. Mackenzie that the governor in council is the only authority who should be authorized to fix pay in the final analysis, but when you have a job to be done today and not in two months time, then I think the suggestion I made is very valid. It is a matter of getting on with the job. This cannot exceed two months or three months and, as I said earlier, the normal provisions of the Civil Service Act will come into play, which means if the job is to be extended beyond that period then the governor in council, and only the governor in council, can decide what the final pay will be.

Mr. CARON: If clause 24 were deleted what effect would it have?

Mr. HUGHES: Then you could not make any emergency appointments.

Mr. CARON: Is there no authority in section 3?

Miss ADDISON: You could have all these other things in; but if you added that the deputy head would also have the discretion to pay the prevailing rate, then it would give the deputy head a little more leeway in meeting these emergency situations.

Mr. HUGHES: It is particularly applicable to remote areas and in overseas positions where the services of the commission are not immediately available.

Mr. BELL (*Carleton*): It seems there is a misunderstanding with respect to the effect of subclause (3). It does not say that in an emergency the governor in council shall fix the actual salary of that individual who is so hired to meet the emergency. The salary that the person so appointed is to be paid is a salary which has been established by the governor in council for the class and grade. If it is not applicable in the class or grade, then it is such higher rate as may be fixed by the governor in council.

There is no basic restriction in this at all, I suggest. I myself would not be prepared to cast a vote which would give the deputy head the right on his own to get into a matter which has been so exclusively under the old act, and is under this new act, within the jurisdiction of the governor in council.

Mr. PELLETIER: You mentioned if the rate has been fixed by the governor in council; but it may well be that the rate fixed by the governor in council, say for carpenters, is so and so—$3, or whatever it may be—and at Kitimat for example, it might be impossible to get a carpenter at that rate. That is what happens. Take, for example, a situation where a carpenter is needed immediately. Certainly the deputy head should be authorized to hire a carpenter at $3.50 or $3.75, it being clear in the act that this cannot last for more than two months.

Mr. MACDONNELL: Would you make clear what is the alternative to that. You have described the situation which might arise at Kitimat; but, alternatively, what happens? Would there be an inevitable delay?

Mr. PELLETIER: Precisely. If you need somebody to do a job now, and if subclause (3) of clause 24 remains as it is, I am afraid that inevitably there will be delays and you will not get the job done.

Mr. MCILRAITH: I suppose this clause would govern in such hypothetical cases as a fire on civil service property in a foreign country; that is the kind of emergency where help would be required to deal with such a situation?

Mr. HUGHES: Yes; conceivably.

Mr. MACKENZIE: That would be very unlikely. Assume that the chancery at Rome caught fire. It is unlikely there would be Canadian citizens around to be employed. It would be a matter of employing Italian nationals who would be exempt under the act. The provisions which exist in the present act under section 38(3) provide for the payment to these emergency employees of the prevailing rate of pay at which persons qualified to perform such emergency work may be secured in the place or locality where the work is required. It should perhaps be observed that when the Civil Service Act of 1918 was passed, carpenters—which is the example Mr. Pelletier used—were subject to the act. Consequently, this reference to prevailing rates is in 38(3). If the emergency requirements were for a carpenter, the prevailing rates for the class of carpenter are established, as Mr. Bell has indicated, in most localities in Canada; they exist in schedules and are published regularly.

The CHAIRMAN: As a practical matter, if a number of men had to be employed at Kitimat or somewhere else, would it not be a matter for the deputy head to make arrangements for that, including wages and salaries, and get approval of the governor in council?

Mr. CARON: Oh no—they would ask the commission.

The CHAIRMAN: It seems to me that as a practical way of meeting the situation the arrangements would be made by the deputy head, subject to the overriding authority of the governor in council. Am I wrong about that?

Mr. CARON: If there are so many differences of opinion, it looks clearly that the clause should be clarified. Otherwise it would be clear for everybody that it means this or that to him. There are three or four different opinions which have been given on that clause. It needs clarification and should be redrafted.

The CHAIRMAN: I think Mr. Caron's suggestion is well taken. Perhaps we should let the matter stand and ask the draftsmen to have a look at it, in view of the opinions which have been expressed.

Mr. BELL (*Carleton*): I am quite satisfied to let it stand. I do not think it needs clarification. I think it is a question of principle. Is the governor in council to be responsible or not? I am afraid I have to take the position that the governor in council is responsible in respect of this, under other provisions of the act, and that this clause should remain. But I am quite satisfied to let it stand.

Mr. MCILRAITH: The existing act was clear on this point. It may not have been satisfactory, but it was clear. What is the reason for the change to this new provision? I have never heard any explanation of the reason for the change.

Mr. HUGHES: Perhaps as Mr. Mackenzie has stated the reason it is a matter shall I say, of pedantic consistency. The governor in council is given this control, as Mr. Mackenzie said, throughout the bill; and it is considered seemly to give it to him in this case. I confess that there could be some delay and embarrassment in providing for the approval of the governor in council in every individual

case, particularly in the case of the words "Or such higher rate as may be fixed by the governor in council".

Mr. MACDONNELL: As a matter of practical politics, what happens with our supposed carpenter in Kitimat? Does he have to wait, or does his work have to wait, until this section is applied, or does he go on with the work and the machinery portion follows in due course?

Mr. PELLETIER: That is my point. I think that if the section is left unchanged, he would have to wait.

Mr. BELL (*Carleton*): Why?

Mr. PELLETIER: In some circumstances. The whole basis of priority is simply this, that the governor in council must of necessity retain the authority to fix the pay, but on the other hand, keeping in mind the authority of parliament, of the governor in council, and of the commission, we still have the job to do. That is to say, the deputy head still has the job to do—I am talking on behalf of the deputy head, not the commission—and it seems to me that two months or three months is within reason, and he should be allowed to get on with the job.

Mr. CARON: We are brought to believe that this is for carpenters, or other trades like this, but this can be used for clerical work also.

Mr. MACKENZIE: In those circumstances, what would happen, it seems to me—answering Mr. Macdonnell's question—is that the deputy head suddenly requires a clerk 2 out at Yellowknife. Under this section he could immediately offer that clerk 2 the salary approved for clerk 2 by the governor in council, after the commission has had an opportunity to review the matter, and so on, under sections 9 and 10. If the employee is not satisfied with that rate—say, $2,960—the deputy head says to him: "You go ahead with the work at $2,960 and I will go to the governor in council and get an increase."

Mr. CARON: It does not say so in clause 24. That is why I think it should be reviewed. It is not clear enough to satisfy everyone.

The CHAIRMAN: I think the committee is generally agreed, as the commissioners seem to be, that the authority should remain with the governor in council to fix rates. Do you think we really ought to be trying here to amend this subclause, to settle what is really an administrative matter? The administration has to solve these things and set up procedures for them, and I do not think we should try to do it in the act. As Mr. Macdonnell said, this is the practical consideration which will have to be given.

Mr. PETERS: On the face of the act, it is clearly fundamental that we do not expect them to set up regulations that will change the act.

The CHAIRMAN: Not regulations, but the matter of practice within the department. What we are up against is that if we begin to change this subclause to give authority to the deputy head, we are undermining the right of the governor in council to settle remuneration—and I do not think we want to do that.

Mr. BELL (*Carleton*): Of course we are.

Mr. MCILRAITH: It seems to me that we have lost sight of the real point, that this is an emergency and that governors in council are notorious for the fact that they cannot deal with an emergency in a very small outlying area where there is no means of communication with the governor in council. This surely envisages a sort of situation where, because of the emergency, action must be taken immediately and presumably before proper and adequate communication with the constituted authority.

The CHAIRMAN: Is it your case that the deputy head should have powers in this instance, which he otherwise would not have under the act?

Mr. McILRAITH: Some power, with limitation. I do not see any way of avoiding it. If we take the clause exactly as it is, he has no power in that emergency, in the circumstances described there, and the regulations cannot crack that situation. There is no way of cracking on that, that I can see, under regulations, because this is an absolute section of the act, absolute in its form. I would like, when the section is standing, to find out in a precise way if there was a reason for a substantial change in dealing with this point when the new bill was drafted. The chairman of the commission was very fair in his comment. I understood his remarks to mean that he was merely supposing what the reason for the change was, and was not aware of any precise reason for the change. There may well be a good reason, but if there is, it has not yet been given to the committee. Presumably those concerned with the drafting have it. It is quite possible that it might be just an assumption on the part of the treasury board that it should be consistent. It could be anything; I just do not know.

Mr. BELL (*Carleton*): This is actually a broadening of the power. If you look at the old section 38(3), you see that the power was confined to appointing a person at the prevailing rate of pay. Under this section there is authority to appoint a person at the prevailing rate of pay—which is the first part—at the remuneration established by the governor in council for the class or grade. That is the prevailing rate, whether it is established for a prevailing rate employee, or is the rate established for a classified employee otherwise. If we stopped at that point, at subsection (3), we would have the same position as the existing act. But we go further in the present bill and we say that the deputy head may appoint that person in such circumstances at a higher rate of pay. Under the old act a person could not have been appointed at a higher rate of pay, if the act had been followed strictly. Therefore, we are expanding the situation here, expanding the emergency authority beyond that which existed in the previous act.

Mr. PELLETIER: There is one important exception which should be made to the remarks about the existing act, section 38 (3)—it talks about "prevailing rates", with a small "p", in the locality concerned. The phrase "prevailing rate" is not defined—it merely means what it says. I assume you cannot go beyond that. It means the rate prevailing in the locality concerned, not necessarily the rate fixed by the Department of Labour, or the treasury board, or the commission.

Mr. BELL (*Carleton*): Are you suggesting that "prevailing rate" in subsection (3) has a different meaning from "prevailing rate" generally?

Mr. PELLETIER: No, I am saying that under the present act " prevailing rate" means what it says, simply the prevailing rate in the locality, without anyone having to decide what that means; whereas in the present bill you have to go to the governor in council first and get a decision as to what the prevailing rate should be. I think that is an important distinction.

Mr. CARON: In the Heeney report, appendix A at reference 5109, it says:

> When an assignment is to be made by a deputy head under the provisions of item 8072.3 to a position which has not been classified, the deputy head may, notwithstanding item 3020, implement a change in plan of organization, and the prevailing rate of pay, at which persons qualified to perform such emergency work may be secured, may be paid to any person engaged for such work.

That is exactly what you were suggesting.

The CHAIRMAN: I think we should let clause 24(3) stand for consideration later. Perhaps more information will be available on the points raised. Otherwise we could spend the rest of the morning on this and not make a decision. By having a change to study it, in the light of what the draftsman says, we might find a simple answer.

Mr. MACDONNELL: What we are looking for is workability. I do not think we should forget what Mr. Mackenzie said is probably happening in such a case, when you say to the carpenter: "Go to work at the prevailing rate, but we will get it put higher". That is what I understood him to say. If it is a matter of practical politics that works out in that way, perhaps we are becoming too bothered by this wording.

Mr. MORE: I would like to get it clear in my own mind. Mr. Pelletier suggests that the new bill limits the powers that the deputy head had under section 38(3) of the old act. Is that your opinion?

Mr. PELLETIER: Yes it is.

Mr. BELL (*Carleton*): And Mr. Pelletier would substitute for it that the pay which may be given is that of the prevailing rate?

Mr. PELLETIER: Yes.

Mr. BELL (*Carleton*): In which case, in my submission, you are very considerably confined in what you can pay, from what is proposed under this new subsection?

Mr. PELLETIER: I could answer that, but I do not want to prolong this.

The CHAIRMAN: By all means.

Mr. PELLETIER: The bill says: "or at such higher rate". I do not think the governor in council would ever pay a rate higher than is required for the work to be done, so we always come back to the prevailing rate. The local rate may be higher than the national rate, or higher than the rate set down by the treasury board for stenographers, but it may not be higher than the prevailing rate for stenographers in any given locality.

Mr. BELL (*Carleton*): If you have full employment of carpenters in Kitimat you are not going to get a man to take up a job for two months at the prevailing rate. You have to pay a higher rate in order to get the man to do the job.

Mr. PELLETIER: That is probably an exception.

Mr. BELL (*Carleton*): If you are confined to the prevailing rate, as you suggest, I do not think you have the carpenter that you need under those circumstances.

Mr. CARON: Can it not always be revised by the governor in council?

The CHAIRMAN: There seems to be quite a few opinions on this. I think we should stand clause 24(3) for the time being.

Clause 24(1) and (2) agreed.

Claude 24(3) stands.

On clause 25—persons having special skill:

Mr. CARON: Clauses 22, 23 and 25 have been looked at by the civil service federation and civil service association and they have a proposal on clause 26 which would cover these clauses. It is in the question of right of appeal.

Mr. BELL (*Carleton*): We dealt with that on Mr. McIlraith's point.

The CHAIRMAN: I think it is covered in clause 27, is it not?

Mr. CARON: In the brief of the federation it is in clause 26.

The CHAIRMAN: The point is covered by clause 27 of the present bill. The appeal provisions are there.

Mr. MORE: I wonder if Mr. Mackenzie agrees that the appeal provisions of clause 27 are general?

Mr. HUGHES: I think clause 27 would cover this situation.

Mr. CARON: It does not cover the whole of clauses 22, 23 and 25. It is only a question of transfer.

Mr. HUGHES: There is another observation which must be made about clause 27, because of the wording. It refers to an "employee", and I think the draftsman would probably agree with the proposition that this is an error, that it should be "a person" who is about to be transferred or promoted to another position in the civil service; but this does not cover the case where the commission may, without competition, appoint somebody from outside.

Mr. MACDONNELL: In subclause (*b*) there is a reference to:

—the persons whose opportunity for promotion has thereby been prejudically affected—

Might that not cover a lot of territory? Is it perfectly clear that you can say that that includes A. B. C and D, and that it does not include anyone else.

Mr. MCILRAITH: He must have applied.

Mr. BELL (*Carleton*): "As prescribed by the regulations".

Mr. HUGHES: That must be provided for in the regulations.

The CHAIRMAN: Is there any other clause in the bill which covers the point of appeal from clause 25, or do you think that appeal from clause 25 is a practical matter, Mr. Hughes?

Mr. CARON: The amendment proposed by the federation covers clauses 22, 23 and 25. Clause 22 deals with appointments from within the public service; clause 23 deals with when appointments from outside the public service are authorized; and clause 25 deals with persons having special skill, being appointed without going through a civil service examination.

Mr. HUGHES: My difficulty is simply this, that the words of clause 27—which I have suggested possibly could be changed with advantage—preclude a right of appeal from clause 25, because it refers to "an employee". Clause 27 says:

—if the selection of the employee for transfer or promotion—

Under section 25, if the commission were to select an employee, in other words a civil servant, there would be the right of appeal. As section 27 now stands it would be confined to the case of the selection of an employee.

Mr. PELLETIER: With reference to some of the questions raised, I think it would be wise to look at clause 70(1) which says:

> This section applies whenever under this act of the regulations an appeal may be made to the commission.

It says "or" there. In several clauses of the bill—and clause 27 is one of their number—there is a provision for appeal; but in clause 70 there is provision to provide by regulation for appeals that may not be specifically covered in the bill itself.

Mr. CARON: Under this clause 70, the commission can always deny the right of appeal. Do you believe they have a right to appeal?

Mr. PELLETIER: It cannot deny the right of appeals that are specifically provided for in the act.

Mr. CARON: But it is not specifically provided for in the act by clauses 22, 23 and 25, and that is why the federation seems to believe it is important that it be included.

Mr. BELL (*Carleton*): May I suggest that we carry clauses 25 and 26, and let clause 27 stand, so that Mr. Hughes may give consideration overnight to the points which have been raised and come back, perhaps, with a considered statement on this matter.

The CHAIRMAN: What you have in mind is that clause 27 might be widened to allow an appeal?

Mr. BELL (*Carleton*): I am not making any representations in relation to this. I think Mr. Hughes might give some final consideration to it between now and the next meeting.

Mr. CARON: And if anything could be found on clause 27 to remedy the situation, then clause 26 would be gone, and that is where the federation suggested that the right of appeal should be included.

Mr. BELL (*Carleton*): In the structure of the act, if the right of appeal is to be put in, it would be put in in clause 27 and not clause 26.

Mr. MCILRAITH: In any event, your intention is to pass the section, other than the right of appeal?

Mr. PETERS: Under clause 25, how many people in the year are appointed under this provision?

Mr. HUGHES: I assume you mean "if it were enacted, how many would be appointed?".

Mr. PETERS: There is a similar section in the old act.

Mr. HUGHES: It is done in a somewhat different way, by exemption under the provisions of section 60 of the Civil Service Act. In such cases the civil service commission with the approval of the governor in council can exempt.

Mr. PETERS: How many exemptions would there be in the year? How many people are being appointed to civil service positions who are not either from within the civil service, or going through competition?

Mr. HUGHES: I can produce our last report to parliament on the subject, but I have not the figures in my head.

Mr. PETERS: Would it be 4,000, or 5,000, or 25,000, or 500?

Mr. HUGHES: Nothing like that. There are exemptions for different reasons. The report to parliament includes all the exemptions made. Some of these are made in favour of people not in Canada for five years, and who are not British subjects; because in areas where there is a shortage of people available for certain occupations we ask the governor in Council to exempt. The total number of exemptions which are reported to parliament over the year may be fairly substantial, but the number of people appointed because of special skills, where the commission feels that the competition would not be warranted, is very few.

Mr. PETERS: With the limited availability of suitable candidates, if there were one candidate, what is the objection to that candidate going through the normal procedure?

Mr. HUGHES: It is expensive and it consumes time. I may say that this is in accordance with the recommendation in the Heeney report, in order to give some easy way of doing something which we now have to do by order in council.

The CHAIRMAN: It saves paper pushing, to use Mr. Pelletier's expression earlier this morning.

Mr. PETERS: I am concerned with the fact that there is no such thing as job posting in the civil service as such, except by this elaborate method of open competition where you circulate through post offices, and all that sort of stuff; so where there is limited availability it is necessary for us to do something else, to have a more formal method of allowing people to apply in these limited availability areas, than to have the commission appoint them.

Mr. PELLETIER: If I may comment on Mr. Peters' remark, perhaps the words "limited availability" may not be too happy. They may or may not be. What is intended here is the situation we have had for quite a few years, and still have to a certain extent now in certain areas where there just are not enough people to fill the jobs going. In these cases we avail ourselves of what we call in our jargon "continuous competitions". If you have 1,000 stenographer jobs and not enough stenographers for them, if a stenographer comes along you give a test and appoint her if she is qualified. This is what this is intended to do. However ,if there are more people on the market than jobs, we would resort to the normal provisions of the bill and recruit by competition.

Mr. PETERS: Is this not the type of clause which allows positions—for instance, in the case of a minister wanting a public relations officer on his staff of a particular type—being filled by your being able to appoint them, rather than have an open competition.

Mr. PELLETIER: This is not related to that situation.

There is another point which I would like to leave to the committee for consideration. It refers to lines 25, 26 and 27, which say:

> . . . the commission may without competition appoint persons having special skill or knowledge whose services are required for duties of an exceptional character.

I think those two phrases are too restrictive. They do not meet the situation which I was just describing to Mr. Peters. There is nothing special about the skill of a stenographer. It is just a general question of scarcity. Therefore, I would suggest for the committee's consideration that those two qualifying phrases should be deleted from the bill.

The CHAIRMAN: Are you following this, Mr. McIlraith?

Mr. MCILRAITH: Yes, I was following it. Those two defeat the purpose of the section altogether. I did not think that was included.

Mr. SPENCER: These appointments should be given very special consideration.

Mr. MCILRAITH: They should be given, subject to an appeal by others who might be affected.

The CHAIRMAN: What is the feeling of the committee on clause 25, that this clause could be widened to take in duties of a skilled nature, such as stenographers, but not necessarily of a special character?

Mr. MCILRAITH: It is skill which is limited by reason of lack of availability. Ordinary skills should only be taken in when they are limited by the other qualifying clause of the section. I think Mr. Pelletier stated the point quite accurately and precisely.

Mr. MORE: Would you not then change the purpose of clause 25, which specifically deals with special skills?

The CHAIRMAN: That is right. You would have a complete departure. What is suggested is that the clause be also used to apply to ordinary personnel for ordinary jobs, apart from exceptional people for exceptional jobs. It is an interesting point.

Mr. MCILRAITH: Does not the clause deal with two types of situation—it deals with special skill, and it deals with non-special skill because of limited availability.

The CHAIRMAN: Are you suggesting that the point is already covered?

Mr. MCILRAITH: No. I am suggesting that there is an attempt in the one clause to deal with two situations, and that is where the difficulty arises.

The CHAIRMAN: It seems to me that the reference to duties of an exceptional character ties this down to very special cases which would not cover the stenographer cases.

Mr. CARON: Advertisements are circulated for duties of an exceptional character. If they have not got anybody, then the commission, in the case for example of a bilingual person,—they are always short of them—can hire such a person.

Mr. BELL (*Carleton*): It may well be that there is a non sequitor in this section, because the phrases "urgent need" and "limited availability" do not seem to me to relate directly to the other phrases "special skill or knowledge" and "duties of an exceptional character".

I think we should let it stand and ask our witnesses to consider a possible amendment to this and come back with a proposal to us at a later time.

The CHAIRMAN: I think the clause should be improved very much. Mr. Hughes, have you made a comment on this before?

Mr. HUGHES: I agree with the observations which have been made by Mr. Pelletier and Mr. Bell.

Mr. MACDONNELL: I do not know what this clause is about. It starts out boldly speaking about the shortage of talent, and then practically negatives that by the subsequent lines. It seems to me that they have not made up their minds as to what it is really doing.

Mr. HUGHES: I would suggest that the committee might bear in mind the fact that the commission is the sole judge of limited availability. The removal of these restrictive words might put great power into the hands of the commission to proceed without competition. This is something that I think should cause some concern.

Mr. BELL (*Carleton*): I would agree with that. I think some amendment appears to be needed, but I think it should be as restrictive as possible. I do not think this committee wants to widen this a fraction of an inch beyond what is absolutely necessary to accomplish the purpose mentioned.

Mr. PELLETIER: Mr. Bell, I agree entirely with your last remarks. Perhaps something like an obligation on the commission to report these things to parliament may be sufficient, or there may be some means of making it restrictive so that the commission cannot—and I agree with Mr. Hughes—the commission should not be given a free hand.

Mr. BELL (*Carleton*): That already exists in clause 76 (2). There is an obligation there to report.

Mr. PELLETIER: Does it cover this?

Mr. BELL (*Carleton*): It covers section 25.

Mr. PELLETIER: Quite right.

The CHAIRMAN: I think our views on the record will be clear enough to assist the draftsman in bringing in a clause which will conform with our ideas to amend clause 25. It is agreed that clause 25 stand for further consideration.

Clause 25 stands.

The CHAIRMAN: I have this morning a letter from the national defence employees association which I will not read since copies are available for all members and for the press. It deals with the establishment of a grievance procedure. This will be circulated to members and should be included as an appendix to the record.

Mr. BELL (*Carleton*): I move that the representations of the national defence employees association be an appendix to the record of today's meeting.

Mr. CARON: I second that.

Agreed. (See appendix "A" to today's Evidence).

APPENDIX "A"

NATIONAL DEFENCE EMPLOYEES' ASSOCIATION
222 Elgin Street,
Ottawa 4, Ont.

May 23, 1961.

Mr. R. S. MacLellan, Chairman,
Special Committee,
Civil Service Act (Bill C-71),
House of Commons,
Ottawa, Ontario.

Dear Sir:

Please excuse my presumption in forwarding information to your Committee on the basis of the discussion I heard on the Act Friday May 19.

On this note I am enclosing a copy of the grievance procedure under which we operate in our own Department. We do not find too much fault with this policy other than it may not go far enough in the resolution of the grievance. The point here being that we may reach the stage, in processing a grievance to our DND headquarters level, where a serious difference of opinion may exist and provisions are not made to continue the grievance to an outside agency as an arbitrator in reaching a final and binding solution. An extension would be to take this procedure one step further to the Civil Service Commission, for example, as the arbitrator would be well considering.

We would also suggest that some consideration should be given to the advisability of including appeals and the right to appeal in the broad grievance procedure. (The use of "broad" here is to permit the Act to designate principles and permit leeway of application within a department). It is not suggested that such appeals should go through the longer process of grievances but that initially appeals be heard within a department, with provisions for unsatisfied appellants to appeal to the Commission as a final arbitrator, in keeping with the proposals outlined by the Civil Service Federation of Canada (see page 40 of the Minutes of Proceedings and Evidence).

Having been so bold as to proceed to this stage, may we make a further suggestion? This would be in reference to—
Section 3 (2) "The deputy head may authorize in writing any competent officer employed in his department to exercise any of the powers, functions or duties of the deputy head under this Act." This rewording would protect the delegated employee and the Government.

We wish to thank you for your courtesies and patience.

Respectfully,

Ken Green,
National Secretary-Treasurer,
N.D.E.A.

CHAPTER 8

Grievances and Appeals

8.02 LOCAL GRIEVANCES

(1) Definition—A local grievance is any personal oppression, injustice or other ill treatment which an employee believes he has suffered, whether occasioned by a member or employee of the Services or by local conditions at his place of employment.

(2) Policy—The Department of National Defence considers it important that the grievances of its civilian employees be considered expeditiously by responsible officers and that whenever it is possible to do so, justifiable grievances be resolved at the local level.

(3) General Regulations—the following shall be observed:

(*a*) Grievances shall be considered at the following levels:
- (i) immediate supervisor,
- (ii) most senior officer of department, branch, section or wing,
- (iii) commanding officer,
- (iv) Area or Group Commander,
- (v) Senior Officer Command,
- (vi) NDHQ

NOTE: Appeals against disciplinary action shall not be initiated below the level of CO.

(*b*) grievances may be submitted orally to the immediate supervisor but shall be in writing to higher authority;

(*c*) except where departure from this procedure is authorized by NDHQ for a specific grievance, and in the case of grievances referred to in the Note appended to (3) (*a*), a grievance shall be initiated at level (i); if the grievance is not resolved at level (i), it shall be referred to level (ii); if it is not resolved at level (ii), it shall be referred to level (iii), and so on; unresolved grievances being considered at each successive level referred to in (3) (*a*);

(*d*) an employee shall be permitted to have a representative of a staff association, his shop steward or other departmental representative accompany him at any formal hearing of his grievance being conducted above the "immediate supervisor" level.

(4) Procedure—The following action shall be taken in processing a local grievance:

(*a*) the employee shall:
- (i) submit the grievance to his immediate supervisor;
- (ii) if his grievance is unresolved submit it in writing to the next higher authority until a satisfactory decision has been reached;
- (iii) send copies of any written grievances to the CPO.

(*b*) the supervisor shall:
- (i) attempt to resolve the grievance,
- (ii) if necessary discuss the problem with his immediate supervisor to arrive at a course of action,
- (iii) inform the employee within 48 hours, of his conclusion or course of remedial action, if any,
- (iv) where he has referred the grievance to higher authority, take necessary follow-up action within a reasonable time and inform the employee accordingly;

(*c*) when a grievance is submitted in writing to the senior officer referred to in (3) (*a*) (ii) the officer shall:
- (i) review the grievance and within one week arrange a formal hearing of the grievance with the employee, his representative if any, and the CPO,
- (ii) inform the employee in writing of the results of the hearing without delay;

(*d*) when the CPO receives a copy of written grievance as provided for in (*a*) he shall:
- (i) where the grievance has not reached the CO level, attend formal hearings and act as mediator,

(ii) where the grievance has been submitted to the CO:
  (*a*) provide the CO with a complete summary of the case with suitable recommendations,
  (*b*) when requested, arrange a formal hearing;

(*e*) when the CO or higher authority receives a written grievance he shall:
  (i) review the case with the CPO or CCPO as applicable,
  (ii) within two weeks inform the employee in writing of his decision or arrange for a formal hearing.

(AL 29/59)
(2 Nov. 59)

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 16

FRIDAY, MAY 26, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

From the Civil Service Commission: Honourable S. H. S. Hughes, Q.C., Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25301-3—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)
Caron
Casselman (Mrs.)
Hanbidge
Hicks
Keays
Lafreniere
Macdonnell
MacRae
Martel
McIlraith
More
O'Leary
Peters
Pickersgill
Richard (*Ottawa East*)
Roberge
Rogers
Spencer
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, May 26, 1961.
(18)

The Special Committee on The Civil Service Act met at 9.40 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Messrs. Bell (*Carleton*), Caron, Mrs. Casselman, Messrs. Hicks, Lafrenière, Macdonnell (*Greenwood*), MacLellan, Martel, McIlraith, More, O'Leary, Peters, Richard (*Ottawa East*), Roberge, and Rogers.—(15).

In attendance: From the Civil Service Commission: The Honourable S. H. S. Hughes, Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners. *From the Department of Finance—Treasury Board:* Mr. C. J. Mackenzie, Assistant Secretary.

The Committee continued its clause-by-clause consideration of Bill C-71, An Act respecting the Civil Service of Canada.

On Clause 26:

Following discussion, the clause was adopted, subject to reconsideration if necessary.

On Clause 27:

The clause was considered, various changes being suggested in the wording. The clause was adopted, subject to rewording by the draftsman to reflect the changes suggested by the Committee.

On Clause 28:

The clause was adopted subject, if necessary, to further review and to comment by the draftsman.

Clauses 29 to 37, inclusive, were adopted.

On Clause 38:

Sub-Clauses (1) and (2) were adopted. Sub-Clause (3) was amended to read as follows:

> (3) Where in the opinion of the Commission there are sufficient qualified applicants coming within paragraphs (a), (b) *and* (c) of subsection 40 to enable the Commission to prepare an eligible list in accordance with section 42, the Commission may confine its selection of qualified candidates under subsection (1) of this section to those applicants.

Sub-Clause (3), as amended, was adopted subject to review by the draftsman.

The clause, as amended, was adopted, subject to review of Sub-Clause (3) by the draftsman.

Clause 39 was adopted.

25301-3—1½

Clause 40 was considered and discussion continuing there on, the Committee adjourned at 10.55 a.m. until 9.30 a.m. Thursday, June the 1st, at which time the Committee will continue consideration of Bill C-71.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

FRIDAY, May 26, 1961.

The CHAIRMAN: Mrs. Casselman and gentlemen, we have a quorum. At the beginning I would like to comment that with so many other committees sitting, and the building busy as it is this morning, I am very pleased to see the turn-out on what I know is a rather difficult day.

When we adjourned yesterday at 11 o'clock we had considered clause 25 and the suggestion had been made that this clause might be widened.

We are on clause 26. Shall clause 26 carry?

Mr. CARON: I thought we had decided yesterday to hold clause 26 until clauses 22, 23 and 25 had been redrafted. Until this has been clarified and redrafted I think we should hold it.

Mr. BELL (*Carleton*): I think the place for that is under clause 27. If one were to give effect to the proposal, I do not think the draftsman would suggest it be done under 26; it would have to be done under clause 27.

The CHAIRMAN: I think there are two separate points. The point you are mentioning under clauses 22, 23 and 25 is the question of appeal; then under clause 26 we have the question of the probation period.

Mr. CARON: The federation brought it up under clause 26, because they thought it would be more appropriate. They say:

> In order to protect the employees' rights of appeal where appointments are made under sections 22, 23 and 25, of the proposed act, we think it is important that this right of appeal should be clearly stated in the legislation. We therefore recommend that sub-clauses (1) and (2) of clause 26 be renumbered (2) and (3), respectively, and that a new sub-clause (1) be inserted, as follows:
>
> 26. (1) Any appointment made under sections 22, 23 and 25, of this act is subject to appeal by any employee of the civil service who considers he has been denied an opportunity to qualify for the position by virtue of such appointment.

Mr. MCILRAITH: I thought we had agreed that in respect of any clauses which we have carried where the question of appeal arises we would have the right to go back if necessary and reconsider them on this matter of appeal.

The CHAIRMAN: On the question of appeal, yes. As you say it comes up in several clauses. Clause 26 does not deal specifically with that.

Mr. MCILRAITH: If we agree to clause 26 now it would be subject to being reopened if the appeal provision is put in it.

The CHAIRMAN: Exactly.

Clause 26 agreed to.

On clause 27, transfers and promotions.

Mr. CARON: This has to be redrafted.

Mr. MCILRAITH: We were to get some help in respect of clause 27, as I understand it. If that help is ready now we might deal with it and even pass it.

The CHAIRMAN: I wonder if the record is clear in respect of our views on clause 27. We had some discussion on it at our last meeting. I think Mr. Hughes has a statement to make on clause 27 and the appeal provisions in general.

The Hon. S. H. S. HUGHES, Q.C. (*Chairman, Civil Service Commission*): Mr. Chairman, yesterday I made a statement about the effect of clause 27 insofar as it might be supposed to give a right of appeal in the case of clauses 21, 22, 23 and 25. I think what I said at that time was partially right; but to the extent that it was partially wrong, I apologize to the committee for misleading them.

Some of the difficulty is that the association indicated that clauses 22, 23 and 25 were clauses which might probably be subject to appeal or would have the right of appeal incorporated in them. Clause 21 clearly has nothing to do with appeal, because it merely empowers the commission to do what it does now; that is, give preference in considering the filling of any vacancy to appointment from within the public service, which would amount to appointment by promotion or transfer. Of course, the right of appeal in connection with promotion and transfer is contained now in clause 27. Clause 22 allows the commission to make an appointment from within the public service without competition in certain cases. Clause 27 would apply to any right of appeal accruing from appointment under clause 22 insofar as it is from within the public service and affects promotion or transfer to a position in the civil service.

Clause 23, I submit, has nothing to do with the right of appeal at all. It merely authorizes the commission to make an appointment from outside the public service where suitable candidates from within the public service are not available. This, of course, might be done by open competition; but insofar as it is done by appointment without competition, it is my suggestion that no right of appeal would arise, by tradition in any event. It has always been the case that initial appointments, whether by open competition or without competition, have not been subject to appeal. The right of appeal has been reserved for appointments which are made from within the civil service, either by way of promotion or transfer. Of course, it is for the committee to decide whether or not this right of appeal should be extended. If the scheme of this act, however, is to follow the scheme of the present act in that regard, there would be no right of appeal.

Clause 25 is only subject to the provisions of clause 27 insofar as the appointment of a person having special skill or knowledge might be made from within the public service, and would have the effect of promotion or transfer. In those cases where the appointment would be made from outside the public service, following the argument that I have given before, no right of appeal would arise.

I might say further that in respect of clause 27, as I indicated yesterday, it has been suggested to our drafstman that the third word in the clause "employee" should be "person" because, by definition, an employee is a member of the civil service; if it were "person" it would provide for those cases where an employee of the public service outside the civil service is about to be transferred or promoted.

Mr. CARON: That is exactly why the federation brought in the amendment in respect of clauses 22, 23 and 25. It is because of what Mr. Hughes said to the effect that in the past there was no appeal from the decision of the commission to bring persons in from outside. Some persons on the inside may believe they were able to fill that position and they would like to have the right of appeal.

This bill is a new act. We have had the old act since 1918, and this one also may stand for a long time; it should be made clear. It should be able to stand the effects of time. If these persons think they have not been given the opportunity to try such a competition, I think they should have the right of appeal.

The CHAIRMAN: Are there any other views on this matter?

Mr. McILRAITH: May I ask if the change from the word "employee" to the word "person" has been taken up with the draftsman?

Mr. HUGHES: I took it up with him some weeks ago and he agreed that there might be some difficulty there. He undertook to study it.

Mr. McILRAITH: I think it is very important that we clear this up point by point. I think perhaps we should have this question about changing it from "employee" to "person" settled first and then deal with the other points which arise in the clause.

Mr. BELL (*Carleton*): It would not be sufficient simply to change the word "employee" to the word "person". Some additional drafting is required, because of the phrase "transfer or promote to another position in the civil service".

Mr. McILRAITH: But what about the subsequent language?

Mr. BELL (*Carleton*): The subsequent language has to be changed obviously, if a change in these words is to be made.

Mr. McILRAITH: I understand that, if only we could agree on this point.

Mr. CARON: Would the word "candidate" cover that?

Mr. PAUL PELLETIER (*Commissioner, Civil Service Commission*): In answer to Mr. Caron's question, in order that everyone should clearly understand what Mr. Hughes suggests, and which I support entirely, the change of the word "employee" to "person" merely means you are dealing with people in the public service. You are not dealing with people outside the public service.

Mr. McILRAITH: That is the point.

Mr. PELLETIER: Whereas if you leave it "employee" it means you are restricting this provision to employees in the civil service, as opposed to the public service.

Mr. BELL (*Carleton*): I think we should leave the matter now, as there may be consultation with the draftsman of the bill. Possibly there will be a report back later on as to a redrafting of the clause, if he concurs with what the committee has in mind.

The CHAIRMAN: Is that agreeable to the committee?

Mr. MACDONNELL: May I ask one question? I asked a question with regard to clause 27 the other day and since then I have been thinking over the answer and wondering if it was complete. I questioned whether the words "the persons whose opportunity for promotion has thereby been prejudicially affected" were sufficiently definite and it was pointed out to me that they were made definite in the following phrase "as prescribed by the regulations". I have been asking myself whether those are apt words and whether, in fact, regulations would cover that exact situation, because it would appear to me the phrase "the persons whose opportunity for promotion has thereby been prejudicially affected" might have quite a broad coverage. I shall not persist in this if you are satisfied that the words "as prescribed by the regulations" cover the matter.

Mr. HUGHES: May I say in answer to Mr. Macdonnell's question that in the first place I think the words "the persons" would have to be changed to "the employees," subject to the other changes in draftsmanship. Secondly it was found to be very difficult to describe who might be prejudicially affected in any given case, in the statute, because cases vary and prejudicial effects would vary too. It was felt this was a proper subject for regulation considering the easy alteration to which regulations are susceptible.

The CHAIRMAN: Does that answer your question, Mr. Macdonnell?

Mr. MACDONNELL: I accept that.

The CHAIRMAN: As to clauses 21, 22 and 23, were not 22 and 23 carried yesterday?

Mr. RICHARD (*Ottawa East*): We are still left with the problem as to the second point raised by Mr. Hughes, that the practice to date has been not to have any right of appeal. I think that is a matter which the committee should consider now.

Mr. BELL (*Carleton*): That was to do with an initial appointment.

Mr. RICHARD (*Ottawa East*): We should decide whether there should be a provision for right of appeal in these sections.

The CHAIRMAN: That opinion has been expressed, that there should be a right of appeal in these sections from the point of view of the civil servant who feels that an appointment from outside has been prejudicial to him.

Mr. BELL (*Carleton*): Perhaps Mr. Hughes would comment on the administrative practicability of the right of appeal on initial competition.

Mr. HUGHES: The point is that civil servants and others are on an equal footing in open competition. I think it would be frivolous to give someone who was a civil servant the right of appeal simply because he comes second in open competition. I submit in connection with clause 23, as I said before, that it has no connection with the right of appeal. It merely authorizes the commission to make an appointment in accordance with the act, either in open competition or not. It is a specific function that is here being described.

Mr. MACDONNELL: I find myself agreeing entirely with Mr. Hughes as to the undesirability of having right of appeal on initial appointment; yet I do not find myself able to answer the question as to whether there is a sharp distinction between that and the other case.

I think it is making a fool of the thing to have right of appeal in initial appointments, because you have serious-minded people making the appointments and using their best judgment. In such cases I would be entirely against having the right of appeal, but is there a sufficiently sharp distinction in the other case?

Mr. RICHARD (*Ottawa East*): Is there not a distinction in that Mr. Hughes is dealing with competitions but there are other cases also where appointments under these sections are made without competition.

Mr. HUGHES: There are, but they are very few.

Mr. RICHARD (*Ottawa East*): It is probably in those cases that the association is requesting the right of appeal.

Mr. MCILRAITH: They are the cases I would be concerned with in having a decision, not the other cases where a competition was held.

Mr. HUGHES: I do not think there is any real distinction between the two. They are both initial appointments. If you give a civil servant the right of appeal it would be very difficult for one to decide how many civil servants in any given case should be given that right. If that were done there could be no objection to granting the right of appeal for all the people of Canada who might have been eligible for such an appointment had it been made by open competition. That is the difficulty with which you are confronted.

The CHAIRMAN: It seems to me that point is covered by section 27.

Mr. BELL (*Carleton*): No, that is not so.

Mr. CARON: It is partially covered, but not completely.

Mr. BELL (*Carleton*): It seems to me that Mr. Hughes in that last comment has given the complete answer to the problem.

Mr. MCILRAITH: Where there was open competition they have had their opportunity, but if there is not a competition they might feel aggrieved because they did not have an opportunity. It is really a narrower aspect of the matter.

Mr. HUGHES: May I present one other aspect? The decision as to whether there would be a competition is a decision to be taken by the civil service commission and any appeal that might be made would be made to the civil service commission. In such a case the commission would be asked to say whether it was right in making the initial decision, and that would be an anomaly.

Mr. MCILRAITH: Are you not on that basis in the final analysis? It is the commission who are really transferring and promoting.

Mr. HUGHES: In a sense.

Mr. MCILRAITH: There is an appeal in the latter case from an action of the commission as such. That is where a case is likely to have been dealt with by the commission, and it is to the commission itself that an appeal is made. That is really the difficulty. In the other case it is not likely to be an appeal from the staff of the commission to the commission itself.

Mr. HUGHES: That is true, but promotion competitions do not involve the commission to the same extent as open competitions.

Mr. MCILRAITH: I recognize that difficulty.

Mr. ROGERS: Does the present act permit the right of appeal?

Mr. BELL (*Carleton*): No.

Mr. HUGHES: You mean any right of appeal?

Mr. ROGERS: Yes.

Mr. HUGHES: Then the answer is no. It is all contained in regulations pursuant to the Act, which may or may not be valid.

Mr. PELLETIER: I think the question was directed towards ascertaining whether appeals were allowed in open competitions. The answer is "no". This is not allowed under the Act or the regulations.

The CHAIRMAN: What are the views of the committee? There seems to be a difference of opinion on this.

Mr. BELL (*Carleton*): I think it has been pretty fully discussed and I am suggesting the clause be put.

The CHAIRMAN: I am not too sure what way this motion should be framed. I would say we are asking that clause 27 be looked at from the point of view of changing it to include persons within the whole public service. There was a suggestion yesterday that clause 27 might be widened, to provide appeals from decision under clause 23, but that was not agreed to. Shall clause 27 carry?

Mr. BELL (*Carleton*): Subject to amendment.

Mr. CARON: Was it not to be redrafted?

Mr. MCILRAITH: I think enough has been said. Let it be redrafted.

The CHAIRMAN: There is the question of what we are going to ask the draftsman to do. I believe we wish to ask him to redraft clause 27 to cover persons in the public service as regards transfers and promotions. Apart from that, shall clause 27 carry, with the amendment subject to rewording from that point of view only?

Clause 27 agreed to, subject to amendment.

On clause 28—appointments within public service but outside civil service.

Mr. CARON: The federation has something on clause 28.

Mr. BELL (*Carleton*): That is the same question of public service and civil service, with which we have already dealt.

Mr. MCILRAITH: There is one comment I wish to make on clause 28. I wish to point out that on clause 72 I want to raise some questions, when we

come to deal with it. It is conceivable that changes made in clause 72 could have a bearing on clause 28, having to do with permanent employees in the House of Commons and Senate. It is possible that there could be a change asked for in clause 28 consequent on changes, if we make them, in clause 72. I am quite satisfied that clause 28 carries, subject to the comment that we might have to come back to it again.

Mr. BELL (*Carleton*): I would agree with that.

Mr. MCILRAITH: I do not think that point should be discussed now on clause 28.

The CHAIRMAN: There is a short point which Miss Addison would like to make.

Miss RUTH ADDISON (*Commissioner, Civil Service Commission*): Since we were discussing the regulations and looking at clause 54, which has to do with lay-offs, it would seem clause 28 would prevent your re-appointing a lay-off back into the civil service because it says:

> Notwithstanding anything in this act, a person who is employed in the public service but not in the civil service shall not be appointed to a position in the civil service without competition.

Then it goes on to outline certain exceptions. There is a suggestion to alter sections 24, 25 and 54 in order to make it perfectly clear.

The CHAIRMAN: Does anyone wish to make any comment on that point?

Mr. BELL (*Carleton*): Has that been discussed with Mr. Driedger.

Mr. HUGHES: It has not.

Mr. BELL (*Carleton*): I suggest we carry the clause now, subject to comment from Mr. Driedger.

The CHAIRMAN: Is that agreeable?

Some hon. MEMBERS: Yes.

Clause 28 agreed to, subject to comment.

Clauses 29 and 30 agreed to.

On clause 31—establishment of eligible lists.

Mr. MCILRAITH: I am wondering if clause 31 is sufficiently clear to enable the commission to hold competitions for positions that are likely to be created by reason of new acts or new departments? We speak about appointment to a particular position that is vacant or about to become vacant, but that does not allow them to take action until after the positions are created. Is there any conceivable situation in which you would want to hold a competition in advance of the creation of a position?

Mr. HUGHES: I would have thought that the words "about to become vacant" would allow the commission to hold a competition and select a leading candidate in advance of the vacation of the position.

Mr. MCILRAITH: But the position must be created. Is there any possibility you would want to hold a competition before the position is created?

Mr. HUGHES: I would hope not.

Mr. MCILRAITH: Thank you. I have nothing more to say.

Clause 31 agreed to.

Clauses 32 and 33 agreed to.

On clause 34—area of competition.

Mr. CARON: This is the same question of public servant and civil servant which was brought up by the association.

Clause 34 agreed to.

On clause 35—appointments to local office.

Mr. BELL (*Carleton*): This is probably the place where we should look at the brief of the postmasters association. If I understand the situation, the position which they advance is one which could be taken care of under the act, if the commission so decides. Perhaps Mr. Hughes would comment generally on the position taken in the brief of the Canadian postmasters.

Mr. HUGHES: If I remember the point they made, it was that the practice of the department and commission had been to confine conditions in a competition for a postmaster to patrons of a post office and in other ways limiting those eligible for a competition. I suggest this is merely a matter of practice, and nothing else. There is nothing in the act as it stands at present on the statute book or, indeed, in this bill, which would prevent us from approaching the subject of postmasters in exactly the same way as we approach the people in any other occupations. There is, however, recognition of the principle of giving preference to people in a location, described as an area served by the local office. That was in the previous act and was referred to generally as the locality preference. It has been carried over into this bill.

Mr. BELL (*Carleton*): My understanding is that the postmaster general is not unsympathetically disposed towards the suggested revision, and perhaps both the commission and the department of the post office have been somewhat inhibited by the feeling they may have had that members of parliament might not be too satisfied with the proposal. I think if it were clearly known that members of parliament were in favour of the proposal it probably could be implemented within a comparatively reasonable period of time. As I understand the position, it affects about 1,366 semi-staff officers across the country and the issue really resolves itself down to how many howls there will be if an outsider is brought into these local offices. In any individual case the person who will encounter the grievance will be the member of parliament for the area, and if members of parliament on all sides of the house, would be satisfied with that situation I certainly do not think from the administrative side there would be any objection whatsoever.

Mr. CARON: There can be an objection on the question of area. I am thinking of what happened in Hull when it came to making an appointment for the airport post office. The whole region of Hull was completely put aside because it was supposed to be in the Montreal district, and there is no sense in that. It meant that candidates from Hull were debarred from work at the airport over here. Even though there were only a distance of two or three miles from the airport they were not eligible to sit for the examination.

Mr. PELLETIER: I am somewhat familiar with the case you have in mind, Mr. Caron. I do not disagree with what Mr. Bell has said or with what Mr. Hughes has said. This provision is quite wide because it says in the fourth line: "whenever it is practical and in the best interests of the civil service to do so." That is what I may term pretty wide language; but the fact of the matter is that the local preference has caused some difficulty over the past several years, of the kind Mr. Caron has mentioned. I was wondering whether the committee should not consider the desirability of inserting in the act something along the lines of what is said in the Heeney report, pages 49 and 50, section 7011, to the effect of giving some guidance to the commission as to the manner in which local preference should be applied. First, it has to be considered whether it is administratively practicable to hold a national competition. For example, if you are going to appoint a messenger in Ottawa it does not seem reasonable to hold a national competition for that. On the other hand, if you are going to appoint, say, a highly qualified research chemist in Winnipeg, it would seem to me it should be a national competition. That is the first consideration, the administrative possibility of so doing; and the second consideration would be to

take into consideration the desirabilty of knowledge of local conditions. This I suggest would apply to many postmasters jobs, particularly in small communities.

Mr. CARON: Possibly in some.

Mr. ROGERS: It would not be much of a factor in Alberta, for instance. What I mean to say is that the person who is running a post office at a little place sixty miles away certainly ought to be able to fit himself into the new position.

Mr. PELLETIER: Perhaps I did not make myself clear. I was not referring to internal promotions.

Mr. ROGERS: I see.

Mr. PELLETIER: I was referring to initial appointments.

Mr. CARON: I have no objection at all to the area being maintained in the bill but it should be dealt with in such a manner that people living near the place where a vacancy occurs should not be excluded from the right of sitting for the examination, as happened the people of Hull in connection with the airport at Ottawa. They were told they would have to apply for a position in Montreal. There is no sense at all in a provision which states that a man living 2½ miles away from the airport should be excluded, when a man living about 100 miles away is eligible.

Mr. HUGHES: I think that was the exception which proves the rule. I think Hull should be given the local preference.

Mr. BELL (*Carleton*): Hear, hear.

Mr. CARON: There should be a general guidance of some kind. At present, because a person is in the province of Quebec he has got to apply to Montreal and if he is in the province of Ontario he applies to Ottawa.

Mr. BELL (*Carleton*): There is no reason in the act or in the new bill why you cannot cross provincial boundaries, just because it is a matter of administrative difficulty or decision. In defining the Ottawa area it seems to me inevitable Hull should always be included.

The CHAIRMAN: I think it is very difficult in a question like this to tie it down to a specific number of miles, and yet that is what members might be inclined to do. I think the only way a matter like this can be handled is by this type of clause, which gives the commission authority as positions fall vacant to make specific decisions along with the administration, the department concerned, in any particular instance. A strong direction under statute might militate against what we have in mind.

Mr. CARON: If it is included in the regulations of the civil service I would like them to look at it that way instead of the way they looked at it in the case of Hull. I think there is no reason in the world to exclude a person from Hull. He may not be competent for the position, but he would have an opportunity of trying for it at least.

Mr. MORE: Is the administrative decision in respect of the case Mr. Caron mentions a civil service decision?

Mr. HUGHES: Yes, taken in conjunction with the other department. Generally, the department will let us know the area which it thinks is suitable. We will discuss it and approve or modify it. There is an almost insurmountable difficulty in respect of the question of a radius of miles. I had some experience with this in respect of the highway transport industry. You have to have a man with instruments and a large-scale map to determine whether a candidate is one side of an imaginary line or another. Therefore, I prefer municipal boundaries. Everybody knows whether he is in a certain municipality or another. That makes it easier.

Mr. MORE: Could there be a change in the regulation to remove the difficulty which has existed?

Mr. PELLETIER: I think that this should not be a subject for regulation; it should be a subject where the commission has pretty wide discretion, because of precisely the kind of problem which is raised. There is a case which came up a few months ago in New Brunswick. It is the case of a fisheries officer. The man was living only two miles away from the point at which the post was, but he had to go, I think, twenty-five miles to get to the bridge to get to it. You get into ridiculous situations such as that.

Mind you, I think this section is workable. I do not feel too strongly about this, but perhaps it might be possible to indicate in the bill the type of considerations the commission will take into account in deciding when and how the local preference will be exercised.

Mr. BELL (*Carleton*): Personally I think I would like to see the full discretion in the commission because of the varied number of circumstances which conceivably might arise. The Heeney report states that in restricting the area of competition to the locality concerned the judgment of the commission and knowledge of local conditions is of paramount importance. I think that word "paramount" is going very far. My own reaction to this is that we should continue the local preference and give to the commission the widest possible discretion. Perhaps the discussion we have had this morning may be helpful to them in the exercise of that discretion.

The CHAIRMAN: I think this is a case in which we have to rely on the commonsense of the commission and be grateful we have a good commission to deal with problems of this type.

Mr. MCILRAITH: Is it clear that the authority in this matter rests with the commission and not with the department.

Mr. HUGHES: I think so.

Mr. MCILRAITH: I am satisfied so long as the authority remains with the commission to make the election as to the local area.

Miss ADDISON: This applies only to the initial appointment.

Mr. CARON: The point I am bringing up is in respect of initial appointments. You said this was decided in conjunction with the interested department. I believe the department perhaps should not have so much to say about the area; it should be in the hands of the commission completely, so that they can make the regulation according to commonsense.

Mr. HUGHES: As you know, this depends on a requisition from the department. The department will say they want one, two or three men and would like them from such-and-such an area.

Mr. CARON: It should be left in the hands of the commission to say what the area should be in connection with the competition.

Mr. PELLETIER: If I might follow this up, I am rather inclined to agree with Mr. Hughes that this must be done in conjunction with the department. Various departments operate differently. Some departments service certain areas, and other departments do not. For example, the Department of Transport has regions; there is the maritime region which I believe covers the provinces of Nova Scotia, New Brunswick, Prince Edward Island, and perhaps a little bit of the province of Quebec. What we try to do is to make sure that every Canadian has a chance to apply for government positions. The regions, for example, set up by the Department of Transport cover the whole of Canada. It sounds sensible to me to restrict the area of competition to the region set up by the department for operational purposes.

Mr. CARON: I oppose the idea. It is in the Department of Transport that the case happened which I mentioned. People in the Quebec region were not permitted to compete with those in Ottawa. If it is going to happen that way it should be corrected by the commission.

Mr. PELLETIER: In that situation, with the full discretion vested in the commission, I think the commission should go to the Department of Transport and say it thinks that this situation ought to be corrected.

Mr. CARON: If the department refuses to accept the suggestion of the commission, what would you do?

Mr. HUGHES: We would invoke clause 35 and say we have the final authority.

Mr. MCILRAITH: It is this policy being exercised by the department which causes me concern; it is the very thing we must avoid. I would like to suggest that the commission re-examine the extent to which they cooperate with the department in this delineation of the area. I think we are on very dangerous ground, there, in letting the department delineate the area.

Mr. BELL (*Carleton*): I would agree with both Mr. McIlraith and Mr. Caron. I support Mr. Caron in respect of the Hull area having the right to contest these competitions, and I hope that he will stand up for the rights of the citizens in the county of Carleton when a similar situation applies to them.

Miss ADDISON: This is very difficult to administer and satisfy everybody in determining what the area should be.

Mr. MCILRAITH: Because it is difficult, I think the members would be willing to trust the discretion of the commission.

Mr. MARTEL: When these competitions come out in my area of northern Quebec they always include a section of Ontario around Ottawa. If it is near the Quebec border it may include five or six counties and also Gatineau, Pontiac and part of my riding at Chapleau. However, we are very seldom given the privilege of going on the other side of the border. I have one question to ask which would come under clause 36.

The CHAIRMAN: Could we carry clause 35 and move on to clause 36?

Mr. MARTEL: My question could apply to both.

Mr. MORE: I would like to ask one question for clarification. As I understand it the commission consults with the department, but they are the final authority.

Mr. HUGHES: Yes.

Mr. CARON: They do not have to accept the opinion given by the department?

Mr. HUGHES: No.

Mr. MORE: All the blame is on you.

Mr. HUGHES: Yes.

Clause 35 agreed to.

On clause 36—Notice.

Mr. MARTEL: I would like to make one observation. On a number of occasions—and it happened even yesterday—when there is a contest for a position in the northern part of my area there sometimes is a delay in getting the notice. There was a contest for an assistant to the Indian agent at lake Mistassini. The contest closes on June 5. I received the notice yesterday, May 25. That leaves about eleven days. Communication, particularly in the Mistassini area, is quite slow at this time of year because of the break-up situation. We have had this experience of getting very short notice in respect of local competitions. In respect of national competitions we usually have about six weeks notice. In this case of the competition for the assistant Indian agent there may be a qualified person who resides in the area. Now he will not have much time in which to apply. Before he answers the advertisement it may be

over. This difficulty arises in my area, because it is a large area. I know that sometimes the reason is they need a person very quickly; but, on the other hand, they may be thus eliminating good people. I would like to have some comments on this.

Mr. HUGHES: I think Mr. Martel in his final words put his finger on the problem. We are under great pressure from the departments to fill positions as quickly as possible, consistent with the holding of a competition. On the other hand, we feel obliged to give such notice as will allow a candidate reasonable time in which to make up his mind and get his application in. We put a closing date on it in order to indicate to the applicant the date after which it may be unsafe to apply. We do however, consider applications and receive them at any time before the advisory board—that is the board which initially considers the applications—convenes. Now, it may be that there are areas where the posters do not arrive as soon as they do in other areas. If this is drawn to our attention we can, of course, delay the advisory board in order to give people a reasonable opportunity to apply.

Mr. MARTEL: When the date is too soon, do you believe that might eliminate persons who reside in the area who are qualified.

Mr. HUGHES: It might. If it can be shown that a poster does not get out until, or after, the closing date, then action should be taken to extend the time allowed.

Mr. HICKS: Do I take it from that that if someone comes to you on, say, the day on which the competition is closed you would tell him that he could still send in his application in the hope that it might get in before the board meets. I think that is a very important point which is not generally known.

Mr. HUGHES: Provided it gets in before the advisory board considers the applications as a whole. In recognition of this problem, at the bottom of the poster we now have a note to the effect that the date is not the absolute closing date but is the date on which persons are recommended to have their application in.

Mr. ROGERS: How soon after the competition is closed does the advisory board meet?

Mr. HUGHES: This, of course, varies. The time generally is governed by the length of time it takes to get the members together. You have to select your advisory board, find a suitable time and place, and then have the meeting. In no case would they meet the next day, I would think. There is no fixed time for them to sit.

Mr. ROGERS: If it can be shown that certain persons in a certain area have not had an opportunity to put in an application by reason of slowness of the mails, representation could be made to have it postponed.

Mr. HUGHES: Yes; that has been done. The advisory board has been reconvened to reconsider applications of this type.

The CHAIRMAN: I think everyone has had instances of this.

Mr. MARTEL: I would like to know from one of the members of the commission if the notices are sent to members of parliament at the same time they are sent to, say the post offices and elsewhere?

Mr. HUGHES: I cannot give you a positive assurance, but so far as I know they coincide pretty well.

Mr. PELLETIER: That is right; they are sent at the same time.

Mr. ROGERS: These notices come from the commission.

Mr. PELLETIER: From the commission or from the district office. We do not send notices of all competitions to members of parliament. All national competitions are sent to all members and all local competitions are sent to the local members at the same time as they are sent out to the general public.

Mr. MORE: They come from the district office.

Mr. PELLETIER: Many of the local competitions come from the district office.

Mr. MARTEL: Suppose there is a local competition or a regional competition, and the member does not get the notice; what can he do when he finds out about the competition?

Mr. HUGHES: I know what he does do.

Mr. MCILRAITH: What he does is pretty effective.

Mr. HUGHES: Yes.

Mr. CARON: Are all the notices in the English or in the French language, or are they all in both languages? Are there any notices which are only in one language?

Mr. PELLETIER: Yes; that happens.

Mr. HUGHES: There must be many cases where they would be given only in one language, especially in those areas where only one language is prevalent.

Mr. CARON: Would it not be preferable that they be in both languages. Even a person from the French sector of a province who speaks English might like to have it in French, just for the principle of it.

Mr. HUGHES: One of our principal difficulties will be resolved on Tuesday when we will be meeting with Mr. Mackenzie's Board and asking them to give us more money for advertising. When we do that we might mention this. Our advertising costs always are rising.

Mr. CARON: And they will continue, because the service is increasing every year.

The CHAIRMAN: I think we should leave this to the discretion of the commission without writing express provisions into the statute. This might increase the cost unnecessarily.

Mr. CARON: This a matter of principle. I am not discussing the practical side of it, but rather the question of principle. I think this should be done, even if the poster is printed on both sides. One side could be in English and the other side in French. This would save money.

Mr. RICHARD (*Ottawa East*): I understand that in certain areas of Quebec they are sent out only in French.

Mr. PELLETIER: That does not happen too often, but it does happen. In some French speaking localities they are sent out only in French and in other localities they are sent out only in English. In national competitions they are always sent out in both languages.

Mr. CARON: I would suggest that they should be in both languages in respect of local competitions.

The CHAIRMAN: It seems to me that in some instances this would be a waste of money.

Mr. CARON: I am thinking of the principle and not the practical side of it. They might be printed on both sides—in French on one side and in English on the other.

Mr. MARTEL: They might all be posted with the English side up and that might not be good.

The CHAIRMAN: This is a question of opinion.

Clauses 36, 37, and subclause (1) of clause 38 agreed to.

On clause 38(2)—option as to language.

Mr. PELLETIER: Although it is not terribly important, I think this is a little confusing. It seems to me this section might read something along the following lines: an examination, test or interview under this section shall be conducted in the English or French language at the option of the candidate, subject to the requirements of section 47. As you may recall section 47 is the one which has to do with knowledge of both languages. This is a small point, but it may happen that a person must be bilingual and would have to be tested in both languages. That is why I suggest this change, but it is a rather minor one.

Mr. HUGHES: In other words, he should not have the option.

Mr. PELLETIER: In that case, no. If he is to fill a position which is essentially bilingual he must necessarily be tested in both languages.

The CHAIRMAN: It seems to me this is rather a minor point. The commission, in such a case, would require knowledge of both languages. I do not think we have to write this in.

Mr. BELL (*Carleton*): If it is a bilingual appointment and the candidate takes the option to be examined in only one language, obviously he would not be appointed.

Mr. MCILRAITH: Obviously he would be thwarting the intention of the legislation. I wonder if the draftsman would have a look at this.

Mr. PELLETIER: I do not want to belabour this. It is a very small point indeed.

The CHAIRMAN: It seems clear to me.

Mr. ROGERS: I think it has been brought up that this is at the option of the candidate and Mr. Pelletier thinks it should be at the option of the commission.

Mr. PELLETIER: No. It should be at the option of the candidate, in English or in French, but subject to section 47.

The CHAIRMAN: It obviously is already subject to section 47, because if a man does not have the two languages he will not win the competition. I do not see any point in making amendments which do not add something material. We are standing a number of these clauses and I think we should make decisions and move on, unless there is something important.

Mr. CARON: I think this needs redrafting to clarify it.

Clause 38(2) agreed to.

On clause 38(3)—veterans, etc.

Mr. PELLETIER: Here again, Mr. Chairman, there is another small point. This provides, essentially, that when there are enough disability pensioners and enough veterans in any given competition that the commission is empowered to consider those and those only. Section 40 of the bill, however, as it stands now provides for the order in which candidates will be considered. First it is the disability pensioners, secondly veterans, thirdly Canadian citizens, and fourthly non-Canadian citizens. Here again I think it is a small point, but it might be advantageous to allow the commission, when there are veterans and Canadian citizens and non-Canadian citizens, to disregard the non-Canadian citizens until we have considered all the others.

The CHAIRMAN: That seems like a reasonable point. What opinion have we on that?

Mr. RICHARD (*Ottawa East*): I think that is very sensible.

Mr. BELL (*Carleton*): This is in line 41 paragraphs (*a*), (*b*) and (*c*) of the subsection?

Mr. PELLETIER: That is correct.

The CHAIRMAN: Shall subclause 3 carry, subject to the drafting of that amendment being made?

Mr. BELL (*Carleton*): I see no objection to that.

Some hon. MEMBERS: Agreed.

Clause 38 agreed to.

On clause 39—delegation to deputy head.

Mr. CARON: The civil service association and the civil service federation have suggested amendments to clause 39. In the federation brief we say:

> We would suggest that the intent of this clause would be made clearer by the addition of the following words:
>
> and shall periodically review the exercise of these powers so delegated, to ensure that the provisions of this act are observed

Then the civil service association comes in with a recommendation to have two paragraphs added to the clause which state:

> 2. The civil service commission shall review the exercise of any powers delegated by it every two years or on evidence of abuse and report to parliament in its annual report the details of such review.
>
> 3. The commission shall immediately suspend the authority delegated to perform or exercise its powers or functions on proof of abuse of such authority, and shall not restore such authority until it is satisfied that no further infractions will occur.

I think they would clarify the clause.

Mr. RICHARD (*Ottawa East*): Before we go ahead with discussion on this clause, could you give us an idea how it operates and when it operates?

Mr. HUGHES: This is an implementation of the suggestion in the Heeney report in section 8003 of appendix A. It was believed by the commissioners that there might be occasions, particularly related to certain occupations of a professional type, when it would be advantageous to allow the deputy head or departmental officials acting under him to select candidates without having a formal competition, in other words, to delegate the selection function of the commission in areas where they know better than the commission how these people may be obtained or recruited. I must say I would think the commission would act very rarely and with extreme discretion in delegating any of these powers. On the question of whether a safeguard should be put in determining when the commission should review this delegation of power, I would say that is implicit in the bill.

Mr. RICHARD (*Ottawa East*): That part I understand quite well, but the section is very broad and does not clarify when the commission should do that. It is a matter of absolute discretion for the commission to play ball with the deputy head.

Mr. MCILRAITH: It is very wide.

The CHAIRMAN: But the commission is responsible for delegating these powers, and the deputy head is responsible to the commission under this clause.

Mr. PELLETIER: I think that is the essential point.

The CHAIRMAN: It is in the power of the commission to review the delegation, and I think that is a safe power. Are there any further questions on this?

Mr. CARON: I am of the opinion they should review the powers delegated.

The CHAIRMAN: The responsibility is on the commissioners to review everything the deputy head does. To me it does not seem necessary to have definite words in the statute requiring the commission to act as a policeman when it has that responsibility clearly defined already.

Mr. HUGHES: I do not like the words "any of the powers or functions of the commission under this act in relation to the selection of candidates". I can see where it might be desirable to delegate the power to select, but it would be

undesirable if the deputy head could say: "We simply cannot get a candidate in that classification and therefore we are going to the next classification". That would mean upgrading the position and I think there is ambiguity in the draftsmanship which might be corrected.

Mr. RICHARD (*Ottawa East*): The section is new and it is very broad. The deputy head, once given power under this section, could go very far.

Mr. HUGHES: I think he could.

Miss ADDISON: I cannot see the commission delegating powers without setting standards which will have to be met.

Mr. PETERS: This is quite a strong power which is given to deputy heads.

Mr. PELLETIER: In answer to Mr. Peters, I think the section says: "in relation to the selection". It says nothing about appointment. The appointment must still be made by the civil service commission, and even though the whole examination process may be carried out by deputy heads the final appointment must be made by the commission, notwithstanding this section.

The CHAIRMAN: Mr. Bell, you wished to say something?

Mr. BELL (*Carleton*): It seems to me that this power would be delegated very rarely and, once delegated, would be reviewed very sensitively by the commission. I am sure the commission would be very sensitive to see the delegation was being properly exercised.

Mr. MACDONNELL: With regard to this business of wide powers, they are only given to the commission. We trust them and if we are going to hair-split the responsibility we might as well do without the commission. Either we trust them or we do not. It is clear this delegation would be used very sparingly and the commission will see that it is exercised properly.

The CHAIRMAN: If you try to write into the clause something which will limit that power, it will be very difficult to do.

Mr. PETERS: Is it not true that deputy heads do this now, that is, make the selection for the commission on an informal basis.

Mr. HUGHES: In the case of promotional competitions that is true. In the cases which are defined, that would be only in inter-departmental competitions, a civil service commission officer is always present.

Mr. PETERS: I should like to ask, is the commission not large enough to handle all this itself?

Mr. HUGHES: No.

Mr. PETERS: Then, if you cannot handle the selection of candidates perhaps you are not able to supervise the handling of it either. I think it would be possible for a deputy head to appoint certain people outside, and I think it is done at the present time; but it should not be very difficult to police that.

Mr. HUGHES: The way it is policed now, Mr. Peters, is that the commission scrutinizes every promotional competition and authorizes the results. There is also an appeal, and it is in the course of the appeal that the commission becomes more intimately concerned with the actual circumstances of each case.

Mr. PETERS: Would there be thousands of these?

Mr. HUGHES: Thousands over the course of a year.

Mr. ROGERS: Who sets up the standards?

Mr. HUGHES: The rating standards?

Mr. ROGERS: And the qualifications?

Mr. HUGHES: Before a promotional competition of any kind is advertised the department makes a requisition in the ordinary way and the standards are approved by the civil service commission after discussion with the deputy head.

Mr. CARON: I am concerned about the supervision over the exercise of the delegated authority.

Mr. HUGHES: This is something about which the commission should be very vigilant. We are vigilant to see that everyone gets a fair chance to qualify.

Mr. MORE: You say there is a right of appeal. Then these selections would come to you for appointment, with supporting evidence to justify them?

Mr. HUGHES: That is right.

Mr. MORE: Is not that the limiting factor, although the language generally really limits the application of this clause?

Mr. HUGHES: I think Mr. Pelletier pointed out that the right of appointments still remains with the commission.

Clause 39 agreed to.

On clause 40—order of preferences.

The CHAIRMAN: I think clauses 40 and 41 represent no change in the present situation.

Mr. HUGHES: There is a minor change, and Mr. Pelletier has alluded to it. That is in the case of subclause 1(c) in clause 41.

The CHAIRMAN: That is the only change, is it?

Mr. HUGHES: Yes.

Mr. CARON: There was quite a study made on that by the Heeney report. I believe there is some inconsistency with the law as it is now. A man who may get only the lowest point possible may qualify for a position because he is a veteran and I believe the Heeney report has suggested that a certain number of points should be added to a competition for those who have had service and a percentage added, say, ten per cent for those who were overseas and five per cent for those who were not overseas, because at the persent time the act precludes those who were not sent overseas. I know some ex-servicemen who wanted to go overseas but they were kept in Canada because they were needed in Canada. It is a very ticklish question, I admit, but it has to be faced one way or another.

Mr. PETERS: Does it not boil down to the position between the voluntary and compulsory type of service?

Mr. MORE: No.

Mr. PETERS: This should be part of the qualifications, whether it was a voluntary or compulsory service. The compulsory member of the armed forces in many cases was sent overseas but the volunteer did not get overseas for a long period; yet there is a distinction between the two, or at least there should be a distinction.

Mr. HUGHES: Mr. Chairman, may I allude to the principle of the existing legislation? I hesitate to say what the intention of parliament was at the time it was enacted, but in effect this preference is a reward for someone who has been exposed to these hazards and not in respect of his intention to become exposed to them.

The CHAIRMAN: It is a question of principle, as to whether the preference extended to veterans who went overseas should apply to other groups.

Mr. ROGERS: I do not think you can interfere with it.

Mr. CARON: I believe the matter should be given more study.

Mr. RICHARD (*Ottawa East*): Is the number of veterans still large?

Mr. HUGHES: Yes. One would expect their number to decrease. They are decreasing, but not with any appreciable rapidity. We still have many veterans from the first world war who are in their early sixties and the veterans of the second world war will have a long way to go before they fade away.

Mr. RICHARD (*Ottawa East*): They also jump from competition to competition. A man may receive an appointment as a clerk and then leave that job and use his preference in competition to get another one.

Mr. HUGHES: He can do that in any open competition.

Mr. RICHARD (*Ottawa East*): They come back after having had their preference, and use it again.

The CHAIRMAN: Mr. Pelletier has a point he would like to make.

Mr. PELLETIER: As one of the co-authors of the Heeney report I still favour its recommandations on this subject. On the other hand I am not naive enough not to realize this is a matter which is going to be decided by members of parliament. One thing to which I should like to direct the attention of the committee is the anomalies which do occur because of the present provisions of the act which, as Mr. Hughes has said, are continued in the present bill except for one small point. The anomaly I have in mind occurs where a disability pensioner takes second place to a veteran who is not disabled. That actually happened not so long ago in respect of a rather senior appointment. The disability pensioner has his disability pension, whether he has been overseas or not; but the veteran who has gone overseas and who has not been disabled still takes preference over him. He can exercise that preference over and over and over again.

There is one final point I should like to make. I should like the committee to consider the possibility of adopting something along the lines of the recommendations in the Heeney report, it being made quite clear in the statute that it would apply only to those persons who obtained veterans status after the act was proclaimed in force. In other words, it would not alter the status of existing veterans.

Mr. HUGHES: This is a provision for future wars, Mr. Chairman.

Mr. CARON: Do you have any difficulty in making nominations after examinations in so far as the preference for overseas veterans is concerned?

Mr. HUGHES: I think this risk was accepted at the time the preference was granted.

Mr. CARON: But at the time it was granted in 1918 I believe they had no experience of a civil service commission.

Mr. HUGHES: I am thinking of the legislation in 1945 when it was devised for veterans of world war two. That is now what we have to contend with.

Mr. CARON: But the very same mistakes are being repeated. You may have the case of a veteran who has not got the best qualifications and yet, because he is successful in having the lowest possible points, he is accepted in the civil service.

Mr. HUGHES: In most competitions there is an average qualifying limit of 70 per cent.

Mr. CARON: Then an overseas veteran who gets 70 points may take precedance over another candidate who has 93 or 95 points?

Mr. HUGHES: I do not think that is quite a fair way to put it. A veteran is not assisted in qualifying; it is only after he has qualified that his preference applies.

The CHAIRMAN: I think we should adjourn until next Thursday.

Mr. BELL (*Carleton*): Are we still dealing with clauses 40 and 41?

The CHAIRMAN: Is it agreeable that clause 40 carry?

Mr. PETERS: I should like to ask whether there has been a complaint received from the Canadian Legion to the affect that the veterans preference has not been used?

The CHAIRMAN: Did you wish to say something Mr. O'Leary?

Mr. O'LEARY: We cannot be concerned with the veterans who missed the draft.

The CHAIRMAN: Then we shall leave the clause until the next day and deal with it in detail again.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 17

THURSDAY, JUNE 1, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

From the Civil Service Commission: Honourable S. H. S. Hughes, Q.C., Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners.

From the Department of Finance—Treasury Board: Mr. C. J. Mackenzie, Assistant Secretary.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25303-9—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)
Caron
Casselman (Mrs.)
Hanbidge
Hicks
Keays
Lafreniere
Macdonnell
MacRae
Martel
McIlraith
More
O'Leary
Peters
Pickersgill
Richard (*Ottawa East*)
Roberge
Rogers
Spencer
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, June 1, 1961.
(19)

The Special Committee on The Civil Service Act met at 9.40 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Messrs. Bell (*Carleton*), Caron, Hanbidge, Hicks, Macdonnell (*Greenwood*), MacLellan, MacRae, Martel, McIlraith, More, O'Leary, Peters, Richard (*Ottawa East*), Roberge, Rogers, and Spencer—(16).

In attendance: *From the Civil Service Commission*: Honourable S. H. S. Hughes, Q.C., Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners. *From the Department of Finance—Treasury Board*: Mr. C. J. Mackenzie, Assistant Secretary.

The Committee resumed its clause-by-clause consideration of Bill C-71, An Act respecting the Civil Service of Canada.

Mr. Rogers requested that a correction be made in the Committee's printed proceedings at page 336. (*See this day's Evidence*)

The Chairman informed the Committee that a letter has been received from The Civil Service Federation of Canada respecting Clause 54 of the Bill under consideration.

On motion of Mr. Bell (*Carleton*), seconded by Mr. Caron,

Ordered,—That the above-mentioned letter be included in the Committee's printed proceedings (*See Appendix "A" to this day's Minutes of Proceedings and Evidence*).

Clause 40 was adopted.

On Clause 41:

Sub-clause (1) was adopted subject to further comment.

Sub-clause (2) was adopted.

Clauses 42 to 49, inclusive, were adopted.

On Clause 50:

The clause was discussed in conjunction with Clause 60.

Clause 50 was allowed to stand.

Clauses 51 to 53, inclusive, were adopted.

On Clause 54:

Mr. Bell (*Carleton*) suggested that Sub-clause (3) be amended to read as follows:

(3) A lay-off is entitled for a period of twelve months, or such longer period not exceeding two years as the Commission may determine, after he was laid off to enter any competition for which he would have been eligible had he not been laid off.

25303-9—1½

Following discussion, the Committee agreed that the draftsman should be requested to reword the sub-clause to conform with Mr. Bell's suggestion.

In order that the members of the Committee would have an opportunity to study carefully today's submission by The Civil Service Federation respecting Clause 54, the clause was allowed to stand.

At 10.55 a.m. the Committee adjourned until 9.30 a.m. Friday, June 2nd, at which time consideration of Bill C-71 will be continued.

E. W. INNES,
Clerk of the Committee.

EVIDENCE

THURSDAY, June 1, 1961.

The CHAIRMAN: Gentlemen, the committee will come to order.

Mr. ROGERS: Mr. Chairman, I would like to make one correction. On page 336, line 27, reads:

> I have not been a civil servant for a number of years, so I am not too concerned about the phrase.

What I meant to say, at least, was:

> Having been a civil servant for a number of years, I am not too concerned about the phrase.

The CHAIRMAN: Is it agreed that the record be amended accordingly?

Agreed.

The CHAIRMAN: Before we begin this morning I would like to draw the attention of the committee to a letter from Mr. F. W. Whitehouse, president of the Civil Service Federation of Canada, dealing with clause 54. I am not going to read this, as you all have copies of it.

Mr. BELL (*Carleton*): I move that it be printed as an appendix to today's proceedings.

Agreed.

(See appendix)

On clause 40—Order of preferences.

The CHAIRMAN: We were working on clause 40(1).

Mr. CARON: When we were discussing that clause the other day I spoke of the Heeney report. Under the merit system up to now, a man who may have 65 per cent—if 65 is accepted—will pass over the head of a man who has had 95 per cent when he passes his examination. This is not so very good for the merit system. There is no provision for those who, against their will, were held in Canada when they wanted to go overseas. I think we should look at that very carefully before we go through with it.

The CHAIRMAN: Would you like to comment on that Mr. Hughes?

The Hon. S. H. S. HUGHES, Q.C. (*Chairman, Civil Service Commission*): The only thing I have to say is, as I said on the last day, that this is in content—and indeed in wording, with the exception of subclause 3 and paragraph (*c*) of subclause (1)—exactly what was in the old act.

Clause 40 agreed to.

On clause 41—Definitions.

Mr. MACDONNELL: I understand there is a question outstanding regarding certain members of the forestry corps and I would like to raise that and have it pursued. I believe there is some uncertainty, and I would like to have it finally settled. Perhaps I could raise it, to put it on the record, and we could have a report on it for the members of the committee at the next meeting.

Mr. BELL (*Carleton*): My understanding was that members of the forestry corps, in fact, were enlisted in the Canadian army and are covered by this provision.

Mr. MACDONNELL: Apparently there is a question with regard to certain enlisted men in Newfoundland, so I am told. I think Mr. Pelletier would agree that there is an outstanding question. I am not quite certain what it is at the moment, but I would ask to have it cleared up.

Mr. HUGHES: I think there was a body of foresters recruited in Newfoundland who were not embodied forces in the military sense and they served under exactly the same conditions as the Canadian forestry corps, but not being part of the armed forces they are not entitled to the preference. The same might be said, also, of the Canadian firefighters who were recruited in Canada for services with English firefighting forces in England, but who, not being part of the armed forces, do not get the veterans preference. I would be glad to investigate the exact position of the Newfoundland foresters, but if, in fact, they are not entitled to it by reason of not being part of the Newfoundland armed forces, then there would be no entitlement, without quite a radical amendment to this section, and no doubt amendments affecting many other non-military or even para-military bodies of men.

Mr. MACDONNELL: The only point as regards this particular body is that the other forestry workers, as far as I understand it, were entitled. This is purely a technical situation. I appreciate there may be very substantial difficulty if we were going to include everyone who, by hook or by crook, is regarded as assisting in the military effort. That would mean opening a very wide door. I am not proposing that. I am just asking whether there is an inequity here regarding these forestry workers.

The CHAIRMAN: Are you suggesting that the clause stand for further study or should we carry the clause now?

Mr. BELL (*Carleton*): We would carry it, subject to further comment.

Clause 41 agreed to.

Clauses 42 to 44, inclusive, agreed to.

On clause 45—Appointments from list.

Mr. CARON: The civil service association and the civil service federation made a lot of comment on that clause, asking for the deletion of all the words after "list" because, as the associations said, the principal danger under this provision is that the exception should become the rule.

Mr. BELL (*Carleton*): That is highly unlikely, is it not?

Mr. CARON: That is what they claim, and they studied it pretty well, according to their needs and interests. They both seemed to claim the very same thing. In any case, it would need clarification, if somebody may interpret the article to mean something else, other than what was the intention of the draftsman of the bill.

The CHAIRMAN: Are there any other views on that?

Mr. CARON: It might need clarification if someone interpreted the article to mean something else than was the intention of the draftsman of the bill.

Mr. BELL (*Carleton*): Perhaps the chairman of the commission would care to comment?

Mr. HUGHES: Yes, I think the words which are giving concern are "except that where in the opinion of the commission any special qualifications" and so on. This merely authorizes what in my opinion was not authorized before, the practice which has developed in the commission which is economical when you have a large general list, say, of clerks, and in some positions the knowledge

of typing, for example, is required but not in others. You then have your clerks generally listed; but if, for instance, the man who is fifth on the list has a knowledge of typing and the man who is fourth on the list has not, then in connection with that vacancy where typing is required you pass over the man who is fourth and appoint the man who is fifth. The same thing might happen in the case of a storeman where heavy lifting is required. This has been done, and I must say that when I first came to examine the practice I felt it was not authorized under the old act and that we should actually have two or three eligible lists for stores and heavy lifting, for clerks typing, for clerks, flower arranging, or whatever it might be, and this, of course, was uneconomical and tedious in the administrative sense. So this is just an attempt to authorize what has become an acceptable and efficient practice in the commission's work.

Mr. SPENCER: Those are permanent appointments to the civil service, and the requirements for some knowledge of typing might be only a temporary matter, is that not so?

Mr. HUGHES: No, not as a rule. That has not been our experience.

Mr. SPENCER: The danger of it is that it may be an area in which we might be getting away from the merit system.

Mr. BELL (*Carleton*): Surely not; surely that is what it does uphold.

Mr. SPENCER: You are not upholding it when you are taking someone lower in the list, in the classification.

Mr. PAUL PELLETIER (*Commissioner, Civil Service Commission*): I agree entirely with what Mr. Hughes has said. In the clerical grades he mentioned there may be also a knowledge of typing. There are other things—knowledge of bookkeeping, knowledge of a number of other things which clerical workers are required from time to time to possess. What we do have is a general examination for clerks where the basic requirements are the same, but the fact that any one individual possesses a special skill in addition to the basic requirements is known, and all that happens—to take the example that Mr. Hughes cited—was that if No. 5 on the list is the first person with a knowledge of typing, then the other four might be by-passed if the job essentially require a knowledge of typing. The merit system is thus observed.

Mr. SPENCER: Would you tell me, then, why the person who had this additional qualification—which would be a desirable thing in a clerk—would have a rating of five instead of four; why would he not be higher on the list, having those additional qualifications?

Mr. PELLETIER: Because, on the basic requirements for clerks generally, he came fifth. Now we could,—as Mr. Hughes I think implied at least—hold ten competitions instead of one, but I think this would be wasteful of time and money and I think the way we are doing it and the way the bill envisages we should do it, is really efficient and economical.

Mr. RICHARD (*Ottawa East*): Mr. Pelletier, in the case of your typist, that would be his or her say-so in the application. You would have to get a new test for the typing, I imagine?

Mr. PELLETIER: That person would be tested.

Mr. BELL (*Carleton*): The only alternative to this would be to subdivide the competitions to such an extent that it would become far too cumbersome administratively.

Mr. MACDONNELL: Has this in fact raised any protest? It seems to me a common-sense way of approaching the situation.

Mr. CARON: Could not they call the first five on the list to give them a test on the typewriter in that case?

The CHAIRMAN: Would someone like to respond to Mr. Macdonnell's question as to whether or not this has caused difficulty in the past?

Mr. HUGHES: Not as far as I know.

Mr. ROGERS: I do not see how it could.

Mr. CARON: It was not in the act in the past.

The CHAIRMAN: It was being done as a matter of practice and this just legalizes it. It seems to me like a good administrative section that makes the act more efficient.

Mr. HUGHES: I would say that general eligible lists are not special eligible lists. These are eligible lists that are kept for vacancies as they become due. The special eligible lists which are designed to fill a specific vacant position are not affected by this provision.

Clauses 45 and 46 agreed to.

On clause 47—Language.

Mr. PELLETIER: I would like to make a small comment on clause 47. It seems to me that this is one area where the commission should be given a somewhat more clear direction as to what it is supposed to do. I would refer you to section 8074 of appendix A of the Heeney report to be found on pages 71 and 72. I am not suggesting now that the act should eventually embody exact percentages, but I do think that this is one area which is difficult—as I am sure all hon. members will agree—and that the commission should be given certain general guideposts a little more specifically than is embodied in the present clause 47 of the bill. I would suggest, for your consideration, that something along the lines of what it contained in section 8074 of the Heeney report would not only be a protection for the commission—with which I am not too much concerned—but a protection for the public in general, to indicate what the commission is supposed to do a little more clearly in this tender area of bilingualism.

The CHAIRMAN: Any comments by anyone on clause 47?

Mr. CARON: Yes, I think there should be an incentive for the applicants to the civil service to try to have a better knowledge of both languages, not necessarily the written language but the spoken language. In that case, if there was an addition of 5 per cent on the points after the examination is completed, if a man can prove that he has a fair knowledge of the secondary language, that would be an incentive for him to try to learn a bit of the other language, at least the spoken language.

The CHAIRMAN: Any comments on that point?

Mr. MARTEL: Mr. Chairman, I would like to know how the regulations of the commission were applied up to now in this regard when they had to choose either a bilingual or a French-speaking man?

Mr. PELLETIER: At the present time the regulations provide that the deputy head must indicate whether or not a knowledge of English and French, or one or the other, is required. Under the section in the bill, of course, the jurisdiction is placed with the commission, and I think that is preferable in order to ensure uniformity in practice between various departments. My only question is: when should bilingualism be required or not? That is all, and the wording of the present section is very very general indeed.

Mr. BELL (*Carleton*): The bill does put two tests forward—"sufficient to enable the department or local office to perform its functions adequately", and the second test is "to give effective service to the public." That is the language which I think was very carefully considered and which was designed to try to meet what is, as you have stated, an exceedingly difficult problem.

My own submission would be that this is a problem for administrative rather than for legislative action, and personally I would have confidence in the handling of the issue by the commission so that those two tests can be met and that the issue can be kept out of a legislative straitjacket.

The CHAIRMAN: Are there further points on clause 47?

Mr. MACDONNELL: I agree fully with what Mr. Bell has said. Just as soon as you try to be more specific and go into particulars beyond these two clearly indicated principles, you might just be in for a peck of trouble. Again I would ask: has this not worked?

Mr. RICHARD (*Ottawa East*): Would not the qualification of speaking another language come under clause 45(2)—special skills—when making appointments? That would be a special skill, would it not, to have both languages?

Mr. PELLETIER: My own view is that language should be considered as just another qualification, nothing more or less. In some jobs the knowledge of both English and French is required, in others not. Therefore it becomes part of the qualifications, in my judgment at least, which a candidate must possess before he can get that job.

Mr. MCILRAITH: I should like some clarification on clause 47. The suggested wording of the clause is "the department or local office to perform its functions adequately and to give effective service to the public". The suggestion, in the Heeney commission report, as I read it, seems to make the test the giving of effective service to the public "in either language as required". Now, it seems to me there is a difference there, and I wonder if that difference was intentional at the time of the drafting, or is there any explanation of the difference? It would look as though the draftsman purported to follow part of the Heeney commission report, but there seems to be a little change in the language.

Mr. BELL (*Carleton*): I interpreted that as the draftsman having followed the language of the Heeney report to the extent that was necessary to give effect to it.

Mr. RICHARD (*Ottawa East*): Except that he did not leave in at the end "in either language as required".

Mr. BELL (*Carleton*): My submission would be that those words are not necessary in order to give effect to the meaning.

Mr. MCILRAITH: It seems to me that one form of the draftsmanship seemed to be looking after the interests of the public and the other seemed to be looking after the interests of the administration, to the extent that you can draw a distinction between the two. The bill before us seems to be concerned with administration, a department performing its functions efficiently, and the Heeney report seemed to be concerned with making sure that "effective service to the public in either language as required" was the test. There does seem to be a difference there.

Mr. ROGERS: Would not the post clarify that?

The CHAIRMAN: In the qualifications that are required for the candidates, you mean?

Mr. PELLETIER: I agree entirely, except that the onus of the decision rests completely with the commission in rather vague terms. Perhaps Mr. Bell is right; perhaps this is sufficient, and perhaps we should rely on the commission entirely. If I could address myself for a moment to one of Mr. McIlraith's comments, the last few lines of section 47 states:

> To perform its functions adequately and to give effective service to the public.

The first few words were probably inserted deliberately by the draftsman to reflect one of the things we had in mind in the Heeney report, and that is that in certain cases it may be that there is no direct service to the public being given but that bilingualism may still be required. For example, if you have in some place in the province of Quebec a group of cleaners and helpers who are completely unilingual, the foreman of that section should also be French-speaking in order to be able to direct his staff, although the foreman may have no direct contact with the public. That addresses itself to "perform its functions adequately". The other one is self-evident "give effective service to the public"—that is the postal clerk in the Post Office.

Mr. MARTEL: Mr. Chairman, I would like some clarification. As I see it, clause 47 in the new act is a new clause; but outside the act itself, or the former Civil Service Act, was there any regulation put into force by the commission on that particular point to bilingual employees which was not written in the act? There must have been a practice of some kind.

Mr. PELLETIER: If I can answer that question, the present act refers to the knowledge of the language of the majority. The present bill—and I think this is a great improvement—refers to bilingualism rather than the knowledge of the language of the majority. Now, to refer to how it was done in the past, there is a regulation—if you have the Heeney report—regulation 32(*a*), which governed the manner in which we operated in this field up until now.

The CHAIRMAN: On page 71, appendix A.

Mr. CARON: Who decides upon the qualifications, when one or two languages are needed; is it the commission or the deputy head?

Mr. PELLETIER: The present regulation states:

> If an appointment is required in a locality where both English and French are spoken, and the deputy head of the department in which the appointment is to be made advises the commission that a knowledge of both English and French is required for the proper performance of its duties, the commission shall appoint to the position a person who possesses such qualification.

First we get the recommendation from the deputy head and then we act accordingly.

Mr. CARON: According to the recommendation. So the commission has not any decision to make according to the fact that they may or may not need to do so?

Mr. PELLETIER: That is correct, but this bill corrects that situation and I think this is an improvement.

Mr. MARTEL: That was the situation up to now. The deputy head would indicate if a bilingual person or a French-speaking employee was required, and now the commission will have this responsibility. But in the Heeney report, page 71, the first column called "language qualification", the item is clear enough, it is an improvement on the old act. However, could these proposals be in the regulations of the commission?

Mr. HUGHES: I think the regulations could be made to spell out the limits of the commission's discretion in this field, if this were considered desirable. I know my colleague, Mr. Pelletier, does feel that the unfettered discretion of the commission might be conceivably insufficient to obtain most desirable results, in which case I think it would certainly be within the powers of the commission to recommend to the governor in council that regulations, or a regulation, be enacted to define more clearly in specific cases what is required. Otherwise, it could be done simply by consistent adherence to a policy within the commission laid down by direction.

Mr. RICHARD (*Ottawa East*): May I ask you this question, Mr. Pelletier? All other things being equal in a contest on a general list, say, for clerks, does the fact that the candidate can speak both languages not give him any preference or special points?

Mr. PELLETIER: It does not give him any preference unless the job to be filled requires the knowledge of both languages. Otherwise there is no preference.

Mr. RICHARD (*Ottawa East*): Does it not stop him from obtaining a job, just because he is bilingual? Will he not be ineligible in one language?

Mr. PELLETIER: Goodness gracious, no.

Mr. RICHARD (*Ottawa East*): You are all laughing, but that is not the general opinion of the public. Today things are changing because the English-speaking people have a knowledge of French in increasingly large numbers and that is why the problem will be more interesting in the future. But in the past the impression has been that French-speaking candidates who wrote in French but otherwise were just as good in English as their counterpart in one language —the English language—were not appointed because they had knowledge of both languages and would be kept for French-speaking positions. It would be a good thing if you could deny it.

Mr. PELLETIER: I would like to comment on that. Insofar as I know, Mr. Richard, in the past four years I have been with the commission, that has definitely not been the case, insofar as competitions that we conduct are concerned. If the knowledge of both languages is concerned, we try to get qualified people to test the candidates. If not, if both languages are not required, then the fact that a person happens to speak French does not militate either in his favour or against him.

Mr. CARON: Do they take special consideration when in the application there is a question "do you speak French and English, or do you write French and English?" Is that considered when you receive the application after the examination has gone through? Is it put on his record that he does speak both languages, or does it just state in the application without being considered after the examination?

Mr. PELLETIER: It goes in his record most definitely, and this is very useful information because it can happen and does happen, that a person is appointed to a position where, say, the knowledge of the English language only is required, but later on in his career he may be promoted to a position where both languages are required, and this kind of knowledge is very valuable to us and indeed to the department. So definitely it does go into his record.

Clause 47 agreed to.

On clause 48—probationary period.

Mr. PETERS: Mr. Chairman, on clause 48(2), how long would or could that extension be? The matter was brought to my attention the other day where this had been going on in one department for considerably over a year, and yet a contest had been held and a number of people had qualified. The deputy head made a recommendation that the contest be held, or no decision made at that time, and the probationary employee is holding the position—that is one of the top positions in that department. It seemed that, to say the least, this is extremely unfair to the other eight or ten people who have qualified for that position, are eligible now and are being held up because the deputy head of the department cannot make up his mind what he wants to do about it. I would think any extension could be a very limited thing, and it should be for other reasons than the one I mentioned.

Mr. HUGHES: I think the simple answer to that rather complicated question is that, if the initial probationary period as described by the act or by the commission is X, then the extension cannot be longer than X and in the aggregate. The whole period cannot be longer than 2X.

Mr. PETERS: What is this?

Mr. HUGHES: If you look at subclause (1) you will see that the basic probationary period is one year. Now the commission, on the recommendation of the deputy head, may extend the probationary period for an additional year—that is the basic period. Looking back again at sub-clause (1) you will see the words "or such longer period as the commission may establish for any class or grade or position"; and that may be eighteen months. In that case the period of extension could not be longer than an additional eighteen months.

The CHAIRMAN: What would be the effect of clause 26(1) on that probationary period, where an appointment is made? It would seem to reduce it to six months in the case of an appointment of someone already in the public service.

Mr. HUGHES: It can be reduced or waived in that case. This refers to an initial appointment.

Mr. PETERS: Could I ask this? In this particular case with which I am concerned—and I happen to have taken it to one of the commissioners—as I understand it, out of the number of people who qualified for this examination—and it was a top level examination—there were at least three deputy heads and one or two members of the commission sat on it, there were a number of people qualified, and it seems to me that it is unfair in this case to the deputy head to have the right to extend that period when these people who are qualified are in effect frozen from trying any other examination because of their desire to continue their opportunity to try to obtain an appointment in this particular position. Why would the deputy head be given the power to do it in this type of case? I can see that if there are no other qualified people and the contest that you held proves unfruitful, then I can see where the extension would be granted; but it works also in this other case and gives considerable leeway, which I do not think is advantageous to the service at all.

Mr. HUGHES: I am not sure that you are talking about the situation which will be provided for by this clause. You seem to be talking about something that is effective now rather than what will be effective under clause 48. If you mention a certain competition, Mr. Peters, it must be one in the experience of most of us here, and I wonder if you could specify exactly which one it was, and possibly either my colleagues or myself may be able to give you more specific information.

Mr. PETERS: I cannot, because I have forgotten which department it was in. I do not think I should do that anyway. The probationary employee is an employee in the department who is handling that department now. He has been on probation some length of time, but some of the applicants for the contest have been notified that they will be called in again for an oral examination and that the list has been weeded down from thirty or forty applicants to the eight or ten who are eligible or qualified for the position. It seems that this would fit that case. What the situation was before I am not aware, but it would seem that this is the type of clause that would allow the deputy head to do this legitimately, and I think it is not advantageous if that is what happens as a result.

Mr. HUGHES: I am sorry, but I am not clear how any question of competition can enter into the situation provided for in this clause, which deals with the probationary period after appointment and allows management the right

to scrutinize the work of an employee during a preliminary period of trial. I am afraid I am not clear as to how this provision is involved in some situation dealing with competitions.

Mr. ROGERS: Mr. Hughes, he won the competition in the first place, did he not? If he won the competition in the first place, I do not see anything wrong with the probationary period.

The CHAIRMAN: That is the point. Before this clause comes into operation a man has to be appointed to the position; he is then in the position for a probationary period.

Mr. MORE: What particular reason is there for an extended probationary period? I fail to see how you cannot determine in a matter of a year at the outside whether or not a man is satisfactory. Why would the period be extended beyond a year?

Mr. HUGHES: It is purely a matter of making sure that the service gets the proper man in that position, and in some positions a year is not long enough to test his performance, or if, in the course of the year, he should show some signs of weakness in the performance of his duties, then the deputy head might desire, for the balance, of this period of one year during which he cannot determine whether he is improving or not, to have an extension.

Clause 48 agreed to.

On clause 49—rejection.

Mr. BELL (*Carleton*): Mr. Chairman, the professional institute raised a rather interesting point on clause 49. They raised it under section 26 and it appears in the record of our proceedings at page 82. It relates to the fact that under this particular clause where, at the end of the probationary period, the employee is rejected, he ceases to become an employee and becomes a lay-off. The suggestion made by the professional institute is that this might discourage persons from applying in promotional competitions, and I think their suggestion was, for a person already an employee and who applied in a promotional competition, that the maximum penalty, if he proved unsatisfactory during his probation, should be reversion to his former status or grade. It seems to me there is some merit in that proposal and I think we should consider it.

The CHAIRMAN: I think there is some merit in the proposal.

Mr. BELL (*Carleton*): Whether it is feasibly administrative I am not sure, but perhaps Mr. Mackenzie can tell us.

Mr. MACKENZIE: There is a point which I think the committee should take into account when dealing with rejection following promotion. The bill would provide for the eligibility of members of the public service to compete in promotional competitions. To take a specific case as an example, a colonel in the army can compete in a promotional competition to qualify as a member of the civil service, but following a period of a year or a year and a half he may have to be rejected. In such a case it is very unlikely the armed forces would be able to absorb him back as a colonel.

There are also circumstances in which the suggestion of the professional institute, meritorious as it is, might present great difficulty regarding employees in the civil service.

Mr. HUGHES: That could apply to civil servants in very much the same manner. The position the appointee on probation had vacated would, of course, have been filled by promotional competition, or perhaps by open competition, and the department might not have a position available to absorb the rejected probationer. I suppose this could be met by the creation of supernumerary positions, but it is conceivable the service could become clogged with people

who had struck their heads sharply on the ceiling and had fallen back to their proper level, and this in turn would inhibit promotion from below their final resting place.

I think this has always been the case and, as a matter of fact, the Department of Justice has ruled under the old act that every promotion was a new appointment, and the rules as to probation under section 23 of the old act applied in cases of promotion also. This is something the service has known and lived with for many years, and it does not seem to have deterred men of ability and ambition from climbing upwards. I really do not think the professional institute's objection is something which should concern the committee too much.

Mr. BELL (*Carleton*): How practical is the problem? How often have you encountered this?

Mr. HUGHES: We have not had many cases.

Miss ADDISON: If I may say so, I think it is largely because in promotional competitions the probation period has never been enforced. Under this bill the deputy head, if he does not want to enforce the probational period, will have to say so, and I think in the majority of cases he will say that no probationary period is required. This is what is worrying some people, and it is suggested if authority were put in this clause to say that in special cases the deputy head could insist on a probationary period, but have it the exception rather than the rule, it might meet the point made by the professional institute.

Mr. CARON: Should there not be a right of appeal in this clause?

Mr. HUGHES: No, I do not think so.

Mr. MARTEL: I have been reading page 198 of our proceedings, and an answer by Mr. Easter to a question by Mr. Caron indicates the civil service federation were satisfied with the present provision. I shall read his answer. It is:

> According to Mr. Caron he would become involved in rather a lengthy procedure because you could find an employee who could not measure up to a job to which he was appointed. During this probationary period if you find that he is not satisfactory, the act provides that he go on lay-off, and I presume he would be appointed when a suitable person comes along. I think that is sufficient.

Mr. BELL (*Carleton*): That should be "when a suitable position comes along".

Mr. MARTEL: Mr. Caron was asking whether there should be a right of appeal in this clause, and that is the answer.

Clause 49 agreed to.

On clause 50—tenure of office.

Mr. CARON: I think the power given to the governor in council seems to be much too wide. The clause states:

> Nothing in this Act shall be construed to limit or affect the right or power of the Governor in Council to remove or dismiss any employee.

In my opinion that is a little too wide. I believe it should be the commission which ought to decide whether a man should be maintained or dismissed. I do not believe the Governor in Council should have the right to comment on any employees, that they should be dismissed.

Mr. MACKENZIE: This is the provision which is contained in section 52 of the present act.

Mr. PETERS: I violently object to this also. Yesterday we heard a minister inform us that appointments had to be made and were not made because of a slight change in an act. I am referring to the electoral branch where only 35 of the employees have been retained as D.R.O.'s. Only 31 of them have been retained since 1957.

Mr. BELL (*Carleton*): But parliament vacated the positions. The hon. gentlemen did not vote against the bill.

Mr. PETERS: It was the same technicality used by the government, and not explained. It was used for the directors of the C.N.R. the other day, where 10 years were ended and complete replacement takes place. I believe this is power which the governor in council should not have.

Mr. MARTEL: Are the returning officers civil servants?

Mr. PETERS: Not necessarily, in that sense.

The CHAIRMAN: I wonder if we could discuss this matter on clause 60?

Mr. RICHARD (*Ottawa East*): Under subsection 2 of section 50 perhaps the governor in council should have the right to dismiss any employee for cause, but there is no qualification in the sentence. Dismissal should be for cause.

Mr. HUGHES: May I suggest, Mr. Chairman, there is a rather elaborate procedure laid down in clause 60 which governs all the practical cases where dismissal is recommended? This is merely a section to preserve the prerogative in the manner similar to the way in which it has been preserved and observed for a great many years. It has nothing to do with specific cases where dismissal is recommended by the deputy head. These are covered in clause 60. The fact that only the governor in council can dismiss an employee is a protection rather than a threat to security of tenure.

Mr. BELL (*Carleton*): Hear, hear.

Mr. CARON: But subsection 2 of clause 50 states:

> Nothing in this act shall be construed to limit or effect the right or power of the Governor in Council.

Clause 60 is out of it.

Mr. PELLETIER: Perhaps I am jumping ahead, but we have already referred to clause 60. Personally I agree with subsection 2 of section 50. I think the prerogative of the crown has got to be maintained in this area, as indeed it has in virtually every other area. However, when you go to clause 60 you will find there is a fairly substantial divergence from what was recommended in the Heeney report. I do not know if we should go into that now, or wait until we come to it.

The CHAIRMAN: I would suggest, as the chairman of the commission has said, section 50 is more or less a catch-all clause, and I think we should discuss this under clause 60.

Mr. CARON: I would accept that if you could prove that these words "nothing in this act shall be construed to limit or affect" have no meaning.

The CHAIRMAN: They certainly have a meaning.

Mr. CARON: Then, if they have a meaning, clause 60 does not count.

Mr. MACKENZIE: In 99 per cent of the cases section 60 will be employed, and subsection 2 of section 50 will only be employed by the crown in extreme cases.

Mr. HUGHES: It will be noted that all these succeeding clauses deal with resignations, abandonment of positions, and so on, and quite clearly the draftsman has thought it necessary to say that nothing which follows shall be a limitation on the power of the governor in council to dismiss.

Mr. MACDONNELL: That is as it exists now.

Mr. HUGHES: As it exists now, and as it will have to exist when we come to clause 60. Possibly the clause could be let stand until we hear the comments of the draftsman who may be able to explain, with much more authority than I, why it is necessary to preserve a state of affairs which has lasted for many generations.

The CHAIRMAN: Are there any comments on that suggestion?

Mr. MARTEL: It is interesting to note that no representations have been made on clause 50 by any of the civil service groups who appeared before us. They all accepted the clause as it is.

Mr. CARON: We have the right to make recommendations.

Mr. MARTEL: But we have to take into account the opinions of the civil service associations as well.

Mr. BELL (*Carleton*): I think all Mr. Martel is saying is that there is no appearance of alarm on the part of the associations that have appeared before us.

Mr. RICHARD (*Ottawa East*): But we should be the watch dogs.

Mr. CARON: This is a matter which the associations may not have cared to raise.

Mr. BELL (*Carleton*): This is only a preservation of the royal prerogative, and it should be remembered the rest of the act provides for civil servants a type of security of tenure which never existed before under the old act. I think we should not lose sight of that fact.

Mr. RICHARD (*Ottawa East*): I shall agree with Mr. Bell, if he agrees this section means what it says, that notwithstanding anything in the act the governor in council can remove anyone for no reason at all.

Mr. MARTEL: No.

Mr. RICHARD (*Ottawa East*): There is no limitation, and there is no use reading it any other way. There is nothing in this to suggest the bill limits the power of the governor in council to remove any employee. Mr. Bell wants to maintain the right to remove or dismiss as the royal prerogative, so that the governor in council can cut a head whenever he wants.

Mr. BELL (*Carleton*): My hon. friend's attitude is totally ridiculous. This is the preservation of a right which has existed from time immemorial. The rights in the act provide for a security of tenure which my hon. friend, when he was in power, did not seek to provide.

Mr. RICHARD (*Ottawa East*): My hon. friend is trying to bring into this something which I have not attempted to do. I have been sitting on committees for a number of years without playing politics, and I am not interested in the purposes of my hon. friend in making such a statement. I am only here in an effort to ensure that a good act is passed for the civil service.

Mr. MACDONNELL: On subsection 2, am I right in understanding this does nothing to cut down the various protections which are given to civil servants by this Bill and, perhaps, other acts? As I read subsection 2 it means that the underlying power of the governor in council still remains, but subject to the various protections given to civil servants in other clauses of the bill and in other acts.

The CHAIRMAN: That is my understanding.

Mr. CARON: Then why not add to the subclause the words "for cause"? It would then read:

> Nothing in this act shall be construed to limit or affect the right or power of the governor in council to remove or dismiss any employee for cause.

The CHAIRMAN: I think the whole point is that you have to read this clause and the other clause at the same time. If you read clause 60 with clause 50 you will find this right to dismiss is subject to the right of the civil servant to appeal, and is subject to the other protections that are in the act.

Mr. CARON: So far as clause 60 is concerned you are right, but in clause 50 it states: "nothing in this act shall be construed to limit", and clause 50 is part of the bill. Therefore, the governor in council has no need to make reference to clause 60, and can do whatever he likes without consulting the other clauses.

Mr. HUGHES: May I point out to Mr. Caron that the words in subclause (1) cover this in a way which possibly makes the words of subclause (2) supererogatory. I should like the draftsman to comment upon that. Subclause (1) states:

> The tenure of office of an employee is during the pleasure of Her Majesty

That is exactly what subclause (2) says, and it covers the tenure of every employee, except those who are employed subject to the limitation of good behaviour, like judges, and those like my colleagues and myself who are employed for a specified period of time. There is nothing revolutionary in these words "during the pleasure of Her Majesty". If they are to be accepted then the governor in council exercises that power of dismissal on behalf of Her Majesty.

Mr. CARON: But subclause (1) states:

> The tenure of office of an employee is during the pleasure of Her Majesty, subject to the provisions of this and any other Act.

Why not delete subsection (2) and let it go on section 60?

The CHAIRMAN: Would you like to have this clause stand and consider it later when we have the draftsman here?

Mr. CARON: Yes.

Clause 50 stands.

Clauses 51 and 52 agreed to.

On clause 53—abandonment.

Mr. PETERS: I should like to see provision made in clause 53 for the right of appeal. An example was given to me of someone who had amnesia, and when that person returned to work he had no job and there was no appeal against the decision.

The CHAIRMAN: I think Mr. Hughes could clarify that point.

Mr. HUGHES: In answer to Mr. Peters' question, I should tell you there has already been a preliminary draft of the regulations in this connection, which provide for the exceptional cases. Naturally, I am not going to bring up the question of regulations specifically before the committee here, but this is covered, as indeed the clause provides for it to be covered, by the regulations which are now being considered. The clause contains the phrase "such longer period as may be prescribed by the regulations", and that covers it.

Mr. PETERS: What is our relationship to these regulations? It seems to me we can only go by the act itself. I believe it would be sufficient if there were provision written into the clause allowing for an appeal from the decision of the deputy head.

Mr. HUGHES: I agree with Mr. Peters, if the committee sees fit to provide for the right of appeal. It could be done, but I cannot express any favourable opinion on this suggestion. That is all.

Mr. CARON: There was a recommendation by the federation to add a subclause (2):

> An appeal may be lodged with the civil service commission by an employee who, through circumstances beyond his control, has been absent from duty and subsequently declared by the deputy head to have abandoned his position...

Mr. PELLETIER: As Mr. Hughes has pointed out, clause 53 includes the phrase "as may be prescribed by the regulations". I fully appreciate the point made by Mr. Peters. These kinds of situations arise, but I do not think it is possible in an act of parliament to provide for all the possible situations and circumstances that might arise. It seems to me, therefore, that this is a sound statutory provision. It enables a responsible body—and I hope this body is responsible—to establish regulations which provide for cases of amnesia, for the case of the fellow who crashes in Labrador and who may be absent for weeks on end but, if after all these things have been ascertained and the person concerned has actually abandoned the position, then I do not see why there should be the right of appeal.

Mr. PETERS: There would be no appeal if the man had abandoned the position.

Mr. CARON: It is the person who has been ill, who has had an accident and could not reach the commission or deputy head, who will have the right to appeal. The other man will not even try to appeal. He will not be there.

The CHAIRMAN: But the point is that all the clause intends to do is give authority to the commission, to do by regulation what obviously could not be done by the act. We can't very well specify all the cases and situations that might arise. It is obviously more efficient to do that sort of thing by regulation than by amendment to a clause of this nature.

Mr. PETERS: But the clause does not give that power to the commission. It gives power to the deputy head to take certain action and it is to that I object. The objection is that the deputy head makes the decision that a man has abandoned his position, not that the man says he has abandoned the position and therefore would not need to appeal. I think there is a considerable difference. If the employee had abandoned the position he would probably have resigned.

The CHAIRMAN: But the deputy head does not act under this section. He acts under the regulations which are drawn up to cover all the numerous types of cases that can be envisaged.

Mr. PETERS: I was under the impression that this was the employee's contract with the civil service which we were discussing, and not that the civil servant was going to have to establish a contract through a series of regulations. I believe this is quite important because I was of opinion this was going to be the contract through which the various associations representing the employees would be negotiating. If you put regulations beyond that, then we are getting further away from direct negotiation and direct representation of the employee with the employer.

Mr. MORE: No.

Mr. MACDONNELL: I think I would be entitled to assume there is a certain amount of common sense in the commission, and I am sure they do not want to provoke rows. I am sure they do not want to be unfair to anyone. If we were to spell out everything in the act the matter would become utterly tiresome.

Mr. CARON: When the associations and a portion of the population seem to think it is not clear, then I think it should be clarified.

The CHAIRMAN: I think it was clarified with the associations when they were before the committee. They were told the matter would be covered by the regulations. Is not that correct?

Mr. RICHARD (*Ottawa East*): Does Mr. Pelletier think the period of one week is a little short?

Mr. PELLETIER: Mr. Richard, that is why we have the words "as may be prescribed by the regulations" in the clause. The one week period should apply normally in large urban centres where you can readily ascertain whether or not the person concerned has abandoned the position, but there will be provision in the regulations to cover extraordinary situations. Personally I believe if a person walks off the job and stays off for one week, he ought to be considered as having abandoned his position. I do not think we can ask the taxpayer to carry a man who is abandoning his position for two, three, four or five weeks. I do not think that is equitable.

Mr. CARON: Do you not think he should be suspended for, say a month, and after a month dismissed?

The CHAIRMAN: Does anyone wish to make a comment on Mr. Caron's suggesstion?

Mr. HUGHES: The difficulty of this is that his position is occupied. This clause was to cover the case of a man who walks out and who cannot be considered likely to reappear. I am thinking of the case of one Finlayson in the 1930's who walked out and eventually, after seven years, was declared to be dead by the courts. It would be considerably embarrassing for the people entrusted with filling positions to wait for a period of seven years to determine whether thy should be filled.

An HON. MEMBER: Did his estate get the seven years' pay?

Mr. MACKENZIE: No sir, but his presumed widow received an allowance under the Civil Service Superannuation Act, as it was then.

Clause 53 agreed to.

On clause 54—laying off employees.

Mr. BELL (*Carleton*): On subsection (3) of clause 54, the professional institute raised the question as to whether the period of 12 months was not sufficient after lay-off for eligibility to enter another competition. I think perhaps we might meet their point by their adding at the end of the first line the words "or such longer period not exceeding two years as the commission may determine", so that the whole subsection would read:

> A lay-off is entitled for a period of 12 months, or such longer period not exceeding two years as the commission may determine, after he was laid off to enter any competition for which he would have been eligible had he not been laid off.

The CHAIRMAN: Are there any comments on that?

Mr. PELLETIER: The only objection I can see to that is not very important. It increases the administrative difficulties of the commission but I do not think that should loom too large in your discussions. Without consulting my colleagues I would say I would be quite prepared to accept an amendment of that kind. It would be left to the discretion of the commission.

Mr. MACKENZIE: I think Mr. Bell's suggestion is reasonable, but the number of cases will not be great and there should not be too much administrative difficulty.

The CHAIRMAN: Gentlemen, what is your opinion?

Mr. CARON: The suggestion made by Mr. Bell is perfectly acceptable.

The CHAIRMAN: Then is it agreed we ask the draftsman to draft an amendment to cover Mr. Bell's suggestion?

Some Hon. MEMBERS: Agreed.

Mr. CARON: On subclause (1) there is a submission by the federation that it should be reworded as follows:

> Where two or more persons employed in positions of the same general class in any unit of a department are to be laid off, or when one person is to be laid off and there are other persons holding positions in the same general class in the same unit of the department, the commission shall list the persons holding positions in the same general class in an order of lay-off which takes into consideration both merit and seniority and such persons shall be laid off in order beginning with the lowest on the list.

Mr. BELL (*Carleton*): What page is that, Mr. Caron?

Mr. CARON: Page eight of the federation's brief.

Mr. BELL (*Carleton*): Is that not on clause 55?

Mr. CARON: Pardon, it is clause 55.

The CHAIRMAN: Gentlemen, I would direct your attention to the brief received today on clause 54.

Mr. BELL (*Carleton*): I think none of us has had a chance to examine it. Has Mr. Hughes had a chance to absorb its details?

Mr. CARON: They suggest a re-wording of subclause (5) and the addition of a new subclause (6). For subclause (5) they suggest:

> (5) a person ceases to be a lay-off if he is appointed to or declines, without sufficient reason, an appointment to a position in the public service with the same or higher maximum rates of pay.

The CHAIRMAN: Gentlemen, it seems to me we have not had sufficient time to check the submission of the federation on clause 54. It is now close to 11 o'clock, and in my opinion the committee should adjourn and meet to-morrow at 9.30 a.m.

APPENDIX "A"

CIVIL SERVICE FEDERATION OF CANADA
88 Argyle Avenue,
Ottawa.

May 31st, 1961.

Mr. R. S. MacLellan, Chairman,
Special Committee,
Civil Service Act (Bill C-71),
House of Commons,
Ottawa, Ontario.

Dear Mr. MacLellan
and Members of your Committee:

Re: Bill C-71, An Act respecting the
Civil Service of Canada, Part 4,
Section 54.

We would request the indulgence of your Committee to consider a point which we have hitherto overlooked in our previous representations and which could contain serious implications to civil servants on lay-off.

We would refer you to Subclause 2 of Clause 54 of Bill C-71 which reads: "The Commission may without competition appoint a lay-off to any position in the Civil Service for which he is qualified having the same or lower maximum rates of pay as the position held by him at the time he was laid off"; and Subclause 5 of Clause 54, which should be considered along with Subclause 2. Subclause 5 reads: "A person ceases to be a lay-off if he is appointed to or declines an appointment to a position in the public service with the same or higher maximum rates of pay."

The concurrent reading of these two subclauses underlines the concern that the Federation has with respect to the present wording of this Clause of the Bill, in that it carries, by implication, the possibility of a further hardship on civil servants on lay-off. We are of the considered opinion that the wording should be changed to retain the intent and eliminate the implication.

As a means of outlining our belief that there is a serious implication inherent in the present wording, we will give an example of what could happen, legitimately and without malice, under the present wording.

Joe Doakes, Clerk 4, HMC Dockyard, Halifax, N.S., finds himself subject to lay-off under Subclause 1 of Clause 54. Subsequently the Commission under Subclause 2, offers Mr. Doakes a position at Army Headquarters, Quebec City, P.Q., the only available vacant position at that time. Because of the financial burden involved, language barrier or other legitimate reason, Mr. Doakes is placed in a situation which forces him to decline the appointment. Therefore, under Subclause 5, he "ceases to be a lay-off" and is not eligible to a future appointment in his home area of Halifax or an area not involving the above reasons for rejection. A short time later a position becomes vacant, one for which Mr. Doakes has all the desirable qualifications, but the Commission cannot appoint him under Subclause 2 because he has been removed from the lay-off list under Subclause 5.

It is not our intention to dictate substitute wording to your Committee but, with your permission, we would suggest a minimum rewording of Subclause 5 as follows:

> (5) A person ceases to be a lay-off if he is appointed to or declines *without sufficient reason,* an appointment to a position in the public service with the same or higher maximum rates of pay.

Add new Subclause 6:

> (6) In the event the reason for declining an appointment under Subclause 5 of this Clause is deemed by the Commission not to be sufficient reason the person involved shall have the right to appeal the decision to remove him from lay-off.

The above right to appeal could also be embodied in the reworded Subclause 5.

We are enclosing sufficient copies of my letter for distribution to members of your Committee.

We wish to thank you and members of your Committee for any consideration you may give this letter during your deliberations.

Respectfully yours,

F. W. Whitehouse,
President.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 18

FRIDAY, JUNE 2, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

From the Civil Service Commission: Honourable S. H. S. Hughes, Q.C., Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners.

From the Department of Finance—Treasury Board: Mr. C. J. Mackenzie, Assistant Secretary.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25367-4—1

SPECIAL COMMITTEE ON THE

CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)
Caron
Casselman (Mrs.)
Hanbidge
Hicks
Keays
Lafreniere
Macdonnell
MacRae
Martel
McIlraith
More
O'Leary
Peters
Pickersgill
Richard (*Ottawa East*)
Roberge
Rogers
Spencer
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, June 2, 1961.
(20)

The Special Committee on The Civil Service Act met at 9.40 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Messrs. Bell (*Carleton*), Hanbidge, Hicks, Lafrenière,
Members present: Messrs. Bell (*Carleton*), Hanbidge, Hicks, Lafrenière,
(*Ottawa East*) and Tardif—(13).

In attendance: From the Civil Service Commission: The honourable S. H. S. Hughes, Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners. *From the Department of Finance—Treasury Board:* Mr. C. J. Mackenzie, Assistant Secretary.

The Committee resumed its clause-by clause consideration of Bill C-71, An Act respecting the Civil Service of Canada.

On clause 54:

The Committee discussed sub-clause (5), together with the submission thereon, of the Civil Service Federation of Canada. The general principle outlined in the Federation's letter was approved and the draftsman was requested to reword the sub-clause accordingly.

Sub-clauses (1), (2) and (4) were adopted.

Sub-clauses (3) and (5) were adopted, as amended, subject to review and rewording by the draftsman.

Clauses 55 to 59, inclusive, were adopted.

On clause 60:

Following discussion and consideration of various proposals to amend sub-clause (5), Mr. Bell (*Carleton*) moved, seconded by Mr. More,—That Clause 60 be adopted.

The motion was adopted on the following division: Yeas: 7; Nays: 4.

On clause 61:

Sub-clause (1) was adopted *on division.*

Sub-clause (2) was adopted.

Mr. Richard (*Ottawa East*) moved, seconded by Mr. McIlraith,

That sub-clause (3) be amended by adding to the sub-clause, after the words "been heard", the following: "and to be represented by counsel at such inquiries".

Further suggestions were considered and the sub-clause was allowed to stand.

25367-4—1½

On clause 62:

The clause was discussed, Miss Addison making a suggestion thereon.

The clause was allowed to stand and it was referred to the draftsman for rewording.

At 10.55 a.m. the Committee adjourned until 9.30 a.m., Thursday, June 8th, at which time the Committee will continue consideration of Bill C-71.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

FRIDAY, June 2, 1961

The CHAIRMAN: Gentlemen, we have a quorum. Would you please come to order.

At 11 o'clock yesterday we were working on clause 54, at which time the recent submission of the Civil Service Federation had been brought to our attention in regard to the appointments of layoffs. Are there any further comments in connection with clause 54?

Mr. BELL (*Carleton*): Perhaps we might have the Chairman of the Commission comment on this additional brief from the Federation which we received yesterday, and which will be an appendix to yesterday's proceedings.

The CHAIRMAN: Would you like to do that, Mr. Hughes?

Hon. S. H. S. HUGHES (*Chairman, Civil Service Commission*): Yes, I would.

Mr. Chairman, I notice that the submission is on rather narrow grounds, and is confined to providing for the single case where a layoff declines an appointment made under the layoff procedure. In the normal course, that would be it; he would not have a second chance, provided, of course, that he was qualified for the position which he was offered.

Mr. MCILRAITH: Would you speak a little louder?

Mr. HUGHES: Yes. The Federation states that there should be some right of appeal to any administrative decision on the question of whether or not the layoff had sufficient reason to decline the appointment. I must say that this would seem to me to be quite a moderate proposal, and perhaps the committee will give it favourable entertainment. I do not believe that my colleagues or myself are disposed to attack it as a proposal.

The CHAIRMAN: Mr. Hughes, could you tell me what the practice is, now, in administration, when you run across a problem like this, where it is inconvenient for an employee to accept an appointment in another city or area?

Mr. HUGHES: I would think, Mr. Chairman, that there is a certain amount of discretion exercised by the Commission in these matters; however, there is no obligation upon it to consider them in the way that is suggested by the Federation. Strictly speaking, the man must take another appointment for which he is qualified, or else cease to be considered a layoff.

The CHAIRMAN: What would you do in an ordinary case if a layoff did not find it reasonably convenient to take an appointment that was offered to him?

Mr. HUGHES: Well, on this, I would like to have some corroboration from my colleagues, who are experienced in this matter, or, perhaps, Mr. Mackenzie.

I would say that in the normal case, if he did not take it—and the most common case is where he has another job in the interim and does not want to give it up—it would be considered that he would cease to be a layoff, and would not be offered any other employment.

The CHAIRMAN: Mr. Pelletier, have you any comments which you would wish to make on this?

Mr. PAUL PELLETIER (*Commissioner, Civil Service Commission*): I would support entirely what Mr. Hughes has said. I think the submission made by the Federation is a moderate one. It may mean more appeals, but that, in itself, is not a sin, I would submit.

In connection with their suggestion on clause 5, that the words "without sufficient reason" be added, and then their adding a new subclause 6, which provides that the sufficient reason has to be determined by the Commission, I think this could live in a statute, because there is a responsible body which will determine what the sufficient reason is.

I must say, as a member of the Commission—and I think that that has been agreed, both by Mr. Hughes and Miss Addison—that this is a reasonable proposal which we could readily accept.

Mr. BELL (*Carleton*): In view of what has been said, I suggest that we adopt the principle of these suggestions of the Civil Service Federation and refer them to the draftsman for consideration, as to whether the actual language suggested by the federation is appropriate, or in the alternative, ask him for any suggested changes that he may make, and that we carry the balance of clause 54, as amended.

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Clause 54 is carried, subject to the proposal made by Mr. Bell.

On clause 55—Order of laying off.

Mr. PETERS: Mr. Chairman, I see that this relates to merit, rather than the seniority principle. What consideration is given now to seniority in the matter of layoffs? Is there established for the civil service a seniority list, which is available?

Mr. HUGHES: I would say no, Mr. Chairman, and I would like to qualify that by saying that under certain circumstances and in certain departments, seniority may have some bearing as to who is laid off. However, there is no such thing as a definitive seniority list, as far as we are concerned.

Clause 55 agreed to.

On clause 56—Misconduct.

Mr. BELL (*Carleton*): I think we had some discussion on the suggestion of both the Federation and the Association, both of whom sought in subclause (2) to have added the words "and of his right to appeal". This really is more of a drafting matter, and I believe the chairman, perhaps, at one time may have expressed the view that this might be cluttering it up a little bit. Have any of the witnesses an opinion which they would like to express at this time, on this?

Mr. HUGHES: Mr. Chairman, my view expressed at the time, which Mr. Bell referred to, was that if you were to write in purely for cautionary reasons, words which were, in fact, unnecessary, it would not be good drafting, since the right of appeal is provided for in another part of the act, and it would seem to be making a mockery of normal economical drafting procedures to keep on repeating something which is evidently the law.

Then, the draftsman, Mr. Driedger, brought up the point that this might conceivably have some limiting effect on the general right of appeal; that is, if in certain portions of the act, as I understood him—and, of course, this is subject to what he might tell you on the subject—it was provided that in any given case the deputy head should warn an employee of his right to appeal, this might vitiate, in general cases, the general right of appeal. On the face of it, this may seem a little subtle, but it is a consideration we also should bear in mind.

Clause 56 agreed to.

Clause 57 agreed to.

On clause 58—Notice of suspension.

Mr. McILRAITH: Mr. Chairman, I would like some explanation in connection with some parts of this clause, because I am experiencing some difficulty in understanding it.

58(2) says:

> An employee is not entitled to any remuneration in respect of any period during which he is under suspension.

It will be noted that that provision is absolute in form. Clause 57, which we have just dealt with, provides that a deputy head may suspend an employee where criminal proceedings against an employee are pending. Let us assume criminal proceedings, for the purpose of illustration, in a situation where there is a clear case of mistaken identity, and where criminal proceeding should never have been taken, or laid. In that case, the deputy head then acts properly in suspending the civil servant. However, as I read clause 58(2), there is no provision for the employee who was wrongfully suspended receiving his remuneration, and I wonder if the Chairman would clarify the situation for me and explain wherein lies the error of what I have stated.

Mr. HUGHES: Mr. Chairman, I think the clause should be taken together with subclause (5) of clause 56. If you look at subclause (5), paragraph (*b*), you will see it reads that if the appeal is against a suspension, the Commission may confirm the suspension, reduce the period of suspension, or revoke the suspension as of the day it was imposed, as it sees fit. If that action was taken pursuant to appeal, of course all entitlement to pay would be restored, but as a matter of law I suppose it is necessary to state that so far as pure entitlement goes, so far as rights go, the employee, if this appeal succeeds, has a right to pay for the period he has been under suspension.

Mr. McILRAITH: That deals with the point where an appeal is taken, but in the hypothetical case I pose there obviously would be no appeal taken.

Mr. MACKENZIE: I think Mr. McIlraith's attention should be directed to paragraph (*b*) of subclause (3) of clause 59.

The CHAIRMAN: That would seem to cover any injustice.

Mr. MACKENZIE: No question of appeal is involved under this clause.

Mr. BELL (*Carleton*): I think that would cover Mr. McIlraith's point.

Mr. McILRAITH: I think it would, though I can tell you it caused me some concern.

Clause 59 agreed to.

On clause 60—notice of dismissal recommendation.

Mr. PETERS: In the case of dismissal has the association representing the employee the right to represent him at whatever hearings the commission may hold?

Mr. HUGHES: We have the provision for anyone to employ either counsel or an agent. I would suspect in most cases it would be an employee of one of the associations who would be representing an appellant at a hearing.

Mr. PETERS: Can the associations or federations attend on their own, without representing anyone, for information purposes?

Mr. HUGHES: I do not see why not, Mr. Peters. It is largely a matter of accommodation. I think the bill of rights might operate here. I say that purely speculatively, because I have not that bill here; but I think under certain circumstances a tribunal of this kind might be bound by the Bill of Rights to conduct its proceedings in public.

Miss ADDISON: I should like to say something about this matter. Under this clause dismissals will be made by the Governor in Council. In other words,

this follows the same procedure as we have now and it has been a problem for government administrators for years and years. The consensus is that it would be much more satisfactory if dismissals could be made by a body like the Commission rather than by the Governor in Council.

Administratively, there is a great deal to be said for doing it in this way. Under this clause, provision is being made for the first time for a civil servant to have the right of appeal on dismissal. He never had that right before, and his security of tenure is therefore much better protected under this bill than it was under the old act.

It seems to me there is a great deal to be said for providing in the bill that the Commission could dismiss without having to go to the Governor in Council every time. I certainly think the Governor in Council should have the overriding authority to dismiss, but in most cases it would be much more satisfactory if the Commission could do the dismissing. The Commission appoints, and I think it makes sense that it should dismiss, and so avoid introducing another unnecessary step into the procedure.

The CHAIRMAN: How could you arrange that? Would it be subject to the overriding authority of the Governor in Council?

Mr. PELLETIER: As I said yesterday on subclause (2) of clause 50, the Crown should always have the residual power to dismiss, but in so far as normal cases are concerned, I agree entirely with Miss Addison, for the reasons she has put forward, and for others.

I shall refer you to section 11032 in appendix "A" of the Heeney report, which is to be found at page 89. The section reads as follows, and I quote:

> The commission may, on the recommendation of a deputy head, dismiss any employee from the civil service, provided that the commission shall report annually to parliament giving the names of any employees who have been dismissed and reasons therefor.

There is another reason Miss Addison did not bring out, and which I should like to mention. It is that it probably could be easier—and this may be slightly cynical—to dismiss employees who ought to be dismissed under this provision than if the Governor in Council had to dismiss them because, if I may be presumptuous enough to say so, I think there is ordinarily a certain reluctance on the part of members of the elected body to dismiss employees, whereas if an independent body such as the commission is charged normally with the power to dismiss, then we can look at the thing and if an individual is indeed incompetent, or for any other sufficient reason warrants dismissal, then he can be dismissed more readily.

Secondly, it seems only logical that the body which has the exclusive authority to appoint, which is the Commission under the present act and under this bill, should also have the power to dismiss.

Finally, I want to reiterate that I think the Crown should always have the power to dismiss, notwithstanding the normal processes which may be written into the legislation.

The CHAIRMAN: Are there any views on this very important suggestion?

Mr. BELL (*Carleton*): I look upon subclause (5) as a protection for civil servants, and personally I would be very reluctant to see it dropped from the bill as it stands. In this respect, under subclause (5), the Governor in Council does not act except on a recommendation of the Commission. Nonetheless, if he does so act he takes the responsibility and the Governor in Council is available on the floor of the house to answer for the decision which may be taken. It is true the Commission reports to parliament, but it is very difficult for parliament itself to examine the members of the Commission; whereas the Governor in Council is always on the floor of the house, and if a mistake

is made in the dismissal of an employee then the ultimately responsible person is directly and immediately answerable to parliament on the floor of the house. For those reasons I would be very reluctant to see this ultimate responsibility of the Governor in Council taken away.

Mr. McILRAITH: May I have some clarification from Miss Addison? If I understood her proposition correctly, it is not a matter of taking away subclause (5). It is a matter of adding something more to the clause, but still leaving the authority to the Governor in Council, and in subclause (5) providing an additional method of dismissal.

Miss ADDISON: Not really. My proposal was to make, subject to the Governor in Council in the other clause, provision for the Commission to dismiss in the majority of cases. In the past, the way in which this has tended to work has been to provide security of tenure for the inefficient.

I have been a civil servant quite a while and over the years I have found this has given rise to a tendency to provide to the inefficient person the kind of protection given to the person who is efficient. I feel there is sufficient protection in the new bill, for security of tenure, since it gives the civil servant the right of appeal, a right which he does not now have. If the majority of cases of dismissal could be handled by the Commission, I think this is as much security as the civil servant should expect to receive.

Mr. McILRAITH: Would this proposal give the Commission the right to dismiss or the right to recommend to the Governor in Council, as they saw fit?

Miss ADDISON: It would give them the right to dismiss.

The CHAIRMAN: They already have the right to recommend to the Governor in Council.

Mr. McILRAITH: As I understood Miss Addison, her proposal indicated that would continue.

Mr. HUGHES: That would be under subclause (2) of clause 50.

Mr. McILRAITH: That would stay unimpaired.

Mr. HUGHES: But this subclause would be altered.

Mr. BELL (*Carleton*): Under the proposal the ordinary process of dismissal would be through the Commission alone, without reporting to the Governor in Council.

Mr. McILRAITH: Would the best way be for the Commission to recommend to the Governor in Council in special cases, rather than take action themselves?

Miss ADDISON: That is not possible under this clause. What I was trying to do was to prevent this extra step of going to the Governor in Council being introduced into the procedure, because in many cases I am sure the step will be a routine one and no further investigation will be made. In all cases of dismissal through Order in Council the responsible minister, under pressure, could be obliged to look into them and investigate them again.

Mr. McILRAITH: I find myself substantially in support of your proposal, but I am concerned with your not reserving to the Commission the right to recommend to the Governor in Council, as is set out in subclause (5), as well as the right to dismiss out of hand, yourself.

Mr. PELLETIER: I might add to what Miss Addison has said—and I think I agree with her position—that if clause 50, subclause (2) should remain it would mean that the Governor in Council retains the right to dismiss without notice and without cause. I think that should remain.

Mr. BELL (*Carleton*): That is a power which would only be exercised in the most exceptional circumstances.

Mr. PELLETIER: Yes; but what Miss Addison is suggesting—and I agree —is that clause 60 should be changed and subclause (5) should be changed, and that the Commission, in the normal course of events, should have the power to dismiss on the recommendation of the deputy head, not otherwise, with the proviso that the dismissal must be reported to parliament.

Mr. MCILRAITH: I think this clarifies the point.

The CHAIRMAN: As I understand the proposal, the Commission would have full power to dismiss. In all ordinary circumstances it would be the responsibility of the Commission, but under the overriding power in clause 50 the Governor in Council could, if he so wished, dismiss an employee.

Mr. MCILRAITH: I understand perfectly about clause 50, but I was concerned with whether or not the power should be exclusively in the hands of the Commission or whether it should have the alternative of dismissal, or dismissal on recommendation to the Governor in Council.

Mr. PETERS: Under this, will it apply to a grade 1 clerk the same as to a deputy minister?

The CHAIRMAN: As I understand it, yes.

Mr. MACDONNELL: Is there no argument for any distinction?

Mr. PETERS: I am inclined to think that a deputy head, for instance, would be in a different position from that of other people. I have no knowledge of the civil service, but in the House of Commons I have seen that we run into temporary, temporary-permanent and permanent employees, and when you reach a certain stage, even in our limited field, you run into cases where there has to be an Order in Council. This seems to be a very slow and tedious process. I would imagine that most departments would not go through this.

As Miss Addison has said, there would be a tendency to maintain people who normally should be disposed of because they really are not in their right niche. I agree with Mr. McIlraith's point that there should be a division between them. The Commission should have the right, because if it does not have this right it seems to me it could not possibly be effective.

Mr. BELL (*Carleton*): I would like to say most emphatically that I believe a clerk grade 1 has every right to the protection which a deputy minister has. I do not think we should draw distinctions just because a person is a high salaried person. He should not have greater rights than a person in a more junior role.

Mr. TARDIF: Is it not the practice, in some cases, to suggest that an employee resign instead of firing him? That would eliminate all that is covered by some of these clauses. They would just tell him that if he does not resign they will fire him anyway. They take the position that it would be better for him, if he is going to look for another job, to have resigned.

Mr. PELLETIER: Is that not the urbane and civilized thing to do?

Mr. TARDIF: Except that when you resign you cannot make an appeal.

Mr. PELLETIER: But if there are grounds for appeal, then the individual will refuse to resign and will appeal. However, the situation in so far as the so-called forced resignations are concerned is simply that in most cases it is to the advantage of the individual. It is not because of any nefarious design on the part of the department that this is done; it is simply to protect the individual and make it easier for him to re-establish himself in some other line of endeavour.

MISS ADDISON: I would like to bring the discussion back to the administrative procedures involved in this. I think it would be much more efficient if

the Commission could ordinarily dismiss and, if you like, subject to the overriding authority of the Governor in Council. I think this would make good administrative sense. What we want is to get some procedure which will prevent every single case having to go to Order in Council.

Mr. MORE: In respect of Miss Addison's proposal to give the Commission the power to fire, then in the case of appeal would the same body hear the appeal? If you were given the power you are asking for, would it be feasible that you then should sit on the appeal of the person whom you fired?

Miss ADDISON: The appeal would be held, the Commission would dismiss, and then the Governor in Council would have the overriding authority to reconsider the dismissal if he wished.

The CHAIRMAN: If what you suggest were put into effect, then the Commission would have the responsibility for dismissal and not the government. The civil servant would lose the protection of his member of parliament in some cases.

Mr. MORE: There would be no appeal until the man had received a notice from the Commission and then, I understand, the Commission would hear the appeal.

Mr. PELLETIER: The simple answer is that the Commission would not dismiss unless there was a recommendation from the deputy head. The deputy head would recommend that a dismissal take place. The commission would then consider the recommendation, whether or not a formal appeal was launched, and there is thus a hearing of the case by a completely independent and impartial body. The Commission would then decide whether or not the deputy head was right and if it decided he was right then the dismissal would be effected. In short; you have a form of appeal, whether or not a formal appeal is launched.

Mr. MORE: Who is the independent body?

Mr. PELLETIER: The Commission.

Mr. PETERS: I would like to correct something which has been said. I made the suggestion there probably should be a difference and Mr. Bell, who is in a much better position to know than I, knows that it already is that way. I did not realize this, but the deputy ministers obviously come under the Governor in Council now for appointment and dismissal and not under the Civil Service Commission. So the point I mentioned is a fact already. I think Mr. Bell really was dishonest and unfair in taking advantage of his knowledge when he made that kind of statement.

Mr. BELL (*Carleton*): Since the comment comes from Mr. Peters I will not take exception to the wording he uses.

Mr. MARTEL: I would like to come back to the recommendation in the Heeney report, which was mentioned a little while ago. The recommendation is to the effect that dismissal should be made under the recommendation of the deputy head. Is that what is the practice now, or is it a recommendation of the Heeney report in respect of the new act?

Mr. PELLETIER: This is for the new act; it is not at all like that in the present act. In the present act all dismissals are by the Governor in Council.

Mr. MARTEL: It says here, "provided the Commission shall report annually to parliament giving the names of any employees who have been dismissed and reasons therefor". Would this mean that a report of the dismissal of an employee who had been dismissed during the year would come to parliament once a year? In that way would it prevent the members of parliament asking for information from the government? The government could not report until it had the report from the Commission. Suppose an employee is dismissed

when the session is over, let us say in August. That would mean it would be a year or more, perhaps, before any member of parliament could inquire into this situation.

Mr. PELLETIER: If I could answer by a generalization, I think the whole basis of the Henney report and, indeed, the whole basis of the bill that is in front of you, is that the operations of the Commission should at all times be public, and, therefore, open to scrutiny. I think this is sound. I do not think the commission should be allowed, or should be given powers to do things in camera.

Your question was a rather specific one as to whether, before the year elapsed, and before the report on dismissals was submitted, inquiries should be made. I see nothing, either in the Heeney report or the bill that you have in front of you, which would prevent such inquiries.

The CHAIRMAN: Have you any further questions, Mr. Martel?

Mr. MARTEL: That clarifies the point. However, I have one more point in connection with dismissal recommendations. 11031 of that report says:

> Subject to item 1007, nothing contained in the Civil Service Act shall impair the power of the governor in council to remove or dismiss any civil servant.

Would that not refer more specifically to clause 52?

The CHAIRMAN: That is clause 50.

Mr. Mackenzie, have you any comments in connection with this suggestion on clause 60?

Mr. MACKENZIE: There are two points I would like to discuss. The first is in reference to a suggestion made by Miss Addison, that, assuming the Civil Service Commission is entrusted with the power to dismiss, the Governor in Council may then later review the matter. In fact, this is impossible under the bill before you, because the Commission, having dismissed him, the employee concerned is out of the civil service. The Governor in Council may not make appointments to the civil service. Only the Civil Service Commission may make appointments to the civil service. The Civil Service Commission is an independent body and is not subject to influence by the Governor in Council to reinstate an employee who has been dismissed. So, there is no power of review on the part of the Governor in Council, and if there is no power of review, it is ineffective in altering the decision that has been made.

The second point is one of logic. The argument for entrusting the Civil Service Commission with the power of dismissal is that the Civil Service Commission makes the appointment. But, it should be borne in mind, once the appointment has been made, the employee, unless the appointment is to the staff of the Civil Service Commission, is no longer an employee of the commission, but an employee of the Department of Finance, the Department of Mines and Technical Surveys, or some other department and, in the final analysis, an employee of the Crown. Surely it is a function of the employer to dismiss, subject to the appeal procedure which the act previously properly provides.

The CHAIRMAN: Gentlemen, are there any further comments on this?

Mr. BELL (*Carleton*): Mr. Chairman, we have had a full discussion of this, and I, personally, would return to my original submission, that this is a means of protecting the employee and ensuring direct and immediate accountability to parliament. On these grounds, my view is that subclause (5) ought to stand in its present form.

Mr. RICHARD (*Ottawa East*): I am not clear on all of this, and I have had qualms as we have gone along. I have read the Heeney report, and it seems to me that certain sections of this are different from what is in the Heeney report.

We have the submission of the members of the civil service commission, who seem to have good reason for amending subclause (5) of clause 60. I, personally, would like to see some compromise in this, which would enable the commission to do something in connection with routine dismissal work, at least, but I do not know where the distinction lies between routine and non-routine.

The CHAIRMAN: Do you have any comment to make, Mr. Hughes?

Mr. HUGHES: Mr. Chairman, I was not going to say anything, until Mr. Richard referred to the opinion of members of the Commission.

I do not entirely share the opinion of my colleagues in this regard. I do admit that there are great administrative advantages to having the Commission dismiss, because I foresee, in addition to other things, considerable work for the Privy Council in their considering the reports of the Commission on appeals against dismissal. I must say that you cannot compromise. It either has to be dismissal by the Governor in Council, or dismissal by the Commision. There is no middle road.

I am certainly very much impressed with the view Mr. Bell has given, and also with the views of Mr. Mackenzie, and their reasons for retaining subclause (5). As well, there are reasons of humanity as far as the employees are concerned, and I doubt very much whether employees would enthusiastically accept this suggestion when the bill, as it is drawn, gives them another chance for having the merits of their case considered by a body which is accountable to parliament.

Mr. TARDIF: Could you tell me what percentage of dismissed employees ever have recourse to the Governor in Council?

Mr. HUGHES: All of them.

Mr. TARDIF: I know, but how many use that?

Mr. HUGHES: 100 per cent of them. Everyone who is dismissed, and who is a permanent employee under the present system, is dismissed by the Governor in Council and, generally, they all have recourse. They all have a right. However, as to what percentage use it—

Mr. MACKENZIE: Very few. In the last fiscal year there were probably about 350 dismissals by the Governor in Council—that is, orders in council dismissing employees. I believe in two, and perhaps three cases, representations were made by the employees to the Governor in Council.

Mr. TARDIF: Well, if that is the case, I do not see any advantage in changing this, and I think it should remain as is.

Mr. MACDONNELL: We all accept Mr. Bell's proposition that we must not deal unfairly with the people merely because they are in a junior position. But my point was whether there was any way of avoiding putting a substantial amount of extra work on the Governor in Council. I do not know whether or not Mr. Mackenzie is satisfied as to the situation.

Mr. MACKENZIE: My understanding is that the officers of the Privy Council are not dissatisfied with the present procedure.

The committee will appreciate that the vast majority of the recommendations for dismissal which go to the Governor in Council are of a type where an appeal would be folly. A sample, which we have prepared over a three-month period, involved some 91 dismissals. Ten of these were on account of abandonment of positions for periods longer than contemplated in the present bill;

three were on account of ill health—and this is a polite term, in this case, for chronic alcoholism; 13 were on account of theft—and there was no appeal. Then, there were others involving arson, immoral conduct, falsifying accounts, and that sort of thing. This classification includes the vast majority of those which go to the Governor in Council and are, obviously, not subject to appeal.

Mr. TARDIF: They become automatic; it is routine.

Mr. MACKENZIE: No, I would not suggest either automatic or routine. The recommendations are considered, and the reasons are examined.

The CHAIRMAN: There is no opposition from the employee because he has no case. Fundamental here is the question of whether or not, as in the past, a member of parliament should be able to raise, on the floor of the house, why an employee is dismissed. If he were dismissed by the Commission rather than the Governor in Council, he would not have that right, except when the Commission reports.

Mr. PELLETIER: If I could make one final point, one of the fundamental reasons why the Act of 1918 and the present bill provide that the commission shall have the exclusive power to appoint is, of course, as all the honourable members of this committee know, to avoid the possibility of political patronage, and it seems to me that it is equally important to avoid the possibility of political patronage in the retaining of incompetent employees. Under the present system an employee cannot be dismissed unless the minister recommends to the cabinet that he shall be dismissed. In this situation—or, at least, under the situation that we recommend, it may well happen, and this, I suggest, it not at all hypothetical—that a minister or deputy minister may wish to get rid of an employee who is incompetent but hesitates to do so for reasons that have nothing to do with the merits of the case. Now, if the situation is brought to the Commission, that kind of consideration does not come into our thinking at all. We look at the competence of the employee, and I would suggest—that this would be a great protection, indeed, for the representatives of the people.

Mr. MACKENZIE: On the contrary, if as Mr. Pelletier has said, the deputy head and the minister are reluctant to dismiss on grounds of incompetence, and if the Commission may only dismiss when the deputy head recommends, the deputy head is going to be no more ready to recommend to the Commission to dismiss than he is to recommend to the Governor in Council to dismiss.

The CHAIRMAN: It would seem to me that we have discussed this very fully. As there is a very important principle here, do you wish to bring it to a vote, or would you rather let it stand?

Mr. BELL (*Carleton*): Carried.

Some hon. MEMBERS: Allow it to stand.

Mr. PETERS: Could I ask one question: The Heeney report has indicated that there should be a list made of every order that is available under this section—that is, in connection with the people that were discharged, and the reasons therefor. Is it contemplated by the Commission that this will be implemented?

The CHAIRMAN: Well, if the suggestion of Miss Addison was followed—

Mr. PETERS: In either case?

Mr. HUGHES: It is implicit in the suggestion that is made in the report, but what worries me is who answers to parliament. This seems to me to be a threat to the independence of the Commission, if there is to be a report by the people who are not accountable on the floor of the house. I must say that I am rather disturbed by that.

Mr. MACKENZIE: There is this further point, as I understand it—and I am subject to correction—the house is now provided with a list of the Orders in Council passed, and all dismissals at the present time are by Order in Council and, consequently, a list of them is tabled.

Mr. MCILRAITH: The Orders in Council are not tabled.

Mr. MACKENZIE: No, but a list of them is.

Mr. MCILRAITH: It is very difficult to wade through them to find out what is in them, and it is very difficult, sometimes, to get the orders in council rapidly.

The CHAIRMAN: If there is no further discussion, I propose to ask that this be carried.

Mr. PETERS: Would there be any objection to this list that Mr. Mackenzie has prepared on a three-month basis—at least that much of the breakdown—being part of the report of the Commission to parliament?

Mr. MACKENZIE: The difficulty is that if clause 60 were passed, as it stands, the Civil Service Commission would not have the data on which to develop such a statistical table. This could be done only in the Privy Council office.

Miss ADDISON: If I might make one last point in connection with Mr. Mackenzie's remarks. He said that the deputy minister would be unlikely to dismiss. When we were drawing up the Heeney report, we received briefs from departments and deputy ministers, and the majority were in favour of having the Commission dismiss, rather than the governor in Council.

Mr. BELL (*Carleton*): Question.

The CHAIRMAN: If there are no further comments, is it moved that this clause be carried?

Mr. BELL (*Carleton*): I so move.

The CHAIRMAN: It has been moved by Mr. Bell, and seconded by Mr. More, that clause 60 carry. Would all in favour raise their right hands?

Mr. MCILRAITH: Mr. Chairman, before you put the motion, my voting against the motion indicates that I merely wish it to stand. That is the extent of my request at this moment.

The CHAIRMAN: I will put the question. Would all those in favour raise their right hand? All those opposed? There are seven for, and four against. I declare the clause carried.

Clause 60 agreed to.

On clause 61—partisan work prohibited.

Mr. PETERS: I object violently to clause 61. The old act was so worded that handling any money for funds of a political party at election time was prohibited, but this bill states: "in any way deal with any money for the funds of any political party".

The reason I am opposed to this is because the party to which I belong has, over a number of years, received certain monies in the form of memberships from various organizations, and from members in various organizations, and we intend to continue operating in exactly the same way. It seems to me this provision is putting a limitation on everyone within the civil service which is not on anyone outside it. I am in complete agreement with the principle that civil servants should not take any overt action at election time, but there may be circumstances under which they might be able to receive leave of absence to run as candidates.

Anyway, I believe this provision will be surmounted. A person will be registered in a political party as "Mr. Smith", and his donations will be made in

the same way. This is already true in a particular field in Ontario, of which I am aware. There are more Mr. Smiths who are employees on that railway than anyone else.

I think this is an unfair provision, and I see no particular value in limiting anyone who wishes to support a political party in whatever manner he wishes. This matter has been handled in the civil service over a period of years without any particular problem arising, and I see no reason why the provision should be changed, particularly since the change considerably limits the rights and freedoms of individuals in the civil service who may wish to support a political party. As at present, most of them can only be supported by financial contributions.

The CHAIRMAN: I think you may have misunderstood the clause. The wording is exactly the same as the wording in the clause in the old act as regards contributions to political parties.

Mr. PETERS: But it was included at that time as part of an election.

Mr. BELL (*Carleton*): No, no. The clauses in the old section 55 are disjunctive. The old section reads:

> No deputy head, officer, clerk or employee in the civil service shall engage in partisan work in connection with any such election, or contribute, receive or in any way deal with any money for party funds.

The latter part of that provision is not confined to an election period. It is only the same clause confined to an election period, and the language of that was deliberately, as I understand it, carried forward into the new clause without changing the principle.

Mr. PETERS: I should like the committee to give consideration to the circumstances in England where they have divided their civil service classification into what are considered to be sensitive and non-sensitive areas. In the non-sensitive areas they are able to participate in politics if they wish, and in the sensitive areas they are not. I do not see why civil servants should not be permitted to do the same as employees in industry in relation to elections.

For example, as a miner working in a large mine I received leave of absence to be a candidate in an election. I was working for a political party that was not completely supporting the idea of nationalization, but the indications were that there might be nationalization of that industry. Yet they had nothing to limit the freedom of their employees to participate in elections. In such a non-sensitive area, where there was not going to be any administration repercussions afterwards, leave of absence could be granted to participate in political activity.

The CHAIRMAN: Does anyone care to comment? Is Mr. Peters alone in this suggestion, or has he some support in the committee?

Mr. RICHARD (*Ottawa East*): Mr. Bell seems to be familiar with the clause, and I should like to ask him whether the prohibition on participation in provincial elections has always been in it?

Mr. BELL (*Carleton*): Yes.

Mr. RICHARD (*Ottawa East*): I cannot understand why we include that. It is really up to the provinces to put a bar on anyone taking part in elections. I do not know what the purpose is, and I think it is going a little far.

Mr. HICKS: I should like to say I think this is a wonderful protection to the civil servant. The very fact he does not take responsibility means he never gets into any trouble later on.

Mr. PETERS: May I ask, if this clause is implemented, will it prevent a civil servant from going to a public political meeting?

Mr. BELL (*Carleton*): No, no.

Mr. HUGHES: Absolutely not.

Mr. TARDIF: Except they feel that way just the same.

Mr. BELL (*Carleton*): It would be impossible to hold a public rally in my riding if civil servants were not permitted to attend.

Mr. PETERS: They feel that if they are seen at political meetings there will be severe repercussions.

Mr. BELL (*Carleton*): We discussed this at an earlier meeting, and I think all members of the committee were clearly of the view that attendance at public rallies was in no sense partisanship of any kind. It is simply civil servants exercising their public rights as citizens to listen and learn about the affairs of the day.

Mr. MCILRAITH: I think it has always been interpreted that they have the right to attend political meetings, if they so desire. I have never heard any other suggestion put forward on the subject.

Mr. TARDIF: This does not prevent members of the civil servant's family from taking an active part in political activities.

Mr. MARTEL: What will happen when a group of civil servants attends a meeting and the enthusiasm gets so great that they start to applaud the speaker? Would that be considered as supporting a political party?

Mr. TARDIF: It would mean they agreed with the speaker at that time.

Mr. BELL (*Carleton*): That reminds me of an incident which took place in Montreal 25 years ago. A customs appraiser went to a Liberal meeting and shouted "hourra pour les bleus". He was thrown out and he went across the street to attend a political meeting of the opposition party. There he shouted, "hourra pour les rouges", and he was thrown out again. He was immediately dismissed, although apparently he had been impartial at both meetings. I should add that he was subsequently reinstated.

Mr. PETERS: What is wrong with a person belonging to a political party and supporting that political party? Is not that democracy? Why do you classify this in the same manner as an overt act? I fail to see how this could be objectionable.

The CHAIRMAN: Those questions could be answered by other members of the committee. Gentlemen, are you prepared to discuss them?

Mr. MCILRAITH: If a civil servant pays membership in a political party then he is indicating his partisan interest, and he is putting himself in a position where his interest may conflict with his duty as a civil servant. His duty as a civil servant is to carry out administrative processes along the lines laid down by the government of the day, and if he becomes a dues paying member of a political party then he is putting himself in a position where his interest may be opposed to his duty as a civil servant.

Mr. MACDONNELL: This is really a protection to him, too.

Mr. MCILRAITH: I would say exclusively a protection to him.

Mr. TARDIF: Does it eliminate the possibility of his wife being a member of a party, being a card bearing member, and influencing him?

Mr. MORE: The wife is free to do what she wishes.

The CHAIRMAN: Shall subclause (1) of clause 61 carry?

Mr. PETERS: I am opposing it.

Subclause (1), of clause 60, carried on division.

Subclause (2) agreed to.

On subclause (3)—inquiry before dismissal.

Mr. RICHARD (*Ottawa East*): Representations were made by the civil service association to add at the end of the clause the words "and to be represented by counsel at such inquiries".

I move, seconded by Mr. McIlraith, that the words "and to be represented by counsel at such inquiries" be added to the subsection after the word "heard".

Mr. MARTEL: By counsel you mean a lawyer?

Mr. RICHARD (*Ottawa East*): By anyone.

Mr. MARTEL: A representative of his association?

Mr. RICHARD (*Ottawa East*): Or a lawyer or a doctor. Anyone can speak for him.

Mr. BELL (*Carleton*): You would have to say "counsel or agent", if that is what you mean. There may be another way of expressing this by making it an inquiry under the Inquiries Act, or something of that sort. Perhaps Mr. Richard would be prepared to let the matter stand for consideration by the draftsman as to how it might be done.

Mr. PELLETIER: The real objection to subsection (3) is that it merely says: "has been the subject of an inquiry", with a small "i". This can be any kind of inquiry. It could be an inquiry held by one man sitting behind a desk, and the subclause fails to say the charges must be made in writing.

I am one hundred per cent in favour of firing incompetent civil servants and I am also in favour of firing civil servants who engage in political partisanship, but I think this clause is too loose. I would suggest for the consideration of the committee that there should be two things added here, first that the charges must be made in writing, and secondly, when such charges have been made it be mandatory that the Minister of Justice appoint a commission under the Inquiries Act to look into the allegations. Then, if the commission finds that the man has indeed been guilty his dismissal should be automatic. If not, there would be no question of dismissal.

There is one final point I would suggest for the consideration of the committee. If this proposal of mine is accepted, would there be merit in providing also in the act that the Commissioner or Commissioners conducting the inquiry should be members of the bench?

Mr. MARTEL: How has dismissal been carried out in cases of political partisanship up to now?

Mr. BELL (*Carleton*): Perhaps at this point I should say I have been handed a copy of Order in Council, P.C. 1467, of the 22 July, 1922, which covers the procedure. It might be useful to have this included in the report of our proceedings at this point. This has been in effect since 1922, and has been followed by all governments since that time. It reads as follows:

> The Committee of the Privy Council have had before them a report from the Right Honourable the Prime Minister, representing that, in view of the large number of charges of political partisanship which have been made against Government Officials in different parts of the country, whose dismissal is asked for by the complainant, it is advisable in the public interest that a course of procedure should be defined for dealing with such charges, in a manner which, whilst giving effect to the intent of the existing legislation respecting political partisanship, will, at the same time, avoid the possibility of injustice being done any member of the public service.
>
> The Prime Minister, therefore, recommends that the following procedure be adopted, viz:—
>
> 1. That only such charges of political partisanship as may be made specifically in writing against an official of the Government shall be deemed deserving of consideration.

2. That, without in any way superseding or suspending the power conferred by existing legislation, when a specific charge of political partisanship is made in writing against an official of the Government, if the act complained of is, in the opinion of the Minister, of a character to constitute "engaging in partisan work" within the meaning of Section 32, Chapter 12, George V, 1918, An Act respecting the Civil Service of Canada, such charge may be referred by the Minister of the Department in which such official is employed, to a Commissioner for investigation and report.

3. That for the purpose of such investigation and report, should the number of complaints so warrant, one or more commissioners may be appointed in each of the several provinces under the provisions of Part I of the Inquiries Act, Chapter 104, Revised Statutes, 1906.

Mr. PELLETIER: Mr. Bell, I am quite familiar with that Order in Council. I think the weakness there is that it is permissive, not mandatory. I agree with you it has been used extensively; but it seems to me that in this kind of area there should be something written into the act.

Mr. BELL (*Carleton*): I was not advancing this as an argument against your point of view. It was simply for the benefit of the committee in having it at this point.

The CHAIRMAN: Perhaps you might wait until after the motion is disposed of and then suggest that it be made part of today's record.

Is there anything further on Mr. Richard's motion?

Mr. RICHARD (*Ottawa East*): I thank Mr. Pelletier for having looked at this section more carefully than I have. I think he has raised an important point now as to what the inquiry should be. In respect of a charge as serious as one relating to this section, no doubt there should be a Commission inquiry. I suppose the draftsman should be asked to look at the section with these points of view in mind.

The CHAIRMAN: Then that would dispose of your point.

Mr. MORE: I certainly agree that we should give consideration to the representations we have had in connection with this subclause. Certainly we should agree to have it stand now for further consideration.

The CHAIRMAN: Is it agreed that clause 61 (3) stand for further consideration by the committee?

Agreed.

The CHAIRMAN: Mr. Bell, I believe you wish that this Treasury Board minute be made part of today's record?

Mr. BELL (*Carleton*): Yes. I think the best place is the point at which it was first mentioned in the proceedings.

The CHAIRMAN: Is that agreed?

Agreed.

On clause 62—*Holidays.*

Mr. BELL (*Carleton*): In respect of this clause. I believe there are some problems here on which Miss Addison is somewhat of an expert.

Miss ADDISON: I do not know that I am an expert, but this clause has raised problems which have come to our attention in a special way when preparing the regulations. To understand this problem, we have to look at clause 62 in conjunction with clause 68 (1)(d). Under clause 62, the holidays for civil servants are set out, but it does not say on what day these holidays shall be observed. In other words, it does not say that these holidays shall be

observed on a working day, nor does it take into account the fact that a large number of civil servants have to work on Saturdays and Sundays, and sometimes on certain holidays, as part of their regular scheduled work week.

In other words, there are certain workers in the civil service, such as the customs officers, who have to be on duty on Saturdays and Sundays particularly during the summer months. Also, there are the postal workers who have to be on duty on Sunday, and other persons in the north who are sometimes on duty 24 hours a day seven days a week.

For many persons in the civil service, therefore, Sunday becomes part of their scheduled work week. If the bill stands the way it is now and clause 62 includes all the days listed here, then under clause 68 (1)(d) it will mean that any person who works on a holiday—and this includes anyone working on Sunday—is entitled to another day of leave with pay. This could create quite a problem, because there would be many persons working perhaps more than ten Sundays, and they would be entitled to 20 holidays or more during the year, compared to other civil servants who would have ten. Also there is nothing in the act which says that if the holiday falls on a normal day of rest that the employee will get another day in lieu of the holiday.

The Commission has tried to make it a principle that all civil servants will get the same number of working days off in the year as holidays. In other words, regulations have been enacted which provide for all civil servants to get the same number of holidays on working days. If the majority of the civil servants do not get a holiday on a working day, which will happen this year in respect of July 1, since it falls on a Saturday, then the others who do work on July 1 will not get a holiday in lieu of that day.

I would like to suggest that clause 62 be amended somewhat along these lines: the holidays for the civil service shall be those days fixed by proclamation of the Governor in Council as holidays for all or any part of the civil service, provided that each employee shall, in each year, be entitled to at least "X" holidays on his working days. This would give leeway in providing for circumstances which arise which compel certain civil servants to work on holidays or whose day of rest coincides with a holiday for most of the service.

Mr. MARTEL: Do you not feel that a person who works during the summer holidays, for instance in June, July or August, and especially on the weekends, should be entitled to a little more? After all in Canada we do not have very long summers. I am thinking in terms of compensation for the time he spends working on the week-ends during the hot summer.

Miss ADDISON: This would create many anomalies. It would mean that some civil servants would get many more holidays than others.

Mr. HICKS: There may be civil servants who would prefer to work on Saturday and Sunday because there is not nearly as much work to do on those days. They may prefer to take Monday and Tuesday off.

Mr. PELLETIER: That is all the more reason to support Miss Addison's argument.

Mr. HICKS: I agree exactly. I do not agree with my friend sitting behind me.

Mr. BELL (*Carleton*): I am not sure that I understand the proviso. Perhaps Miss Addison might read it again and suggest what her figure "X" is.

Miss ADDISON: Under the present clause 62 the civil servants receive ten holidays other than Saturdays and Sundays. If you call Sunday a holiday and the person gets another day of leave with pay he would really be working four days instead of five. There are now ten holidays other than Sunday included in the bill. Unless you give some kind of protection to the civil servant so that he will get at least "X" number of days in the year, there is no authorities to treat civil servants the same throughout the service.

Mr. MACDONNELL: Would that figure include Saturday and Sunday?

Miss ADDISON: No; it would only include holidays falling on working days for civil servants.

Mr. MACDONNELL: In other kords, it would be that figure plus Saturday and Sunday?

Miss ADDISON: They will get Saturday and Sunday or two equivalent days as days of rest, as long as the service works on a five-day week. Saturdays and Sundays are normal days of rest for the majority of the service Two other days would be provided in lieu thereof for persons who work on rotation; but for the service as a whole, there would be "X" number of working days to cover the holidays they would receive under the clause if revised.

Mr. BELL (*Carleton*): I still am not clear whether "X" is ten or 14.

Miss ADDISON: We work a five-day week. That means there are two days rest in every work week, whether you work on a rotational basis or from Monday to Friday. In addition the civil servants now get the holidays, if those holidays fall on a working day for the civil service. In some years, When certain holidays fall on Saturday or Sunday and no alternative day is proclaimed, they might get only 8 days. This is what this bill also provides. It provides for New Year's day, Good Friday, Easter Monday, and so on.

Mr. BELL (*Carleton*): I still do not have a figure for the X. Is it 114 which you would put in?

Miss ADDISON: It certainly would not.

Mr. BELL (*Carleton*): What figure would you put in?

Miss ADDISON: I would be inclined to put in 9, because they now get at least 8 and usually 10. In some years when certain holidays fall on a Saturday, the number is lower than in others.

Mr. MACDONNELL: You are relating this to a five-day week. There are 104 more days.

Miss ADDISON: Yes; but those are not holidays.

The CHAIRMAN: They are days of rest.

Mr. HUGHES: This would involve saying that Sunday is not a holiday.

Mr. RICHARD (*Ottawa East*): There also is the question of Saturday.

Mr MACDONNELL: Somewhere would we not need to say "in addition to Saturday and Sunday?"

Mr. PETERS: Miss Addison mentioned persons working in the north. In most of these cases where they work on a seven-day basis there is no rotation. They go in for a limited length of time. When they come back have they accumulated Saturdays and Sundays as time off?

Miss ADDISON: Yes. This is all worked out on the basis of picking it up at another time. Provision is often made for holidays to be taken when the person returns from the north.

Mr. MORE: You are trying to make the point that every civil servant should have nine days' holidays during the year.

Miss ADDISON: Yes.

Mr. MORE: Apart from normal days of rest.

Miss ADDISON: In other words, they should all have the same number of holidays on working days in a year.

The CHAIRMAN: Then if we take out the word "Sunday", we would assume that he would get the two days of rest along with the other holidays.

Miss ADDISON: So long as you mention these other holidays in the bill, you have the problem which occurs when the holiday falls on a Saturday.

Mr. RICHARD (*Ottawa East*): I would suggest that for the next meeting we have Miss Addison's suggestion prepared in draft form.

Mr. BELL (*Carleton*): There really are two points here. The first is, should we have a clause like this in the bill at all? It may be that this could be done in the regulations. Certainly all of us want to see at least 9 days statutory holidays for civil servants, but we do not want to get into the position Miss Addison has described. If it is not in the regulations, then should we have a clause of the type she has mentioned? If this is the view of the committee, then we should instruct that it be taken up by the Commission, with the draftsman for consideration at a subsequent meeting. Probably the latter is the better way.

Miss ADDISON: I would agree that there is a drafting problem involved.

The CHAIRMAN: Let us send it to the draftsman and then it can be sent back to us at a subsequent meeting. Is that agreeable?

Agreed.

The CHAIRMAN: We will adjourn until next Thursday morning at 9.30.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 19

THURSDAY, JUNE 8, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

From the Civil Service Commission: Honourable S. H. S. Hughes, Q.C., Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners.

From the Department of Finance—Treasury Board: Mr. C. J. Mackenzie, Assistant Secretary.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25369-0—1

SPECIAL COMMITTEE ON THE

CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)	Macdonnel	Pickersgill
Caron	MacRae	Richard (*Ottawa East*)
Casselman (Mrs.)	Martel	Roberge
Hanbidge	McIlraith	Rogers
Hicks	More	Spencer
Keays	O'Leary	Tardif.
Lafreniere	Peters	

(Quorum 11)

E. W. Innes,

Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, June 8, 1961.
(21)

The Special Committee on The Civil Service Act met at 9.45 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Messrs. Bell (*Carleton*), Caron, Hanbidge, Hicks, Lafrenière, MacLellan, Martel, McIlraith, More, O'Leary, Peters, Richard (*Ottawa East*), and Spencer. (13)

In attendance: From the Civil Service Commission: The Honourable S. H. S. Hughes, Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners. *From the Department of Finance—Treasury Board:* Mr. C. J. Mackenzie, Assistant Secretary.

The Committee resumed its clause-by-clause consideration of Bill C-71, An Act respecting the Civil Service of Canada.

On Clause 63:

Sub-clause (1) was amended by deleting the words "a period of" in line 26, page 22 of the Bill.

The Sub-clause, as amended, was adopted, subject to review by the draftsman.

Sub-clauses (2), (3) and (4) were adopted.

Clauses 64 to 67 inclusive were adopted.

On Clause 68:

Sub-clause (1) (*a*) to (*c*) and (*e*) to (*u*) were adopted.

Sub-clause (1) (*d*) was discussed and allowed to stand.

Sub-clause (2) was adopted.

The clause was adopted, subject to further consideration.

Clause 69 was adopted subject to review, if necessary.

On Clause 70:

Sub-clauses (1), (2) and (3) were adopted.

At 11 o'clock a.m. the Committee adjourned until 9.30 a.m. Friday, June 9th, at which time the Committee will continue the consideration of Bill C-71.

E. W. Innes,
Clerk of the Committee.

25369-0—1½

EVIDENCE

THURSDAY, June 8, 1961.

The CHAIRMAN: Will the committee come to order, please? We turn this morning to clause 63.

On clause 63—Annual Leave.

Mr. BELL (*Carleton*): There was only one point raised by the association, as I recollect, on clause 63. That was to add the words:

—not less than—

—three weeks. I think that is quite unnecessary in view of the fact that in clause 68(1)(*a*), provision is made for regulations providing for the granting of vacation leave in excess of three weeks. Therefore, I think the point they make is, in fact, covered. Certainly, the intention of the bill is that under appropriate circumstances additional vacation leave could be granted.

Mr. CARON: What they seem to be afraid of there is that it could be less than three weeks in certain cases, where others in the same circumstances would be three weeks or more.

Mr. BELL (*Carleton*): I do not think that is the point, Mr. Caron.

The CHAIRMAN: I think the point is that they want to make sure there was provision there for authority to grant leave of more than three weeks. They were not worried about "less than".

Mr. BELL (*Carleton*): It is a compulsory three weeks. There is no doubt about that.

Hon. S. H. S. HUGHES (*Chairman, Civil Service Commission*): There is one small point involved in the use of the words:

—for a period of three weeks in respect of each fiscal year.

It is felt that that might compel employees to take vacation leave in one continuous period of three weeks. The practice is, when occasion makes it necessary, to take a week here, a week there and another week somewhere else, or two weeks and one week. In order to prevent any misunderstanding about that, I would suggest that the words:

—a period of—

—be deleted from subclause (1) so that it would read:

—pay for three weeks in respect of each fiscal year.

Mr. CARON: I think I would accept that.

Mr. HICKS: I think that is satisfactory.

Mr. BELL (*Carleton*): Has that been discussed with Mr. Driedger?

Mr. HUGHES: No.

Mr. CARON: It may happen that in some departments it would be to the advantage of the department that they would divide their holidays. In certain cases they were asked to do so.

Mr. BELL (*Carleton*): I think we should carry it, subject to the approval of the draftsman, despite my unlimited confidence in the legal knowledge of the chairman of the commission.

Clause 63 agreed to, subject to the opinion of the draftsman on the wording of subclause (1).

On Clause 64—Re-appointment during extended leave.

Mr. McILRAITH: I should like to ask the chairman of the commission about this, or draw his attention to the words:

> —a period in excess—

Those words are used in the second line of clause 64 (1). Does the same argument apply there?

Mr. HUGHES: I do not think so, Mr. McIlraith, but it might.

The CHAIRMAN: It seems to me to be an entirely different situation.

Mr. MACKENZIE (*Assistant Secretary, Treasury Board*): In this case, Mr. Chairman, it would seem to mean a consecutive period of two months.

Mr. McILRAITH: I think that is probably correct. I think it does mean a consecutive period of two months. If that is what is intended, it is all right as it is.

Clause 64 agreed to.

On Clause 65—Rate of pay on appointment.

Mr. CARON: There is a submission by the Federation on clause 65. They want to have the words:

> —and, on the death of an employee, his estate shall be compensated in cash for unused compensatory, annual and retirement leave which stands to his credit at the time of death.

I would like to know if there is real objection to that.

Mr. MACKENZIE: With respect to the compensatory leave, provision exists under clause 68 (1) (*g*) for the making of regulations under which the estate of a deceased employee may receive credit in cash for compensatory leave. With respect to retiring leave, I would submit that there is no entitlement to retiring leave in the event of death. Retiring leave is granted in the circumstances of retirement only. On the question of annual leave, I have an open mind, as a matter of fact.

Mr. HUGHES: I do not think it was considered that annual vacation leave was something which could properly be transmitted to the personal representatives of a deceased employee. In that case it is granted for the health and efficiency of an employee who is alive and it does not seem to me to be appropriate to have an estate benefit from that particular type of entitlement.

Mr. CARON: Paragraph 5104 of the Heeney report seems to indicate the belief that the commission should have more leeway between minimum and maximum. It says:

> The commission may authorize the payment of intermediate rates or the maximum rate in any class or grade used for recruiting purposes if, in the judgment of the commission, such higher rates of compensation are required in particular circumstances to effect the appointment of qualified candidates.

According to the wish of the Heeney report, this should be left entirely to the commission. Is there any objection to this point of view?

Mr. BELL (*Carleton*): Is that not in effect what subclause (3) says?

Mr. PELLETIER (*Commissioner, Civil Service Commission*): I think, Mr. Bell, that the problem here is that subclause (3) does allow that, but it says:

> The commission may, with the approval of the governor in council,—

The point I would like to make is that the minimum and maximum of any given rate have to be authorized by the governor in council. I think that should remain so. I do not think anyone would quarrel with that. However, once that minimum and maximum have been fixed, it seems to me wasteful of time and

money to oblige the commission to go back to the governor in council to seek authority to appoint above the minimum. I would suggest for the consideration of the committee that the words in subclause (3) of clause 65:

—with the approval of the governor in council—

—should be deleted.

Mr. MACKENZIE: May I say that I think there are objections to this proposal by Mr. Pelletier. This is in effect entrusting to the independent civil service commission powers to increase the charges on the consolidated fund.

The CHAIRMAN: It is a matter of expenditure of money.

Mr. MACKENZIE: Quite so. Having regard to recruiting techniques, the consequence of, say, inability to secure people at the minimum rate, which is certainly possible, may involve the government in substantial expenditure, because the corollary is that it is necessary to make an initial appointment at a rate in excess of the minimum and the presumption is that in equity those who have previously been appointed at the minimum must be increased to the same rate.

Mr. PELLETIER: In answer to Mr. Mackenzie, the corollary, I suppose, in logic is quite right, but that is not what I am suggesting. I am merely suggesting that when the maximum and minimum have been fixed by the governor in council, by the treasury, then the commission should be free in a responsible manner to appoint at any range in between the minimum and the maximum—and you could write into the act certain safeguards.

Mr. BELL (*Carleton*): That would be quite a chore, would it not?

Mr. MACKENZIE: The safeguard is there now in the regulation, "with the approval of the governor in council."

The CHAIRMAN: It seems to me that the point raised is that it would save time for the commission, and I suppose also for the governor in council, if the decision could be made by the commission without reference to the governor in council. It is only a matter of saving time, and if the governor in council does not object to this extra time, I do not see any reason why the change would be necessary.

Miss RUTH ADDISON (*Commissioner, Civil Service Commission*): Administratively, it takes more time because every time you have to recruit above the minimum, particularly in individual cases, it is necessary to go to the governor in council. The Commission often loses people because of this very fact, since quite often we want to appoint someone quickly and the person says he will not come at the minimum. Then we have to wait, while we get the additional authority. I suggest there is already a safeguard in the estimates which have been voted for each department, as the department could not spend beyond the amount already voted by parliament.

Mr. HUGHES: There is this to be said, that the governor in council could give general approval to payment above the minimum in the case of any given class or group of classes, which would make continuous reference in each isolated case to the governor in council unnecessary. If this solution were agreeable to the governor in council, I do not think there would be any administrative inconvenience.

Mr. MACKENZIE: The commissioners will agree, I am quite certain, that that is the practise at the present time.

In recent years some difficulty has been experienced—and the commission will be able to speak more authoritatively on this than I—in recruiting university graduate classes. With respect to many of these, a general exemption permitting the commission to pay architects, engineers and so on, in excess of the minimum of the class has already been granted on the commission's recommendation.

Mr. CARON: For special cases only?

Mr. MACKENZIE: For any appointments in specific classes, as architect 1, engineer 1, forestry officer 1, and so on.

Mr. CARON: If it is done already, why not put it in the bill?

Mr. MACKENZIE: It is done with the approval of the governor in council.

The CHAIRMAN: Shall the clause carry?

Clauses 65 and 66 agreed to.

On clause 67—increases.

Mr. CARON: On clause 67(4), would that come under the principle of rating:

> An increase shall not be granted to an employee if the deputy head, before the due date, certifies to the commission that the employee is not performing the duties of his position satisfactorily.

So that this is done by rating, is it not?

Mr. HUGHES: These so-called statutory increases, which are what are referred to here in clause 67, are only given provided the deputy head certifies that the employee is performing his duties satisfactorily. It is in the nature of a reward, and there is nothing basically automatic in these increases, Mr. Caron. I do not think anyone would suggest—at least I do not think any of the staff associations have suggested—that an employee should get this increase if he is not performing his duties satisfactorily. It is that situation which this subclause is intended to cover.

Mr. CARON: As it is, it is left to the one man to decide. If he happens to have a personal grudge against someone, he may say that that person is not competent for the job, that he is not a good working man. Would there be any appeal on that?

Mr. PELLETIER: Mr. Caron, may I refer you to subclause (7) of that clause which provides for an appeal and which provides that the commission may reinstate the statutory increase that otherwise would have been granted to the individual concerned?

Mr. CARON: But is this recommendation from the deputy head made with what we generally call a rating for the general employee, or is it another form of recommendation that the general rating they make on the whole department?

Mr. PELLETIER: The manner in which ratings are made in various departments vary a great deal, but the long and short of it is that under the subclause of the bill as it is now drafted, an appeal is possible to the commission and the commission will then consider all the facts including the fact that the rating in department A may be different from that in department B. If the commission is satisfied that the individual concerned under subclause (4) was not performing the duties of his position satisfactorily, then the commission would maintain the recommendation of the deputy head. It seems to me this is a pretty healthy and satisfactory way of operating.

Mr. CARON: Has the commission ever thought of establishing a uniform way of rating, and that this rating should be presented to the person interested in it so that he could accept or refuse the rating and make an appeal before the increases are due? I know it has been done in some departments but it has not been done all over. In the Department of National Defence it was shown to be very satisfactory. The rating was presented to the person concerned before it was sent to the commission, and then if the person accepted it he would just initial the rating, and if he did not then he could complain about the rating and receive reasons as to why the rating was too low.

Mr. HUGHES: First of all, Mr. Caron, we have an interdepartmental committee now studying means of providing uniform ratings throughout the service. I think the committee feels that any attempt to devise a rigid efficiency rating form universally applicable in all departments would be difficult, but that certain principles of rating must be clearly defined and accepted.

Secondly, on the point as to whether an employee is entitled to be shown a rating, I think my colleagues and I would agree that this is not only desirable but it is the accepted view. I hesitate to pontificate about what happens in departments. There have been some indications that employees, at least, do not get very long to scrutinize and deliberate in connection with their efficiency rating forms, but the accepted practice is that an employee shall see it and sign it and be governed accordingly.

Mr. PELLETIER: Incidentally, when he signs it, it does not mean he approves it; it means he has seen it and has had a chance to discuss it with his supervisor. The fact that he is signing his rating report does not mean he approves it.

Mr. CARON: But has the practice not been established yet that they should be compelled to present the rating to the employee so he would see it?

Mr. PELLETIER: What the commission has done is to suggest strongly to all departments that ratings should always be shown to the individual employees concerned. This is merely a strong suggestion from the commission; it is not an instruction. It may well be that in some departments they do and in some they do not.

Mr. CARON: They do not do so in more departments than they do at the present time, and I think it should be part of the regulations that they should be forced to do so. I do not want to put it in the bill, but the regulation should say that they are forced to do so.

Mr. PELLETIER: You suggest it should be written into the regulations?

Mr. CARON: That every deputy head should present to the employee his rating so that he could sign it or refuse to sign it.

Mr. PELLETIER: In some cases—and this is a very delicate area—if you have a rigid rule of that kind it might be quite inadvisable in exceptional cases to show the rating to an individual. In cases, for example, of mental instability I think you could probably do more harm than good by showing the rating to the individual. Now, this is a question of judgment and how you go about it. I am inclined to think it should not be in the act. Whether or not it should be in the regulations is another matter. If it is, it should be qualified.

The CHAIRMAN: I wonder if we should discuss that under clause 68, if you agree that the matter should not be in the bill?

Is clause 67 agreed to?

Mr. PETERS: Clause 67(4) really means that this increase is automatic except when the deputy head presents a certificate; and subclause (6) indicates that that objection must be in writing and there is an appeal from that. So subclause (4) really says that this is automatic unless there are exceptions.

The CHAIRMAN: Is that the practice, Mr. Pelletier?

Mr. PELLETIER: Yes, I think it is. The commission now in its present act and indeed under the bill may reinstate the statutory increase and indeed does so not infrequently. I am not too sure how frequently, but the commission does do so. When the commission comes to the considered conclusion that the department withheld the statutory increase advisably, it does not change that personally. I think it is a sound provision.

Mr. PETERS: I would like to ask—maybe it is not advisable but I would like to ask it anyway—how does it work in reverse? If, for instance, a department head finds that someone is not satisfactory and, for instance, this year they file a form for no statutory increase for this employee, and next year they find that that employee has not only warranted an increase but has gone the other way, what is the procedure then?

Mr. CARON: You fire the man.

Mr. PETERS: Do they do this? This is one of the problems of the civil service, that once you are in it you never get out, and frankly there should be some protection in this respect. Even politicians should be willing to accept that there is inefficiency in the civil service in some areas and that there should be some method of handling this. The employee has a right to appeal, but the other employees should also have a right against carrying deadwood in their department.

Mr. HUGHES: Continued unsatisfactory work would obviously produce recommendations for either demotion or dismissal. From either step the employee has the right to appeal provided under this bill.

Mr. PETERS: Would two of these denials of increase warrant investigation or is there some pattern where the commission itself other than the department head examines departments? There may be a reason why a department head would carry three or four people that have no functional value in that department at all.

Mr. HUGHES: I think it is properly within the discretion of the deputy head who is charged with the management of his department to decide whether an employee should be retained or recommended for dismissal. In an extreme case I suppose someone could protect an inefficient employee, but in the present atmosphere of the civil service I would say it would be most unlikely.

The CHAIRMAN: Clause 67 agreed to.

On clause 68—regulations.

Mr. PETERS: Mr. Chairman, I cannot find in the regulations—it is probably there but I just do not see it—a clause in the Civil Service Act, or has there been a practice to pay death benefits; and also is there regulatory leave of absence for death in the immediate family that is automatically allowed?

Mr. HUGHES: There are recommendations dealing with what we call special leave. This will be dealt with under this bill. In certain cases special leave may be granted where an employee has a death in the family and has responsibilities in connection with it. When you mentioned death benefit, Mr. Peters, were you referring also to the payment of money on death?

Mr. PETERS: Yes.

Mr. HUGHES: That is covered, of course, in the Public Service Superannuation Act.

Mr. PETERS: And under this regulation, how close a relationship must it be for this death leave to be granted?

Mr. HUGHES: I would say this particular paragraph has no connection with what you were discussing.

Mr. PETERS: Should it not come under the regulations?

The CHAIRMAN: Mr. Peters, if the committee would agree, it might be better procedure if, instead of discussing regulations in general or discussing points that might be added to the regulations, we went through and discussed the paragraphs one at a time. At the end of the discussion of the paragraphs, after we agree to each one, if there are matters you think should be added for regulatory power, you might suggest them at that time. I am concerned

about our jumping back and forth from clause to clause which would tie us up endlessly and would lead to a lot of repetition. Would that be agreeable? Shall clause 68 (1) carry?

Clause 68(1) agreed to.

The CHAIRMAN: On clause 68 (1) (b).

Mr. MORE: There were some questions about this subparagraph and the draftsman was supposed to look at it.

The CHAIRMAN: There is a representation from the C.S.A.C.

Mr. MORE: It was generally assumed that it was not to be too restrictive and it was suggested the draftsman look at it.

The CHAIRMAN: I do not follow your point.

Mr. MORE: If you refer to page 301 of our evidence, you will see that a question was raised there by Mr. Bell to Mr. Best, starting at the third paragraph.

The CHAIRMAN: I think the C.S.A.C. raised the point that the bill should permit the making of immediate appointments to positions that are occupied by employees on retiring leave. Mr. Mackenzie, have you a comment?

Mr. MACKENZIE: The point the C.S.A.C. made about immediate appointment to positions occupied by employees on retiring leave is covered by clause 64 which permits the commission to appoint another person to that position when the employee is on leave of absence for a period in excess of two months, and most retiring leave is for two months or more, up to six months. So the point made by the C.S.A.C. has been met.

Mr. BELL (*Carleton*): I raised this with Mr. Best at the time but since then I am satisfied that clause 64 does in fact cover this particular point.

The CHAIRMAN: Shall the clause carry?

Clause 68 (1) (b) agreed to.

Mr. PETERS: What does this involve?

Mr. HUGHES: This is the case you were raising about special leave for various purposes, and the example you raised about leave involving the death of a relative is provided for here.

Mr. PETERS: Is there a list of things that can be applied, for example a leave of absence for other purposes?

Mr. HUGHES: The regulation will deal pretty specifically with it.

Mr. PETERS: Is an employee entitled to leave of absence under this to represent his organization, his association, or union? Is this an automatic entitlement?

Mr. HUGHES: I can say this, Mr. Peters, that now, as you know, leave is given for the purpose of attending conferences of this type to officers who have responsibilities in connection with it. I would say, subject to correction, that attendance by people who have not some delegated function to perform is not provided for, and they take it out of their vacation leave.

Mr. PETERS: Is it possible under this clause to obtain leave of absence to run for elective office?

Mr. HUGHES: Yes.

Mr. PELLETIER: At the present time.

Mr. PETERS: If he is nominated to the right party.

Mr. HUGHES: This covers all those cases which do not deal specifically with vacation, sick or retiring leave.

Mr. PELLETIER: At the present time, Mr. Peters, if you refer to regulation 69 (1), I do not know if you have it in front of you, you will see it says:

> Special leave with pay may be granted by the deputy head to employees who have the necessary special leave credit for certain designated causes, such as illness in the family, death in the family, quarantine, et cetera.

In other words, the present regulation does not attempt to define exhaustively the causes for which special leave may be granted. Now, what will be done in the regulations under the new act is another matter, but certainly clause 68 (1) (c) of this bill provides the possibility of granting leave for quite a number of different reasons.

Mr. PETERS: Yes, but this is the problem. I do not know what the regulation applies to and I do not think the employees know. Where are the employees going to find out? This is why I am asking about this. If the commission give us their interpretation or their opinion under this, that is all right, and as far as I am concerned that is as good as a regulation.

The CHAIRMAN: That is another facet altogether, Mr. Peters, that we are not concerned with now. The regulations are being drafted, and they will be worked out with the civil service staff associations, and so on. What we are concerned with is giving power under this bill to the governor in council and the commission to do certain things by regulation. As long as we give power under clause 68 (1) (c), to draft regulations which will cover situations which we think ought to be covered, that is as far as we can go. We really cannot be concerned with the actual provisions of the regulations.

Mr. CARON: It is not only a question of power to the commission and the governor in council. There is also the protection of the employees, which we are looking after.

The CHAIRMAN: Exactly, Mr. Caron, but we are concerned simply with seeing that clause 68 (1) (c) is wide enough and gives sufficient power to cover cases which should be covered by the regulations. The second phase, which we are not concerned with, is whether or not, in fact, the regulations will cover the required situation. That is something which we are not dealing with now, as we have not got the regulations.

Mr. CARON: What Mr. Peters is asking is how the employees are to know the regulations. Are they publicized or published so that the employees will know?

The CHAIRMAN: That is a different question.

Mr. HUGHES: I can assure you, Mr. Peters, that the first draft of regulations under the bill has already been prepared and distributed to the staff associations, and also to deputy heads. It has been discussed fully with personnel officers in the departments, and it is now in the process of being discussed with staff associations.

Mr. CARON: With the staff associations? Then I am satisfied.

Clause 68 (1) (c) agreed to.

On paragraph (*d*)—

The CHAIRMAN: The committee will recall that we stood aside clause 62, which deals with holidays, and this regulation also deals with holidays. Is it necessary to stand this, in view of that?

Miss ADDISON: Yes. I am not certain, but it could very well require redrafting in order to tie it in with clause 62. It would make the redrafting of clause 62 easier, if this one were to stand as well.

The CHAIRMAN: If it makes it easier, this paragraph (*d*) could stand also.

Clause 68 (1) (*d*) stands.

On paragraph (*e*)—

Mr. PETERS: What regulations are being made there for shift differentials? I understand that up until now it has been pretty well up to the department head as to what the shift differentials should be. I presume that is going to be more formalized than it has been in the past.

Mr. HUGHES: This has reference to an earlier part of the bill, clause (2) (1) (*a*), which I think was stood over.

Mr. BELL (*Carleton*): For other reasons.

Mr. HUGHES: For other reasons. Under clause 12, as well provision may be made for shift differentials, where the policy to put them into effect may be acceptable.

Mr. CARON: These clauses are all coming back for study?

Mr. HUGHES: Yes.

The CHAIRMAN: At any rate, the point is that the power is there to set up shift differentials, which I think was Mr. Peter's question.

Clause 68 (1) (*e*) agreed to.

On paragraph (*f*)—

Mr. PETERS: What is the application of this at the present time?

Mr. HUGHES: There is a system of fines, prevalent generally in departments, for employees who come late to work. In order to provide authority for cotninuing this system—which, incidentally, was not provided for in the present act or, if it was, was provided in rather doubtful form—this has been introduced.

The CHAIRMAN: Does it apply to those who come late to House of Commons committees?

Mr. PETERS: If you wish to apply it to the committee, sir, there would have to be some provision for this dual attendance.

Mr. RICHARD (*Ottawa East*): Double pay.

Clause 68 (1) (*f*) agreed to.

Clause 68 (1) (*g*) agreed to.

On paragraph (*h*)—

Mr. CARON: This says:

> providing for the determination of due dates of pay increases and the manner in which alterations in rates of pay shall be implemented;

I would like to know exactly what it means, as far as increases are concerned.

Mr. HUGHES: Each employee, by virtue of his coming into the service at a different time, may carry with him throughout his service a due date for pay increases, which may not necessarily coincide with that of other employees. This is to determine what time shall elapse between the incidence of satutory increases, for one thing, and what will happen when an employee is promoted into a higher position which has a new range, and to what extent he will be entitled to statutory increases in that new range.

Mr. CARON: Is that based mostly on the date of entrance into the service?

Mr. HUGHES: Yes, the date of entrance into the service, and the date of promotion to a new position.

Mr. CARON: At the present time, does the date of entrance affect the increases for a man who is getting a higher position, or is it only the date of entry to the higher position which will decide upon the increase?

Mr. HUGHES: I think I would like some help from my colleagues here.

Mr. MACKENZIE: The date of initial appointment to the service determines the date of annual increase in the position to which the initial appointment was made; but following promotion, the date of promotion normally determines the date of the annual increases in the class to which promotion was made.

Mr. CARON: Once this man has been promoted, when the annual increases are coming after he has had his promotion, will they be based on the date of entrance, or on the date of promotion?

Mr. MACKENZIE: Normally on the date of promotion.

Mr. CARON: Thank you.

Mr. PELLETIER: I may add that Mr. Mackenzie is quite right as far as the present practice is concerned, but under this subsection it will be quite possible to provide that when a person comes into the civil service in a class and is subsequently promoted or transferred to two or three other classes, the date of increase would remain stable, which is not now possible, as Mr. Mackenzie indicated.

Mr. CARON: It will remain stable, based on what?

Mr. PELLETIER: On the first date of entry into the civil service.

Mr. CARON: On the first date of entry, and they will not consider the date of promotion?

Mr. PELLETIER: Yes, transfers and promotions.

Mr. CARON: It does seem the very same in that clause.

Mr. PELLETIER: There are certain anomalies occurring now. A person, let us say, may be promoted to another class one month before his normal date of increase, and he goes to the minimum of the new class which may be equivalent to his existing salary. That means he has to wait 12 months instead of one to get an increase. This is a very complex area. Under this subclause, I think we can make regulations which provide equity for all civil servants, and will certainly not cause any drain of any consequence on the treasury.

Clause 68 (1) (*h*) agreed to.

Clause 69 (1) (*i*) agreed to.

On paragraph (*j*)—

Mr. CARON: We have no explanation of that clause.

Mr. MACKENZIE: Perhaps an illustration will indicate the intent, or what I assume to be the intent, under this clause. Where the employee who has, let us say, reached the third or fourth rate in his range is laid off, he is eligible under this bill for re-appointment to the civil service. Appointment, however, is normally at the minimum of the class. This subclause will enable the civil service commission to make a recommendation under which on re-appointment he can be appointed at the rate which he had reached before his lay-off.

Mr. CARON: Thank you.

Mr. HICKS: It is a good idea.

Clause 68 (1) (*j*) agreed to.

Clause 68 (1) (*k*) to (*m*), inclusive, agreed to.

On paragraph (*n*)—

Mr. PETERS: May I ask what is the extent of acting pay?

Mr. HUGHES: The extent of acting pay?

Mr. PETERS: This says:

> providing for the payment of acting pay where an employee is required to perform for a temporary period the duties of a higher position . . .

How long are they on acting pay in this temporary position?

Mr. HUGHES: I do not think there is any limit to it, subject to the approval of the civil service commission. Where the limit is imposed if it is imposed at all, it is due to the necessity of filling a position which is vacant. Now, acting pay could be granted in a case where an employee is doing the work of his superior, during illness, and when the superior returns to duty, of course, acting pay ceases. Where an employee does not return to duty, of course, the position may become vacant, and it is filled by competition, either closed or open, in which case eventually acting pay ceases. Acting pay is granted on the recommendation of the deputy head with the approval of the civil service commission.

Mr. PETERS: This can in practice create quite a hardship in other instances, where somebody may be holding a job on acting pay without any opportunity of ever getting that job. To use an example in the house here, which I think has been hammered fairly well, where the head had retired, the one who was appointed on acting pay for that job is one not qualified for the competition in the first place, or says that he is not eligible for that job. He does it for a temporary period, while a competition is held and the selection is made, which is a limited period of time. I can also think of other cases where a year or more elapsed, and this seems very unfair to me to the people who would be applying for a particular job.

Mr. HUGHES: I will admit that it creates a situation which should be examined by the commission, if acting pay is granted for what is apparently an excessive period.

Miss ADDISON: Usually the acting pay procedure is to protect the person who has been appointed to the position. Supposing this person is sick for a year or even two years, and yet it is likely that he is going to come back to his job. The intent of acting pay in such a case is to protect the job for the person who was originally appointed to it. While the department has to put somebody in the position in an acting capacity in order to get the work, at the same time it is also important to protect the person who is on leave of absence, when it is for legitimate reasons.

Mr. PELLETIER: If I could add to that, I agree entirely with Mr. Hughes. It is up to the commission to make sure that the period of acting pay is not excessive, since this could lead to all kinds of abuses. In fact, this we now do. We review all acting pay situations, I think at least yearly, to make sure that a person is not kept in an acting pay position, the kind of person you were suggesting a moment ago, Mr. Peters, who has not got the qualifications, but is capable of carrying on the job in an acting capacity.

The other feature of this—and this is a very important one—is that regulations should be made, I think, to cover this situation, because it is quite obvious to me, at least, that you should not grant acting pay in the situation where a person is called upon to replace a superior for one day. It seems to me that it is the job of the assistant to assist. That is why, at the present time, under present regulations, we have a minimum of two months, which, I think, is reasonable. Perhaps it should be three months, or one month, or four months, but certainly you should not grant acting pay to an individual who replaces his superior for a day or two. That is the other facet of this matter.

Mr. PETERS: I think this section should certainly be changed. I have an example where there is a person who has been in a job for over a year, much over a year, where there are eight or ten people qualified for that job. That is a disgrace to the civil service and to the government, in this particular case. I would be happy to mention it. It seems to me that this is a kind of situation which regulations, if properly limited, would eliminate.

The CHAIRMAN: Exactly, Mr. Peters. It is a point which could be covered by the regulations.

Mr. PETERS: This deals with regulations.

The CHAIRMAN: This does not deal with regulations. This is a paragraph which gives authority to make a regulation which will cover that point. If you think this paragraph is wide enough to give the authority that you would like to see under the regulations, then the paragraph should be satisfactory. We are not making the regulations here. We are just giving authority to make the regulations.

Mr. RICHARD (*Ottawa East*): Is it the intention to go into the regulations at all?

The CHAIRMAN: That is a question I cannot answer. I do not think the regulations will be ready before the end of the session.

Mr. RICHARD (*Ottawa East*): Then it is important what this bill does; it is important what we put into the bill.

The CHAIRMAN: It is important, but we have to complete our considerations of the bill first.

Mr. RICHARD (*Ottawa East*): I think the matter should be left open for consideration by the committee at a later date, as to whether we can review the regulations, and at least a draft submitted is now in the hands of the association.

The CHAIRMAN: The regulations are not within our terms of reference, I suppose.

Mr. RICHARD (*Ottawa East*): They are part of the bill.

Mr. CARON: It is very wide.

The CHAIRMAN: For the moment, are you satisfied that paragraph (n) is sufficient authority to provide regulations?

Mr. PETERS: Could I ask the commissioners whether this clause includes powers which would make it possible for the commission to regulate this particular abuse out of existence?

Mr. HUGHES: Yes.

Mr. PETERS: It appears that the other regulations under the old act were not sufficient to eliminate this problem. Does this clause enlarge the powers to the extent we want?

Mr. HUGHES: I do not think, Mr. Peters, one could say that the regulations under the present act are insufficient to provide for this problem. As an example of the sort of change we contemplate under the regulations—it may not be strictly relevant to this—where a person has been recommended for acting pay, we had a regulation which said that it could not be granted prior to the first day of the month in which the recommendation was made, with the result that if the department was slipshod about putting through the recommendation, a man might have worked for four or five months in a higher position and yet could not get four or five months acting pay. Our plan is to provide in the new regulations for completely retroactive treatment of that type of pay.

Mr. PETERS: In almost any outside industry or employment, where employees are on acting pay for any extended period, automatically there will be a period of termination of that acting position, and it would be made a per-

manent position; and it would behoove those looking after it to get busy and put in whomsoever they wanted, or they would have this person there permanently, whether they wanted him or not. I think this is something which should apply in the civil service.

Mr. HUGHES: Are you suggesting that we should be able to make appointments to higher civil service positions by selecting a man and putting him on acting pay for a number of months, and then filling the position in that way?

Mr. PETERS: I am not disagreeing, but I know of a particular case in the department of the undersecretary of state, for instance, where there is considered to be an incompetent employee in an acting capacity for an excessive length of time, and this has meant that people applying from the civil service, or a competition, may pass the competition or be amongst the selected number from the competition, and they are pretty well frozen in all the positions there they are sitting in because they have been made acceptable under the qualifications for this job. It seems to me that this is not only reflecting on the person who is on acting pay in the job, but also on everyone who has got into this situation.

The CHAIRMAN: That all may be true, but it has nothing to do with this paragraph.

Mr. PETERS: I want to see that this bill will be wide enough that the commissioners will have power to make regulations to prevent that situation.

Mr. HUGHES: Of course they will.

Mr. CARON: There is a submission by the federation. They seem to want wider powers for the commission "for duties or partial duties of one or more positions in addition to their own." This is not covered by the present (*n*).

Mr. HUGHES: It is now handled by terminable allowances. Acting pay is reserved for remuneration in connection with a higher position. Where a person is doing two jobs at once, for instance, he can be compensated by terminable allowance, because it is the law that a man cannot, under normal circumstances, hold two jobs at once and be paid for two jobs. That is according to the provisions of section 16 of the present act. We compensate these people by means of an exemption from section 16 of the act, under the provisions of clause 60 of the present act, and give them what we call a terminable allowance. I think this is the proper way of doing it.

Mr. MACKENZIE: Perhaps Mr. Caron's attention could be drawn to clause 2(1)(*a*)(ii) of the bill which is designed just for the circumstances he has in mind.

> For duties that an employee is required to perform in addition to the duties of his position.

This of course has been stood over by the committee, but that was the intention in drafting 2(1)(*a*)(ii).

Mr. PELLETIER: If I could add to that, Mr. Caron, I agree with Mr. Mackenzie and Mr. Hughes. If you look at clause 65, sub-clause 4 it says:

> Subject to this act, an employee is entitled to be paid for services rendered the remuneration applicable to the position held by him.

Perhaps Mr. Hughes will correct me if I am wrong, but I think that in a statute the singular includes the plural, and if a man in the civil service holds two positions, he could either by allowance under 2(1)(*a*)(ii) or under 65(4) be paid properly.

Mr. HUGHES: Yes, but the case which the federation makes, and I think Mr. Caron is considering now, is not a case where a man holds two positions; it is where he holds one position and is temporarily performing the duties of another. I do not think he could be appointed in the normal course to two

positions. What sub-clause (4) of clause 65 is doing is recognizing his entitlement to pay as opposed to the desirability of the crown paying him as an act of grace.

Mr. CARON: Because it happens that one man may be sick and his work is divided between two or three others. They are then partially doing the work of one man, and there is no provision for such a case.

The CHAIRMAN: It is provided for under 2(1)(*a*).

Mr. CARON: It is not as clear as I think it should be.

> —for duties that an employee is required to perform in addition to the duties of his position.

What I would like to know is if the commission, according to the bill and the regulations which are being prepared, will have the power to give compensation for additional duties. Do you not think it would be clearer if the words suggested by the federation "or to perform concurrently with the duties of his own position, those of another position" were added? If it were clarified, it would not be in conflict with any other part of the bill.

Mr. HUGHES: May I just say this, Mr. Caron? I think it is undesirable to recognize as a continuing proposition the fact that a man should be doing two jobs at once, and that any circumstances which are of that nature can be dealt with under the system of terminable allowances, provision which is made in the bill as referred to by Mr. Mackenzie. I think it would be more satisfactory in the long run to preserve the concept of acting pay as being something which is given as remuneration for duties in a higher position, rather than additional duties at the same grade.

Mr. CARON: The only thing I wanted to be sure of is that the commission has the right and power to deal with that problem as it arises.

Mr. HUGHES: I would say we have.

The CHAIRMAN: Paragraph (*n*) agreed to. Paragraphs (*o*), (*p*), (*q*) and (*r*) agreed to.

On paragraph (*s*).

Mr. CARON: Does the commission intend to deal with the question of prescribing the procedure of appeal as dealt with by the Heeney report? The Heeney report is clear on that. There should be a larger field of appeal than there was in the past.

Mr. HUGHES: This is solely confined to procedure. The act provides specifically for the occasions on which appeals may be taken, and I think it is fair to say it does considerably enlarge the present act because the present act does not say anything about appeals being taken. Any rights that are allowed for appeal are contained in the regulations made under the present act and are quite narrow; but this merely allows us to say, for istance, that the deputy head will have ten days in which to make a reply to the notice of appeal or something of that kind. It is just procedure.

Mr. CARON: Will this not establish a cause for appeal? Will there be any part in the regulations which will clarify the causes for appeal?

Mr. HUGHES: There is provision in the bill, in addition to the specific rights of appeal therein set out, for the regulations to expand on those rights of appeal. It appears in clause 70.

The CHAIRMAN: This paragraph deals with procedure on appeals, not with the appeals themselves.

Mr. CARON: This could be within the procedure. The causes for appeal would be detailed in the procedure.

Mr. HUGHES: Mr. Caron, I must admit we have tried to use the regulations on procedure for appeal to some extent to control the incidence of frivolous and vexatious appeals, but we have not been successful because the bill specifically says that anyone can appeal if he is subject to certain disciplinary action whether or not he has a good case or whether or not his case is frivolous and vexatious. We do not feel we can do anything by regulation to limit the right of appeal or extend it under this particular paragraph. We certainly cannot limit it.

Mr. CARON: We will have to review it to see whether there should be the right of appeal.

The CHAIRMAN: That is under the act.

Mr. CARON: I have submitted that under different cases, and I have been told this is covered. I am not quite sure it is covered.

The CHAIRMAN: We will be going back to a good many of these clauses.

Paragraphs (*s*), (*t*) and (*u*) agreed to.

I believe we agreed to make additions to the regulations to provide for grievance procedures.

Mr. BELL (*Carleton*): We could carry it on the understanding that at a later date we will come back to it and add some paragraphs and reletter them accordingly in the present clause.

The CHAIRMAN: Shall subclause (1) carry, subject to that understanding, except for paragraph (*b*) which we agreed to stand?

Sub-clause (2) of clause 68 agreed to.

On clause 69—regulations by governor in council.

Mr. CARON: There is a submission by the federation on that clause.

> There appears to be nothing in bill C-71 which makes provision for the establishment of grievance procedures as recommended in section 16004 of the Heeney report, page 121.

The CHAIRMAN: That is the point we covered. We agreed we were going to come back to clause 68 to add a paragraph which will allow the setting up of a grievance procedure.

Mr. CARON: With the same reservations as for clause 68, that we should come back to discuss it when we discuss the other one. We can also adopt that reservation that we can always come back to it.

The CHAIRMAN: Does the same difficulty apply?

Mr. BELL (*Carleton*): I would hope the grievance procedure would be covered in clause 68 rather than in clause 69.

Mr. CARON: If it is covered by clause 68, we will not have to come back to it.

The CHAIRMAN: We will see that it is covered in clause 68.

Mr. CARON: If it is not covered, we want to have the right to come back to 69.

The CHAIRMAN: We are coming back to 68.

Mr. CARON: But if we are not satisfied, we may do something to clause 69.

Mr. BELL (*Carleton*): I am sure we will be able to satisfy Mr. Caron, but I take no exception to his suggestion.

The CHAIRMAN: It is agreed we can come back to clause 69.

Clause 69 agreed to.

Clause 71 agreed to.

On clause 70 (2).

Mr. CARON: The federation made a submission on this paragraph. They suggest that the following words be added to sub-clause (2):

> ...and selected from a panel of active or retired public servants; one member of the board being a panel member nominated by the recognized staff associations.

It concerns cases of appeal.

The CHAIRMAN: Are there any comments on that point?

Mr. HUGHES: There is some background to this. As members of the committee may remember, I think in 1959 my colleagues appeared before the committee on estimates, and it was recommended in the report of that committee that the present situation where an appeal board consists of a representative of the staff association representing the employee, a departmental representative and a civil service commission officer acting as chairman, there were in fact at least two members of the appeal board filling the role of advocate rather than of judge. It was thereupon decided that all members of an appeal board should be appointed by the civil service commission to which indeed a report has to be made for approval, rejection or variation. This is an implementation of that view.

The CHAIRMAN: Shall subclause (2) carry?

Subclause (2) agreed to.

On subclause (3).

Mr. CARON: I would suggest that at the end of the subclause the words "or a counsel" be added.

Mr. BELL (*Carleton*): Surely a counsel is a representative?

Mr. CARON: Yes, but he should have the right to be represented by a lawyer of his choice.

The CHAIRMAN: That would be a representative. The word "representative" is wide enough to cover lawyers, doctors and Indian chiefs.

Mr. BELL (*Carleton*): I agree with Mr. Caron that it is desirable that there be the right to be heard through counsel, but I think no clarification is necessary. All a counsel is is a representative.

Mr. HUGHES: I think it was deliberately put like this in order to comprehend not only counsel but a layman acting as agent or anyone else.

Mr. CARON: I do not oppose this, but as long as he has the choice, it is all right.

Mr. PELLETIER: It is clear in the bill. It can be counsel or almost anyone—a representative.

Mr. CARON: In the past they had to be represented by a member of the staff association.

Mr. PELLETIER: You think there should be some clarification as to whether it should be made abundantly clear that it is a representative of his choice?

Mr. CARON: Of his choice.

The CHAIRMAN: That would be clear. The representative would have to be chosen by the man concerned.

Mr. BELL (*Carleton*): I have no objection to saying "a representative of his choice" and I would be glad to see that done, provided the draftsman approves of that language.

Mr. MARTEL: For clarification, a representative of his choice is not to be appointed on the board but to represent him before the board? Is that correct? The board of appeal is appointed by the commission.

The CHAIRMAN: Yes, and this clause deals with the right of a man to have a representative before the board. Is it the wish of the committee to add these words "of his own choice"?

Mr. HICKS: I cannot see any purpose in doing it. He would not have a representative he did not want, surely; therefore it is his choice.

Mr. PELLETIER: In other words, what you are saying is that if a representative is not of his own choice, then he is not a representative. I am inclined to agree with that.

Mr. BELL (*Carleton*): There may be a little background in relation to the type of representation there has been in the past. That is the point Mr. Caron has in mind. He wants to make it abundantly clear.

Mr. CARON: There is no harm in clarifying anything.

Mr. BELL (*Carleton*): I think myself it is clear, but I have no objection to putting "of his own choice" in the sub-clause.

Mr. MARTEL: It says here "either personally or through a representative". If I understand this correctly, he could go himself, and if he does not go he can send a representative, but would that mean that this would prevent him from going with his representative?

The CHAIRMAN: I would think not. He is entitled to be there.

Mr. MARTEL: It says "either personally or through a representative".

The CHAIRMAN: He can make his representations either personally or through the counsel he could bring along.

Mr. MARTEL: Would that not eliminate the employee from attending the hearings before the board?

The CHAIRMAN: As I read the clause, the employee can appear himself and act for himself or appear and act through a representative. Are there any further points on subclause (3)?

Mr. PELLETIER: There is one point, Mr. Chairman, if I may, on subclause (3). I hesitate to raise it but the clause as it now reads says:

> The board shall conduct an inquiry into the subject matter of the appeal and shall give the employee who is appealing and the deputy head an opportunity of being heard, either personally or through a representative.

That means—and I am referring now to a casual remark Mr. Hughes made a moment ago—to the frivolous and vexatious type of appeal. Probably this is something Mr. Mackenzie should talk to rather than I because it involves the spending of an awful lot of time and unnecessary money. I was wondering whether the committee would consider the desirability of revising this paragraph to provide that whenever an appeal is made a board be established, but not necessarily that the appellant be heard if it is established by the board that the appeal is vexatious, frivolous, or indeed not within the terms of the act.

The CHAIRMAN: That would seem like rather an arbitrary thing.

Mr. CARON: Whenever a person appeals it is because he believes he has a right to it and he believes he has the competency to fill the job, even if he has not. It is up to the board of appeal to decide whether or not he has.

Mr. PELLETIER: But, Mr. Caron, appeals are taken on many more grounds than the one you have just mentioned, and this section as it now stands will certainly involve a great deal of time and money. Perhaps it is worth it; perhaps it should be done; but we have appeals from Newfoundland to Victoria, and in some cases the appeals are based on nothing. All I am suggesting is—perhaps the suggestion is not a good one—that there should in all cases be a board, not a one-man decision, and then the board will decide whether the

appeal is within the terms of the act, and if so, then the appellant or his representative or both will be heard. If it is not within the terms of the act, if it is frivolous and vexatious, then the board will decide to reject the appeal. This is common court practice, it seems to me.

Mr. BELL (*Carleton*): What Mr. Pelletier is really advocating is that there be application for leave to appeal to be heard by a board, and I appreciate the problems which he does raise but I think I would want to see the appellant have his day in court before the board. It may be that this would get out of hand, and if so the commission would have to report to parliament and parliament act at that time.

The CHAIRMAN: Do we agree on clause 70?

Mr. CARON: No, there is subclause (4) on which there is a submission by the federation.

Subclause (3) agreed to.

The CHAIRMAN: We will adjourn until tomorrow.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 20

FRIDAY, JUNE 9, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

From the Civil Service Commission: Honourable S. H. S. Hughes, Q.C., Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners.

From the Department of Finance—Treasury Board: Mr. C. J. Mackenzie, Assistant Secretary.

From the Law Branch, House of Commons: Dr. P. M. Ollivier, Q.C., Parliamentary Counsel.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

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SPECIAL COMMITTEE ON THE

CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)	Macdonnell	Pickersgill
Caron	MacRae	Richard (*Ottawa East*)
Casselman (Mrs.)	Martel	Roberge
Hanbidge	McIlraith	Rogers
Hicks	More	Spencer
Keays	O'Leary	Tardif.
Lafreniere	Peters	

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, June 9, 1961
(22)

The Special Committee on The Civil Service Act met at 9.45 a.m. this day, the Chairman, Mr. R. S. MacLellan, presided.

Members present: Mrs. Casselman and Messrs. Bell (*Carleton*), Caron, Hicks, Lafrenière, Macdonnell (*Greenwood*), MacLellan, MacRae, Martel, McIlraith, More, Peters, Richard (*Ottawa East*), and Spencer.—(14)

In attendance: From the Civil Service Commission: The Honourable S. H. S. Hughes, Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners. *From the Department of Finance—Treasury Board:* Mr. C. J. Mackenzie, Assistant Secretary. And also Dr. P. M. Ollivier, Parliamentary Counsel.

The Committee resumed its clause-by-clause consideration of Bill C-71, An Act respecting the Civil Service of Canada.

On Clause 70:

By leave, Subclause (3) was further considered. It was allowed to stand; and the draftsman was requested to reword the subclause in accordance with the views of the Committee.

Subclauses (4) and (5) were adopted.

On Clause 71:

Subclauses (1) and (2) were adopted.

Mr. More moved, seconded by Mr. Martel,

That Subclause (3) of Clause 71 be adopted.

The subclause was adopted on the following division: YEAS: 8; NAYS: 4.

Subclauses (4) and (5) were adopted.

On Clause 72:

Mr. Bell (*Carleton*) set forth the objectives of the clause.

On motion of Mr. Bell (*Carleton*), seconded by Mr. McIlraith,

Resolved,—That Subclauses (1), (2) and (3) of the clause be deleted and the following substituted therefor:

"72. (1) The Senate and House of Commons may, in the manner prescribed by subsections (2) and (3), apply any of the provisions of this Act to the officers, clerks and employees of both Houses of Parliament and of the Library of Parliament.

(2) Any action with respect to the officers, clerks and employees of the Senate or the House of Commons authorized or directed to be taken by the Senate or the House of Commons under subsection (1),

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or by the Governor in Council under any of the provisions of this Act made applicable to them under subsection (1), shall be taken by the Senate or the House of Commons, as the case may be, by resolution, or, if such action is required when Parliament is not sitting, by the Governor in Council subject to ratification by the Senate or the House of Commons, as the case may be, at the next ensuing session.

(3) Any section with respect to the officers, clerks and employees of the Library of Parliament and to such other officers, clerks and employees as are under the joint control of both Houses of Parliament authorized or directed to be taken by the Senate and House of Commons under subsection (1), or by the Governor in Council under any of the provisions of this Act made applicable to them under subsection (1), shall be taken by both Houses of Parliament by resolution, or, if such action is required when Parliament is not sitting, by the Governor in Council, subject to ratification by both Houses of Parliament at the next ensuing session."

and that a consequential amendment be made in paragraph (b) of Subclause (1) of *Clause 2* by adding the following subparagraph:

"(vi) the officers, clerks and employees of both Houses of Parliament and of the Library of Parliament."

Subclause (4) of Clause 72 was adopted.

On Clause 73:

On motion of Mr. Bell (*Carleton*), seconded by Mr. More,

Resolved,—That Subclause (1) be amended to read as follows:

(1) The Governor in Council may appoint and fix the remuneration of

(a) the Clerk of the Privy Council,

(b) the Clerk of the Senate,

(c) the Clerk of the House of Commons, and

(d) the Secretary to the Governor General

who shall be deputy heads for the purposes of this Act.

Subclause (2) was adopted.

Clauses 74 and 75 were adopted.

On Clause 76:

Subclause (1) was adopted.

Subclause (2) was allowed to stand for redrafting.

At 11.00 a.m. the Committee adjourned until 9.30 a.m. Tursday, June 15th at which time Bill C-71 will be further considered.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

FRIDAY, June 9, 1961.

The CHAIRMAN: We have a quorum gentlemen.

As you will recall, yesterday at adjournment time in the hubbub of that moment we agreed to clause 70(3). I am wondering, however, if the committee would agree to re-open this clause for further discussion. I feel the point raised by Mr. Caron as to adding the words "of his choice" at the end of the clause was not disposed of in an orderly way.

Mr. MACDONNELL: I did not hear you, Mr. Chairman.

The CHAIRMAN: Yesterday we agreed to sub-clause 3 of clause 70. However, there was a point raised by Mr. Caron in respect of adding the words "of his choice" at the end of that clause. Also, since that time I have had an opportunity to talk to Mr. Hewitt-White of the civil service federation of Canada, who feels that the clause is not as clear as it might be in respect of a man being represented at the appeal board, not only personally but with counsel. Therefore, if the committee feels we should re-open the clause, I think it might be appropriate to do so at this time. In a later conversation with Mr. Caron, he feels the word "representative" is wide enough. He does not now see the need to add the words "of his choice" to the clause.

The other point which was raised, however, may be worth consideration.

Mr. CARON: At the time I did accept the suggestion made by Mr. Bell to add the words "of his choice", just for further clarification.

The CHAIRMAN: Personally I think the word "representative" is wide enough. I believe that generally this is the view of the committee. Are there any further views to be expressed on this?

Mr. BELL (*Carleton*): Have you any suggestion as to alternative language which might be used to make clear that the intention is that the man may be present there on his own behalf, and by counsel or agent as well.

Mr. PAUL PELLETIER (*Commissioner, Civil Service Commission*): I think there is a point here. If this were interpreted literally it might be construed to mean either the appellant may be there or the representative, but not both. Perhaps the draftsmen could be asked to provide something along the following lines: either personally or through a representative or through both. This is not very legalistic language.

Mr. SPENCER: Is it not so clearly established that anyone who is a party to a proceeding is entitled to be there, that it does not need clarification. I think this is such a fundamental principle that I do not see why we should have to spell it out.

Hon. S. H. S. HUGHES, Q.C. (*Chairman, Civil Service Commission*): May I suggest, since it is the intention of the committee—if I may presume to suggest the intention of the committee—to provide the right of representation by counsel or agent as well as the personal attendance of the appellant, that we leave this for the draftsmen to make sure there is no rigid alternative provided by these words?

Mr. MORE: I think Mr. Hughes has explained what the committee has in mind in regard to this clause. We would save time by referring it to the draftsmen and agreeing that that is the intent of the committee.

The CHAIRMAN: Is this the wish of the committee?

Agreed.

The CHAIRMAN: It is agreed that clause 70(3) stand for further consideration by the draftsmen.

Clause 70(3) stands.

Mr. MCILRAITH: I would like to bring up a general question which probably should have been raised under clause 70(2), which was carried. It seems to me we are reaching a stage in the development of this whole subject of relations with employees where it might be desirable to give thought to setting up a permanent appeal board, a board which would have its independence established. I merely want to raise this point now. I do not want this clause passed without having raised this point. I think it is something which will have to be considered. I am not pressing it as an amendment to this clause at this time, but I think it will have to be considered. I would think this should be considered very shortly because of the changed techniques in personnel relations, the granting of rights of appeal, the strengthening of the appeal provisions, and the necessity of strengthening them because of added powers given to deputies. I feel we should be thinking about the technique of establishing the appeal board as a permanent body rather than the way it is set up in subclause (2) of clause 70.

The CHAIRMAN: Have you a comment, Mr. Hughes?

Mr. HUGHES: I would like to draw to your attention the fact that the immigration appeal board, which is a permanent board, is not provided for under the Immigration Act except by section 12 which, in my respectful view, goes no further than authorizing the establishment of boards like the one contemplated in clause 70. If it can be done under the Immigration Act—and the Department of Justice has said it can—I suppose we can do it in this act with this form of wording.

Mr. CARON: They also have that kind of a board for unemployment insurance commission appeals.

The CHAIRMAN: It seems to me the wording in subclause (2) of clause 70 is wide enough to allow the establishment of a permanent board of appeal.

Mr. MCILRAITH: It is limited to where an appeal is made. Of course, if no appeals are made, I do not see where they would have any authority. I am not wishing to differ with the opinion given by His Lordship. I read the words "where an appeal is made to the commission" as a limitation to the authority of the commission to establish the board.

Mr. HUGHES: I am inclined to agree with Mr. McIlraith, but I dare not do so in view of what the Department of Justice has said in relation to the Immigration Act.

Mr. MCILRAITH: It seems to me, at this stage of development in employee relations in the civil service, that we are about at the point where thought and attention should be given to the creation of a permanent appeal board. Perhaps, since the committee has been good enough to hear me, and since the subclause has been carried, I might leave it at that. I would be glad, however, to hear any other views from any of the members.

Mr. BELL (*Carleton*): This is the first time I have heard Mr. McIlraith being timorous about disagreeing with a judge, either active or retired.

The CHAIRMAN: I suppose if the same board were appointed as a matter of practice from time to time it would in essence be a permanent appeal board, even if it had to be re-appointed every time an appeal was launched.

Mr. MCILRAITH: There is a nice point in this. I think it is a question worthy of some rather careful attention.

The CHAIRMAN: Shall we move on to subclause (4) of clause 70?

Mr. MACDONNELL: The last two lines in this subclause read:

> The board shall, for the purposes of that part, be deemed to be commissioners appointed under that part.

I suggest that the words in the second last line should read, "The board shall, for the purposes of the appeal, be deemed to be commissioners appointed under that part." It seems that as it is now it is repetitious.

Mr. HUGHES: I do not have it before me, but as you know part II deals with departmental inquiries and is somewhat different in form and in content to part I. I rather think those words are put in to confine the powers of the board to the extent that part II may give them authority and not part I.

Mr. BELL (*Carleton*): Could we draw Mr. Macdonnell's comment to the attention of Mr. Driedger to see whether or not he has any comment?

Mr. MACDONNELL: I will submit to Mr. Driedger.

Mr. CARON: There is a submission by the association of civil servants in which they ask for certain protection. They ask that if a member of the association has been chosen by the appellant that he should be considered as being on regular duty in his position while he is at the hearing. Is there anything in the act which would provide for that?

Mr. HUGHES: I do not think there is anything in the act. Miss Addison reminds me that we have covered this in the first draft of the regulations. It always has been the case that representatives of associations who are on this type of duty for an appellant have been considered as being on duty in the general sense of the word. We would certainly want to see that continued.

Mr. CARON: In respect of the regulations you seem to have thought of it.

Mr. HUGHES: Yes.

Mr. CARON: So it will be included in the regulations?

Mr. HUGHES: Yes. If there is any doubt about it being there now, it will be there.

Mr. BELL (*Carleton*): I have no doubt it would be the wish of the committee to have that included.

Clause agreed to.

On clause 71—Ministers' staffs.

Mr. MACDONNELL: On subclause (1) of this clause, it is not immediately clear to me why the most prominent person in the office of the minister apparently is not appointed by the governor in council. Do I read it right? If so, why should that be?

Mr. C. J. MACKENZIE (*Assistant Secretary, Department of Finance*): Mr. Macdonnell, the reason for this limitation is in order that the government may exercise some control over the number of employees whom the minister may have in his office.

Clause 71, subclause (1), agreed to.

Clause 71, subclause (2), agreed to.

On clause 71, subclause (3)—Executive Assistants and Private Secretaries.

The CHAIRMAN: Have you any comment to make on this, Mr. Pelletier?

Mr. PELLETIER: Yes, I have a comment on this.

I would like to draw the committee's attention to the fact that this subclause (3) of clause 71 is significantly different from the present clause 61 of the current Civil Service Act.

The clause in the present Act states:

> Any person may be appointed by a minister of the crown or other member of the government or by the leader of the opposition to be his private secretary.

Then, in subclauses of that section, it goes on to say that when a minister or a leader of the opposition, as the case may be, ceases to hold that office, then the private secretary is entitled to a job at a grade not less than—

Now, if you read the section in the bill carefully, it says:

> A person who, for at least three years, has held the position of executive assistant to a minister or the position of private secretary to a minister, is entitled to be appointed to a position in the civil service for which he is qualified, . . .

The whole purpose of my point is simply this: At the present time, the minister must cease to be a minister. Under the section as it is now drafted, theoretically,—and I admit it may be rather theoretical—every three years, even though the minister remained in that office for 20 years, his private secretary or executive assistant could be entitled to a job in the civil service. I really am thinking of back-door appointments, and I was wondering whether this was not perhaps over generous. I should add, in so far as I am concerned—and I am certain that my colleagues agree—I feel that an executive assistant or private secretary of a minister who has served for a great number of years should be entitled to some consideration. On the other hand, I do not think the act should be drafted in such a manner that back-door appointments are made possible.

The CHAIRMAN: Are there any comments on this point?

Mr. CARON: In appendix A of the Heeney report there is quite a substantial study of that question.

Mr. BELL (*Carleton*): What paragraph is that?

Mr. CARON: It is at page 69.

Mr. PELLETIER: Mr. Caron, I think it is section 8074, sub(d) of appendix A.

The CHAIRMAN: Then, are there any comments to be made on this clause?

Mr. RICHARD (*Ottawa East*): There is quite a point involved there, as to whether his appointment should be determined by the fact the minister has left his position, or whether it is a matter of the secretary having been in the position for three years. In 12 years the minister could have 12 appointments.

Mr. BELL (*Carleton*): No, no.

Mr. RICHARD (*Ottawa East*): Well, every three years.

Mr. MCILRAITH: In 12 years, under the clause as it is now drafted, the minister could have eight persons brought into the civil service by this method, and they would be entitled to be appointed into the civil service. The question is whether this committee wishes that kind of a right, or whether it is seeking to protect the secretaries and executive assistants of the ministers when the ministers retire.

Mr. MARTEL: Mr. Chairman, if we read carefully section 61 in the present act, you will note at the end of sub-section (2) it says—and they are referring to secretaries of ministers or the leader of the opposition, as the case may be:

> the said secretary shall thereupon be appointed to a permanent position in the public service classified not lower than that of chief clerk, if the said secretary has been acting as such for a period of not less than three years.

That means that the same rule applies here.

Mr. McILRAITH: No, no.

Mr. MARTEL: Have you been appointing people every three years?

Mr. RICHARD (*Ottawa East*): He had to be in office at least three years. But, the minister had to abandon his position before that could be done. That is the way I understand it.

The CHAIRMAN: Have you any comments to make, Mr. Hughes?

Mr. HUGHES: Yes, Mr. Chairman, I would say that there is some offsetting character to this clause, in that it has been held by the Department of Justice that the reference to a minister's private secretary in section 61 will admit the possibility of a number of associate private secretaries being created, and giving them the same privileges, whereas this clause confines the entitlement to two people, the executive assistant and the private secretary—and that is specifically set out. I believe that in 1957—and Mr. Pelletier knows much more about this than I do, because I think he was in the privy council office at the time, and shortly thereafter in the civil service commission—a considerable number of ministerial appointees were taken into the civil service.

I would also draw the committee's attention to the existence of the words in subclause (3), "for which he is qualified". Now, there are no such words in section 61 of the present act. An individual concerned may not be qualified for a position at all, but he has a right to go in at a certain level whereas, in my view, the existence of the words "for which he is qualified" means that he must submit to some sort of test.

Mr. BELL (*Carleton*): There is also another aspect of this, if I may say so, and that is the problem under the old act, that the minister had to cease to be a minister of the crown, and his transfer from one portfolio to another brought no entitlement to his private secretary. As a result, it thereby created some considerable difficulties where a private secretary was appointed who was a very adequate person and very happy in a role in one department, but would be quite unhappy to go to another department. Under the old legislation it was absolutely necessary he follow his minister to the other department. This is drafted on such a basis that in these circumstances he might remain in the department in which he has gained some competence, and in which he has been working happily, presumably, with the other officials. That, basically, is the purpose. I, personally, do not see any likelihood of abuse arising in respect of this. If any abuse was started on the part of any government, one could be certain the opposition would check it very quickly.

Mr. McILRAITH: But they would have no right—that is the point—because it would be done under the authority of section 71 of the act, and the right to check it would have gone.

There is no doubt whatever as to the reason for this language. It does create quite a wide loophole in the act and, theoretically, a government remaining in office could place on the civil service rolls by this means 40 persons each three years. That is what we are dealing with, and I do not think it is the kind of loophole the committee had at all in mind. The committee, I think, and the ones drafting the bill, were undoubtedly trying to meet another situation.

The CHAIRMAN: Well, if you are worrying about possible abuse, there is this point: Any appointment under the section would have to be reported to parliament under 76 (2), and there would be adequate opportunity for examination and debate where any minister is making an abuse of the section.

Mr. RICHARD (*Ottawa East*): It would not be abuse in a case like this.

Mr. McILRAITH: No.

The CHAIRMAN: You are worrying about the abuse of that section?

Mr. McILRAITH: But the tabling of the annual report, surely, does not provide the opportunity to deal with this matter.

The CHAIRMAN: There would be an opportunity there, though, to object in a situation where the minister was taking on more people than necessary.

Mr. MCILRAITH: Tabling does not give an opportunity to object. Concurrence in an annual report is never moved. There is no right other than when the estimates of the Department of the Secretary of State are discussed, and that is about the only time.

The CHAIRMAN: When a report comes down and lists all these people appointed, any member has the right, under the estimates, to raise a question concerning it.

Mr. MCILRAITH: But the answer is quite simple when raised on the estimates; it is done by virtue of the authority of the correct section of the Civil Service Act, which parliament enacted. The meaning is clear.

The CHAIRMAN: The point I am making is that if you are worried that in theory this could be a loophole—

Mr. MCILRAITH: It is a loophole.

The CHAIRMAN: —then a proper check on that would be a scrutiny by the house.

Mr. MCILRAITH: No, Mr. Chairman. The best check is to draft the legislation in such a way as to remove the loophole.

Mr. MACDONNELL: I am not sure about this, but may I ask, do we fear a minister, presumably compos mentis, whose two officials assumably are capable of doing their jobs, is going to get rid of them at the end of two years so that he can bring in two others?

Mr. MCILRAITH: No, Mr. Macdonnell. The problem is a little different. In drafting the civil service legislation we have seen fit to provide a method of entry into the civil service that is not in accordance with the general principles of the act. It is to take care of a special situation, namely the situation that arises where there is a change of government or other retirement of ministers; and this is to provide that their long-term secretaries and executive assistants, who have given up years of their lives to their work, can go directly into the civil service without going through the usual method for entry into it.

In doing that we have come forward with a clause which provides that every secretary and every executive assistant of a minister may be appointed by that indirect method to the civil service, after three years service. Therefore, we are dealing with a situation which was never intended to be dealt with, and I am quite sure the ministers' secretaries can go in en masse through this method every few years.

Mr. SPENCER: En masse?

Mr. MCILRAITH: Well, Mr. Spencer—

Mr. SPENCER: What percentage would that be of the total civil service?

Mr. MCILRAITH: Well, in that class of position it is quite a factor, and you know that cabinets do change. We have as many as four and five ministers replaced at a time when these cabinet shuffles come about. It is quite an important point; it is not a small point.

What we are seeking to do is to protect the long-term secretaries of ministers when their ministers go. That is a very proper thing to do, but it must be done in a way which is consistent with protecting the merit system, and this clause seems to be too wide to achieve that purpose.

The CHAIRMAN: How would you deal with the situation raised by Mr. Bell? This clause also deals with the leader of the opposition. Suppose the leader of the opposition has a number of people in his office and he would

like to bring in someone else. This gives him an opportunity to find a position in the civil service for someone on his present staff, thus allowing him to bring in someone else.

Mr. McILRAITH: That is the very point I am raising, but I do not see why you should pick out one of the 20 persons involved.

The CHAIRMAN: I wanted to make sure.

Mr. McILRAITH: Does this committee want to take that step? I do not know. Personally I do not think the leader of the opposition should have the right to put persons into the civil service in that indirect way. However, if the leader of the opposition moves to another position he then probably should have the right, as Mr. Bell remarked in the case of ministers going from department to department. Such a situation should certainly be covered, but the right should not be given indiscriminately.

Mr. SPENCER: Let us turn our attention from the ministers to the secretaries and executive assistants who are involved. They are the ones I believe who should be our concern in dealing with this matter. Here are young men, or perhaps women, who have taken up quite responsible positions as executive assistants, and in some instances they may have given up other employment. Having worked in that capacity for at least three years they will have gained certain experience. It is true they will not be in the civil service because of the positions they hold but, having worked on the job for a period of three years, it seems to me they should have some status and some preference such as we give to veterans in going into the civil service.

As has been pointed out by the chairman of the commission, any position to which one of these men is appointed must be a position for which he is qualified; but I think for the few who are involved it is only fair, having accepted these positions and perhaps liking them, and having the desire to remain in the public service, that they should have some entitlement to remain in it.

Mr. RICHARD (*Ottawa East*): I disagree.

Mr. MARTEL: For the benefit of members of the committee I should like the members of the civil service commission to give us an idea how this operated under section 61 of the present act. I should like to know if there were many appointments made from time to time following a change of ministers. If there was any abuse then there might be good reason for this provision, but I do not see there was any abuse.

Mr. McILRAITH: This provision did not exist previously.

Mr. MARTEL: But there was section 61 which provided for some appointments after three years of service.

Mr. McILRAITH: No, not in this way.

Mr. MARTEL: The old section provides that after three years of service, if a minister were taking another portfolio, these people could be appointed to the civil service.

The CHAIRMAN: Mr. Pelletier would like to speak on this point.

Mr. PELLETIER: Under clause 61 provision is made, but the provision is quite different to what existed previously, and I endorse entirely what Mr. Hughes has said. He was quite right. Under clause 61 as it is now drafted, a minister theoretically could have ten private secretaries, provided he could get the treasury board to agree to pay their salaries. On the other hand, section 61 does not mention qualifications. Whether there has been abuse or not, I would not be prepared to say, although I am under the distinct impression there was no abuse.

Actually what happened was that when there was a change of government the private secretaries and executive assistance were, with very few exceptions,

placed in jobs for which they were qualified. It seems to me the committee should address itself more to the question of principle than to the question of what has happened in the past.

Mr. MARTEL: That could give us some information for what we are discussing now. Maybe I am a little better informed. Under the present act, when a minister was changed from one department to another, he took his executive assistant and secretaries with him.

The CHAIRMAN: As Mr. Bell pointed out a moment ago—

Mr. MARTEL: And the section also permitted them to go into the service, and the minister hired someone else.

Mr. MCILRAITH: May I direct Mr. Martel's attention to section 61(2) of the existing act where the phrase is used: "ceasing to be a minister or member of the government"? Those are the words which provide the limitation, and that is not in the new bill.

Mr. MARTEL: But they may have had more than one executive assistant, or more than one secretary.

The CHAIRMAN: That is quite correct.

Mr. MORE: That is the question I was going to ask. As I understand it, under the old act you could have four, five or six people under a minister, while in this bill it is limited to two. I can see some benefit in it, and I do not see any representations from the associations about this clause.

It seems to me a minister might change his portfolio; and the men he has, while they were capable in the department he was administering, might not be capable in the new department. Also, if they remained in the old department the new minister might be of different origin to the old minister and they would not be acceptable to him. If they have three years' service I believe they should have some protection, and I think an attempt is being made to put the worst possible light on the benefits provided by this clause. For the life of me I cannot see it being used in the way that is suggested because I would think if a minister has capable people, and they must be capable to fill the jobs they hold, he will take them with him if they are willing to go.

Mr. MCILRAITH: That is a much narrower point and I would have no objection to it. When the minister changes departments that point can be included in the amendment. I have no objection to that.

Mr. PELLETIER: Could not that kind of provision be written into the act, which would meet the point raised by Mr. Bell and the point Mr. McIlraith has just made, so that when a minister does change portfolio a provision similar to the provision in section 71 could be implemented?

Mr. BELL (*Carleton*): I have no doubt that the section could be re-drafted in relation to that, but it seems to me the practicality of that situation is such that possibilities of abuse are theoretical and remote, and that we are really spending a lot of time on something that reasonable men should not envisage. After all we must assume both ministers, private secretaries and executive assistants are reasonable people, and are not going to use this section in the way that has been suggested. It seems to me this section in its present form is satisfactory.

Mr. RICHARD (*Ottawa East*): Mr. Chairman, I do not think it is a matter of trying to find out how many abuses there might be under the section if it is badly drafted. It is a question of finding out how those abuses can be avoided by good drafting. We cannot say "let this section go; after all there will be no abuses, the civil service has been doing it this way and it has been satisfactory". We cannot say that no minister is crazy enough to appoint ten secretaries, or that the boys who are secretaries are good boys and they would not want to abuse their privileges. We might as well not put anything into the act and say

that those who carry on will never make any abuses and it does not matter what we put into it. I think Mr. Bell is perfectly right if he wants to agree with the section as it is and if he says he is willing to take it as wide as it is, but I do not want to hear any reservations that there will not be any abuse. If he wants it, let him take it as it is.

The CHAIRMAN: That is the point, Mr. Richard. There seems to be a difference of opinion which we are not going to resolve by repetition. Shall this clause carry?

Mr. SPENCER: Just as a matter of information, I was wondering if the chairman of the commission would care to comment on this? If a person has been taken into a department on a temporary basis—and there is provision for persons being appointed on a temporary basis without competition—and he has acquired considerable experience as a result of that, when a competition is later held and he enters that competition, is some regard given to the experience he has gained in the department and does he receive a higher rating on this account?

Mr. HUGHES: You are not speaking specifically of ministerial employees?

Mr. SPENCER: I am speaking of others who were working in departments originally on a temporary basis, and then an opening occurs and he enters the competition. He has had considerable experience.

Mr. HUGHES: He would have the advantage of experience, although I can say I think this is a charge that is sometimes levelled against departments, that they make temporary appointments in order to "prequalify" some particular person. As far as subclause (3) is concerned, I think the words "for which he is qualified" probably mean that although he does not have to compete in the sense that he has to stand first in order to get the job, he has to have a minimum qualifying knowledge of the job to which he is appointed.

Mr. MORE: Mr. Chairman, in answer to Mr. Richard, as far as I am concerned I am not trying to use any double talk. I am willing to accept the clause as it is. The limitations are to two people per minister, they must be qualified and there is also a limitation of position for which he is qualified. I did not intend, in any other remarks, to limit it to that position because it seems to me another thing to take into consideration is that these people usually work very, very heavy and long hours, and you might have the case where, after putting in three or four years a man might say "I have had enough of this; I would like to get into the regular service where I have regular hours and have a job of that nature"; and I do not see why the clause should be limited so that he cannot have that opportunity. I move the clause as is.

The CHAIRMAN: Mr. More Seconded by Mr. Martell, moves that the clause shall carry.

Mr. PETERS: Could I ask how many of the executive assistants and private secretaries are appointed from the civil service now? What is the percentage who come out of a qualified position in a similar classification which would, by itself, entitle them to return to a job of a similar nature?

Mr. HUGHES: It can be said that there are some employees holding positions in ministers' offices who have been civil servants, but not in any case, I think, in connection with the position of executive assistant or private secretary. There is a possibility there might be some private secretaries who have been civil servants, but I do not think any executive assistants.

Mr. PETERS: This would mean that every time a government changes these automatically are ministerial appointments which are made outside the civil service?

Mr. HUGHES: This has been the case.

Mr. CARON: This has always been the case.

Mr. PETERS: We have not appointed any, so I am not familiar or concerned with that; but I think it is a fact in deciding whether this can be abused or not, if they were qualified in that sense and the civil service had already had some relationship with them, then this would not be a problem even if they were put back into the civil service every three years.

Mr. SPENCER: Do you think those employees would be out of a job?

Mr. PETERS: Yes, I think there are many who come here are political appointees, serving as a person in that sense. That may not make them necessarily qualified for the civil service. I also think there must be many who are there in a role that would fit into the civil service by the very operation of their job. There are probably both categories, and what I want to know is how many are in the political category and how many are in the actual secretarial category.

Mr. MCILRAITH: Mr. Chairman, I think there may be a little misapprehension on Mr. Peters' part, if he does not mind my saying so. The situation was that these secretaries, when there was a change of government, could be put into the civil service directly—and that is still the case. I do not think there is any difference about that in the minds of most members of the committee. The point of difference is that the new bill now before us permits this to be done by the ministers every three years and not just when they change portfolios when they retire as ministers.

Mr. PETERS: They still have to qualify.

Mr. BELL (*Carleton*): And it confines it to two persons, whereas the old act provided for an unnamed number—it could be as many associates, private secretaries, and so on, as they wanted.

Mr. MCILRAITH: There was a loophole in the draftsmanship of the old act.

Mr. BELL (*Carleton*): So we are certainly not opening it up beyond anything that has previously existed?

Mr. MCILRAITH: The point of difference is quite narrow; it is as to whether this right should be given to the minister every three years or whether it should be confined to the periods of time when they are retired as ministers or change portfolios.

Mr. SPENCER: It is not a right given to the minister. It is a right given to the employee. There is quite a difference.

Mr. MCILRAITH: The right is attached to the employee, but it can be attached to him by the action of the minister in firing him at the end of the three years.

Mr. PETERS: Why is there objection to restricting it to the limitation of the minister changing portfolio, or any other reason that those circumstances may change?

The CHAIRMAN: The reason is to give the clause maximum flexibility where people are coming and going.

Mr. PETERS: I agree with Mr. Bell's point, which is a good one, that someone in the treasury may not want to follow that minister into External Affairs, for instance, because his qualification may be highly developed in a particular field.

The CHAIRMAN: All those in favour of Mr. More's motion please signify by raising their hands.

Yeas, 8; nays, 4.

I declare the subclause carried.

Subclauses (4) and (5) agreed to.

On clause 72—parliamentary staff

Mr. BELL (*Carleton*): Mr. Chairman, clause 72 is the one which deals with parliamentary staff, and it is a rather complex and difficult one. Because of some objection which was taken to it, there have been some informal and further discussions with the draftsman of the bill. Perhaps the committee would permit me to take a very brief time to indicate what are the objectives of the government in relation to this particular clause of the bill. I think I can describe them as threefold.

The first principle is to ensure that the prerogatives of parliament are not impaired in any way; and one of the prerogatives of parliament is that the Senate or the House of Commons has full jurisdiction over its own staff.

The second principle would be that at any time, the services of the civil service commission ought to be made available to the Senate or to the House of Commons on the request of the Senate or the House of Commons, but only on request, and that in respect of recruitment or, if that is desired by either house, in terms and conditions of employment or anything that the respective houses should desire.

The third objective—I discussed this with Mr. Pelletier, perhaps he can prompt me.

Mr. PELLETIER: I think your third objective was that the people so appointed should have the benefits of the Civil Service Act.

Mr. BELL (*Carleton*): Yes, that the staff of the House of Commons, however appointed should, to the maximum possible extent, have the benefits of the civil service procedure and Civil Service Act.

Having stated those objectives, I think I can say that under the existing clause, particularly subclause (1), there is some possibility of an interference with the prerogatives of parliament. As a result of the representations which were made, discussions were had with Mr. Driedger, the draftsman of the bill, and with members of the commission, as a result of which I am proposing that an amendment to this subclause, and to subclause (2), be inserted. I have a few copies of the letter from the draftsman of the bill to the chairman of the commission which perhaps might be passed around while I explain what are the objectives.

In order clearly to preserve the prerogatives of parliament, I turn back to clause 2 (1) (*b*), and there suggest the addition of another sub-paragraph which would exclude the officers, clerks and employees of both houses of parliament, and of the library of parliament. So we start with an exclusion and take them out from the provisions of the act.

Then we would propose to amend section 72 in such a way as to give to the Senate in respect of its staff, or to the House of Commons in respect of its staff, the power to apply any of the provisions of the act. The suggested amendment, as it is now drafted by Mr. Driedger, is as follows:

> That subclauses (1), (2) and (3) of clause 72 be deleted and the following substituted therefor:
>
> 72. (1) The Senate and House of Commons may, in the manner prescribed by subsections (2) and (3), apply any of the provisions of this Act to the officers, clerks and employees of both Houses of Parliament and of the Library of Parliament.

Members will note that in the copies which they have, there was some suggestion originally of having, after the word "parliament" there, the words "holding continuing positions". It was felt, after further discussion with the draftsman, that that was unnecessary. The suggested amendment continues:

> (2) Any action with respect to the officers, clerks and employees of the Senate or the House of Commons authorized or directed to be taken by the Senate or the House of Commons under subsection (1),

or by the Governor in Council under any of the provisions of this Act made applicable to them under subsection (1), shall be taken by the Senate or the House of Commons, as the case may be, by resolution, or, if such action is required when Parliament is not sitting, by the Governor in Council subject to ratification by the Senate or the House of Commons, as the case may be, at the next ensuing session.

(3) Any action with respect to the officers, clerks and employees of the Library of Parliament and to such other officers, clerks and employees as are under the joint control of both Houses of Parliament authorized or directed to be taken by the Senate and House of Commons under subsection (1), or by the Governor in Council under any of the provisions of this Act made applicable to them under subsection (1), shall be taken by both Houses of Parliament by resolution, or, if such action is required when Parliament is not sitting, by the Governor in Council, subject to ratification by both Houses of Parliament at the next ensuing session.

Then the committee will see that it is proposed that subclause (4) of clause 72 should remain in its present form.

I should add that the existing status of employees in the House of Commons and in the Senate will be preserved by the transitional provisions of the bill; in other words, the status quo remains. Then, as to the future, you have the general exclusion, and then the capacity of either the Senate or the house to apply the provisions of the Civil Service Act, or any provisions it may wish, to such of its employees of a continuing nature or sessional nature as the house or the Senate respectively may wish.

In this way the full control and authority of the houses over their respective staffs is completely preserved, and a technique is provided which I believe will give the maximum of protection to the employees of the two houses. My proposal would be to move that this be substituted for existing subclauses (1), (2) and (3) of clause 72.

The CHAIRMAN: Do you second that, Mr. McIlraith?

Mr. MCILRAITH: Yes, Mr. Chairman. Perhaps I should mention to the committee that I did have a good deal of discussion on this clause. The clause as printed in the bill is not satisfactory. I had a good deal of discussion with certain officers of parliament and of the House of Commons, and with Mr. Bell and others concerned with this problem, and with certain officers of the civil service commission. It seems to me that the proposed new clause does do what is required and what was sought to be done. The existing clause as printed is quite unsatisfactory on several grounds, and I think it did not do what was being sought to be done. This new clause does so. As far as I am personally concerned, I do not see anything wrong with it and I hope it is as good as I think it is.

The CHAIRMAN: Mr. Bell moves and Mr. McIlraith seconds:

That clause 2(1)(b) be amended by adding to it subparagraph (vi) as follows:

(vi) the officers, clerks and employees of both Houses of Parliament and of the Library of Parliament.

Motion agreed to.

The CHAIRMAN: Mr. Bell moves, seconded by Mr. McIlraith:

That subclauses (1), (2) and (3) of clause 72 be deleted, and that the following subclauses be substituted therefor:

"72(1) The Senate and House of Commons may, in the manner prescribed by subsections (2) and (3), apply any of the provisions of this act to the officers, clerks and employees of both houses of parliament and of the library of parliament.

(2) Any action with respect to the officers, clerks and employees of the Senate or the House of Commons authorized or directed to be taken by the Senate or the House of Commons under subsection (1), or by the governor in council under any of the provisions of this act made applicable to them under subsection (1) shall be taken by the Senate or the House of Commons, as the case may be, by resolution, or, if such action is required when parliament is not sitting, by the governor in council subject to ratification by the Senate or the House of Commons, as the case may be, at the next ensuing session.

(3) Any action with respect to the officers, clerks and employees of the library of parliament and to such other officers, clerks and employees as are under the joint control of both houses of parliament authorized or directed to be taken by the Senate and House of Commons under subsection (1), or by the governor in council under any of the provisions of this act made applicable to them under subsection (1), shall be taken by both houses of parliament by resolution, or, if such action is required when parliament is not sitting, by the governor in council, subject to ratification "by both houses of parliament at the next ensuing session."

Motion agreed to.

On subclause (4)—

Mr. PETERS: I wonder what the situation is in relation to people working and receiving remuneration in recess periods, periods when the house is not in session? Has there been any change? Really this was never defined before. It was a kind of situation which I believe developed and grew. Does the commission have any thinking on this?

Mr. HUGHES: As far I am concerned—and I defer markedly here to Dr. Ollivier, the parliamentary counsel, who will have something to say about it—as far as I am concerned the privilege of the employees covered by subclause (4) is in relation to the past absolutely unchanged, if effect is given to this subclause.

Mr. MARTEL: The periods of recess are not very long any more.

Mr. BELL (*Carleton*): Would it be a correct statement, Mr. Hughes, that there is no change in the law and the matter of practice then becomes a matter for the speaker of each of the houses?

Mr. HUGHES: I would think so.

Mr. BELL (*Carleton*): And those who feel there is a problem in respect of this ought to make vigorous representtion to the respective speakers of the chambers.

Dr. P. M. OLLIVIER (*Parliamentary Counsel*): This clause has always existed, of course. The only difference now is that previously it could be used to a certain extent—I know I must admit that I have used it myself. The reason that it has been changed now is that the recess is so short that very often it is not practicable to allow employees to go away for three or four months. There is a certain amount of work to be done after the House closes, so in theory the clause is still there, but the practice is quite different; I do not think we could change the clause to increase the privileges, because the privileges are there; the application of its provisions on the other hand is a matter of administration. In some cases it is possible. For instance in the case of the *Hansard* reporters, they might be able to absent themselves. I believe the committees staff may not always be able to

go away. I know that in the law branch we are not able to leave at all so as to do other work. However this is purely a matter of administration for the speaker and the club of the House of Commons.

Mr. BELL (*Carleton*): There is certainly nothing here which restricts any existing rights.

The CHAIRMAN: As far I understand the position, all the privileges are retained to the houses by the clause, and the relation to the staff of the house is set by the administrative decision of the speaker. In other words, it is a matter of domestic regulation and not a matter which we can affect by any further amendment of this bill.

Mr. BELL (*Carleton*): I personally would hope that Mr. Speaker would interpret in favour of employees to the greatest possible extent.

Mr. PETERS: There was an inquiry a year or so ago by the civil service into the operation of the clause and there was some suggestion that changes be made. Has anything been done? Perhaps I should raise that on the legislation vote.

The CHAIRMAN: That is the point. In the vote for legislation, we give the power to make any rules they like, and it is a matter of working out arrangements between the speaker and the staff, and not something for us.

Clause 72 (4) agreed to.

On clause 73—Appointment by governor in coucil.

Mr. BELL (*Carleton*): I think the table of precedence is a little out of order here and I would move that the secretary to the governor general be tranferred from (b) to (d). I move:

That the order of precedence read:

(a) the Clerk of the Privy Council,
(b) the Clerk of the Senate,
(c) the Clerk of the House of Commons, and
(d) the Secretary to the Governor General.

Mr. MCILRAITH: I am a little in doubt as to the purpose of the clause other than to give them authority as deputy heads for the purpose of the act. Why do we need the authority of the governor in council to appoint them in here?

Mr. PELLETIER: I think the answer to that is—and I stand to be corrected—that provisions of this kind for these particular persons are not made in other statutes, whereas such provisions are made for deputy heads, for example, in the departmental acts.

Mr. BELL (*Carleton*): I must confess that I take exception to subclause (2). It should be in the Financial Administration Act. It may be that Mr. Mackenzie would take note of this, because amendments to the Financial Administration Act will be coming forward. If we could get this into the Financial Administration Act and out of the Civil Service Act it would mean more tidy legislation.

Mr. MCILRAITH: What about the sergeant-at-arms? Why is he left out?

Mr. MACKENZIE: The sergeant-at-arms is not a deputy head.

Mr. HUGHES: The civil service commission has no responsibilities in connection with his appointment, although we do act in an advisory way in connection with the appointment of the assistant sergeant-at-arms.

Mr. MCILRAITH: Surely you have no authority in connection with the appointment of the clerk of the Senate?

Mr. HUGHES: No. Dr. Ollivier may correct me, but I believe there was a competition for the position of assistant sergeant-at-arms.

Mr. McILRAITH: The sergeant-at-arms has the authority for this appointment.

Dr. OLLIVIER: They are exempted by the civil service commission from the operations of the Civil Service Act.

Mr. McILRAITH: There are two points dealt with in the clause; one is the authority to appoint, and the other is the rank. I wonder what the distinction is between the position of sergeant-at-arms and that of sergeant of the House of Commons.

Mr. PELLETIER: Dr. Ollivier should probably answer this, but is it not dealt with in the Senate and House of Commons Act?

Mr. McILRAITH: Yes, it is.

Mr. PELLETIER: Provision is specifically made in that statute for the four people mentioned, but provision is not made in any other statute, and that is why provision is made for them here.

Mr. BELL (*Carleton*): That is what Mr. Dreidger told me on another occasion; there are no departmental statutes.

Mr. MARTEL: Why is it that the secretary of the governor general should come last? If I am wrong, please correct me. Legislative authority rests with parliament, which has full authority, while the governor general is a symbol of authority. So why should it be last? Why should it be (*d*) instead of (*a*)?

Dr. OLLIVIER: This table of precedence is made by order in council, and it is changed quite often.

Mr. BELL (*Carleton*): The governor general comes first, but not his secretary; the order of precedence in the civil service gives the three clerks, of the Privy Council, the Senate and the House of Commons.

The CHAIRMAN: Is there a seconder to the motion? Oh yes, Mr. More seconds the motion. Does the motion carry?

Motion agreed to.

Shall clause 73 (2) carry?

Clause 73 subclause (2) agreed to.

Mr. BELL (*Carleton*): Subject to the comment I made, if it is possible to get it into the other act.

On clause 74—Exclusion of persons and positions.

Mr. CARON: There seems to be very wide powers here. May we have some explanation?

Mr. HUGHES: There was a discussion in connection with the definition of the prevailing rates group. This provides for the commission to take the initiative to exclude classes from the civil service with the approval of the governor in council, and also to bring them back in, if that is considered right.

The CHAIRMAN: Are there any further questions on clause 74?

Mr. CARON: In certain cases you can do away with the act?

Mr. HUGHES: I want to refer you to the section of the present act, which is section 60. This is used in special cases. I think we have already referred to them. It is used in the case of people in an area where there are shortages, and who are not British subjects, and have not lived for five years in Canada—to admit them to examination. Then it is used to make certain appointments without competition in cases where you have one man with special knowledge. All these exclusions are reported to parliament in every case.

Mr. CARON: Were there any of these cases, let us say, in the last five years?

Mr. HUGHES: Oh yes, there was a considerable number.

Mr. PELLETIER: This is tabled yearly in parliament. There are a number of exclusions, for the reasons Mr. Hughes mentioned, and a number of other reasons. But in every case, they are reported to parliament annually; I mean the exclusions and the reasons for them, so that they are open to parliamentary scrutiny.

Mr. MORE: My point in connection with this clause is that it seems to me that, whereas the excluding power is substantially the same as that conferred by section 60 of the present act, this is the first occasion when provision is made in a statute for bringing a position which has been exempted back under the statute. This point, I think the commission will agree, is a very important one indeed.

Mr. MCILRAITH: I have one other point. The existing act provides that the commission shall make an annual report within 30 days from the commencement of each session, giving the positions excluded. In the corresponding clause to this, that proviso is taken from clause 74, and instead we have the report to parliament dealt with in clause 76, which provides that the commission shall transmit it with its annual report. Now, it seems to me that embodying this information in the annual report lessens the possibility of parliament having it available, as is required under the other legislation. I wonder what the reason for that change was.

Mr. HUGHES: I might suggest one reason, Mr. McIlraith; it is that by including it in the annual report of the commission, this gives far greater publicity to those exclusions than prevailed before. As you know the annual report of the commission does circulate widely and is used by members of the press as an ore body for producing information. So it was thought that it would be convenient and wise to have the two documents submitted together. I do not see any intention of making it less accessible to parliament at an early stage in the session.

Mr. MCILRAITH: That is the point which concerns me; making it available to parliament at an early stage. The annual report takes a bit longer to prepare, and the requirement is that it be tabled within five months after the end of the current year. The existing provision in the act as it now reads provides that this information about exemption shall be given within 30 days from the commencement of each session, and it covers the case where there are starts in November or January, and it is of considerable advantage to members of parliament. Perhaps this clause should be dealt with at the point when we come to the annual report.

The CHAIRMAN: That would seem to be a good idea.

Clauses 74 and 75 agreed to.

On clause 76 subclause (1) "annual report on operations under act".

Mr. HUGHES: I think, Mr. McIlraith, the reason this is here is because it was dealt with in the Heeney Report in appendix A.

Mr. MCILRAITH: At what page?

Mr. HUGHES: I think it is item 1101-F and G, but I cannot give you the actual page number.

Mr. MCILRAITH: It is page 31.

The CHAIRMAN: It is item 1101-G on page 31.

Mr. MCILRAITH: Does that deal with the narrow point I am raising?

Mr. BELL (*Carleton*): I am personally of the view that this ought to be in the annual report. Does Mr. McIlraith feel that it ought to be in the earlier document, as well?

Mr. MCILRAITH: Yes, I believe it should be in the earlier document as well.

Mr. BELL (*Carleton*): In other words, you believe that it should be reported to parliament within 30 days, as well as included in the annual report?

Mr. MCILRAITH: That is right. That is my point.

Mr. BELL (*Carleton*): What difficulty would that create?

Mr. HUGHES: There are a great many exclusions, and for various reasons.

Mr. MCILRAITH: No; I mean within 30 days of the opening of a session.

Mr. HUGHES: There will be fewer of these reports, of course, under the new bill, because a lot of procedures achieved by the commission under section 60 of the present act, are now provided for specifically in clauses of this bill. I see no reason why we should not make such a report, if the committee thought it was the proper way to do it.

Mr. BELL (*Carleton*): I would suggest that we give effect to Mr. McIlraith's point in this matter, and ask the draftsman to provide in this subclause that there shall be a report to parliament within 30 days of the opening of a session, and that, as well, the information be included in the annual report.

Mr. MACDONNELL: What is the difference in staying within five months after the 31st of December of each year, and the 31st of May?

The CHAIRMAN: Just to keep it mysterious.

Mr. MORE: It is legal language.

Mr. MACKENZIE: Is it not essentially that the commission's report deal with transactions during the calendar year in respect of which that report is made?

The CHAIRMAN: Are there any other points of view on clause 76(1)? Shall the clause stand for further consideration?

Mr. BELL (*Carleton*): Subclause (2) should be the one which would stand, and we should carry subclause (1).

The CHAIRMAN: Shall clause 76(1) carry?

Clause 76(1) agreed to.

Is it agreed that 76(2) shall stand for consideration in connection with the report under clause 74?

Agreed.

It is now eleven o'clock and the committee stands adjourned until next Thursday at 9:30 a.m.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 21

FRIDAY, JUNE 16, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESSES:

From the Civil Service Commission: Honourable S. H. S. Hughes, Q.C., Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners.

From the Department of Justice: Mr. E. A. Driedger, Q.C., Deputy Minister.

From the Department of Finance—Treasury Board: Mr. C. J. Mackenzie, Assistant Secretary.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25407-8—1

SPECIAL COMMITTEE ON THE
CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)	Macdonnell	Pickersgill
Caron	MacRae	Richard (*Ottawa East*)
Casselman (Mrs.)	Martel	Roberge
Hanbidge	McIlraith	Rogers
Hicks	More	Spencer
Keays	O'Leary	Tardif
Lafreniere	Peters	

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

CORRECTIONS—(English copy only)

PROCEEDINGS No. 20—Friday, June 9, 1961.

In the Minutes of Proceedings—Page 464 of the printed Proceedings,—Line 7 should read: "(3) Any action with respect to the officers, clerks and..."

In the Evidence—Page 478 of the printed Proceedings,—The sentence appearing on lines 2 and 3 should read as follows: "However this is purely a matter of administration for the Speaker and the Clerk of the House of Commons".

MINUTES OF PROCEEDINGS

THURSDAY, June 15, 1961.

A meeting of the Special Committee on The Civil Service Act having been called for 9.30 a.m. this day, only ten members of the Committee were present, namely: Mr. R. S. MacLellan, *Chairman,* and Messrs. Bell (*Carleton*), Caron, Hanbidge, Hicks, McIlraith, More, O'Leary, Rogers, and Spencer. (10)

In attendance: From the Civil Service Commission: The Honourable S. H. S. Hughes, Chairman of the Commission; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners. *From the Department of Finance—Treasury Board:* Mr. C. J. Mackenzie, Assistant Secretary.

Members of the Committee indicated that lack of a quorum could be attributed in part to the fact that the Committee was scheduled to meet in Room 303 West Block. They expressed dissatisfaction with that arrangement; and requested that future meetings be not held in the West Block.

At 10.05 a.m., there being no quorum, the Chairman announced that the Committee would meet at 9.30 a.m. Friday, June the 16th, at which time consideration of Bill C-71 will be continued.

E. W. Innes,
Clerk of the Committee.

FRIDAY, June 16, 1961.
(23)

The Special Committee on The Civil Service Act met at 9.35 a.m. this day. The Chairman, Mr. R. S. MacLellan, presided.

Members present: Mrs. Casselman and Messrs. Bell (*Carleton*), Caron, Hanbidge, Hicks, Keays, Macdonnell (*Greenwood*), MacLellan, MacRae, More, O'Leary, Rogers, and Spencer. (13)

In attendance: From the Civil Service Commission: The Honourable S. H. S. Hughes, Q.C., Chairman; Miss Ruth Addison and Mr. Paul Pelletier, Commissioners. *From the Department of Justice:* Mr. E. A. Driedger, Q.C., Deputy Minister. *From the Department of Finance—Treasury Board:* Mr. C. J. Mackenzie, Assistant Secretary.

The Chairman tabled a letter from the Civil Service Federation of Canada respecting Clause 62 of the Bill—Holidays. Copies of this letter were distributed to the members of the Committee.

The Committee was also informed that the Civil Service Association of Canada has written requesting that it be permitted to make further representations respecting Clause 7 of the Bill in the event that amendments to that clause are brought forward in the Committee.

Agreed,—That, if amendments are brought forward respecting Clauses 7 and 10 to 14, the Staff Associations may make further written submissions respecting the subject-matter of those clauses.

25407-8—1½

Agreed,—That the Committee meet again at 2.30 p.m. on Tuesday, June the 20th.

Mr. Hughes requested that a correction be made at page 479 of the Committee's Minutes of Proceedings and Evidence.

The Committee proceeded to the clause-by-clause consideration of Bill C-71.

Clauses 77 to 81 inclusive were adopted.

On Clause 82

Subclauses (1), (2) and (3) were adopted.
Subclause (4) was considered and allowed to stand.

Clauses 83 to 85 inclusive were adopted.

The Chairman thanked the representatives of the Civil Service Commission and of the Treasury Board for their assistance; and they were permitted to retire.

Mr. Driedger was called.

The Committee began a review of those clauses which had been allowed to stand for further consideration or for rewording.

Mr. Driedger answered questions respecting the meaning and phraseology of these clauses.

On Clause 2

On motion of Mr. Bell (*Carleton*), seconded by Mr. More,

Resolved,—That Subclause (1) (b) be amended by deleting the word "and" in line 25, page 1 of the Bill, and inserting the word "and" at the end of Subparagraph (v) in line 28.

Subclause (1) (*k*) was further considered and adopted.

On Clause 3

Subclause (2) was further considered and adopted.

On Clause 6

Paragraphs (*b*) and (c) were further considered and adopted.

On Clause 27

On motion of Mr. Bell (*Carleton*), seconded by Mr. Macdonnell (*Greenwood*),

Resolved,—That Clause 27 be amended by striking out the words "an employee" in line 36, page 10 of the Bill, and substituting therefor the words "a person"; by striking out the word "another" in line 37, page 10 of the Bill, and substituting the word "a"; and by striking out the word "employee" in lines 38 and 41, page 10 of the Bill, and in each case substituting the word "person". *Clause 28* was further considered and adopted.

On Clause 38

On motion of Mr. Bell (*Carleton*), seconded by Mr. O'Leary,

Resolved,—That subclause (3) be deleted and the following substituted therefor:

(3) Where in the opinion of the Commission there are sufficient qualified applicants

(*a*) coming within paragraphs (*a*) and (*b*) of subsection (1) of section 40, or

(*b*) coming within paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section 40

to enable the Commission to prepare an eligible list in accordance with section 42, the Commission may confine its selection of qualified candidates under subsection (1) of this section to those applicants.

On Clause 54

On motion of Mr. Bell (*Carleton*), seconded by Mr. Rogers,

Resolved,—That subclause (2) be amended by inserting at the beginning of line 31 of page 18 of the Bill, the following words: "Notwithstanding anything in this Act,".

Subclause (3) was adopted as amended on June 1st.

On motion of Mr. Bell (*Carleton*), seconded by Mr. Hicks,

Resolved,—That subclause (5) be amended by inserting after the word "or" in line 11, page 19 of the Bill, the following: "if, except for reasons that in the opinion of the Commission are sufficient, he".

On Clause 63

Subclause (1) was adopted as amended on June 8, 1961.

On Clause 70

On motion of Mr. Bell (*Carleton*), seconded by Mr. More,

Resolved,—That subclause (3) be amended by striking out the words "either personally or through a representative" in line 24 of page 26 of the Bill and substituting therefor the words "personally and through his representative".

On Clause 73

On motion of Mr. Bell (*Carleton*), seconded by Mr. Hicks,

Resolved,—That the present clause 73 be deleted and the following substituted therefor:

73. The Governor in Council may appoint and fix the remuneration of

(*a*) the Clerk of the Privy Council,

(*b*) the Clerk of the Senate,

(*c*) the Clerk of the House of Commons, and

(*d*) the Secretary to the Governor General,

who shall be deputy heads for the purposes of this Act.

On Clause 2

On motion of Mr. Bell (*Carleton*), seconded by Mr. Keays,

Resolved,—That immediately after paragraph (*k*) in subclause (1), a new subclause be inserted as follows:

(*l*) "incompetence" means incompetence of an employee in the performance of his duties, and includes negligence;

and that the present paragraphs (*l*) to (*s*) of this subclause be relettered as (*m*) to (*t*) respectively, and further that the following paragraph (*p*) be substituted for the relettered paragraph (*p*):

(*p*) "misconduct" means misconduct of an employee in the performance of his duties, and includes bringing the civil service into disrepute;

Agreed,—That the following consequential amendments be made:

1. That subclause (2) of Clause 2, line 7, page 3 of the Bill be amended by substituting the letter (*q*) for the letter (*p*);

2. That subclause (1) of Clause 56 in line 28 on page 19 of the Bill be amended by inserting after the word "misconduct" the words "or incompetence";

3. That Clause 57 be amended by inserting the words "or incompetence" after the word "misconduct" in lines 26 and 27 on page 20 of the Bill;

4. That subclause (3) of Clause 59 be amended by inserting the words "or incompetence" after the word "misconduct" where it appears in lines 2 and 3 and 10 on page 21 of the Bill.

On Clause 4

Subclause (4) was further considered and adopted.

On Clause 5

On motion of Mr. Bell (*Carleton*), seconded by Mr. Caron,

Resolved,—That all the words in subclause (1) after the word "Commission" in line 26 be deleted; that the following be inserted immediately following subclause (1) as a new subclause (2):

(2) For the purposes of this Act, the Commissioners and the staff of the Commission constitute a department and the Chairman is the deputy head in relation thereto;

and that the present subclauses (2) to (5) be renumbered as (3) to (6).

On Clause 25

Mr. Caron moved, seconded by Mr. Rogers, that the figure "(1)" be inserted immediately after the figure "25" in line 21, page 10 of the Bill; and that the following subclause (2) be added:

Appeals.

(2) The persons whose opportunity for promotion has been prejudicially affected, as prescribed by the regulations, by an appointment under subsection (1) shall, before the appointment becomes effective, be given an opportunity of appealing to the Commission, and the Commission shall reconsider the matter and shall confirm or rescind the appointment as it sees fit.

Discussion continuing on Mr. Caron's motion, at 11 a.m. the Committee adjourned until 2.30 p.m. Tuesday, June 20, 1961.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

FRIDAY, June 16, 1961.

The CHAIRMAN: I see we have a quorum, Mrs. Casselman and gentlemen, and I would like the meeting to come to order.

Before we proceed to the bill, I have a letter from Mr. Whitehouse, President of the Civil Service Federation of Canada, in regard to clause 62 of the bill respecting holidays. I propose to pass copies out to members of the committee and to the press.

I also have a letter from Mr. Best, national president of the Civil Service Association of Canada, and the purport of the letter is to ask if the Civil Service Association could be allowed to come forward if an amendment is proposed to clause 7, for the purpose of making further recommendations to the committee. It seems to me that we are close to being able to finish our work on the bill and to report it back to the house. Since there is very little time left in the session, if we are going to get the bill through this year, as I know everyone in the committee is anxious to do, I doubt very much if there will be time to hear any further representations. I think we should keep to the rule we made earlier, that we would hear no further representations once we began to work clause on the bill.

Mr. CARON: May I speak on that point?

The CHAIRMAN: Just a moment, Mr. Caron. There are two points I would like to make on this matter: one is that if any of the staff associations were invited to make further verbal representations, we would have to accord all of them the same courtesy and it would take up considerable time. The other point is that the briefs we have in relation to clause 7 in particular, have been very good. The brief we have now from the Association is very comprehensive, as well as the one from the Federation, the Institute and other organizations. I doubt very much if there is anything more that could be said that would help us very much. If the committee wishes to hear further representations, we could do so, but I think it would mean that we could not get the bill through this year. However, I would like to have the opinion of the committee on this matter of further representations from the staff associations, if there is an amendment proposed to clause 7.

Mr. CARON: Mr. Chairman, the first law lasted from 1918 to 1961—quite a long time. How long would the new law last? We do not know; it may be amended much sooner than we think. The staff associations came and made their representations on the proposed bill C-71. If anything is brought forward that would change the bill which they had on hand when they prepared their briefs, I think they should have the chance to answer and put their point of view forward on this change which is to be brought forward; because after all they are the most interested parties. They are the ones who have to stand by that law when it is passed, and for the time they are in the civil service they would have to abide by that law.

I believe they have so much at stake and they are so interested in all the changes which are to be made, that they should have some say. Some clauses have been put aside, particularly clause 7 and clauses 10 to 14, which are the most contentious in the bill, and even if we do not agree to hear them on everything which we have put aside for redrafting, we should allow them to speak on clause 7 and clauses 10 to 14.

The CHAIRMAN: Even though it would probably mean we could not get the bill through this year?

Mr. CARON: I think that if clause 7 and clauses 10 to 14 are not satisfactory to them and do not give them what they expect to have in the bill, we should be prepared to let the bill stand until next year rather han pass only half of what they are asking for this year.

The CHAIRMAN: Are there any further views?

Mr. MORE: Mr. Chairman, I agree with some of what Mr. Caron said, and I am sure the committee will agree that the purpose is to have a satisfactory act. I believe however, the civil service would like to see the act passed this year and I think that having them appear would take far more time. It seems to me we should be prepared to have written submissions, if there are any arguments about the proposed amendments after they are introduced. We could very well receive written submissions which we would be able to study and examine. The committee could then decide whether it would be in order or necessary to hear them further. In the first instance, however, I think we would be quite fair to the groups of civil servants if we enabled them to make a further written submission if they have anything new to add, after the proposed amendments come before us. That would save time.

The CHAIRMAN: That would save us time and perhaps would help us just as much as if there were further verbal representations, which would take considerably longer. It is easier for us to study written representations than to hear verbal representations.

Mr. BELL (*Carleton*): Mr. Chairman, it seems to me that at this stage perhaps the problem is hypothetical. I am personally very anxious to see this bill enacted at this session of parliament. I think the bill contains very genuine advantages for all civil servants which should be enacted into law at the earliest possible date, and I would be most reluctant to see anything which would prevent that. At the moment we are not confronted with a situation where we have to make a decision. I would hope that if the staff associations had further representations, they could put them very briefly in writing and then, at that time, the committee could decide whether it would take the risk of not having the bill enacted at this session in order to hear an elaboration of views which I have heard, and which already have been expressed in a rather comprehensive way.

The CHAIRMAN: Any other views on this important subject?

Mr. HICKS: I would favour receiving a very brief written representation which we could study and discuss in a few minutes. Otherwise, I would hate to see us take on any more that would have any chance at all of hampering this bill from going to the house this year.

The CHAIRMAN: I take it it is the feeling of this committee, apart from Mr. Caron, that we would be better advised not to reopen our ruling against further representations, and that while we should invite the staff associations—and I hereby do that—to prevent further written representations if they think that is necessary, that it would not be in the best interests of the work of the committee to hear further verbal representations.

Mr. SPENCER: I thought it was suggested we have the written representations and decide at that time whether we required them to put in a personal appearance.

The CHAIRMAN: Very well, if that is what the committee wants.

Mr. SPENCER: Was that not suggested by Mr. Bell?

Mr. ROGERS: I think, Mr. Chairman, the whole basis of our discussions is whether or not we want to get this bill through this session, and for the

life of me I think a written brief would be better, because we certainly should permit any other association to be heard again.

Mr. BELL (*Carleton*): I assume, in relation to this, we are talking only about clause 7 and clauses 10 to 14, because if we go into the other clauses, we might as well throw up our hands now.

Mr. CARON: That is what I mentioned, clause 7 and clauses 10 to 14.

The CHAIRMAN: Shall we leave the matter then on that basis, that if further written representations indicate to us that there is a need for inviting further oral evidence from the staff associations, we will at that time invite them? I think it is clear from the committee that we feel we already have very comprehensive statements on this, that almost every point which could be covered has already been covered in their excellent briefs, and that it is unlikely that we will need further help from them in the way of oral representations.

There is one other matter. We lost a meeting yesterday, and I know the members of the committee are anxious to have this bill reported to the house as soon as possible. It would be very satisfactory indeed if we could do it next week. To that end, I am wondering if the committee would be agreeable to having a special meeting of the committee next Tuesday afternoon. We have this room reserved from 2.30 until 4.30 if it is convenient for members of the committee to meet here in special meeting to try to push our deliberations along.

Mr. CARON: It depends on what is coming up on Monday and Tuesday. If it is decided that the bill is to go into committee of supply, members would want to be in the house for that purpose. Maybe Wednesday would be easier?

The CHAIRMAN: I think it would be easier for us, in view of the competition of all the other committees, to get a meeting on Tuesday afternoon. I may say I have discussed this with some members of the committee, and Mr. McIlraith and Mr. Richard thought Tuesday afternoon would probably be most suitable.

Mr. CARON: They may rely upon me to be here.

The CHAIRMAN: I would say that their representations would be in very good hands, if you were here to speak for them, Mr. Caron. Are there any views on this? What is the general feeling of the committee? Could we generlaly be available at 2.30 on Tuesday afternoon for a special meeting to try to hurry the bill along?

Agreed.

Very well, then, I shall have notices sent out for a meeting on Tuesday afternoon at 2.30. Oh, yes, Mr. Hughes tells me that he has a correction he would like to see made in the evidence of the last meeting of the committee.

The Hon. S. H. S. HUGHES (*Chairman of the Commission*): Thank you, Mr. Chairman, I did not think it would be proper to make this in the text, because it is a matter of substance. In my second answer on page 479 on Friday, June 9th—that is when we were dealing with the exclusion clause, 74, I referred to section 60 of the present act, and gave as an example the admission to examination of persons who were not British subjects and who had not had five years residence in Canada, it was incorrect to refer to that situation under section 60, because it is covered under section 32, subsection 1, of the present act. It would have been accurate for me to refer to the rather frequent exclusions in the cases of people who, because of local situations, have to be paid above the minimum, in a given pay range. Thank you, Mr. Chairman.

The CHAIRMAN: Thank you, Mr. Hughes. Now let us proceed with the bill.

Clauses 77 to 81 inclusive agreed to.

On clause 82—Establishments continued.

Mr. PELLETIER: Mr. Chairman, I have a comment on the last subsection of clause 82. I do not know if you want it now.

The CHAIRMAN: Very well.

Subclauses 1, 2 and 3 agreed to.

The CHAIRMAN: We will now proceed with subclause 4—prevailing rates employees.

Mr. PELLETIER: This point has been made before, but it relates directly to this subsection. The problem is simply that under the clause as it now stands I think it could be construed to mean that all people would come under the prevailing rate employees general regulations of 1960 upon the proclamation of that act, and would be subject to those regulations. The problem is perhaps a simple one to correct. It is simply that some of the prevailing rate employees in the civil service at the present time are only partially exempt from the Civil Service Act; and if the clause stands as it is, I am afraid they will become totally exempt. I think it is a matter of drafting, as I did not think that the intended purpose was achieved in the subclause as presently drafted.

Mr. BELL (*Carleton*): Is there any other group except the printing trades?

Mr. PELLETIER: Not to my knowledge, Mr. Bell, but there may be.

Mr. CARON: There are the cleaners and helpers.

Mr. BELL (*Carleton*): They are exempt?

Mr. CARON: There are two groups of cleaners and helpers, those from the civil service and those from the Department of Public Works.

Mr. BELL (*Carleton*): That is correct.

The CHAIRMAN: Which group is exempted?

Mr. CARON: The groups from the Department of Public Works.

The CHAIRMAN: The Public Works cleaners are exempted from the act?

Mr. PELLETIER: I think that is correct; they are totally exempt.

The CHAIRMAN: But the other group is not?

Mr. PELLETIER: Only partially.

The CHAIRMAN: You think that the passing of subclause (4) would exempt the other group also?

Mr. PELLETIER: No. I was thinking primarily about the printing trades, where they are exempt only for the purposes of pay and leave; and for all other purposes they are subject to the Civil Service Act.

Mr. HUGHES: I agree entirely with Mr. Pelletier. It seems to me that if some words were inserted to the effect that they could be exempt to the extent that they are exempt at the time of the act coming into force, this would solve the problem.

Mr. C. J. MACKENZIE (*Assistant Secretary, Department of Finance*): There are two ways of getting at this, as Mr. Pelletier has said and as Mr. Hughes has confirmed. The problem concerns the present employees of the printing bureau in 77 classes who are exempt from the Civil Service Act in so far as the matters of compensation and working conditions are concerned; but as to other aspects of the Civil Service Act, the employees in those 77 classes are subject to the act.

The first way of getting at this problem is, as Mr. Hughes suggested, to add to subclause 4 the words "to the extent of the exclusion", or some other similar phrase which would have the same effect. An alternative method, and one which commended itself to me at any rate, is by the passing of an order in council under clause 69 of the bill, which provides that the governor

in council may make regulations applying all or any of the provisions of this act to all or any of the positions set forth in subparagraphs (ii) to (v) of (*b*) of subsection (1) of section 2. In other words, regulations might be passed which would apply to the employees in these 77 classes in the printing bureau, to bring them under the appropriate sections of the new act, once it is proclaimed. The comparable clauses in the old bill now apply to those prevailing rate people. That is an alternative method of getting at it.

Mr. BELL (*Carleton*): As I understand it, the Department of Justice was consulted about this after it was first questioned, and a draft order in council under clause 69(*a*) was prepared.

Mr. MACKENZIE: That is correct. We have a draft order in council which lists the clauses of the new bill which would apply to the printing trades prevailing rate positions.

Mr. ROGERS: I think that is covered. I would like someone to explain the difference between this bill and the old act.

Mr. MACKENZIE: The difference between subclause 4 of clause 82 and the old act is this: well, of course, the subclause does not appear in the old act. Under the old act prevailing rate positions in general have been exempted from the provisions of the Civil Service Act in their entirety. The positions of those 77 classes to which I have referred have been partially exempted.

Mr. ROGERS: Thank you very much.

Mr. PELLETIER: In answer to what Mr. Mackenzie has said, there is one important feature here. I do not disagree with Mr. Mackenzie's suggestion, but you must also refer—and I think it is very important—you must also refer to subclause (5) of clause 2 of the bill which says:

> (5) The governor in council, on the recommendation of the commission, may declare any positions,—

This is an important provision because I think it would be unwise to provide that the governor in council could put into or take out of the civil service a number of positions without a recommendation from the commission. This is in order to preserve the merit system, and so on; this is in order to preserve what was envisaged in 1918, to do away with political patronage in all its aspects. But I think this is done under the terms of the bill as it now stands.

The CHAIRMAN: Yes, under subclause (5) of clause 2.

Mr. BELL (*Carleton*): It seems to me that the suggestion Mr. Mackenzie has made ought to be a satisfactory one.

Miss RUTH ADDISON (*Commissioner, Civil Service Commission*): It takes them out of the Civil Service Act. They would not be under the civil service commission or the act, although the same rules would apply. That is the difference.

Mr. MACKENZIE: I am not sure that I understand Miss Addison's comment on what I said with respect to Mr. Pelletier's observation. The effect of clause 69, or of a recommendation made thereunder, is to bring positions back under the Civil Service Act, and in so far as it is desired, to apply any of the provisions of the act to them.

Miss ADDISON: If that is the case, then I would withdraw my objection. I thought the purpose of the clause was to apply the terms of the new act to other public employees, but not necessarily to bring them under the act.

Mr. PELLETIER: Do you not think that subclause 5 of clause 2 is very important?

Mr. BELL (*Carleton*): Oh, very.

Mr. PELLETIER: And that it applies to clause 69?

Mr. MACKENZIE: I am sorry, but I do not quite see the logic. Subclause (5) deals with positions which presently are in the civil service, or are to be created in the future in the civil service, and which positions it may be desired to have exempted from the Civil Service Act. That is not the case here. We are dealing with 77 classes in the printing bureau, and they are prevailing rate positions. But the commission retains the authority to recruit, select and appoint. And there are certain other provisions in the bill which apply to them. As I said, clause 69 is a device whereby the provisions of the bill can be made applicable to positions which are now exempt from the act. There is no power under clause 69 to exempt further positions from the act, as Mr. Pelletier has said. That is subclause 5(2), which does not come into this discussion.

Mr. PELLETIER: Mr. Chairman, my sole point is that I think at this stage the committee would wish to see to it that the bill is so drafted that the status quo is extended for the time being. And if the bill now does that, I am satisfied, but I am not sure that it does.

Mr. HUGHES: No, Mr. Chairman, if I might say something here; I think we are bound to accept the assurance that there is an order in council in draft form in the files of the Department of Justice, but I do not think that is a satisfactory way of drafting a statute. The suggestion that Mr. Pelletier made, I think, is eminently reasonable, and it is a device, incidentally, which has already been employed in at least one order in council to effect exactly the same conditions. I would think that this is a matter for parliament, and for this committee specifically, and not for the governor in council.

Mr. MORE: Mr. Hughes, you do not disagree with Mr. Mackenzie's interpretation of clause 69?

Mr. HUGHES: I think Mr. Mackenzie's interpretation is entirely irrelevant to the consideration of this clause.

Mr. CARON: Since there seems to be so much discussion by people with knowledge of these things, I think it needs some clarification.

The CHAIRMAN: I am inclined to agree. Would the committee like to stand subclause (4) until we have an opportunity of talking to the draftsman of the bill on the matter?

Mr. SPENCER: That is a good idea.

Subclause (4) stands.

On clause 83—definition of "old act".

Mr. CARON: I should like to have some explanation of subclause 3. As it is written now it states:

> Every person who at the coming into force of this act is certified as a temporary employee under the old act shall be deemed to be so certified for a period of six months after the coming into force of this act.

Why the limitation?

Mr. HUGHES: I think I can explain this. As you know, Mr. Caron, there are a large number of long-term "temporaries" who are renewed in their posts every six months under section 37 of the old act. Rather than have any chance of those people being automatically excluded from the civil service by the operation of this act, we felt we would need six months to examine the records and make sure every temporary employee who is entitled, by reason of service, to become a permanent employee, should not be overlooked.

Mr. PELLETIER: If I may add one word to that, there is another point. This is hypothetical, but it is possible a person may be appointed the day before

the new act comes into force, and this provision would allow the normal probationary period. Do I make myself clear?

Mr. CARON: No.

Mr. PELLETIER: It may be possible for a person to be appointed the day before the act is proclaimed, to a continuing job. This provision, which I think is sound, would allow the department and the commission to give that person the normal probationary period in order to find out whether that person is suitable and then, at the end of six months, such a person would automatically become permanent.

Mr. CARON: If this provision were not in the act, then that person would be automatically out of the service?

Mr. PELLETIER: Not necessarily. It would depend how the section was drafted. That person might be automatically out, or in, after one day's service—which is not healthy.

Mr. HUGHES: In other words, there would not be a probationary period in that person's case.

Clause 83 agreed to.

Clauses 84 and 85 agreed to.

The CHAIRMAN: Mrs. Casselman and gentlemen, we have come to the end of the second stage of our work on the bill and at this point I wish to express our very sincere thanks to Mr. Hughes, Miss Addison and Mr. Pelletier for the many long hours of time and very excellent help which they gave us during the last two months. I know on many occasions when they were busy that it was a hardship on them to come to this committee every day and be prepared to discuss the clauses in the bill. I desire to thank them very much and at the same time would like to express on behalf of the committee our thanks to Mr. Mackenzie of the treasury board, who also had a very full briefcase every Thursday and Friday morning for many months past.

Mr. HUGHES: On behalf of my colleagues and myself I wish to thank you, Mr. Chairman, for the words you have just used. I wish to say this has been a most important and interesting experience for us and, rather than being an inconvenience, it may be represented as the culmination of all our work in connection with this new bill.

The CHAIRMAN: I now wish to welcome the deputy minister of justice, who personally drafted this bill. I know he comes here this morning very pleased to note what the committee wants to do with some of the clauses upon which he spent many long hours of work. He is Mr. Elmer A. Driedger, of the Department of Justice.

Before we begin to consider the many clauses we have stood, I should like to suggest to the committee that we work in this fashion; I have here a copy of a proposed agenda which lists all the clauses reserved by the committee for further study. That agenda will be circulated to members immediately.

My suggestion is that first of all we consider the clauses that were mainly reserved for the draftsman's opinion. Then, secondly, we can go on to the clauses reserved for redrafting and discuss them. There is a third group of clauses which were reserved for further policy consideration by the committee and there is a fourth group which we reserved without discussion, namely, clauses 7 and clauses 10 to 14 inclusive. If it is agreeable to the committee we shall begin this morning with the first group that were reserved for Mr. Driedger's opinion and clarification.

The first one of these is clause 2 (1) (a).

Mr. BELL (*Carleton*): Actually I think there is one before that, and it arises out of the amendment which we made to clause 2 (1) (b) by adding

(vi) in relation to the Senate and House of Commons employees. It will be noticed that after (iv) in 2(b) there is the word "and" which will have to be deleted and then reinserted after (v.)

I would propose this motion, that we delete the word "and" in line 25 on page 1, and insert the word "and" at the end of paragraph (*v*) in line 28.

Mr. HANBIDGE: I second that.

Amendment agreed to.

The CHAIRMAN: We shall now go on to clause 2 (1) (*k*). Mr. Driedger, as I recall it Mr. Macdonnell asked whether ships that were to be built under any subsidy program would be classed as "government railways or ships". Is that correct?

Mr. MACDONNELL: I think so.

Mr. ELMER A. DRIEDGER (*Deputy Minister of Justice*): I do not know if I can say anything about it, without knowing more, but I would point out that the only place where the definition of "government railways and ships" is used in the bill is in Subclause (1)(*b*)(iv) of the same clause. It is there mentioned for the purpose of excluding positions in or in connection with government railways and ships from the provisions of this bill. Therefore it seems to me there is no danger that persons who are employed on ships built under a subsidy would be brought under the terms of the bill. In any event, I would point out the exclusion is in exactly the same terms as the exclusion in section 57(2) of the present act. I think there is something to be said for keeping the exclusion in the same terms in the new act.

Subclause 2 (*b*) (*k*) agreed to.

The CHAIRMAN: The next clause is clause 3 (2). Mr. Driedger, there was some question in the committee as to the meaning of this subclause and we are seeking clarification of it from you.

Mr. DRIEDGER: I believe it had been suggested that the words "the deputy head may authorize any person" should be replaced by the words "the deputy head may authorize in writing any competent officer".

I am afraid I could not subscribe to that suggestion because, if that amendment were made and action were taken by a person authorized by the deputy minister, there might well be a dispute and even an appeal on the question whether the person who was authorized to act was, in fact, an officer and, if so, whether he was a competent officer. It seems to me an amendment in those terms would probably give rise to more difficulties. As to the suggestion it should be in writing, again, I can foresee difficulties, because if, for example, a person were authorized by the deputy minister to request an appointment, and the appointment were made, it might be possible to attack the validity of the appointment because the request had not been made in writing.

It seems to me that the insertion of a requirement that the authorization must be in writing would simply be putting up an additional rule over which any ordinary transaction could be tripped up, and therefore I believe the suggested amendment is undesirable and would be unworkable.

Mr. CARON: The reason this was brought up was because some of us seemed to think there is too much power given to deputy heads and if everything were done in writing that would provide a check on everything being done.

The CHAIRMAN: Are there any further comments on clause 3 (2)?

Clause 3 (2) agreed to.

The CHAIRMAN: The next is clause 6 (*b*). Mr. Driedger, I think you are familiar with the point raised in respect to that.

Mr. DRIEDGER: I understand the question was raised whether this paragraph would authorize the commission to examine and report on organization and employment in government departments on its own initiative. The bill does deal expressly with organization and employment, and therefore it seems to me that such matters as relate to the administration and operation of the act, and the regulations, would come squarely within the terms of the paragraph. That is what I had in mind.

The CHAIRMAN: That is the way I read it. What about clause 6 (c)?

Mr. BELL (*Carleton*): I think Mr. Driedger has been dealing with that as well.

Mr. DRIEDGER: I think the two are related. The question was raised whether perhaps this should be changed by inserting a provision to the effect the commission might, on its own initiative, proceed to examine. I think that is covered by clause 6 (*b*) and paragraph (*c*) was inserted for different purposes. This provides that at the request of the deputy head the commission may report upon matters pertaining to organization and employment.

Mr. BELL (*Carleton*): The commission has full power to act on its own initiative under (*b*) and they must do so, if requested by the deputy head, under (*c*).

Mr. DRIEDGER: That was the idea behind the two paragraphs.

Mr. BELL (*Carleton*): I think that is clear and should satisfy everyone.

The CHAIRMAN: Paragraphs (*b*) and (*c*) of clause 6 agreed to.

On clause 27.

Mr. DRIEDGER: I believe the suggestion was made here that for the word "employee" in this clause the word "person" should be substituted, because employee means a person employed in the civil service, and by substituting "person" for "employee" it would extend also to persons employed in the public service. I see no objection to that amendment.

Mr. BELL (*Carleton*): Mr. Chairman, I have here an amendment which Mr. Driedger has drafted, and I would move that we strike out the words "an employee" in line 36 and substitute therefor the words "a person";

Strike out the word "another" in line 37 and substitute the word "a";

Strike out the word "employee" in line 38 and in line 41 and in each case substitute therefor the word "person".

This, I think, gives effect to what was raised in the committee earlier and to the advice which we have just had from Mr. Driedger.

The CHAIRMAN: Does everyone have a copy of the proposed amendment to clause 27? The motion is seconded by Mr. Macdonnell that clause 27 shall be amended as read by Mr. Bell.

Clause 27 as amended, agreed to.

On clause 28.

Mr. DRIEDGER: I understand it was here suggested that paragraph (*a*) of this clause should refer also to clause 54 which deals with lay-offs. I see no objection from my point of view to such an amendment, but I would suggest that it would be better to make the amendment to clause 54 itself because that deals with lay-offs, and I suggest therefore that subclause (2) of 54 be amended by putting in the words at the beginning of the clause "notwithstanding anything in this act," so that the provisions of subclause (2) of 54 will override all other provisions of the act. That is where I think you would be likely to look for a provision of that kind.

The CHAIRMAN: Any discussion on this?

Mr. BELL (*Carleton*): I would move that in subclause (2) of clause 54 we insert at the beginning of line 31 the words "notwithstanding anything in this act,".

I might add that when we come to section 54(5) which is also listed, there will be another proposed amendment which is on the sheet which is being distributed.

The CHAIRMAN: Seconded by Mr. Rogers. You have heard the motion proposed by Mr. Bell, seconded by Mr. Rogers, and a copy of it is before you. The amendment to clause 54, subclause (2) is agreed to.

Clause 28 agreed to.

On clause 38(3).

Mr. DRIEDGER: I believe an amendment to this clause was made by the committee. I had a look at it and I am afraid it does not quite carry out what the committee had in mind. I think the idea was that the commission should have two choices, namely to make up a list from the persons mentioned in paragraphs (*a*) and (*b*) of clause 40, subclause (1), or make up a list of persons mentioned in paragraphs (*a*), (*b*) and (*c*). I think the intention would be clarified by an amendment that I suggested to Mr. Bell.

Mr. BELL (*Carleton*): I propose this amendment, which is being distributed, that subclause (3) of clause 38 be struck out and the following substituted therefor:

> (3) Where in the opinion of the commission there are sufficient qualified applicants
> (*a*) coming within paragraphs (*a*) and (*b*) of subsection (1) of section 40, or
> (*b*) coming within paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section 40
> to enable the commission to prepare an eligible list in accordance with section 42, the commission may confine its selection of qualified candidates under subsection (1) of this section to those applicants.

The CHAIRMAN: The motion is seconded by Mr. O'Leary. It is moved that clause 38 be amended as shown on the sheet before you. Is that agreed?

Clause 38, subclause (3) as amended, agreed to.

We now come to clause 54(3).

Mr. DRIEDGER: An amendment was made by the committee. I have looked at it and it seems to be satisfactory. I have no comment to make on it.

The CHAIRMAN: On clause 54, subclause (5).

Mr. BELL (*Carleton*): The amendment in relation to that, which was on the sheet distributed earlier, Mr. Chairman, proposed that clause 54(5) be amended by inserting after the word "or" in line 11 the words "if, except for reasons that in the opinion of the commission are sufficient, he", and so on.

The CHAIRMAN: The motion is seconded by Mr. Hicks.

Mr. BELL (*Carleton*): This gives effect to what one of the associations recommended to us, that the commission had the obligation to determine whether there was sufficient reason.

The CHAIRMAN: Shall subclause (5) of clause 54 be amended as proposed by Mr. Bell and seconded by Mr. Hicks?

Clause 54(5) as amended, agreed to.

Mr. MACDONNELL: I have one question to ask about clause 38 "where in the opinion of the commission there are sufficient qualified applicants (*a*) coming within paragraphs (*a*) and (*b*) of subsection (1) of section 40, or (*b*) coming within paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section 40".

I am missing a point. It would seem to me that if the greater includes the less, it would come within (*a*), (*b*) and (*c*) without coming within (*a*) and (*b*).

Mr. DRIEDGER: My difficulty with that amendment as made by the committee was that if you referred only to (*a*), (*b*) and (*c*), it would seem that the commission would always have to consider persons coming within (*c*) in making up its list, but if you have the two paragraphs, it can take its choice; it may consider those coming within (*a*), (*b*) and (*c*) or alternatively may consider those coming within (*a*) and (*b*).

The CHAIRMAN: We turn to clause 63, subclause (1).

Mr. DRIEDGER: Here again the amendment made by the committee would seem to me to be satisfactory. The amendment was to delete the words "a period of".

Mr. BELL (*Carleton*): Yes, in line 26.

Mr. CARON: I thought the suggestion was that the words " a period of" shoudl be replaced by the words "not less than".

Mr. BELL (*Carleton*): The committee was agreed that there was full power in clause 68(1)(*a*), and it was only at Mr. Hughes' suggestion that we struck out the words "a period of". That was the only amendment made.

The CHAIRMAN: Clause 63, subclause (1) agreed to. This amendment was made by the committee and it was just a matter of the amended clause being approved by the draftsman. He approved it.

On clause 70, subclause (3).

Mr. DRIEDGER: I have prepared an amendment for that.

Mr. BELL (*Carleton*): This was the question of whether a person must appear personally and with his representative. Mr. Driedger's suggestion, which I have in front of me and which I would move, is that in subclause (3), line 24, strike out the words "either personally or through a representative" and substitute therefor the words "personally and through his representative". It is quite clear that it is a representative of his choice and that both may be in attendance.

The CHAIRMAN: The motion made by Mr. Bell is seconded by Mr. More to amend subclause (3) of clause 70 which is before you.

Clause 70, subclause (3) as amended, agreed to.

On clause 73 (2).

Mr. DRIEDGER: The suggestion here was that this subclause might be deleted. I have no objection to that.

Mr. BELL (*Carleton*): The ordinary procedure would provide for the appointment of an assistant auditor general who would act through the Auditor General in his absence.

Mr. DRIEDGER: It was put in here before because it was specifically mentioned in the other act.

Mr. BELL (*Carleton*): I would move that we delete all of clause 73 and substitute therefor the following:

73. The governor in council may appoint and fix the remuneration of

(*a*) the clerk of the privy council;

(*b*) the clerk of the Senate;

(*c*) the clerk of the House of Commons, and

(*d*) the secretary to the governor general,

who shall be deputy heads for the purposes of this act.

The CHAIRMAN: The motion made by Mr. Bell is seconded by Mr. Hicks.

Mr. BELL (*Carleton*): The effect of that is simply to delete the second subclause.

The CHAIRMAN: It is moved by Mr. Bell and seconded by Mr. Hicks that clause 73 be deleted and substituted as placed before you.

Clause 73 as amended, agreed to.

Mr. BELL (*Carleton*): May I return for a moment to clause 27? The chairman of the commission raised with me the point whether in line 42 we do not need to strike out the word "persons" and substitute the word "employees". The purpose of this is to give the right of appeal to civil servants.

Mr. DRIEDGER: I think that would be a matter of policy, whether you want to confine it that way or not. I would point out that it does say in the clause "the persons whose opportunity for promotion has thereby been prejudicially affected, as prescribed by the regulations", so that the regulations would define the area, whether the persons should be confined to those employed in the civil service, or should be extended to persons in the public service. It is more a matter of policy.

The CHAIRMAN: We now move on to the second group which the committee asked to be reserved for redrafting. The first is clause 2(1)(o) regarding the definition of misconduct.

Mr. DRIEDGER: Perhaps Mr. Bell might take over on this group because I did prepare amendments as requested.

Mr. BELL (*Carleton*): Perhaps we could now distribute the proposed amendment to clause 2(1)(o) and the ones which are consequential to it. I shall read it, Mr. Chairman.

The CHAIRMAN: Just a moment. The purpose, as the members of the committee will realize, was to subdivide misconduct, which under the present definition includes incompetence or any negligence, into two sections, one of which is misconduct and the other is incompetence.

Mr. BELL (*Carleton*): The proposed amendment would be this:

Insert a new paragraph immediately after paragraph (k) of subclause (1) of clause 2 as follows:

(1) "incompetence" means incompetence of an employee in the performance of his duties, and includes negligence;

2. Reletter paragraphs (l) to (*s*) of this subclause as (*m*) to (*t*) respectively.

3. Substitute the following paragraph for paragraph (*p*) as relettered:
   (*p*) "misconduct" means misconduct of an employee in the performance of his duties, and includes bringing the civil service into disrepute;

4. In subclause (2) of Clause 2, on page 3, line 7, substitute "(*q*)" for "(*p*)".

5. In Clause 56, subclause (1), line 28 on page 19, insert after the word "misconduct" the words "or incompetence".

6. In Clause 57, after the word "misconduct" in lines 26 and 27, page 20, insert the words "or incompetence".

7. In Clause 59, subclause (3), after the word "misconduct" in lines 2 and 3 on page 21, and also in line 10 on this page, insert in each case the words "or incompetence".

That is as Mr. Driedger has drafted it, I think, to give effect to the representations which were made before the committee.

The CHAIRMAN: Mr. Keays do you second Mr. Bell's motion?

Mr. KEAYS: Yes.

The CHAIRMAN: Is there any discussion on this motion? Shall the motion as proposed by Mr. Bell and seconded by Mr. Keays carry?

Motion agreed to.

We move on now to clause 4(4).

Mr. BELL (*Carleton*): It will be remembered that there was a question raised by Mr. Macdonnell as to whether, when a commissioner had attained the age of 65, he might be extended for one or more periods not exceeding five years, rather than as the bill presently stands, for one period not exceeding five years. Now, to give effect to Mr. Macdonnell's suggestion, Mr. Driedger has prepared this amendment which reads as follows:

Clause 4

Strike out the words "one period not exceeding five years" in subclause (4) on page 4 in line 14 and substitute therefor the words "one or more periods not exceeding five years in the aggregate".

Before I propose that amendment, Mr. Chairman, may I say that there is perhaps a minor matter of policy which I think the committee should determine in relation to it. The clause was drawn in its present form deliberately to preserve to the greatest possible extent the independence of members of the commission. It is conceivable, although perhaps remote, that a commissioner who had attained the age of 65, might be seeking to carry on for a total of a five year period, when the government might say: "all right we will appoint you for one year, and we will see what happens after that." The commissioner might well feel that he is in some way beholden to the government during that period of time—and this, I suppose, is conceivable, with human nature being what it is—by his endeavouring to do what is agreeable during that period of time to ensure that he would get a further extension. It was on that ground that the view of the government initially in respect of this was that one period was what it should be, for a total of five years, and there would be no possibility under those circumstances of any pressures indirect or otherwise, being brought to bear upon an over-age commissioner. It is a small matter, and personally I would prefer to have the clause remain as it now stands in the draft bill rather than in the amended form which Mr. Driedger has proposed in response to Mr. Macdonnell's suggestion.

Mr. MACDONNELL: May I say, since I raised the matter, that my recommendation was prompted by the fact that as a trustee of the University of Toronto, I know we have a similar provision, whereby a professor when he reaches the age of 65 may be recommended from year to year by the principal for continuation. I had not thought of Mr. Bell's suggestion, but I see it might be substantial, and I am inclined to go along with Mr. Bell, personally.

The CHAIRMAN: Shall clause 4(4) carry as it is now in the bill, without amendment?

Agreed.

The next point is clause 5(1). Mr. Driedger has a comment to make.

Mr. DRIEDGER: The suggestion was made, I believe, that subclause (1) of clause 5 should terminate with the word "Commission", so that it would read "The Chairman is the chief executive officer of the Commission", and that there be added another subclause to this effect—"For the purpose of this Act, the commission and the staff of the commission shall constitute a department and the chairman is the deputy head in relation thereto". I do not think there is anything wrong with a provision of that kind, but I would point out that paragraph (*g*) and (*h*) of subclause (1) of clause 2 contemplate that a branch or division of the public service will be designated as a department for the purpose of this act, and that some person will be designated as a deputy head

in relation to that department for the purpose of this act. The intention was that this provision would be used to declare branches or divisions of the public service to be departments, and to designate persons to be deputy heads. So actually, an amendment to the effect proposed would not seem to me to be necessary, since it is provided for in paragraphs (*g*) and (*h*).

The CHAIRMAN: Is there any comment?

Mr. CARON: In my opinion, in some cases it is good to be repetitious so that we do not have to go back to this clause or to that clause in order to clarify a position. Repetition is not bad in certain cases.

The CHAIRMAN: Do you think it would be better to amend the clause as suggested by Mr. Driedger?

Mr. BELL (*Carleton*): Yes, I would subscribe to Mr. Caron's views in relation to this particularly, as I say it is most undesirable that the civil service commission in a matter of this sort should have to go to the governor in council for the passage of an order in council. I think I would prefer to see it in the draft form as Mr. Driedger has suggested, and while he does not think it is necessary, still he does not take any exception to it.

The CHAIRMAN: Is there any other comment?

Mr. BELL (*Carleton*): I would so move it in the form in which Mr. Driedger has read it to us; and my motion would include the renumbering subclauses (2), (3), (4) and (5) as numbers (3) to (6) respectively.

The CHAIRMAN: Yes.

Mr. MACDONNELL: May we have the amendment read again?

The CHAIRMAN: Yes. Mr. Driedger will read it to us in a moment. He will read it slowly so that all members of the committee may have an opportunity to write it down.

Mr. DRIEDGER: Yes. The amendment required would be this: Delete all the words in subclause (1) after the word "Commission" in line 26, and then insert the following as subclause (2): "For the purposes of this Act, the Commission and the staff of the Commission constitute a department and the Chairman is the deputy head in relation thereto." And I should add that the words "department" and "deputy head" should not be capitalized. There should also be a marginal note. Perhaps it would be suitable if you said simply "department and deputy head", and again, "deputy head" in lower case.

Mr. MACDONNELL: And that is consistent with paragraph (*g*) on page two, which says: "Department means a department named in schedule A to the Financial Administration Act."

Mr. DRIEDGER: Yes; and a further amendment would be to renumber subclauses (2) to (5), as subclauses (3) to (6) respectively.

The CHAIRMAN: Have we a seconder? We need a mover first, and then a seconder. Have you moved that motion as read by Mr. Driedger, Mr. Bell?

Mr. BELL (*Carleton*): Yes.

Mr. CARON: And I second the motion.

The CHAIRMAN: It has been moved and seconded that clause 5 be amended as suggested by Mr. Driedger. Shall clause 5, as amended, carry?

Clause 5, as amended, agreed to.

The CHAIRMAN: We move on now to clause 25.

Mr. BELL (*Carleton*): There were two matters, I think, in relation to clause 25. The first was the suggestion that there was some incongruity between the words "urgent need and limited availability" respectively, and the words "special skill or knowledge, and duties of an exceptional character", as they appear later on. That was the first question: whether it required any redraft-

ing on that basis; and as to it, I think we should have Mr. Driedger's comments. Secondly, there was a question whether anyone who considered himself prejudicially affected by this, might have the right to appeal.

Mr. DRIEDGER: On the first point, I do not know whether I can say much more. I think it is largely a matter of policy. This clause, of course, is in the nature of an exception to the general principles in the statute or in the bill. My original instructions, and what I had in mind when they were prepared, was that the authority to make this kind of appointment should be rather limited; and it is restricted on the basis of need or limited availability, and also it is restricted to persons who have special skill or knowledge. If there is to be any change from that, I think it would be a matter of policy.

The CHAIRMAN: It would seem to me that to make that alteration would require a very radical change, and that we would really have a different clause altogether.

Mr. BELL (*Carleton*): Certainly we do not want to open this up. We want to keep this as confined as possible. This is a clause which deals with appointments without competition, and we want the most limited right of appointment, I think, without competition.

The CHAIRMAN: Is there any further discussion?

Mr. CARON: Errors might be made and other members of the staff may believe, perhaps wrongly, that they would have the right to be called upon to fill those positions. That is why I claimed they should have the right of appeal in such matters.

The CHAIRMAN: That is quite true. We are now dealing with the point as to whether or not the clause should be widened to allow the commission to appoint people like stenographers, where they are available, without competition.

Mr. CARON: I think they should have the right in certain cases.

Mr. BELL (*Carleton*): Mr. Driedger has drawn up a possible amendment, which is to insert the figure "(1)" immediately after the figure "25" in line 21, thereby treating the existing clause as subclause (1) and adding a further clause (2) which states:

> The persons whose opportunity for promotion has been prejudicially affected, as prescribed by the regulations, by an appointment under subsection (1) shall, before the appointment becomes effective, be given an opportunity of appealing to the commission, and the commission shall reconsider the matter and shall confirm or rescind the appointment as it sees fit.

This is very definitely a matter of policy for the committee to decide whether it is desirable to have an appeal where there is urgent need. An appeal would certainly hold up the appointment if there is urgent need, but I like the idea of getting as many rights of appeal as we can into the bill.

The CHAIRMAN: It seems to me the persons appointed under this clause, persons having special skill or knowledge in the case of urgent need, would be very few. There would not be very many appointments under clause 25. While I agree with Mr. Bell we should have as many provisions as possible for appeal, actually this would create an administrative difficulty and perhaps the clause should be carried as it is. Are there any other views on this?

Mr. MACDONNELL: I should like to say that while I agree with what Mr. Bell has said, as to the giving of a right of appeal where it is fair, I am frightened by the words "the person whose opportunity for promotion has been prejudicially affected". That would seem to me to be a most dangerous phrase unless it is adequately covered by the following phrase "as prescribed by the regulations".

I do not know what the regulations are. Is it possible that the regulations can be so accurately drawn that you will not have all kinds of people coming in and saying "my opportunity for promotion was prejudicially affected"? It seems to me that unless there is a concise and definite limitation placed on the number of people whose opportunities for promotion might be affected by persons coming in at the top to senior positions, this would certainly be a happy hunting ground for appeals. It is hard for me to see how you could define those whose opportunities for promotion would be affected.

Mr. DRIEDGER: I realize that may be a source of difficulty but I do not know how we can escape it. I might point out the clause is patterned upon what is now in the bill in clause 27(*b*).

Mr. MACDONNELL: Then I was shying at shadows when I said everyone who was underneath the person brought in would have their opportunities for promotion prejudiced?

Mr. DRIEDGER: I think there would be less difficulty in framing the regulations than there would be in satisfying all possible employees.

Mr. MACDONNELL: Perhaps you are answering my question, but I do not know what the regulations state.

Mr. DRIEDGER: I think the regulations might be clear, but there might be dissatisfaction with them.

Mr. MACDONNELL: Would you agree unless the regulations are clear, then everyone who is below the employee brought in for a special reason at the top might well be affected?

Mr. DRIEDGER: They might think so.

Mr. MACDONNELL: If you put in a right of appeal you ought to be cautious not to exclude anyone who thinks he is affected.

Mr. CARON: I believe clause 27 is a little different to clause 25. In effect clause 27 deals only with transfers and promotions, while clause 25 deals with new positions filled by persons with special skills. Unless there is a right of appeal provided, some employees may believe, even wrongly, that they have the necessary qualifications and, as I say, unless they have the right of appeal they will always hold their belief that the deputy head or someone else in the commission did not pay any attention to them. After they have made their appeal, and it is rejected, they can have no complaint to make. I think this is important for the peace of mind of people in some departments, and I think the re-drafting should be accepted.

The CHAIRMAN: Does anyone else wish to speak?

Mr. SPENCER: It seems to me that alternative conditions have been set for the exercising of these powers. I think instead of the word "or" in line 22 there should be substituted the word "and", because there may be an urgent need for the appointment but no limited number is available. I think the appointment should only be made where both those conditions exist. First, there must be the urgent need and secondly there must be a limited availability of suitable candidates. If there are suitable candidates available, the urgency alone should not allow appointment without recourse to competition.

The CHAIRMAN: Are there any further comments on clause 25?

Mr. ROGERS: I should like to know if this amendment were put in does Mr. Driedger think it would be used extensively?

Mr. DRIEDGER: I am afraid I could not answer that.

Mr. ROGERS: I do not think it would.

Mr. CARON: I do not think so either.

Mr. ROGERS: Most applicants know if they have the qualifications for a job, or not. I do not think there is too much to be concerned with in the argument Mr. Caron has put forward.

The CHAIRMAN: Let us dispose of this point first and then perhaps we should consider the point raised by Mr. Spencer. Are there any further views on whether the amendment should be introduced providing for an appeal?

Mr. SPENCER: I think it ought to be the other way around. I think you should deal with my suggestion first. If this clause is not to be restricted then I should like to see the right of appeal put in but, if it is restricted, then I am inclined to think there is no need for an appeal.

The CHAIRMAN: Very well then. Are there any comments on Mr. Spencer's suggestion that the word "or" in the second line of clause 25 should be replaced by the word "and", so that the provision would only operate where there is both an urgent need and a limited availability of suitable candidates?

Mr. BELL (*Carleton*): I would personally feel that might be too restrictive, to suggest you have the two aspects before you can proceed. This is a matter upon which I think the administrators could advise us, but my own reaction is that it would be restricting the clause to the point where it would be pretty nearly valueless.

Mr. DRIEDGER: One of the situations which this clause was intended to cover was where you had a person operating a special machine and the position fell vacant. While you might get enough candidates to enter a competition, the machine still has to be operated today and tomorrow. It cannot be left idle until next week, after you have had a competition. Therefore, you could make the appointment because there was an urgent need for it; but you could not argue there was a limited number of candidates because, if you had advertised the position, the chances are that you would get many candidates. That is the type of situation which this was intended to cover.

Mr. MACDONNELL: It seems to me that adding limited availability to urgent need imposes a very difficult condition. How can you establish the limited availability? You cannot do that overnight.

The CHAIRMAN: What Mr. Spencer suggests would actually take the heart out of the clause.

Mr. MACDONNELL: Absolutely.

The CHAIRMAN: It is a machinery for dealing with an urgent situation.

Mr. SPENCER: It seems to me this leaves an awful lot of discretion in the hands of the commission. It is possible that any situation could be considered to be urgent.

The CHAIRMAN: Are there any other comments on this point?

Mr. MACDONNELL: As a matter of fact, can we not be satisfied this kind of thing would arise very seldom?

Mr. BELL (*Carleton*): I think we were assured that was true.

The CHAIRMAN: What about the second point?

Mr. ROGERS: I should like to hear what Mr. Caron has to say on this.

Mr. CARON: I think the commission should have quite a bit of leeway when there is urgent need, but I think in cases where people believe they have not been treated as they should be, they ought to have the right of appeal. However, as I say, I think the commission should have quite some leeway to decide in cases of urgent need.

Mr. ROGERS: I agree.

Mr. SPENCER: If there is an urgent need and there are suitable candidates available, why should not one of those candidates who are available be appointed? Why should you go outside that area?

The CHAIRMAN: Under your suggestion the clause would only have effect where there were no candidates or very few candidates available, but where

there were lots of candidates available the commission could not act under this clause in the case of urgency.

Mr. CARON: Even if you changed "or" and put in "and", line 23 still reads: "a competition is not in the opinion of the commission practical or in the public interest". The commission would still have the right to appoint if in its opinion competition was not in the public interest and was not practical.

The CHAIRMAN: Do you think we have had enough discussion on this matter of the right of appeal?

Mr. MACDONNELL: I want to state that; if we are going to decide this I believe we ought to know the regulations.

Mr. BELL (*Carleton*): I do not think we could satisfy Mr. Macdonnell on that. The regulations will be matters to be determined afterwards and there can be negotiations between the staff associations on them.

The CHAIRMAN: I propose to put the motion.

Mr. MACDONNELL: It seems to me this condition leaves it wide open.

The CHAIRMAN: May I invite a motion on this?

Mr. CARON: I want to move that the suggested revision be accepted as an amendment.

The CHAIRMAN: Mr. Caron moves that clause 25 be amended by inserting the figure "(1)" immediately after the figure "25" in line 21, and adding to the clause the following subclause:

(2) the persons whose opportunity for promotion has been prejudicially affected, as prescribed by the regulations, by an appointment under subsection (1) shall, before the appointment becomes effective, be given an opportunity of appealing to the commission, and the commission shall reconsider the matter and shall confirm or rescind the appointment as it sees fit.

Mr. MACDONNELL: May I ask a question whether this, in effect, makes the clause nugatory by making an appeal necessary?

The CHAIRMAN: Is there a seconder for the motion?

Mr. ROGERS: I second it.

The CHAIRMAN: The motion is before the committee. You had a question, Mr. Macdonnell?

Mr. MACDONELL: I have asked my question, but I should like to comment on this. I believe you leave the provision wide open unless the right of appeal is restricted. I believe this makes the whole provision quite nugatory.

Mr. SPENCER: Is not the power under the act to make temporary appointments? But, if an appointment is made under clause 25 it becomes a permanent appointment?

The CHAIRMAN: Yes, that is true.

Mr. MACRAE: Not immediately.

Mr. BELL (*Carleton*): It is subject to the probationary period.

Mr. SPENCER: As regards the probationary period, once you are in there performing the work, you are in there permanently.

The CHAIRMAN: With regard to the point raised by Mr. Macdonnell, if you add subclause (2) providing for a right of appeal, then you cannot make urgent appointments.

Mr. SPENCER: Of course you can.

Mr. DRIEDGER: You can make the appointments, but subject to subsequent confirmation.

The CHAIRMAN: I hear the bell ringing and I know there will be further discussion on this.

Mr. ROGERS: I should like to get this point clear. Can you make such an appointment subject to permanency?

The CHAIRMAN: I think we should adjourn until Tuesday next.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 22

TUESDAY, JUNE 20, 1961

Bill C-71, An Act respecting the Civil Service of Canada

WITNESS:

Mr. E. A. Driedger, Q.C., Deputy Minister of Justice.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25409-4—1

SPECIAL COMMITTEE ON THE

CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)
Caron
Casselman (Mrs.)
Hanbidge
Hicks
Keays
Lafreniere
Macdonnell
MacRae
Martel
McIlraith
More
O'Leary
Peters
Pickersgill
Richard (*Ottawa East*)
Roberge
Rogers
Spencer
Tardif.

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, June 20, 1961.
(24)

The Special Committee on the Civil Service Act met at 2.40 p.m. this day. The Chairman, Mr. R. S. McLellan, presided.

Members present: Messrs. Bell (*Carleton*), Hanbidge, Hicks, Keays, Macdonnell (*Greenwood*), MacLellan, MacRae, McIlraith, Pickersgill, Richard (*Ottawa East*), Roberge, Rogers, Spencer, and Tardif.—(14).

In attendance: From the Department of Justice, Mr. E. A. Driedger, Q.C., Deputy Minister.

Nine members of the Parliamentary staff of the Congo under the leadership of Mr. Natwalie were welcomed as observers to the committee meeting.

The Committee resumed its clause-by-clause consideration of Bill C-71.

On Clause 25

By leave of the Committee, the motion moved by Mr. Caron on Friday, June the 16th, was withdrawn.

Mr. Bell (*Carleton*) moved, seconded by Mr. Keays, that Clause 25 be deleted and the following substituted therefor:

> 25. Where the Commission is of the opinion that a competition is not practical or is not in the public interest because
> (*a*) an appointment to a position is urgently required,
> (*b*) the availability of suitable candidates for a position is limited, or
> (*c*) a person having special skill or knowledge is required for a position involving duties of an exceptional character,
> the Commission may make an appointment to that position without competition.

The said motion was resolved in the affirmative on the following division: Yeas, 6; Nays, 5.

The clause was adopted as amended.

The visitors from the Congo, mentioned above, withdrew after expressing in the French language their appreciation of the opportunity to observe the proceedings of the Committee.

On Clause 61

On motion of Mr. Bell (*Carleton*), seconded by Mr. Rogers,

Resolved,—That subclause (3) be amended by substituting a comma for the period after the word "heard" in line 4, page 22 of the Bill, and adding thereto the following: "personally and through his representative."

Clause 62 was allowed to stand.

On Clause 68

Paragraph (*d*) of subclause (1) was adopted.

On motion of Mr. Bell (*Carleton*), seconded by Mr. MacRae,

Resolved,—That paragraph (*s*) of subclause (1) be amended by inserting the following words immediately after the semi-colon in line 45, on page 25 of the Bill:

> "and prescribing the procedure for dealing with grievances, as defined in such regulations, arising out of the administration of this Act and of the regulations".

The clause, as amended, was adopted.

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Clause 76, subclause (2) was considered and allowed to stand.

Clause 82, subclause (4) was considered and adopted.

Subparagraph (i), of paragraph (*a*) of subclause (1) of *Clause 2* was considered and adopted.

Subclause (5) of *Clause 9* was considered and adopted.

Subclause (3) of *Clause 24* was considered and adopted.

Subclause (1) of *Clause 41* was further considered and adopted.

Clause 50 was adopted.

On Clause 33

By leave, the Clause was further considered.

On motion of Mr. Bell (*Carleton*), seconded by Mr. Hanbidge,

Resolved,—That Clause 33 be amended by substituting a comma for the period at the end of line 5, page 12 of the Bill, and adding thereto the following:

"but in so doing the Commission shall not discriminate against any person by reason of race, national origin, colour or religion."

The clause was adopted as amended.

The Committee reverted to *Clause 62*.

Mr. Bell (*Carleton*) submitted the following as a possible alternate to *Clause 62*:

Days of rest.

"62. (1) Employees are entitled to the equivalent of

(*a*) two days of rest per week if they are employed on a five-day week, or

(*b*) one day of rest per week if they are employed on a six-day week.

Holidays.

(2) The following days are holidays for the civil service:

(*a*) New Year's Day;

(*b*) Good Friday;

(*c*) Easter Monday;

(*d*) the day fixed by proclamation of the Governor in Council for the celebration of the birthday of the Sovereign;

(*e*) Dominion Day;

(*f*) Labour Day;

(*g*) Remembrance Day;

(*h*) Christmas Day; and

(*i*) the day fixed by proclamation of the Governor in Council as a general day of thanksgiving;

and any other day fixed by proclamation of the Governor in Council as a holiday for all or any part of the civil service is a holiday for the civil service or for that part of the civil service, as the case may be."

Following discussion, the Clause and Mr. Bell's suggestion were allowed to stand.

Agreed,—That the Staff Associations be permitted to make further written submissions respecting Clauses 7 and 10 to 14 inclusive; and that such submissions should be in the hands of the committee not later than the morning of Thursday, June the 22nd, 1961.

At 4.05 p.m. the Committee adjourned until 9.30 a.m. Friday, June the 23rd.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

TUESDAY, June 20, 1961

The CHAIRMAN: The committee will please come to order. Before we begin this afternoon I would like to introduce to the committee a group of nine members of the parliamentary staff of the Congo. They have come here to study our Canadian parliamentary system to see if it can be adapted to their own country. They are led by Mr. Natwalie, and all the members speak French. A translation system has been put into effect to allow them to follow the proceedings of the committee. They spent about an hour with Mr. Speaker Michener this morning and inquired as to which was the best committee in the House whose proceedings they might follow and where they would learn the most, and they were recommended to come to this committee.

I would like to welcome Mr. Natwalie and the other members of his group, who are in Canada under the joint sponsorship of the external aid office of Canada, and its counterpart in the United States. I hope very much that they enjoy the afternoon and that they learn something while they are here.

Gentlemen, you will recall that as we closed last Friday we were discussing clause 25 of the bill. I wonder if Mr. Driedger would please come forward.

Mr. BELL (*Carleton*): Since the committee rose last Friday I have been giving a considerable amount of thought to this question of clause 25 and the two aspects of it which have been discussed. I have had the opportunity and privilege to discuss them with Mr. Driedger.

May I deal first, sir, with clause 25 as presently drafted. The feeling in some quarters was that the last two lines were so restricted as to negate the powers granted in the first two lines of the clause. The committee wished unquestionably to confine these exceptional powers to the most restrictive basis possible. On the other hand we must be reasonable and practical, and we must take into consideration matters of urgency, and the limited availability, and of special skills. There is a very real safeguard which we provide in the reporting clause, in clause 76, which requires that all appointments made under this clause shall be reported to parliament. I think that has a salutary effect. As a result of the discussions had with Mr. Driedger, and in the hope that there might be an amendment which perhaps would commend itself to the committee, I am going to read—and perhaps the clerk could distribute—what Mr. Driedger has drawn up as an alternative to the existing clause 25.

The CHAIRMAN: Before you proceed, Mr. Bell, we have before the committee now a motion made last day by Mr. Caron, seconded by Mr. Rogers with respect to an amendment to clause 25. I understand that this motion is to be withdrawn. Have you any comments to make, Mr. Rogers?

Mr. ROGERS: Mr. Chairman and gentlemen: I understand that Mr. Caron, after further clarification and discussion, has agreed to withdraw his motion. Following the remarks which Mr. Bell has made, and since this is a narrow field, I would like to support the withdrawal, since I was the seconder of Mr. Caron's motion.

The CHAIRMAN: Is it agreed that this motion may be withdrawn?

Agreed.

Please proceed, Mr. Bell.

Mr. BELL (*Carleton*): The proposed amendment as Mr. Driedger has drawn it, reads as follows:

> 25. Where the Commission is of the opinion that a competition is not practical or is not in the public interest because
> (*a*) an appointment to a position is urgently required,
> (*b*) the availability of suitable candidates for a position is limited, or
> (*c*) a person having special skill or knowledge is required for a position involving duties of an exceptional character,
> the Commission may make an appointment to that position without competition.

That is the amendment which was put forward, and I would add that the commission must decide that a competition is not practical, and that they have to decide this on a basis which they can justify to parliament under the reporting clause; or they must decide that it is not in the public interest. Having decided on either of those grounds, then they are confined to the grounds of real or limited availability, or of special skills involving duties of an exceptional character. I would think that the latter might easily be confined to positions of a more sensitive character, the qualifications of which perhaps could not be made public without prejudice to the national security. I present this amendment. This is a difficult field. I present it in the hope that perhaps it may meet the situation. We have to be practical and reasonable, and to have confidence in the commission in exercising the discretion which we give them on a reasonable basis. And if they do this, I foresee no difficulty. But if they should be haywire in relation to this, then parliament will check them, I am sure, because they have to report specially.

The CHAIRMAN: Are there any further comments on this proposed amendment?

Mr. SPENCER: This proposed amendment now is much more objectionable to me than was the original section. I make no apologies at all in saying right at the moment that I am opposed to it. With the way we have it set up in the act, there are certain safeguards in the making of appointments to the public service. Section 25 of this act is certainly an escape clause; in other words, it is a section as it reads now, which makes it possible for the commission to make appointments without regard to all the safeguards which are set up in the act to ensure that the principle of merit is maintained in the civil service.

You will recall that at the last meeting I had some objection to section 25, as it is now worded, because I felt that two conditions should exist for the exercise of this unusual power. They were, first of all, that there should be an urgent need for the appointment, and secondly that there should be limited availability of suitable candidates. I felt that both of these conditions should exist in order for the commission to have the power to make an appointment without competition. I shall say this: that upon reflection I am not disposed to insist on holding to that view. I think there is considerable to be said for the need to give the commission certain powers in the case of limited availability of suitable candidates alone, and I felt there also should be urgent need. But I would be disposed to abandon that position. However, the proposed amendment now, to my mind, does not begin to meet the objections that I had to it. I objected particularly to the position that was taken by Mr. Pelletier of the commission that this section could be applied to stenographers, and in that connection may I refer to the caution that was extended to the committee by the chairman of the commission, Mr. Hughes. I think that is to be found on

page 378, and Mr. Pelletier's remarks appear at the bottom of page 376. Mr. Hughes said at page 378, after Mr. Macdonnell had brought up the question of the latter part of section 25:

> Mr. Hughes: I would suggest that the committee might bear in mind the fact that the commission is the sole judge of limited availability. The removal of these restrictive words might put great power into the hands of the commission to proceed without competition. This is something that I think should cause some concern.

And it certainly does cause some concern to me. As this section is now proposed, all that would be required is that if the appointment to a position is urgently required, the commission may then make the appointment to that position without competition. Now, I do not know if it is of importance at this stage to bring it up, but I would point out under section 29, that there is tremendous power of delegation on the part of the commission, and I am not so sure that section 29 does not also apply, and should be read along with section 25. I am prepared to support the section as it is drafted in the bill, but I think that the proposed amendment now is simply going to destroy all the work we have put into this bill to preserve for the civil service advancement on the basis of merit, as well as appointment to the civil service on the basis of merit. I think we should not, except in very extreme cases, allow appointments to be made without competition.

The CHAIRMAN: Are there any further comments?

Mr. ROGERS: I wonder if Mr. Pelletier would care to comment on this?

The CHAIRMAN: It seems to me that we have had a very clear expression of views by Mr. Pelletier, and his evidence is on record. I had hoped that we could move along a little more swiftly if we did not call witnesses now, unless we felt we absolutely needed them.

Mr. ROGERS: I think Mr. Hughes had some different interpretation.

Mr. BELL (*Carleton*): I understand that the amendment which is presented to the committee does carry the unanimous judgment of the three members of the commission.

Mr. SPENCER: It might bear their unanimous consent, but I think it is for this committee surely to decide whether we want to invest this tremendous power in the commission.

Mr. BELL (*Carleton*): I was not suggesting anything to the contrary. I think the evidence is in the amendment which has actually been presented.

Mr. MACDONNELL: I want to know whether we should read "and" or "or" at the end of subclause (*a*). That "and" it seems to me puts a different complexion on it.

Mr. DRIEDGER: The practice is that a conjunction between the last two paragraphs governs them all; "or" makes them all disjunctive, but if it is "and", then they are cumulative.

Mr. MACDONNELL: Should we not put an "and" after "a"?

The CHAIRMAN: There could be two different meanings. What is your opinion on the section? Should it read "and" or "or"?

Mr. DRIEDGER: It would be "or", of course. Without anything between (*a*) and (*b*), it would be read as "or".

Mr. MACDONNELL: I am not questioning that; but the section might look different if you had an "a" and a "b" as present conditions of action, instead of just "a" or "or b"; you are not attempting to impose, in drafting it that way.

Mr. RICHARD (*Ottawa East*): I am inclined to agree with Mr. Spencer. I did not like section 25, because I am against anything that has to do with appointments without competition, of course. I realize there are special occasions when appointments have to be made immediately, requiring special skill or knowledge. But I think the restrictions should be as great as possible and section 25 is more restrictive than the new clause 25 suggests. As Mr. Spencer said, it is a fact that the phrase "no apparent availability of suitable candidates for the position" is pretty broad.

The CHAIRMAN: Yes, the section is completely different from clause 25. Are there any further comments?

Mr. SPENCER: How would you determine that there was an unavailability of suitable candidates unless you had a competition? When we had Mr. Best here, he pointed out that when a closed competition was not provided for, they had an open competition, and somebody in the department entered the open competition and won it. So you do not know whether there is limited availability unless you have a competition to find out who are available for the job, and you are not going to find out unless you publicize it in some way to let people know that they are being made available.

The CHAIRMAN: This amended clause would give authority to the commission to make an appointment in three cases: where you have an urgent situation, or where the availability of suitable candidates is limited, or where a person is required with special skills or knowledge. Are you objecting to all three of these powers for the commission, or only as to the availability of candidates?

Mr. SPENCER: I felt that (*a*) and (*b*) should be conjunctive, that they should both exist, and I felt that way in so far as the present section is concerned. But according to section 25 as it stands now, the commission may appoint only those having special skills or knowledge, whose services are required for duties of a special character. I think that is sufficiently restrictive, so we may retain the alternative. But certainly I would want to have (*a*) and (*b*) combined.

The CHAIRMAN: I wonder if Mr. Bell could tell us just why it is he thinks we should have (*b*) there, so that there could be appointments by the commission without competition where there is a lack of availability of suitable candidates.

Mr. BELL (*Carleton*): I think the principal reason for (*b*) is to protect what might be called the running competition where there are simply not enough individuals responding to the advertised competition. Then it may be held open; and as persons make application they may be individually examined to make sure that they have in fact the qualifications for the position. If they have the qualifications for the position, and that position is immediately available, then they may be appointed. But if we do not have this, then there is no authority whatever under the act to hold a running competition, and in those circumstances the jobs will be there, but it may be months before another regular competition could be prepared to fill them.

The CHAIRMAN: What is being done now?

Mr. BELL (*Carleton*): The fact is that now they are holding running competitions. This has been the practice. I think it is quite questionable under the existing act whether the commission has the authority to hold what is called a running competition, which is really not a competition at all. What is called a running competition is really when a person who seems to have the appropriate qualifications comes in, takes the test, the job is available,

and he is appointed. This is not in any way an infringement of the merit system; there is the test. It cannot, however, be legitimately called a competition because it is a test of one person. I do not think you can have a competition with only one person involved.

The CHAIRMAN: In effect you are saying that this practice which is being carried on now is illegal and that this amendment which you propose would make it a legal procedure.

Mr. MACDONNELL: I think we should remind ourselves that this is a very unusual circumstance.

Mr. BELL (*Carleton*): The problem in respect of section 25 as it now stands is that the only person who can be appointed under it is a person with special skill or knowledge whose services are required for duties of an exceptional character. The limited availability of candidates is more frequently than not in the fields in which special skills, knowledge, or duties of an exceptional character are required. The scarcity is in other fields. May I put it this way: I am as anxious as any member of this committee to uphold to the full the competitive system. I would quarrel in only one particular with what Mr. Spencer has said. Mr. Spencer says that all the commission needs to do is decide there is an urgent need. That is not true. The competition is not in the decide that a competition is not practical or that a competition is not in the public interest, and then whether or not it is an urgent matter. So there are two decisions that must be taken by the commission. I think we must assume there will be three reasonable persons who know that they have to report to parliament and that in reporting to parliament they will be subject to review by the opposition.

I only say, Mr. Chairman, to finish this, that I think this gives the authority to carry out a procedure which has been followed, generally speaking, without exception. As it presently stands, section 25 will not permit that type of running competition except where the duties are of an exceptional character. If you confine it in that way, it hamstrings the commission in doing some of the things which really need to be done adequately and properly in order to uphold the merit system.

Mr. SPENCER: Mr. Bell, I certainly do not wish to quarrel with you; but do you not agree with me that as this amendment now reads you might just as well have subclause (c) out of there because subclause (c) is the clause which has to do with a person having special skill or knowledge who is required for a position involving duties of an exceptional character. I would think that a person having a special skill, knowledge and so on would be of limited availability. We could simply eliminate (c) and say that all the commission has to decide is one or the other; they can simply say there is an urgency which exists and if so they can go ahead and appoint him, or they can decide that they do not see anyone else available and can go ahead and appoint him. How are you going to find out whether or not people are available unless you run a competition. I do not know how else you would provide for it. I am told, for instance, that a stenographer need only go in and apply in Ottawa in order to get a job. That is a situation which was certainly not known to me until the other day. I think, if it were made known that stenographers who are unemployed can come to Ottawa and get a job, that there would be plenty of stenographers available. It is very easy to say that someone is not available when, as a matter of fact, they are available. The only reason you do not know that is because you do not run a competition.

Mr. HICKS: I would like to enquire of Mr. Bell just what is the difference between the proposed amendment and section 25 so far as the bumper or protection in respect of reporting to parliament is concerned. Do they not report to parliament under 25 as it now stands?

Mr. BELL (*Carleton*): Oh, yes; in that regard there is no difference. In respect of section 76(2) individual appointments are made under section 25. Whether in the form in which it appears in the bill, or in any form, the committee may choose to amend it, there will still have to be the special report to parliament.

Mr. RICHARD (*Ottawa East*): But surely Mr. Bell will agree that the section may be good in the act, but it could not be utilized to investigate every case appointed under section 25 as amended, because there could be hundreds and hundreds of applications.

Mr. BELL (*Carleton*): I think the principal effect is that it is a salutory warning to the commission that they have to report to parliament in order to justify a case at all times.

Mr. RICHARD (*Ottawa East*): I do not think you will agree it is a good thing to keep these running competitions when the commission can carry on without the running competitions which they have been having.

Mr. BELL (*Carleton*): I would wish that were unnecessary, but in a period of so called high unemployment there is no doubt that in Ottawa running competitions have been necessary. I have no quarrel in that respect with the commission's judgment.

Mr. ROGERS: I would like to clear up one question on this business of hiring stenographers. Is there not an open competition continually for stenographers?

Mr. BELL (*Carleton*): That is what I was referring to as a running competition. At least once a year, and perhaps more frequently, there is a nationally advertised competition for stenographers. Regrettably, that competition does not begin to produce for the headquarters staff a sufficient number of stenographers. The net result is that the commission keeps an open list. A girl with qualifications can go into the commission, be examined specially, and if she meets the standards of the commission which would enable her to go on to the eligibility list in normal circumstances in respect of the general national competition, then she will be appointed. The fact is that if we confine it to section 25 as it now exists, there will be no authority in the commission, in my view, to appoint such persons in that manner.

Mr. RICHARD (*Ottawa East*): Is it not possible that all the people who are successful in open competition are taken care of and then running competitions are necessary because everybody who has been successful on the main competition has been taken care of.

Mr. BELL (*Carleton*): Yes; in respect of some, that is the case.

Mr. RICHARD (*Ottawa East*): Then the only answer is to have more open competitions. I would like to know a little more before I would agree to your suggestion that such a broad section is necessary in order to cover the type of situation that you have in mind.

The CHAIRMAN: Are there any further opinions on this proposed amendment?

Mr. HICKS: My question may be out of order, but I am wondering if anyone can tell me why there are not more young men and youths running a typewriter

than there are at the present time with the wages and so on which they could get. Why is there so much unemployment when there is such a demand for secretaries.

The CHAIRMAN: That is a very interesting question, but it would take us completely away from the work of the committee.

Mr. HICKS: I said I expected I would be out of order.

Mr. SPENCER: We have been speaking about a situation which apparently exists in the city of Ottawa. Apparently it is a very unusual situation. However, this is a section which applies all across Canada. I am also worried about the delegation of authority under section 39 to deputy heads. Certainly in the city of Windsor I would not want to see the deputy head of a department—the head of the income tax department or of some other agency—in Windsor being able, under that delegated authority, to come along and say there is an urgent need to employ a stenographer and then employ someone without holding a competition. This section applies all across Canada.

Then on the question of reporting to parliament Mr. Best, at page 295 of our minutes of our proceedings and evidence, said to Mr. Bell:

> I would submit, Mr. Bell, that by the time the report got to parliament the person would have been in the job so long that nothing could be done if he had been improperly appointed.

Now, I cannot go into all the evidence and pick out all the complaints. You will recall there was a suggestion that there should be appeal against appointments under this section. I do not go along with the need for appeal so long as the section is restrictive enough; but if we are going to open it up, then surely there must be an appeal against decisions made under circumstances which are so illegal.

The CHAIRMAN: I think we all understand the principal involved. Would you like to bring this to a question? Are you moving the amendment to clause 25, Mr. Bell?

Mr. BELL (*Carleton*): Yes.

Mr. ROGERS: Mr. Bell, what is the necessity for (c)?

Mr. BELL (*Carleton*): I think I can say that the principal necessity for (c) is, as I mentioned earlier, in relation to positions of perhaps a very sensitive character where the qualifications could not be made public without a breach of national security. There are such cases in which the mere fact of the advertising of the qualifications would of itself be detrimental. That is the principal reason for it being in.

I can only say that I think we have to rely upon three commissioners who are responsible to parliament as being reasonable persons. If they are unreasonable persons, that certainly could cause difficulty under this section; but surely at least we will have confidence in the type of commissioners who will be appointed.

Mr. MACDONNELL: With deference, Mr. Bell, it seems this thing has worked up to the present time. I move that clause 25 stand.

Mr. BELL (*Carleton*): May I say that it has not worked. This clause has not been in. What is being done would be illegal without it.

The CHAIRMAN: Mr. Bell has moved this amendment. I suppose I should ask if there is a seconder? It has been moved by Mr. Bell and seconded by Mr. Keays that clause 25 as it appears in the bill be deleted and a new clause 25 as put before the committee by Mr. Bell be substituted. Is the committee ready for the question?

Agreed.

The CHAIRMAN: All those in favour of Mr. Bell's motion please signify by raising their hands? All those against the motion please signify?

I declare the motion carried six to five.

Shall clause 25 as amended be adopted?

Clause 25 as amended agreed to.

The CHAIRMAN: The next clause on our agenda is clause 61(3).

On clause 61(3) Inquiry before dismissal.

Mr. BELL (*Carleton*): In respect of this subclause of clause 61, I think the thought was that perhaps Mr. Driedger might give us an amendment which would provide that the individual who was the subject of the inquiry should have the right to be heard by way of counsel.

The CHAIRMAN: Mr. Bell and gentlemen before we proceed with this, I understand that our visitors from the Congo are preparing to leave now. I would like to wish them well in their travels across Canada and hope that there are some things in our government here which recommend themselves to them. Good luck.

(At this point a spokesman for the group from the Congo addressed the members of the committee briefly in French).

The CHAIRMAN: Mr. Bell, I think I interrupted you.

Mr. BELL (*Carleton*): I think I was mentioning that I thought on this the committee had in mind that a provision should be made for representation by counsel.

Mr. DRIEDGER: The suggestion was considered that it should be under Part I of the Inquiries Act. An inquiry under Part I of the Inquiries Act is a very formal inquiry with a good deal of publicity. It is conceivable that a less formal inquiry might be desired or desirable.

Mr. BELL (*Carleton*): In the interest of the employee?

Mr. DRIEDGER: Yes; instead of insisting on a formal inquiry under the Inquiries Act, provision was made for an inquiry that could be satisfied in some other way.

The CHAIRMAN: Are there any further comments on this?

Mr. RICHARD (*Ottawa East*): What is the wording?

Mr. DRIEDGER: I had not worked out anything; but, if you want something on that, I would suggest that you add the same words which were added in respect of subclause 3 of clause 70. As I recall it the words were: "personally and through his representative".

Mr. BELL (*Carleton*): I would so move.

The CHAIRMAN: Is there a seconder?

Mr. ROGERS: I second the motion.

The CHAIRMAN: Gentlemen, it has been moved by Mr. Bell, seconded by Mr. Rogers, that clause 61(3) be amended by adding thereto the words "personally and through his representative".

Motion agreed to.

Clause 61 subclause (3) agreed to as amended.

The CHAIRMAN: We are now on clause 62 in respect of holidays.

On clause 62, holidays.

Mr. BELL (*Carleton*): I wonder if this clause might stand for the moment. This is a clause to which I have tried to give a little study on the basis of the proposed amendments. I confess I have not had the opportunity of consulting with Miss Addison in respect of it. It is a situation so complex that I really would like to have it stand until we could come back to it at our next meeting or perhaps later at this meeting.

The CHAIRMAN: Do you also wish 68(1)(*d*) to stand?

Mr. BELL (*Carleton*): I do not think that is necessary.

The CHAIRMAN: Is it agreed that clause 62 shall stand for the present time?

Agreed.

The CHAIRMAN: We come to clause 68(1)(*d*).

Mr. BELL (*Carleton*): That is what we were just speaking of.

The CHAIRMAN: I understood you to say that this paragraph could carry?

Mr. BELL (*Carleton*): Yes.

Clause 68(1)(*d*) agreed to.

The CHAIRMAN: Clause 68(1)(*s*), prescribing procedure on appeals.

Mr. BELL (*Carleton*): Mr. Chairman, the committee will remember there was quite considerable discussion in connection wtih the grievances and grievance procedure. Representations of a significant character were made. I would think it would be the wish of the committee to provide for grievance procedures, the definition of a grievance and how it should arise. The draftsman of the bill has suggested this might be best affected by adding to subclause (*s*) which has been already carried these words—it will be noticed that subclause (*s*) gives the power to the commission, with the approval to the governor in council, to prescribe procedures on appeals. The words to be added are: "and prescribing the procedure for dealing with grievances, as defined in such regulations, arising out of the administration of this act and the regulations". So that a grievance would be one which either arose out of the act itself or out of the regulations. This is a matter in which obviously there will have to be some considerable discussion between the staff associations, and the commission over a period, but I am sure it can be worked out.

The CHAIRMAN: Do you so move, Mr. Bell?

Mr. BELL (*Carleton*): Yes.

The CHAIRMAN: Is there a seconder to this?

Mr. MCILRAITH: In the last line of this amendment I note the words "and of the regulations". Could it not be all the regulations?

Mr. DRIEDGER: I think it is six of one and half a dozen of the other. Some do it one way, and some do it another way.

Mr. MCILRAITH: We just had an argument about it.

Mr. DRIEDGER: I would have no objection. This happens to be my practice, but I would not foist it on anyone else.

Mr. BELL (*Carleton*): Unless Mr. Driedger objects vigorously, I would accept Mr. McIlraith's proposal and amend my motion accordingly.

The CHAIRMAN: Is there a seconder to Mr. Bell's motion? Mr. MacRae, seconds it. It has been moved by Mr. Bell and seconded by Mr. MacRae that clause 68—(1) be amended by adding thereto:

Clause 68

Add at the end of paragraph (*s*) on page 25, line 45, the words "and prescribing the procedure for dealing wtih grievances, as defined in such regulations, arising out of the administration of this Act and the regulations".

Does the motion carry?

Motion agreed to?

Shall clause 68-(1)-(s) as amended carry?

Clause agreed to.

Shall clause 68 as amended carry?

Clause 68 carried.

Shall clause 76(2) "additional information to be included" carry?

Mr. BELL (*Carleton*): This is a matter which Mr. McIlraith raised, and on which I think Mr. Driedger would wish to comment.

Mr. DRIEDGER: Yes. The suggestion I believe was that this should be amended by requiring this report to be made to parliament within 30 days after the beginning of each session, the reason being that the report would then be before parliament before the regular report, which might not come along for another four or five months. I started to work out an amendment, but when I did so I ran into two difficulties. One was that the amendment would not, I thought, carry out the wishes of the committee; and, moreover, it would give rise to very serious problems. The difficulties arose out of the fact that the present clause 76 defines very clearly the period in respect to which the report is made. But if you superimpose a further requirement that a report must be made within 30 days after the beginning of each session of parliament, you have not specified the period in relation to which the report must be made.

Suppose that the amendment is made, and I amend the clause to provide that the commission shall make an annual report to parliament within 30 days from the commencement of the session concerning the positions and persons excluded, and so on; then we go on and provide that they shall include it in their annual report. But suppose that a session of parliament were to commence in January, 1962. If the amendment that was suggested were made, a report on the exclusions for the year 1961 would have to be made within 30 days after the commencement of that session; and then before the end of May, the second report of the exclusions for 1961 would have to be made. Let us suppose then that that session ends in June, and that you have a further session commencing in September; and then within 30 days of the commencement of that session, for the third time, a report of the exclusions for 1961 would have to be made. It could not be made in 1962, because that period has not yet expired.

And suppose that session ran along into the new year. A report would have to be made before the end of May for the year 1962. That would be the first time that a report of the exclusions for 1962 would have to be made, while three reports of exclusions for 1961 have been made, and you would not have before parliament the 1962 report within 30 days after the commencement of that session of parliament. That represents the problem which I ran into in trying to carry out this suggestion.

Mr. McILRAITH: Part of the problem could be dealt with by leaving section 76 exactly as it is, and then adding a new provision, something along the line that within 30 days after the commencement of each session of parliament, the commission shall transmit a report or file a report covering these exempted positions from the date of the last report, or according to whatever language you might use. I mean the last report which has been provided to parliament, which brought the provisions all together.

Mr. DRIEDGER: You are then specifying a different period. I did not consider every conceivable possibility, no. I was trying to consider it in the terms in which it had been proposed. I did not go much beyond that. But even so, I am not sure that you would not have difficulty because you might have one, two, or sometimes even more; you could have one or two sessions of parliament commencing within one year, and you might run into anomalies. You would have to work out this provision very carefully and consider the different possibilities.

Mr. McILRAITH: I have been thinking about it quite a bit since the last meeting, and it seems to me that 76-(2) probably was necessary in its present form to be left in the annual report, because the annual report deals with the whole year. But then there was the other problem that was bothering me, that at the commencement of the session, not having information as to the exemptions which had taken place, that if there is nothing more than the present section 76, the weakness might be this: where the session ends in April, and there has been no annual report, we could have a situation where you may have more than a year and a half delay in getting the information desired, and I think it is very bad, and a very undesirable situation.

Mr. DRIEDGER: That is quite true, and I can only say this: that because the beginning and the end of a session of parliament is unknown, and they vary so much, it seems to me that there would be difficulty in adapting the report section that we have, because we would run into other problems as well.

Mr. McILRAITH: I am quite convinced that there must be two report sections; one is the annual report section, and the other is this one. Now, in 1957 the session of the house dissolved on April 10, or April 12, so there would be no requirement for an annual report. In 1958 the session of the house dissolved in February, and there was no requirement for an annual report. So we had the extreme situation there, where we could have gone for more than two years, without the tabling of this information. I think that is something which is not desired by the members. I think the members want some machinery which would give them notice of the exemptions which have been made.

Mr. DRIEDGER: One problem there is that if you do provide for reports since the previous report, it might be impossible to make a report as of the time that it is filed.

Mr. McILRAITH: You would have to put in a starting date, probably the commencement of the session, because this date must be kept up to date. It is easy data to provide, and probably it should be.

Mr. DRIEDGER: You mean the period between the end of the last report and the commencement of the session of parliament?

Mr. McILRAITH: Something of that sort, yes.

The CHAIRMAN: Do you have a comment to make Mr. Bell?

Mr. BELL (*Carleton*): I agree, as I did the other day, when this was first raised, with Mr. McIlraith; and I think that the principle proposed now, I mean the suggestion of the addition of another subclause in respect to these exclusions, would require a separate and distinct report to parliament within

30 days of the commencement of each session of parliament covering the period from the time of the last report to parliament. I agree with the draftsman that it is going to be difficult, but I would be very anxious to see that it is done in view of the fact that the committee has had serious difference of opinion in respect to the exclusion this afternoon, and I think it makes it more important because of the sincere difference of opinion that we have had about it, that we should provide for the greatest possible safeguard.

Mr. ROGERS: That would just be an interim report.

Mr. MCILRAITH: Yes.

The CHAIRMAN: Mr. Driedger says that he will try to find something along that line, and perhaps we might agree that the clause shall stand until Mr. Driedger has had a chance to see what he can work out. Is that satisfactory?

Agreed.

Mr. BELL (*Carleton*): Might we not pass clause 76(2), or should we hold it?

Mr. DRIEDGER: It might turn out that there would have to be some consequential changes.

Mr. BELL (*Carleton*): Yes. Before we move on in relation to that, there is one other section which really falls into it; it was considered after this particular memorandum was prepared. I refer to clause 82(4) where there was one matter which was held over in relation to it; that was the status of the printing bureau prevailing rate staff. I understand that Mr. Driedger has a comment to make in relation to what he considers to be the best procedure with which to deal with the matter.

Mr. DRIEDGER: It was suggested that a reference might be made in the act to positions which had been excluded from certain sections of the existing Civil Service Act. The difficulty in trying to continue that by statute is that you might not have corresponding sections in the new act, or sections in corresponding terms, so that some difficulty might arise in trying to relate sections of the old act to comparable provisions of the new act. It would seem to me to be that it should be clear, and that it might be better to make these exclusions under this act by specific reference to the sections of this act rather than to sections of the old act which resemble this, but which might not be exactly the same.

The CHAIRMAN: Are there any further questions on clause 82(4) or shall clause 82(4) carry?

Carried.

Shall clause 82 carry?

Carried.

Our third group of reserved clauses are those which were reserved for further policy considerations by the committee. The first of these is clause 2(1)(a)(i).

Mr. DRIEDGER: I understand that it was suggested that this sub-paragraph might be amended by referring to other circumstances so as to permit the payment of shift differentials. That was considered at the time that this was prepared, and it was thought at that time that this is something which could be done under the Financial Administration Act. Any obstacle to the application of that Act was removed by clause 14, which provides—"unless authorized by or under this act or any other act of parliament". These additional payments

were contemplated by clause 14, and provision could be made for differentials of this kind under the Financial Administration Act. But the difficulty in trying to amend sub-paragraph (c) of clause 2 is that any change to it, might sweep in more than shift differentials, sweep in more than was intended.

The CHAIRMAN: I take it that it is your opinion that clause 2(1)(a)(i) as now written will provide for shift differentials?

Mr. DRIEDGER: I thought you could do that under the Financial Administration Act.

The CHAIRMAN: Shall clause 2(1)(a)(i) carry?

Mr. MCILRAITH: Will you hold it for a moment, please.

The CHAIRMAN: Certainly. Shall the clause carry?

Carried.

I declare clause 2(1)(a)(i) carried.

We move on then to clause 9(5) "amendments". Are there any comments on clause 9(5), or any matters on which the committee would like to have clarification? Shall clause 9(5) carry?

Carried.

Clause 9(5) is carried. Now, we are on clause 24(3) "remuneration". Shall clause 24(3) carry?

Carried.

Shall clause 24 carry?

Carried.

Shall clause 41(1) "definitions" carry?

I think this is the point which was raised by Mr. Macdonnell before the committee. Is there anything you want to discuss?

Mr. MACDONNELL: I think my point was under paragraph (b) of clause 41.

Mr. BELL (*Carleton*): It was about the Newfoundland forestry corps, I think.

Mr. MACDONNELL: It was forestry, and especially Newfoundland forestry, yes.

Mr. BELL (*Carleton*): This is a matter which is rather more for the veterans affairs committee than it is for us here. Mr. Rogers is a very distinguished member of the veterans affairs committee, and I understand that they have, generally speaking, sought to hold the line against non-uniformed forces.

Mr. ROGERS: Yes, they have.

Mr. MCILRAITH: This matter came up last night in the house in respect to the veterans allowance legislation. The difficulty was that in the nine provinces of Canada the forestry corps were put in uniform, while the Newfoundland forestry corps was not put in uniform, although they were actually working side by side, doing the same work. And it was in order to remove this anomaly that agitation was brought forward to have them included in the legislation, because it was felt that there was discrimination and it was also suggested that there had been some commitment or understanding made at the time of confederation. I am not very familiar with the topic at all, but I heard the point raised last night.

Mr. BELL (*Carleton*): What was the decision?

Mr. MACRAE: That is a problem with which I am familiar. Over the years the Newfoundland forestry unit was a civilian unit, while the Canadian forestry corps was a corps just like any other corps of the army. So there is a basic difference. One was fully civilian, while the other was a group of soldiers. And as to the commitment that had been discussed on many occasions, unfortunately nothing can be found in writing as to the commitment, and the particular man who was entrusted with dealing with this particular thing in Newfoundland, died about that time, or shortly after, so the matter was never resolved. However, the line that has been held in veterans affairs is that one group are civilians and the other group are soldiers.

Mr. MACDONNELL: Did the forestry corps actually go into action?

Mr. MACRAE: Oh yes.

Mr. MCILRAITH: The Newfoundland people were in the same position.

The CHAIRMAN: Not quite.

Mr. MACRAE: Some units of the Canadian forestry corps served in France, while other units served in Scotland, or in the United Kingdom for the most part. Whether or not the Canadian forestry corps, went to France, it did not matter, since they were regularly attested and uniformed, and served for five or six years in many cases; and since they were transferred back and forth in the Canadian army, and there was no difference between the men in the Canadian forestry corps or in any other corps except that in a few cases it might have been a little safer for them.

Mr. MACDONNELL: I thought the merchant seamen were mentioned too.

The CHAIRMAN: There is no mention of merchant seamen in the act, Mr. Macdonnell.

Mr. MACDONNELL: Are you satisfied with that?

The CHAIRMAN: This clause is exactly the same as it existed in the present act; it does not include merchant seamen. Shall clause 41 carry?

Carried.

Shall clause 50 "tenure of office" carry?

Mr. RICHARD (*Ottawa East*): We had quite a discussion on that one.

Mr. BELL (*Carleton*): Yes, there was considerable discussion about this in the committee. We had the unanimous view of the three civil service commissioners that there should be retention in this section of the final prerogative of the crown. Personally I would hope that the committee would see fit to allow the section to stand as it now does.

The CHAIRMAN: Shall clause 50 carry?

Mr. RICHARD (*Ottawa East*): My suggestion was that subsection (2) of clause 50 should have the words added "for cause", and not to have a blanket authority given to the governor in council to dismiss without cause. I think everybody should understand that the way the section stands, if it passes that way, anybody can be dismissed by order of the governor in council without cause. It all depends on how you look at it. If you really want to pull out, that is another matter. I think that is the only objection I have to it. I suggest that the words "for cause" should be added. I wonder if Mr. Driedger has any comment to make about it? You agree with me that the words "for cause" mean something other than what is contained in the clause now?

Mr. DRIEDGER: You are putting words into my mouth.

Mr. RICHARD (*Ottawa East*): No, I am asking you.

Mr. DRIEDGER: What was your question?

Mr. RICHARD (*Ottawa East*): Do you think that adding the words "for cause" would limit the powers?

Mr. DRIEDGER: It would change this provision, yes.

Mr. RICHARD (*Ottawa East*): Surely it would.

Mr. BELL (*Carleton*): It should be pointed out also that no representations were made by any of the staff organizations to this clause.

The CHAIRMAN: This clause is the same as it is in the present act. Are there any further comments about it?

Mr. RICHARD (*Ottawa East*): My comment is this: I may be looking into the welfare of people who will be dealing with governors in council present and future.

The CHAIRMAN: Shall the clause carry?

Mr. MACDONNELL: May I be allowed to ask one question?

The CHAIRMAN: On clause 50?

Mr. MACDONNELL: No.

The CHAIRMAN: May I carry the clause first?

Clause 50 agreed to.

Mr. MACDONNELL: Has there been any representation on behalf of the merchant seamen? I am not happy about that. They saw action far more serious than perhaps did fifty per cent of the people in uniform. I do not want to be going back over a subject, but on the other hand I do not want to be a party to any injustice. If there has been no representation made, then perhaps one should regard it as concluded, and I will not say anything more.

The CHAIRMAN: To my knowledge there have been no representations in respect of this clause. I would agree that before any changes of a substantial nature should be made, there should be wide opportunity for representation from service organizations and others who are concerned; but I do not think this would be the place to open the subject. I would think it would be more appropriately considered in the veterans affairs committee. It would open up the broad question of whether people who were not in uniform should be entitled to the benefits which are now accorded to veterans only.

Mr. Bell has a further section with which he would like to deal.

Mr. BELL (*Carleton*): May I ask the leave of the committee to revert to clause 33. The members of the committee will remember at the meeting of Friday, April 21, that there was presented to us a letter from the Canadian Jewish Congress in which they asked that there be inserted in the Civil Service Act a non-discrimination clause. That matter has had some consideration especially as to where if such a clause were to be placed in the act, it should be placed. The advice of the draftsman is that if such a clause is to be inserted that it be inserted in clause 33.

I am satisfied that all members of the committee believe there does not now exist, and we hope there will never exist, discrimination on any grounds in respect of appointment to the civil service of Canada. I think, however, that any step which we, as parliament, can take to make certain there is no discrimination would be highly desirable. In this regard I am satisfied that the committee would give its unanimous support.

After consultation with the draftsman, the proposal is that in clause 33 a comma be substituted for the period at the end of line 5 and the following added: "but in so doing the commission shall not discriminate against any person by reason of race, national origin, colour or religion". As a result of that the clause will read:

> The commission may in relation to any position or any class or grade prescribe qualifications as to age, residence or any other matters

that in the opinion of the commission are necessary or desirable having regard to the nature of the duties to be performed, but in so doing the commission shall not discriminate against any person by reason of race, national origin, colour or religion.

Mr. MACDONNELL: Is there not general legislation affecting that now?

Mr. BELL (*Carleton*): There is legislation in the Canada Fair Employment Practices Act which does not, in its present form, bind the crown; it is not applicable to the crown. This is an adoption of the language of that legislation and in effect carries forward the provisions of it into this act. The alternative is to say that the crown is bound by the Canada Fair Employment Practices Act, and that would involve procedures which probably are not satisfactory to the commission. Here the commission is given the enforcing power under its own act.

Mr. MACDONNELL: Is the crown not carrying out the effect of an act which it passed itself?

Mr. BELL (*Carleton*): I am afraid that very frequently happens.

The CHAIRMAN: Is there a seconder to the motion?

Seconded by Mr. Hanbidge.

Mr. MCILRAITH: Mr. Chairman, I think all hon. members probably will be agreeable to this clause. Perhaps it will alleviate some feelings which some groups in the country may have had. To that extent it probably is a good thing. I am all for it; but at the same time I think it would be a mistake for us to assume here that it is a good principle to legislate on points on which it is not necessary to legislate. I think our system of legislation has been built up in rather a different way. We have only legislated where we had to achieve some purpose which was not being achieved without the legislation.

However, in view of the fact that undoubtedly there are fears about this, I am in accord with the amendment; but I do want to put forward that reservation in case this principle of legislation be adopted and become universal. It is not a good principle of legislation.

The CHAIRMAN: Are there any further questions on this?

Clause 33 as amended agreed to.

Mr. BELL (*Carleton*): That leaves clause 62.

The CHAIRMAN: And also clause 76(3).

Mr. BELL (*Carleton*): Perhaps we might return to this question of clause 62 upon which I had hoped there would be an opportunity for additional consultation. As Miss Addison pointed out to the committee, this is a most complex situation. I think she has made a most elaborate study of this. It has been considered by the draftsman, and Mr. Driedger has prepared an amendment which I will read to the committee. This is the proposal to strike out clause 62 and substitute therefor the following:

Days of rest.

"62. (1) Employees are entitled to the equivalent of

(*a*) two days of rest per week if they are employed on a five-day week, or

(*b*) one day of rest per week if they are employed on a six-day week.

Holidays.

(2) The following days are holidays for the civil service:

(*a*) New Year's Day;

(*b*) God Friday;

(*c*) Easter Monday;

(*d*) the day fixed by proclamation of the Governor in Council for the celebration of the birthday of the Sovereign;

(*e*) Dominion Day;

(*f*) Labour Day;
(*g*) Remembrance Day;
(*h*) Christmas Day;
(*i*) the day fixed by proclamation of the Governor in Council as a general day of thanksgiving;

and any other day fixed by proclamation of the Governor in Council as a holiday for all or any part of the civil service is a holiday for the civil service or for that part of the civil service, as the case may be."

Perhaps Mr. Driedger would be in a position to comment on the draftsmanship and its significance.

Mr. DRIEDGER: The effect is really to eliminate Sundays from the list of holidays and to provide in a separate subsection for the day of rest that normally is taken on Sunday, but in many cases would not be on the Sunday. If a person has a five day week, two days, Saturday and Sunday would be credited, and if he were on a six day week, one day would be credited. These are eliminated from the list of holidays.

Mr. MCILRAITH: Under the proposed amendment, take July 1, of this year, which is a holiday under the act and which is a Saturday; then take a prevailing rate employee, bearing in mind that no allowance is being made for the fact that July 1 is on a Saturday. The consequence under this new legislation is that the prevailing rate employee who has the shift on Saturday does not get any July 1 holiday at all. I do not think that is what is meant by the proposed amendment.

The CHAIRMAN: Have you any comment on that, Mr. Driedger?

Mr. DRIEDGER: No.

Mr. BELL (*Carleton*): Prevailing rate employees I do not think are under the act.

Mr. MCILRAITH: There are shift employees who are under the act. Where I used the term "prevailing rate employees" substitute "post office employees who are on a shift basis".

The CHAIRMAN: Is there any further discussion on this matter?

Mr. MCILRAITH: Yes.

Mr. DRIEDGER: This makes no provision for that.

Mr. MCILRAITH: Well, Mr. Driedger, it not only makes no provision for it, but it means they get no holiday. It seems to me that this leaves a loop-hole in the act, because the clause was never intended to take away holidays which were given to the civil service.

The CHAIRMAN: Are you suggesting there is a difference between this and the present act in that regard?

Mr. MCILRAITH: Yes.

The CHAIRMAN: I do not think so. It is exactly the same.

Mr. MCILRAITH: This is the very point I would like to have clarified. I gave a specific example so that the point could be brought down to reality.

Mr. DRIEDGER: I am afraid I do not know what you are getting at, really. I might explain my position. I take it that your comment would apply to clause 62 as it affects shift employees. It may be that there is nothing in the point were to take Sundays out of the list of holidays and make provision for it in subclause 1 of clause 62. That is as far as my instructions have gone and that is as far as I have gone.

Mr. MCILRAITH: I think you have done that very well. This matter I am raising, however, is another thing. I would suggest that the committee might do well to hear the commissioners on this point related to the proposed section

62 as it affects shift employees. It may be that there is nothing in the point I have raised; I do not know. I think it should be dealt with and answered.

Mr. BELL (*Carleton*): This is the type of thing I had hoped I would have had the opportunity to discuss with Miss Addison. However, I have not had that opportunity.

Mr. MCILRAITH: Is there any objection, at this point, to considering it? I take it we will have to have another meeting. Is there any objection to letting this stand until Mr. Bell has had an opportunity of discussing it with the commissioners?

The CHAIRMAN: What are the views of the committee in that regard? Would you like to wind up Clause 62 today?

Mr. BELL (*Carleton*): We have to come back on another matter.

The CHAIRMAN: Gentlemen, it is now 4 o'clock. We have been here for an hour and a half. If it is agreeable to the committee, we could put this important matter off until another day. Is that agreeable?

Agreed.

Mr. BELL (*Carleton*): Before we adjourn. I think it is the wish of the committee to have the Minister of Finance appear, perhaps as a witness, in relation to clauses 7, 10 and 14.

Mr. MCILRAITH: But not tonight?

Mr. BELL (*Carleton*): Not tonight. The situation is that because of important commitments on Thursday morning, which is our normal meeting morning, he advises me that it would not be possible for him to be present at 9:30. The suggestion is that he might be present at 9:30 on Friday morning.

This raises another question which I throw out for the consideration of the committee. There is the suggestion that some of the staff associations wish to make further representations in connection with clause 7.

The CHAIRMAN: That is correct.

Mr. BELL (*Carleton*): I would like to propose that you ask the staff associations if they would be prepared to present any further representations they have in respect of clauses 7, 10 and 14 by Thursday morning so that we might be able to take them into consideration when we discuss these clauses on Friday morning. That is, that they send in their representations in writing. I do not wish to rush the staff associations, but I know they are as anxious as are all the members of the committee to get this bill back into the house. Therefore, if they were to have this in your hands for Thursday morning they could be distributed to all members of the committee and taken into consideration along with the evidence of the Minister of Finance on Friday morning.

I would venture to suggest further that if we are not finished by the normal adjournment hour on Friday that we should endeavour to find time on Friday afternoon to come back and clean up everything.

The CHAIRMAN: Are you suggesting we need not meet on Thursday?

Mr. BELL (*Carleton*): Yes.

The CHAIRMAN: And that we meet on Friday. Is it agreeable that we ask the staff associations to send in any briefs which they would like to file on Thursday to assist us on Friday in respect of the clauses to which Mr. Bell referred.

Agreed.

The CHAIRMAN: The committee stands adjourned until Friday morning at 9:30.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE

on the

CIVIL SERVICE ACT

(Bill C-71)

Chairman: Mr. R. S. MacLellan

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 23

FRIDAY, JUNE 23, 1961

Bill C-71, An Act respecting the Civil Service of Canada

INCLUDING FIRST REPORT TO THE HOUSE

WITNESSES:

Honourable Donald M. Fleming, Minister of Finance; and Mr. E. A. Driedger, Q.C., Deputy Minister of Justice.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

25489-6—1

SPECIAL COMMITTEE ON THE

CIVIL SERVICE ACT

Chairman: Mr. R. S. MacLellan

and Messrs.

Bell (*Carleton*)	Macdonnell	Pickersgill
Caron	MacRae	Richard (*Ottawa East*)
Casselman (Mrs.)	Martel	Roberge
Hanbidge	McIlraith	Rogers
Hicks	More	Spencer
Keays	O'Leary	Tardif
Lafreniere	Peters	

(Quorum 11)

E. W. Innes,
Clerk of the Committee.

CORRECTIONS—(English copy only)

PROCEEDINGS No. 21—Friday, June 16, 1961.

In the Minutes of Proceedings—On page 485 of the printed Proceedings,—Lines 37 to 43, inclusive, should read:

On Clause 2

On motion of Mr. Bell (*Carleton*), seconded by Mr. Keays,

Resolved,—That immediately after paragraph (*k*) in subclause (1), a new paragraph be inserted as follows:

(*l*) "incompetence" means incompetence of an employee in the performance of his duties, and includes negligence;

and that the present . . . .

REPORT TO THE HOUSE

MONDAY, June 26, 1961

The Special Committee on the Civil Service Act has the honour to present its

FIRST REPORT

Your Committee has considered Bill C-71, An Act respecting the Civil Service of Canada, and has agreed to report it with the following amendments:

On Clause 2

1. In subclause (1), paragraph (*b*), page 1 of the Bill, delete the word "and" at the end of line 25; and add the word "and" at the end of subparagraph (v), line 28.
2. In subclause (1), add the following new subparagraph (vi) to paragraph (*b*), immediately after line 28, page 1 of the Bill:

   (*vi*) the officers, clerks and employees of both Houses of Parliament and of the Library of Parliament;
3. In subclause (1), immediately after paragraph (*k*), following line 34 on page 2 of the Bill, insert the following as new paragraph (*l*):

   (*l*) "incompetence" means incompetence of an employee in the performance of his duties, and includes negligence;
4. Reletter present paragraphs (*l*) to (*s*) of subclause (1) to read (*m*) *to* (*t*), respectively.
5. Delete the relettered paragraph (*p*) of subclause (1) on page 2 of the Bill and substitute therefor the following:

   (*p*) "misconduct" means misconduct of an employeee in the performance of his duties, and includes bringing the civil service into disrepute;
6. In subclause (2), delete the letter "(*p*)" in line 7, page 3 of the Bill, and insert therefor the letter "(*q*)".

On Clause 5

1. Delete all the words in subclause (1) after the word "Commission" in line 26, page 4 of the Bill.
2. Immediately following subclause (1), insert the following as a new subclause (2):

   (2) For the purposes of this Act, the Commission and the staff of the Commission constitute a department and the Chairman is the deputy head in relation thereto.
3. Renumber the present subclause (2) to (5), on page 4 of the Bill, to read (3) to (6), respectively.

On Clause 7

Delete all the words in Clause 7 as it appears on page 5 of the Bill and substitute therefor the following:

7. (1) The Minister of Finance or such members of the public service as he may designate shall from time to time consult with representatives of appropriate organizations and associations of

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employees with respect to remuneration, at the request of such representatives or whenever in the opinion of the Minister of Finance such consultation is necessary or desirable.

(2) The Commission and such members of the public service as the Minister of Finance may designate shall from time to time consult with representatives of appropriate organizations and associations of employees with respect to the terms and conditions of employment referred to in subsection (1) of section 68, at the request of such representatives or whenever in the opinion of the Commission and the Minister of Finance such consultation is necessary or desirable.

(3) The Commission shall from time to time consult with representatives of appropriate organizations and associations of employees with respect to such terms and conditions of employment as come within the exclusive jurisdiction of the Commission under this Act and the regulations, at the request of such representatives or whenever in the opinion of the Commission such consultation is necessary or desirable.

On Clause 10

Immediately after subclause (2), add the following as a new subclause (3):

(3) Prior to formulating any recommendations under this section the Commission shall from time to time as may be necessary consult with representatives of appropriate organizations and associations of employees with respect to the matters specified in this section.

On Clause 25

Delete all of the words in lines 21 to 27, inclusive, on page 10 of the Bill, and substitute therefor the following:

"25. Where the Commission is of the opinion that a competition is not practical or is not in the public interest because

(*a*) an appointment to a position is urgently required,

(*b*) the availability of suitable candidates for a position is limited, or

(*c*) a person having special skill or knowledge is required for a position involving duties of an exceptional character,

the Commission may make an appointment to that position without competition."

On Clause 27

1. In line 36, page 10 of the Bill, delete the words "an employee" and substitute therefor the words "a person".
2. In line 37, page 10 of the Bill, delete the word "another" and substitute therefor the word "a".
3. In lines 38 and 41, delete the word "employee" and, in each case, substitute therefor the word "person".

On Clause 33

Substitute a comma for the period, immediately following the word "performed" in line 5, page 12 of the Bill, and add the following words:

but in so doing the Commission shall not discriminate against any person by reason of race, national origin, colour or religion.

On Clause 38

Strike out all of the words in subclause (3), lines 40 to 46, page 12 of the Bill, and substitute therefor the following:

(3) Where in the opinion of the Commission there are sufficient qualified applicants

(*a*) coming within paragraphs (*a*) and (*b*) of subsection (1) of section 40, or

(*b*) coming within paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section 40

to enable the Commission to prepare an eligible list in accordance with section 42, the Commission may confine its selection of qualified candidates under subsection (1) of this section to those applicants.

On Clause 54

1. Insert the following words at the beginning of subclause (2), immediately after the numeral "(2)", in line 31, on page 18 of the Bill;

notwithstanding anything in this Act,

2. In subclause (3), immediately after the words "twelve months" in line 1, page 19 of the Bill, insert the following:

, or such longer period not exceeding two years as the Commission may determine,

3. In subclause (5), immediately after the word "or" in line 11, page 19 of the Bill, insert the words:

if, except for reasons that in the opinion of the Commission are sufficient, he

On Clause 56

In subclause (1), insert the words "or incompetence" immediately after the word "misconduct" in line 28, page 19 of the Bill.

On Clause 57

Insert the words "or incompetence" immediately following the word "misconduct" where it appears in lines 26 and 27, page 20 of the Bill.

On Clause 59

In subclause (3), insert the words "or incompetence" immediately following the word "misconduct" where that word appears in lines 2 and 3, and in line 10, page 21 of the Bill.

On Clause 61

In subclause (3), substitute a comma for the period at the end of line 4 on page 22 of the Bill, and add thereto the following:

personally and through his representative.

On Clause 62

Delete all of Clause 62 as it appears on page 22 of the Bill and substitute therefor the following:

"62. (1) The following days are holidays for the civil service:

(*a*) New Year's Day;

(*b*) Good Friday;

(*c*) Easter Monday;

(*d*) the day fixed by proclamation of the Governor in Council for the celebration of the birthday of the Sovereign;

(*e*) Dominion Day;
(*f*) Labour Day;
(*g*) Remembrance Day;
(*h*) Christmas Day; and
(*i*) the day fixed by proclamation of the Governor in Council as a general day of thanksgiving;

and any other day fixed by proclamation of the Governor in Council as a holiday for all or any part of the civil service is a holiday for the civil service or for that part of the civil service, as the case may be.

(2) The Governor in Council may make regulations providing for the grant of leave of absence to employees where a holiday specified in subsection (1) falls on a day when they are not required to perform the duties of their positions."

On Clause 63

In subclause (1), delete the words "a period of" in line 26, page 22 of the Bill.

On Clause 68

In paragraph (*s*) of subclause (1) on page 25, substitute a comma for the semicolon at the end of line 45 and add the following:

and prescribing the procedure for dealing with grievances, as defined in such regulations, arising out of the administration of this Act and of the regulations;

On Clause 69

1. Delete the word "and" at the end of paragraph (*b*) in line 13 on page 26 of the Bill; substitute a semicolon for the period at the end of paragraph (c), in line 15, and add immediately thereafter the word "and".

2. Immediately following line 15 on page 26 of the Bill, add a new paragraph as follows:

(d) establishing the procedures under which the consultations authorized by section 7 shall be conducted.

On Clause 70

Subclause (3) is amended by striking out the words "either personally or through a representative" in line 24, page 26 of the Bill, and substituting therefor the following:

personally and through his representative".

On Clause 72

Strike out all of subclauses (1), (2) and (3) on pages 27 and 28 of the Bill, and substitute therefor the following:

72. (1) The Senate and the House of Commons may, in the manner prescribed by subsections (2) and (3), apply any of the provisions of this Act to the officers, clerks and employees of both Houses of Parliament and of the Library of Parliament.

(2) Any action with respect to the officers, clerks and employees of the Senate or the House of Commons authorized or directed to be taken by the Senate or the House of Commons

under subsection (1), or by the Governor in Council under any of the provisions of this Act made applicable to them under subsection (1), shall be taken by the Senate or the House of Commons, as the case may be, by resolution, or, if such action is required when Parliament is not sitting, by the Governor in Council, subject to ratification by the Senate or the House of Commons, as the case may be, at the next ensuing session.

(3) Any action with respect to the officers, clerks and employees of the Library of Parliament and to such other officers, clerks and employees as are under the joint control of both Houses of Parliament authorized or directed to be taken by the Senate and House of Commons under subsection (1), or by the Governor in Council under any of the provisions of this Act made applicable to them under subsection (1), shall be taken by both Houses of Parliament by resolution, or, if such action is required when Parliament is not sitting, by the Governor in Council, subject to ratification by both Houses of Parliament at the next ensuing session.

On Clause 73

Strike out all of the Clause, as it appears on page 28 of the Bill and substitute therefor the following:

73. The Governor in Council may appoint and fix the remuneration of

(*a*) the Clerk of the Privy Council,
(*b*) the Clerk of the Senate,
(*c*) the Clerk of the House of Commons, and
(*d*) the Secretary to the Governor General,

who shall be deputy heads for the purposes of this Act.

On Clause 76

1. In subclause (2), substitute the word "this" for the word "the" at the beginning of line 14, page 29 of the Bill.
2. Immediately after subclause (2), add the following as a new subclause (3):

(3) The Commission shall make a report to Parliament within thirty days of the beginning of each session setting forth the information specified in subsection (2) for the period commencing at the end of the year for which the latest report was made under subsection (2) and ending at the end of the month immediately preceding the month in which that session began.

Your Committee has ordered a reprint of the Bill, as amended.

A copy of the Committee's Minutes of Proceedings and Evidence is appended hereto.

Respectfully submitted,

R. S. MacLellan,
Chairman.

MINUTES OF PROCEEDINGS

FRIDAY, June 23, 1961.
(25)

The Special Committee on the Civil Service Act met at 9.40 a.m. this day, the Chairman, Mr. R. S. MacLellan, presiding.

Members present: Mrs. Casselman and Messrs. Bell (*Carleton*), Caron, Hicks, Macdonnell (*Greenwood*), MacLellan, Martel, McIlraith, O'Leary, Richard (*Ottawa East*), Rogers and Tardif.—12

In attendance: Honourable Donald M. Fleming, Minister of Finance; and Mr. E. A. Driedger, Q.C., Deputy Minister of Justice.

Mr. Fleming was called, and he referred to the work of the Committee and to certain clauses in Bill C-71, particularly to Clause 7.

The Minister then submitted a number of proposed amendments for the consideration of the Committee.

Mr. Driedger was called, and he explained the phraseology of certain clauses.

The Committee continued with its clause-by-clause consideration of Bill C-71.

Clauses 7, 10 and 69 were considered together.

On Clause 7

Mr. Macdonnell (*Greenwood*) moved, seconded by Mr. Rogers,

That all of Clause 7, as it appears on page 5 of the Bill, be deleted and the following substituted therefor:

7. (1) The Minister of Finance or such members of the public service as he may designate shall from time to time consult with representatives of appropriate organizations and associations of employees with respect to remuneration, at the request of such representatives or whenever in the opinion of the Minister of Finance such consultation is necessary or desirable.

(2) The Commission and such members of the public service as the Minister of Finance may designate shall from time to time consult with representatives of appropriate organizations and associations of employees with respect to the terms and conditions of employment referred to in subsection (1) of section 68, at the request of such representatives or whenever in the opinion of the Commission and the Minister of Finance such consultation is necessary or desirable.

(3) The Commission shall from time to time consult with representatives of appropriate organizations and associations of employees with respect to such terms and conditions of employment as come within the exclusive jurisdiction of the Commission under this Act and the regulations, at the request of such representatives or whenever in the opinion of the Commission such consultation is necessary or desirable.

In amendment thereto, Mr. Caron moved, seconded by Mr. Tardif,

That Clause 7 be amended to read as follows:

"7. (1) The Commission, and such members of the public service as the Minister of Finance may designate, SHALL NEGOTIATE DIRECTLY with representatives of appropriate organizations and associations of employees of the Crown, with respect to pay and other terms and conditions of employment, at the request of such representatives, or wherever in the opinion of the Commission or the Minister of Finance, as the case may be, such negotiation and consultation is necessary or desirable in the interests of Civil Service or the Government. Such direct negotiation and consultation shall be initiated by either the Governor in Council, its appointees, or the appropriate staff associations and organizations noted above.

(2) Where negotiation does not result in agreement, the matter under dispute shall be taken to an arbitration tribunal by either party.

(3) The results of such negotiation and/or arbitration shall be proclaimed by a suitable instrument, where necessary subject to the approval of parliament."

The question being put on the amendment, it was resolved in the negative as follows: YEAS: 3. NAYS: 7.

Mr. Macdonnell's motion was adopted, *on division.*

On Clause 10

Mr. Bell (*Carleton*) moved, seconded by Mrs. Casselman,

That Clause 10 be amended by adding thereto the following as new subclause (3):

(3) Prior to formulating any recommendations under this section the Commission shall from time to time as may be necessary consult with representatives of appropriate organizations and associations of employees with respect to the matters specified in this section.

The motion was carried *on division;* and the clause, as amended, was adopted, *on division.*

Clauses 11 to 14 were carried, *on division.*

On Clause 69

Mr. Bell (*Carleton*) moved, seconded by Mr. Martel,

That Clause 69 be amended by striking out the word "and" at the end of paragraph (*b*) of line 13 on page 26; insert the word "and" at the end of paragraph (c) in line 15 and add the following new paragraph (*d*):

(*d*) establishing the procedures under which the consultations authorized by section 7 shall be conducted.

The motion was adopted, *on division;* and the clause, as amended was adopted, *on division.*

On Clause 62

On motion of Mr. Bell (*Carleton*), seconded by Mr. Hicks,

Resolved,—That Clause 62 as it appears on page 22 of the Bill be deleted and the following substituted therefor:

62. (1) The following days are holidays for the civil service:

(*a*) New Year's Day;
(*b*) Good Friday;
(c) Easter Monday;
(*d*) the day fixed by proclamation of the Governor in Council for the celebration of the birthday of the Sovereign;
(*e*) Dominion Day;

(*f*) Labour Day;
(*g*) Remembrance Day;
(*h*) Christmas Day; and
(*i*) the day fixed by proclamation of the Governor in Council as a general day of thanksgiving;

and any other day fixed by proclamation of the Governor in Council as a holiday for all or any part of the civil service is a holiday for the civil service or for that part of the civil service, as the case may be.

(2) The Governor in Council may make regulations providing for the grant of leave of absence to employees where a holiday specified in subsection (1) falls on a day when they are not required to perform the duties of their positions.

On Clause 76

On motion of Mr. Bell (*Carleton*), seconded by Mr. Rogers,

Resolved,—That subclause (2) be amended by striking out the word "the" at the beginning of line 14 on page 29 of the Bill and substituting therefor the word "this"; and by adding immediately after subclause (2) the following as a new subclause (3):

(3) The Commission shall make a report to Parliament within thirty days of the beginning of each session setting forth the information specified in subsection (2) for the period commencing at the end of the year for which the latest report was made under subsection (2) and ending at the end of the month immediately preceding the month in which that session began.

Schedules A, B and C were adopted.

The Title was adopted; and the Bill, as amended, was adopted, *on division.*

The Chairman was ordered to report the Bill, as amended, to the House.

On motion of Mr. Martel, seconded by Mr. Rogers,

Ordered,—That the Bill, as amended by the Committee, be reprinted.

Mr. Bell (*Carleton*) and Mr. Tardif, on behalf of the Members of the Committee, expressed appreciation of the manner in which the Chairman had carried out his duties and for the cooperation and assistance rendered to the Committee by the witnesses.

In turn, the Chairman thanked the Members of the Committee for their assistance and cooperation.

At 11.00 a.m. the Committee adjourned.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

FRIDAY, June 23, 1961.

The CHAIRMAN: Mrs. Casselman and gentlemen, we have a quorum and I ask the meeting to come to order. As you see, we have the Minister of Finance with us this morning, and he has a statement to make on some of the clauses in the bill that we have not yet passed.

Hon. DONALD M. FLEMING (*Minister of Finance*): Mr. Chairman, I am very grateful for the opportunity of returning to this committee. I have not been called back since you had your first meeting, but naturally I have followed with great interest the proceedings of the committee. It is quite obvious that the committee has gone about its important task with a spirit of thoroughness, and in patient determination to do a thorough piece of work on this legislation. Probably in the end the members of the committee will have an unrivalled knowledge and understanding of the whole civil service system and Canada's legislation in relation to it.

I shall not dwell on general considerations, except to say I am quite certain that in the course of the studies and considerations in the committee's deliberations the Canadian civil service system has been vindicated and strengthened in the eyes of all.

May I just say a word about procedure, Mr. Chairman? No doubt you will be reporting to the house soon and the bill, as reported, will then be referred in the house to committee of the whole. It will be the government's hope that this bill may be brought forward as quickly as possible in order that it may come into effect at the present session. When it comes back to the house it will, I suppose, be my responsibility as the sponsor of the bill to pilot it through committee of the whole, I hope with the assistance of all members of the committee. I may say I am acquainted with the amendments which the committee has thus far approved, and am happy to accept all of them and to support them in the house.

Mr. Chairman, I think my role this morning is to deal with some of the questions that are outstanding and on which the committee will be making determinations, I understand very shortly. Here I thank you for the courtesy of allowing me to come and indicate, as the sponsor of the bill, my views in relation to the several subjects on which there may be more difficulty than on others which have already been dealt with.

I take it the major question remaining before the committee is the one related to clause 7, and several clauses related thereto, broadly concerning methods and procedures of dealing as between government and the civil service, and the commission and the civil service, with matters of wages and conditions of employment, of mutual interest. In that respect I shall have something to say specifically concerning the provisions of clauses 7, 10 and 69.

Then, I understand there is a second question that has been reserved arising out of the provisions of clause 62 respecting the formulation of legislative provisions in relation to holidays.

To begin with, may I take up the first broad question mentioned? At the present time, of course, we have the pay research bureau operating within or under the jurisdiction of the civil service commission, and in my view that is the place where it should operate. I think the pay research bureau, in the relatively short time it has been in existence, has fully justified that existence, and the

hopes that were held out for it when it was first established; and I believe it will continue to be of increasing assistance to all concerned, to the government, to the civil service commission and to the civil service.

From the various associations representative of the civil service you have had various proposals in this regard and there are differences among them in their approach to this question. They would be complicated also by the fact that the legislation treats the civil service as one body, homogeneous in certain senses; whereas some of their approaches would, if given legislative effect, involve regarding the civil service as being made up of certain groups, each with a certain status.

Another problem that was raised, as among the representations you have received from the associations through their executives, concerned the question of how far this legislation should go in giving express recognition to collective bargaining. You had some representations that asked for the right of collective bargaining without the right to strike, and you had others that proposed there should be the right of collective bargaining recognized legislatively with the right to strike.

Mr. Chairman, I do not think parliament could possibly accept any measure that contemplates where the national interest is involved, as it certainly would be, any question of strike. That would be very damaging. It could have the effect of paralyzing important national public services. In general, Mr. Chairman, may I say this concerning legislation as applied to the question of relations between those who represent the associations and the government, or between the associations and the civil service commission: I think that, to begin with, in this field we must recognize that legislation of itself is not the whole nub of the problem. You could have discussions; you could have negotiations; you could have consultations—all these terms that have been employed to apply to the kind of contacts that have been suggested from various quarters—you could have all these without any legislation at all. In the present act, the one we are now in the process of supplanting with a brand new act, there is virtually nothing on that subject. You have not legislation on that subject, of the kind that is proposed, in the provinces of this country, with one exception; and when we think of the United Kingdom with its long experience, and the success that has been attained in this field in that country, we must remind ourselves this has not been made a matter of legislation in that country, even in relation to what are understood to be the provisions for arbitration. It seems to me, Mr. Chairman, that what we need to concentrate or think on, in an approach to this question, is to recognize that you could have effective discussions without any legislation at all.

In all fairness, I think the question of a legislative formulation of provisions in this field has tended to be exaggerated in importance in our discussions. It is perfectly natural, of course, when we are recasting the legislation in this field that we try to make as complete a codification of the legislation as may be proper, but I think we might well remind ourselves there are other things which are just as important in this matter of the relations.

First of all, Mr. Chairman, I believe we need to think in terms of some kind of machinery or method, and that was the thought behind clause 7 when it was first drafted. It was decided to give some basic recognition to what was certainly to be a legislative and existing fact. There is also the question of experience in this field, and experience in this field I think is highly desirable. It might be very difficult to work out legislatively some ready made system in this field. What I think is needed much more is experience of working together in this field without too much firm, rigid formulation; and with experience there will, I am sure, be a development of relations in this field that are not dependent merely upon the words of legislation.

I stress the fact that I think it would be very difficult to give an adequate legislative formulation with a view to setting up some ready-made system, and I think it would be a mistake in this area to be too formal in our legislative approach. It would be a mistake to be too rigid. If that were attempted there would immediately be questions about representation by different associations of different groups of employees within the civil service commission.

The Heeney report put forward a particular proposal designed, as I understand it, to offer an opportunity for experimentation in this field. The idea broadly was that the civil service commission would act as a sort of moderator of discussions, and would have representatives of the employees associations on one side of the table and representatives of treasury board on the other. This was not acceptable to the representatives and spokesmen for the employees' association.

What I think we need, Mr. Chairman, and what will be so essential in this field, is a willingness to explore and to go forward in a spirit of goodwill and mutual confidence. I think that is possible. So far as I am personally concerned that would be my hope and my wish, indeed my firm determination, as to any part that I may have to play in this matter.

To sum it up, Mr. Chairman, I will be putting forward certain suggested amendments to clauses 7, 10 and 69. It will be observed that very substantial and far-reaching provisions are contained in clauses 7 and 10, for consultation between representatives of government and the civil service commission and representatives of the civil service staff associations. These do not, however, contain any legislative provision for reference of irreconcilable differences to any form of arbitration. Here, I think that all parties may recognize that any provision in the Civil Service Act, or indeed in any statute, which would abridge the rights of parliament, and in particular its control over the extent to which moneys will be voted, is not in accordance with long-standing tradition and indeed has no precedent in the much discussed Whitley council system established in the United Kingdom. It is no disparagement of the Whitley council system, which has been successfully established there, to say that it is not explicitly recognized or provided for in any act of parliament or by any order in council. We do not wish to embark on any radical or untried form of legislative action, but we—I speak for my colleagues and myself—are willing to explore the possibility of developing in Canada procedures based upon precedent and fortified by good faith.

I think it is recognized by all, Mr. Chairman, that any system of negotiation which might be considered will require considerable time, and no doubt patience, to develop along these lines. I am led to believe that the views of the staff associations themselves on matters of representation fall somewhat short of unanimity. I would respectfully suggest, therefore, that this whole question be carefully explored so that the rights of parliament will not be unduly abridged, and that all of us on our part and in our turn will be able to develop an approach to the question of consultation on matters of pay and conditions of employment which, being based upon precedent and experience, will stand the test of time.

Mr. Chairman, I would ask the privilege of laying before you amendments that I would propose to clauses 7, 10 and 69 in relation to this subject. These amendments will go part way to meet some of the suggestions which have been put forward, but will be within the framework of the approach which I have indicated.

Perhaps, Mr. Chairman, when these have been distributed, I might say a word by way of explanation of the changes that have been made. I think these three clauses might well be considered together; at least, if I may, I should like to offer my comments in relation to the three because I believe these three clauses all have a bearing on one another.

The CHAIRMAN: I think that would be agreeable to the committee, Mr. Fleming.

Mr. FLEMING (*Eglinton*): There are three sheets relating respectively to clauses 7, 10 and 69. May I take up No. 7 first, Mr. Chairman, and there should be three sheets in the hands of hon. members relating respectively to clauses 7, 10 and 69. First, in relation to clause 7, Mr. Chairman, it is proposed that it should now read:

> Consultations with staff organizations by Minister
>
> 7. (1) The Minister of Finance or such members of the public service as he may designate shall from time to time consult with representatives of appropriate organizations and associations of employees with respect to remuneration, at the request of such representatives or whenever in the opinion of the Minister of Finance such consultation is necessary or desirable.
>
> By Commission and Minister
>
> (2) The Commission and such members of the public service as the Minister of Finance may designate shall from time to time consult with representatives of appropriate organizations and associations of employees with respect to the terms and conditions of employment referred to in subsection (1) of section 68, at the request of such representatives or whenever in the opinion of the Commission and the Minister of Finance such consultation is necessary or desirable.
>
> By Commission
>
> (3) The Commission shall from time to time consult with representatives of appropriate organizations and associations of employees with respect to such terms and conditions of employment as come within the exclusive jurisdiction of the Commission under this Act and the regulations, at the request of such representatives or whenever in the opinion of the Commission such consultation is necessary or desirable.

May I point out that whereas clause 7 in the bill as introduced has simply the one paragraph in it and deals in that same paragraph with the functions of the commission and the public service through the Minister of Finance, the new draft proposes to separate the functions of the government and the commission. I think this has been touched on in the discussions, and probably I do not need to dwell on the reasons for it. It is now proposed that in subclause (1) the provisions should be confined to the legislative terms concerning the Minister of Finance. Subclause (1) will now have no reference to the commission as such.

Subclause (2) deals with those matters in which the commission and the government have a joint interest.

Subclause (3) deals separately with those matters that concern the responsibility of the commission alone.

We now have a three-branch approach to this question of consultation—the first where the minister alone, and not the commission, is concerned; the second where the commission and the government are jointly concerned, and the third in the area where the commission under the statute alone has the responsibility. Provision is made in these three cases for the kind of consultation that has been proposed in the legislation.

There has been discussion, of which I am well aware, about the precise meaning of this word "consultation". As I am sure a good many members of this committee have done, I have looked at the dictionary to see if there was some word which would better fit what is in mind in this regard. Frankly, apart from going into a field that I think would be premature and rigid at this time, and until there has been more experience in this field, I think that we cannot choose a better word for this legislative purpose than the word "consultation".

May I turn now to the second sheet, which is as follows:

Consultation with staff organizations.

Clause 10

Add to Clause 10 the following subclause:

"(3) Prior to formulating any recommendations under this section the Commission shall from time to time as may be necessary consult with representatives of appropriate organizations and associations of employees with respect to the matters specified in this section."

This proposes to amend clause 10 of the bill which concerns pay and allowances, by the addition of subclause (3) which will relate the procedure under clause 10 to the kind of consultation which is provided for in clause 7 as amended. It will provide that prior to formulating any recommendations under this section, namely recommendations by the commission to the government, the commission shall—this is imperative—from time to time, as may be necessary, consult with representatives of appropriate organizations and associations of employees with respect to the matters specified in this clause, that concerns rates of pay and other terms and conditions of employment.

Then the third sheet contains a proposed amendment to clause 69. This proposal is as follows:

Clause 69

Strike out the word "and" at the end of paragraph (b) in line 13 on page 26, insert the word "and" at the end of paragraph (c) in line 15 and add the following paragraph:

"(d) establishing the procedures under which the consultations authorized by section 7 shall be conducted."

This is related alike to the provisions proposed for amending clauses 7 and 10. Clause 69, at the present time, authorizes the governor in council to make regulations in certain cases. This power of regulation would be enlarged to include subclause (d) to embrace the establishment of procedures under which the consultations authorized by clause 7 shall be conducted. I am sure it will give further recognition to the importance to be attached by all concerned to the consultations which are to be carried on under the provisions of the earlier clauses.

Mr. Chairman, unless there are questions at a later point, perhaps I have said enough to the committee on those three clauses, I might turn now to the other subject which I understand has been reserved by the committee. It concerns clause 62, affecting holidays.

There are difficulties here and I am bringing forward a proposed amendment which is as follows:

Clause 62

Strike out Clause 62 and substitute therefor the following:

Holidays.

"62. (1) The following days are holidays for the civil service:

(a) New Year's Day;
(b) Good Friday;
(c) Easter Monday;
(d) the day fixed by proclamation of the Governor in Council for the celebration of the birthday of the Sovereign;
(e) Dominion Day;
(f) Labour Day;
(g) Remembrance Day;

(*h*) Christmas Day; and

(*i*) the day fixed by proclamation of the Governor in Council as a general day of thanksgiving;

and any other day fixed by proclamation of the governor in council as a holiday for all or any part of the civil service is a holiday for the civil service or for that part of the civil service, as the case may be.

When holiday falls on day of rest.

(2) The governor in council may make regulations providing for the grant of leave of absence to employees where a holiday specified in subsection (1) falls on a day when they are not required to perform the duties of their positions."

Mr. Chairman, I think the purposes of the amendments in clause 62 will be obvious. There has been a difficulty which I understand you have already faced in relation to the inclusion of Sundays in the list of holidays. This has raised certain difficulties. It seemed to us that the most effective way of meeting the problem was to remove any reference to Sunday from the enumeration of holidays for the civil service. Therefore you will observe, Mr. Chairman, that the list of holidays set forth in the proposed amendment is the same as that now appearing in the bill, clause 62, except that Sundays have been dropped and the enumeration is simply relettered accordingly.

You have the provision following that enumeration, that any other day fixed by proclamation of the governor in council as a holiday for all or any part of the civil service is a holiday for the civil service, or for that part of the civil service, as the case may be. Then we have proposed an addition, a new subsection (2) which reads:

> The governor in council may make regulations providing for the grant of leave of absence to employees where a holiday specified in subsection (1) falls on a day when they are not required to perform the duties of their positions.

Again, Mr. Chairman, from what I understand of the course of the discussion on this matter in previous meetings of the committee, the purposes here will be obvious. It is not, believe me, in order to take any more power to the governor in council, because this is not a field in which the governor in council will feel happy in the exercise of that power. I do not think I need expand on that theme. It seemed to be the one effective way of escaping certain rigidities which, I think, are obvious otherwise and of ensuring that, having regard to the conditions in various areas of the civil service, there should not be discriminatory effects following an enumeration of this kind because with some the work day is different from others. It seems, from our study of the situation, that we will have to fall back on a power of regulation to avoid, as I am sure we would all wish to do, any discriminatory effect within the civil service, having regard to the variety of conditions there, in relation to the days and times of duty, from the rigidities which would otherwise exist. It is the rigidities which would be very likely to give rise to a discriminatory effect.

I think that is all I have to say. Perhaps I have said more than there was any need to say, but may I respectfully commend these proposed amendments to the consideration of the committee. I hope they will be viewed as meeting some of the suggestions, the constructive suggestions which have been advanced in the course of your hearing of representations and your discussions. They are put forward in the hope that they will offer means of making better use of the provisions of the bill and the procedures which are contemplated there. Thank you very much.

The CHAIRMAN: Thank you very much, Mr. Fleming.

Mr. McILRAITH: May I ask Mr. Fleming a question arising out of the latter part of the proposed clause 62? Is he satisfied that the power taken to the governor in council, to make regulations as limited by subclause (2) to those areas, is wide enough? It says:

> For the grant of leave of absence to employees where a holiday specified in subsection (1) falls on a day when they are not required to perform the duties of their positions.

Is he satisfied that that is wide enough to permit authority to make regulations, for instance, to cover the case of shiftworkers who are required to work on Saturdays—and July 1 falls on a Saturday this year.

Mr. FLEMING: I think it might be better to ask Mr. Driedger, if it is a question of precise wording.

Mr. McILRAITH: Could I take it from your answer, Mr. Fleming, that it was your intention that it should be wide enough to do that?

Mr. FLEMING: It is intended, Mr. Chairman, that there should be complete equity in these cases and that those who, in the case Mr. McIlraith has put, have to work on Saturday, the first of July, should not thereby suffer by comparison with others in the service. Mr. Driedger will confirm that the provisions he has drafted for subclause (2) are broad enough to achieve that purpose.

Mr. E. A. DRIEDGER, Q.C., (*Deputy Minister, Department of Justice*): I believe so.

The CHAIRMAN: Mr. Driedger, would you be good enough to come forward?

Mr. McILRAITH: Mr. Driedger, I am concerned with this point arising out of the latter part of clause 62, subclause (2), where the limitation of the powers of the governor in council to make regulations concerning the grant of leave is to those cases where a holiday is specified in subclause (1), taking for the purpose of illustration, July 1, which falls on a day when they are not required to perform the duties of their position. If workers are required to perform the duties of their positions on Saturdays and Sundays, would you explain to me how this gives you power to make regulations for that example I cited?

Mr. DRIEDGER: I shall have to think about that, Mr. McIlraith.

Mr. McILRAITH: Would you have a look at the point?

Mr. BELL (*Carleton*): Would that not be broad enough taking it in relation to clause 68 (1) (*d*) which makes it mandatory that any employee who is required to perform the duties of his position on a holiday shall be granted another day of leave with pay, or shall be compensated with overtime in lieu thereof? It seems to me when the two are taken together there would be power to meet the situation described by Mr. McIlraith.

Mr. McILRAITH: I think this clause, as now drafted, is too restrictive.

Mr. FLEMING (*Eglinton*): I think I can assure the committee on this and, if in the light of Mr. McIlraith's question Mr. Driedger has any doubts about the adequacy or breadth of the amendment, certainly from my point of view there would be no objection to enlarge it. What we are seeking to achieve is complete equity for all government employees.

Mr. McILRAITH: That satisfies me. If Mr. Driedger takes a look at it we can deal with it later.

The CHAIRMAN: Then it seems amending clause 62 will have to await for further consideration from the draftsman. We shall turn now to clause 7. Are there any questions on clauses 7, 10 and 69? Perhaps we could take them all together.

Mr. CARON: In my opinion the minister seems to be afraid that the rights of parliament will not be respected if the suggestions made by the association and the federation are brought into the legislation. However, I believe any time

there is an increase of any kind, it is brought in front of parliament and money has to be voted for it by parliament. Even arbitration has to be accepted by parliament before salaries are granted. Parliament has to vote the money and so parliament's rights are respected.

The minister said that the words "collective negotiation", or "bargaining" are seemingly covered by the word "consultation", but it seems to me that only the governor in council or the commission can initiate discussions on those matters from time to time whenever they think fit. What the employees seem to want is the right to initiate these discussions themselves in regard to working conditions and salaries, and the amendment submitted by the minister does not seem to cover that question.

Mr. BELL (*Carleton*): It seems to me Mr. Caron is overlooking the fact that in each of the three subclauses the words "at the request of such representatives" are included, which means that all these discussions and consultations may be initiated at any time by the staff associations.

Mr. CARON: That is what I do not seem to understand quite well. Not being a lawyer I am not well informed on the language. It only states "may initiate", but it does not say "must" or "shall". That is why I think the power resides with the governor in council and with the commission.

Mr. FLEMING (*Eglinton*): Perhaps I have not made it clear. If Mr. Caron looks at the proposed clause 7, he will see that the language in subclauses 1, 2 and 3 is in the imperative.

(1) states:

> The Minister of Finance or such members of the public service as he may designate shall from time to time consult . . . at the request of such representatives or whenever in the opinion of the Minister of Finance such consultation is necessary or desirable.

It is perfectly clear that at any time, and from time to time when the representatives of appropriate organizations and associations propose a request for such consultations, the Minister of Finance must consult. It is as imperative as it can be made. Then in subclause (2) the provision again is in the imperative, and again the words "at the request of such representatives" are plainly written in, and in subclause (3), in relation to the commission, the language is mandatory and reads:

> The commission shall from time to time consult—

—and again it is at the request of the representatives. I think it is quite clear these clauses have been drafted now in such a way as to make it clear beyond any possible doubt that at any time the appropriate representatives make the request for consultation, the Minister of Finance according to subclause (1), the commission and the Minister of Finance under subclause (2) and the commission under subclause (3) must consult. The language is clearly imperative.

Mr. RICHARD (*Ottawa East*): I think this clause 7 as submitted is a great improvement on the original clause in the bill.

Mr. BELL (*Carleton*): We cannot hear you.

Mr. RICHARD (*Ottawa East*): Clause 7, as submitted, is a great improvement upon the original clause in the proposed bill. However, I am not satisfied about this, and it was the feeling of the associations that these things would get pretty far by the time they would have time to make a request. In other words, the feeling of the associations was that the Minister of Finance or the commission, as the case may be, should consult,—that is, if you want to use the word "consult" in the bill. Let us say we agree at the present time with the word "consult".

In other words the Minister of Finance, the treasury board, and the government as the case may be, might have gone pretty far ahead with its decision, and have almost made a decision before it is made public, and the staffs would

not know remuneration was being discussed or that a decision was arrived at until it was communicated to the public. By that time it would be a little late to talk about consultation. I think consultation should be at the time the problem has arisen, and I think in all these matters the Minister of Finance should consult, and not only at the request of the associations.

Mr. FLEMING (*Eglinton*): May I draw to Mr. Richard's attention that the purpose of the amendment to clause 10, by adding subclause (3) is to provide that prior to formulating any recommendations under this section, that is to pay, allowances and termination of employment, the commission shall from time to time as may be necessary consult with representatives of appropriate organizations and associations of employees. That, in my opinion, is where all these things start, and that language is mandatory. The associations are going to be completely aware and must be consulted before those recommendations are formulated by the commission for submission to the governor in council, and all that any association has to do then is notify the Minister of Finance that they want the commission to consult with them. The provisions of clause 7 are mandatory.

Mr. RICHARD (*Ottawa East*): That is the explanation of the Minister of Finance, and I am very glad he gives that interpretation to subclause (3)—that all these matters are initiated by the commission. But I do not think the matters of pay are all initiated by the commission. I think the decision to initiate matters of pay starts somewhere else; but if that is the interpretation the Minister of Finance gives to it, that initially the representatives and the organizations would be made aware that a question of remuneration or conditions of work is being processed, so that they could immediately request to be consulted, then it is a great improvement.

Mr. FLEMING (*Eglinton*): That, I think, is the clear effect of these amendments to clause 10 and clause 7.

Mr. CARON: My impression is that civil servants should have the same right as other people to collective negotiation and even arbitration, and this would not in any way infringe the rights of parliament, because after we have the report of these bodies it is up to parliament to decide whether it will vote the money or not. Regarding the proposal which is placed in front of us it is, as was said by Mr. Richard, an improvement on section 7, but it is not completely what was asked by the different associations. They want collective negotiation or bargaining, call it whatever you like, and they want to have the right to appear before an arbitration board to see if their demand is going overboard. This is not included in the proposal.

Mr. RICHARD (*Ottawa East*): The broad question for this committee to decide is whether we are going to support the trend of the 1960's, which is to give employees the right to negotiate with their employers, whether the employers be the government or other employers, so that they can sit down with them and make their case. In other words, they can have consultation, and I expect in most cases that would be the end of it; but if there were disagreement, then they could submit their case to an independent board. These associations are very generous in their submissions. They are willing to give the governor in council a great deal of power and they propose that an arbitration board function subject to the right of parliament to review its actions and decisions. However, in my own opinion, I am not sure all this can be spelled out in legislation. I have enough experience to realize some of the difficulties. If we were dealing with one association representing all employees, all having the same problem, it would be easier and we could incorporate such a procedure in legislation. I am wondering how far we can go in this clause to spell out the kind of consultation we want to see, because

I think without a doubt the rights of the employees would be very limited if the government wants to limit them by this clause. It all depends on the procedure outlined by the governor in council as a result of this clause.

The CHAIRMAN: Mrs. Casselman and gentlemen, the Minister of Finance would like to try to get away in about five or six minutes time, and it would seem to me that it might be more orderly if, while he is here, we confined ourselves to questions concerning the amendments he has brought forward as regards the establishment of direct consultation between the staff associations and the Minister of Finance.

There is a second question as regards arbitration. There are those who might feel it should be set up by legislation; others who might think, like the Minister of Finance, that it would be better set up by a process of evolution, without any legislative authority in a direct way. I think we would move along faster this morning if we confined ourselves to the amendments brought forward by the minister to take advantage of the opportunity of his presence by asking him questions which we think should be asked to in clarification. We would then have lots of time for any debate on amendments put forward on arbitration or anything else.

Mr. RICHARD (*Ottawa East*): How can we discuss this without covering what we suggested to add to it?

The CHAIRMAN: Of course, but there are two points to it. We will first of all deal with the consultation procedure, and we would then move along faster.

Mr. MACDONNELL: I was just going to recall the words used by the Minister of Finance "—this is surely a great step forward". The minister has pointed out the undesirability of too much rigid formulation. He has also stressed his hope and expectation to have amicable relationships. Cannot we take this step forward and then see what happens, see whether these expectations are realized?

Mr. CARON: The last legislation lasted from 1918 to 1961. If it has to take that long to change the principle involved in this act, it might be too long for the employees to wait.

Mr. MACDONNELL: We are more active now.

Mr. CARON: Do you think so? I am not quite sure of that.

The CHAIRMAN: Any questions on consultation?

Mr. RICHARD (*Ottawa East*): I was going to ask the minister a question. Has he thought of some form of authority which could arbitrate any disagreement as a result of those consultations enumerated in clause 7?

Mr. FLEMING (*Eglinton*): Even if one had in mind something of this nature, Mr. Chairman, I think, and I believe Mr. Richard has recognized this, that it would be extremely difficult to provide for it in legislative form. It would immediately give rise to the problems that are inevitable here, of trying to draw lines of distinction as to where the authority of parliament remains. One cannot overlook the experience of the United Kingdom. Its is a system that has grown up there. It has not depended upon legislation; it has been a growth.

It seems to me, Mr. Chairman, that instead of trying to force ideas here into what might later prove to be some kind of legislative straitjacket, it is very much better to think in terms of developing a system. One thinks of Tennyson's expression about "broadening down from precedent to precedent".

What we all need in this field,—and I am speaking of all three bodies concerned, the civil service represented by its associations, the commission, and the government,—what we all need is more experience in this field; and if I may say so, the amendments brought forward today are going to afford

that opportunity, with due recognition of an intention that all shall bring about in this field the kind of constant consultation that will, I hope, lead to an established means of working together in harmony, in understanding and, above all, in mutual confidence.

There must be mutual confidence in this field. There must be recognition of good faith on both sides. That is more important than any legislation we could write here, if we sat until Christmas time.

I think it is in that light, Mr. Chairman, that we will find a better approach to this problem. That is the spirit, I may say, in which I brought forward these proposals to the committee.

Mr. TARDIF: The spirit no doubt is right, but the province of Ontario has legislation that permits employees of municipalities to go to arbitration, and they have that by legislation. It works very well.

Mr. FLEMING (*Eglinton*): That is in municipalities.

Mr. CARON: They also have it in Saskatchewan.

Mr. FLEMING (*Eglinton*): Yes; I said "one province", but there is only one province out of ten that has gone as far as was suggested in relation to recognizing the right of collective bargaining on the part of employees of the provincial government. It is a different thing to doing it for municipalities.

Mr. TARDIF: It is legislation passed by the province that governs the actions of municipalities and its employees.

Mr. FLEMING (*Eglinton*): It is one thing for a provincial legislature to pass laws permitting certain procedures in case of municipal employees, but stopping short of doing it in a way that binds the government of the province in relation to dealing with provincial employees. There is quite a difference there.

Mr. BELL (*Carleton*): It just applies to policemen and firemen.

Mr. FLEMING (*Eglinton*): It has limited application.

The CHAIRMAN: If there are no other questions on this, perhaps we could have a motion to insert clause 7 as amended by the committee. It is moved by Mr. Macdonnell, seconded by Mr. Rogers that clause 7, as it appears in the bill, should be deleted and substituted as has been read and as is before you. Shall the clause carry?

Mr. CARON: I should like to make a supplementary amendment to that.

Mr. FLEMING (*Eglinton*): If the committee needs me, I shall be happy to answer any questions, if there are any on which the committee would wish to question me. I know you will have an interesting debate, and I am sorry to have to miss it, but if you will excuse me, I will have to leave you, if there are no other questions, Mr. Chairman.

Mr. CARON: This is only a difference of views which we will express. They have been expressed, anyway.

The CHAIRMAN: If that is so, if there are no other questions the minister can clarify, I would like to thank him very much for coming here this morning and for putting the views of the government in regard to these amendments before us. Thank you, Mr. Fleming.

Mr. FLEMING (*Eglinton*): I would thank all hon. members for their patience in listening to me.

Mr. CARON: I would move that clause 7 be amended, and that the amendment be as follows:

7 (1) The commission, and such members of the public service as the Minister of Finance may designate, shall negotiate directly with representatives of appropriate organizations and associations of

employees of the crown, with respect to pay and other terms and conditions of employment, at the request of such representatives, or wherever in the opinion of the commission or the Minister of Finance, as the case may be, such negotiation and consultation is necessary or desirable in the interests of civil service or the government. Such direct negotiation and consultation shall be initiated by either the governor in council, its appointees, or the appropriate staff associations and organizations noted above.

7 (2) Where negotiation does not result in agreement, the matter under dispute shall be taken to an arbitration tribunal by either party.

7 (3) The results of such negotiation and/or arbitration shall be proclaimed by a suitable instrument, where necessary subject to the approval of parliament.

The CHAIRMAN: Have you a seconder?

Mr. TARDIF: I will second that.

The CHAIRMAN: This is a very important amendment. Do you have copies of the amendment that could be made available to members of the committee?

Mr. CARON: I have not very many because I have not got the staff the minister has.

The CHAIRMAN: Frankly, Mrs. Casselman and gentlemen, I have grave doubts as to whether or not this amendment is in order. It seems to me to be suggesting an alternative to the amendment, and I doubt very much if it would be in order as it is put forward. But I would like to hear from any of the members of the committee on that point. Is there any discussion on this matter? It seems to me this is an amendment which would completely defeat the amendment already proposed and which is before us.

Mr. CARON: It does not defeat it; it amends the amendment. Some parts of it are included in the amendment and some parts, which I read, are not included in the amendment. If an amendment is not completely negative, it is considered as being a regular amendment.

Mr. RICHARD (*Ottawa East*): You would strike out clause 10?

Mr. TARDIF: It could be redrafted. The purpose of it is to make sure the employees get the benefit of arbitration, if there is no complete agreement between the minister and the employees or the associations.

The CHAIRMAN: It seems to me it is chiefly a question of principle or argument. You have heard the amendment.

Mr. MACDONNELL: I would just like to say this. As I understand it, the amendment as brought in by the minister is following the British tradition in strict line. I think we do admit that the British civil service has been a model for civil services all over the world—it is certainly for the civil service in this country. I would suggest, going along with them and with the spirit which the minister has indicated, and which we all think is sincere, that we ought to be content at the moment to go along with the amendment as is, and which provides for consultation.

Mr. CARON: Mr. Chairman, I think some of the British legislation may be very good in Britain, but may not necessarily be good over here because of the difference in population, among other things. We have tried some things from Britain, such as monuments we have around the building, and it was very bad over here and very good over there. It may be the same thing for anything we might try here.

Mr. TARDIF: There should be no strenuous objection to improving the British system, if there are methods of improving it in Canada.

The CHAIRMAN: You have heard the amendment put forward by Mr. Caron and seconded by Mr. Tardif. Are you ready for the question?

Mr. BELL (*Carleton*): There seems to be only one thing before the committee, that is, whether we spell out in the legislation the technique of discussion and consultation, or whether we leave those to be developed, dwelt upon constantly as the months and years go ahead. I personally agree with the remark which Mr. Richard made earlier in which he expressed doubt as to the desirability of spelling out all particulars now in the legislation.

I personally do not disagree with anything in the amendment. My hope is that in this country within a comparatively short time we shall be able to achieve what is the Canadian impression of the Whitley system. I do not think that the amendment to the amendment will lead us any faster towards that than the amendment originally proposed by the Minister of Finance. Indeed I think that the very rigidity of the amendment to the amendment might very easily retard the development towards what I see as the desirable relationship between the civil service of the country and the government. So far as I am concerned, whatever influence I may be able to exercise at any time will be in the direction of the establishment of a Whitley council operation in this country; but I do not believe that we would be wise at this time in perhaps retarding that development by spelling out something which, in a period of time, both the staff associations and the government might consider was undesirable. It is not in any spirit of disagreement with the objectives of the amendment to the amendment, but rather on that basis, that I propose to vote against it.

Mr. TARDIF: I think there should be a correction here. Mr. Richard did not say there should be any desirability. I think he said there should not be any difficulty. That is not the same thing.

Mr. RICHARD (*Ottawa East*): That is right. My great difficulty with the amendment by the minister is that I am a little hesitant on the governor in council establishing the kind of procedures that I envisage after consultation. I think the only way to bring this to a head is to support the amendment to the amendment of Mr. Caron. I do not think in effect it would make any difference, except that there would be an assurance that there would be an independent board, or a board which would listen to the decision reached at the consultation. For that reason I support the amendment to the amendment.

Mr. ROGERS: I would like to say a few words. I think the civil service is very sensitive to the public, and quite frankly I do not think we should go too far with arbitration at this time. I am quite in accord with what the minister said, that we should use this and develop it and for that reason I want to support the amendment as brought out by the Minister of Finance.

Amendment to the amendment negatived: Ayes, 3; Nays, 7.

Amendment as outlined by the Minister, moved by Mr. Macdonnell, seconded by Mr. Rogers.

Amendment agreed to, on division.

Clause 7, as amended, agreed to, on division.

Moved by Mr. Bell (Carleton) and seconded by Mrs, Casselman: that clause 10 be amended as proposed by the minister, by adding subclause (3).

Amendment agreed to, on division.

Clause 10, as amended, agreed to, on division.

Clauses 11 to 14, inclusive, agreed to, on division.

Moved by Mr. Bell (Carleton), and seconded by Mr. Martel, that clause 69 be amended as proposed by the Minister of Finance.

Amendment agreed to, on division.

Clause 69, as amended, agreed to, on division.

On clause 62—Holidays:

The CHAIRMAN: Mr McIlraith raised a point on the proposed amendment and Mr. Driedger says he is prepared now to comment on it.

Mr. DRIEDGER: I think this does cover the situation described by Mr. McIlraith. The day on which a holiday falls is, for any particular employee, either a normal working day or it is not a normal working day. If it is, then he would get his holiday under clause 62 (1). If it is not a normal working day, then he is either required to work or he does not work. If he is required to work he would get his day under clause 68 (1) (b). If he does not work he would get it under the proposed clause 62 (2). It seems to me that it covers all the cases.

Mr. BELL (*Carleton*): In these circumstances I move that clause 62 be amended in accordance with the draft laid before us by the minister.

Moved by Mr. Bell and seconded by Mr. Hicks that clause 62, as it appears in the bill, be deleted and clause 62 as proposed by the minister be substituted therefor.

Motion agreed to.

Gentlemen, the last clause before us is clause 76 (3).

Mr. BELL (*Carleton*): This is a point which Mr. McIlraith and I raised previously. It is on the question of the report in respect of excluded positions under clause 74, or the appointment made under clause 25. The committee previously thought that another subclause should be added. Mr. Driedger has drafted one of which I think the Clerk has copies available. There is a small change made in subclause (2) where it says "the act". The wording there should be "this act". I will read the proposed amendment:

> That Clause 76 be amended by striking out the words "the Act" in line 14 on page 29 and substituting therefor the words "this Act" and by adding thereto the following sub-clause:
>
> *Special report of exclusions.*
>
> (3) The commission shall make a report to parliament within thirty days of the beginning of each session setting forth the information specified in subsection (2) for the period commencing at the end of the year for which the latest report was made under subsection (2) and ending at the end of the month immediately preceding the month in which that session began.

As the committee will see, the purpose of this is to make sure that within 30 days after the commencement of any session of parliament there will, in respect of these two types, clause 74 and clause 25, be reports from the commission.

Mr. ROGERS: I second that.

Moved by Mr. Bell, seconded by Mr. Rogers.

Amendment agreed to.

Clause 76, as amended, agreed to.

Title agreed to.

Bill, as amended, agreed to, on division.

Moved by Mr. Martel and seconded by Mr. Rogers, that the bill, as amended, by the committee, be reprinted.

Motion agreed to.

Mr. BELL (*Carleton*): Mr. Chairman, it appears that we have come to the end of our proceedings and before we conclude I should like to express, on behalf of all the members of the committee, our very sincere appreciation of the

manner in which you, sir, have presided over our deliberations. You have done so with great skill, obvious knowledge and judicious impartiality. That is known to all of us, and we are grateful for your contribution.

The CHAIRMAN: Thank you very much.

Mr. TARDIF: I should like to add to that that all witnesses who appear before us were most cooperative and most well informed, and that they made our work much easier.

The CHAIRMAN: Mrs. Casselman and gentlemen, I would like to express my appreciation to the committee for the work and cooperation of the committee during the many hours of sittings. I think we have done a very good job on the bill. I should also like to express to the civil service commission witnesses, and all staff association and other witnesses who came before us, our very great thanks for their assistance.