



DEBATES OF THE SENATE

1st SESSION



42nd PARLIAMENT



VOLUME 150



NUMBER 251

OFFICIAL REPORT
(HANSARD)

Monday, November 26, 2018

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Monday, November 26, 2018

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

CAVELL SIMMONDS

Hon. Fabian Manning: Honourable senators, today I am pleased to present Chapter 47 of "Telling Our Story."

On a trip to the Warrior Games in the United States in 2013, His Royal Highness, the Duke of Sussex, saw firsthand how the power of sport can help physically, psychologically and socially those suffering from injuries and illness. Prince Harry was inspired by his visit and the Invictus Games were born.

The Games harness the power of sport to inspire recovery, support rehabilitation and generate a wider understanding and respect for those who serve their country.

In 2018, the Fourth Invictus Games were held in Sydney, Australia and once again the event was a huge success. And, as you would expect, there is a Newfoundland and Labrador connection.

The oldest competitor at this year's Games was Cavell Simmonds from Bishop's Falls, Newfoundland, and now residing in Calgary, Alberta.

This woman of inspiration retired in 2009 after serving her country for more than 35 years as a military nurse.

She is a throat cancer survivor who has had three major operations and suffers from post-traumatic stress disorder (PTSD).

At the age of 67, Cavell was not only the oldest Games participant, but she competed in nearly every sporting event that was offered during the Games.

She won a bronze medal for archery and best female competitor in golf. She also competed in powerlifting, wheelchair rugby and sitting volleyball.

Simmonds' impressive showing at a wheelchair rugby match right after qualifying for the bronze contest in archery prompted Australian competitor, Jamie Tanner, to give her his number 11 shirt.

According to a report on the Invictus Games website, he told her she inspired him and he was proud to have met her. He said for someone who had never played wheelchair rugby before, she put everyone else to shame.

Simmonds told *The Telegram* of St. John's that was "the greatest compliment of all" and called it the proudest moment of her life. She said:

This opportunity has been very beneficial in helping me to cope with this condition.

Simmonds said other highlights during the week were meeting Prince Harry and Meghan Markle, and meeting many new friends.

She said:

I am so privileged to be participating in these games. I can't say enough good things about this opportunity.

Cavell thought she would never be accepted because of her age but was so proud to be given the opportunity to do so. Of her Invictus Games participation, she said:

I am just over the moon.

Back home in Newfoundland and Labrador, Cavell's brother, former M.P. Roger Simmonds, summed it up for all of us, I do believe, when he said:

We're very happy and very proud that she's part of the team

The word Invictus means unconquered. It embodies the fighting spirit of wounded, injured and ill service personnel and personifies what these tenacious men and women can achieve post-injury.

Cavell Simmonds has shown our province and country pride both in the military arena and, now, in the sporting arena.

I ask my colleagues to join with me in thanking, congratulating and saluting this wonderful and courageous woman of Newfoundland and Labrador.

Thank you.

[*Translation*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Mr. Robert Niesing, the husband of the Honourable Senator Forest-Niesing. He is accompanied by the senator's sisters, Mrs. Sylvie Forest and Mrs. Dominique Forest, as well as members of their families.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

[English]

ONTARIO

NEWFOUNDLAND AND LABRADOR

TWILLINGATE

Hon. Mohamed-Iqbal Ravalia: Honourable senators, I rise today to recognize the community of Twillingate, Newfoundland and Labrador, my home for the last 34 years.

In following in the footsteps of my fellow Newfoundland and Labradorian, Senator Manning, I will entitle my occasional verbiage, “From the Stethoscope to the Senate: Tales from the Bay.”

Let me begin with act one. Turn off the Trans-Canada Highway onto Route 340, aptly named the Road to the Isles, and the winding, two-lane highway takes you past the rugged coastline of Notre Dame Bay. Gorgeous, scenic vistas of the oceans and ponds, clusters of coniferous and birch trees and a series of endless fishing communities and causeways with charming names like Virgin Arm, Dildo Run, Toogood Arm, and Herring Neck finally brings you to the end of the road.

The tenacious allure of the majestic North Atlantic strikes you as you inhale the salt water air and are met by a beautiful community nestled between a rugged coastline and bold-faced, jagged and rocky protrusions.

A largely Protestant community, church steeples are sprinkled across the island and a profound sense of spirituality fills the air. The very small Catholic community and the single Muslim male have seamlessly integrated themselves with the Anglican, United, Pentecostal and Salvation Army brethren.

The colloquial ring of the local conversations are a linguist’s haven; much of the diction has remained intact for centuries and is easily traceable to the communities in Great Britain and Ireland from where the people have migrated to the New World.

It is amongst these remarkable individuals I found my foothold so far away from home. A welcoming and hardy people who had such clarity and definition of their history immediately touched me. Out of adversity had gelled a fierce and proud heritage that was captured in beautiful, singsong lilts and a self-sufficiency that exemplified an endearing spirit of survival.

• (1410)

This, honourable senators, has been the foundation on which I have built my strengths and, equally, faced my vulnerabilities, where my ideas have been formulated into the ideal by which I live. It is this nurturing environment that I and so many others were welcomed into. I continue to feel a profound sense of gratitude for a community’s gifts of generosity, unconditional love and altruism. May God continue to bless these unsung heroes.

Thank you, *meegwetch*.

OSHAWA—CLOSURE OF GENERAL MOTORS PLANT

Hon. Ratna Omidvar: Honourable senators, I wish I could follow the wonderful statements of Senators Manning and Ravalia with good news stories, but Ontarians and, in fact, our country woke up to some truly devastating news today about the closure of the GM plant in Oshawa. It’s a challenging day for all of us, but in particular for the 2,800 workers, for the community of Oshawa, for Ontario and for all of us. For over 100 years, the Oshawa assembly plant has been an economic epicentre for Ontario. General Motors has owned the plant for over 65 years. It has been home to thousands of good jobs and has been a source of countless indirect opportunities that have allowed many other enterprises to grow around and thrive. It is not an exaggeration to say that auto manufacturing runs in the DNA of Oshawa, the city and the community.

This is a shock for many reasons. In 2009, the federal government loaned almost \$11 billion to keep the company afloat during the recession, with the condition that the automaker would not reduce its manufacturing operations in Canada for six years. GM has been actively communicating with all levels of government ever since, but seems not to have hinted at such a closure. Oshawa’s mayor met with General Motors officials earlier this month and reported there was no indication that it would be ending production in the community.

I think it is unsettling to hear that a company with such a huge economic impact has made such a drastic decision without notice. Its workers learned of the decision by watching a late-night newscast or scrolling through Twitter, as I found out. By this morning, governments are talking to each other. It is my hope that something can be worked out, even at this late stage.

I think there is a lesson bigger than one company inherent in this. We all live in communities and regions. We represent cities and communities whose local economies are reliant on volatile yet shifting sectors like the automotive industry. This is a scenario that plays out far too often in all corners of the globe, and I believe it must be addressed and mitigated with forward-looking policy that understands that the nature of manufacturing is changing, consumer behaviour is changing and, in fact, products are changing.

Now, more than ever, we need to work with workers, unions, employers and governments to identify and address risks and vulnerabilities, prevent immediate closures and production stoppages, and attract further investments in industry.

I want to close by quoting a Tweet put out today by Dr. Steven Murphy, who is the President and CEO of the University of Ontario Institute of Technology:

Oshawa and Durham are resilient and the next chapter is already being written. But this stings.

I hope we all stand in solidarity with the City of Oshawa and its workers.

Thank you.

FEDERAL ENVIRONMENTAL ASSESSMENT

NORTHUMBERLAND STRAIT

Hon. Michael Duffy: Today, as we worry about the loss of jobs in Oshawa and we contemplate the possibility of back-to-work legislation, I am rising to alert Canadians to a looming environmental crisis in the Gulf of St. Lawrence, most particularly in the Northumberland Strait, and the need for the federal government to exercise its constitutional responsibilities to protect the environment.

The Province of Nova Scotia and a company called Paper Excellence plan to upgrade the Northern Pulp mill in Pictou. Everyone wants to see jobs in the Maritimes, but not at the cost of a potential environmental disaster.

Our colleagues Senator Francis and Senator Christmas have been watching developments closely and they share the concerns of Pictou Landing First Nations Chief Andrea Paul. Last week, Senators Christmas and Francis, along with Senator Griffin and I, met with representatives of fisheries groups from all three Maritime provinces. Today, effluent from that plant is dumped into Boat Harbour, but that option ends next year.

The proposed answer is to run a pipe on the seabed to carry millions of litres of caustic waste into the Northumberland Strait. If this scheme is allowed to proceed it could damage the fishery in the three Maritime provinces, Quebec's Magdalen Islands and beyond. What about the thousands of tourists who flock to the clean warm water and pure sandy beaches?

This is a project that pits jobs in the woods for those who cut and haul pulp and who process the pulp at the paper plant against the environment, tourism and the fishery.

Colleagues, the solution to pollution is no longer dilution. Better ways to solve these problems are available, and only those clean solutions should be considered.

Nova Scotia believes their provincial environmental assessment is sufficient, but frankly that doesn't cut it with the public. They see the Nova Scotia government in a conflict of interest. They are simultaneously promoting the project while at the same time claiming they are committed to protecting the environment. Given the Crown's constitutional responsibilities to our Native people, given their national responsibility for the fishery and for the environment, Ottawa has no choice but to step in immediately and do a complete environmental impact study.

This is an election year both federally and provincially. The people of our region do not want electoral politics to taint what should be a rigorous, independent and trustworthy process. Colleagues, I invite you to join Senators Christmas, Francis, Griffin and me in signing our joint letter to the Minister of Environment and Climate Change, Catherine McKenna, and to the Minister of Fisheries and Oceans, Jonathan Wilkinson, asking them to take immediate action. We're asking them for a full-

fledged federal environmental assessment of this dangerous project, and we invite you to join us in making that demand. The people of maritime Canada deserve nothing less.

Thank you.

[Translation]

ROUTINE PROCEEDINGS

FEDERAL SUSTAINABLE DEVELOPMENT ACT

BILL TO AMEND—SEVENTEENTH REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE PRESENTED

Hon. Rosa Galvez: Honourable senators, I have the honour to present, in both official languages, the seventeenth report of the Standing Senate Committee on Energy, the Environment and Natural Resources, entitled *Bill C-57, An Act to amend the Federal Sustainable Development Act, with amendments*.

(For text of report, see today's Journals of the Senate, p. 4075.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Galvez, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

• (1420)

[English]

QUESTION PERIOD

EMPLOYMENT, WORKFORCE DEVELOPMENT AND LABOUR

CANADA POST—PUBLIC OPINION RESEARCH

Hon. Donna Dasko: Honourable senators, my question is for the Government Leader in the Senate.

Has the Government of Canada commissioned any public opinion research on the issues involved in Bill C-89, including public attitudes, awareness and/or possible impact of the rotating strikes? Has the government been privy to any such research

conducted by Canada Post or others on this topic? Can these findings, including question wordings and methodologies of such research, be shared with us?

Hon. Peter Harder (Government Representative in the Senate): I'm unaware and will make inquiries.

ORDERS OF THE DAY

POSTAL SERVICES RESUMPTION AND CONTINUATION BILL

THIRD READING—DEBATE

Hon. Peter Harder (Government Representative in the Senate) moved third reading of Bill C-89, An Act to provide for the resumption and continuation of postal services.

He said: Honourable senators, it is with no sense of happiness that I rise today to speak at third reading as the sponsor of Bill C-89, An Act to provide for the resumption and continuation of postal services.

Today, much of my intervention will address concerns raised as to the compliance of this bill with the Charter of Rights and Freedoms. During our comprehensive debate last Saturday, a number of senators raised concerns about the constitutionality of the bill and were looking for comfort that it does not infringe on Canadians' rights under the Charter. I would like to spend some time discussing that.

Within that context, I will also take some time to address the pressing and substantial need for this legislation at this point in time and, in particular, the harms associated with continuation of the strike action especially now that we are into the holiday season. Before I discuss the government's position on Charter compliance, I want to speak briefly to the importance of freedom of association in Canadian society and the role that collective bargaining has and continues to play in advancing economic fairness for many Canadians and indeed around the world.

In the bigger picture, organized labour has achieved progress on issues related to workplace safety; racial and gender discrimination; disability; harassment; due process on disciplinary actions; hours; pay, including the minimum wage and the benefits that are critical to Canadian workers, particularly those supporting families. These benefits, including provisions like drug plans, dental plans, parental leave, pensions and insurance are important pieces of a modern society.

Beyond the collective bargaining processes enshrined in our statutes and the protection of the Constitution, organized labour has achieved statutory employment standard minimums and human rights protections in the private sector. Over the years,

freedom of association has fundamentally been a check on the asymmetrical power bargaining relationships that industry would otherwise enjoy against individuals in Canada. Historically, when unchecked, this asymmetry produces injustice, including people working grueling hours in unsafe conditions and still living in poverty.

The achievements of organized labour play a role in defining the economics of today's middle class and lower income households in particular. These hard won legal rights and standards have created fair opportunities in Canada's labour market and reduced economic inequality while preserving the power of free markets to generate net economic prosperity. This balance means Canadians can live a decent life in Canada, afford to raise kids and build their communities where they live.

We need to see freedom of association as a value that has helped to build Canada's middle class and must continue to do so. However, the question before the chamber today is not the value of collective bargaining. The question is the role of government with respect to collective bargaining and the role of the Senate in regard to the legislation we have before us. Together with labour and management, the government constitutes the third party in the tripartite relationship of collective bargaining. The government's role in this framework is to safeguard the fairness of collective bargaining, but also to balance the form of that process with other rights and interests vital to good governance.

With Bill C-89, we are talking about balancing the right of postal workers to strike with the needs of a vast number of businesses and charities for mail service at a critical time of the year and of the needs of citizens to access goods and services, particularly in rural and remote areas.

The collective bargaining process to date has respected fairness to both parties and Bill C-89's path forward of mediation and arbitration is similarly respectful of freedom of association. The Constitution and the government recognizes this freedom as a vital social value. However, in this instance, for the reasons senators have heard and that I will outline again today, the government is of the view that the time has come to end the strike in service of the public good while providing for an equitable process to continue what is a fair process for both labour and management.

As we know, the parties in dispute have failed to reach an agreement thus far and appear to be at an impasse. In fact, there is one issue on which the government, Canada Post and CUPW agreed during Committee of the Whole. It is that the employer and the union remain far apart.

As Minister Hajdu stated at her appearance at Committee of the Whole:

It became increasingly clear the gap between what the union perceived needed to be in the collective agreement and what the employer perceived was their capacity to provide in the collective agreement was quite large and that the parties were at an impasse.

• (1430)

Speaking on behalf of Canada Post, Jessica McDonald stated:

There is a very big gap between us and the union on a number of issues.

... the process of reaching resolution on issues has been very slow. There is a very large gap between the parties on the issues.

Mr. Mike Palecek, President of the Canadian Union of Postal Workers, presented a similar view when he said:

... after nearly a year of negotiations there had been very little movement on the core issues that we were trying to address.

Finally, colleagues, the mediator has gone home. In fact, he has sent a message to the parties saying, “The parties have been advised that based on the responses received I see no opportunity for settlement in the time remaining and am accordingly ending the session.”

At this point, the government strongly believes it has become necessary to act in the public interest not only to put an end to the ongoing harm but most importantly to prevent future damage to Canada Post and the wider economy generally and to secure continued postal service to Canada Post customers during the holiday season.

It is the government’s strong view if it does not now act to protect the public interest, it will have acted too late.

I will move now to a discussion of the constitutional issues at play in Bill C-89.

As honourable senators have heard, the Supreme Court of Canada decided in 2015 that the right to strike is constitutionally protected through the freedom of association under section 2(d) of the Charter by virtue of its role in the collective bargaining process. The case was called *Saskatchewan Federation of Labour v. Saskatchewan*.

In order to determine whether back-to-work legislation is constitutional, the courts will first determine whether it substantially interferes with the right to strike.

Second, if the court concludes there is substantial interference, it will then assess whether that interference is nevertheless justified under section 1 of the Charter.

I will address each of these questions in turn.

First, the courts assess whether legislating the return to work in a particular case amounts to a “substantial interference” with the collective bargaining process.

Whether legislative intervention is a substantial interference is not a straightforward determination but depends on the factual context of a particular case.

It is important for honourable senators to know the right to strike under the Charter is of very recent vintage.

Previously, in 1987, the Supreme Court of Canada decided the right to strike was not protected.

In 2015 the case marked a sea change as the Supreme Court specifically endorsed the right to strike as a protected right under section 2(d).

The reason this is important is there is not much jurisprudence defining the scope of the right to strike or what justifies a limit on the right to strike under section 1 of the Charter.

The law, quite frankly, is in its infancy.

It will take more cases and many years for the courts to flesh out these issues.

One case we do have is the 2016 decision of the Ontario Superior Court in *Canadian Union of Postal Workers v. Her Majesty in Right of Canada*.

That decision addressed back-to-work legislation enacted by Parliament in relation to Canada Post.

Although there are some similarities to the bill before us, it is worth reminding colleagues this is one decision dealing with one piece of legislation, the content of which is different from the bill before you today and which arose in a factual context different from the one surrounding us today.

It is also a lower court decision which may or may not persuade courts in the future.

It is not necessarily the last word.

On the interpretation of freedom of association in the collective bargaining process, the *Saskatchewan Federation of Labour v. Saskatchewan* decision from the Supreme Court of Canada offers important guidance.

In that case, the Supreme Court concluded that legislation preventing employees from engaging in any strike as part of the bargaining process substantially interfered with the freedom of association.

In the case of Canada Post before us today, postal employees have a right to strike and have exercised that right for over four weeks.

Would this make a difference in deciding whether there is a substantial interference with the collective bargaining process? Perhaps.

The Ontario Superior Court in 2016 didn’t seem to think so. But that doesn’t mean another court would necessarily take the same approach.

Bill C-89 has principles to guide an arbitrator’s decision if it comes to that. Those principles are found in section 11(3).

Those principles include protecting the health and safety of the employees; ensuring they receive equal pay for work of equal value; and ensuring fair treatment between full-time and other employees.

These are issues important to the union in this dispute.

Those principles also include ensuring the financial sustainability of Canada Post and ensuring Canada Post provides high-quality service at a reasonable price to Canadians.

These principles draw on issues of concern to the union, management and Canadians. These principles are drawn from the issues identified during the collective bargaining process.

The Supreme Court in the *Saskatchewan Federation of Labour v. Saskatchewan* case spoke about how substantial interference in the collective bargaining process is considered in relation to the balance of negotiating power between employers and employees.

At our last sitting, Senator Joyal indicated the legislation must not tip the balance of power in the employer's favour.

The guiding principles enshrined in Bill C-89 are designed precisely to maintain the balance of bargaining power.

What I say next is crucial to our assessment of the legislation.

Given the terms of Bill C-89, the employer here would face the very real possibility of losing an arbitration guided by principles that are specific to the employees' interests in this dispute.

My point here is to suggest it is not a given that the freedom of association under the Charter is limited here. This is not back-to-work legislation as we have seen it before. It is drafted differently. It takes its lessons from the Supreme Court guidance. As I said, the law is in its infancy.

The freedom of association jurisprudence in the labour context has taken several twists and turns in the past 10 years.

Many honourable senators who recall the 2008 expenditure restraint legislation may have thought it clearly limited freedom of association.

This turned out not to be the case, as indicated in the 2015 *Meredith v. Canada (Attorney General)* case from the Supreme Court and in the cases from Ontario, British Columbia and Quebec Courts of Appeal.

On the strength of these considerations, the Minister of Justice's Charter statement is correct to say that Bill C-89 "potentially engages" the freedom of association.

As her statement notes:

A meaningful collective bargaining process has been interpreted to include the ability of employees to strike in order to pursue a new collective agreement.

For reasons I've just outlined, however, the statement cannot be too definitive in concluding freedom of association is necessarily engaged.

That is because the bill before us is different than legislation previously considered by the Supreme Court and the Ontario court, and because the case law surrounding the right to strike is but a few years old and is, as I said, in development.

But the freedom of association is not the only Charter right that should be of concern to honourable senators. That is because there is a plausible claim to freedom of expression.

I'm not talking here about restraints on picketing, which clearly limit protected expression. Rather I am drawing our attention to the possibility that the act of collectively withdrawing labour is itself a protected expression irrespective of whether one pickets.

To this end, I recall for honourable senators in its 2016 decision, the Ontario Superior Court also found a limit on freedom of expression.

In the *Saskatchewan Federation of Labour v. Saskatchewan* case, the Supreme Court of Canada did not decide whether there was a limit on freedom of expression.

In other cases, judges have expressed reservations about including the act of striking under freedom of expression.

In a 2009 case involving grain workers' concerted refusal to cross a picket line, Justice Blais of the Federal Court of Appeal said if we accept work stoppages are themselves a form of expression, then almost any human activity can be considered expressive.

Again, the 2016 Ontario decision is not necessarily the final word on this issue.

Here again, I believe the Minister of Justice's Charter statement is correct to say that Bill C-89 "potentially engages" the freedom of expression.

As her statement puts it, the freedom of expression ". . . may encompass the act of withdrawing labour to express discontent over working conditions."

This is an accurate statement. It is not one that can be put more definitively given the state of our law. However, it is important for senators to know that, even if we judge there to be a limit on freedom of expression or freedom of association with Bill C-89, that is but the first step in a constitutional analysis.

• (1440)

It is a settled part of our Charter that Parliament may enact laws that limit Charter rights and freedoms. The Charter will be violated only where a limit is not demonstrably justified in a free and democratic society.

And so, for those who think Bill C-89 does limit the freedom of association or the freedom of expression, I now turn to the question of whether such a limit is justifiable in a free and democratic society.

In the government's view, Bill C-89 would be found to respect the Charter because it is justifiable in a free and democratic society.

As some honourable senators have noted, the government has established four things under section 1. First, the objective of limiting freedom of association or expression must be pressing and substantial. Second, there must be a rational connection between the objective and the limitation. Third, the legislation has to “minimally impair” the limited right or freedom, while still meeting the government’s objective. And finally, the beneficial impacts of the legislation must outweigh the impacts on the limited right or freedom.

The success of a justification along these four evaluations is highly dependent on the factual context of the specific situation.

I now turn to speak to each of these four evaluations.

The first invites us to identify and evaluate the objective pursued by Bill C-89.

In the 2016 Ontario Superior Court case, the court was satisfied the government had established a pressing and substantial objective. In that case, the strike had lasted two weeks in the summer months, not during the Christmas holiday season. The objective of that legislation, as with the objective of Bill C-89, was principally to stem the detrimental impact of postal services disruption on Canadians. As was found by the Ontario Superior Court in 2016, it is a legitimate, pressing and substantial objective to prevent damage to Canada Post and the wider economy generally and to secure a continued postal service to Canada Post customers, in particular those elderly and economically vulnerable Canadians who live in remote, rural locations.

As is the case with Bill C-89, the government in the 2016 case relied on the importance of postal services to the Canadian economy as a whole and to small- and medium-sized enterprises in particular. The work stoppage was being felt not only by Canada Post but by its suppliers, business customers, investors and governments in the form of lost orders, investments and tax revenues.

As is the case with Bill C-89, the government relied on the disproportionate impact of a work stoppage on rural, Northern and Indigenous communities. It relied on the impact on persons with disabilities, the elderly and economically vulnerable Canadians.

For all of these communities, mail is a vital form of communication.

Senators, as we heard from the ministers, the dispute has caused uncertainty for businesses, charities, workers and vulnerable Canadians. These concerns cannot be overlooked or understated.

I will talk more specifically about the harm that Bill C-89 seeks to address when I turn to the last step in the assessment, namely, the balance of beneficial and negative impacts. For now I think it’s important to refer senators to what the minister’s Charter statement identifies with respect to Bill C-89’s objectives.

The statement clearly draws on the lessons of the 2016 decision. It states:

The resumption of postal services is important to the Canadian economy as a whole. The Bill will prevent the continuing and significant economic harms to small and medium-sized enterprises, online retailers, director marketers, the employees of these organizations and others as a result of the strike. Resumption of postal services will also assist those who rely on mail as a vital form of communication and who are disproportionately impacted by the work stoppages — for example, those living in rural, Northern and Indigenous communities, persons with disabilities, and elderly and economically vulnerable Canadians.

Senators, I believe this to be a fair report on why Bill C-89 pursues a pressing and substantial objective.

The second evaluation under the justification analysis is to ask if the limit on the freedom or the right is rationally connected to the government’s objective.

In 2016, the Ontario court found there was a clear rational connection between the pressing and substantial objectives that animated the legislation and the measures devised to achieve those objectives.

Legislating back to work for Canada’s postal services was clearly linked with the government’s objective of avoiding economic harm to Canadians and to avoiding negative impacts on vulnerable Canadians. It is the same case with Bill C-89.

This brings me to the third evaluation: whether the objective could be pursued in a way that would be less impairing of the limited right or freedom.

It is here that the 2011 legislation failed before the Ontario Superior Court. The concerns of the court were essentially these:

First, the legislation fixed the wage increases and the duration of the agreement. The court said taking these items off the table was fatal to the constitutionality of the bill. In contrast, no such measure is contemplated in Bill C-89. This first concern is therefore inapplicable to the bill before us today.

The second concern outlined in the Ontario court’s reasons is the minister could appoint the arbitrator without any input from the union. In contrast, Bill C-89 provides that the minister is to appoint an arbitrator from lists provided by both parties and, where there is no common name listed, the minister will be statutorily required to seek the advice of the chairperson of the Canada Industrial Relations Board before naming an arbitrator. The second concern is therefore also inapplicable to the bill before us today.

The third concern outlined in the Ontario court’s reasons is the legislation did not permit employees to continue to express themselves through site-specific strike activity. This concern is not addressed in the bill before us.

Now, that said and with the greatest of respect to the Ontario court, it is questionable whether this finding would be followed in the future. The court essentially required an effective arbitration process and permitted strike activity to occur at the same time.

In labour relations, arbitrating and striking are two mutually exclusive ways of resolving a bargaining dispute.

More to the point, this option appears to be contrary to an important consideration in evaluating whether an alternative, less-impairing means could have been adopted by Parliament in pursuing its objective: that consideration is that the alternative means are as effective as the selected means.

I think honourable senators will agree that allowing for site-specific strike activity is not an effective way of pursuing the objective of stemming the detrimental impact of postal service disruption on Canadians, among the other objectives I previously outlined.

Under Bill C-89, employees can continue to express their dissatisfaction with the employer in ways other than withdrawing their labour.

These alternative ways ensure any limit on freedom of association or expression go only so far as necessary in order to pursue the government's pressing and substantial objectives.

In addition, Bill C-89 differs in other respects from the legislation found unconstitutional in 2016 — ways which minimally impair any limit on Charter rights.

First, the 2011 legislation prohibited union officials from any conduct encouraging employees not to return to work, which even included prohibiting returning workers from expressing dissatisfaction with the legislation — something the Ontario court found “casts a very wide net.” There is no such provision in Bill C-89.

Second, the bill privileges a voluntary resolution of the dispute by requiring the mediator-arbitrator to first endeavour to bring about a negotiated agreement. Final-offer selection is not mandatory but an option the mediator-arbitrator might or can choose.

A third important difference is the guiding principles.

The 2011 legislation contained principles that tended to weigh toward the interests of Canada Post. These included the consistency with comparable postal industries, providing Canada Post with flexibility to ensure its short- and long-term economic viability and competitiveness and the sustainability of its pension plan.

In Bill C-89, the guiding principles for the arbitrator are not one-sided. Instead, they help to equalize bargaining power between the parties, thus minimally impairing any limit on collective bargaining.

To repeat, they include protecting the health and safety of employees; ensuring workers receive equal pay for work of equal value; ensuring fair treatment between full-time and other

employees; ensuring the financial sustainability of Canada Post; and ensuring Canada Post provides high-quality service at a reasonable price to Canadians.

• (1450)

What is more, and as the Minister of Justice's Charter statement importantly recalls:

The Bill is introduced only following unsuccessful efforts to bring the collective bargaining process to a satisfactory conclusion for all parties.

As outlined in her statement:

The Government has taken significant steps to promote the collective bargaining process by encouraging a negotiated resolution of the parties' dispute. These steps include those set out in the Preamble of the Bill.

The absence of such a detailed preamble in the 2011 legislation speaks volumes about the differences between the two cases.

The parties have been collective bargaining for approximately one year.

Since the beginning of the parties' negotiations, the government has been monitoring and facilitating negotiations. The government has exhausted all options and has provided every available tool to the parties to resolve this dispute.

Prior to the work stoppages, the Government appointed conciliators and mediators to assist the parties with their negotiation. Work stoppages have continued for over four weeks. During that time, the Government has appointed, and then reappointed two additional times, a special mediator to assist the parties with their negotiation.

This includes the appointment of federal conciliators and mediators from the Federal Mediation and Conciliation Service.

When this did not bring the parties closer, the minister appointed a special mediator, Morton Mitchnick, to bring a “fresh set of eyes” to the negotiations. When limited progress was made with these tools, the government has also encouraged the parties to consider voluntary arbitration. This offer was declined.

Now the government must focus on a solution that will bring about a timely resolution.

The union has used its freedom to strike to pursue new collective agreements, but the parties have so far been unable to conclude new collective agreements.

So Bill C-89 comes to us after the collective bargaining process has failed to reach a conclusion and comes to us with provisions very different from those held to be unconstitutional in 2016.

Finally, I come to the fourth and final evaluation in a justification analysis: whether the harms to Charter rights are outweighed by the beneficial impacts of the legislation.

So what are the beneficial impacts of Bill C-89? The bill seeks to end actual and avoid reasonably anticipated economic harm to Canadians as a result of the strike. It also seeks to end and avoid harm to vulnerable groups who rely on the mail, such as Canadians with disabilities, seniors, those with lower incomes, Indigenous peoples, and people who live in the North or rural and remote areas.

Before I summarize the harm, I should point out that Parliament is not required to wait for harm to occur before it legislates. Legislation can seek to prevent reasonably anticipated harm. As well, the courts will grant Parliament a degree of deference when it is balancing competing interests between different groups.

Postal services have always been, and continue to be, a key enabler of economic activity in Canada. Canada Post has a monopoly on letter mail delivery in Canada. The corporation estimates that its domestic parcel volumes constitute approximately 50 per cent of Canada's domestic parcel market and 70 per cent of the Canadian domestic e-commerce market.

Disruptions in postal services are not merely inconvenient. They can significantly disrupt business activities. Retailers and stakeholders have reported significant declines in online business due to the labour disruption. Companies have experienced delays in receiving imported goods, whether for resale or to use in making other goods.

There have been reports of businesses facing delays in issuing invoices, making and receiving payments, including cases where companies have been cut off from key suppliers for nonpayment.

The Retail Council of Canada has stated that retailers are facing swelling inventories and growing consumer aversion to online purchases.

Alternative delivery services through couriers have nowhere near the capacity to handle the volumes that are moved by Canada Post. These disruptions are affecting current business operations, causing uncertainty, increasing costs and affecting hiring plans particularly in relation to seasonal workers.

The strikes come at a critical period for retailers. The holiday shopping period between Black Friday — that is, last Friday — and early January is a peak period for e-commerce, representing up to 40 per cent of annual revenues.

Unlike other kinds of e-commerce transactions, such as household goods, food items, clothing and so on, lost holiday sales are unlikely to be deferred to another date. They represent real and actual lost business for these companies.

The strikes are expected to cause significant and potentially enduring economic harm for some small- and medium-sized enterprises. Small- and medium-sized enterprises tend to rely more on Canada Post than larger businesses. There is a higher likelihood that they will permanently lose sales to other retailers and a reasonable expectation that many online retailers will face a net loss in revenues. Small retailers have lower capacity to switch to alternative delivery services, which are more expensive than Canada Post.

There are also limits on alternative services for companies located in rural or remote areas, or who ship to customers in those areas. Some are only serviced by Canada Post.

In addition, small- and medium-sized enterprises with limited physical presence are also less likely than larger retailers to benefit from customers opting for in-store purchases to avoid delivery delays. For example, eBay reports that small-business sellers have been forced to adapt their businesses and make costly alternative shipping arrangements in order to remain competitive and open for business. Unlike their larger competitors, small online businesses are not able to leverage their scale to negotiate favourable rates with private couriers.

Colleagues, eBay small business sellers are going to be “seriously disadvantaged,” their words, “in competing for U.S. demand” during the critical Black Friday and Cyber Monday sales opportunities.

Small businesses across the country have reported that the strikes have affected their online sales and their shipments. They have also reported so-called “basket abandonment,” when a purchaser abandons a shopping cart online as soon as they discover the shipment will be from Canada Post.

For small- and medium-sized enterprises that invoice and receive payments by mail, a work stoppage can have a serious impact. Given their small scale and limited resources, small- and medium-sized enterprises are expected to be more sensitive to negative impacts from this labour dispute, with less capacity to endure cost increases and interruptions in cash flow than larger retailers.

Depending on the duration of the disruption, there is a reasonable expectation that it will result in bankruptcies among some small- and medium-sized enterprises in Canada. It bears repeating how, for some, 40 per cent of annual revenues occur during the holiday shopping period between last Friday and the end of January next.

Overall, the disruptions to Canada Post clients may be offset to some extent by the availability of alternative delivery options, such as alternative parcel delivery services, electronic bill and invoice deliveries, electronic payments and in-person shopping. However, these alternatives may not be immediate or costless and are not available to all customers of Canada Post. Clients may resist electronic invoicing and payments. Small- and medium-sized enterprises' physical retail locations may be unable to handle the same volumes as e-commerce operations.

The Canadian Federation of Independent Business has surveyed its members on the impact of the strikes with 3,865 responses. The survey is not scientific, but it indicates that 67 per cent of the respondents reported that their business's cash flow has been affected by delayed cheques or invoices; 53 per cent reported having to switch to higher-cost alternative delivery services; 41 per cent reported waiting for products or supplies which they use in their own businesses; 36 reported that shipments to customers have been delayed; 17 per cent reported that customers are not receiving marketing or advertising products in time to take advantage of sales; 14 per cent reported

that holiday earnings are being negatively affected; and 7 per cent reported that they were not hiring seasonal staff due to the uncertainty about when the strike will end.

eBay sellers have posted to online forums indicating that the job action has harmed their sales, with some sellers claiming decreases for October and November of nearly 50 per cent compared to last year. We know that the holiday season can be make-or-break for some small businesses. Small businesses are, of course, the backbone of Canada's economy and critical to the middle class. They make up almost 98 per cent of private sector businesses, and nearly 8 million Canadians from coast to coast to coast are employed by small businesses.

• (1500)

It is also a time of year when businesses hire more employees, thus creating more jobs. If the strike is left to continue, companies that rely on e-commerce might not take on those new hires.

Honourable senators will recall the remarks from Jessica McDonald, the interim President and CEO of Canada Post, who said that a large number of parcel backlog is generated by or for the 200,000 small businesses across the country that Canada Post serves.

I would also like to share with senators the latest information with Canada Post on the growing backlog of mail as the rotating strikes enter week six. This morning across Canada there were 526 trailers full of mail waiting in line to be offloaded and processed. At this time last year, there were just 104, five times less. More than 200 additional trailers are expected to arrive in the next 24 hours. There is simply no more room to accept mail.

Canada Post had planned to deliver 513,000 parcels this past Friday weekend. However, due to the overtime ban and limited acceptance of casual hours, only 13,000 parcels were delivered, 500,000 parcels short.

The congestion of mail means Canada Post is turning customers' trailers away. For many small businesses, it's not just about getting their products to their customers; it's also about getting paid themselves. A recent study found that 46 per cent of total sales for small businesses in Canada are processed through cheque. The inability to send and receive payment is one of top concerns we hear over and over again.

Ultimately, labour disruptions at Canada Post are expected to reduce business confidence in Canada. This raises the risk of lower levels of investment and foregone productivity improvements that would persist beyond the duration of the labour disruption.

As I mentioned, there are also negative effects on vulnerable Canadians. About 30 per cent of Canada's population lives in rural or remote areas where access to the Internet is limited at best. Seniors and those with lower income are more prominent in these areas. Just under half of Canada's Indigenous population lives in rural and remote areas. Canadians in the North are more reliant and parcel delivery, receiving about double the per capita parcel average. In these areas, other parcel companies rely on Canada Post to deliver from a delivery hub to a person's

residence. Persons with mobility disabilities are less likely to have Internet at home and less likely to conduct online transactions. They are more likely to consider mail delivery as essential.

For all of the above groups and communities, interrupting Canada Post delivery is not a mere inconvenience but involves significant harm.

We also hear about the impact on the charitable sector. Salvation Army recently reported that they have seen a significant decrease in their received donations, which has real impact on their ability to deliver programming for those in need. We've heard how here in Ottawa, for example, the food bank raises 65 per cent of its total budget in the months leading up to the holidays, and about a third of that comes through the mail.

Honourable senators, this is all common sense. Of course, the strike is disruptive. That's the point of a strike. We all may not agree on the precise timing of the bill. However, as I said at the opening, it is the government's strong view that if we do not act now to protect Canada's interests, it will have acted too late. The government is of the view that we are past the need to act; we must act now.

The following is a snapshot of harms the legislation attempts to avoid.

On the other side of the coin is the impact on Charter rights of the unions and employees. The union will have lost the ability to continue to strike, no question, but the right to strike will be replaced with a robust and innovation mediation and arbitration process that is designed to safeguard the balance between the parties. This process seeks to encourage collective bargaining to reach a voluntary settlement.

Second, it contemplates an arbitration process that is fair and goes a long way to righting the balance of power between the employer and the union. What is more, and as outlined in the Charter statement, the bill does not impose new contracts but rather extends existing contracts. It seeks to facilitate continuing collective bargaining rather than imposing terms. Indeed, the Charter statement reviews in some detail how the bill would continue to promote a negotiated resolution of the dispute, which is important for evaluating the degree of harm to the limited rights and freedoms. That is why the government believes the legislation respects the Charter.

In closing, I would note that Charter compliance issues are rarely black and white. Where the government has a reasonable case but there remains a lingering ambiguity, as there often is, I firmly believe that the appropriate forum to resolve the issues with finality is the judicial branch, particularly in a case, as this one, where the case law is in its infancy and the bill has been carefully crafted with the most recent jurisprudence in mind. Before the courts, each litigant has the opportunity to present a case with the benefit of an exhaustive evidentiary record. The courts are well equipped and constitutionally empowered to assess, with the benefit of complete arguments and the evidence from both sides, whether there is a limitation to a protected right or freedom and, if so, whether the breach is justified in a free and democratic society.

What I hope to have shown today is that the government has a strong position, endorsed by the other place in a vote last Friday night, that Bill C-89 was carefully tailored with the Charter in mind and that, as such, given the urgency of the situation, it is worthy of this chamber's support.

It would not be the first time, nor sadly will it be the last, that this chamber has been asked to pass back-to-work legislation. Looking back to 1997, we see five instances. In each case, the legislation was dealt with in one or two days at the most, indicating the urgent nature of back-to-work legislation. To my knowledge, the Senate has never defeated or amended back-to-work legislation.

Let me say a few words about another issue that was raised. We heard about the issue of pay equity with regard to postal employees. We heard about the decision of the arbitrator, Maureen Flynn, to recommend a pay increase for roughly 8,000 rural and suburban postal workers, most of whom are women. As you will recall, both the Minister of Public Services and Procurement and the interim President and CEO of Canada Post stated that this was being implemented.

I should also add that the government is also moving forward with its proposed pay equity act, which will apply to federally regulated bodies, as well as modernizing the Canada Labour Code, both of which are part of Bill C-86 and are being reviewed in this chamber in our pre-study of the budget implementation bill. Such initiatives will go a long way to correcting injustices in the workplace.

Honourable senators, I think we can concur that an agreement that has been negotiated freely and in good faith is always the best solution. Back-to-work legislation is a last resort, to be used only when all efforts to reach an agreement have been exhausted. But Canada Post and the Canadian Union of Postal Workers are at an impasse following one year of negotiation, over one month of strike action, and we are now fully into the holidays season.

As our country's primary postal operator, Canada Post is part of the infrastructure upon which Canadians and Canadian businesses, in particular, depend. The government has given a great deal of consideration to this course of action. It has been a long road, and we have reached the end of it. I urge you to support Canadian businesses, both large and small, and stand up for Canadians who depend so much on this vital postal service. But I also urge you to support the implementation of what I believe are balanced and fair dispute resolution processes that will lead to an outcome that is just for both parties.

I urge you to adopt Bill C-89. Let's move forward without delay.

Hon. Frances Lankin: Would the senator accept a question?

Thank you very much. As you know, I spent most of yesterday trying to track down numbers to add to the numerous emails and letters we have received, talking about both sides of this issue. I appreciate your effort in obtaining some further numbers from

the government for us. I also reached out to Jessica McDonald, and she has been very helpful, including phone calls and emails. I reached out to CUPW, and they have been great.

The parties are all trying to provide us with more evidence. The timing of it is such that we don't have it all in front of us.

• (1510)

You spoke about the number of 526 trailers as of this morning. I look at the information behind that and on November 18 it was over 600 trailers. It came down, by November 23, to about 350 trailers. As of this morning, it's just over 500. It seems like there is a weekend to midweek flow to it, which doesn't help me understand any better the nature of the cumulative backlog.

What I can see is that since the beginning of the strike, there is more of a backlog. As you said, that's natural. What am I to make of these numbers you have given us today, which are, in fact, substantially lower than they were a week ago?

Senator Harder: Senator, I think the important point for all of us to understand is that there is a serious backlog, and the 200 arrivals that are expected today and tomorrow add to that backlog.

We had before us on Saturday, for some good deal of time, the interim CEO explaining to us the nature the backlog and the way in which Canada Post has even taken steps to encourage the post to not be sent to become part of the shipments that are late.

What I am seeking to demonstrate, and what Canada Post has demonstrated before this chamber, is that these are unusually large, that the distribution has not gone at the level of previous years in terms of seasonal comparisons and that there is a serious economic impact taking place.

Senator Lankin: Thank you very much. I appreciate that. In part, the opportunity to ask these questions is also to be able to get this evidence in front of whole Senate as we deliberate.

Included in the information from Canada Post was an analysis of where the trailers are and how long they have been there. I note that the arrival date of the oldest trailers — that's how they categorize it — in two places — Halifax and Calgary — have the longest dates of oldest arrival, and the date is November 22. All of the others are November 23 and November 24. Things seem to be moving, except, to be fair, the largest number at the gateway in Toronto, which is in the riding I represent and I know it well. They don't know the oldest date there. They have not been able to track that down at this point in time.

Once again, this is a busy time of year. The backlogs would be normally be bigger compared to last year. There are lots of points of comparison for us to talk about.

What do you make of this information of the arrival of the oldest trailer date just stretching back to mid-last week?

Senator Harder: Senator, obviously I can't answer where they do not have data for Toronto, but you know that is the largest hub and the most likely place of congestion. I think the most important data point that I took from the material I spoke to is that the expected distribution of 537,000 parcels over the weekend was reduced to 37,000. That's a substantial gap of normal year-over-year comparison, and this is disruptive. I think we can all agree on that. There will be disputes as to whether it is this or that trailer, but the point of the information, generically, is that there has been a serious accumulation and a lack of distribution leading to further backlogs, notwithstanding the fact that there is a downturn in people using the service itself.

Hon. Leo Housakos: My question is for the government leader and has to do more with procedures and rules than the actual content of your speech, which was a very good speech, by the way.

You have expressed on a number of occasions to myself, as chair of the Rules Committee, and to others in the chamber your concern about leadership in this chamber having unlimited time in debate. I was wondering after, of course, today and your appropriate use of unlimited time of debate if maybe you've come to see the light, like some of us defenders of the rules of the Westminster model and our rules that there is actually some merit to it. Have you come to terms with the fact that unlimited time for leadership in this place is actually useful?

Senator Harder: I will take no more time to salute the observation and say that that would also apply, of course, to ex officio status.

Hon. Denise Batters: Senator Harder, today it was reported that Minister of Labour Patty Hajdu embellished a story she told about a poor, disabled man facing homelessness in order to justify this back-to-work legislation for Canada Post. She said:

These Canadians count on this money to scrape by, and they are put in very precarious positions by any delay, like Jack, who told me that as a person on Ontario disability any delay could mean a loss of housing for him.

Today's article also states:

The labour minister's office confirmed Hajdu neither met nor spoke with Jack.

Apparently, Senator Harder, the labour minister forgot she neither met nor spoke with this man facing homelessness. I guess this is how the minister has also forgotten that today is Cyber Monday, the biggest online shopping day of the year, and that Christmas is now less than one month away. It's too bad we didn't know about this story when the minister was here on Saturday for questioning so she could have answered for this.

Senator Harder, as government leader, I will ask you to respond on behalf of the Trudeau government: How can the government justify the labour minister using this kind of false

information to tug at heart strings and force through her back-to-work legislation? Is this yet another example of the Trudeau government's so-called evidence-based decision-making?

Senator Harder: Senator, I hope that we can return to the subject of the debate.

Senator Batters: Senator Harder, the subject of the debate is this back-to-work legislation. I think Canadians deserve a better answer to that question than that. This is a minister who refuses to answer to this particular reporter about this issue and, meanwhile, her office has said that the minister's office confirmed that Minister Hajdu neither met nor spoke with Jack.

The subject of this particular situation was that the minister was trying to say that people who are receiving these types of disability cheques won't receive them if this back-to-work legislation doesn't go through, and apparently that's not true. So, Senator Harder, please answer the question.

Senator Harder: Obviously, I will make inquiries with respect to the specific question, but I think the minister made an eloquent case before us on Saturday with respect to the effects this work stoppage has had on Canadians, particularly vulnerable Canadians.

Senator Batters: Senator Harder, as I said, today is Cyber Monday, the biggest online shopping day of the year, and parcel deliveries are the major portion of Canada Post's profitability. Unfortunately, the Senate is still dealing with Bill C-89 today, on Cyber Monday.

How much will that be projected to cost Canada Post today as businesses across Canada make other choices in their shipping decisions, whether that be UPS or FedEx, et cetera? In helping you try to come to that answer, what was the estimate of Canada Post's profit last year from Cyber Monday?

Senator Harder: Senator, as you will recall from Saturday, both the President and CEO of Canada Post and the ministers concerned spoke to the importance of this season, not only in the impact it has on particularly remote and rural areas, but also small- and medium-sized businesses, particularly the smaller businesses.

Obviously, it has an impact on Canada Post. All senators will know, and I repeated it today, that 40 per cent of business revenues come in this period between last Friday and the end of January.

Senator Batters: Senator Harder, could you please get us an answer to that particular question before we are done debating this today? I imagine that is something the minister would have at her fingertips.

Senator Harder: Again, I will make every effort to do so, but I thought that would have been a question you would have asked of the president last Saturday.

Senator Housakos: Senators, I assure you I will not take my 45 minutes today. I will be brief in my remarks since most of the key issues on the legislation have been addressed. While we may

not agree that this legislation is the right way to go about it, I think it is fair to say there is a general consensus that the resumption of postal services is an urgent priority in this country.

First, it is vital for Canada businesses, particularly our small businesses, now confronted with the disruption of deliveries that are vital to their bottom lines. The costs are substantial and the strike that has impacted them so negatively has been permitted to go on far too long.

Second, Canada's small businesses are not to blame for the postal strike. They are the victims of it.

• (1520)

I believe it's unacceptable to hold businesses from coast to coast to coast hostage due to a dispute between the corporation and the union.

Third, the strike is now having a serious impact on all Canadians as they prepare for the holiday season. While I support the need for Parliament to take action to rectify the situation, there is something disquieting about the way in which this government has done that. Up until last Tuesday, the government expresses strong confidence in the collective bargaining process, saying they would not interfere. Then on Wednesday, that messaging suddenly changed.

We know from testimony from Jessica McDonald that Canada Post didn't ask the government to intervene. Colleagues, what happened? We all know what happened. The government's position changed because they realized there may be a political price to pay for the pending disruption that would result from the strike over the holiday season.

What remains a mystery is, why now? In his address, the government leader stated quite appropriately if we don't act now, it would be too late. That is what he said in his address today. When the government knew the holiday season was around the corner and they knew the serious impacts the strike was having on Canadian business, why did they choose to dig in their heels only to do a complete about face two days later? Why not sooner, colleagues? The only conclusion that can be reached is the government hoped that somehow their chestnuts would be pulled from the fire before they had to act. In clinging to this hope, immense damage has already been done to many Canadian businesses.

This government was so concerned with appearances, not wanting to look like previous governments, wanting instead to wag their finger and lift their chain in righteous indignation. They sat on their hands until it was almost too late, and it might still be too late. Sadly, it is ordinary Canadians in our business sector that have been forced to pay the price.

Honourable senators, I will support this legislation but I'm not at all happy about the detached and ambivalent approach the government has brought to this file. Before concluding, I would also like to return to what I said earlier about there being a lack of consensus on what needs to be done to address the ongoing work action. That is certainly what has come through in speeches, the lines of questioning and in comments to the media.

Then there are the social media comments from some of our senators and staff about this debate being historic and how this vote will be the test for this chamber.

Honourable colleagues, with all due respect, this institution has been the source of robust and important debate for more than 150 years. What is happening here is no different. There have always been those who rise to speak in support of legislation and those who rise to speak in opposition to legislation. There have always been amendments proposed to legislation.

The only difference has been that some governments are more open to accepting those amendments than others. On that point, I have said it before and I'll say it again, senators who are sitting in national caucuses and attending conventions — instead of waiting on the sidelines — are able to have input on legislation and their concerns addressed before it reaches both chambers. Being part of drafting legislation and policy curbs the need for as many amendments as we have had in this chamber.

If there is one thing I can say about the debate that has taken place in this chamber over the past few years, Prime Minister Trudeau and his cabinet could benefit from having your voices weigh in on the national governing caucus. If they did, perhaps this government wouldn't have to wait until the eleventh hour and then come to the table with cobbled together policy and legislation on things of such national importance as pipelines, marijuana legalization and official languages, but I digress.

All of this is to say, this institution and those who have passed through it deserve some respect for the work they have done. This chamber is operating now and doing its job as it has always done. Today will be no different. There are those who have spoken in support of this legislation and those who have spoken against it. It doesn't matter what we call ourselves, which Prime Minister appointed us, which caucus or group we sit in; we are all independent to choose which side of the debate we fall on.

I choose the side I believe is best for Canadians and as I have expressed in second reading, throughout Committee of the Whole and here again today, I believe the best thing for Canadians is that postal service resumes. The fact I am a Conservative member of Her Majesty's loyal opposition and this is a Liberal government bill won't stop me for supporting it, because it's what best for Canadians and what is best for Canada. That is true independence.

Thank you, colleagues.

Hon. David Tkachuk: Will you take a question, senator?

Senator Housakos: Absolutely, Senator Tkachuk.

Senator Tkachuk: I'm glad he was speaking for himself right there. Senator, I understand Canada Post owns over 90 per cent of Purolator, which delivers packages all across Canada. If you have a problem delivering the package through the post office, why don't people go to Purolator? Could you explain why Purolator is not part of this whole discussion?

Senator Housakos: I suspect Purolator probably has its own union, a different workforce and different set of conditions. I would venture to say Purolator, which was bought by Canada Post a few years ago, probably operates under a more private sector model than Canada Post. I don't know if that answers your question.

Senator Tkachuk: Part of it, but perhaps the government should be promoting the fact if you can't get your packages sent through Canada Post, just go to Purolator or FedEx. Purolator is the same company. The package will still get there and the strike can continue.

The Hon. the Speaker: I didn't hear a question there, Senator Housakos.

Senator Housakos: Senator Tkachuk, the beauty with being in the opposition is we get to ask questions and the government gets to answer them.

Hon. Larry W. Smith (Leader of the Opposition): Honourable senators, I have a few final remarks. I guarantee I will not take the maximum amount of time.

Related to Bill C-89, An Act to provide for the resumption and continuation of postal services, the first and most important factor that I think we must keep in mind as we prepare to vote on the legislation is the serious negative impact that the strike has had on Canadian businesses to date, even the greater impact the strike will have if it's permitted to continue.

When ministers Hajdu and Qualtrough appeared before the Senate Committee of the Whole last Saturday, they themselves outlined some of these impacts.

Minister Hajdu stated:

The economic and social effects are hitting Canadians and businesses particularly hard —

She confirmed the estimate of the Canadian Federation of Independent Business the cost to small- and medium-sized businesses is around \$3,000 per business whether it is in terms of lost sales, cancelled orders or the use of more expensive delivery services.

Minister Qualtrough stated:

Every day this impasse continues, the cost to businesses and the economy increases.

Minister Qualtrough in turn referenced the e-commerce activities are down 20 to 30 per cent and companies have indicated they have deferred seasonal hiring because of the strike. Minister Hajdu outlined some of the broader impacts on both ordinary Canadians as well as on the charitable sector.

[*Translation*]

Those who are the most vulnerable are seniors, people with disabilities, and those living in remote and northern areas who depend on Canada Post to send and receive their packages and mail.

[*English*]

For the charitable sector, the minister noted the fourth quarter of the year and Christmas season is the most important fundraising period. The minister referred to a number of organizations but specifically noted the Salvation Army has had their direct mail donations drop by 40 per cent. What is perhaps more concerning is these impacts are now, to borrow on Minister Qualtrough's words, ramping up.

The minister stated:

For the government not to take action at this time, in this manner, would be simply irresponsible.

I completely agree. This Conservative caucus has offered its co-operation to get Bill C-89 read, tabled and passed this Saturday afternoon just past. Unfortunately, due to other situations and circumstances, members on the other side did not agree to allow the business to finish and complete itself on Saturday.

Colleagues, our businesses are vulnerable populations and our charitable sectors are all innocent bystanders in this dispute. They are not parties to the labour dispute, yet they are directly and variously seriously impacted by it. This is the overreaching reason why I believe it's incumbent for the Parliament of Canada to act. That being said, I do not believe we have had a good explanation from the government as to why it has taken so long to act. These rotating strikes have been going on since October 22. In fact, the government has allowed the serious labour disruptions to go on three times longer than the case under previous governments of Mr. Harper and Mr. Chrétien. So whether it's Conservative or Liberal, it's happened many times.

• (1530)

The labour disruptions have, in essence, been timed to do the greatest damage to the Canadian economy. During my questioning of the ministers on Saturday, I noted that a full month ago, on October 29, the Retail Council of Canada wrote to both ministers warning of the implications of a prolonged strike. Other businesses issued similar warnings, particularly in relation to the impacts that would result from postal disruptions over Black Friday and Cyber Monday.

The reality is that the government ignored all of these warnings. Indeed, throughout all of this, the government has stuck to its mantra that it is committed to free and collective bargaining as a basis for sound industrial relations. In almost an Orwellian fashion it has even continued to repeat this mantra while finally introducing back-to-work legislation this week. I think it's reasonably clear that much of the reason for the government's slow response is ideology driven.

A final concern I would like to raise is what I see as an abdication of responsibility since 2015 in developing a vision for Canada Post that might have averted the situation we find ourselves in today.

Just a personal comment — when you hear two sides in an argument and you hear the separation of these two sides, this is something that's existed historically over time. This is something

that takes more than a year. This takes three to five years to fix, and should have started a long time ago. We can blame everybody, but the fact of the matter is that this is not going to be something that needs an extra week or two to handle. This is something that needs to be addressed right away. It will take time.

When I asked Minister Hajdu about the historical experience that numerous governments have had in relation to the disruption of postal services in this country and about what productive steps her government had taken to avoid the serious dilemma that we now find ourselves in, I did not get a very reassuring response. Her response was formulaic. She had already indicated that the government had tried the standard approach of working through the Federal Mediation and Conciliation Service to head off a strike. She said that in 97 per cent of the cases this mediation works.

How often has this approach been successfully put in place in relation to postal services? In the unique situation of postal services? Given the troubled history of labour relations between Canada Post and its union, one might have expected that perhaps a more hands-on approach by ministers might have been warranted. We need to bear in mind, colleagues, that these collective agreements expired at the end of 2017 and in January 2018, yet conciliators were only appointed in July. I'm troubled by the government's cavalier abandonment of various initiatives embarked upon by previous governments that had the objective of improving the efficiency of Canada Post's services to Canadians.

The government claims that it has a new vision for postal services in Canada, but so far what we have seen has been far from encouraging.

To conclude, I support the legislation that we have before us today to minimize the damage that has already been caused by five weeks of postal disruptions. I repeat: Delaying this any longer serves no purpose because the two parties are too far apart. This will take time and it will start with management and the union making a solid commitment to dealing with this, and it's going to take time.

Unfortunately, I'm not at all sanguine about the government's handling of the situation, nor am I confident that the government has any vision for moving forward to a modern and efficient postal service to assist in avoiding the same problem again in the future. Thank you.

[*Translation*]

Hon. Ghislain Maltais: Would Senator Smith take a question?

Senator Smith: I will do what I can, senator.

Senator Maltais: My honourable colleague made an excellent speech, but I think he overlooked one crucial detail. Everyone in the world knows that Christmas is on December 25.

Senator Smith, you and Senator Harder pointed out all of the ways that this strike is affecting the public, businesses and others. The fact remains that the government has been asleep at the switch for six months. Not once did it seriously engage with the

Canada Post Corporation or with the union. This is the government's fault. It is responsible for this situation. Would you agree, Senator Smith?

Senator Smith: Senator, if you watched the Grey Cup yesterday, you certainly would have noticed the parallels between the game and what we are presently debating in this chamber: Each team has some hits to take from the opposing team. I believe that there is no other choice but to accept the fact that there has been a problem in labour-management relations at Canada Post for far too long. Senator Maltais, in my opinion and with my experience in labour relations, I believe that the key to success is as follows: The parties need to sit down at the table and lay their cards on the table. It will take more than two weeks, even more than two months. It will take time. They need to come to an agreement, and that will have to come with an attitude shift. We are talking about a complete change in direction.

I don't believe that pointing fingers is a productive way for us to spend our precious time. It is high time that we sit down and work together in a constructive manner.

[*English*]

Hon. Yuen Pau Woo: Honourable colleagues, when we rose on Saturday after nearly eight hours of debate and witness testimony, I believe we were left with, at least in my own mind, three important questions.

The first has to do with the compliance of this bill with the Charter of Rights and Freedoms.

The second has to do with the degree of economic damage that the rotating strikes have inflicted on Canadian businesses and Canadians in general, particularly on vulnerable populations.

The third issue has to do with the broader question of the longer term, what I would characterize as the toxic relationship which was described to us between Canada Post management and its employees.

We received a lot of information in the course of the eight-hour debate and witness testimony, on top of material that was given to us through the transcripts of debate in the other place. It is right, I believe, that we did not rush to third reading and to the vote on Saturday, and that we took the time to process the copious information that was given to us on at least these three issues that I have enunciated, but probably much more.

I am proud to say that we have, in fact, taken the extra 24 or 36 hours for further deliberation and that we are doing our duty as senators: Providing sober second thought on a bill of great consequence.

I know all of us took time on Sunday to reflect deeply on these questions, to do our research, to make phone calls — maybe some of us even drove to postal sorting stations. I didn't, but I know some were intending to do so. But we worked hard to try to come to a clearer picture of whether or not this bill violates the Constitution; whether or not the economic damage that's been asserted is as great as to justify the bill; and whether or not this

bill will improve or merely exacerbate the unpleasant and unconstructive working relationship between workers and management at Canada Post.

Let me describe how my own thinking has evolved in the last 36 hours since our Committee of the Whole witness testimony.

I do not profess to have the definitive answer to the three questions I've posed, but I am forced to come to an answer. I'm forced to come to a judgment, as we all are. While sober second thought is important, it is not right that we take an indefinite period of time to come to a decision. At some point, we simply have to use our best judgment to decide on the questions we think are material to the vote on the bill.

• (1540)

I have heard from colleagues who are much more expert on the Constitution than I am. I've heard from Senator Harder, who gave us a further explanation of how this bill engages with the Charter of Rights and Freedoms.

I think it is correct to say that the Charter statement we were provided didn't give us a lot of guidance. It was, at best, a statement — maybe even a coventry — but we are still left with many questions about whether this bill in fact violates the right to freedom of association.

But I have heard sufficient arguments to suggest that the law is unsettled and that there are differing opinions for me to be agnostic about this question and to leave it, in fact, to the courts. I do not believe that back-to-work legislation is not, under any circumstances, something we should contemplate. I believe there are possibilities for back-to-work legislation, and I'm willing to remain agnostic in this particular case on whether or not this bill violates the Charter.

So the principal question for me gets to that of the economic impact, the impact on vulnerable populations, the impact on Canadians in general, and of course, by extension, the impact on our economy, particularly small- and medium-sized enterprises.

On this question, we received conflicting testimony. We received what might be called anecdotal testimony, all of which has to be taken into account. We cannot brush aside anecdotal evidence if we don't have anything else to go on. It is one of the factors that we must use in our consideration.

I did hear from all the witnesses is that there is an impact. That is, of course, the point of a strike. Our witnesses, both from the union and the management of Canada Post, were able to agree that there was an impact already, and it was in the form of some backlog and delays in the delivery of mail and parcels.

It may be that the impact at this point in time is not as severe as the minister is making it out to be or as severe as requires a harsh reaction. But my common sense and economic theory would suggest that if delays are perpetuated over a period of time, there will, by definition, be a growing backlog. There will be a cumulative impact on the number of parcels and letters that have to be developed; and that the cumulative impact will become more difficult to manage as time passes.

Bear in mind that the cumulative impact takes place not only in our country, where the sorting stations are, where the containers are parked — or not parked, as the case may be — but they also take place outside of Canada, where counterparts, postal services in other countries, have to manage a volume of mail and parcels that are destined for Canada and which may not be adequately captured in our statistics and empirical observation.

We also know from common sense and theory that if a strike persists, if a condition exists whereby it is known that the normal operations of a business or of a postal system do not continue in the way one would expect, the users of those systems will respond. This is the market system. This is the way human beings behave. It's inconceivable to me that Canadians, particularly users of e-commerce, companies that rely on e-commerce, are not adjusting to the slowdowns, the disruptions in service and, therefore, withholding purchases of products that would be delivered ordinarily by Canada Post.

My point is simply that while we may or may not agree on the severity of the impact at this very point in time, given what we have heard from the mediator that there's no possibility of a deal in the near future — he's basically told us that — I think it's fair to conclude that the impact is going to get worse and that, as we are in a busy holiday season, that impact could be quite severe indeed.

Let me move on to the third conundrum, if you will, that we were left with at the end of Committee of the Whole. It has to do with the difficult relationship between Canada Post management and employees and what has been described by some of you as a recurring pattern of the corporation perhaps, maybe the union as well, to end up in this place that we all don't want to be in.

Over the weekend, all of us have received numerous emails about how we should not be legislating workers back into unsafe work conditions. Another variation of the email is that we should not legislate workers into situations where there is no pay equity. Those are very fair points. But my own thinking about that question is that if we defeat this bill, if we do not pass back-to-work legislation, I do not see the two sides in any case coming to a situation where they will agree quickly on safer working conditions or on some of the thornier issues around pay equity, which is to say that not supporting this bill does not solve the problem that has been raised around the very difficult relationship between Canada Post management and labour.

Of course, there is still the question of whether this legislation, if passed, will further damage the relationship or if it may help mend the relationship. Intuitively, we would think that passing this legislation would cause more damage to the relationship between management and the union. But call me naive if you like; I have reason for a little bit of hope because the nature of the bill before us seems to bias any settlement in favour of the kinds of conditions that I think we would all want to see for Canada Post and the workers.

You've already heard the guiding principles of the legislation, but it's worth repeating them again. The mediator-arbitrator is to be guided by the need: (a), to ensure that the health and safety of the employees is protected; (b), to ensure that the employees receive equal pay for work of equal value; (c), to ensure the fair treatment of temporary or part-time employees and other

employees in non-standard employment as compared to full-time, permanent employees; (d), to ensure the financial sustainability of the employer; (e), to create a culture of collaborative labour-management relations; and (f), to have the employer provide high-quality service at a reasonable price to Canadians.

This is mandated for the mediator-arbitrator to work towards in any mandatory mediation or arbitration that may be the outcome of the back-to-work legislation.

Let me conclude by saying that I still do not have answers to some of the questions that were asked on Saturday, and nobody does. We don't have the full picture of the economic impact, and we will not have that any time soon. We should not wait for that before we vote on the bill. But I have sufficient information for me to be persuaded that there are current and likely accelerating and increasing harms to justify a timely end to this work stoppage.

• (1550)

Even if you disagree with me, in addition to whatever conclusion you might reach about either the Constitution or the economic impacts, I think we've heard loud and clear today from the Government Representative that the elected government, through the votes in the house, have made it very clear they see this legislation to be both necessary and urgent. I think the Senate has acted in response to the urgency articulated by the government, but we have not acted as a rubber stamp. We have taken a little more time to deliberate. I'm proud of the fact we have done that. However, we should also take careful note the government has made its view very clear. This bill did pass the vote in the other place by a substantial margin. That should be a factor as well in our consideration.

Colleagues, I am inspired and proud of the debate we've had so far. I will be supporting this bill. I hope you will as well. Thank you.

Hon. Donald Neil Plett: Honourable senators, after Senator Housakos said he wouldn't take his time and then our leader said the same, I was inclined to ask for leave to use some of their time. However, I thought I might not get unanimous consent. I'll stick with my allotted time.

Honourable senators, I also want to make a few comments about Bill C-89. Let me start by saying I don't think this bill has been handled — I'm not with Senator Woo on this — the right way. In fact, I think it is shameful. I'm not talking about the fact the government sat on its hands until the eleventh hour and then, in a panicked rush, suddenly decided something needed to be done. I'm talking about certain members of this chamber.

There are times, honourable colleagues, when, for the sake of the national good, we need to realize the most important thing we bring to this chamber is not our special interest or our pet hobby horses. It is our responsibility to ensure that legislation tabled in this house achieves the greater good. Yes, you may have an area of interest, but when it blinds you to the bigger picture, you — we — are not helping anyone. The nation depends on us to do what is right and to do it at the right time.

Let's take a step back for a moment and consider where we find ourselves today. It was no shock, colleagues, to anyone when the government announced last week it would be tabling back-to-work legislation. We all knew the clock was winding down and that government intervention was all but inevitable. I suspect each one of us has followed the developments of the contract talks between Canada Post Corporation and the Canadian Union of Postal Workers over the last year. We're well aware of the lack of progress the parties were making. Their failure to come to an agreement was stamped into the minds of every Canadian as the possibility of strike action grew nearer along with Christmas.

Well, senators, those rotating strikes started October 22. That was five weeks ago today — five weeks where businesses in Canada dependent on Canada Post have been struggling to operate; five weeks where anxiety has filled homes over how their businesses were going to cope and what would happen to their income. I repeat: five weeks!

The Canadian Federation of Independent Business tells us the strike action has cost the average Canadian business at least \$3,000. Some small businesses have been forced to suspend their operations or even close.

Honourable senators, these are real people, businesses and families. They don't get to pick a different courier company and carry on as usual. They don't have the luxury of a recession-proof appointment to the Senate of Canada. These things impact their lives in significant ways and needless stonewalling in this chamber by ISG senators is not helpful.

Colleagues, when the government announced last week it was going to introduce back-to-work legislation, nobody in this chamber should have been taken off guard. We were all aware of the situation and we all knew legislation was becoming inevitable. It happens this way every time there is an impasse between these two parties.

In fact, between 1950 and 2014, this legislation has been used 34 times. From Air Canada, to CN, to Canada Post, back-to-work legislation has been passed over and over again. The majority of those times it happened under none other than Justin Trudeau's father Pierre in the 1970s. It also happened under Brian Mulroney, Jean Chrétien and Stephen Harper. In fact, in 1997, the former Chrétien government acted in just 10 days to end a postal strike that year. That's two days quicker than what Stephen Harper did in 2011. Although Harper acted very quickly, it took him 12 days. Justin Trudeau has taken over four weeks to finally make a move. He has been incredibly lax in taking the proper leadership.

Honourable senators, there was absolutely no reason why we could not have started debate on this bill Saturday morning at 9 a.m. and sat here until the legislation was passed, or at least voted on, on Saturday. It could have been wrapped up on that same day and sent on for Royal Assent. If passed, the mail would be moving by now. But instead, some senators threw a hissy fit over the idea of starting work that early in the morning and insisted on leaving our Canadian postal workers out there in inclement weather, striking instead of delivering the mail.

They opted to stall and delay for no good reason, costing both the postal workers and Canadian businesses millions upon millions of dollars over the course of just one weekend — not to mention the senators who needed to fly back and forth as a result of this.

Colleagues, this bill could have been taken care of in one day. If — for some inexplicable reason — we were not able to complete our work on Saturday, we could have sat on Sunday to finish it off.

But here we are. Now this legislation will, at the earliest, take effect Tuesday afternoon. It could have taken effect yesterday. The mail would now be moving. Canadians would be back in business. Instead, we wander in here at two o'clock in the afternoon, while the mail is still not moving at the rate it should be. Regardless of whether it's 391 trailers, or 526 trailers, or 128 trailers, the mail is not moving. There are backlogs that need not be there.

There is no shortage of excuses going around for why the delay was necessary. I understand some senators claimed they were waiting for the Charter statement on the legislation. Well, colleagues, that was tabled in the other place just before 9 p.m. on Friday and posted to the Department of Justice's website. It was circulated to senators at about 1 a.m. Saturday morning. There was lots of time to review it.

The document is not long — 960 words, including the title. It's 11 paragraphs long, including the standard three paragraphs in the explanatory note. It doesn't take long to read or digest. Like all other Charter statements before it, it contains a clearly worded line that says, "A statement is not a legal opinion on the constitutionality of a bill." Yet, some senators have tried to convince us they were surprised the statement didn't contain a detailed Charter analysis.

This is laughable. Was this the first Charter statement they have ever read? Did they expect a lengthy legal brief? The Charter statement legalizing marijuana was barely over 3,200 words, and the bill was 152 pages long. This bill is only 14 pages long, and unlike Bill C-45, it neither amends the Criminal Code nor the Controlled Drugs and Substances Act.

• (1600)

How long did they expect the Charter statement to be? For Bill C-71, it was 1,040 words. For Bill C-81, it was about 2,500 words. It was 960 words for Bill C-28, and it was 1,074 for Bill C-32.

Colleagues, I'm no lawyer, but even a plumber can recognize a pattern. To suggest that Bill C-89 needed to be delayed because the Charter statement does not provide a detailed Charter analysis is disingenuous at best. It is absurd.

To make matters worse, I was horrified to sit here in this chamber and hear a colleague, an esteemed former justice of the Court of Queen's Bench of Manitoba, say that he was surprised that this Charter statement, a government document, was not written on toilet paper. We might expect this kind of behaviour from someone who doesn't know better, but from a former justice, this is horrifying.

And then we watched as Mike Palecek, President of the Canadian Union of Postal Workers, sat here on Saturday and suggested that the President of Canada Post, Jessica McDonald, was not telling the truth. We had just heard her testimony about backlogs of parcels and mail, and the impacts this would have on families, businesses and charities. Although he did not say it directly — I asked him about it — Mr. Palecek was clearly insinuating that Ms. McDonald was lying to us when he had no evidence that such was the case.

If this is the level of character being brought into the negotiating room, I'm not surprised the two parties are at impasse.

Colleagues, Canada Post and CUPW have been at loggerheads for almost a year. It is unacceptable that the two of them could not get together and agree to a mediated process so that Canadians would not be in the predicament they are today.

This is a serious issue. As every business person knows, if you have a problem in your business, it is almost always reflective of a problem in management. Frankly, I'm beginning to think that it wouldn't matter how long you left these two parties at the table, they wouldn't be capable of coming to an agreement.

Mind you, in fairness, this government has done little to help them. In fact, if the Liberals have demonstrated anything over their three years in office, it's incompetence and incoherence. One of the first things they did after the election was to cancel a plan that would have saved Canada Post between \$700 million and \$900 million. They don't seem to realize that unnecessarily squeezing a corporation's finances doesn't put it in a good bargaining position.

I suppose the government figures Canada Post's budget will balance itself, just as Mr. Trudeau believes his budget will balance itself. The fact is that reality has a way of catching up.

In the meantime, we in this chamber have a responsibility, colleagues, to play the cards we have been dealt. The situation may not be perfect, but today, we will once again have the opportunity to decide what we are going to do with this legislation. Will we support it, delay it or amend it?

I have difficulty voting for anything this government has brought forward, but, colleagues, I personally will be voting for this legislation. The national good demands it. Our country demands it.

But I am interested in seeing if the Prime Minister has gotten his senators to vote in favour of it. One minute they are independent; the next minute they are lining up behind the Prime Minister. What will they do today? Did they wake up this morning with their independent hats on, or have they got the Prime Minister's hat on? I suspect we'll know soon enough.

Hon. André Pratte: Honourable senators, the strike at Canada Post: millions of Canadians and thousands of businesses suffering inconvenience; many people and organizations demanding government intervention. This is our country's broken record.

In such circumstances, the easiest thing for Parliament to do is to satisfy popular demand and vote in favour of back-to-work legislation. It is the easiest thing to do, but is it the right thing to do? What are we trying to achieve? Of course, we want the postal service to fully resume as early as possible. If this were our only goal, we would vote in favour of Bill C-89 without hesitation. So why is this decision so difficult for all of us?

I surmise it's for at least two reasons: One, as others have already mentioned, the right to strike is a fundamental right derived from freedom of association as recognized by the Supreme Court; and two, we also know that legislating will not solve the deeply rooted labour relations problems that have plagued Canada Post and its employees over the past decades. Legislation will only kick the proverbial can further down the road.

In arguing in favour of another bill, Bill C-62, the sponsor, our friend Senator Bellemare, said:

The current government believes that unions have an important role to play not only in protecting workers' rights, but also in strengthening the middle class by negotiating working conditions and compensation.

I agree.

In defending Bill C-4, Senator Bellemare stated:

Unions played a major role in shaping our social programs and establishing mechanisms for distributing wealth. Today, they still play an important role in our democratic societies. . . . Rather than seeing unions as organizations that cause problems, we need to understand that they are part of the solution.

Again, I agree.

Senator Harder just repeated such strong assertions today, which is why I'm struck by the fact that with Bill C-89, the current government is operating an unfortunate and premature U-turn as far as its faith in collective bargaining is concerned. Without the right to strike, workers are left at the mercy of employers in an unbalanced relationship. We know this not only because the Supreme Court asserted as much in its historic *Saskatchewan Federation of Labour v. Saskatchewan* ruling three years ago, we know this because it's what history teaches us.

Following the asbestos strike in Quebec in 1949, Pierre Elliott Trudeau wrote a few years later:

. . . it is the possibility of the strike which enables workers to negotiate with their employers on terms of approximate equality. It is wrong to think that the unions are in themselves able to secure this equality.

It is part of this chamber's duties to protect Canadians' rights, including the right to strike. It may not be a comfortable position. Strikes obviously are unpopular because they are disruptive for people and businesses, but as Mr. Trudeau Senior wrote, this is precisely where the workers' bargaining power resides. Remove the right to strike, remove the threat of disruption, and workers are powerless.

We, the Senate, should not shirk the defence of unpopular causes when the fundamental rights of a group of Canadians are at play.

Of course, like any Charter right, the right to strike is not absolute. It may be limited if such infringement can be demonstrably justified in a free and democratic society.

In my view, there is no doubt that restoring full postal service is a pressing and substantial objective, the first part of the *Oakes* test. However, in the current context, we need to consider the fact that the government is intervening, as the mail carriers are holding not a general strike, but rotating strikes. These do not stop all mail service in the nation; delivery continues but is slowed down. This causes delays, costs and headaches to a great number of Canadians and businesses, especially small and medium enterprises, many of which are struggling to deliver their goods to customers and are desperately waiting for payments.

Or are these problems serious enough to justify depriving roughly 50,000 Canadian workers, real people, from their constitutionally protected right to strike? The postal service may be a very important service, but it is not an essential service such that the employees providing the service should not be allowed to strike.

As Justice Dickson wrote in his famous defence in *Reference Re Public Service Employee Relations Act (Alta.)*, quoting the International Labour Organization's Committee on Freedom of Association:

• (1610)

. . . an essential service [is] a service "whose interruption would endanger the life, personal safety or health of the whole or part of the population" . . .

Justice Dickson concluded:

Mere inconvenience to the public does not fall within the ambit of the essential services for justification abrogating the freedom to strike.

The truly essential part of mail service, the delivery of socioeconomic cheques, pensions, employment insurance benefits and social assistance payments, for instance, is assured pursuant to an agreement between the parties. This month, November, some 606,000 cheques were delivered under this agreement. Saturday, in this chamber, ministers, Canada Post and the union painted very different pictures of the disruption caused by these rotating strikes.

Yes, I agree it's a long speech. Obviously you weren't here for Senator Harder's speech. We have to laugh even in very serious situations.

The simple fact that we're having a hard time getting an accurate picture of the disruption is an indication, in my view, that the situation may not be as dramatic as some make it to be: a very major inconvenience, yes; a catastrophic economic slowdown, no.

In passing, I note that the oft-quoted cost estimate of \$3,000 per business is based on a small, non-random sample of less than 4 per cent of the 110,000 members of the Canadian Federation of Independent Business.

Now as Senator Woo said earlier, things could get worse, of course. However, the government appears to take for granted that if it does not legislate urgently to force the workers back to work, the rotating strikes will continue through the holiday season causing dire consequences. The more probable scenario, in my humble opinion, is that as pressure mounts on both parties, each would become more amenable to compromise to break the impasse. This is usually what happens when you have the right to strike.

After reviewing the evolution of the negotiations during the 2011 work stoppage, before back-to-work legislation was enacted, Justice Firestone of the Ontario Superior Court asserted:

. . . the right to strike was actively contributing to a meaningful process of collective bargaining at the very moment of its abrogation by the Act.

[*Translation*]

As concerns fundamental rights and the application of section 1 of the Charter, Justice Abella ruled, in the case of the Saskatchewan Federation of Labour, and I quoted:

The determinative issue here . . . is whether the means chosen by the government are minimally impairing . . .

In determining this minimal impairment, we must ask ourselves whether the proposed legislation offers the parties alternative mechanisms for resolving their disputes. National and international courts have ruled that this is a crucial aspect of the problem.

Bill C-89 does not impose a resolution. It does not establish working conditions for postal workers. Rather, it proposes appointing a mediator-arbitrator. The parties could therefore pursue negotiations for the time being.

The 2011 legislation was different in that it set the duration of the next agreement in advance and imposed lower salary increases than Canada Post proposed during the negotiations. What is more, the government, the sole shareholder of Canada Post, unilaterally selected the arbitrator in the case, while Bill C-89 encourages the parties to agree on the choice of mediator-arbitrator. The government is making an effort to minimize the impact that temporarily removing the right to strike will have on the workers. As many colleagues pointed out on Saturday and today, the bill also provides that in rendering decisions, the mediator-arbitrator will consider many of the union's demands. That is important and very different from the 2011 legislation where management's objectives were clearly favoured.

[Senator Pratte]

Is this extra effort enough, given the context, to compensate for violating postal workers' fundamental rights? That is the question.

From a legal standpoint, perhaps. The government obviously drafted this bill in an attempt to avoid the pitfalls identified by the Supreme Court and the Ontario Superior Court. The courts will decide whether the government succeeded. That said, Justice Abella wrote that, to be constitutional, return-to-work legislation must include a "meaningful dispute resolution mechanism."

In my opinion, although the arbitration mechanism in Bill C-89 is a significant improvement over the previous government's Bill C-6, it may well, like any imposed rules, make disagreements worse instead of settling them. This is not the desired result of a meaningful dispute resolution mechanism as envisioned by the Supreme Court.

[*English*]

Be that as it may, for our part we do not have to try to predict how the Supreme Court would rule on the matter; rather, we should determine if, *prima facie*, the bill unfairly or unjustifiably infringes on the fundamental rights of employees. Nor are we here to determine who is right in this labour dispute. Not only is it not our own, but more importantly we would need much more information to settle such a question, information that flows only from detailed knowledge of a workplace.

We do need to decide whether the bill contributes to the achievement of a durable solution to the issues highlighted by the strike, problems the existence of which the interim CEO acknowledged during the Committee of the Whole. If it does not contribute to a resolution long term of the problem, then the removal of the workers' right to strike is unjustified since the dispute resolution mechanism put in place is obviously lacking.

The frequent interventions of the government in labour conflicts at Canada Post have vitiated labour relations. For years Canada Post mail carriers have been deprived of an effective right to strike. In law, of course, the government has never removed this right, except for short periods; but in fact, it has done so, since the workers are always forced back to work before they can really exercise their bargaining power. This is a vicious circle that, one, infringes a fundamental right of the postal workers; and two, perpetuates a hostile and unproductive labour relations culture at Canada Post. We should not contribute to the perpetuation of such an unhealthy situation.

Furthermore, Bill C-89 asks that the mediator-arbitrator be guided by the need to "create a culture of collaborative labour-management relations." Simply put, this is an impossibility. An imposed collective agreement cannot facilitate a culture of collaboration between management and labour.

Colleagues, I don't have a union background, neither am I blinded by special interests. For most of my career in journalism, I occupied management positions. However, I'm convinced that a country where workers have an equal say in the establishment of their working conditions is a more democratic, prosperous and fair nation. This is why I voted in favour of Bill C-26 and Bill C-4. For the same reason, I will vote against Bill C-89, since

it, like other similar pieces of legislation, makes a fair negotiated agreement impossible by depriving workers of the lone source of their bargaining power, their right to strike.

Like all of you, I'm sensitive to the significant problems caused by the rotating strikes, and I want mail carriers to return to work as early as possible. But I also want the parties to reach a bargained agreement, because if they don't, we will find ourselves facing the same scenario two or three years from now.

Honourable senators, because the right to strike is a fundamental right; because the postal service is an extremely important, but not an essential, service in the pure sense of the term; because rotating strikes, although they cause severe inconveniences, do allow some mail and parcel delivery to continue, including the delivery of important government cheques to individuals in need; and because constant government intervention has fed deleterious labour relations at Canada Post, I'm convinced that more time should be allowed for negotiations to come to a fruitful conclusion.

Some might argue that defeating the bill would be a useless exercise, since the government would surely send it back to us. Well, Charter rights are at play here; and when they are, we cannot sit idly by.

• (1620)

Of course, commentators will accuse the Senate of obstructing the elected government's business, but as you know, protecting fundamental rights is the Senate's business. It is when the majority, be it the majority in the other place, the majority of columnists or even the majority of Canadians, appear willing to infringe these rights that it is especially important for us, the Senate of Canada, to fulfill our duty. Thank you.

[*Translation*]

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Since I was named in the speech, I will share my thoughts on the subject with you.

I am not a lawyer. I am, first and foremost, an economist. I have worked with unions. For my first job, I worked on a negotiation with the association of railway workers' unions. That was in 1976. Inflation was high, so unions were asking for an escalator clause. That year, we got a negotiated deal. There was no arbitration. In 1976, Mr. Sinclair, the then CEO of Canadian Pacific, wanted to know just who cost him several million dollars right as negotiations were wrapping up. It was me. Our negotiation on the escalator clause was a principled negotiation.

I have also worked for companies. I am aware of the impact that labour disputes can have on companies and on the general public. I believe negotiation is the best way to reach an agreement.

I'm not a lawyer, as I said, so I can't tell you if this legislation is constitutional or not. In my opinion, Senator Harder's point and the idea of letting the courts decide are reasonable solutions.

While listening to the experts on Saturday, the more I heard, the more I said to myself that this dispute will never be resolved. We are dealing with a dispute that is not a run-of-the-mill labour relations dispute. It is not a dispute over a salary increase of 10 cents or 10 to 15 per cent. It is not a dispute about money. It is a labour dispute that requires solutions involving substantial changes to the organization of the work. At issue is the pay structure.

We didn't talk much about this with the witnesses. However, when reading articles about the dispute, we can see that the pay structure is completely useless and outdated. Some mail carriers are paid a certain amount because they work in a city, whereas others are paid a different amount because they work in rural areas, which have now become suburbs.

This pay structure must be revised. It is a long-standing problem. The pay structure is causing pay equity issues, because there are more female mail carriers in rural areas. Because of technological changes and greater openness to the world, it's not just letters that need to be delivered, but parcels too, which is causing workplace health and safety issues. We are talking about an organization that is operating in a competitive environment. There is an array of problems, and the current situation is such that bargaining cannot be principled.

Listening to the witnesses, I became convinced that Bill C-89 must be passed, precisely because it contains a process for more principled negotiations. The mediator will have 90 days to bring about an agreement on some key principles, including health and safety and pay equity. There are six fundamental principles at the root of the dispute, and they would offset the bargaining power that the workers are losing by returning to work. They win it back through those principles in Bill C-89.

That is why I think this is a balanced approach. It would be conducive to principled negotiation and would give Canada Post time to deal with the fundamental problems. What's more, if the arbitrator's decision doesn't meet the criteria set out in the legislation, the unions would have the power to challenge the decision in court. That is what the minister told us.

I know it won't be pleasant for employees to go back to work. However, we must take into account the fact that the organization and the union are negotiating, but that this is not an ordinary organization. There are mail carriers across the country. The deteriorating work atmosphere, which is causing frustration among mail carriers, will take time to fix. Perhaps the chief negotiators feel that the organization of work needs to be reviewed. When listening to them on Saturday, I was convinced that the parties at the negotiating table have a much better understanding of how complex the situation is than mail carriers do.

In light of that, I think that Bill C-89 presents a balanced approach, and I will be voting in favour of it.

Some Hon. Senators: Hear, hear.

[*English*]

Hon. Percy E. Downe: Honourable colleagues, I'll be brief. I know there is a long list of speakers.

I spent the weekend looking back on this issue of Canada Post and these constant strikes and disruptions. I think there is a role for the Senate to play here on a go-forward basis after we get through whatever happens today or over the next few days.

One of the things I noticed was when we met as a Senate on June 26, 2011, on back-to-work legislation — incidentally, it was a Sunday — the comments in the Hansard were almost identical to what happened on Saturday past, almost word for word, just in some cases the positions were switched a bit. For example, Senator Mitchell said on that date, talking about the back-to-work legislation:

I agree that this is an affront to the collective bargaining process, which is in many respects a fundamental human rights principle in our society. This matter is not receiving, in any way, shape or form, the kind of respect it deserves.

I say that only for people to understand this discussion has been going on for a continuous period of time in this chamber and across this country.

I looked back to what was done in 1997, when then-Prime Minister Jean Chrétien's government introduced back-to-work legislation. He appointed a mediator-arbitrator, as in this bill. He — it was a man appointed — was called a mediator-arbitrator, the same as in this bill, and the mandate was to “endeavour to mediate all matters [in dispute] . . . and to bring about an agreement between the parties to those matters.” There were no instructions to select between two competing final offers.

In 1997, the mediator-arbitrator was to take into account — and these are important words, and Senator Pratte alluded to what is in the current legislation — “the importance of good labour-management relations between Canada Post and the union.”

• (1630)

How has that worked out? Here we are, years later, with the very same problem. This legislation before us talks about — and I'll repeat what Senator Pratte mentioned — creating a culture of collaboration, labour management relations and also to ensure the financial sustainability of the employer.

Then you look back at some of the changes the government has taken to do that. They did purchase, as was referred to earlier, Purolator, which has become a major revenue generator for Canada Post. The then president of Canada Post, when he appeared before the Senate on that Sunday in 2011, talked about the importance of Canada Post on a go-forward basis for their e-commerce business, their parcel delivery and so on.

But then the Government of Canada also took an action that negatively affected Canada Post when, a couple of years before 2011, they changed the rules to remove exclusive privilege for outbound mail from Canada Post, a decision that, at the time, cost Canada Post \$80 million a year, every year.

The question is — and I raise this for senators to consider — whether there should be a role for the Senate in trying to resolve this situation. We should conduct studies in our committees, which we are all so proud of. Is Canada Post an essential service? If so, what does that mean? They don't have the financial resources because the government, on the one hand, allows them to buy Purolator and, on the other hand, takes away this exclusive outbound mail provision that they have, costing them at least \$80 million a year, putting into question the financial viability of the corporation on a go-forward basis.

Almost all of this, as senators of all stripes know, comes down to reimbursement, or money: how much the senior management is making, how much the employees are making and how much is allowed to keep the corporation functioning.

I rise very briefly to talk about this, having been here for a while and having addressed these back-to-work bills before us, mostly with Canada Post. There's a bigger role for the Senate to play, in addition to our vote today or over the next few days.

Thank you, colleagues.

[*Translation*]

Hon. Marc Gold: Honourable senators, I rise to speak to Bill C-89. I have decided to vote in favour of the bill. Allow me to explain why.

It's not because I'm anti-union or against the workers, because that's not the case. It's not because I preferred a legislated solution to a negotiated solution. I'm a chartered mediator, I was teaching mediation and arbitration at the Faculty of Law at McGill University when I was appointed to the Senate. I grew up in a family whose father was a labour mediator and a well-respected and well-known arbitrator. I know that a negotiated solution is the best solution.

I'm voting in favour of Bill C-89 for the following reason. After reading the bill and listening to the debates and the questions asked in this chamber, I don't think it would be appropriate for me, in my constitutional role as senator, to refuse to pass this bill.

[*English*]

The constitutionality of the bill has been much discussed both in the public debate and in this chamber. Opponents of the bill claim that it violates the Charter guarantees of both freedom of association and freedom of expression and cannot be justified under section 1 of the Charter. The government, in its Charter statement, defends the bill as consistent with the Charter.

I think there are reasonable arguments on both sides. Having analyzed the bill and read the relevant case law, the constitutional law professor in me is inclined to conclude that the bill likely would be upheld by the courts as constitutional. But I'm not here as a law professor, I'm not here as a lawyer pleading a case before you and I'm not here as a judge seized with reaching a definitive conclusion one way or the other.

I'm here as a parliamentarian confronted with a piece of legislation where questions have been raised about its constitutionality. I'm here as a senator appointed to provide independent and critical review of government legislation that is brought to this chamber for consideration.

As I've argued in this chamber on other occasions, most recently in connection with Bill C-46, involving the impaired driving law, our constitutional role as legislators — and unelected legislators at that — is fundamentally different from that of lawyers, judges, law professors or activists.

In my view, when there are reasonable and credible arguments in support of the constitutionality of proposed legislation, the Senate should be very hesitant to invoke the Constitution as a reason for refusing to pass the bill. In my respectful opinion, this is very much the case here.

Now, I'm so tempted to quote chapter and verse from jurisprudence and the case law, and if others do it, that's fine. I just want, as briefly as I can, to summarize the principles and questions that the courts have raised when confronted with legislation that restricts collective bargaining or the right to strike. In the interest of time, I will restrict myself to the issue of freedom of association.

You've already heard that, in a trilogy of cases, the Supreme Court clearly established that the right to bargain collectively and the right to strike are included in the freedom of association guaranteed by section 2(d) of the Charter. As the court stated in one of those cases, the test is:

... whether the legislative interference amounts to a substantial interference with ... collective bargaining.

Not all interference with collective bargaining or with negotiated agreements will be held to infringe the Charter. For example, as Senator Harder pointed out, in one of the trilogy, the *Meredith* case, the Supreme Court held that the rollback of scheduled wage increases for RCMP members — without any prior consultation, I should add — did not infringe section 2(d) of the Charter.

The court has provided some examples of what would constitute an infringement. In the *Health Services* case, decided in 2007, a majority of the court wrote:

Laws or state actions that prevent or deny meaningful discussion and consultation about significant workplace issues between employees and their employer may interfere with the activity of collective bargaining, as may laws that unilaterally nullify negotiated terms on significant workplace issues in existing collective agreements.

In the *Saskatchewan Federation of Labour* case, already referred to in this chamber, the court held that:

Legislation that limits the right to strike or restricts the union's certification process would infringe section 2(d) and have to be justified under section 1.

In another of the trilogy, the *Mounted Police Association of Ontario* case, the Supreme Court said that:

... the ultimate question to be determined is whether the measures disrupt the balance between employees and employer that s. 2 (d) seeks to achieve, so as to substantially interfere with meaningful collective bargaining.

In light of all this, the question is: Does Bill C-89 infringe freedom of association?

In this chamber, Senator Joyal suggested that it does, and the only question was whether it would be justified under section 1. In this, he relies upon the 2016 decision of the Ontario Superior Court that Senator Harder referred to earlier.

Senator Sinclair also argued that it does, objecting, amongst other things, to the fact that the government's Charter statement did not even acknowledge there was an infringement of the Charter.

Now, they may be right, but as I read the Charter statement, the government seems to be making the case that the bill does not, in fact, infringe on freedom of association and, indeed, there is such a case to be made.

First, if we consider the examples provided by the Supreme Court in its decisions, which I cited, Bill C-89 can be distinguished in several material ways. As Senator Pratte and others have noted, the bill does not nullify existing terms of an agreement. It does not extinguish the right to strike going forward. It does not prevent meaningful discussions about working conditions.

On the contrary: it provides for a process of mediation arbitration for such discussions and one that is to be guided by many of the considerations — the so-called guiding principles — that the union has brought forward in its negotiations.

Now, of course, the bill orders the workers back to work. In this respect, it ends the strike. But is that enough to conclude that section 2(d) is infringed and that the balance between employer and employee has been disrupted?

• (1640)

Senator Sinclair, in his second reading speech, took the view it is sufficient. In his words, the bill gives the employer all the marbles. I think Senator Joyal made essentially the same point when he questioned Minister Hajdu.

Respectfully, I'm not persuaded that this is correct. All back-to-work legislation ends the strike. If that alone were the test, then all such legislation would automatically be held to infringe section 2(d), regardless of its terms. That's not how the courts have approached the issue. That's not how the Ontario Superior Court approached the issue when it was reviewing the legislation passed by the previous government in 2011.

As Senator Dean pointed out, we have to look at the terms of the legislation itself. When you examine Bill C-89, there are several elements that distinguish it from the 2011 legislation that was struck down by the Ontario court. These elements are set out in the Charter statement, they were underlined in Senator Harder's second reading speech, they were noted by Minister Hajdu during the Committee of the Whole. They've been noted here again today by Senators Harder and Pratte. Therefore, I will not repeat them. It's sufficient to say Bill C-89 strikes a very different balance between employers and employees, a much fairer balance, I should say, than did the 2011 act.

Honourable senators, in my view, there's a credible argument that the bill does not in fact infringe the Charter guarantee of freedom of expression, notwithstanding that it does legislate the end of the strike. I'm not here to make that case, for even if the bill does infringe section 2(d) of the Charter, I believe a very strong case can be made that it would be upheld as a reasonable limit under section 1 of the Charter.

I'm going to spare you again what I wrote about the steps the court has outlined under section 1. By now, you know that and, in fact, Senator Harder laid it out very well. I refer you to his remarks for the various elements of the test. I think he's correct in his analysis.

I believe, then, if I can jump to this point, that Bill C-89 would be upheld as constitutional by our courts. I readily acknowledge that a full analysis by a court would require evidence of facts, both legislative and adjudicative, that are not before us. This has been a preoccupation of many of us in the chamber, Senator Lankin and others, both raising the questions in here and doing a lot of work to try to get before us more facts and evidence.

Again, our role as parliamentarians is not to substitute ourselves for the courts. Courts are required to make a definitive and final ruling on the constitutionality of legislation. Our role as senators is different.

[*Translation*]

Our role is defined by constitutional law, constitutional conventions, practices and traditions. The elected members of Parliament are not our rivals. Our mandate is not to substitute our policy preferences for those of elected members of Parliament. We are also not independent members of a government think tank. As members of a complementary, unelected chamber of the Parliament of Canada, we have developed principles over time. What I mean is that there are certain questions we ask every time we study a bill. Does the bill violate the Constitution of Canada? Does it unjustly undermine one region over another? Does it violate the rights of minorities or the most vulnerable members of our society? Is the bill an abuse of power by a government that forms a majority in the House of Commons? Must it be held accountable?

In my opinion, the concerns about Bill C-89 aren't sufficient to justify our refusal to adopt it.

Senators have a constitutional obligation to ensure that legislation respects our constitutional values. When legislation clearly violates the Constitution with regard to the division of powers, the Charter, or other constitutional principles, the Senate

should refuse to pass it. Charter violations might be so blatant and arguments in support of the legislation so weak and fallacious that it is our duty to refuse to pass such legislation. However, as I suggested, that's simply not the case here.

Senators also have a responsibility to ensure that legislation does not unreasonably burden minorities and vulnerable members of our society. The contention here, and rightly so, is that the current work structure at Canada Post unfairly burdens certain more vulnerable groups, including postal workers in Canada's rural areas. However, the guiding principles for the mediator-arbitrator stated in the bill, principles that will inform the solution, do not impose an unreasonable burden on these workers. On the contrary, these principles protect their interests.

[*English*]

Honourable senators, we also have a responsibility to ensure the government does not abuse its power when it controls a majority in the House of Commons. In this respect, we have a responsibility to hold the government to account.

In a case like Bill C-89, it is ultimately the government and elected members of the house who have the responsibility to balance the competing interests at stake in a labour dispute such as the one before us. It is they who will be held politically accountable for their actions. I do not believe this is a case where our responsibility to "hold the government to account" is engaged sufficiently to refuse to pass this law.

I conclude where I began. Having read the bill and listened to the debates in this chamber, I have concluded it would be inappropriate for me, in the exercise of my constitutional role as a senator, to refuse to pass this bill. These are the reasons that have led me to decide to vote in favour of this bill. I encourage you to do the same.

Hon. Colin Deacon: Honourable senators, in my consideration of Bill C-89, I find there's one perspective I cannot ignore; it's the perspective of a group that does not have a union speaking for them: the entrepreneurs who run micro and small businesses across Canada. The vast majority are not entrepreneurs by choice. They're entrepreneurs by necessity, especially those in our small, rural and remote communities. Employment continues to be a huge challenge for them. These vulnerable communities are places where, if you want a job, you need to create it.

I have enormous admiration for those who, out of a sense of responsibility to themselves, their families and communities, dig deeper and find the courage and tenacity required to create an opportunity and build a business. Clearly, I look at this legislation through that lens. I've used the answers to four questions to guide my decision on Bill C-89.

The questions are as follows: First, can we reasonably assess the specific business and employment issues being disputed by the parties? Second, what do we do about the troubling workplace injury claims? Third, is there evidence indicating the current labour actions are causing social and economic damage at a level that justifies the legislation? And fourth, what is our role as senators, particularly in how we respond to the wishes of the elected members of the House of Commons?

Allow me, if you will, to explain how I've answered these questions. During testimony at Committee of the Whole stage on Saturday, we heard two conflicting viewpoints on the business and employment issues. I came away with a few key perspectives.

Canada Post, as a business, is experiencing a lot of disruption, from the changing habits of consumers and businesses globally to the increasing competitive pressures in its own market. This is clearly putting a lot of strain on the organization and its employees. Management and workers are experiencing a lot of friction — it seems that's nothing new — as they try to adjust to rapid changes to the competitive marketplace. They cannot even agree on the underlying market and performance data resulting from the current labour disruption.

The two sides have been working to get a deal done for 10 or 11 months yet remain on completely different pages and show no willingness to compromise.

• (1650)

Despite a complete turnover in governance and leadership at Canada Post, with a new board and interim CEO, there has still been no progress. I've come to the conclusion these two parties continue to hope the other side will somehow recognize the error of their ways and capitulate. In my experience that never happens, no matter how right I've been. That was a bit of a joke for my wife.

In short, I don't see any hope for a negotiated solution.

Regarding the concern about on-the-job injuries, some serious claims have been made. Based on provided reports, there are some important problems that need to be explored and better managed. I was very pleased to hear Ms. McDonald state that, "Canada Post needs to bring its injury incidents down dramatically." I was especially glad to hear her say there were "benchmarking and standards which need to be set up," so everyone can ensure the improvements are actually occurring.

Regardless of how a deal is reached — through legislation or last-minute agreement, which I understand now is not going to happen with the mediator having left the discussions — I think we can all agree it is crucial this issue be addressed. On the issue of injuries, Ms. McDonald has already provided us with assurances of the accountability mechanisms that Canada Post intends to put in place. I'm hopeful we will see meaningful improvement in short order.

As it relates to the social and economic impacts resulting from the union's current actions, I was pleased to hear Mr. Palecek speak about how CUPW is working with Canada Post to make sure the needs of vulnerable individuals are being met. I applaud those efforts. However, I forcefully disagree with his perspective that the backlog of parcels is not a concern and the implication

that delays in package delivery are simply a manageable inconvenience. I do not believe this is the case for Canada Post as a service provider within a highly competitive industry. I do not believe that, in the case of micro and small businesses who rely on Canada Post across this country, there is a reasonable alternative.

To get a sense of how important the parcel business is to the long-term sustainability of Canada Post, I looked at their 2017 annual report. It identified parcel revenue growth is much higher than the global average, up 23 per cent over the previous year. Within that number, the top 25 e-commerce customers grew by more than 42 per cent in the previous 12 months. When I looked at that against global benchmarks, it became clear Canada Post is dramatically outperforming its international peers in attracting and serving e-commerce customers. That's good for Canada.

As an example of what is happening to the rest of the business, just consider the fact that letter mail volumes have been dropping for 11 straight years. This is a business in a lot of change.

Is the parcel business central to Canada Post's survival? Absolutely. Without the highly competitive parcel business the federal government would be subsidizing Canada Post at an unsustainable level.

According to the Canadian Internet Registration Authority, 62 per cent of Canadians prefer to make their purchases online. Canada Post carries two thirds of that total e-commerce volume. Micro and small businesses tend to use third-party e-commerce platforms, like eBay. In those cases Canada Post carries more than 80 per cent of the parcel volume, be it for domestic or export markets.

The reality is there is an increasing reliance on online transactions. The vast majority of order fulfillment occurs through Canada Post. In market terms, Canada Post is getting it right. This is good news for Canada and good news for its workers. But do they have the luxury of relaxing as a result of the success of their parcel business? Absolutely not. It's a highly competitive business. Canadians have quickly become accustomed to high standards when it comes to the delivery of online purchases. A recent UPS study revealed 63 per cent of Canadians expect same-day delivery on orders placed by noon, and 61 per cent expect next-day delivery for orders placed by 5 p.m. While Canada Post and CUPW do not agree on the numbers regarding the current backlog of packages, it's clear any backlog poses a significant concern for the companies whose packages are not being delivered because of the increasingly stringent delivery standards expected in the marketplace today.

The simple fact is customers expect businesses to ensure their product is delivered on time. The business and its logistics partner are one and the same. If customers have any concerns

about the timely delivery, they simply do not make that purchase. This very point has been made by several of my honourable colleagues who found themselves deciding against making online purchases from a small business because of the delivery risk caused by the current labour disruptions. My worry is the chilling effect that this strike is having on so many online orders is further distorting the so-called backlog numbers. There is a lot of business not occurring because people are deciding not to make the transaction. For most of these businesses, every single day at this time of year is worth the same as 10 days at any other time of the year. The month of December is simply crucial to their survival.

Last week, operators of a small online business in Halifax specializing in handmade scarves, mittens and aprons told CBC in normal years they would be sold out by now. Dale Kearney, who operates Monkeys and More with his wife Sherrie claimed, “the rotating strike is just killing us.”

Those who listen to “The House” on CBC Radio 1 on Saturday morning heard the eBay Canada general manager Andrea Stairs report on the recent activity on eBay’s platform. She remarked that, since the strike began, small sellers have been losing market share to the larger organizations who can afford the correspondingly higher prices that alternative parcel delivery options present. Ms. Stairs expressed concern regarding the real challenges that the CUPW strike action is placing on micro-businesses at their busiest selling season, the lead-up to Christmas.

This was confirmed in the chamber on Saturday by Ms. McDonald. She told us that, “. . . small businesses are still shipping with us because they have nowhere else to go. It is these small businesses and their employees that will be hit the hardest financially by the delivery delays, refunds and cancelled orders.” Yes, some entrepreneurs in urban areas may have the option to switch to more expensive logistics suppliers, which could be argued to be a sustainable burden. In many and most rural and remote locations, no other options exist.

In summary, the continuation of this labour action puts micro and small businesses at significant risk, especially those with less capital and those in smaller rural and remote communities. They are at greater risk of suffering permanent harm. Simply, Canada Post is essential to the survival of their business.

Now to our role as the chamber of sober second thought.

I vividly recall the debate at third reading of Bill C-45. It was my second day in this chamber. A few statements stand out, particularly speeches made by Senator Pratte and Senator Dalphond. Senator Pratte offered the opinion that if we choose to push against the will of the elected government we should do so in relatively rare cases. He identified that it only be considered in the following situations: First, where the issue is of special importance related to our constitutional role; second, where we are prepared to lead a serious fight and see its completion; third, when a significant part of the public opinion is or could be on our side; and fourth, where there’s a realistic prospect of convincing or forcing the government to change its mind. When I consider Senator Pratte’s conditions, I do not believe they are met in this situation. In terms of the question of Charter rights, I will defer to Senator Gold and Senator Dalphond’s approach.

Senator Dalphond offered five different criteria he considered when the other place rejected some of the Senate’s proposed amendments to Bill C-45. These were as follows:

. . . will it result in legislation that clearly or most likely violates the Constitution or the Charter of Rights and Freedoms? If the answer is unclear, shall the task of answering that question not be left to the courts?

It seems the answer to the first question may be unclear. As a layperson and new senator, I believe my honourable colleague’s second question is key. Given that CUPW has stated it will challenge the legislation in court, it seems the process has already begun and will proceed regardless of whether we can determine constitutionality in this chamber.

Second:

. . . is the purpose of the bill an election campaign issue for the government, or is it an extremely controversial issue for which voters did not give the government the mandate?

Not directly. I would argue the government’s focus on the digital economy makes Bill C-89 central to their ability to deliver on promises made both in their campaign and the Speech from the Throne because it affects entrepreneurship, innovation, the digital economy and the middle class.

Third:

. . . does the evidence provided to both houses unequivocally show that the bill is fundamentally flawed and that the response, in part or as a whole, is thus plainly unreasonable?

I certainly heard arguments this was the case for the back-to-work legislation examined by this chamber seven years ago. Bill C-89 appears to have been drafted in a manner that responds to the guidance provided by the courts that time around.

Fourth:

. . . does the response show that the majority is abusing one or more minorities, showing contempt for language rights, demonstrating favoritism for one region at the expense of another?

Absolutely not. In fact, I would argue that not implementing this legislation abuses the rights of micro and small business owners in struggling rural, remote and vulnerable communities.

• (1700)

Finally, Senator Dalphond offered that:

. . . if we choose to agree with the will of House of Commons, will those actions cause unforeseeable and irreparable harm to the national interest?

To the contrary, our economy is changing in dramatic ways and Canada Post and its workers are having to rapidly adjust in order to effectively and cost efficiently serve those market-driven needs. Canada Post's role is simply too important and they need to keep finding ways to adapt to the market demands "come hell or high water," to borrow a phrase from a former finance minister.

We are being asked whether the current circumstances justify our voting to stop these strikes, to stop the harm being done to micro and small businesses across the country. A vote in favour will replace those strikes with a mediated or arbitrated solution that will be forced on both parties, not just the union or corporation.

I believe that the parties have been given enough time to address their differences but have demonstrated that if left to their own devices, their positions remain so disparate as to offer little hope that an amicable resolution will be found.

Micro and small businesses are the most vulnerable to suffering permanent harm as a consequence of this dispute, and their voices are not being heard at the table. We need to speak up for this important group of Canadians whose livelihoods are being risked. To this end, I intend to vote in favour of Bill C-89.

Thank you, colleagues.

[*Translation*]

Hon. Jean-Guy Dagenais: Honourable senators, I'm sure it will come as no surprise to anyone that I'm against this bill, a poorly conceived bill without merit that favours the employer, an employer that, by all accounts, is solely responsible for its delivery issues.

The bill before us tramples on the rights of Canada Post workers: the right to associate, the right to demand better working conditions and the right to use pressure tactics against the employer to advance negotiations.

I mentioned the right to negotiate, and that is what's at stake here. The main thing the Trudeau government wants to take away from Canada Post workers is their right to negotiate at the very moment when they have a true balance of power with an employer that has done nothing but ignore them for the past 11 months. It's obvious what went on: 11 months of bogus negotiations full of ridiculous proposals. Canada Post never negotiated in good faith, but it had no need to because it knew that, come the holidays, the government would pass special legislation to break the union. I saw that same strategy back in my union days. Canada Post ignored the workers' reasonable demands. Honourable senators, I find this shameful.

Prime Minister Trudeau is certainly his father's son when it comes to labour relations. Those of you who are a little older will recall that Pierre Elliott Trudeau showed workers for Canada Post subcontractor Lapalme who was boss when he took away their fundamental union rights in the early 1970s.

Justin Trudeau would have us believe that he is working for the middle class and that he listens to workers. How hypocritical.

The negotiations currently under way at Canada Post have to do with gender equality within the organization, one of Prime Minister Trudeau's favourite subjects. One has to wonder whether he's speaking out of both sides of his mouth. As senators know, an arbitration decision was rendered in this regard and yet the situation at Canada Post has not improved. Why should we believe in the mediation process when Canada Post is not even abiding by the existing arbitration decision on pay equity?

What is worse, this legislation would allow Canada Post to put off meeting its obligations. It seems to me that Prime Minister Trudeau is acting like a dictator who is catering to the whims of management rather than allowing negotiations to go forward under the usual rules. One does not have to be an expert in labour relations to see that the legislation tips the scales in Canada Post's favour.

There is absolutely nothing for the workers. In this bill, the Trudeau government talks about essential services. Honourable colleagues, no one has been able to establish that essential services were not being delivered or would not be delivered by Canada Post employees. That argument is therefore completely unacceptable. Far worse, we get the clear impression that we are being lied to about the delays and the backlog of mail. We have heard nothing concrete, merely doubtful speculation.

The reason the Trudeau government wants us to pass this special legislation has nothing to do with home mail delivery, but rather with ensuring the profitable delivery of parcels and gifts ordered from web giants for the holidays. Let me remind you that those companies can use businesses like FedEx and UPS to deliver their products.

It is pretty clear that there is nothing urgent here, especially since we know that both parties are still at the bargaining table. If negotiations are taking place, we should let them continue, since that is what the Canada Labour Code calls for.

Under the circumstances, it is clear that the bill was drafted so as to cover up the inability of Canada Post management to come to an agreement with its workers in light of the significant changes that have come about in recent years in the world of mail and parcel delivery.

It is also obvious that this bill was designed to protect private interests that use our postal service. We heard them calling on the government to intervene on behalf of corporate interests. As usual, Mr. Trudeau answered their call.

It is unacceptable for the current Canada Post dispute to be brought to an end by special legislation. I believe that the rights of Canadian workers are more important than that. I was especially pleased to see that two senators, Senator Lankin and Senator McPhedran, made the effort to write to the Minister of Labour to share their concerns about this bill. You both noted that the bill is constitutionally dubious. I commend you both.

We have before us an unacceptable piece of legislation that we could debate at length. However, to my mind, it comes down to the following. The only urgent need I see this afternoon is the need for us to collectively reject this bill and to say to the government and, above all, to Canada Post, "Negotiate and come

to an agreement so that Canada Post grows as an organization by giving its employees working conditions that are acceptable by 2018 standards.”

This is 2018. The workloads have changed, and so must working conditions. The ones who really know what’s what are sitting at the bargaining table. They’re the ones who should be looking for solutions.

I will conclude by saying that we need to show some backbone with this bill and stand up to those who want to ignore the Canada Labour Code and our court rulings and mistreat workers as a result.

I urge each and every one of you to reject this bill.

[*English*]

Hon. Patricia Bovey: Honourable senators, I too rise today to speak to Bill C-89. Like many colleagues, I struggled with the situation, conflicted in weighing the core issues. I spent the last days examining and soul searching facts and history. Often seemingly simple answers are truly complex, with layers of conflicting information, realities and histories. Bill C-89 is no exception.

I listened closely during our special Saturday sitting. Every witness added to the substance and complexity of overriding issues. I commend my Senate colleagues for their probing questions and the way they collectively peeled back many layers of the onion. I extend thanks and appreciation to all of my colleagues for participating in our debates and appreciate your diverse opinions and approaches. I have faith in this chamber not to treat these issues lightly.

• (1710)

I approached the conflicting testimony in what we have read and heard, the empirical and the anecdotal using many lenses; those of pay equity, to health and safety, to the needs and desires of all Canadians, to the Charter, to governance and to international conventions, particularly number 98.

There are so many lenses to view this situation through, one can easily miss the forest for the trees. Let me look briefly at a few and my inner conflicts as I attempted to come to what I believe is the right decision, the one which I feel looks to the long term and to which I can stand up with full accountability in the years ahead; not an easy task.

The minister was balanced in her views. Her concern regarding the point reached was well taken. The legislation she put forth reflects these concerns. The preamble in the bill encapsulates the efforts of the government in dealing with this impasse.

The argument is:

. . . the work stoppages are having a significant adverse impact on Canadian workers, consumers and businesses as well as those on Canadians who rely on postal services.

[Senator Dagenais]

There is regard for the concerns of labour. The minister:

. . . recognizes the importance of collective bargaining practices and the need for stable and industrial relations for employees, unions and employers in the postal services sector.

We heard on Saturday the negative impacts are wide and ranging. The Minister of Public Services and Procurement and Accessibility noted small- and medium-sized businesses rely on Canada Post for their most profitable season, the holidays, as has just been stated again by Senator Deacon.

International shipping to Canada has been suspended. The vulnerable, the elderly, people with disabilities and those in northern and remote communities are adversely affected. Charities have seen declines in their direct mail donations. This holiday season is their most important season as well. I’ve worked in that sector so I know that well.

Senators asked for empirical evidence. Canada Post and Minister Qualtrough noted that 391 trailers full of parcels and packets are waiting to be unloaded. Now it seems, according to Senator Harder’s information today, there are over 500. That would be 1 million or more parcels waiting for delivery as of last Saturday.

The union stated that was one day’s work. I have to wonder, is it? Canada Post asserted 3.6 million parcels were delivered on holiday weekends last year. We must weigh these costs to businesses, to the economy as a whole, to Canadians in remote and rural areas, to the most vulnerable and to the rights of workers.

That the relationship between Canada Post and CUPW is poisoned is an understatement, yet I as a senator must balance the testimony we have heard; that the union has taken measures to ensure rotating strikes, not a full walkout, counts, in my opinion.

Aspects of essential services have been defined and agreed to by management and workers, the delivery of government cheques and live animals — the cheques, chicks and crickets are being delivered. It is clear, workers are meeting their responsibility of providing essential services. If there is a question that our postal delivery ought to be an essential service, I contend that is for another discussion.

What about pay equity? The government has introduced legislation to address this absolutely unfair practice. We heard in this chamber Canada Post’s rural and suburban mail carriers are not receiving equal pay for equal work. We have also heard 60 per cent of that workforce is composed of women.

The fact that arbitration was required this fall to establish equal pay for these workers troubles me, for as PSAC has noted:

Thirty years ago, the federal government passed a law making it illegal to discriminate against women in the workplace.

The thought that Canada Post continued to ignore pay equity frankly leaves me more than concerned.

My experience? A year after being hired as an art gallery director in 1980, I was told if I had been male I would have earned \$6,000 more a year. I was then patted on the head and told to keep it up. I know what not being paid the same amount for the same work and same responsibility feels like and means financially, emotionally and psychologically. I have been there and can assure you it's neither fair nor pleasant and should not be the case. I am pleased arbitration has dealt with this. I hope the process that has failed these same workers over many years is now fixed.

The safety aspects of this impasse also trouble me. The business and methods of delivering mail as we have heard have changed over the past few years. Postal workers' injury incidents are now the highest among federal employees. The national average in 2016 was 1.85 employees per 100 workers. Canada Post workers' average was 7.1 per 100 workers. We heard 15 injuries on average a day. The shift to parcels from letters has been the major reason for this increase. It is not an easy job.

You can appreciate my delight when health and safety legislation was proclaimed at every level of government, federally first in 1986. Bill C-89, when calling for back-to-work legislation, asks the mediator to address those issues as they are still unresolved in Canada Post. I find it very disconcerting this still needs to be addressed at the end of 2018. Why were these issues not already dealt with? Why is this still a question?

The Canadian Press published some very interesting facts this week regarding the past 50 years' history of Canada Post's relationship with its workforce. Between 1965 and 2005, there were no fewer than 19 work stoppages due to strikes, walkouts and lockouts. Workers were legislated back to work in 1987, 1991 and 1995. A four-year truce occurred in 2007. Rotating strikes in 2011 led to a lockout and eventually back-to-work legislation, as we all know.

Today, Canada is at another impasse. Past events over so many years speak of a broken system, a systemic, poisoned relationship between workers and management on a downward trajectory. Both parties acknowledged this situation last Saturday.

Both Canada Post and its workforce talked of a deep mistrust which will be exceedingly difficult to overcome. How is that best overcome?

Through all the disruptions and various back-to-work pieces of legislation over the past several decades, was anything really resolved long-term? Or, has the ability of the two sides within the organization been curtailed from resolving what are clearly systemic, historic crises within Canada Post? I think the latter. Perhaps it's time that as an organization Canada Post be allowed,

or indeed directed, to deal with their systemic issues. Perhaps that, in the interests for the long-term health of mail delivery in Canada, is what we should be forcing.

Now what about governance within Canada Post? I spent my life working as a head of an organization governed by a board. The board of any organization governs. It sets policy and budgets and hires and fires the CEO. The CEO is the chief executive officer managing and running the day-to-day operations of the organization and reporting to the board chair and the board. These are two completely different though equally important functions within an organization. I do not think they can or should be conflated as they have been in Canada Post for the last nine months. In my experience, when these functions are conflated, the organization is usually in peril.

How does the same person report to self or to the board they lead in the best interests of a company or organization? How can the same person deal with the day-to-day and the overarching governance, especially when they have held one job for a year and both for nine months? How, with a conflated position, can full and proper discussions take place at the board table especially with such long-standing dire relationships? Again from my experience, I fail to see how an organization will overcome or deal with or repair years of systemic lack of trust with its two senior positions fused into one individual's realm of responsibility. There does need to be a paradigm shift within the corporation.

As one who has led both union and non-union places of work, I herald sincere proper internal discussion in the resolution of the unresolvable. May that discussion happen within Canada Post going forward.

Colleagues, taking history and the Charter into the core of my decision — and I'm not speaking of the Charter because others have eloquently — and using the empirical and anecdotal evidence before me, my questions are: Are we voting today in the best interests of Canadians for this holiday season when postal service has not been stopped in whole but has been compromised on a rotational basis? Or, are we voting for the long-term health of our postal system and the best interests of Canadian for years to come? To me, that is the essential question as we move to vote.

• (1720)

One of the toughest words in contemporary society is the elusive B-word: balance. In this case, we must balance the needs of the workers, employers, the post office and the long-term interests of Canadians. I would much prefer that bargaining continue in good faith, allowing the two parties to sort it out without being forced by the government. I believe it's time for the organization to deal with their problems in the context and needs of all Canadians, all citizens, the economy, rural and remote regions, and customer confidence.

I have to ask: Does this bill, at this time, serve the corporation or the workers, the government or our public?

Colleagues, this is a truly difficult vote. I really value everybody's opinions and perspectives. I assure you, when we come to vote, I will not be taking my vote lightly.

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. René Cormier: Honourable colleagues, I will be brief as I take my turn to speak to Bill C-89 at third reading stage. Some of my thoughts have already been shared by several of our colleagues, but you will agree that sometimes it's worth repeating certain things so that they are understood and truly absorbed.

I want to acknowledge the quality of the exchanges that took place in this chamber on Saturday during Committee of the Whole. The valuable testimony, especially from the CEO of Canada Post and the union president, and the thoughtful questions asked by our Senate colleagues were very enlightening.

I would add that the very wise decision made on Saturday not to sit on Sunday to allow us more time to do our research and gather our thoughts has proven quite useful.

That decision allowed me to talk to Canada Post workers in my province, New Brunswick, whether they were letter carriers or employees at Canada Post regional offices, in addition to having an exchange with a mediation expert with years of experience.

First, let me acknowledge the government's efforts to draft a bill that takes into account the needs of the parties and the workers by including specific instructions for selecting the mediator-arbitrator and a detailed description of his or her duties. That said, this aspect raises questions about how workers themselves will be consulted. We all know that decisions made by higher ups without consulting and involving workers are often doomed to fail.

The second aspect of the bill relates to the guiding principles for the mediator-arbitrator's work. I applaud the government's decision to include that and, like some of my colleagues, I wonder about whether a labour-management relationship based on a culture of collaboration can be created while negotiations are under way.

I also understand the issues Canada Post is facing at this point in its history: competition, ongoing financial difficulty related to potential loss of revenue, recurrent conflict with employees, adaptation to new technology, and how the corporation will evolve to ensure that it can adapt to our rapidly changing society.

It was interesting to learn that, on Saturday, while we were debating this bill at second reading, Canada Post employees in the Atlantic region met in Halifax to discuss topics including the future of Canada Post and what the corporation could look like. For example, they talked about the different uses that could be made of this vast coast-to-coast infrastructure network in an effort to help modernize Canada Post. In spite of the challenges

and difficult work environment they currently face, the workers remain wholeheartedly committed to the future of this corporation.

That said, like many of you, I find myself confronted with a difficult dilemma, today. On the one hand, I recognize that some rural regions and small- and medium-sized companies face some challenges if the mail is not delivered in a timely manner. On the other hand, I recognize that Canada Post workers are facing unacceptable working conditions.

Since the start of the debate in this chamber, we've heard a lot about the economic impact this work stoppage, this rotating strike, would have if Canadians and small business owners couldn't get their mail. In my view, we haven't heard enough about the impact this situation is having and will have on our fellow Canadians who work at Canada Post. Those 50,000 Canadians are already feeling the financial impact, the impact on workplace motivation and the psychological impact of their fellow Canadians. They also feel like they are not being heard.

Honourable colleagues, recognizing that I, like you, don't currently have all of the information that would allow me to be fully informed of all the issues, I consciously choose to put the workers first, the women and men who, for years, have been suffering from the deteriorating work environment at Canada Post and who have put a great deal of effort into adapting to the ongoing challenges within the corporation.

I am thinking of the women in rural areas who are doing this work and, still today, in 2018, are not being paid for all of the hours that they work. Also, despite the efforts of the government and Canada Post to find a quick solution to this problem by introducing this legislation, I intend to vote against it for the following reasons. First, there is far too long a history of unresolved labour disputes at Canada Post, the workplace culture has been deteriorating for a number of years at the workers' expense, and successive governments from all parties have not managed to support Canada Post and its employees in finding a lasting resolution to this dispute, which you will all agree has been going on for far too long.

I agree with Senator Bellemare. In order to resolve the situation in the long term, a major change needs to be made to the way the work is organized, including a review of the pay system. Why has that not yet been done?

My second reason for voting against this bill is the right of association and the right to strike set out in the Canadian Charter of Rights and Freedoms. I would like to quote what Liberal MP Bob Rae had to say in that regard in 2011. He said, and I quote:

The right to bargain collectively, to create a union and to be able to legally strike is a constitutional right that must be recognized. Yet, because of a public interest greater than this right, or because of a public emergency, the government may decide that it has the right to do what it is doing now.

[Senator Bovey]

— that is, introduce back-to-work legislation —

However, if the government exercises this right, it has a responsibility to protect the public interest. . . . But this right must be exercised intelligently and in a way that respects the rights of individuals and communities.

In a way that respects the rights of individuals. Is that the case, honourable colleagues? Does this legislation respect the rights of workers?

The third reason given by certain colleagues is the ambiguity surrounding what constitutes an essential service. In an article that appeared in *McGill Law Journal* entitled, “Les lois spéciales de retour au travail : enjeux institutionnels et constitutionnels,” the authors refer to the International Labour Organization and its Committee on Freedom of Association, whose mandate is to examine complaints about violations of freedom of association with the objective of strengthening compliance with these principles.

When he appeared before us, the union president confirmed that Canada Post and his organization had reached an agreement whereby cheques for vulnerable Canadians would be delivered, including the Canada child benefit, disability cheques, Old Age Security cheques, Canada pension plan cheques, veterans’ benefit cheques and Canada student loans.

The fourth reason is the most important and the reason why I will be voting against this bill. I am referring to the issues mentioned by many workers I spoke with, the issues they have been forced to endure for a long time in the workplace, such as being forced to work overtime, unpaid hours worked, accidents and injuries mainly caused by the arrival of bundled deliveries and multiple packages and harassment by certain supervisors.

• (1730)

Honourable colleagues, faced with all these challenges affecting the workers in our regions, what should we do?

The proposed solution is to pass special legislation providing for the resumption and continuation of postal services, taking into account the negative repercussions of work stoppages on Canada’s economy. This is a short-term solution, a bill that merely puts a temporary Band-Aid on a deep wound that has been festering for many years now. This wound requires major surgery and an effective, long-term cure.

Honourable colleagues, what I want to say is this: As a society and as legislators, as Senator Downe suggested earlier, why not conduct a study to help Canada Post and its employees come up with long-term solutions to this long-standing problem? Let’s work together to find the best ways to solve this recurring problem for Canadians.

Thank you.

Hon. Lucie Moncion: Honourable senators, my remarks today are about Bill C-89, An Act to provide for the resumption and continuation of postal services. Although I am not in favour of forcing workers back to work, which infringes on workers’ right to negotiate and interferes with the negotiation of respectful

collective agreements between employer and employees, I will support this bill. I understand my role as a senator when it comes to bills introduced by the House of Commons.

I thank my colleague Marc Gold for so adroitly elucidating what we must take into consideration as we prepare to vote on a bill.

The labour dispute between Canada Post and its employees has gone on for too long, since the late 1960s, in fact. This is not the first time the government has intervened to put an end to a dispute by introducing back-to-work legislation, but it should be the last.

The government has stated that the bill we must vote on will not violate constitutional rights. That remains to be seen.

The government argued that the resumption of postal services is important for the entire Canadian economy and that this legislation would prevent economic harm from coming to small- and medium-sized businesses, online retailers, direct marketers, the employees of those organizations, residents of rural, northern and Indigenous communities, people with disabilities, seniors, and economically vulnerable Canadians. That also remains to be seen.

However, we have heard different opinions in that regard. There are no specific studies to support such collateral damage, but many voters have told us that they are experiencing significant financial losses because the strike is affecting e-commerce. Customers are not placing orders because they can’t be sure if they’ll get their parcels in time for Christmas.

The government also argued that postal service is an essential service and that this legislation would continue to promote a resolution to the dispute. Again, that remains to be seen. However, an interruption or delay in postal services can be dangerous for people who depend on the mail to get medication or other products that are essential to their health.

Jessica McDonald, interim President and CEO of Canada Post, testified that Canada Post did not ask the federal government to intervene by passing special back-to-work legislation. She argued that the cumulative impact of the current dispute has resulted in a financial loss of over \$230 million. There are reportedly 3.6 million parcels waiting to be delivered, and rural and remote communities have been hardest hit. The Netherlands, Britain and Australia are holding onto 285,000 tonnes of mail while they wait for the dispute in Canada to be resolved.

Mike Palecek, president of the union, said that the delivery delays were exaggerated, that the mail is being delivered as usual, and that the numbers put forward by Canada Post were not accurate. He said that if employees returned to work in the next few days, the backlog would be completely cleared by mid-January.

He also said that the labour dispute is about pay equity, overtime, an excessive workload, and injuries that have increased fivefold since postal services shifted from delivering letters to delivering parcels.

I indicated at the top of my speech that I am supporting this bill for two reasons. The first has nothing to do with the employer or the union. It has to do with the workers. In any labour dispute that pits the employer against the union, the workers are the ones who pay the price. They are the ones who lose wages and have to find ways to make ends meet.

This pre-Christmas period is critical not only to businesses but also to the Canada Post workers who need their full incomes to get through the holiday season.

The second reason has to do with the issues still in dispute. We hear that the parties are close to an agreement. Once these issues are resolved, the improved working conditions will be standardized retroactively, but income lost as a result of a strike is immediate and significant. The financial impact can linger long after they return to work and a new collective agreement is signed and implemented. Some may say that this is not the issue, that the issue is the right to negotiate. I think you will agree that the right to negotiate is costing them dearly.

I want to talk about the issues in dispute. There are two issues connected to pay equity: The first is about money owed to former employees, and the second is about rural mail carriers. Why hasn't the money that's owed been paid yet, and why are there still disputes over pay equity?

There are two issues around overtime. Apparently, under some circumstances, overtime is unpaid. Why? Here again, employees in rural areas seem most affected. Why does this inequality persist?

Since the rotating strikes began, the union has forbidden its members from working overtime at the risk of being expelled and losing the benefits of union representation. If letters and parcels are being delivered on time, why is Canada Post asking its employees to work overtime, and why would the union deny its members that right? We have to wonder about the reasons behind that stance.

There are workload issues. The shift from delivering letters to delivering parcels has led to an increase in workplace accidents and injuries, which are five times more common now than Canadians have changed their buying habits. The problem is very real, and both Canada Post and the union are aware of it. In light of the situation and the costs associated with employees taking sick leave, what solutions are being considered, and what issues are still outstanding?

These are important issues that need to be resolved. If Canada Post wants to provide high-quality service, improve the climate, the safety of its employees and labour relations, and operate profitably, it must be able to count on a workforce that is treated fairly.

[Senator Moncion]

Bill C-89 will extend the existing collective agreements, support continued negotiations and ensure that postal services are maintained during the holiday period. In addition, if it passes, this bill will allow both parties to save face, since neither side will have to capitulate on any key bargaining issues. Thank you.

[English]

Hon. Peter M. Boehm: Honourable senators, I did not expect this to be the first issue on which I would speak in this chamber, but I certainly feel compelled to do so today.

[Translation]

First, I would like to thank the witnesses we heard from on Saturday. Minister Hajdu, Minister Qualtrough, Jessica McDonald, Chair of the Board of Directors and interim President and CEO of Canada Post, and Mike Palecek, President of the Canadian Union of Postal Workers, all gave excellent, thoughtful presentations.

[English]

I think we can all agree that, regardless of which side of this labour dispute you fall on, this is a difficult situation for all concerned and this debate today illustrates that fact.

All of us have received important messages from our fellow citizens, from businesses and postal union members. They are pertinent, touching and relevant, and these messages keep coming in.

• (1740)

Despite the varying, often passionate opinions on all sides, especially given the seriousness of labour disputes, I was heartened by the general sense of decorum and respect with which everyone governed themselves here on Saturday. This speaks with pride to the value of our institution.

In that spirit, Canada Post should see this as an opportunity to work with the union to address present and future challenges, including changing business and working conditions to reflect new realities in mail and parcel delivery, health and safety, and especially pay equity issues related to women in the workforce.

The impact of disruptive technologies, as expressed by Senator Deacon, has pushed a new business model on the logistics industry all over the world. Adaptation continues, and it will continue to be key.

For its part, the union should demonstrate more clearly that it understands the economic and business challenges faced by Canada Post and be prepared to show greater flexibility in working with the corporation to address these challenges.

On both sides, there must be greater understanding of the fact that labour disruptions at Canada Post also disrupt the work and income of the many individual Canadians and communities, especially rural ones, that are most reliant on Canada Post. Of course, there are also the thousands of businesses, large and small, whose bottom line depends on the services provided by Canada Post.

I also wish to say that while doing so may not be completely understood, nor welcomed, by supporters of this legislation, or at least the need for it, I believe this house did the right thing in waiting for third reading until today.

The one day we took to reflect, instead of sitting yesterday, was an important opportunity to really think about this legislation and all that comes with it. That's what I did.

I believe to have pushed it through on Saturday without due deliberation would have been harmful to the parties involved and, by extension, to Canadians and indeed to the Senate itself, particularly given that we received conflicting information from Canada Post and the union on the state of backlogs.

Whether there was disagreement about the number of trailers parked in Canada Post lots or whether they were empty or not, or about drone footage or media statements, or whether a million parcels is a large backlog or just a Monday, it is clear there was much for us to think about.

As a former international negotiator for various governments, I should add that I am not a hissy-fit type of person. That's not part of my tool kit nor my lexicon.

We must also consider the gravity of the situation and the underlying principles of the freedoms of peaceful assembly and association, and the right to strike, the latter of which was, of course, affirmed as constitutionally protected by the Supreme Court in 2015.

When the Charter of Rights and Freedoms is concerned, we must be especially cautious. The Charter, and everything codified within it, must be respected and cannot be taken for granted.

I appreciate the clarifications provided by the Government Representative in this chamber earlier.

In other words, honourable colleagues, this is a decision we cannot take lightly. That being said, I will also say that in a situation such as this, which has national and now even global reach, we also have a duty to act in the national interest. We must do so, to paraphrase our colleague Senator Woo, with haste, but not hastily.

Colleagues, I support Bill C-89 because I believe the bill to be in the public interest. While I believe strongly in collective bargaining and the right of workers to strike when good faith negotiations falter, I also believe that Canada Post and Canadian businesses, both large and small, will suffer short- and long-term economic consequences if this dispute continues. Lost business will have to be regained, and that will have medium- and longer-term repercussions on everyone: industry and the workers of Canada Post.

Much has been said about the holidays being the busiest time of year for Canada Post and how many Canadian businesses rely on the increased profits that come with this season. It must be pointed out that these businesses rely greatly on our national postal service during the other 11 months of the year as well.

Colleagues, there's no slam dunk resolution that back-to-work legislation provides. There is no solution being imposed other than the important one of enforced mediation.

It is clear from all presentations that the industry has changed and will continue to do so, hence the need for real and enduring compromise, if not a total reset of the employer-labour relationship. Canada Post and the union must come together to face this reality, but not at the expense of Canadians. Thank you, colleagues.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Honourable senators, I wasn't planning on speaking to this bill, but after hearing you speak, I decided to say a few words. I want to thank all of you for what I feel has been a very honourable and objective debate on this bill.

I have some personal connections to Canada Post. My brother-in-law worked there as an executive; my brother spent his whole career there, as did my sister-in-law; and I even worked there myself for a few years as a casual worker while I was in school. This is an industry I am relatively familiar with, or at least I was.

The fundamental problem Canada Post is facing goes beyond a simple labour dispute. This corporation has not managed to redefine itself in a competitive, globalized world of changing technologies. These problems have hit all industry and business sectors, and even governments.

Having worked in government reorganization for 20 years, I know that getting an organization of workers to change in order to better adapt is a management responsibility. That is where Canada Post has been failing for nearly a decade, and that is why I think we are going to fail again, because we keep repeating the same patterns year after year in terms of labour relations and the search for solutions. We always end up at the edge of the same cliff, almost always at the same time of year, just before the holidays. That pushes the government to make a decision that always brings the parties to the same point the following January, making it impossible to get a group of workers to buy into the need to adapt to a changing world.

What I don't understand is why management hasn't been able to make any progress in a decade, except maybe a few changes that I would describe as secondary changes, having to do with workloads, work stations and job descriptions. They constantly stay at the same level of what I would call "the traditional position." I think this bill will help the parties make significant progress, in order to prevent Canada Post from becoming obsolete.

I think that the real challenge management is facing today is saving Canada Post, and it seems rather unfair to me to make workers bear that burden. That is what this legislation tries to do.

It tries to make staff bear the burden of Canada Post's future. I think that management failed in its duty to save this organization, which, as we know, has been in financial difficulty for years.

My gut and my heart are telling me not to vote in favour of this bill, because doing so would be like saying that it is the workers' fault that the organization was not able to adapt to 2018.

I don't know what kind of message we should send to management, but I think that we, as parliamentarians, can't shift this burden to workers. It isn't fair.

I hope that this isn't the last piece of legislation on Canada Post that we deal with before the organization disappears in a year or two, but I also don't think that this legislation has what it takes to send the organization a wake-up call. I don't know if Canada Post is even aware that it's on the brink. The government will have to ensure that Canada Post is managed much more carefully and with a firmer hand if it is to survive, because right now it's teetering on the brink.

I personally can't vote in favour of this legislation. I will respect the choice that each of you makes, because on this particular legislation, I think we need to vote not only along party lines, but with our hearts.

• (1750)

[English]

Hon. Pierre J. Dalphond: I will start by thanking my colleague from Nova Scotia for quoting me extensively, though I should say out of context. I was referring to a bill amended by this house, and the amendment was not accepted by the other house. Then I spoke about the deference that is owed to the other place and when we should insist or not upon an amendment that has not been accepted. That may happen if we amend this bill. It's nice to remind me.

[Translation]

Honourable senators, I stand before you today to comment on two aspects of this issue. The first is the role of the Senate as an institution that now enjoys full independence from the governing party in the House of Commons, and the second is the content of Bill C-89 and the reasons why I will not be voting for the bill.

[English]

I am a member of the Independent Senators Group now forming the majority in this chamber. For the first time in its history, the Senate enjoys full independence from the governing party and party whips. We enjoy this independence because it is the sincere wish of the current Prime Minister to have an independent Senate. This independence allows us to better fulfill our mission by making our decisions based on science and evidence and in the full respect of the fundamental rights of all Canadians, such as Indigenous and treaty rights, the rights of francophone minorities outside Quebec, the rights of the English minority in Quebec, and of course, the enforcement of fundamental rights recognized by the Charter, such as the right to equality, the right to freedom of association and the right to freedom of expression.

[Senator Boisvenu]

These fundamental rights should not be sacrificed, thwarted or denied in order to build a pipeline across Indigenous lands because it will be cheaper, to reduce by a few million the massive Ontario deficit, or to provide some businesses a way to ensure more revenue.

As you all know, this house could not sit over the weekend to rush through Bill C-89, as urged by the government, without the unanimous consent of senators. And maybe Senator Plett, if he is listening to me, will hear the answers to his questions.

Because of our duty as independent senators to stand for fundamental rights, some of us made it clear last week we will not consent to suspending the ordinary *Rules of the Senate* because we were of the opinion it did not behoove a chamber whose mission is to safeguard fundamental rights and to protect minorities, to waive its rules to facilitate the denial of fundamental rights of the unionized workers of Canada Post. I understand my colleague Senator Plett does not share these principles. I respect his views. I stand firm on mine.

In the end, we agreed on Saturday morning to engage in the process Saturday but to hold the critical vote today, Monday. We were of the view this compromise would provide senators with more time to think about the issues at hand and for the parties, including the government, which is the owner of Canada Post, to go back to the table and reach an agreement in principle. We are here today because, much to my disappointment, no such agreement was reached over the weekend, though I'm told there were discussions and the parties are not too far apart.

Does that mean we should pass this legislation? My answer is no, for the following reasons.

In *Saskatchewan Federation of Labour v. Saskatchewan*, rendered in 2015, the Supreme Court of Canada ruled on the constitutionality of the right to strike. Justice Abella for the majority wrote:

The conclusion that the right to strike is an essential part of a meaningful collective bargaining process in our system of labour relations is supported by history, by jurisprudence, and by Canada's international obligations. . . . the right to strike is not merely derivative of collective bargaining, it is an indispensable component of that right. It seems to me to be the time to give this conclusion constitutional benediction.

As the majority of the court explained, the right to strike promotes equality in the bargaining process. It places pressures on both sides to engage in good-faith negotiations, thus placing workers on an equal footing with their employer.

It goes without saying the government's intervention through Bill C-89, at a time when the parties were still negotiating and the unions were striking, interferes with Canada Post workers' fundamental freedom of association. This is a clear violation of section 2(d) of the Charter of Rights and Freedoms. Nobody can deny that.

However, Charter violations can be justified under some circumstances under section 1 of the Charter.

Last Thursday, when the ISG met with the labour minister, we asked her to provide us a Charter statement from the Justice Department, since the fundamental right of association, guaranteed by the Charter, was at stake. We received that Charter statement late Friday night, as the bill was rammed through the other place. I don't know how many of you have read it, but I did. Like Senator Sinclair, I am of the view it's not worth the paper it's written on.

First, this one-and-a-half-page document contains no conclusion. Second, it does not acknowledge the fact there is a clear violation of the freedom of association guaranteed by the Charter. Third, it does not give any weight to the fact Canada Post workers have resorted only to rotating strikes and not to a full strike. It does not refer to agreements made between the unions and management about the delivery of social security cheques and other social benefit cheques to all Canadians.

Finally, it fails to apply a legal test called the *Oakes* test to determine if an infringement is justifiable under section 1 of the Charter. This word is not even used in the statement. It fails to explain how the proposed measure is a forced end to any form of strike and to negotiations. The mediation is going to last for seven days and then it will go to forced compulsory arbitration.

How do these measures follow an objective of sufficient importance to warrant overriding constitutionally protected rights and freedoms? How are the measures rationally connected to the identified objective? How is the infringement minimally impairing? Will a balance be struck between the infringing effects of the measures and the importance of the objective? In other words, we're left without a Charter statement worthy of the name.

Therefore, we have to come to a conclusion without it. Fortunately, I feel some ability to do my own *Oakes* analysis.

[*Translation*]

The government's stated objectives are to ensure the delivery of mail and parcels to Canadians, to preserve a means for businesses to send parcels at a crucial time of the year, and to allow Canada Post Corporation to make a good portion of its annual sales.

For the sake of discussion, let us assume that the objectives are quite real and that removing the right to strike and the right to negotiate after seven days is a measure that will achieve those objectives. The question that remains is the following: Do these objectives justify suspending the constitutional right of Canada Post employees to conduct strikes, even rotating strikes, and to obtain a collective agreement through real negotiation and not under an agreement imposed by an arbitrator?

Does the bill consequently result in minimal infringement on the guaranteed rights of Canada Post employees? It is true that the text of this bill is different in several ways from the 2011 legislation, which was declared unconstitutional. However, in both cases, the government interfered in Canada Post negotiations. The government intervened when the parties were negotiating on an equal footing.

• (1800)

In my view, the government has other measures at its disposal to meet those objectives while limiting the infringement on fundamental rights. Indeed, it would have been easy for the government to propose a ban on all general strike action and provide a framework for rotating strikes. For example, it could have stipulated that the distribution centres in Montreal, Toronto and Vancouver could not be part of any rotating strike.

Instead, the government is choosing the most extreme measure, completely prohibiting the workers from using pressure tactics on their employer and taking away their right to negotiate the next collective agreement unless they reach a deal within seven days of the bill's passing.

In reality, all this bill does is impose on the union and its members a little less than what the CEO of Canada Post Corporation offered last Monday. She described that offer to the Senate on Saturday, and I quote:

[*English*]

We would have restored full benefits under the current collective agreement and would have agreed to renewed mediation under a jointly agreed mediator that would have extended until the end of January. We would have provided a \$1,000 bonus for employees in recognition of the compromise this would represent for them. We would have continued the free collective-bargaining process and negotiated until the end of January, then moving to binding arbitration if we didn't reach an agreement.

In other words, the bill submitted to us provides less than what was offered last Monday and rejected by the unions: a shorter period for negotiations — seven days only — no bonus and a compulsory arbitration.

[*Translation*]

The bill does not require the employer to take measures immediately to reduce the risk of workplace accidents. I should point out that, every day, 15 Canada Post Corporation employees are involved in workplace accidents, that the workplace accident rate is five times higher at Canada Post than in any other federal organization, and that the rate is rising in step with the growing number of parcels delivered.

In other words, workers are being forced back to dangerous working conditions during the busiest time of the year as winter sets in. This is all the more surprising considering that the CEO of Canada Post told the Senate on Saturday that employee health and safety is the corporation's priority.

[*English*]

She said:

Canada Post needs to bring its injury incidents down dramatically. It is imperative. . . .

At the end of day, management and I have a responsibility to provide safe workplaces. That responsibility is absolute, and safety has to be a primary consideration, if not the primary consideration, in terms of all matters of work.

Where do we find anything about that in the bill? They resume work without these issues being dealt with.

[*Translation*]

In short, not only does the bill upset the balance between the union and the employer, but it also sets out measures whose only immediate goal is to protect the employer's economic interests at the expense of worker health and safety.

[*English*]

At this stage, we are asked not only to disregard the constitutional right of association and the right to freely negotiate a collective agreement, but also to overlook the legitimate health and safety concerns of Canada Post workers in order to allow the corporation to preserve its client base where it makes profits.

I cannot support a bill that sacrifices fundamental rights and risks injuring employees in order to protect the end of the year books of the employer.

Hon. Marilou McPhedran: Honourable senators, I will be mindful of the time pressures of this debate and make only a few points for the record.

Let me begin with appreciation for what unions contribute to our constitutional democracy. In particular, CUPW has been a leader in bringing human rights to the floor for workers. Even before we had the Charter as the tool that protected maternity and paternity leave in the 1980s, postal workers and their union were among the first to implement paid maternity leave in Canada.

In the process, they brought together women's groups across the country to focus national attention on the issue and contributed to readiness when the Charter did become available to expand parental leave from a negotiated option on an individual basis to a national guarantee, strengthening our entire society and caring for generations to come.

I wish to share in the disappointment expressed in the Charter opinion that senators received this weekend, as pointed out by a number of senators, including Senator Joyal and Senator Sinclair, and acknowledge the comfort expressed by Senators Harder, Woo, Gold and Boehm with the constitutional reasoning in that opinion. The fact is, however, it is all speculation and we do not know what the courts may decide as to Bill C-89 as a law.

The unreasonable burden that we need to consider is not whether the guiding principles set out for the mediator-arbitrator are nice or welcome in comparison to the nature of the back-to-work legislation by the Harper government that was ruled unconstitutional, as numerous speakers, including Minister Hajdu, have assured us.

[Senator Dalphond]

The unreasonable burden that must concern us as senators is the weight that Bill C-89 loads on the 50,000 postal workers in this country who would be, once again, denied their right to strike and, once again, told that they must live with an imposed set of conditions.

Senator Colin Deacon has pointed out that the growth in Canada Post's parcel delivery is substantially higher than the international average. While that is an appealing statistic in itself, we need to be concerned about the burden being carried by postal workers in the form of injuries and unpaid overtime to respond to this growth.

The nature of this burden that we must be concerned about is in the words of CUPW President Palecek when he pointed out that postal workers:

... are now the most injured workforce in the federal sector, at five times the average injury rate, at double the rate of the next group of workers, and it wasn't always this way. The situation is new.

While the guiding principles in Bill C-89 are good to see and hard to argue with, we need to understand that they form a list of outcomes that are actually already law in this country — equal pay for work of equal value, workplace safety, reasonable work hours with paid overtime. So why have these laws not been respected and implemented already by Canada Post? Why is it an undisputed fact that rural and suburban mail carriers, most of whom are women, do not earn the same amount as urban carriers?

May I suggest that we need to be realistic about making a deal under the pressures of back-to-work legislation because Bill C-89 is clear that these guiding principles are to guide the mediator-arbitrator. It would seem logical that any well-qualified and honest mediator-arbitrator would know these are already in Canadian law. So what is the likely outcome if an imposed agreement doesn't respect the law and doesn't incorporate the outcome set out in the guiding principles?

In response to my questions on Saturday, we did not hear the ministers say they would keep a close watch or follow up on the outcomes to any imposed deal but, rather, they would leave postal workers to try to get their equality and safety issues addressed through business as usual for the parties using the regular process that was designed to apply to negotiating, not imposed, working conditions.

As to the widely disparate allegations about mail backlog, I wish to note that I live in a high-rise with hundreds of others. Every day last week I walked past all of our mailboxes on my way to the elevator.

• (1810)

When a parcel has arrived, each box has a yellow sticky notice affixed. Last week, every day, many boxes were festooned with yellow stickies. The deliveries are getting through, at least where I live.

This is not a full strike. It is a rotating strike, with particular consideration being given to vulnerable Canadians who need their mail. There is a signed memorandum of agreement between CUPW and Canada Post to deliver disability and pension cheques throughout any strike action. Canada Post told us the backlog is nearly a million parcels. CUPW told us clearing the backlog is “a day’s worth of mail.” It does appear the union is keeping its word to moderately disrupt the mail. This raises a big question about the demonstrated necessity of this emergency back-to-work bill.

It is relevant for us to remember there has been no contradiction of the fact there is an agreement in place to deliver social assistance, pension, and disability cheques throughout any strike action. We have been told by CUPW that women have to be paid equally and to be paid for all the hours they work. The CUPW president told us on Saturday that detailed proposals on equalizing the pay of rural and suburban mail carriers have been tabled. There is no agreement and the mandate for the mediator ended today.

The two bargaining units do the exact same work, but one is dominated by women and gets paid substantially less.

In closing, colleagues, I wish to indicate I am not at all convinced of the necessity of this legislation or of the fact it meets the constitutional standard. I will therefore vote against it.

Senator Lankin: Honourable senators, following the leadership of Senator Manning and Senator Ravalia today, I thought I’d name my speech. I’ve come up with: Is that a backlog or is it just Monday? There’s no import in the fact we’re debating this on a Monday. It seemed to me to be a distillation of the lack of factual evidence or interpretation that we can bring to this issue. The reason I raise it is because I believe it is central to the question of whether one can make an argument that this legislation should be brought forward at this time. The issue of timing, which I’m going into in a moment, is important for me as I look at this.

First, I would like to say how grateful I am to speakers in this chamber, honourable colleagues. It has been a high-quality, high-calibre debate, with one notable exception, but that’s what happens when there’s diversity in a place. I thought comments about the ISG, people with pet projects and their own background and all that might be directed at me. I’m not sure. People know I have a trade union background. I’m now thinking it might have been directed at Senator Dagenais and Senator Boisvenu. I don’t know exactly.

However, putting that aside, by and large, this debate has been incredibly informative. It has been rich. It has been thought-provoking. I again thank all members who have contributed at that level.

As I thought about coming into the questions on Saturday, I understood fully the issues with respect to the workplace injuries, the lack of pay equality, the growth of contract and precarious employment and a number of other key issues, but those three in particular. I find it abhorrent that these issues, many of which have been on the bargaining table in this particular employer-employee relationship for many years, are still unresolved. I made the comment that in the public sector, for many years, Canada Post has been known or perceived to be the worst public

sector employer in Canada. I believe the government has — I know, I’ve read it — the mandate letter to the new board and interim CEO and the incoming one to clearly make change that will rectify this situation.

I don’t know if it’s reasonable for any of us to expect that change would happen in a nine-month to one-year time frame. I am very distressed these issues remain the key of the bargaining impasse.

I had to work my mind through that. The conclusion I came to is that is something for us all to be aware of and it’s something for us to have our opinions about. It is not the central decision point before us in this chamber today with this piece of legislation. I say to Senator Downe, you raised an interesting idea, as we start to move past this moment in time and look to whether there’s anything the Senate can do that can be helpful and not harmful to the parties as we go forward.

I think Senator C. Deacon from Nova Scotia’s contribution in talking about micro-business, entrepreneurs and a fundamental change in our economy is an important one. It may be one the parties look at in the future to include in their definition of essential services in small, rural, remote communities where micro-enterprise is the underpinning of people’s capability to earn a living and provide for their families.

Those are very interesting ideas. They contribute to our long-term thinking. However, here we are today. If the issues that bother me so much, as a long-time fighter for health and safety laws, for pay equity laws, for an end to precarious employment, understanding the economic contribution those progressive measures on those fronts would make to our economy, is not the central issue I can deal with today: Where did I go and what did I think was?

For me, it clearly comes down to the issue that many people have talked about. It is the issue of the Constitution and the Charter rights, the infringement of those Charter rights and the section 1 accommodation for reasonableness and whether that test has been met.

I’m amazed at some of the comments I heard on Saturday that everybody supports the right to strike here. I don’t believe that. People voted for legislation that imposed wages on workers and didn’t send it to arbitration. It imposed wages on workers that were lower than the wages that had been offered at the table and that appointed, without party participation, arbitrators that twice got taken to court and were twice struck down when the labour minister of the day appointed, first, an arbitrator who was found to be completely inexperienced with respect to these matters and the court found that unreasonable; and second, the person that labour minister appointed was a lawyer who represented Canada Post in a pay equity battle against the union that we’re still trying to see resolved today, and that person was an active member in that minister’s political party.

Those things are in the decision of Justice Firestone. I find them stunning, as matters of fact, and refer back to the actual court decision to accept the judicial review and quashing those arbitration appointments. Are we in a different place, however? That’s the question I needed to search through.

With respect, and as Senator McPhedran just outlined — I won't go through the outline and others have spoken to it — the guidelines set out go an extremely long way to attempt to meet Justice Firestone's criticism of the 2011 back-to-work legislation. I want to say to all of us there's nothing to be self-righteous about one way or the other on these things. The law has evolved. This is evergreen.

For those who think I have a special pet project interest, I have sat at a cabinet table and had to participate in the deliberation and finally the introduction and passage of back-to-work legislation in public sector strike situations. That legislation was not nearly as fulsome and fair as this. However, the law wasn't the same law then, either. I think we shouldn't regress to simple finger pointing and to bad them, good us. I don't believe that in terms of the political parties in the House of Commons and their roles in the past on this.

- (1820)

What I do believe is those conditions around the mediation first then arbitration, those conditions around the guiding principles, those conditions that provide for the parties to choose their own. If not, at the end of the day, the mediation services, not the minister, to make that appointment. I think those are all quite positive. Does that mean I think this gets a free pass in terms of constitutional examination? Courts will do what they will, of course. The answer is no. There is another level of probing I believe we need to do. And that is with respect to — it's something I believe the courts have already alluded to in their decisions when they talk about being sure that what we are doing is minimizing its impact in terms of the bargaining process. When progress is or is not being made, I turn it around and think about in terms that many people have talked about, the impairment to customers. What is the economic impact? What is the disruption? Is it an inconvenience? Is it a crisis? Those are polarized words. It's probably somewhere in the middle.

Let me acknowledge clearly, if you are a small business or micro-business and you have been hurt during this process, that is a fundamental hurt. Is it widespread? I don't know yet. I have been trying to get at that issue because I think the question for me, if I put it in plain language, is: Did the government pull the plug too early? Should they have given some more time?

I heard many people speak to the fact they thought too much time had been given. I point out in the 2011 situation there were three weeks of rotating strikes, not five weeks, but followed by a general lockout. For those who say the mail is not moving now — and I heard that twice and then an accommodation that some of it's moving but it's not moving to the degree it should be this time of year. There was a general lockout. That's different from rotating strikes. I come back to what is the evidence of impairment? I don't negate the emails and the letters we have received. I don't negate the testimony that senators and their speeches have given from talking to people in their own communities about what the impact has been. I think that's an important contribution. I did spend a fair bit of time saying, can't we move beyond that? Isn't there hard evidence?

A number of years ago Michael Warren was president of Canada Post. He was also at one point in time general manager of the TTC. In my days in Toronto I was aware of that. He also

held, over a period of years, four or five different deputy minister posts in the Ontario government. Very professional person and respected in a lot of circles. And Senator Deacon (Nova Scotia) reminded me he spoke on a number of occasions about the innovation of tracking and measuring volumes of mail. I went back to try to search and find some of that and see where the state of that was. I wanted to understand this many years forward with the improvement in terms of customer relationship and performance management, all the technological tools to do that, I knew it would be so much more sophisticated. I began to ask questions. I asked a lot of questions of the parties here on Saturday. I came away from that unsatisfied. I contacted Senator Harder and said, can you get some of this information from the government? He went to great lengths, got some information that came from Canada Post to the government to him to me. And I referred to some of that in my questions to him earlier.

It wasn't sufficient information that Canada Post provided. I emailed Ms. McDonald, who was here with us — and I want to say thank you very much to Ms. McDonald. She responded by telephone. We have had several conversations and email exchanges since, and I got a lot more information. I still didn't get exactly what I was looking for, the contention being that it may not be available at this time. It might be another week before it's available. That doesn't quite help us here.

What I did get — not through Ms. McDonald but through someone in management I know in Canada Post who has access to this through their intranet. All employees do. — was close to 100 pages of analysis of volume tracking for letters and regular parcels, Xpresspost, international. It's a lot of data. That data — I sifted through some of it with the assistance of a couple of great staff who have been poring through it — told us basically for the month of October — because that's what I had — that the rate of successful delivery — and now I'm going to go to letters. I know we were talking a lot about parcels, but you can only talk with confidence about the data you have been given. The rate of successful delivery is about the same as it was for all of last year, over 94 per cent.

Now, I caution anyone drawing conclusion from that because for most of October there was no labour disruption. That only happened towards the last week or week and a half or so of October. Thus my request for the November stats. We are not at the end of November. The information was that that would be forthcoming in a week or so, after November. I have said this to Canada Post, I find it hard to believe the systems don't allow you to get, if you want, based way back on what Michael Warren had to say, an hourly or daily or weekly update on those reports. Could we get an update as of today? We've got updates on the number of trailers. None of us know what that really means in terms of what's backlogged and what's not. We know the trailers are more now than they were in the middle of last week. We know the middle of last week was a lot less than it was last weekend. I spent a lot of time on this, senators — it doesn't sound it — but I didn't come to a lot of conclusions in terms of the data I was able to look at.

I had the opportunity last night and I, in the end, did not take the opportunity up, but to go to the Montreal distribution plant to see for myself. I was going to take two senators with me. I called Senator Deacon (Nova Scotia) and Senator Pratte and said, would

you like to come? I thought Senator Deacon (Nova Scotia) because he has a strong sensibility to the small and micro-business side that have particular issues and questions and —

The Hon. the Speaker: Sorry, senator, but your time has expired. Are you asking for five more minutes? Leave granted.

Hon. Senators: Agreed.

Senator Lankin: Senator Pratte because of his former role as a journalist and the way he could ask questions. We were going to meet with both management and the union. After it ended up not happening I thought about the title to my speech, is that a backlog or just Monday? I thought, if I came into a room like this and it was filled with parcels and letters, mounds of them, what would I know? Because I don't know if that's a backlog or if it's just Monday.

I think the court will have to drill down on this issue of the impairment and the timeliness of this legislation. We will have to await that. I suspect this will, if passed, go to court with a challenge.

I have spent a lot of time looking at the Labour Trilogy in terms of terms of evolution of the understanding of the right to strike as a fundamental part of freedom of association, the *Saskatchewan Federation of Labour v. Saskatchewan*, the Firestone decision I just talked about, the *Oakes* criteria. None of it brings me to a definitive answer on this. I believe this is something that will go to the courts.

Lastly, as much as I have tried to move away from anecdotes to hard evidence, and absent that hard evidence, let me share with you one anecdote of my own. As we were heading into this Friday and watching all of the debate going on in the House of Commons, I got an email from Canada Post notifying me the parcel that I had ordered from a vendor had arrived at Canada Post and was being forwarded to me. They gave me a tracking number. I went on and looked at the tracking number and it said — maybe it won't arrive when it said, but it said it will arrive this week. I don't feel inconvenienced yet, but I do take to heart those senators who have spoken to people who are.

I am fundamentally opposed on principle to back-to-work legislation. As I said, I have had to be part of a cabinet that exercised it before. It's a question of judgment for me. The question is have they pulled the plug too soon? Thank you very much.

Some Hon. Senators: Hear, hear.

• (1830)

Hon. Ratna Omidvar: Honourable senators, I will be brief, but I feel compelled to share the line of my reasoning and logic with all of you.

I will freely admit that I have see-sawed on the substance of the debate through Saturday, Sunday and today.

Senator Pratte asked : Who is right? Who is wrong? The postal workers are right. They have the right to freedom of association, and they have a right to a workplace that is free of injury. They have a right to equal pay for work of equal value.

But so are Canadians right — who want their medicines delivered, whose businesses are feeling impacted, as Senator Deacon pointed out, and who need their cheques delivered. So when I read this, I come to the conclusion that they are both right and no one is wrong.

This does not help me much. So I go to my second screen, and I ask myself three questions we are charged with asking ourselves every time: protecting the Constitution and ensuring that legislation is Charter proof. Again, I'm not a lawyer. We have some very learned legal minds in the chamber, but I know one thing about lawyers — and all the lawyers will please forgive me — when you put them all together, they will all disagree. So I have no clarity from the very learned legal minds because we have conflicting opinions here.

But I do know that I do not believe that we should look at the legislation and second-guess the Supreme Court, because we cannot second-guess the Supreme Court. We have to make our decisions based on what we know and let the Supreme Court do its job.

Second, we are charged with representing our regions. Now, if the strike goes on — the rolling strike I should say; I think we should keep in mind that it's not a full-on strike but rather a rolling strike. If the strike goes on or the workers are mandated back to work, Ontarians will be impacted as will British Columbians, Quebecers and Newfoundlanders in the same way because we have postal workers and communities in our midst.

I go on to my third question, which has been a hard one for me: a mandate to protect the rights of minorities. I think about women in particular, and we have heard lots about the fact that there are more women who are delivering heavier parcels, trudging through the snow and wind to make their deliveries on time, and I think this is a real issue that must be dealt with.

So then I come to my final screen, because my reasoning and my logic have not persuaded me any which way as I've applied screens. My final screen is what is my role as an unelected senator in a house of sober second thought vis-à-vis my elected colleagues in the other place?

In our history, this chamber of sober second thought has refused legislation only a handful of times. I have notionally tried to imagine a situation where I would say no, and because I'm a practical person and I think in the particular rather than the abstract. I think if legislation to make beer free for Canadians would come before us I would probably say no. Senator Mercer would say yes, clearly. I would certainly say no if there was legislation before our house to legislate torture as a way to protect our national security. I would vote against that. I believe that we should only vote down legislation that is egregious in nature.

Very reluctantly, I come to the conclusion that this bill does not meet that bar. I will very reluctantly vote in favour of Bill C-89.

Thank you.

Senator Downe: Will the senator take a question?

Senator Omidvar: Yes.

Senator Downe: Thank you. I noticed you referenced the number of times the Senate has defeated legislation. You are aware, of course, that the Senate has defeated significant government bills over 50 times, only a few since the Second World War when new rules came in, obviously with restrictions that the whips of the day were enforcing.

The situation I'm personally aware of is that in the election of 1993, the Liberal Party under the leadership of Jean Chrétien promised — and it was a campaign commitment — to overturn provisions of the sale of some assets in the Toronto airport. That issue came before the Senate. Various senators from both parties had different positions on it, and some of the senators who have been here a long time would recall this. There was a crossover of how senators voted, but the initiative was eventually defeated, even though it was an election commitment of the government.

How would the senator feel about that if she had been here at that time? Would she have defeated an election commitment of the party that formed the government?

Senator Omidvar: I'm not sure I'm able to answer that hypothetical question. I was not here. I'm here today, and I'm weighing in on this bill with my logic and my reasoning, as I have said.

Hon. Marty Klyne: Honourable colleagues, this is the first time I have had the opportunity to speak in the Senate since being appointed mere weeks ago. In my corporate career history, this is the shortest honeymoon period I have ever had.

This issue is of great importance to Canadians. We have heard many well-articulated positions in this chamber. I won't go into details summarizing the arguments already made, but I acknowledge that our work in this chamber over the past couple of days inspires me as a new senator to the important role we undertake as senators.

The health and safety of Canadians are essential. Their right to express themselves is paramount through collective bargaining. The difficulty we face is that there are two groups of Canadians who are affected by this use of rotating strike action. The workers represented by the union continue to work in the environment that they have identified as unsafe. I find that unacceptable as an employer.

The other group is Canadians who are negatively affected by the strike as it places undue financial risk on their businesses, especially during the time of year tied to ensuring their businesses remain profitable. I heard from Senator Deacon the other day that many of them look at this as about 75 per cent of their revenue during this height of the season.

We know there have been efforts to mediate the disputes between the two parties. The result has been inconclusive, and now we, as senators, must make a difficult decision to either move the parties forward or allow them to continue as they have with the aspiration that some agreement will be reached.

The mediation has been ongoing, and the decision by the Canadian Union of Postal Workers is politically strategic as this is the time of year when the volume of parcels is moving across like no other season.

The shift into increasing parcel delivery has been an ongoing issue over the years, and the management of Canada Post should have been sensitive to these changes, and I'm sure they were aware of them many years ago.

But Canadians require certainty while the details are discussed by the parties. The question is whether this infringement on the rights of Canadians to express themselves freely, as outlined in the Charter, is essential, and I'm hopeful that CUPW and Canada Post will continue and find agreement soon.

I could turn to the justices of the Supreme Court, which has been mentioned, with *Saskatchewan Federation of Labour v. Saskatchewan*, but I'll just borrow some of the words of that decision:

. . . does not violate the right to meaningful collective bargaining protected under . . . the Charter.

• (1840)

It can be argued that the goal of a strike is not to ensure meaningful collective bargaining but, instead, is to exert political pressure on the employer and the Senate, which it has been successful in doing.

You'll see I'm working from a bunch of scattered notes made over my time listening to your comments.

I agree with many of our colleagues in the Senate that it should not have come to this measure of last resort at this height of the season yet again. This cycle could very well be the definition of insanity.

It's not our role to use this legislation, rejecting it, to send a message to the shareholder, the minister responsible and the CEO to get back to the table. I'm sure many of you heard about culture versus strategy. If we simply send it back in that format, I can assure you that culture will win. When culture and strategy clash, culture always wins.

The shareholder needs to have a CEO that will break this cycle and create a new culture; a CEO that can build a culture of trust and shared values and turn this corporation around to one of high performance, an organization that others aspire to and measure themselves against; a CEO that leads with integrity. It's going to take a whole lot of truths in this situation to establish a reputation for being credible and someone of integrity. One lie or misrepresentation will disrupt the whole reputation of that CEO.

What is needed is a CEO that is forward-looking and that is working on this organization five years from now, not five minutes from now. I find unacceptable the idea that many of these things have continued to carry on without a plan to turn things around. What is needed is a CEO whose positive, high energy is contagious throughout that organization. This needs to change. We've all heard about the poison. I can tell you it will be the leadership in that CEO office that turns that around.

Finally, what is needed is someone who is competent. If you want people to follow someone, they will follow someone of integrity. Think of the antonym of that. They will follow somebody that is forward-looking and has a plan and a steady hand on the rudder and has a positive, clear and realistic picture of the future. They will follow someone with positive energy and someone they just want to be around. That needs to come from the CEO through the ranks he or she leads, and those messages must continue on through the other 50,000 employees there.

Tempting as it is to reject this bill and break the cycle in which this country once again finds itself, I cannot do that. I choose instead to not reject this bill but support it and send a message to the shareholder, the minister responsible and the CEO: Get it right; we don't want to be doing this again.

Thank you.

Hon. Howard Wetston: One of the benefits of speaking at this moment is that I've heard a lot of debate, which is very helpful, obviously, in thinking about the issues that we're dealing with today.

As some of you know, I sat on the Federal Court and I did have the opportunity to hear Charter cases. That was very helpful in attempting to give some thought to what we're doing here today.

That was, admittedly, a long time ago, but I do remember some of the challenges associated with these Charter cases. I'm here, of course, with Senator Dalphond and Senator Sinclair, who experienced similar kinds of situations in the courts they sat on. It was very helpful to hear from Senator Gold, as well as others, with his deep understanding of constitutional law.

When I sat on the court, I would often hear from an applicant or a plaintiff and then hear from a respondent or defendant. On Charter cases, I was absolutely convinced, after I heard from the applicant or plaintiff, that they were right. And then when I heard from the respondent, I wasn't so sure anymore. A little bit of that is happening here today, and I can certainly understand that.

So here's what I did on Sunday. Sunday seems to have taken on a pretty significant role in the chamber today. I read a bunch of cases. I felt like I was back on the court making a decision. Of course, I read the *Saskatchewan Federation of Labour* case and I considered the *Canada Post* 2011 decision and the School Board case of Ontario, the B.C. Hospital case, and I think I read some other cases on the right to strike and section 2(d) of the Charter.

It is difficult, obviously, to come to a definite view, because here's the one difference when you're in the court: You do have the opportunity to hear from learned counsel most of the time. You also hear expert testimony, not just those on Charter cases that are necessarily argued one way or another; you hear from experts. You also get the benefit of one thing that we don't get here: We ask questions, but we don't get the benefit of cross-examination. We get to the truth, at least the truth that we need to make a decision, whether it's a Charter case or another type.

In reviewing these cases, I had to think about the issue concerning the right to strike, and I've come to the conclusion — and I think Senator Gold indicated this — that not every interference with the right to strike is unconstitutional.

Not every interference with the right to strike is unconstitutional, or is *prima facie* unconstitutional. It's quite easy to jump to a conclusion that section 2(d) is violated in this situation despite the decision, but I think we have to be careful about that.

Let me turn to the Charter statement, which a number of you have said is deficient and doesn't have enough information. Much of the statement follows the preamble of the bill, if you compare them, and I know you know that. But I wondered on Sunday about that statement. I looked at the part which said that section 2(d) of the Charter provides that everyone has freedom of association — I don't think we disagree with that at all — and has been interpreted as preventing a substantial interference with the collective bargaining process.

The court was very careful to discuss the fact that it has been interpreted to prevent a substantial interference with the collective bargaining process. Let me remind you about what happened in *Saskatchewan Federation of Labour* and why, as I think Senator Lankin even mentioned a moment ago, the courts may have to resolve this and it may go all the way up to the Supreme Court of Canada again. You've heard me say this before: That's the proper place to determine whether there's a Charter violation, not the Senate Chamber.

The reason I say that is if you examine that decision, you'll note it's a 5-2 decision. Seven judges sat on the case. There is no question we honour and respect the majority decision of the court, but there were two dissenting justices in that case, Justice Marshall Rothstein and now Chief Justice Wagner, who dissented in that case.

What does that all mean? Constitutional scholars know that the dissents in constitutional cases are very important and they must be paid attention to. It's not the law, but it could be the law. If you pay attention to what now Chief Justice Wagner and Justice Rothstein discussed, they are totally supportive of the notion of collective bargaining and the freedom of association as a constitutional right, but they didn't go so far as the majority. I'm not saying that's the law, but I'm saying we need to pay attention to the reasoning and the thinking in that particular case.

It brings me back to where we are today. The statement doesn't have an *Oakes* analysis. The statement didn't go through minimal impairment or proportionality. Senator Harder talked about that mostly in the context of freedom of expression, not so much in the context of freedom of association, which might be the paramount provision of the Charter to think about in this case. I think they didn't do it because they didn't believe there was a constitutional violation. Why do an *Oakes* analysis if the view of the government is the Charter is not being violated? I believe that's the reason they did not do the *Oakes* analysis. They're very capable of doing an *Oakes* analysis, but they didn't do it in this case.

• (1850)

If you follow the reasoning in the decision in the *Saskatchewan Federation of Labour v. Saskatchewan*, you will find the potential rationale for why an *Oakes* analysis was unnecessary. The government is intervening to bring an end to a labour dispute — a labour dispute. We've talked in this chamber about a lot of other issues associated with a labour dispute. At the end of the day, that is what this is: It's a labour dispute. We know there's a lack of trust in the collective bargaining. There's been a very acrimonious relationship for many years, it seems to me, between Canada Post and the union. Nevertheless, this is a labour dispute.

The government is not intervening to bring an end to collective bargaining. It's important to remember that. They're not bringing an end to collective bargaining; they're trying to end a labour dispute. This is a dispute resolution mechanism to end a bargaining process that has no end in sight — no end in sight.

What do you do when there's no end in sight? A lot of you have, in a very articulate manner, talked about the implications. I'm not going to talk about those implications. This is a key point — I think Senator Gold may have mentioned this, or maybe Senator Harder: The government is not, in this case, imposing an outcome. That's what collective bargaining is all about. There are cases in which there was an outcome that was imposed by the legislation. They're not doing so in this case.

The approach in other cases is not being adopted here. They are imposing a dispute resolution mechanism. Many of you don't like it. You don't think it goes far enough. You don't think what's incorporated in subsection 11(3) of the proposed law sets out a sufficient basis for collective bargaining. I'm not disagreeing with your position on this. You can obviously come to that conclusion. It's for you to come to that opinion.

Nevertheless, they are imposing a dispute resolution mechanism to end, or try to end, a labour dispute. No one in this room knows whether it will end. No one in this room can say if they get back to the bargaining table, whether they can end this dispute. I can't say it. I may have an opinion on the Constitution issue. I have no opinion as to what that outcome could be. By the way, you could look at past experiences, which is probably a good indication of what might happen in the future, but I can't come to that opinion.

The legislation will not force any terms upon postal workers or end the negotiation process. Instead, the bill will mandate mediation and arbitration to ensure an independent third party — which is key — can hear the arguments made by both sides and resolve the matter fairly.

You've looked at Bill C-89. You've looked at the preamble. You know what it says. I'm going to get to the heart of this. As you know, the government's proposed approach will not impose any contract terms unilaterally and will allow the parties to resolve the impasse of all issues through mediation and arbitration. There's a clear public interest in approaching the issue this way. Mediation and arbitration will allow the parties to resolve the labour dispute. I don't know whether they will resolve it, but it will give them the opportunity.

Is this the only alternative? Is capitulation the only alternative? Is that what will happen if the strike continues — capitulation will be the result? That's a bad result for everybody. What does the public interest demand? There's been some discussion of that.

If the legislation abrogates the right to strike without an alternative mechanism, that could very well be unconstitutional. That is not the case here. If you look at the Supreme Court of Canada decision, you will find that is exactly where the court ended up. In this regard, referring to subsection 11(3) — some of you have referred to that — and looking at the guiding principles, I come to the point of view that if there is a constitutional decision to be made, it belongs in the court.

What we need to do is resolve this bill today. In my opinion — and I agree with Senator Omidvar and others — I will support this bill, because I believe there is sufficient information here, recognizing we need to get these parties back to the bargaining table. I hope there will be a satisfactory resolution for the union, the employees and government.

Hon. Murray Sinclair: I don't intend to speak long. Most of what I wanted to say, I said on Saturday.

I want to comment first on the fact that much of what needs to be said about this legislation has already been said. You've heard about the issue of constitutional breach and whether it's there. I spoke about that on Saturday. You've heard about the issue of the *Oakes* test. Senator Harder's opening statement with regard to third reading brought forward a lot of information that I wish we would have had on Saturday so we could have done our own assessment. Unfortunately, we're getting it at a point now when we have no ability to assess it, really, but I accept much of what he's spoken about.

The Charter statement is no longer of any consequence. We've all had a chance now to consider the issue of the Charter and the impact it will have upon our own decision-making. We've had speeches that have addressed the benefit of the strikes that have occurred between the postal workers and Canada Post over the years — the maternity leave issue, the right to strike among the public servants, et cetera. Things such as that have come about because of the nature of the strikes that have occurred between Canada Post and its postal workers.

What may not have become very clear is there seems to have been a thought that's developed here that every labour dispute between Canada Post and its postal workers has resulted in back-to-work legislation. That's not the case. There have been many resolutions that have occurred between the union and the employer that have resulted in collective agreements being signed without there being any back-to-work legislation. Strikes have not always accompanied those situations.

We also need to recognize the issue of pay equity has been spoken to here. I won't say much more about that.

The one thing I want to expand upon a little bit is the issue of workplace safety.

Let me encourage colleagues to think about how you're going to cast your vote on third reading with respect to this legislation by considering a number of questions you need to keep in mind as you go forward. No matter how you cut it, this legislation is taking away the union's right to strike. We can talk about whether that's constitutional. We can talk about whether it's fair. The reality is the union is losing the right to strike. More so, the union is losing the right to strike in a situation where everybody was still getting their mail; they may not have been getting it as frequently as they had in the past, but they were still getting their mail. No one has written to me to complain about the fact they haven't been getting their mail. In fact, I've gotten correspondence from people who have been complaining about the fact they don't understand why it's such a big issue about this strike, because they keep getting their bills. They want to know why someone can't stop somebody from delivering their bills during this strike.

The union is losing its right to strike, even for a short period of time, as a result of this legislation. We need to keep that in mind. There's really no negative consequence for the employer. We need to keep that in mind. The question of balance and whether the legislation is balanced is an important consideration for us. Is there balance in this legislation? I suggest there isn't.

We've heard some comments that have been made here about the fact that vulnerable people are not getting their cheques and won't be getting their cheques. We know that's not true. There is a memorandum of understanding which was reached. People have been getting their pension and government assistance cheques despite the disruption which has gone on because this is a series of rotating strikes. It's not a situation where the employer has not been able to deliver mail to those in the most vulnerable situations.

• (1900)

One thing that concerns me is — and I want to respond to something my colleague Senator Wetston just spoke about — this legislation does not appear to be imposing a contract on the parties. In reality, it is imposing working conditions on the parties. Let's be very clear about that. It is, in effect, taking the existing working conditions and telling the union, you have to continue to live with those working conditions that you don't like. The ones you are on strike about? Tough. You have to continue to live with those working conditions.

Let us not think we are dealing with legislation which does not impose working conditions because it does. It is those very working conditions which are causing danger to the employees of Canada Post that are most at issue with regard to the parties. It is that which concerns me the most.

I am very concerned about the information we have been provided about the rate of injury that Canada Post employees are experiencing. I'm very concerned about the impact this is having upon their lives, their families and upon the reputation of Canada Post; but also upon the fact, at this very busy time of the year, those injury rates are likely going to go up. Those injury rates

you have heard about — they have been spoken about here and I don't need to repeat them — but I am so concerned about those injury rates that I'm going to propose an amendment that will address that.

I want you to know Senator Harder has read to us a message from the mediator. My information is that mediator's term has expired. Within the time his mediation term was available, which ended yesterday, he didn't feel he could reach an agreement within that period of time and obviously he couldn't. One of the answers might be to extend his term to allow him to continue to mediate. More importantly, the parties have told us they are close to an agreement on a number of issues. Maybe not an overall settlement, but on a number of issues. Specifically, we asked the union, are you close to an agreement on the issue of workplace safety? On the issue of the elements relating to the employees' ability to do their work without being injured? They felt that was an issue they were close to an agreement in principle on.

I move the following amendment. The effect of this amendment will be to extend the period of time for the parties to negotiate before the bill becomes effective for one week so they can continue to negotiate until the issue of workplace health and safety is addressed. The impact of the amendment will be to delay the impact of Royal Assent on the legislation for one week.

MOTION IN AMENDMENT NEGATIVED

Hon. Murray Sinclair: Therefore, honourable senators, in amendment, I move:

That Bill C-89 be not now read a third time, but that it be amended in clause 16, on page 9, by replacing lines 27 to 29 with the following:

“**16 (1)** Subject to subsection (2), this Act comes into force at noon Eastern Standard Time on a day to be fixed by order of the Governor in Council.

(2) No order is to be made under subsection (1) before the earlier of

(a) the day after the day on which the employer and the union notify the Minister, in writing, that they have resolved all matters related to the health and safety of the employees; or

(b) the seventh day following the day on which this Act receives royal assent.”.

Hon. André Pratte: Would the honourable senator take a question?

Senator Sinclair: Absolutely.

Senator Pratte: I'm struggling to understand the meaning of this. If a senator opposes the bill on a matter of question of principle, opposes the suspension of the right to strike, isn't this amendment simply delaying the infringement of the fundamental right to strike for seven days? Therefore, if I vote in favour of this, I agree it's right to suspend the right to strike in this case?

Senator Plett: But you seconded it.

Senator Sinclair: Right.

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question.

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

Some Hon. Senators: Yea.

Some Hon. Senators: Nay.

The Hon. the Speaker: All those in favour will please say “yea.”

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say “nay.”

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion the nays have it.

And two honourable senators having risen:

The Hon. the Speaker: The vote will take place at 7:38 p.m., call in the senators.

• (1940)

Motion in amendment of the Honourable Senator Sinclair negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Boyer	Griffin
Dalphond	McCallum
Deacon (<i>Ontario</i>)	McCoy
Dean	McPhedran
Downe	Mégie
Duffy	Mercer
Dyck	Pate
Forest	Simons
Galvez	Sinclair—18

NAYS
THE HONOURABLE SENATORS

Andreychuk	Maltais
Batters	Manning
Bellemare	Marshall
Black (<i>Ontario</i>)	Martin

Boehm	McInnis
Boisvenu	McIntyre
Boniface	Mitchell
Bovey	Miville-Dechéne
Busson	Mockler
Campbell	Moncion
Carignan	Neufeld
Christmas	Ngo
Dagenais	Omidvar
Dasko	Patterson
Dawson	Petitclerc
Deacon (<i>Nova Scotia</i>)	Plett
Doyle	Poirier
Eaton	Pratte
Forest-Niesing	Ravalia
Francis	Richards
Frum	Seidman
Gagné	Smith
Gold	Stewart Olsen
Greene	Tannas
Harder	Tkachuk
Housakos	Wetston
Klyne	White
Lankin	Woo—57
MacDonald	

ABSTENTIONS
THE HONOURABLE SENATORS

Bernard	Hartling
Cormier	Joyal
Coyle	Saint-Germain—7
Day	

The Hon. the Speaker: Accordingly the motion is defeated.

Hon. Senators: Question.

The Hon. the Speaker: Before the question, Senator Saint-Germain.

[*Translation*]

THIRD READING

Hon. Raymonde Saint-Germain: Honourable senators, I haven't participated in the debate yet, but I would now like to say a few words before the final vote on this bill.

Regardless of our respective opinions for or against this bill, during the debate, we have heard some very troubling things about labour relations at Canada Post. We are legislators, but we also have a duty to investigate the quality of governance in Canada's public services.

Some colleagues proposed that the Senate of Canada examine labour relations at Canada Post, either through a standing committee or perhaps through a special committee. Personally, I would like this issue to move beyond debate. I would like all senators to make a formal commitment this evening, after the vote, no matter what the result is, to undertake this inquiry. We need to ensure that this infringement of rights, this situation that has an impact on services to Canadians and, in my view, in some cases, on an outrageous use of the courts, can be resolved so that we are not faced with the same situation in two years, four years or 10 years.

That is the purpose of my intervention, honourable senators, and I hope that we will act on the words and wishes that certain colleagues have expressed, which I fully support. Thank you.

[English]

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Harder, seconded by the Honourable Senator Bellemare, that the bill be read a third time.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: All those in favour of the motion will please say “yea.”

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say “nay.”

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the “yeas” have it. I see two senators rising.

And two honourable senators having risen:

The Hon. the Speaker: Do we have agreement on a bell?

Hon. Senators: Now.

• (1950)

Motion agreed to and bill read third time and passed on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk
Batters

Hartling
Housakos

Bellemare	Klyne
Bernard	Manning
Boehm	Marshall
Boniface	Martin
Bovey	McInnis
Boyer	Mitchell
Busson	Miville-Dechéne
Carignan	Mockler
Christmas	Moncion
Coyle	Neufeld
Dasko	Omidvar
Day	Patterson
Deacon (Nova Scotia)	Plett
Deacon (Ontario)	Poirier
Dean	Ravalia
Downe	Richards
Doyle	Saint-Germain
Eaton	Seidman
Francis	Smith
Frum	Stewart Olsen
Furey	Tannas
Gagné	Wetston
Gold	White
Greene	Woo—53
Harder	

NAYS
THE HONOURABLE SENATORS

Black (Ontario)	Maltais
Boisvenu	McCallum
Campbell	McCoy
Cormier	McIntyre
Dagenais	McPhedran
Dalphond	Mégie
Duffy	Mercer
Dyck	Pate
Forest	Petitclerc
Forest-Niesing	Pratte
Galvez	Simons
Joyal	Sinclair—25
Lankin	

ABSTENTIONS
THE HONOURABLE SENATORS

Griffin
MacDonald

Ngo
Tkachuk—4

[Translation]

RIDEAU HALL

November 26th, 2018

BUSINESS OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate, I move:

That the sitting be suspended to await the announcement of Royal Assent, to reassemble at the call of the chair with a five minute bell.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (2100)

ROYAL ASSENT

The Hon. the Speaker informed the Senate that the following communication had been received:

Mr. Speaker:

I have the honour to inform you that Ms. Assunta Di Lorenzo, Secretary to the Governor General and Herald Chancellor, in her capacity as Deputy of the Governor General, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 26th day of November, 2018, at 8:33 pm.

Yours sincerely,

Christine MacIntyre

Executive Director, Events, Household and Visitor Services

The Honourable

The Speaker of the Senate
Ottawa

Bills Assented to Monday, November 26, 2018:

An Act to amend the Federal Public Sector Labour Relations Act and other Acts (*Bill C-62, Chapter 24, 2018*)

An Act to provide for the resumption and continuation of postal services (*Bill C-89, Chapter 25, 2018*)

(*At 9:03 p.m., the Senate was continued until tomorrow at 2 p.m.*)

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