FINAL REPORT | JUNE 2001

WORKING TOGETHER
in the Public Interest

ADVISORY COMMITTEE ON LABOUR MANAGEMENT
RELATIONS IN THE FEDERAL PUBLIC SERVICE

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The final report of the Advisory Committee on Labour Management Relations
in the Federal Public Service

ISBN Number: 0-662-65583-4
Catalogue Number: BT22-70/1-2001

(Printing House to place their Printers logo here)

D E D I C A T I O N

TO OUR COLLEAGUE AND FRIEND

CATHERINE HELEN MACLEAN
June 1, 1950 - January 27, 2001

We remember with gratitude and respect her fine legal mind, her warmth, her wit and above all her contribution to the work of the committee. She left an indelible mark on all who knew her and worked with her. We all miss her terribly and hope that in some way the acceptance of our recommendations will form a part of her living legacy.

Acknowledgements

It has been an honour and a privilege to chair the work of the Advisory Committee. This genuinely tripartite committee has worked hard and long to produce this report containing, as it does, nothing but unanimous recommendations. A simple thank you is woefully inadequate to express my deep, deep gratitude for their help throughout the process, especially since January 27th, 2001.

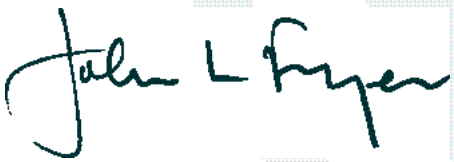
I wish to express our thanks to Yvon Tarte, Chair of the Public Service Staff Relations Board and to the members of his staff who provided us with accommodation and logistical support in a most gracious fashion.

And a sincere thank you is also due to the literally scores of stakeholders who participated so willingly and so completely in our extensive consultations. They are far too numerous to name but on behalf of the committee, we truly appreciated their very valuable inputs. The willingness of these stakeholders to think about difficult labour management issues and then to engage in constructive dialogue with us about them was very helpful to the committee's deliberations. We only hope that they will feel that this report fairly reflects their contributions.

Let me also pay tribute to the work of the committee's small staff, Francine Desrochers, Jon Peirce and above all Penny Driscoll who has worked unstintingly to help make the committee's functioning productive as well as appearing effortless.

This report is dedicated to the memory of Catherine Helen MacLean - our colleague and friend - and in my case, partner in life. Her untimely death on January 27, 2001, the victim of a tragic automobile accident reverberated through the legal and labour relations communities where she had practiced her craft for the past 23 years.

We remember with gratitude and respect her fine legal mind, her warmth, her wit and above all her contribution to the work of the committee. She left an indelible mark on all who knew her and worked with her. We all miss her terribly and hope that in some way the acceptance of our recommendations will form a part of her living legacy.



John L. Fryer
Chair

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Overview

In May of 2000, our Committee issued its first report entitled "Identifying the Issues". We sought to catalogue the current state of labour management relationships in the federal public service and at the same time identify problems and deficiencies.

This second and final report recommends changes to the labour management relationship that we believe will make it sustainable into the twenty-first century.

When we examined the history of labour management relations, we found that while a regime of collective bargaining was grafted onto the public service via the *Public Service Staff Relations Act (PSSRA)* in 1967, this did not include the adoption, at the same time, of a comprehensive labour management regime. If anything, human resource management became bifurcated between human resources and staff relations. The recommendations in this report urge both government and unions to complete the task of building a trusting and respectful regime of labour management relations throughout the federal public service.

To achieve this goal, we propose a new framework based on a collaborative approach to solving workplace problems. Our framework is based on the fundamental principle that joint efforts by employees, their unions and management will improve the quality of services delivered.

Consultation, co-development and collective bargaining are all appropriate mechanisms for the creation of "win - win" solutions to workplace concerns.

To help bring about this basic change from an adversarial to a more joint problem solving approach requires the rebuilding of trust and a willingness on both sides to explore different approaches - in short what is often referred to as "a cultural change".

We believe that such change, while difficult, is nevertheless possible. We further believe that the change can be encouraged by revising and modernizing the *PSSRA*, by providing for a single redress system for individual workplace complaints throughout government and by establishing a new agency to assist the parties in finding mutually acceptable solutions in collective bargaining.

A good, stable and productive labour management regime should be the foundation to good human resources management in a unionized environment. The employees in Canada's public service and broader public sector are almost completely represented by certified bargaining agents, a situation that we do not expect to change. Finding a way to build effective working relationships between unions and management thus becomes a key public policy issue. In this report our committee believes that it has developed a new framework that, if implemented, will assist in building a solid labour management relationship in the federal public sector.

We make these recommendations because it is our considered conclusion that the industrial model of adversarial labour management relations has proven over nearly four decades to be ill-suited, indeed inappropriate, for the federal public service.

Given our diverse backgrounds and strongly held opinions, we truly believe that if we can agree upon these recommendations for change then they are worthy of very serious consideration.

We would ask that they be viewed as a "package" since they seek to achieve a balanced renewal of the labour management relationship in the federal public service.

We therefore recommend unanimously these changes to all parties concerned.

ERCEL BAKER

DARYL BEAN

LINDA DUXBURY

JEAN-CLAUDE BOUCHARD

DAVE LEWIS

RENAUD PAQUET

MARTHA HYNNA

JOHN FRYER

MARK THOMPSON

I. Recommendations

This chapter contains a list of the 33 recommendations of the Advisory Committee on Labour Management Relations in the Federal Public Service, in the same order as they appear in the main text of the Report.

CHAPTER III - A NEW FRAMEWORK FOR LABOUR MANAGEMENT RELATIONS IN THE PUBLIC SERVICE OF CANADA

1. We recommend a new institutional framework for labour management relations.

CHAPTER IV - DELEGATING AUTHORITY AND INCREASING FLEXIBILITY –CHANGES NEEDED TO THE *PUBLIC SERVICE STAFF RELATIONS ACT*

2. We recommend that the revised *Public Service Staff Relations Act* contain a preamble outlining the principles underlying the legislation.

3. We recommend that the *Public Service Staff Relations Act* be amended to provide for consultation and co-development of policies at the service-wide, departmental and workplace levels. The details of how these processes will be implemented should be left to the parties to develop.

4. We recommend that the staffing system be made subject to co-development by the parties at the National Joint Council. To ensure that the co-development process respects core public service values, the *Public Service Employment Act* should be amended to include a list of values such as merit, employment equity, fairness and transparency with which the process must be consistent.

5. We recommend that the classification system be made subject to co-development by the parties at the National Joint Council.

6. We recommend that the Pension Plan, its provisions, the funds and the investment of those funds be made subject to co-development by the parties at the National Joint Council and be co-managed by a jointly appointed Management Board.

7. We recommend that any disputes over co-development issues be resolved through the use of the National Joint Council's new dispute resolution process whether or not such disputes arise in the National Joint Council forum.

8. We recommend that collective agreements negotiated at the service-wide level provide the general outline of the terms and conditions of employment so that, subject to mutual agreement between the parties, managers and union representatives in individual departments and workplaces can work out the details of how these provisions should be applied locally.

9. We recommend that the *Public Service Staff Relations Act* enable collective bargaining at the departmental and agency level, to set the detailed terms and conditions of employment for subjects negotiated in broad terms at the service-wide level.

10. We recommend that the *Public Service Staff Relations Act*'s exclusion policy be changed to mirror that of the *Canada Labour Code*, to exclude only those performing management functions or employed in a confidential capacity in matters relating to industrial relations.

11. We recommend that the parties jointly establish a permanent list of designated positions that is reviewed regularly. The process of determining the list of designated positions should also reflect that used under the *Code*.

12. We recommend that the terms upon which positions are deemed essential be changed to mirror those of the *Canada Labour Code*, which requires that activities be maintained during a legal strike to the extent necessary to prevent an immediate and serious danger to the safety or health of the public.

13. We recommend that, if the two parties do not agree on which employees should be designated as essential, then the Canada Industrial Relations Board should make the final decision.

14. We recommend that the revised *Public Service Staff Relations Act* be administered by the Canada Industrial Relations Board.

15. We recommend that certification of bargaining units be determined by the Canada Industrial Relations Board. To encourage the parties to reach agreement on changes to existing bargaining units, applications to the Canada Industrial Relations Board for determination of bargaining units should be prohibited for two years after this change takes effect.

CHAPTER V - RESOLVING RIGHTS AND INTEREST DISPUTES –UNIQUE SOLUTIONS ARE REQUIRED TO MEET PUBLIC SERVICE NEEDS

16. We recommend that the Public Service Staff Relations Board be reconstituted as the Public Service Rights Redress Board, with the power to resolve rights disputes on any matter affecting unionized and other employees, including complaints about staffing actions, which are now dealt with through appeals to the Public Service Commission, using mediation and alternative forms of dispute resolution as appropriate.

17. We recommend that unions have the right to present group and policy grievances on behalf of employees and that they should have the right to decide whether or not to bring forward a grievance by a represented employee.

18. We recommend that the Public Service Rights Redress Board be a representative board, with an appointment process similar to that of the Canada Industrial Relations Board.

19. We recommend that the Canadian Human Rights Commission and the Human Rights Tribunals, when dealing with a case that has been brought to adjudication before the Public Service Rights Redress Board, take cognisance of the outcome of that prior process.

20. We recommend that the *Public Service Staff Relations Act* be amended to provide for a tripartite representative Public Interest Dispute Resolution Commission, to represent the public interest and to assist the parties in resolving interest disputes. The Public Interest Dispute Resolution Commission should have the following powers:

    - fact-finding;
    - referral back to the negotiating table;
    - mediation;
    - issuance of a preliminary report commenting on the reasonableness of the parties' positions;
    - issuance of a report outlining the terms of a settlement that could be adopted by or imposed on the parties;
    - imposition of a collective agreement at the request of a union under specified circumstances.

21. We recommend that the Public Interest Dispute Resolution Commission be a representative body. It would consist of at least nine part-time members and a full-time Chair, all to be appointed by the Governor-in-Council. An equal number of union and management representatives (at least three of each) would be drawn from lists submitted by the parties. The remaining members would be third party neutrals representing the public interest.

22. We recommend that the Public Interest Dispute Resolution Commission report directly to Parliament.

CHAPTER VI - A NEW ROLE FOR THE NATIONAL JOINT COUNCIL

23. We recommend the establishment of a Compensation Research Bureau to provide reliable pay and benefit data to both parties in collective bargaining.

24. We recommend that the National Joint Council be the forum for the joint management of the newly established Compensation Research Bureau.

25. We recommend that the *Public Service Staff Relations Act* be amended to:

    - recognize the National Joint Council as an independent entity (operating parallel to the Canada Industrial Relations Board and the Public Service Rights Redress Board reporting to the Parliament of Canada;
    - confirm its mandate and governance structure as expressed in the National Joint Council Constitution; and
    - fund the National Joint Council through a specific appropriation.

26. We recommend that funding for the National Joint Council be increased to a level adequate to allow it to fulfil its current and extended mandate.

CHAPTER VII – SEPARATE EMPLOYERS – A NEED FOR CONSISTENCY WITH THE CORE PUBLIC SERVICE

27. We recommend that separate employers have authority to conduct collective bargaining on their own behalf with accountability for the results vested solely in the Head of their organizations. Separate employers should be able to bargain without having to obtain their mandate from Treasury Board and without having to obtain Order-in-Council approval before implementing the results of the bargaining process. Separate employers who receive appropriations from Treasury Board should have no restrictions on how these are spent. This will give the parties greater flexibility to determine compensation patterns.

28. We recommend that separate employers remaining under the revised *Public Service Staff Relations Act* adhere to a labour management relations framework that provides for:

    - a streamlined grievance process;
    - an array of improved dispute resolution mechanisms for collective bargaining;
    - consultation or co-development of terms and conditions of employment not subject to collective bargaining.

29. We recommend that the *Financial Administration Act* be amended at Section 11 to allow, where appropriate, for the application of National Joint Council directives to separate employers.

CHAPTER VIII - A NEW START– IMPLEMENTATION AND ACCOUNTABILITY FOR CHANGE

30. We recommend that an overall labour relations accountability plan be drawn up. This plan should specify the roles and responsibilities of the various parties, including line managers and union representatives as well as government boards and agencies such as the Public Service Rights Redress Board, Public Interest Dispute Resolution Commission and National Joint Council.

31. We recommend comprehensive joint union-management training in labour relations and conflict resolution.

32. We recommend that union meetings be permitted on-site during regular working hours.

33. We recommend that middle managers be permitted to form an organization, perhaps modeled after APEX, which would provide them some kind of collective representation short of full collective bargaining.

II. Working together

In 1967 the federal government decided to change fundamentally its relationship with its own employees. With the passage of the *Public Service Staff Relations Act (PSSRA)* it became government policy to recognize legally certified bargaining agents as the representatives of the vast majority of employees. It also became government policy to determine pay and many other conditions of employment through a formal system of collective bargaining negotiations that remains the structure today. The history of labour management relationships in the federal public service since 1967 has been a somewhat checkered one. We reviewed this history in our first report and concluded that the last decade of the 20th Century was a particularly problematic period.

While new labour management institutions were created and collective bargaining was introduced, the "traditional attitude of all those who are concerned"[1] changed little. The government was now legally required to deal with its employees through the associations and unions they had formed, but rather than reinforce the legal and legitimate roles of these unions, the employer tended to isolate labour management relations. In departmental organization charts, staff relations was segregated from "human resources management," even though the relationship between the employer and the unions representing employees is an integral part of human resources management in unionized workplaces. Over the past three decades, labour management relations in the public service was relegated almost exclusively to the process of collective bargaining and was ignored in many crucial areas affecting the broader workplace environment. The consequence was that the interaction between labour and management has not evolved into a positive working relationship between the government as employer and the unions representing public service employees.

Tremendous changes face today's public service. Coping successfully with this will put labour management relations to the test. In our view, it is possible for the relationship to play a very constructive role in the adaptation to new environments. But the likelihood of success will be that much greater if the labour management relationship can be refocused in a fair, efficient and flexible way.

It is, therefore, preferable for the federal employer to foster good relationships with the unions representing public service employees. It is the norm in Canada for public service workplaces to be unionized.

The federal government has made numerous attempts in the past decade or more to improve its strategies, policies and practices respecting human resources management. While these efforts have been earnest, they have proved inadequate to the task of improving morale. We believe this failure may be due both to the lack of true consultation, as well as an inability to truly comprehend the dynamics of the relationship between the employer and the unions. In a unionized environment it is simply impossible to achieve good human resources management if labour management relations are ignored or allowed to deteriorate.

With the passage of the Public Service Staff Relations Act it became government policy to recognize legally certified bargaining agents as the representatives of the vast majority of employees.

We wish to state clearly that good labour management relations can and should form a cornerstone of good human resource management in the public service.

We have concluded that the leadership of the federal public service should broaden its definition of human resources management to include labour management relations so that both can be improved. To achieve this it will be necessary to adjust some of the labour management institutions and mechanisms that are not working as well as they should and to recognize the importance of harmonious labour management relations in every workplace across the public service.

We wish to state clearly that good labour management relations can and should form a cornerstone of good human resource management in the public service.

We believe that the moment is right: the employer and the unions involved have indicated their willingness to improve matters and explore alternatives to streamline dispute resolution. Change is now possible and success is achievable. Better labour management relations, as evidenced by positive, constructive relationships between the government and its unions, can help the federal government improve its overall management of human resources. And we agree with those who maintain that effective human resources management is key to the provision of quality government service to Canadians.[2]

The February 2001 report of the Auditor General supports our call for legislative change as an antidote to the marginally effective efforts to date to improve human resources management policies and practices:

> In my view, the efforts of several generations of well-meaning senior officials to streamline and modernize human resource management have been stymied by the tangle of roles and responsibilities of the institutions that manage human resources and by the legislative framework that applies[3].
>
> Three major, related issues must be addressed:
>
> - the unduly complex and outdated legislative and administrative framework;
> - the fragmenting of human resource management; and
> - the need for strengthened human resource management in departments.[4]

Some other observers have maintained that the wording and spirit of the *PSSRA* itself has a negative effect on labour management relations. The Public Policy Forum, in the report *Levelling the Path*, says that the *PSSRA* focuses "mainly on the restrictions to labour management relations" and "provides little guidance for parties to identify common ground or opportunities for cooperation." The Forum's report says that the *Act* "no longer governs the relationship between labour and management, but rather it governs the parties themselves and so sets a stage for a more antagonistic relationship."[5]

Effective labour management relations is the product of many influences: the culture of the workplace, the legislative framework, the attitudes and the values of the parties and the leadership shown

by senior members of the public service and elected representatives of employees. Many of these factors change slowly. However, reform of the legislative framework is essential to improve labour management relationships in the public service. We rely on the good judgement of the parties at all levels to build on these changes to provide the people of Canada with the service they deserve from their government.

2.1 WORKING IN THE PUBLIC INTEREST

Protection of the public interest is a core element of any public sector labour management relations regime. In Lester Pearson's words, legislation must "take care to preserve the capacity of the public service to function efficiently in serving the people of Canada."[6] In a more recent expression of this requirement, the summary of the report *A Strong Foundation*, by the Task Force on Public Service Values and Ethics (the Tait report), said that:

> ... a professional public service is an important national institution in the service of democracy.
> ...
> Who should be employed in the public service, how that employment should be arranged and the conditions under which it should continue–in short, the employment regime–is at the heart of public administration and the issues raised by the choice of an employment regime are closely connected to values.[7]

In addition to demonstrating the importance of values such as protection of the merit principle and non-partisanship, that report also notes that good "people values" can serve the public interest.

> To live up to assertions about the value of people, we believe public service leaders and managers should be held accountable not only for results but for the way they are achieved. They should be evaluated not just for organizational performance but for whether their organizations are good places to work, whether they nourish sound public service values and a spirit of dedication to the public good. This will also require review and alignment of all people management systems to support public service values and reward behaviour that promotes them.[8]

2.2 ECONOMIC INTERESTS

An effective public service is fundamental to the country's economic interests. The *First Report of the Advisory Committee on Senior Level Retention and Compensation* (the Strong report) made the point that a strong public service is crucial to international competitiveness:

> In a world of greater economic insecurity and scarce resources, citizens require more effective social programmes ... The corporate sector requires a competitive framework of laws and skilful representation abroad if it is to succeed in global markets. And all of this needs to be accomplished in an efficient way. These challenges will require exceptional leadership, creative thinking and new operating skills and competencies.[9]

Protection of the public interest is a core element of any public sector labour management relations regime.

2.3 WORKING TO MEET COMMON NEEDS

In the 34 years since the passage of the *Public Service Staff Relations Act* introduced collective bargaining in the federal public service, that very public service, like the society it serves, has undergone immense changes.

In the most recent three and a half decades, the public service has seen its workforce swell to more than 200,000, then contract suddenly as the economy struggled through the severe downturns of the early 1980s and the 1990s, dropping by about 56,000 jobs. Other significant workforce cuts have been the result of a move to introduce alternate service delivery mechanisms such as the Canada Customs and Revenue Agency, which, on its own, shifted more than 40,000 jobs out of the core public service.[10]

In addition to changes in its size, the public service has taken on the role of "steering, not rowing" the boat. Instead of delivering programs directly to the public, for example, federal employees focus on creating and supporting the economic and social conditions that enable the private and voluntary sectors to thrive and, through grants, contributions and contracts, to implement government policy in the field. Federal employees use e-government and other innovative systems to bring federal programs and policies to the public. Their work crosses the boundaries of traditional government departments to engage partners in other governments and other sectors.

Today, federal public service employees are "knowledge workers." They have to be skilled, flexible, adaptable and well educated. They are called upon to be

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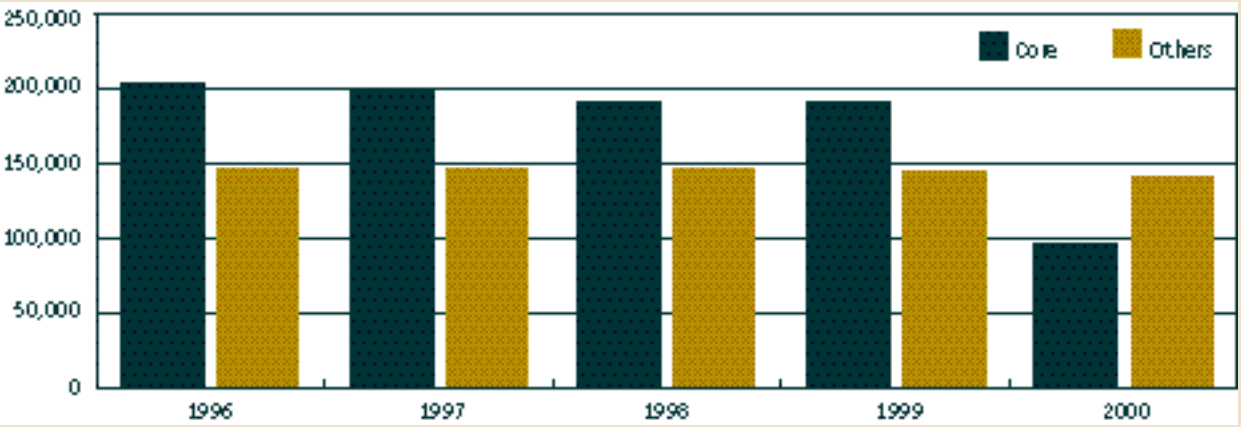


Core is active employees in those departments and agencies listed under Schedule 1, Part I of the *Public Service Staff Relations Act* (*PSSRA* 1-1) for which the Treasury Board represents the Employer. Others are Separate Employers, Schedule 1, Part II of the Public Service Staff Relations Act, Military Personnel, RCMP

Source: Data derived from CANSIM Data Base and TBS Incumbent System, November 2000.

responsive to changing needs and to adapt systems and apply regulatory requirements to meet government goals and the variable objectives of a diverse, literate and technologically aware citizenry.

In the January 30, 2001 Speech from the Throne, the government recognized the importance of adapting its employment systems to the changing environment:

> The Government is committed to the reforms needed for the Public Service of Canada to continue evolving and adapting. These reforms will ensure that the Public Service of Canada is innovative, dynamic and reflective of the diversity of the country–able to attract and develop the talents needed to serve Canadians in the 21st century.

Meeting the challenges posed by that new environment will not be easy at a time when the public service is ageing rapidly. The Auditor General's April 2000 report noted that 65 % of executives will be eligible to retire in about five years. Employees aged 45 to 54 represent fully 39 % of the public service workforce, while the percentage of employees under age 35 is about half that of their representation in the Canadian work force. In March 1999 there were more than three times as many federal public service employees over age 45 than under age 30. Meanwhile, Statistics Canada data show that the population of Canadians aged 20 to 44 has declined since 1996 and will continue to decline–by a total of about 5 %–until 2011, presenting a formidable recruitment challenge for the coming decade.

Graham Lowe summarizes the forces for change in the public service organizational culture and employment regimes, in *Employer of Choice? Workplace Innovation in Government–A Synthesis Report*, a publication by Canadian Policy Research Networks:

> The forces driving this shift from the bureaucratic to the flexible government organization are the demographic crunch and resulting recruitment and retention pressures, the rising skill requirements of government work and a new political environment that places a premium on the quality and efficiency of public service.[11]

This means that the federal government as employer will be competing for a limited pool of skilled and other knowledge workers against high-technology employers and innovators in every field. To achieve such goals as becoming the "most wired" government in the world by 2004–the stated aim of the Government On-Line initiative, its work environment will have to resemble the flexible, dynamic workplaces that have become the norm in the new economy.

2.4 FLEXIBILITY AND DYNAMISM, FAIRNESS AND TRUST ARE NEEDED

Flexibility and dynamism are by-products of the fairness and trust that characterize workplaces with positive labour management relations. The level of trust between the parties is defined by the honesty demonstrated in their relations, their respect for commitments and their ability to exchange confidential information. While trust is characterized by hope, faith, confidence, assurance and initiative, distrust is characterized by fear, skepticism, cynicism, wariness, watchfulness and vigilance.

Flexibility and dynamism are by-products of the fairness and trust that characterize workplaces with positive labour management relations.

...framework for labour management relations that would help meet these challenges while respecting the essential values upon which the relationship should be based.

In a climate of trust, the parties can work together to resolve problems, respect each others' needs, consult each other, take the other party's point of view into consideration and act in good faith. A good level of trust is the basis for the flexibility and positive working relationships needed in the modern workplace.

As we considered the kinds of challenges faced by government in the 21st century, we sought to create a framework for labour management relations that would help meet these challenges while respecting the essential values upon which the relationship should be based.

In the *Eighth Annual Report to the Prime Minister on the Public Service of Canada* (March 2001), the Clerk of the Privy Council and Secretary to the Cabinet, Mel Cappe, highlighted some of the challenges that need to be addressed in making the federal public service a workplace of choice:

> We have begun the transformation to a modern, people-centered Public Service of Canada, one which is more flexible and responsive, adaptive and innovative. But the transformation is taking place too slowly. Current laws, rules and structures for managing people in the Public Service are neither flexible nor responsive enough to allow us to compete for talent in a knowledge economy. As well, the industrial era mindset and culture is still alive in many parts of today's Public Service.[12]

To become a workplace of choice, the public service must involve employees, through their unions, in redesigning employment systems. Rather than prescribe and limit actions, emphasize rules and define complex processes, the labour legislation and institutions governing these relationships must enable the parties in labour management relations–the employer and the unions–to prevent and resolve disputes and to work together better in the public interest.

1. Canada, House of Commons, **Debates**, April 25, 1966, p. 4243.
2. Denis Desautels, 2000 *Report of the Auditor General of Canada* (Ottawa: Report of the Auditor General of Canada to the House of Commons, 2000), pp. 9-29.
3. Denis Desautels, *Reflections on a decade of serving Parliament* (Ottawa: Report of the Auditor General of Canada to the House of Commons, 2001), p. 18.
4. Ibid.,p. 19.
5. Public Policy Forum, *Levelling the Path: Perspectives on Labour Management Relations in the Federal Public Service* (Ottawa: Public Policy Forum, 2000), p. 30.
6. Canada, House of Commons, *Debates*, April 25, 1966, p. 4242.
7. John Tait (chair), *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics – A Summary* (Ottawa: Canadian Centre for Management Development, February 1997), pp. 5-6.
8. Ibid., p. 7.
9. Laurence Strong (chair), *First Report of the Advisory Committee on Senior Level Retention and Compensation* (Ottawa: Treasury Board Secretariat, January 1998), p. 3.
10. Employment Statistics for the Federal Public Service (Ottawa: Treasury Board Secretariat, March 2000)
11. Graham Lowe, *Employer of Choice? Workplace Innovation in Government: A Synthesis Report* (Ottawa: Canadian Policy Research Networks Inc., 2001), p. 11.
12. Mel Cappe, *Eighth Annual Report to the Prime Minister on the Public Service of Canada* (Canada, Privy Council Office, March 2001), p. 3.

III. A new framework for labour management relations in the Public Service of Canada

Achieving significant change in the labour management relationship is never easy. But it is made easier if the raison d'être for change can be based upon a set of common and shared values. To this end, our Advisory Committee recommends a set of fundamental principles to guide the implementation of a new framework for labour management relations in the Public Service of Canada. The framework includes significant institutional changes accomplished through adjustments to the mandates and structures of existing organizations and the creation of a new entity representing the public interest. Our framework calls for, not just the *recognition* that labour management relationships are intrinsic to all subjects in the workplace, but action to place this fact in everyday decision making in the workplace, in departments and agencies and in the public service as a whole.

...our Advisory Committee recommends a set of fundamental principles to guide the implementation of a new framework for labour management relations in the Public Service of Canada.

3.1 FUNDAMENTAL PRINCIPLES FOR LABOUR MANAGEMENT RELATIONS

We suggest three statements of principle that demonstrate a shared commitment to building positive labour management relations in the public service:

- **We support** Canadian pluralism by listening to collective views.
- **We recognize** that individuals have the right to associate, form unions and participate in the determination of their working conditions through collective bargaining and other mechanisms.
- **We promote** cooperative solutions.

To ensure that the will to involve unions in decision-making at all levels translates into constructive action, we suggest a statement of principle underlining the importance of demonstrating a positive, professional attitude in these interactions:

- **We uphold** the fundamental values of trust, honesty and mutual respect.

Because we recognize that only what gets measured actually gets done, we suggest a statement of principle committing the partners to back up actions with measurements of results:

- **We support** clear accountability for both parties at all levels.

Good fundamental values and effective working relationships do not preclude problems. Labour management relationships involve dealing with difficult issues and tough trade-offs. There will be disagreements. To develop effective systems to deal with conflicting needs and goals, we suggest a statement of principle supporting work towards mutually satisfactory solutions:

- **We maintain** the need for fair, credible and efficient recourse procedures.

As a committee, we developed this set of principles, reflecting our varying backgrounds and a mutual desire to improve federal labour management relations. We have long years of experience as public service managers, union officials and third-party neutrals. Our views on this topic are quite distinct. We know

The public interest must be protected and unique public-service-oriented legislation is the best way to achieve that end.

that many groups before us have failed in their efforts to find points of unanimous agreement. Some have resorted to a low common denominator to find agreement. Others groups have simply not tried to reach agreement with the "other side," preferring instead to present a strong view of their own.

So when we struggled, in Merrickville, Ontario on July 12, 2000, to agree upon a set of principles, we were frankly quite surprised when we succeeded. Perhaps because the moment seemed so profound to us, we called the ensuing document "the Merrickville Manifesto." We saw it as our ultimate–and soon to be public–declaration of our common principles and goals. We all believe in these statements. Given our diverse backgrounds and strongly held opinions, we further believe that if we can agree on them, they will serve the Public Service of Canada and the people of Canada well.

3.2 COLLECTIVE BARGAINING MUST REMAIN A FIXTURE OF THE PUBLIC SERVICE

Our unanimous agreement as a committee extends to some basic precepts that we wish to address before presenting our proposed framework for labour management relations. After due consideration, we have flatly rejected any notion that collective bargaining rights should be removed from the federal public service. Collective bargaining is well established in the public sector and, in our considerable experience, no rationale exists to support a removal of these rights. It rests on fundamental human rights widely supported in Canada.

3.3 UNIQUE LEGISLATION FOR THE RESOLUTION OF DISPUTES

Our deliberations led us to consider many options to reform federal labour management relations. We assessed the wisdom, for example, of making the public service subject to the *Canada Labour Code*, which applies to employees of some federal agencies and to private sector workers in areas of federal jurisdiction. While we believe that, in an overall sense, federal public service employees should be treated the same as private sector employees for purposes of collective bargaining, we have determined that disputes, together with some other matters, need to be addressed differently.

This is so because the public sector is in some ways qualitatively different from the private sector. Public service strikes can greatly inconvenience the public without imposing economic loss on the employer. The public interest must be protected and unique public-service-oriented legislation is the best way to achieve that end. The legislation must establish dispute resolution systems that preserve the rights of the parties while, at the same time, protecting the public interest that citizens receive critical services from the state.

Our goal in recommending changes to the dispute resolution systems used within the public service is designed to reduce disruption to the public while preserving the fundamental rights of unions to strike and at the same time respecting government's ability to ultimately implement its will through legislation.

3.4 THE THREE Cs — CONSULTATION, CO-DEVELOPMENT, COLLECTIVE BARGAINING

Putting principles and values into action need not be unduly complicated. We are proposing that existing methods used to apply labour management relations at the service-wide level be applied, as well, at department/agency and workplace levels. Doing so is simply a matter of extending the reach of existing consultative and collaborative methods.

Our basic premise is this: We believe that every subject that arises in the workplace is properly a matter for union-management interaction.

Some subjects traditionally matters of management prerogative, such as the distribution of work, can and should be the subject of consultation. Some matters, which are not currently subject to collective bargaining such as the staffing and classification systems, can and should be co-developed by the two parties. Other subjects are, and should remain matters, the terms and conditions of which are determined through collective bargaining.

We envision processes of consultation, co-development and collective bargaining that set broad parameters for each subject at the service-wide level, while allowing for customization at the departmental or agency level, and enabling precise terms of implementation to be set at the local level of the workplace. We know that this is already happening in some places. The Department of Public Works and Government Services, for example, has working union-management consultation committees representing every region and workplace across the country.

3.4.1 CONSULTATION

Union-management consultation should be a regular aspect of the development of policies and practices in all workplaces and departments across the public service. Consultation has to be real. It has to be done before the fact, before ideas are set in individuals' minds, before implementation plans are started, even before some of the inevitable trade-offs are fully identified. Both parties need to feel that they are truly part of the planning, that they are partners in developing options and in analyzing the situation, assessing advantages and disadvantages and recommending specific actions.

Consultation does not remove management's right to manage. It is, instead, a statement by managers that they value the insight and opinions of their staff and of their staff's chosen representatives. The parties to consultation have to enter the process with an understanding that they will have to change some of their preconceptions and be prepared to listen carefully to other viewpoints. But both parties will gain from the process. And although neither will be able to claim "victory" in any ensuing policy or practice, if the process of consultation is done properly, both will see some of their aims realized. Managers and union representatives both will build their capacity to contribute to a better workplace and, ultimately, to better service for Canadians.

3.4.2 CO-DEVELOPMENT

In the public service to date, a form of co-development has been largely the creation of the National Joint Council.

We believe that every subject that arises in the workplace is properly a matter for union-management interaction.

We believe that now is the time to formalize this process of co-development and, at the same time, extend it to such important employment related matters as the classification and staffing systems within government. Co-development involves both parties undertaking research and presenting background information to feed into the process of developing policies. It involves real give and take, with neither party expecting to achieve all its goals on the subject. It is a process that helps to build trust and that relies on trust to be effective. It can play a major role in ensuring that employees' voices and their preferences are heard and reflected in internal government policies. At the service-wide level, co-development has already resulted in such major achievements as the creation of the Public Service Health Care Plan Trust and the modernization of the National Joint Council mandate and its by-laws. It is an important building block in the framework for improved labour management relations in the public service.

We also see the process of co-development extending beyond the National Joint Council to individual departments and agencies and to workplaces with local union-management consultation committees. While each department and work site is likely to have its own set of issues for co-development, our consultations elicited a number of issues that can serve as a starting point:

- organization of work
- work schedules
- delivery of quality public services
- operational issues
- workplace procedures
- joint training on workplace issues
- technological change and its impacts
- employment equity implementation
- flexibility to meet operational and personal needs

As with other proposals that we make, we wish to see the parties decide for themselves what subjects should be on this list, how the process should ultimately be implemented and how success will be measured. We are offering a framework. It is for the parties themselves to decide what they want to do and how they intend to achieve their goals and measure progress towards that end.

3.4.3 COLLECTIVE BARGAINING

We propose that, while collective bargaining on a service-wide basis should set the broad parameters for terms and conditions of employment, the precise details could, in many instances, be negotiated in each department according to specific needs identified by the unions and departmental management. The customized terms and conditions can then be incorporated into contractual as well as policy language. We call this approach "two tier bargaining" and explain it in more detail in Chapter IV.

3.5 THE NEW STRUCTURE OF LABOUR MANAGEMENT RELATIONS

While it may take time for the parties to build trust and to reduce the distrust that has developed over the years, a new structure for labour management relations can create a climate in which these changes can evolve. Our proposed structure for the day-to-day interactions that are part of effective labour management relations allows for more flexibility based on a level of trust in the relationship. If trust is at any time eroded, this new approach would still allow the parties to set more precise terms and conditions of service-wide employment.

1. *We recommend* a new institutional framework for labour management relations.

Our proposed framework requires the establishment of institutions that support positive working relationships and that provide for effective dispute resolution mechanisms. Our approach to institutional change involves revising the *PSSRA*, adjusting the work of three federal organizations and creating a fourth to represent the public interest. We separate the important functions of resolving workplace disputes and resolving impasses in collective bargaining, assigning these tasks to different institutions. The new institutions are described in brief on the following page and in detail in the chapters that follow.

STRUCTURE FOR LABOUR MANAGEMENT RELATIONS IN THE PUBLIC SERVICE OF CANADA*

	Consultation	Co-development	Collective bargaining
Public-service-wide	●	●	●
Department-wide	●	●	●
Workplace/work unit	●	●	

*Indicates that the activity in question will take place at the level indicated in the chart.

1. **The *Public Service Staff Relations Act (PSSRA)***

   The *PSSRA* provides the legal framework or "rules of the game" for labour management relations in the federal public service. The *PSSRA* needs to be updated and amended in order to facilitate the changes that we are proposing.

2. **The Canada Industrial Relations Board (CIRB)**

   The Canada Industrial Relations Board would administer the revised *Public Service Staff Relations Act*.

3. **The Public Service Rights Redress Board (PSRRB)**

   The PSRRB would be responsible for the adjudication of all grievances presented in the public service, including what are now called "appeals" of staffing actions.

4. **The Public Interest Dispute Resolution Commission (PIDRC)**

   The Public Interest Dispute Resolution Commission would provide for the public interest in offering dispute resolution services to the parties in collective bargaining should they reach an impasse.

5. **National Joint Council (NJC)**

   The NJC brings management and union representatives together to co-develop policies and directives on matters that affect public service employees in multiple departments and unions. We believe that this role should be given legal recognition and an expanded mandate together with adequate resources.

IV. Delegating authority and increasing flexibility– Changes needed to the *Public Service Staff Relations Act*

The new framework we present for labour relations in the federal public service is based on the set of fundamental principles we developed at Merrickville. We believe that these principles should be expressed in the preamble to a revised *Public Service Staff Relations Act*.

In proposing changes to the *PSSRA*, we have sought to provide general guidance. To the extent possible, we have avoided being unduly prescriptive in our recommendations for change.

4.1 EMPHASIZE PRINCIPLES, NOT DETAILS

Like many private sector labour relations acts, the *Canada Labour Code* has a preamble outlining the principles underlying the legislation. The *PSSRA* has none. We believe that this is one reason the *PSSRA* is a much more prescriptive act than the *Code*. Without a set of principles to guide the relationship between the parties, the *PSSRA* must necessarily provide exhaustive lists of conditions for the parties to follow. Consistent with our belief that the parties themselves must work through their differences and reach mutually satisfactory agreements, we think that the *PSSRA* should be less detailed and less prescriptive in its directions to the parties.

ESSENTIAL PRINCIPLES FOR A NEW LABOUR MANAGEMENT RELATIONSHIP

We believe that a vibrant public service that consistently delivers excellent services is vital to our country's future. To achieve this the Canadian government must have a labour management system that is fair, efficient and flexible. This system must:

- Support Canadian pluralism by listening to collective views.
- Recognize that individuals have the right to associate, form unions and participate in the determination of their working conditions through collective bargaining or other mechanisms.
- Promote co-operative solutions.
- Uphold the fundamental values of trust, honesty and mutual respect.
- Establish clear accountability for both parties at all levels.
- Maintain a fair, credible and efficient recourse procedure.

The new framework we present for labour relations in the federal public service is based on the set of fundamental principles... these principles should be expressed in the preamble to a revised Public Service Staff Relations Act.

2. *We recommend* that the revised *Public Service Staff Relations Act* contain a preamble outlining the principles underlying the legislation.

...all matters that arise in the workplace are properly the subject for joint discussion between the unions and the employer.

We consider that four specific issues require particular attention in a revised *PSSRA*:

- scope of bargaining
- two tier collective bargaining
- excluded and designated employees
- bargaining unit certification

4.2 SCOPE OF BARGAINING

We believe that virtually all matters that arise in the workplace are properly the subject for joint discussion between the unions and the employer.

The *PSSRA* sets severe limits on the range of subjects that can be negotiated in collective bargaining. While we believe that these restrictions should be eased considerably, we are also persuaded that some subjects should be negotiated through a process of co-development rather than formal collective bargaining.

To reflect the interests and views of federal public service employees in the development of service-wide policies and procedures affecting them in the workplace, the government as employer, must involve these employees' elected representatives in the development process. Service-wide issues such as staffing and classification systems and the pension plan are logically addressed through jointly developed policies. As we note in more detail in Chapter VI, we believe that the most appropriate forum for co-development of such service-wide policies is the National Joint Council, which already has a long history as a collaborative, problem-solving mechanism. Other issues, such as telework, training, or special allowances applicable to a single occupational group, may be more appropriately dealt with through co-development or consultation at the bargaining unit, departmental, or workplace level. In all cases, federal public service employees' elected representatives must be significantly involved in developing and implementing new workplace policies. It is not enough for government managers to summon union officials into their offices and notify them of impending policy changes after key decisions have already been made.

3. *We recommend* that the *Public Service Staff Relations Act* be amended to provide for consultation and co-development of policies at the service-wide, departmental and workplace levels. The details of how these processes will be implemented should be left to the parties to develop.

The areas we believe best suited for co-development are the staffing, classification and pension systems. In what follows, we address each of these areas in turn.

4.3 THE STAFFING SYSTEM

In our consultations with unions and management representatives, we were made amply aware of problems with the staffing system in the federal public service. Managers view the system as too slow to meet their needs in recruiting and retaining the best people. They also find that the system is inflexible and imposes too great a burden on them. Although the

system is supposed to protect employees from favouritism and similar abuses, union leaders consider the system neither transparent nor fair. They do not see it as an effective mechanism for the protection of the merit principle.

We believe that co-development can lead to significant improvements in the efficiency and effectiveness of the staffing system, all in support of the merit principle. In line with the approach we recommend for other issues, we believe that these policies and procedures need to be set out in general terms at the service-wide level and allow for flexibility in implementation at the local level.

4. ***We recommend*** that the staffing system be made subject to co-development by the parties at the National Joint Council. To ensure that the co-development process respects core public service values, the *Public Service Employment Act* should be amended to include a list of values such as merit, employment equity, fairness and transparency with which the process must be consistent.

4.4 THE CLASSIFICATION SYSTEM

When it took on the challenge of revising the classification system, the public service entered a prolonged period of study, analysis and development with limited outcome to date. While there has been some consultation between the employer and the unions, it has been insufficient to achieve a mutually satisfactory result. We believe that the classification system is ideally suited to co-development between the parties so that management requirements and employees' needs as well as legislative obligations are satisfied to the greatest extent possible in this important undertaking.

5. ***We recommend*** that the classification system be made subject to co-development by the parties at the National Joint Council.

4.5 THE PENSION PLAN

The pension plan is one element of the conditions of employment that affects every long-term, full-time employee, at every level, in every workplace. It is also an issue that links employees in today's workplaces and the retirees of the public service of yesterday. Its administration and management affect the well being of employees past, present and future in a direct and most important way. This subject is ideally and properly suited, in our opinion, to co-development.

While there currently exists a Pension Plan Advisory Committee consisting of management and union representatives as well as a representative of retirees, this committee provides advice to the President of the Treasury Board only on an ad hoc basis. Consultations between the Treasury Board and unions, conducted in 1998 and 1999, reached agreement on many provisions for reform but broke down on the issue of the sharing of the notional surplus funds. And while agreement was reached on joint management of the Plan, these terms were not included in Bill C-78, adopted in 1999. Fully two-thirds of provincial and municipal pension funds are jointly managed. We believe that the federal public service pension plan itself, its provisions, the funds and the investment of those funds

should all be subject to co-development and co-management. Because of the interest of pensioners in the plan, their representatives should be a party to the co-development and co-management.

To permit co-development of the public service pension plan, the *Public Service Staff Relations Act* would need to be amended in that it prohibits the negotiation of matters specifically covered by other legislation such as the *Public Service Superannuation Act*.

6. *We recommend* that the Pension Plan, its provisions, the funds and the investment of those funds should be made subject to co-development by the parties at the National Joint Council and be co-managed by a jointly appointed Management Board.

...process of bargaining should be more sensitive to individual workplace needs in order to provide the flexibility the system requires.

4.6 RESOLVING CO-DEVELOPMENT DISPUTES

If the parties are to work together effectively to develop additional policies and terms and conditions of employment in the public service, they must have access to effective dispute resolution mechanisms. In 1999, the National Joint Council began to explore an expanded third party impasse resolution system. We applaud the recent amendment to the Council's by-laws signed in March 2001, introducing a system to resolve disputes rather than leaving the issue to be decided unilaterally by the employer.[13] With access to a jointly agreed roster of neutrals, we expect that the parties will be able to come to agreement on some difficult and contentious issues.

7. *We recommend* that any disputes over co-development issues be resolved through the use of the National Joint Council's new dispute resolution process whether or not such disputes arise in the National Joint Council forum.

4.7 TWO TIER COLLECTIVE BARGAINING

Under the current system, the employer and the unions negotiate the terms of service-wide collective agreements. This can mean that the financial terms and policies that are meant to provide flexibility to employees and managers do not respond fully to local needs. We reject the too rigid notion that service-wide determined terms and conditions of employment should apply in all circumstances and uniformly in all workplaces. We believe that the process of bargaining should be more sensitive to individual workplace needs in order to provide the flexibility the system requires. We recognize that this concept of two tier negotiation is somewhat novel in the federal public service and believe that it should only be implemented on a voluntary basis.

For example, a service-wide collective agreement for administrative employees might set the standard workweek at 37.5 hours. It can do this by stating that an employee with the base level of three weeks annual vacation must work a total of 1950 hours per year. In any one department, the managers and union representatives might agree that, to accommodate the requirements of certain work groups, the standard work week be defined as ranging from a minimum of

4 to a maximum of 8 days. Days off could be arranged in ways that appropriately compensate employees working longer or compressed workweeks. To respond to shift requirements in a specific work unit, the managers and union representatives might agree that the standard work day be defined as ranging from a set minimum to a set maximum, with correspondingly large blocks of time off for employees working longer days. Similarly, in work units with a seasonal component, they could also agree that the standard work year should be defined as ranging from nine to twelve months, which would give employees a solid block of time off in slack periods in return for working longer hours at peak periods.

8. ***We recommend*** that collective agreements negotiated at the service-wide level provide the general outlines of the terms and conditions of employment so that, subject to mutual agreement between the parties, managers and union representatives in individual departments and workplaces can work out the details of how these provisions should be applied locally.

9. ***We recommend*** that the *Public Service Staff Relations Act* enable collective bargaining at the departmental and agency level, to set the detailed terms and conditions of employment for subjects negotiated in broad terms at the service-wide level.

4.8 EMPLOYEES EXCLUDED FROM UNION MEMBERSHIP

In general, the tendency in Canadian labour law has been to exclude fewer employees from the right to join unions, thereby leaving a greater number eligible to join. The *Canada Labour Code* has for some time mirrored this trend, excluding only those performing management functions or employed in a confidential capacity in matters relating to industrial relations.

In contrast, the *PSSRA* contains a lengthy and complex list of exclusions. Aside from those occupying managerial or confidential positions, it excludes ten additional classes of employee, including part-time, term and casual employees, dependent contractors and persons locally engaged outside Canada[14]. The managerial/confidential exclusion itself takes in seven different categories of employee, among them legal officers in the Department of Justice and all Treasury Board employees.

In our first report, we noted that the exclusion process was a problem for both parties. Management representatives believe that the process is too long and cumbersome, while union representatives believe that too many people are excluded from unionization rights.

In our view, a detailed, complex exclusion policy such as that currently contained in the *Public Service Staff Relations Act* has done little to improve relations between the parties. This kind of policy is also inconsistent with the facilitative, enabling approach we seek throughout this document.

10. ***We recommend*** that the *Public Service Staff Relations Act*'s exclusion policy be changed to mirror that of the *Canada Labour Code*, to exclude only those performing management functions or employed in a confidential capacity in matters relating to industrial relations.

4.9. DESIGNATING ESSENTIAL EMPLOYEES

The *PSSRA* includes a detailed and complex system for identifying employees designated as essential in the event of a strike. The *Act* includes a broad set of terms requiring designations for each position in a bargaining unit involving "duties the performance of which is necessary in the interest of the safety or security of the public." In cases of disagreement between the employer and the union involved, the Public Service Staff Relations Board decides whether an individual position should be designated as essential.

In our consultations we were told by the parties that they consider the designation process to be complex, cumbersome and contentious. While the public service has, in theory, created a standing list of designated positions, we were advised that there is little initiative taken by either side to maintain the list between rounds of collective bargaining. In addition, the process of determining designations is time-consuming and can serve to delay conciliation when negotiations reach an impasse. The current legislation calls for the establishment of a review panel to make recommendations on the designation of positions where the parties have been unable to reach agreement. If the parties disagree with the panel's recommendation, the matter is referred to the Public Service Staff Relations Board for a final and binding decision. The unions have advised us that they sometimes feel compelled to agree to designate positions so that the conciliation process can proceed in a more timely way.

11. *We recommend* that the parties jointly establish a permanent list of designated positions that is reviewed regularly. The process of determining the list of designated positions should also reflect that used under the *Code*.

12. ***We recommend*** that the terms upon which positions are deemed essential be changed to mirror those of the *Canada Labour Code*, which requires that activities be maintained during a legal strike to the extent necessary to prevent an immediate and serious danger to the safety or health of the public.

13. ***We recommend*** that, if the two parties do not agree on which employees should be designated as essential, then the Canada Industrial Relations Board should make the final decision.

4.10 BARGAINING UNIT CERTIFICATION

Under the *PSSRA*, bargaining unit certification is now based on the employer's classification system. As we pointed out in our first report, the result has been a highly complex bargaining unit structure which often prevents an appropriate "community of interest" from emerging and may well make bargaining more difficult.

We believe that instead of being based on the employer's classification system, bargaining unit certification should instead be based on more standard

industrial relations criteria such as community of interest, industrial stability and the viability of individual bargaining units. We also believe that a revised *PSSRA* should not fix the number of bargaining units in advance, but instead should leave that determination to the Canada Industrial Relations Board.

Because this new system of bargaining unit certification could represent a significant change for the parties, we suggest that any applications to change the bargaining unit structure be prohibited for two years after the legislation takes effect, in order to encourage the parties to work out the relevant issues between themselves. After that time, if the parties could not agree, either could apply to the board for a determination.

4.11 ADMINISTERING THE *PUBLIC SERVICE STAFF RELATIONS ACT* — A NEW ROLE FOR THE CANADA INDUSTRIAL RELATIONS BOARD

A growing tendency in Canadian labour relations is for public and private sector labour legislation to be administered by a single board. Our review of provincial public service legislation found that the single board model has been adopted by a number of provinces.

In the Committee's view, such a shift makes sense at the federal level as well, both for reasons of administrative efficiency and as a way of helping to ensure that public service employees' rights more closely approximate those of their private sector counterparts. Accordingly, as the *PSSRA* is revised to follow more closely the provisions of the *Code*, we believe that it is sensible and appropriate to have the institution that administers the *Code* use its experience to administer the new provisions of the *PSSRA* affecting:

- the certification of bargaining units;
- the designation of essential positions in cases of strikes;
- the exclusion of certain employees from union membership;
- matters such as the duty of fair representation, unfair labour practices and refusal to bargain in good faith.

To take full advantage of the expertise and experience with these matters in the federal public service that the Public Service Staff Relations Board has accumulated, the Canada Industrial Relations Board will need certain resources now available within the PSSRB.

14. ***We recommend*** that the revised *Public Service Staff Relations Act* be administered by the Canada Industrial Relations Board.

15. ***We recommend*** that certification of bargaining units be determined by the Canada Industrial Relations Board. To encourage the parties to reach agreement on changes to existing bargaining units, applications to the Canada Industrial Relations Board for determination of bargaining units should be prohibited for two years after this change takes effect.

A growing tendency in Canadian labour relations is for public and private sector labour legislation to be administered by a single board.

13. National Joint Council By-laws, 11.2, effective March 7, 2001.

14. In considering the definition of employees, the issue of dependent contractors should be taken into consideration. It is suggested that no person who is employed by an entity other than the Treasury Board or another employer who falls within the scope of the labour legislation governing federal public service workers, should be considered as an employee under the Act, and that dependent contractors employed by Treasury Board or another employer who falls within the scope of the labour legislation governing federal public service workers should be considered employees for the purposes of labour relations.

V. Resolving rights and interest disputes– Unique solutions are required to meet public service needs

We believe that, of all the improvements that can be made to the framework of labour management relations, those surrounding dispute resolution are most likely to prove fundamental in supporting the federal public service through the technological, societal and administrative changes that will arise over the decades to come.

We are not alone in this belief. *Seeking A Balance*, the report of the task force to inquire into Part I of the *Canada Labour Code*, states:

> We cannot overemphasize the importance of developing a culture of dispute resolution and of increasing the skills of Canadians in the resolution of workplace disputes.[15]

It is important to improve two types of redress mechanisms:

- **Rights disputes** involve the resolution of complaints and grievances about the violation of individual rights pursuant to collective agreements, directives or policies.
- **Interest disputes** involve the resolution of problems between the parties in the course of collective bargaining.

Because these two types of disputes involve completely different circumstances and participants, two separate mechanisms are required to deal with them.

Rights disputes require straightforward avenues for all employees to complain about alleged unfair treatment, without fear of reprisal or other negative career consequences. At present, as we note in more detail later, there is a complex array of mechanisms involving five different federal agencies as well as individual departments. We believe that resolution of rights disputes logically falls within the purview of the Public Service Staff Relations Board, which already devotes up to 90 percent of its time to these disputes. We propose to build on the PSSRB's experience and expertise in introducing a more streamlined and transparent process for a reconstituted Board to use in resolving a wider range of disputes.

Interest disputes require mechanisms that assist the parties to resolve collective bargaining impasses before problems escalate to levels where a strike or a legislated solution seems imminent. We propose to expand the array of dispute resolution strategies available to the parties in the course of collective bargaining.

We believe that, of all the improvements that can be made to the framework of labour management relations, those surrounding dispute resolution are most likely to prove fundamental...

In the public service today, there is a bewildering array of mechanisms for resolving disputes between individuals and the employer.

5.1 SIMPLIFY RIGHTS REDRESS PROCEDURES

In the public service today, there is a bewildering array of mechanisms for resolving disputes between individuals and the employer. The June 2000 report, *Recourse and Redress in the Public Service*, by the Public Service Commission Advisory Council, presents all of the possible mechanisms public service employees can use to resolve complaints and disputes. The chart explaining these processes runs for seven pages and includes, among others, the following mechanisms:

- Appeals
- Complaints
- Grievances
- Grievances involving the application of the Workforce Adjustment Directive
- Investigations
- National Joint Council grievances

The review process can involve one or more of the following institutions:

- Canadian Human Rights Commission
- Federal Court of Canada
- Individual departments
- National Joint Council
- Public Service Staff Relations Board
- Public Service Commission of Canada

Under the current redress system, not all grievances can be brought to adjudication before the Public Service Staff Relations Board. The union can only present grievances to the PSSRB for adjudication if they involve disciplinary action resulting in suspension or financial penalty or a provision of the collective agreement that applies to the grievor. The PSSRB's decision in all cases is final.

If the grievance concerns a directive of the National Joint Council, the complaint goes to the National Joint Council, and if there is still an impasse it can be referred to the Public Service Staff Relations Board. The PSSRB constitutes the final avenue of appeal for unionized and other employees.

The existing system is inefficient. For example, except in certain tightly defined circumstances, unions cannot present group grievances on behalf of their members, even if a problem is common to hundreds or thousands of people. Each individual must file a separate grievance, tying up people and resources for no additional benefit. The system is also complex. Grievances concerning harassment are subject to policies set within each department, or to investigations by the Public Service Commission. Redress for complaints involving staffing actions must be presented as "appeals" to the Public Service Commission, introducing additional complexity and significant delays.

The appeals process is perhaps the most pressing concern in the current recourse system. This process, created to respond to complaints related to the staffing of positions in the public service, is renowned for its slowness and its inability to resolve the problems that tend to precipitate appeals. While the appeal system, like the grievance system, should work as a "safety valve" for workplace tensions, it can instead exacerbate them. Managers complain that it hamstrings their efforts to obtain the human resources needed to meet workload demands. This, in turn, frustrates some

employees' expectations for promotions or job mobility. And even within the appeals process, separate procedures must be used for certain circumstances: for example, complaints concerning deployments–transfers of employees without competition–are subject to a separate process.

5.2 THE PUBLIC SERVICE RIGHTS REDRESS BOARD —A FOCUS ON RESOLVING COMPLAINTS AND GRIEVANCES

The federal public service's grievance and complaints systems have often been criticized for their complexity and inefficiency. In our first report, we noted that these systems have been a source of frustration both for managers and for employees and their unions. The Committee does not believe that the government and the public service unions can achieve an effective working relationship without major changes to existing redress mechanisms.

In our view, there are two elements to an effective redress system:

a) the resolution of as many problems as possible at the departmental level, including staffing appeals, which are currently heard by the Public Service Commission; and

b) the existence of a single, impartial institution charged with resolving and adjudicating all disputes that could not be resolved at the departmental level.

A reconstituted PSSRB—to be known as the Public Service Rights Redress Board (PSRRB)—would be best suited to bring the necessary expertise to this challenge.

The new PSRRB should be responsible for providing mediation and other alternate forms of dispute resolution services at no charge to the parties and adjudicating all grievances and complaints following the procedures outlined in collective agreements. All cases should have access to PSRRB adjudication, including complaints from unrepresented members, matters not covered by collective agreements, appeals of staffing actions and job classifications, cases of disciplinary action of all kinds and harassment and other human rights complaints. Unions should be allowed to present group grievances on behalf of employees and, to avoid the heavy and unwarranted costs of frivolous grievances, should have the right to decide whether or not to bring forward a grievance by a represented employee.

To streamline the dispute resolution process, the parties should build on the work begun by the Public Service Staff Relations Board, with considerable success, bringing mediation and alternate forms of dispute resolution into the grievance process. The goal, wherever possible, should be to reduce the number of steps in the process.

A revised *Public Service Staff Relations Act* and any necessary revisions to the *Canadian Human Rights Act* should also ensure that the Canadian Human Rights Commission, when dealing with a case that has been brought to adjudication before the PSRRB, take cognisance of the outcome of that prior process.

The Committee does not believe that the government and the public service unions can achieve an effective working relationship without major changes to existing redress mechanisms.

The Public Service of Canada can and should be a model of respect for individual rights and liberties.

By making the redress process simpler, clearer, faster and more efficient, we believe that the government as employer can send an important signal to employees and managers that redress is a right, not a problem. By charging a single, experienced institution with the important responsibility of mediating and resolving all complaints, it can demonstrate that it is intent on resolving problems and building positive relationships in the workplace. In turn, this can help to ease the "chill" that we encountered, whereby individuals fear filing grievances or complaints because they see such actions as "career limiting." The Public Service of Canada can and should be a model of respect for individual rights and liberties. The Public Service Rights Redress Board would be a tangible manifestation of that respect.

The Public Service Staff Relations Board is not presently a representative board. We believe that a reconstituted Public Service Rights Redress Board would have more credibility with the parties and would function more effectively if it were a representative board, along the lines of the Canada Industrial Relations Board. An equal number of union and management members would be drawn from lists selected by the parties. The remaining members would be neutral Vice-Chairs. All would be appointed by Order-in-Council.

16. *We recommend* that the Public Service Staff Relations Board be reconstituted as the Public Service Rights Redress Board, with the power to resolve rights disputes on any matter affecting unionized and other employees, including complaints about staffing actions, which are now dealt with through appeals to the Public Service Commission, using mediation and alternative forms of dispute resolution as appropriate.

17. *We recommend* that unions have the right to present group and policy grievances on behalf of employees and that they should have the right to decide whether or not to bring forward a grievance by a represented employee.

18. *We recommend* that the Public Service Rights Redress Board be a representative board, with an appointment process similar to that of the Canada Industrial Relations Board.

19. *We recommend* that the Canadian Human Rights Commission and the Human Rights Tribunals, when dealing with a case that has been brought to adjudication before the Public Service Rights Redress Board, take cognisance of the outcome of that prior process.

5.3 WHEN COLLECTIVE BARGAINING BREAKS DOWN

As we noted earlier, interest disputes arising in the course of collective bargaining are fundamentally different from rights disputes involving the interpretation or application of collective agreements. The most important difference is that interest disputes can lead to strikes which may affect the public significantly. Because public service strikes can have such a significant impact on the public and because

there are often no readily available substitutes for the services provided by government employees, governments generally restrict their own employees' right to strike more severely than they do the rights of private sector employees.

Under the *Public Service Staff Relations Act*, federal government unions may choose between binding arbitration and conciliation/strike as the means of resolving any subsequent impasse. But they must make this choice at the beginning of negotiations, which as we shall soon see is problematic for both sides. It is also worth noting that the right to opt for arbitration was suspended in 1996, although it is due to be reinstated in June of this year.

The major problem with the current public service dispute resolution method, commonly known as "choice of procedures," is that it tends to hinder the process of voluntary settlement, particularly in cases where the union has opted for arbitration. In such cases, there is a risk that neither side will bargain properly, in the belief that there is little need to make hard choices when the arbitrator will be making the final decision in any case. In the industrial relations literature, this phenomenon is referred to as the "chilling effect" of arbitration.

No one can deny that public service strikes are undesirable. On the other hand, as we have seen, binding arbitration can be problematic as well. Moreover, the right to strike is firmly established in the Canadian public sector, at both the federal and provincial levels. While it is essential that certain government services continue in the event of a strike–and all public sector labour legislation provides for essential services to be provided in such cases–not all government jobs are essential to the safety and well being of the public. If inspectors at the Canadian Food Inspection Agency were to strike, some level of service would have to continue for Canadians. If policy officers were to strike, the impact on Canadians would be much less immediate or apparent. While public service strikes may be undesirable, the solution is not to disallow them in basic labour legislation but to avoid them by introducing dispute resolution strategies that help the parties work out their differences.

Our first report made frequent reference to the problems which have resulted from the government's apparent failure to distance public service dispute resolution from the political process. A particularly severe problem is that frequent legislative intervention has eroded confidence in the public service labour management relations system and trust between the parties. It is this problem we have sought to address through the creation of a new mechanism: the Public Interest Dispute Resolution Commission, to be described in detail below.

We considered putting the public service under the dispute provisions of the *Canada Labour Code*, but the Canada Industrial Relations Board, which administers the *Code*, ultimately reports to the Minister of Labour. Because the Minister is a member of Cabinet he/she, therefore, clearly belongs to the "employer side". Under the existing rules of Cabinet solidarity, the Minister, by definition, cannot be a disinterested observer who is above the fray in disputes involving government and its own employees.

While public service strikes may be undesirable, the solution is not to disallow them in basic labour legislation but to avoid them by introducing dispute resolution strategies that help the parties work out their differences.

5.4 THE PUBLIC INTEREST DISPUTE RESOLUTION COMMISSION

We propose that a new organization–the Public Interest Dispute Resolution Commission–be created to assist the parties in resolving interest disputes arising in collective bargaining. The Commission will assist the parties in resolving bargaining impasses by a number of means, without work stoppages. The Commission would serve to reduce the incidence of public service strikes as well as the probability of intervention by the government.

We propose that the Commission have access to a wide variety of established dispute-settlement techniques, to accomplish its objective. These techniques for resolving labour-management disputes are all based on the neutrality of the third

INTEREST DISPUTES

Issues	Current Process	Proposed Process			
		PSSRB/New Public Service Rights Redress Board	Canada Industrial Relations Board	New Public Interest Dispute Resolution Commission	National Joint Council
Negotiations Impasse (Arbitration / Strike)	PSSRB			■	
Mediation Services (Mediation / Fact Finding)	PSSRB			■	
CO-development	None				■
Salary / Benefit Research Data	None				■
Certification / De-Certification Bargaining Unit Review	PSSRB		■		
Duty of fair representation	PSSRB		■		
Unfair labour practice	PSSRB		■		
Essential services Designation	PSSRB		■		
Managerial / Confidential Exclusions	PSSRB		■		
Refusal to Bargain in Good Faith	PSSRB		■		

PSSRB: Public Service Staff Relations Board

Note: The above listed items are examples of issues and are not all-inclusive.

party. If the Commission is to function effectively, it must be independent of the government. This independence is critical if the Commission is to truly protect the public interest. The most effective way of ensuring the Commission's independence is having it report directly to Parliament, rather than to a minister of the government.

The original idea for such a commission came from the Public Interest Disputes Commission proposed in the 1968 Woods Task Force Report on Industrial Relations.[16] We have also drawn on the proposal for an Essential Service Disputes Commission put forward by Paul Weiler in *Reconcilable Differences*.[17] The rationale for establishing a Commission with an array of strategies available to assist in resolving disputes is that this flexibility on the part of the Commission keeps the parties in a state of uncertainty about the remedy the Commission might impose in the case of deadlock. This in turn encourages the parties to settle on their own and avoid the imposition of a remedy that might be less acceptable than one they could work out between themselves.

We believe that with the Commission in place, it will be more difficult to arrive either at a point where unions perceive that a strike is the only option, or where legislators perceive that legislation is required to end a strike or to suspend any collective bargaining rights.

While the new Commission will assist the parties to resolve their differences and avoid strikes or legislated solutions, it must also explicitly take into account the interests of the third party to the proceedings, the Canadian public.

5.5 HOW WOULD THE DISPUTE RESOLUTION COMMISSION BE CONSTITUTED?

Representativeness is important to the success of the Public Interest Dispute Resolution Commission. We suggest that the Commission have at least nine part-time members and a Chair appointed for fixed, renewable terms by the Governor-in-Council.

An equal number of union and management representatives, at least three of each, would be drawn from lists submitted by the unions and the employer, respectively. The remaining neutral members would be individuals experienced in labour management relations, to represent the public interest.

The Chair should be a respected and experienced individual with a national reputation in the field of public sector labour relations. The Commission would be assisted in its work by a small, full-time secretariat.

The Commission should report directly to Parliament, which we believe would reduce the possibility of its becoming politicized.

While the new Commission will assist the parties to resolve their differences and avoid strikes or legislated solutions, it must also explicitly take into account the interests of the third party to the proceedings, the Canadian public.

The Commission's role would be to assist the parties in reaching a voluntary solution to their impasse thus avoiding the withdrawal of services from Canadians. Therefore referral to the Commission should be mandatory when an impasse in collective bargaining occurs.

5.6 ASSISTING THE PARTIES IN RESOLVING DISPUTES

The Public Interest Dispute Resolution Commission should have the following techniques available to assist the parties in resolving interest disputes:

- fact-finding;
- referral back to the negotiating table;
- mediation;
- issuance of a preliminary report commenting on the reasonableness of the parties' positions;
- issuance of a report outlining the terms of a settlement that could be adopted by or imposed on the parties.

The Commission could offer fact-finding services for both sides, to assist the parties in resolving irritants or in finding new possibilities for the resolution of differences. If the Commission concludes that the parties have not bargained enough, it could refer the dispute back to them, with or without mediation assistance provided by the Federal Mediation and Conciliation Service. If the parties remain deadlocked, the Commission could investigate the dispute thoroughly and issue a detailed report containing its recommendations for settlement. The Commission would not be bound by the parties' representations. It might conclude, for example, that one party was being unreasonable and the other's position should prevail. Its report might strike a compromise between the two positions. Or its report might introduce a package consistent with practices in other jurisdictions.

The new Commission would take into account representations and research on environmental factors–such as new economic conditions or private-sector wage rates and occupational availability rates–that could suggest a need for a settlement that departs from recent precedent. The parties should have a limited time to review the Commission's report. They should then be required either to accept or reject the report.

The possible outcomes of this process are:

- The union and the employer accept the Commission's report and it forms the basis of the new collective agreement;
- The parties return to the bargaining table to work out a settlement within the constrained timeframe, instead of accepting the report's recommendations;
- The union rejects the report and proceeds with job action;
- The employer rejects the report and the union applies to the Commission to have the report's recommendations imposed.

When preparing its reports, the Commission should be guided by the following fundamental principles:

- The promotion of harmonious labour-management relations in the public service;

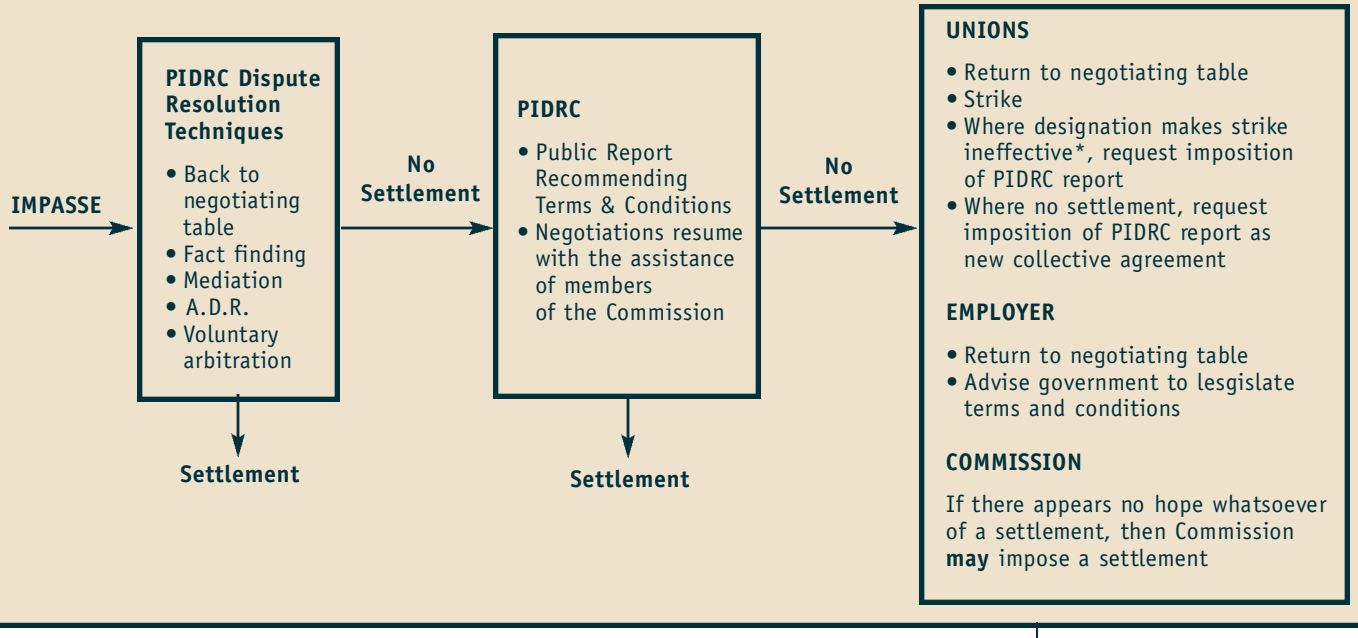
- The recognition of the rights of public service staff to associate freely and bargain collectively, including the right to strike;
- The recognition of the importance of a competent and efficient public service to the citizens of Canada;
- The necessity of the public service to offer compensation and other terms of employment comparable to private sector employers and other public sector employers;
- The current state of the economy and the government's fiscal circumstances.

The Commission should have the authority to receive representations from the parties and to obtain information on economic conditions or labour markets. It could obtain this information from the Compensation Research Bureau (See Chapter VI) or other sources.

Each report issued by the Commission should reflect its views of the dispute before it and would not be bound by previous Commission reports.

We believe that it would be difficult for the bargaining agent to recommend that its members strike instead of accepting the Commission's recommendations. If the union proceeded with job action, or applied to the Commission to have the report imposed, the government would still have the option of legislating a return to work or imposing a new agreement. But we also believe that it would be difficult for the government as employer to pass legislation against the expressed opinion of a Dispute Resolution Commission of its own creation.

PUBLIC INTEREST DISPUTE RESOLUTION COMMISSION (PIDRC)
IMPASSE-RESOLUTION PROCESS



* To be determined by Commission in their report (guided by Essential Services decision of Canada Industrial Relations Board).

Within two weeks of issuing its report to the parties, the Commission should make it available to the public.

5.7 A PUBLIC REPORT MAKES FOR A MORE OPEN PROCESS

Within two weeks of issuing its report to the parties, the Commission should make it available to the public. In this way, if either party chose to reject the report's recommendations, there would be pressure to demonstrate why the Resolution Commission's Report was unacceptable when compared to their own positions.

For these reasons, and because the availability of an array of dispute resolution strategies would likely make a freely negotiated settlement seem relatively more attractive, we expect the Public Interest Dispute Resolution Commission to reduce public service strikes as well as the government's use of ad hoc legislation to end those strikes or impose settlements. These options, we believe, would be unattractive to the parties after the Commission issued its report.

Nonetheless an impasse could occur. A bargaining agent might be dissatisfied with the recommendations, but also be unable to exercise meaningful pressure on the employer because of the high proportion of its members who had been designated as essential under the *Public Service Staff Relations Act*. Since the right to strike would effectively have been denied to the members of such bargaining units, they should have the unilateral right to request imposition of the Commission's award. While the Commission would not be obliged to agree to the bargaining agent's request, it presumably would consider carefully the special circumstances of the employees in those bargaining units.

A second possibility for continued impasse would exist when the employer rejected the Commission's report, even after the parties had had the opportunity to negotiate its implementation. The Committee carefully considered an equitable policy to apply in such circumstances. If the employer were determined to avoid implementing the report, it could request the government to pass special legislation ending the dispute or even imposing the terms and conditions of the new agreement. Such a drastic action, which would be a rejection of the PIDRC's considered judgement, will likely be extremely rare.

For its part, a union facing employer resistance has few options. It could go on strike. However, many public service bargaining units have only a limited ability to apply meaningful strike pressure on the employer. Those bargaining agents that do have the power to exert meaningful pressure on the employer or the general public risk the imposition of ad hoc legislation by Parliament. The bargaining agent should have the right to request imposition of the Commission's report. Again, the Commission should have the power to accept or reject the bargaining agent's request. Uncertainty as to the Commission's reaction to a bargaining agent's request should be a further incentive to the parties to resolve their disputes themselves. If the Commission does agree to the bargaining agent's request, the report would constitute a final and binding resolution to the dispute in question.

20. ***We recommend*** that the *Public Service Staff Relations Act* be amended to provide for a tripartite representative Public Interest Dispute Resolution Commission, to represent the public interest and to assist the parties in resolving interest disputes. The Public Interest Dispute Resolution Commission should have the following powers:

    - fact-finding;
    - referral back to the negotiating table;
    - mediation;
    - issuance of a preliminary report commenting on the reasonableness of the parties' positions;
    - issuance of a report outlining the terms of a settlement that could be adopted by or imposed on the parties;
    - imposition of a collective agreement at the request of a union under specified circumstances.

21. ***We recommend*** that the Public Interest Dispute Resolution Commission be a representative body. It would consist of at least nine part-time members and a full-time Chair, all to be appointed by the Governor-in-Council. An equal number of union and management representatives (at least three of each) would be drawn from lists submitted by the parties. The remaining members would be third party neutrals representing the public interest.

22. ***We recommend*** that the Public Interest Dispute Resolution Commission report directly to Parliament.

15. Andrew Sims (chair) *Seeking a Balance: Review of the Canada Labour Code, Part 1* (Ottawa, Public Works and Government Services Canada, 1995), p. xii.

16. H.D. Woods (chair), *Canadian Industrial Relations: The Report of the Task Force on Labour Relations* (Ottawa, Privy Council Office, 1968) pp. 167-174.

17. Paul Weiler, *Reconcilable Differences* (Toronto: Carswell, 1980).

VI. A new role for the National Joint Council

The National Joint Council is an example of the kind of collaborative, problem-solving institution we believe is needed to sustain labour management relations through the 21st century. As the organization's outgoing General Secretary has noted, the NJC as a consultative body "plays a significant role in relationship building, in ongoing dialogue between the parties and in promoting modern concepts of management cooperation and codetermination." [18]

We believe the NJC is a place where trust and mutual respect between the parties are most likely to be developed. To help improve labour management relations in the public service, we propose an expansion in the scope of the NJC's activities.

We envisage the National Joint Council as the primary forum for co-development by the employer and the unions of policies and directives that affect employees across the public service. As we pointed out in Chapter IV, we believe that this role should include matters, such as the staffing system, the classification system and the pension plan, that have not previously been the subject of co-development.

We make this recommendation with the proviso that the voting procedure of the National Joint Council might subsequently need to be adjusted to reflect the actual membership strength of the unions. The reality of the unionized public service today is that most employees are represented by the Public Service Alliance of Canada, which has about 100,000 members. While the Professional Institute of the Public Service has approximately 30,000 members and the Social Science Employees Association has about 10,000, the Alliance dwarfs its colleagues, including some unions with as few as a dozen members in the public service. We believe it may be necessary for the National Joint Council's voting procedures to take this into account for the Alliance to agree to an expanded role for the Council in co-development.

Both the union and management representatives interviewed for our first report spoke favourably of the role played by the former Pay Research Bureau (PRB) as an independent and neutral source of economic data to be used in collective bargaining. The lack of a PRB or some similar politically neutral mechanism has made public service salary bargaining more difficult. All parties appear to believe that restoring a reliable data collection agency could improve future public service bargaining and facilitate new alternative dispute resolution mechanisms, most of which require a mutually acceptable fact base as a starting point.

23. *We recommend* the establishment of a Compensation Research Bureau (CRB) to provide reliable pay and benefit data to both parties in collective bargaining.

24. *We recommend* that the National Joint Council be the forum for the joint management of the newly established Compensation Research Bureau.

The National Joint Council is an example of the kind of collaborative, problem-solving institution we believe is needed to sustain labour management relations through the 21st century

To help improve labour management relations in the public service, we propose an expansion in the scope of the National Joint Council's activities.

6.1 A HISTORY OF COLLABORATION

The NJC was established by an Order-in-Council in 1944. Its purpose is to promote the efficiency of the public service and the well being of public service employees by providing for regular consultation between the government and employee organizations.

Before the advent of collective bargaining, the NJC was the major vehicle for discussions between the employer and the staff associations on employment-related issues, including discipline, hours of work and seniority, although the government generally deemed wages to be outside the Council's jurisdiction.[19] George Sulzner points out that prior to the passage of the *Public Service Staff Relations Act,* most federal HR practices were established through NJC consultations.[20]

With the introduction of collective bargaining in 1967, the scope of the NJC's activities was narrowed, but it remained a useful forum for collaborative efforts over the ensuing decades, especially as the relations between the parties deteriorated at the bargaining table. Over the years, the NJC has become a particularly useful forum for addressing service-wide issues such as the Foreign Service Directive, the Bilingual Bonus, the Travel and Relocation Directives and the Health Care and Dental Plans. It also played a key role in the extension of the Workforce Adjustment Directive, initially negotiated by the government and the Public Service Alliance, to the entire public service.

The importance of the National Joint Council to public service labour management relations was highlighted between 1991 and 1996, when public service bargaining was suspended but NJC discussions were explicitly exempted. Since 1999, the NJC has:

- reached agreement on the Public Service Health Care Plan and established a Trust to jointly manage this plan;
- negotiated childcare allowances;
- renegotiated the Public Service Dental Care Plan and resolved foreign service issues related to the plan; and
- developed a consultation framework to work toward a complete overhaul and modernization of the Travel Directive.

We share the view of L.W.C.S. Barnes, that the Council is "an essential element of the system"[21] and lament the fact that far too little is known about the organization.[22] Despite the important work it has done, the NJC has laboured "in relative obscurity" throughout its history.[23] Of particular concern to us, it has been seriously underfunded and lacked an independent legislative mandate. If the NJC is to play the important coordinating and facilitative role we envision for it, these deficiencies must be remedied.

Sulzner says that the NJC has always been financed "on a shoestring."[24] For years, NJC officials have lamented budgetary limitations that have prevented them from telling government officials working in staff relations and human resources about the organization. Indeed, in 1995, the outgoing General Secretary asserted in his final annual report that the lack of adequate funding was damaging

the NJC's status and image and risked compromising the organization's independence. The next General Secretary noted that the resourcing of the NJC Secretariat continued to be a problem.[25]

A 1993 Consulting and Audit Canada report found that the General Secretary's office lacked sufficient personnel and resources to support the Council's various committees and boards. The report expressed concern that the lack of funding meant that the General Secretary had to attend to operational matters that should be performed by support staff, taking away time needed for briefings of bargaining agents and departmental liaison officers, or for promoting the consultation process.[26]

The NJC's funding appropriation must be adequate to support the broader range of activities we recommend for it, and that appropriation must be independent. The Council currently receives its funding through the Public Service Staff Relations Board. We believe it is more appropriate for the Council to receive independent funding for its activities through a specific appropriation. We also believe that the NJC requires an independent legislative mandate.

We also believe that the NJC requires an independent legislative mandate.

25. ***We recommend*** that the *Public Service Staff Relations Act* be amended to:

    - recognize the National Joint Council as an independent entity (operating parallel to the Canada Industrial Relations Board and the Public Service Rights Redress Board reporting to the Parliament of Canada;
    - confirm its mandate and governance structure as expressed in the National Joint Council Constitution; and
    - fund the National Joint Council through a specific appropriation.

26. ***We recommend*** that funding for the National Joint Council be increased to a level adequate to allow it to fulfil its current and extended mandate.

18. Fernand Lalonde, *Report of the General Secretary* (Ottawa: National Joint Council, 1996), in George Sulzner, "The National Joint Council of the Public Service of Canada: A Vehicle for Bargaining and Dispute Resolution," in *Journal of Collective Negotiations in the Public Sector*, vol. 27 (1998), p. 343.
19. L.W.C.S. Barnes, *Consult and Advise: A History of the National Joint Council of the Public Service of Canada* (Kingston: Queen's IRC Press, 1975). L.W.C.S. Barnes, *Consult and Advise: A History of the National Joint Council of the Public Service of Canada* (Kingston: Queen's IRC Press, 1975), p. 101.
20. Sulzner, "The National Joint Council," p. 332.
21. *Consult and Advise*, p. 193.
22. Sulzner, "The National Joint Council," p. 332.
23. Ibid.
24. Ibid., p. 338.
25. *Annual Report*, p. 7, quoted in Sulzner, p. 339.
26. Quoted in Sulzner, p. 338.

VII. Separate employers–A need for consistency with the core public service

In our first report, we described how the public service environment has changed significantly, especially since the 1990s. Crown corporations and other governmental organizations operating more at arm's length from the government have existed for some time. However, in the last decade, the federal government has fostered alternative service delivery arrangements that have resulted in changes in the way it manages, organizes and delivers its core programs and services. The shift towards new organizational arrangements has led to an increase in separate employer organizations.

Our first report identified the key issues raised by the separate agencies during consultations with their representatives:

- The agencies do not have the broad negotiating mandate necessary to meet their special needs in collective bargaining;
- There are fewer grounds for grievances available to employees under the *PSSRA;*
- There is a degree of control exercised by Treasury Board and a lack of flexibility to determine their own negotiating mandates;
- The agencies are not covered by the pay equity agreements reached between the employer and the public service unions.

At the request of the Federal Employers Liaison Committee, for our final report we have broadened the scope of our study to address the concerns of a wider group of separate employers.

7.1 SEPARATE EMPLOYERS SHOULD HAVE INDEPENDENCE FROM TREASURY BOARD

All separate employers expressed a major concern over their lack of independence from Treasury Board. The requirement for separate employers to get Treasury Board approval before negotiating collective agreements causes delays in the process, creates uncertainty for employers and employees and leads to unsatisfactory results. They cannot conclude their collective agreements before Treasury Board has finished its own collective bargaining process. They must then adhere to the mandate allowed by Treasury Board for rates of pay and allowable percentage increases within the core public service. The resulting collective agreements end up simply mirroring those signed by Treasury Board. Separate employers have to get specific Treasury Board approval to introduce flexibility in how they may administer funds received from the Board for collective bargaining.

27. **We recommend** that separate employers have authority to conduct collective bargaining on their own behalf with accountability for the results vested solely in the Head of their organizations. Separate employers should be able to bargain without having to obtain their mandate from Treasury Board and without having to obtain Order-in-Council approval before implementing the results of the bargaining process. Separate employers who receive appropriations from Treasury Board should have no restrictions on how they are spent. This will give the parties greater flexibility to determine compensation patterns.

All separate employers expressed a major concern over their lack of independence from Treasury Board.

7.2 THE NEW LABOUR MANAGEMENT FRAMEWORK SHOULD APPLY TO SEPARATE EMPLOYERS SUBJECT TO THE *PSSRA*

All separate employers do not operate under the same labour management legislation when they move outside the core public service. Some remain subject to the *Public Service Staff Relations Act*, while others operate under the terms of the *Canada Labour Code*. In addition, the *Public Service Employment Act* applies only to a few separate employers. There is a perception that those who operate under the *Code* have a more arm's length relationship from the core public service and Treasury Board. Unlike their *Public Service Staff Relations Act* counterparts, they have sole responsibility for staffing and classification and are thought to have more independence in concluding collective agreements. In reality, though, it makes little difference what regime the separate employer operates under when all experience a lack of independence from Treasury Board.

While separate employers now employ a greater percentage of the federal government workforce than ever before, they vary widely in their mandates and in the size of their organizations. No single piece of labour legislation – whether the *Code* or the *Public Service Staff Relations Act* – will meet the needs of these disparate organizations. Rather than imposing uniformity, there is a need for flexibility in the administration of both labour regimes to take account of these differences.

Under the *Financial Administration Act*, when employees are moved to a separate agency, any National Joint Council agreement that has been incorporated by reference into a collective agreement, or "which would otherwise be part of the terms and conditions" of their employment, ceases to apply. This compromises the National Joint Council's effectiveness in the broader public service. These barriers must be removed to enable the co-development of common public-service-wide policies and terms of employment where appropriate.

Where appropriate, these recommendations will make it possible for separate employers to be seamless with the rest of the public service and will ensure greater mobility for employees in these organizations.

28. ***We recommend*** that separate employers remaining under the revised *Public Service Staff Relations Act* adhere to a labour management relations framework that provides for:

    - a streamlined grievance process;
    - an array of improved dispute resolution mechanisms for collective bargaining;
    - consultation or co-development of terms and conditions of employment not subject to collective bargaining.

29. ***We recommend*** that the *Financial Administration Act* be amended at Section 11 to allow, where appropriate, for the application of National Joint Council directives to separate employers.

VIII. A new start– Implementation and accountability for change

8.1 IMPLEMENTATION

The two tier approach to collective bargaining that we have proposed, whereby broad policies are negotiated at the service-wide level and specific implementation strategies are developed departmentally and/or locally, should help the parties become more used to working together and to taking joint ownership of labour relations problems. Similarly, co-development of issues not subject to formal collective bargaining can help build a stronger labour management relationship and a capacity for joint problem solving and decision making on certain issues.

Institutional re-ordering alone cannot achieve the desired results. Wherever there is interaction between union representatives and managers, standards will have to be set and results measured. We advocate rearranging responsibilities for labour relations management to change a pattern that has persisted within the public service for more than 30 years. Accountability and measurement are both critical to bringing about the kind of change in the public service labour management relations system that we envision. Without them, there is little hope of actually changing people's behaviours. The public service must involve its employees more, train its managers better in human resources management and labour relations and reward behaviors that lead to the expected changes.

8.2 CHANGING BEHAVIOURS TO CHANGE THE CULTURE

For the public service's labour management relations system to be sustainable well into the 21st century, the changes we propose to the legislative regime must be accompanied by a far-reaching culture change. Culture change is a slippery term to define and a difficult thing to bring about. If culture is understood as shared learning and shared expectations about how things are to be done in the workplace and about informal norms, values and social networks, it is clear that there will be resistance to such change. In *The Quality of Work*, Graham Lowe is perceptive about the lack of genuine change in most North American workplaces:

> The call for revolutionary new management ideas goes back to the early 1980s, with the publication of Tom Peters and Robert Waterman's best seller *In Search of Excellence*. For all the rebellions against traditional thinking, we have yet to see any revolutionary new approaches to management at either the theoretical or the practical level. New management techniques are much like fireworks, generating lots of noise and flash, but soon fizzling out.[27]

This does not mean that fundamental culture change is impossible to bring about. It does mean that it is not easy and that certain definite steps must be followed.

Accountability and measurement are both critical to bringing about the kind of change in the public service labour management relations system that we envision.

...to change a culture you need to promote behavioural change. A change in attitude will follow.

In the past 12 years, attempts have been made to change the public service workplace. Public Service 2000 and *La Relève* are two examples of initiatives that were expected to help create the modern public service that Canada needs. While some progress has been made, the Auditor General of Canada, in his 2001 report *Reflections on a Decade of Serving Parliament*, notes that the high expectations these efforts raised have not been met.[28]

We agree with the Auditor General's suggestion that one reason these efforts did not produce more significant results is that the emphasis was on articulating the culture and values of the desired new workplace. To change an organization's culture by exhorting people to adopt different attitudes requires three things that, it seems, are not evident throughout the public service:

- A sense of urgency;
- A belief among the people being asked to change that the desired outcome is achievable;
- Effective leadership.

The question remains, however: how does one change an organization's culture? Research in this area has found the following sequence of activities to be effective:

- Determine what types of behaviours you want from your managers and your employees and your unions;
- Change the roles that people have to play to include these new behaviours;
- Determine how to measure the performance of these new roles;
- Develop a transparent, mutually agreed upon accountability framework which incorporates these measurements;
- Change the organization's reward structure;
- Attach positive consequences to the behaviours you want to increase and negative consequences to those you want to decrease.

In other words, to change a culture you need to promote behavioural change. A change in attitude will follow.

We believe the best way to achieve cultural change in the public service is to emphasize accountability for results by applying appropriate measures to the areas that need to be changed. This approach is entirely in keeping with the approach outlined by the Clerk of the Privy Council in his *Eighth Annual Report to the Prime Minister on the Public Service of Canada*:

> We believe that modern human resources management legislation should be based on the following guiding principles:
>
> - First and foremost is the protection of merit, non-partisanship, representativeness and competence;
> - Second, management should be responsible for all aspects of human resources management;
> - Third, authority for human resources management should be pushed as far down in the organization as possible;
> - Fourth, managers should be held accountable for the exercise of their responsibilities.[29]

8.3 ACCOUNTABILITY

Accountability need not be a negative concept. It is entirely possible to implement accountability not by assigning blame and punishing wrongdoing, but rather by providing incentives to get things right. Effective accountability depends on shared values of responsibility, ownership, integrity and trust.

For accountability to be implemented and maintained there must be:

- Agreement as to what constitutes acceptable and unacceptable levels of performance;
- Clear specification by managers as to expected levels of performance;
- Agreement on what outcomes are to be associated with positive and negative results;
- Strategies to improve performance that falls below acceptable levels.

30. *We recommend* that an overall labour relations accountability plan be drawn up. This plan should specify the roles and responsibilities of the various parties, including line managers and union representatives as well as government boards and agencies such as the Public Service Rights Redress Board, Public Interest Dispute Resolution Commission and National Joint Council.

We believe that managers throughout the public service have to take responsibility for labour relations. Dealing with the unions should no longer be a function of the staff relations specialist who is separated from the overall human resources regime. The role of the staff relations specialist should be to advise managers at all levels about their interactions with unions.

8.4 TRAINING

While poor labour management relationships typically have a variety of causes, a major one is likely to be a lack of labour relations knowledge. A lack of training was cited as a problem by a number of union and management representatives we consulted, leading us to identify this deficiency as one factor reducing the trust and respect between the parties.[30]

While some departments and agencies provide training in labour relations and related areas, such training is by no means available or uniform across the federal government. All government managers and elected employee representatives need to be thoroughly versed in labour relations and conflict resolution methods if our vision of a new, collaborative labour management relations regime is to become a reality.

Leslie Macleod, in a report on the Ontario government's grievance system, recommends that line managers and staff relations professionals receive joint training in labour relations, conflict resolution and people management skills. We believe that if first-line managers and union stewards—the people most directly involved in working with collective agreements on a day-to-day basis—get used to working together to solve problems, the overall labour management relationship could benefit greatly. The Macleod Report also emphasizes the need to provide conflict resolution training for deputy ministers and senior management and that managers be relieved of their regular duties so they can attend courses.[31]

All government managers and elected employee representatives need to be thoroughly versed in labour relations and conflict resolution methods if our vision of a new, collaborative labour management relations regime is to become a reality.

The NJC might well be involved in developing some of the joint union management training initiatives...

We would like to see the lack of labour relations courses offered by the Canadian Centre for Management Development (CCMD) remedied, with the assistance of a joint Labour Management Advisory Committee, which would offer guidance on priority areas of study, course content and other matters. We believe that CCMD courses should be open to all managers, not just senior executives. Further joint training could well be provided by departments and bargaining agents working together.

The NJC might well be involved in developing some of the joint union management training initiatives we recommend. So might the various colleges and universities, some of which possess considerable expertise in the areas of labour relations and conflict resolution.

31. *We recommend* comprehensive joint union-management training in labour relations and conflict resolution.

8.5 INCREASED EMPLOYEE PARTICIPATION IN UNION ACTIVITIES

A cornerstone of the changes we are seeking is increased employee participation in the employment relationship. Since many aspects of that relationship involve union participation, to achieve increased participation of individual employees requires more participation by them in the affairs of their unions. Attendance at union meetings across Canada, other than those where strike or ratification votes are being held or officers elected, is generally extremely low.

The public service unions are no exception. While there are many possible explanations for low attendance at union meetings, the current situation, whereby employees must go to a hotel or other off-site location after regular working hours and arrange for child care if they have family responsibilities, seems guaranteed to ensure low attendance. In such a situation most members in attendance may be activists who do not represent the views of the membership as a whole. To ensure fuller and more representative employee participation in union business and to increase the accountability of union representatives to the general union membership, we recommend that union meetings be permitted on-site during regular working hours.

32. *We recommend* that union meetings be permitted on-site during regular working hours.

8.6 A NEW ROLE FOR MIDDLE MANAGERS

The middle management cadre includes two quite distinct groups: those excluded by statute (such as individuals occupying specific managerial or confidential labour relations positions or lawyers at the Justice Department) and those excluded from the bargaining unit on the basis of their job functions (say a senior PM who spends most of his/her time doing managerial work). The latter group poses a particularly difficult problem as they are not represented even though their pay and working conditions are determined by the union representing their particular occupational classification.

During the Committee's consultations, we found a growing desire on the part of both groups of middle managers for some kind of collective representation – perhaps a body similar to APEX, the organization which represents the public service's executive community. While such a body would probably not have collective bargaining rights, it could, like APEX, serve a useful function by lobbying the federal government on behalf of the middle management community and consulting with senior officials on issues affecting that community.

33. ***We recommend*** that middle managers be permitted to form an organization, perhaps modeled after APEX, which would provide them some kind of collective representation short of full collective bargaining.

8.7 MEASUREMENT

The parties can develop a shared sense of responsibility by working together to develop labour management relations indicators to measure the labour relations climate in the government as a whole and in specific departments or work units. They can use existing indicators that measure such things as turnover rates, absenteeism and sick leave usage, hours of overtime and grievance activity. We suggest that new indicators be developed to measure such things as:

- Satisfaction with recourse procedures;
- Time needed to resolve matters in consultation and co-development;
- Time provided for union meetings in the workplace and participation;
- Involvement of employees in consultation;
- Joint training in labour relations completed by managers and union representatives.

Once such a set of indicators had been developed, it might be incorporated into senior managers' performance contracts along with other measures of good human resource practice.

8.8 REWARDING GOOD RESULTS

Special recognition could also be given to work units and departments that distinguish themselves as good places to work, perhaps by designating them as "well-performing organizations," like those profiled some years ago by the Auditor General. In situations where a department or work unit appears to need improvement on specific labour relations indicators, the parties should commit to work together to solve the problem, looking first for assistance and guidance to their internal union-management consultation committees.

27. Graham Lowe, The *Quality of Work: A People-Centred Agenda*. (Don Mills: Oxford University Press, 2000), p. 129.

28. Ottawa: Government of Canada, 2001), p.16.

29. Mel Cappe, E*ighth Annual Report to the Prime Minister on the Public Service of Canada*. (Ottawa: Government of Canada, 2001), pp.14-15.

30. Survey by CEREST (University of Quebec at Hull) 2000

31. Leslie Macleod, Management Board Secretariat Grievance Administration Project Final Report (Toronto: Management Board Secretariat, 2000).

Conclusion

We encourage the government as employer and the unions representing public service employees to work together better in the public interest.

As a Committee, we have deliberately refrained from being overly prescriptive in outlining how the changes we recommend should be implemented. We encourage the government as employer and the unions representing public service employees to work together better in the public interest. We would leave it to the parties themselves to determine how things should best be done within the framework we have provided, what timetable should be established for change and what accountability measures should be introduced. While we have been honoured to be able to contribute our expertise and thoughts on these matters, the parties themselves are the real experts when it comes to what they want and need and how best to achieve their goals.

We look forward to being witness to the results of their efforts.

Committee Members

JOHN L. FRYER - CHAIR

John L. Fryer is Chair of the Advisory Committee on Labour-Management Relations in the Federal Public Service. He has had a unique career spanning nearly four decades as a public sector union leader, professor of labour relations and public policy problem-solver.

As General Secretary of the B.C. Government Employees' Union (1969-83), Mr. Fryer led this union to become the biggest in Western Canada before being elected president of the National Union of Public and General Employees (1981-90). After leaving the union presidency, Mr. Fryer returned to British Columbia to become a professor and consultant on labour management relations and broader public policy issues.

In 1998, he was appointed Assistant Deputy Minister Crown Corporations Secretariat in the government of British Columbia and in the fall of 1999 accepted the invitation of the secretary of the Treasury Board to chair the Advisory Committee on Labour Management Relations in the Federal Public Service.

Mr. Fryer is a member of the Order of Canada and in 1995 received the Gérard Dion award for his outstanding contributions to Canadian labour-management relations.

ERCEL BAKER

Ercel Baker joined the Privy Council Office in June 1994, as Deputy Secretary to the Cabinet (Machinery of Government and Senior Personnel). Prior to his time at PCO, he held several senior level positions in the federal government, including: Executive Director, Public Service Commission; Chief Executive Officer, Consulting and Audit Canada; and Assistant Deputy Minister, Fisheries and Oceans.

Prior to his retirement from the public service in October 1995, Mr. Baker was Chairman of the Advisory Committee to the President of the Treasury Board on Pensions. He is presently Chairman and President of Baker Group International Inc.

DARYL BEAN

Daryl Bean retired in May 2000 after being elected for five terms (15 years) as National President of the Public Service Alliance of Canada (PSAC). Prior to this, he was PSAC's Second Vice-President in charge of collective bargaining from 1982 to 1985 and National President of the Alliance's Union of Public Works Employees for seven years before that.

Mr. Bean has also held the positions of General Vice-President of the Canadian Labour Congress, Executive Member of Public Services International, Executive and Board Member of the Canadian Labour Business Centre and member of the Public Service Superannuation Act Advisory Committee. Mr. Bean is a Trustee on the Public Service Health Care Plan Board.

JEAN-CLAUDE BOUCHARD

Effective May 29, 2000, Jean-Claude Bouchard returned to the Federal Public Service as Assistant Deputy Minister, Operations, at Industry Canada. Before that he was Vice President, Group Insurance, of the Canadian Life and Health Insurance Association Inc.

Mr. Bouchard served as Deputy Secretary, Human Resources Branch of the Treasury Board Secretariat from June 1995 until he left the public service in the fall of 1997. Before joining TBS, he held several prominent senior level positions at Human Resources Development Canada, Communications and Energy, Mines and Resources.

Mr. Bouchard has been a member of the Board of Directors of the Civil Service Co-operative Credit Society Limited since March 1991.

LINDA DUXBURY

Linda Duxbury is a Professor at the School of Business, Carleton University. She received a M.A.Sc. in Chemical Engineering and a Ph.D. in Management Sciences from the University of Waterloo. She has published widely in both the academic and practitioner literatures in the area of work-family conflict, supportive work environments, stress, telework, and supportive management.

Dr. Duxbury held the Imperial Life Chair in Women and Management from 1992 to 1996 and is current Director of Research for the Carleton Centre for Research and Education on Women and Work. She sits on the Carleton University Board of Governors. In 2000, she received the Public Service Citation from APEX for her work on supportive work environments.

MARTHA HYNNA

Martha Hynna is a consultant on executive and management issues related to the public sector.

She has recently been appointed as Chair of the Public Service Health Care Plan Trust. She retired from the Public Service of Canada in 1996, after holding a number of senior positions in various government departments.

Ms. Hynna has participated in a number of government-wide initiatives, including the Advisory Committee on the Public Service Superannuation Act, the Executive Committee of the National Joint Council, the Personnel Renewal Council and the Study Team on Public Service Values and Ethics.

She is a former President of the Board of Directors of the United Way of Ottawa-Carleton and is currently on the Board of Directors of the Carleton University Foundation, as well as a member of the Grants Committee of the Community Foundation of Ottawa-Carleton.

DAVE LEWIS

Dave Lewis is the immediate past President of the Canadian Air Traffic Control Association (CATCA). He began his career as an air traffic controller in 1973 and spent sixteen years as an operational controller at various locations in Western Canada. After many years of active service in CATCA, he was elected in 1986 to the association's Board of Directors. He began full-time, elected service on the CATCA National Executive in 1989 as Vice-President, Labour Relations, then was elected President in 1993 and served in that position until the end of his third term in 1999. He is currently employed as an air traffic controller at Victoria International Airport.

CATHERINE H. MACLEAN (DECEASED)

After receiving her B.A. and L.L.B. form the University of Toronto, Catherine MacLean joined Nelligan O'Brien Payne in 1977, becoming a partner in 1982. She represented trade unions and individual employees in all aspects of their relationships with their employers, appearing before a large number of courts and administrative tribunals, including the Supreme Court of Canada. At one time it was said "she appeared at the Federal Court of Appeal on more occasions than some of the judges".

Ms. MacLean will perhaps be best remembered for arguing a critical pay equity case before the Human Rights Tribunal on behalf of the Professional Institute of the Public Service of Canada. Representing PIPSC's nurses, dieticians, and occupational and physiotherapists, Ms. MacLean argued the case between 1990 and 1994, when a negotiated settlement was finally achieved. In 1982, she represented the Canadian Air Traffic Control Association before the Supreme Court of Canada in its dispute with the federal government over designation levels. In 1992, she appeared before the House of Commons Legislative Committee as an interested intervenor testifying on the proposed *Public Service Reform Act*.

Ms. MacLean was a member of the Advocates' Society of Ontario, the Canadian Association of Labour Lawyers and the Canadian Bar Association. She also served as a member of the Board of directors of Nav Canada. She was also involved in the legal education of lawyers, law students, and other professionals in labour relations, employment law, and trial advocacy.

RENAUD PAQUET

Renaud Paquet is professor of collective bargaining in the Department of Industrial Relations at the University of Quebec at Hull. He holds a Ph.D. in Industrial Relations from the University of Montreal. He has published several articles on labour relations in the public sector in Canada. Professor Paquet has occupied various positions in the Federal Government as a program officer. He was also National President of the Canada Employment and Immigration Union from 1982 to 1989.

MARK THOMPSON

Mark Thompson is the William M. Hamilton Professor of Industrial Relations, Faculty of Commerce and Business Administration, University of British Columbia. He received his Ph.D. from the School of Industrial Administration, Cornell University. He was a governor of the Workers' Compensation Board of B.C. representing the public interest from 1991 to 1995.

Dr. Thompson was appointed a Commissioner to review employment standards in British Columbia and issued a report in 1994. He served on the Board of Governors of the National Academy of Arbitrators and the executive of the Industrial Relations Research Association. He is past president of the Research and Education Foundation of the National Academy of Arbitrators as well as past president of the Canadian Industrial Relations Association.

COMMITTEE SECRETARIAT

Penelope Driscoll
Francine Desrochers
Jon Peirce