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THE PUBLIC SERVICE COMMITTEE, 1966-67:

A CASE STUDY

ABSTRACT

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The Legislative Role of Parliamentary Committees in Canada: A Case Study of the Special Joint Committee of the Senate and the House of Commons on Employer-Employee Relations in the Public Service of Canada. (1966-67)

The Special Joint Committee of the Senate and the House of Commons on Employer--Employee Relations in the Public Service of Canada was, unlike most legislative committees, quite successful. Almost everyone associated with it agreed that it had substantially changed for the better the legislation with which it dealt. The purpose of this thesis is to understand the factors which contributed to the success and to what extent these factors may apply to the general committee system of the Canadian House of Commons. The first two chapters outline the legislative role of committees and the history of employer-employee relations in the Canadian public service. Then, various aspects of the Committee's proceedings are considered in detail. This section is based on the written transcript of the proceedings as well as personal interviews with three civil servants and one M.P. all of whom were concerned with the Committee in some way. In the conclusion of the thesis an attempt is made to generalize from the experience of this Committee to the whole legislative committee system in the Canadian House of Commons.

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The Legislative Role of Parliamentary Committees in Canada: A Case Study of the Special Joint Committee of the Senate and the House of Commons on Employer-Employee Relations in the Public Service of Canada.

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PREFACE

Canadian Parliamentary committees have seldom if ever been very successful. However, the Public Service Committee was, and so it was desirable to find out why and if the reasons could be made to apply to other committees. The success of our endeavour must be left for the reader to decide.

This study was begun at the initiation of Professor Mallory to whom I express my thanks for all that he has done. He somehow blended just the right amounts of encouragement, criticism and discreet silence so that I was able to work with both guidance and freedom. Professor Mallory and I interviewed three officials and one member of parliament, all of whom were closely connected with the work of this committee. For obvious reasons they must remain anonymous. They provided us with invaluable information and frank insights from which I have drawn liberally throughout this paper, and I thank them very much.

The parliamentary procedure described in the thesis was based on a number of sessional modifications in Standing Orders, which, at the time of writing, had not been adopted on a permanent basis.

I should also like to express my warmest gratitude to my wife Denise, whose support and encouragement greatly contributed to this endeavour.

Chapter 1: Introduction, House of Commons Committees Past and Present

We shall first discuss the past role of standing committees of the House of Commons and other committees which perform a similar function, that is, joint committees of the Commons and the Senate. Our primary concern is with the legislative function of committees but this introductory treatment will also deal with the scrutiny function since, to some extent, the two overlap.[1] Also it is expected that these two functions will be combined in a new committee structure which the House has adopted. We should mention here that parliamentary committees have performed reasonably well as investigative bodies and probably will continue to do so,[2] however, we are concerned here with what could be called the normal legislative process as it relates to the committee system, that is, the sending of legislation to committee after second reading and before the committee of the whole stage.

Before the adoption of Standing Order 65 by the House of Commons in 1965, the role of standing committees was at best marginal. The reasons for this may be summarized as follows. The cabinet, through Canadian history, has gradually assumed virtually complete dominance over the legislature, the only

1. See J.R. Mallory, "Uses of Legislative Committees", Canadian Public Administration, Vol. VI, No 1., March 1963, p.2. There are four other possible functions which are advisory, inquiry, negotiative and administrative. (Based on K.C. Wheare, Government by Committee, (Oxford, 1955), pp.5-6).

2. R.M. Dawson, (revised by N. Ward), The Government of Canada, (Toronto, 1963), p.381 and Mallory loc.cit., pp.12-13

qualifications to this being the possibilities of minority government and backbench, or caucus revolt. Indeed, responsible government in effect means cabinet control and "the responsibility of the Cabinet for [illegible] policy had been one of the main reasons why the powers of our committees have been severely limited..."[3] Also, the "growing professionalism" of the public service has led to "rational bureaucratic controls over the administration"[4] so that the amateur criticism of policy application, which committees once provided, is no longer as necessary as it once was. These factors, combined with the development of a sensitive national economy and the general acceptance of Keynesian economics, led to the situation where the cabinet is held responsible for such things as the national level of income and employment. Of necessity, it would seem, relatively strong cabinet dominance of Parliament has gone along with this responsibility.[5] Particularly since World War 2, the amount of legislation with which Parliament has had to deal has become quite large and so there must be some central direction of legislative time. Legislation is also becoming more complex and many of the backbenchers who normally sit on the committees are less competent to handle it unless they specialize and on the whole they have not.

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3. Mallory, op.cit., p.1.
4. ibid., p.3.
5. Although this has not been so true in the United States.

One observer, who is now quite beyond partisan politics, was much less abstract in his conceptualization of the reason for the decline of legislative power. D. Roland Michener, writing in 1957, felt that the long dominance of the Liberal party in federal politics was primarily responsible for the decline, since a cabinet, long in power, need pay less attention to the wishes of the average members.[6] However, it should be pointed out that things changed little when the Conservatives came to power.

The legislative role of committees was never entirely eliminated. At times they were able to play an important role in complex and bipartisan matters which were either undesirable or very difficult for the Commons to handle.

The growth in power of the executive at the expense of the legislative branch of government has caused general concern. While the size and expertise of the executive-administrative side of government has increased, little has changed in the House of Commons itself. Thus the quality and quantity of opposition to the government of the day has declined. Bernard Crick feels that the legislative side must be strengthened in order to create a counter-vailing power to the government. Among his recommendations was the reform of the committee system.[7]

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6. D.R. Michener, "Parliament and Centralization", Queen's Quarterly, Vol. XLIII, No.4., Winter, 1957, pp.491-502.

7. B. Crick, The Reform of Parliament (London, 1968) passim. See below, pp. 90-94.

This sort of thinking has also taken place in Canada. The major function of Parliament has changed from one of scrutinizing public expenditure to the forming of social polity with the cabinet taking the lead.[8] Thus while the legislative role of committees declined, they began to find a new role in considering the estimates.[9] This trend has been very slow in developing and by 1965 the major, formal function of committees was still legislative.[10]

Perhaps the real function of committees was to a large extent no more than creating an illusion for backbenchers that they really did have something important to do. This would be partly confirmed by the fact that a revival of the committee system took place during the 1958-62 Parliament when the government felt it necessary to occupy the time of its rather large number of backbenchers.[11] This is not to suggest that the committees had more power but only that they were used more often.

Before outlining the new system of standing committees we shall review the specific problems of the old system.

Perhaps the major difficulty was inefficiency. Sometimes when the committees were given legislation to consider they did their work "reasonably well"[12] but many bills died in committee

8. N. Ward, The Public Purse: A Study in Canadian Democracy, (Toronto, 1962) p.272.
9. The first referral of estimates to a committee was in 1924, ibid., pp.260-263.
10. Dawson-Ward, op.cit., p.380
11. Ibid., p.381
12. W.F. Dawson, Procedure in the Canadian House of Commons.(Toronto,1962),p.207

through plain bad management.[13] A great deal of legislation never went to standing committee and often, legislation that was considered in committee was subjected to the same arguments when it returned to committee of the whole.

An example of this inefficiency was the Committee on Estimates. It was supposed to save time and money but it really did neither. The Committee could not choose the departmental estimates which it would consider, nor could Parliament. Up to 1958 this was done by the cabinet. After that the Committee did choose the estimates but it had no official power to do so.[14] Economies were usually only recommended by opposition members and rejected by the government.[15] Most departmental estimates were never considered by the Committee.[16] The Committee's reports often served to stimulate even more debate in the House and ministers and members would use the proceedings of the Committee to lobby for more money.[17] The fact that the Committee did show an increased interest in the objective scrutiny of the executive and performed an educational function for Parliament was considered incidental.[18]

As well as not saving time or money, the system was inefficient in another respect in that the individual talents of the members

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13. Mallory, op.cit., p.6
14. S.P. Singh, The Canadian Committee on Estimates, (unpublished MA thesis, McGill University,1962), pp.74-76.
15. ibid., p.95
16. ibid., p.100
17. Ward, op.cit, p.269. On a few occasions a little time was saved, see Mallory, opcit. p.10.
18. Ward, op.cit.pp.271-272. Also see Ward, "The Committee on Estimates", Canadian Public Administration, Vol. V1, No.1, March, 1963, pp.35-42.

whatever they might have been, were not being used.

A second problem with the old system was the frustration which it brought to the individual members. It was obvious to most M.P.s. that their role on committees was of little consequence to the legislative process. Committee recommendations were often not adopted or even considered. Matters which had supposedly been settled in committee could easily be reconsidered on the floor of the House.[19]

The committee chairmen were usually partisan and inefficient. Typically they were loyal party men who had not been able to secure a position in the cabinet or as a parliamentary secretary.[20] As government figures, the chairmen were responsible for insuring that an adequate number of government supporters were on hand for the proceedings and they would often argue for a position acceptable only to the government.[21] Also, the minister responsible for the legislation in question might have his parliamentary secretary placed on the committee to "run interference" for the government position.[22]

Minority reports were not allowed [23] and this insured that the government position always prevailed. This no doubt contributed

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19. For examples of the frustration caused members by the old system see their reactions to the 15th Report of the Special Committee on Procedure and Organization (Journals of the House of Commons of Canada), Dec. 14, 1964, pp.985-992), which dealt with the committee structure. Canada, House of Commons Debates, 1964-65, pp.12512, 12550, 12588.
20. W.F. Dawson, op.cit. p.209.
21. ibid., p.205
22. Debates, 1964-65, p.12513.
23. W.F. Dawson, op.cit., p.206

to the frustration of the members and decreased any potential educational value that the committees might have. All subcommittee reports had to be presented to the House by the full committee and at their discretion.[24]

Since the committees did little important work, were dominated by the government and had members who, with an understandably low sense of efficacy, took little trouble to adequately inform themselves on the issues at hand, the only field left for action was often petty partisanship. The chairman was a partisan figure, the government could block information and kill opposition members' amendments easily. In response, the opposition would concentrate a partisan attack on the general nature of the bill rather than channelling their efforts into more detailed consideration.[25]

There was also a problem of physical facilities and information. The committees had no proper research facilities and no secretariat. They could not meet when the House was sitting except by special permission and they could not meet at all when the House was prorogued.[26] When they did have time to meet there was sometimes trouble in just finding a room.[27]

Committee membership varied from 35 to 60 and it would seem that this size was too large. There was considerable turnover of

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24. ibid., p.206.
25. ibid., pp.208-209.
26. Dawson-Ward, op.cit. pp.380-381.
27. ibid., p.380.

members on the committee and this tended to disrupt the continuity of the proceedings. Members served on a great many committees and had difficulty giving their full attention to any one of them. This situation perhaps inhibited the development of an esprit de corps among the members on one committee which would have contributed to better work.

The outline presented above of the problems encountered by the old system is by no means exhaustive and the fact that we used the past tense indicates only that things have changed somewhat, not that all the problems have been solved.

The old system did have a few good points. On matters where there was substantive agreement between the parties and no "political capital" to be made, some valuable work was done.[28] A good example of this would be the Veterans' Affairs Committee.[29]

Special committees were usually fairly successful. They were empowered by the House of Commons to do a specific task and had a narrow frame of reference. The means to do the job adequately was usually made available. The purpose of this type of committee was normally investigation, the result of which was often of substantial help to the Commons in the drafting

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28. W.F. Dawson, op.cit. p.208.
29. "The Minister of Veterans' Affairs [in] 1959 remarked that, despite arguments 'we usually come out with a solution of the problem pretty much in favour of the Veteran: and that is exactly what the purpose (of the committee) is.'" (Ward, op.cit., p.269).

and amending of statutes.[30]

Committees were also useful in gathering information, even if they were unable to use it. This had some educational value and the preparation of the information was a "useful and stimulating activity for the various branches of the executive."[31] The committees were also showing a "heartening increase of interest in objective scrutiny of executive affairs (and) Parliament itself, because of the committees' work (was) able to give more enlightened consideration to everything brought before it."[32]

Despite these few good points, the old system was a failure. The government seldom had a positive attitude toward committees except where they could be used as a training ground or a pasture. There was no generally accepted conception of what the role of committees should be.

The committee structure was changed in 1965 as part of a general interim program of parliamentary reform.[33] Briefly, the changes are as follows: the number of standing committees has been increased from 14 to 21 and the average membership has decreased from 40 to 24. A quorum has been raised from one third to a majority. The new committees are empowered to

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30. Dawson-Ward, op.cit., p.381
31. Ward, op.cit., p.271
32. ibid., p.272
33. The reasons for the general reform program are outlined in D. Page "Streamlining the Procedure of the Canadian House of Commons", Canadian Journal of Economics and Political Science, Vol.XXXIII, No.1; and Pauline Jewett, Canadian Studies, Vol. 1, No.3., Nov., 1966.

"examine and enquire into all such matters and things as may be referred to them by the House; to report from time to time their observations and opinions thereon; to send for persons, papers and records; and to print, from day to day, such papers and evidence as may be ordered by them."[34] All legislation in its committee stage, that is after second reading, is to be automatically considered by a standing committee unless claimed for committee of the whole or sent to a select committee.[35]

The primary purpose of the new committee is to give detailed scrutiny to the estimates but they are also expected to play a legislative role. However, Pauline Jewett has pointed out that many problems remain unsolved. There is still the problem of time conflicts with the House, quorums are difficult to get and there are still inadequate physical and research facilities. Nothing has been done about providing research staffs or further administrative assistance. There is no assurance that the committees will always be re-established at the beginning of a new session. There is no assurance on the number of estimates a committee will get and there is no guarantee that bills will be referred, although the general rule is that they will be. Furthermore,

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34. Jewett, op.cit., p.14
35. T.A. Hockin, "The New Procedural Reforms", in Paul Fox (ed.) Politics: Canada (Toronto, 1966), p.269.

there is no assurance that minority reports will be allowed or that the committees will be permitted to undertake more general studies into public policy.[36] There is also no assurance that members will learn to specialize and thus exploit the potential opportunities offered by the new committee structure.

The case to be considered in this thesis is that of a special joint committee. Before we go on, a word about special joint committees is in order. On the whole they have been used infrequently in the Canadian Parliament.[37]

> In 1945 a Joint Committee was appointed to choose a design for the Canadian Flag; in 1946 and 1947 another of these committees was set up to examine and consider the Indian Act and to report on a number of specific problems relating to Indian Administration; in 1947 yet another was set up to consider human rights and freedoms; and in 1957 there was a joint committee on old age security. In 1956 there was a special joint committee on capital and corporal punishment.[38]

Certain procedural problems are encountered by joint committees. There are two chairmen and a system of double quorums may be necessary. The Special Joint Committee on Capital and Corporal Punishment and Lotteries pointed out in its final report that "the rules, standing orders, procedures and practices of both Houses relating to Special Joint Committees are in need

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36. Jewett, op.cit., p.15
37. Dawson-Ward, op.cit., p.382
38. The Library of Parliament and the Parliamentary restaurant are administered by joint standing committees. W.F. Dawson, op.cit., p.201.

of re-examination and revision to effect greater efficiency, uniformity and clarity."[39]

One outspoken member of the House of Commons expressed his feelings about joint committees as follows:[40]

> A joint committee in my opinion, is one where the work is done far too slowly, where ideas are put forward which are two centuries behind the times, where there are representatives of finance companies and banks who are more concerned with their own interests or the interests of their firms than those of the people, for their own interests have priority over those of the nation. The bill [Pension Plan] runs the risk of being consigned to oblivion.

Above we have reviewed the past role of committees in the House of Commons and then briefly looked at the reforms which have been instituted. The general question which we face in this paper is will the reforms work? We shall try to give what can only be a partial and tentative answer by examining the performance of a recent special joint committee; the Special Joint Committee of the Senate and the House of Commons on Employer-Employee Relations in the Public Service of Canada.

We will be examining only one committee but it was one that worked extremely well and so our task is to discover why it worked so well and if the same reasons can apply to the committee system as a whole. This was not a standing committee

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39. ibid., p.201
40. Debates, 1964-1965, p.10139. The Bill did go to a Special Joint Committee but was not "consigned to oblivion". However, the Special Committee did not save the committee of the whole much time.

but it performed detailed scrutiny of legislation and so from a functional point of view it could be considered as the same thing as a standing committee, except of course that it did not deal with estimates. It was a joint committee, not a Commons committee but as we have seen above the problems of joint committees have been similar, if not greater, than those of the Commons standing committees.

That the Committee was a success there can be no doubt. The Minister of Revenue, Mr. Benson, when introducing the first of the three bills to Committee of the Whole said of the Committee:[41]

> The special committee...has applied itself with great diligence and patience to a very important task. I am sure I voice the feelings of all the hon. members of this committee [of the whole] to this special joint committee for the study they have given all three bills...The proceedings took place in an atmosphere of calm reflection and deliberation...I want to make it clear now that the government is pleased to accept the amendments proposed by the committee to the bills. As we proceed in committee of the whole on the clauses of the bills those clauses will be called as amended, because in my view they strengthen the measures previously placed by the government before this House.

Richard Bell, the opposition public service specialist and a member of the committee also endorsed the Committee's work.[42]

> Personally I have never been a member of a committee which worked more harmoniously, more assiduously and with more complete freedom from political partisanship...The magnitude of the committee's work is best

41. Debates, (unrevised), Feb.17, 1967, p.13158 (emphasis added)
42. Ibid., p.13159

> illustrated by the fact that during some 39 sittings a total of 182 amendments were made to the bill (C-170), as I count them. I think this might be something of a parliamentary record. Of 182 amendments, I calculate 49 are of substance and greatly improve the bill originally presented to the House. A better justification for the committee system could not be found.

David Lewis, a New Democratic member of the committee expressed similar sentiments.[43]

> I think the minister was right, and perhaps he understated the position when he said the bill had been improved by the special joint committee. In my view...Bill C-170 as it now lies before the members of this committee bears hardly any resemblance in basic principle to the bill which the government originally presented. The changes that have been made are not merely changes of detail or procedure. In every case the amendments that were made...were changes of fundamental substance...

Even allowing for the normal hyperbolic license of members of Parliament, these statements indicate a strong positive feeling toward the work of the committee.

A brief comparison of the work of the Committee to the Special Committee on the Civil Service Act of 1961 also indicates the scope and success of this Committee. The 1961 Committee proceedings covered 549 pages of transcript[44] and suggested amendments to 19 clauses of the bill.[45] Three of these most important amendments were "suggested" by the Minister of Finance.[46]

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43. ibid., pp.13162-13163
44. "Special Committee on the Civil Service Act," "Minutes of Proceedings of Evidence, March 20,-June 23, 1961.
45. Report of ibid., pp.525-529.
46. ibid., pp.535-545

The Committee took 29 pages of transcript per clause amended. The debate in Committee of the Whole took 99 pages of Hansard and there were four opposition amendments offered.[47] The 1966 Committee considered three bills, used up 1102 pages of transcript and recommended that a total of 72 clauses be amended.[48] Its efficiency is indicated in that it took only 15 pages of transcript per clause amended. The debate for all three bills in Committee of the Whole took only 83 pages and there were three amendments offered at this stage.[49] The comparison is even more favourable if it is kept in mind that in 1961 no radical changes were being adopted while in the latter case there were.[50]

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47. Debates, 1960-1961, pp.7667-75, 7709-14, 7962-83, 7992-8025, 8159-23, 8555-9, 8567-88, 8597-8601.
48. "The Special Joint Committee of the Senate and the House of Commons on Employer-Employee Relations in the Public Service of Canada.", Minutes of Proceedings and Evidence, pp.193-1295; and ibid. Report, pp. 1297-1339. Note that we are talking about the number of clauses amended, not the actual number of amendments.
49. Debates, 1966-67, pp.13236-54, 13158-95, 13221-36, 13254-67.
50. See Chapter 2 for treatment of the substance and history of the legislation.

Chapter 2: History of Staff Relations in the Public Service.

The demand for collective bargaining was relatively late in coming to the Canadian civil service. Up to World War II the staff associations were relatively weak and they concentrated most of their efforts on the establishment of a joint council system.[1]

In 1919, in Britain, the Whitley Councils were established. They were made up of representatives of the government-employer and of the employees and met regularly to discuss issues such as salary, hours of work, leave and allowances. Agreement had to be reached on both sides before recommendations could be made. The recommendations were not binding on the government. If agreement could not be reached, the issue remained unresolved.[2]

In Canada,[3]

> ...the rights of federal civil servants to organize staff associations and to make collective representation to the Government, the Civil Service Commission, and the individual members of Parliament have rarely been seriously questioned. The development of regularized relations on a basis of even limited reciprocity, however, has been slow in maturing.

In 1922 the Malcolm Committee was established by the King government to enquire into staff relations in the public service. The various civil service groups appeared before the Committee and agreed in principle that some sort of council should be

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1. S.J.Frankel, Staff Relations in the Civil Service, The Canadian Experience, (Montreal, 1962) p.54 For arguments for and against collective bargaining in the public service, see pp.10-15.
2. ibid., p.56
3. ibid., p.51

established along the lines of the Whitley Councils. The Committee, however, rejected the notion of councils but they did recommend the creation of departmental personnel boards which would give equal representation to the departmental management, the Civil Service Commission and the departmental employees, "to act in an advisory capacity in matters of classification, promotion, dismissal, salary revision, leave of absence, and other kindred problems affecting the welfare and efficiency of the civil service."[4] This recommendation was not implemented.

In 1928, J.S. Woodsworth was able to get his private member's bill, which would amend the Civil Service Act to provide for the establishment of joint councils, through second reading. The bill was then referred to the Select Standing Committee on Industrial and International Relations. The Prime Minister "expressed his sympathy for the project and recommended...that the associations should appear before the committee...and that a well prepared case could be a factor in influencing the committee to report in favour of the bill."[5]

It was suggested during the proceedings that the council could be established by an order in council rather than by legislation. This was opposed by Mr. Woodsworth because it would leave everything at the

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4. Canada, House of Commons, Proceedings of the Special Committee appointed to enquire into the operations of Chapter 12, 8-9 George V, An Act respecting the Civil Service of Canada, Second and Final Report, p.xi. (quoted in Frankel, op. cit., p.59)
5. Frankel, op.cit., p.61

discretion of the government but the civil service organizations were so anxious to get the council that they disagreed with Woodsworth on this point.[6]

The Committee reported on March 27, 1928 and recommended that a national joint council be established by order in council. The report received approval in that same month but there was no further action until May, 1930 when an order in council provided for the creation of an interim committee to draft a constitution prior to the creation of a national council. The committee did not get a chance to meet before the general election which changed the government.[7]

In March, 1932, the Select Special Committee of the Civil Service and the Civil Service Act was established. It ignored the usual appeals of the associations for joint councils but it did recommend the establishment of an appeal board to hear individual grievances.[8] This recommendation "was not implemented in 1932 nor again in 1939 when another special committee of the House made a similar recommendation."[9]

Finally in May, 1944, an order in council formally created the National Joint Council of the Public Service of Canada.[10] The Council was composed of representatives of the staff associations, and senior officials

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6. ibid., pp.63-64
7. ibid., pp.65-66
8. ibid., p.67
9. ibid., p.68
10. ibid., p.71

who represented the government as employer. It would act "in an advisory capacity to the treasury board in all matters affecting the conditions of work in the public service."[11] Its recommendations would not be binding on the Treasury Board.

The National Joint Council did make some concrete achievements[12] but on the whole it was a failure. Agreements were quite slow in being implemented;[13] when agreement could not be reached there was no method of arbitration;[14] the degree of secrecy was often frustrating to the staff associations;[15] the Council could not discuss salary even though "a simple reading and construction of [the relevant clauses in the constitution] would seem to indicate that discussion and recommendation with regard to salaries, even accepting the qualification that they be confined to 'general principles', are legitimate areas of Council action."[16] There was also the problem of the inclusion on the government side of the Council of a representative of the Civil Service Commission. This would seem to have "run counter to the oft-expressed official view which regards the Civil Service Commission as the impartial administrator of the merit system and expert advisor on all other civil service

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11. Canada, House of Commons Debates, 1944, p.779.(quoted in Frankel, op.cit., p.81)
12. Frankel, op cit., p.107
13. ibid., pp.80-88
14. ibid., p.96
15. ibid., pp.98-102
16. ibid., p.89

matters."[17] There were no departmental councils[18] and there was no clear division between the official and staff sides of the Council as some associations had among their membership civil servants of very high rank.[19]

In 1954 there was an interesting and illustrative example of how matters concerning staff relations were handled.[20] Without consultation between the National Joint Council and the membership of the associations, although there had been consultation within the Council with the leadership of the associations, a resolution was tabled in the House of Commons to amend the Superannuation Act. The next day the provisions of the bill were made public for the first time and they provoked a negative reaction throughout much of the civil service. The main objections were directed towards the compulsory aspects of a proposed group insurance plan. The Conservative opposition in the House took up the cry of the civil servants.

The bill passed through the Standing Committee on Banking and Finance with the controversial provisions unchanged, despite Conservative opposition within the Committee and briefs by civil service organizations which attacked the provision. However, when the bill reached the Senate Banking and Commerce Committee the

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17. ibid., p.79
18. ibid., p.102
19. ibid., p.105
20. ibid., pp.100-101

compulsory features were deleted. The government accepted the amendment and the bill finally passed both Houses in amended form.

In 1957 the Bureau of Pay Research was established. It was located within the Civil Service Commission and was responsible for recommending salary rates to the government, based on independent research on pay scales and conditions of employment inside and outside the civil service. The Bureau's reports were made available to both parties but there was no negotiation and the staff associations were not consulted on the interpretation of the information.[21]

The report of the Civil Service Commission (the "Heeney Report") was tabled in Parliament in January, 1959. This report was primarily in response, as it pointed out, to the growing need for rationalization and efficiency in the public service which was made necessary by its growth in size and complexity. While the Civil Service Act of 1918 had been successful in keeping the merit system in operation, it was no longer adequate to meet the "vastly different social and economic conditions within which public administration must be conducted today."[22]

Among the major objectives which the new legislation should have, the report recommended that it should provide for "greater participation by employees in the process leading to the

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21. ibid., p.139-142
22. Personnel Administration in the Public Service (Ottawa, 1958), p.8.

determination of their conditions of employment."[23] However, the report never used the word "negotiation" and it did not differ radically from the public statements of either the immediate past Prime Minister or the then present one, both of whom were relatively conservative on the issue.[24]

The report only recommended the strengthening of existing procedures. It suggested that the National Joint Council's facilities be expanded "for dealing with matters of mutual concern to the Government and its employees through joint consultations, and for the disposition of grievances, under regulations which would provide for the setting up of machinery appropriate for this purpose."[25] However, the council would not be able to discuss salary. The Commission felt that "its status as an independent authority enables it to exercise [the necessary] objectivity and to weigh, in an impartial manner, the different factors which bear on remuneration in the service."[26] It would arrive at its salary recommendations through its knowledge of the service as a whole, information provided by the Pay Research Bureau and through a form of institutionalized consultation with the Treasury Board, officials from the departments and the staff associations.[27] The recommendations would not be binding on the

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23. ibid., p.9-10
24. Frankel, op.cit., pp.150-151.
25. Personnel Administration, p.19
26. ibid., p.13
27. ibid., pp.13-14 and see p.132.

government.

A few hours after the Heeney Report was tabled in Parliament the government announced that Mr. Heeney was being transferred to the post of Canadian Ambassador to the United States. The government rejected the more original Heeney proposals for the handling of staff relations. The Civil Service Act, however, was substantially revised in the form recommended in the Report. [28]

The Civil Service Act of 1961 made little change in the structure of staff relations. Although virtually every staff association argued for collective bargaining the government would not concede it. The Act established a three tier structure. First, the Minister of Finance, or his representatives, and representatives of the employee organizations could consult on salary at the initiative of either party. Second, the Civil Service Commission and the Minister of Finance, or his representatives, could consult with the representatives of the employee organizations on terms and conditions of employment, excluding salary, at the initiative of either party. Third, the Civil Service Commission and representatives of the employee organizations could consult on areas exclusively under the jurisdiction of the Commission, for example, the merit system.[29]

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28. Frankel, op.cit., p.157
29. Civil Service Act (1961), clause 7. Also see "Special Committee on the Civil Service Act", Proceedings, pp. 541-545.

The 1961 Act was generally unsatisfactory and this was soon acknowledged. By 1963 all the major parties had committed themselves to collective bargaining.[30] The Preparatory Committee on collective bargaining observed that "the new consultative process caused a good deal of frustration and was regarded by all concerned as cumbersome and ineffective. In the employee organizations, the resulting dissatisfaction tended to strengthen a growing demand for some form of collective bargaining."[31]

The major catalyst in the process of change proved to be the Report of the Royal Commission on Government Organization released in 1962. The Commission recommended that the various government departments be given the power to coincide with their responsbility, or in other words, the administration should be decentralized. Specifically, the departments would be each given power to "select, classify, train, promote and discipline their own personnel. In the process, the Civil Service Commission ... would be divested of various powers."[32]

The overall coordinating authority for personnel matters would be transferred to the Treasury Board. "The most important single new function proposed for the Treasury Borad is considered to be the duty

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30. Dawson-Ward, op.cit., p. 284
31. Report of the Preparatory Committee on Collective Bargaining, 1965, p. 35.
32. Report of the Royal Commission on Government Organization, (Ottawa, 1963), Vol. V., p. 102.

of insuring that all departments and agencies have senior officers equal to their tasks."[33] The new Treasury Board would be basically concerned with three general areas; "the coordination of programs, the formulation of personnel policies and standards, and the promotion of improved administrative systems throughout the public service."[34]

The new Civil Service Commission would -[35]

> ...discharge those personnel functions requiring independence from executive authority: it should certify all initial appointments to the public service to insure that selection is based on competence; it should be the final point of appeal by all public servants on all grievances involving disciplinary matters; and it should conduct pay research independent of both management and staff, including wage comparisons made by the Department of Labour in respect of employees now exempt from the Civil Service Act. The Commission should also provide a common recruiting service throughout Canada, except where the Treasury Board decides that administrative recruitment warrants direct recruitment by departments and agencies. In addition the Commission should provide training facilities to meet common needs. With the transfer to the departments and the Treasury Board, it will be possible to extend the remaining jurisdiction of the Civil ServiceCommission to a number of agencies that are now independent of it.

In the area of salary determination the Royal Commission could see only duplication and inefficiency. They recommended that the defects could be remedied "if the proposed Personnel Division of the Treasury

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33. ibid., p.103
34. ibid., p.103
35. ibid., pp.103-104

Board is held responsible for the wage and salary situation and for making recommendations to the Board for all pay adjustments in the civil service."[36] Although it recommended the continuation of the Pay Research Bureau, it somewhat doubted the usefulness of outside wage comparisons because there is often a lack of similarity between private and public organization.[37]

The Commission's conception of the role of the proposed Personnel Division of the Treasury Board reflected a rather conservative bias[38] that was unacceptable to many.[39] Arnold Heeney later observed that -

> ...the Glassco Commission report...contemplated a new role for management in the service and had a great deal to commend it...But, at the same time, I felt bound to add that the proposal to remove the Civil Service Commission from its third party position between employees and government was totally unrealistic and would remain unrealized, unless and until the traditional protection of the Commission was replaced and a new balance created. In my judgement this radical change could only be accomplished by granting organized employees a more significant role in the determination of the terms and conditions of their employment.

With the need for collective bargaining now generally recognized, the Preparatory Committee on Collective Bargaining was launched in August of 1963, under the chairmanship of Arnold Heeney.

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36. Royal Commission on Government Organization, Vol,1, p.422-423
37. ibid., p.423. This was an unusual point for the Commission to make because overall it stressed the similarity between public and private organization.
38. On the conservative bias of the whole report, see T.H. McLeod, "Glassco Commission Report", Canadian Public Administration Vol. V1, No.4, Dec. 1963, p.395.
39. A.D.P. Heeney, "Some Aspects of Administrative Reform in the Public Service", Canadian Public Administration , Vol. 1X, No.2, June, 1966, p.222.

The report was completed in July, 1965 and it contained a proposed draft of a collective bargaining act.

The report affirmed the Glassco recommendation for departmental decentralization and flexibility and its corollary of cross-service standardization and departmental responsibility for classification and related matters.[40] It then proposed that there be collective bargaining by employers and representatives of designated groups of employees at regular intervals; that machinery for arbitration be available when negotiations fail; that there be provision for prompt implementation of agreements; and that the system be responsive to change and it should adhere as closely as possible to the existing methods of collective bargaining in the private sector.[41]

The Preparatory Committee also recommended that an independent Public Service Staff Relations Board be created "to regulate the system of collective bargaining and arbitration; to determine the bargaining units and certify bargaining agents; to provide for the conciliation and arbitration of disputes arising out of the negotiation of collective agreements and for the adjudication of grievances..."[42] The Board would also define the bargaining units in a manner generally consistent with the

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40. Preparatory Committee, pp.17-21
41. ibid., pp.49-50.
42. ibid., p.54

occupational groups on which the new system of classification was being based.[43] The Report made no mention of the definition of the original bargaining units although it seemed to imply that this would be done by the Board.[44]

The Report did not endorse the right of public servants to strike but it did decide against the statutory prohibition of the right to strike. It stated that "at the present time, most of the employees to which the proposed system would apply do not have a 'right to strike' ...Nothing in the recommendations of the Committee is intended to change this position."[45] The Committee also took the view that the government should have the power to ignore any award which they thought detrimental to the public interest, although they pointed out that this power should only be used in the most critical circumstances.[46]

The Report was by and large adopted by the government. In late April and early May, 1966, three bills were introduced into the House of Commons which were designed to implement many of the recommendations of the Glassco Commission as to the function of the Treasury Board and the Civil Service Commission (known as the Public Service Commission in the new act) and to establish collective bargaining in the public service, which

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43. ibid., p.66
44. ibid., pp.71-72.
45. ibid., p.81
46. ibid.

had been made"necessary" by the proposed new roles of the Treasury Board and the Public Service Commission.

The Public Service Staff Relations Act (C-170) was to provide for the system of collective bargaining. The bill extended bargaining rights to virtually all civil servants except to management, those serving in a confidential capacity, employees of crown corporations already covered by the Industrial Relations and Disputes Investigation Act, members of the armed forces and the Royal Canadian Mounted Police, and "to certain small groups for whom it would be difficult or inappropriate to establish terms and conditions of employment by means of collective bargaining."[47]

The system would be administered by the Public Service Staff Relations Board which would have the power to define the bargaining units and certify the bargaining agents. The original bargaining units would be defined by the Governor in Council. The Board would also serve as an "administrative umbrella" for other third party functions, such as the arbitration of disputes and the adjudication of grievances.

The original bargaining units would be defined so as to correspond with the occupational groups identified by the new classification structure then being developed by the Civil Service Commission. This feature was "designed to insure that bargaining rights [be] extended as quickly as possible,

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47. Debates, 1966, (May 31), p.5785

with a minimum of destruction to the ongoing process of pay determination."[48]

For most of the public service, the interests of the employer would be represented by the Treasury Board, except in certain agencies such as the National Film Board "that have traditionally had a significant measure of independence in matters of personnel management."[49] Agreements reached through the bargaining or arbitration process would be binding on the parties. This differed from the Preparatory Report which recommended that the government have the final authority.[50]

The bargaining agents would have a choice of two methods of dispute settlement. They could choose either binding arbitration or "reference to a conciliation board and offering, in defined circumstances, to employees other than those deemed necessary in the interests of the safety or security of the public, the right to strike."[51] Once the bargaining agent had chosen his course of action, the choice could not be altered for three years. The extension of the right to strike also differed from the Preparatory Report's recommendation.

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48. ibid., p.5786
49. ibid.
50. ibid., and see Preparatory Report, p.81
51. ibid.

The next bill, the Public Service Employment Act (C-181), created the new Public Service Commission. The Minister of National Revenue , speaking for the bill on second reading, stated that it incorporated three government objectives.[52]

> First, to preserve and extend the merit system of appointment and promotion under the control of an independent commission responsible only to parliament; second, to provide the commission with a flexible framework of law with which to operate, one well suited to the task of staffing a modern public service with qualified personnel; and third, to relieve the commission of any responsibility for the classification, pay and conditions of employment, or from the control of personnel policy, and to remove from the law any detailed provisions relating to these matters, in order to make possible a genuine system of collective bargaining and to provide in Treasury Control a focal point of central managerial authority.

Since the new Commission would be somewhat weaker than its predecessor, there was some concern over its ability to preserve the merit system. The Minister expressed his feeling that the new legislation would indeed preserve the merit system but added that "if after careful examination and study, hon. members have any doubts about this, the government will be prepared to consider seriously any changes that may be suggested to improve the relevant provisions."[53]

The Minister also pointed out that while the clause covering

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52. ibid., pp.5802-5803.
53. ibid., p.5803

political activities of civil servants had not been changed in the proposed bill, the government, while not advocating change, would consider it "if there was a consensus of agreement within the committee."[54]

The third and final piece of legislation was An Act to Amend the Financial Administration Act (C-182). The stated purpose of the bill was "to establish the Treasury Board as the central source of managerial authority in the public service and to provide it with the capacity to serve as the principal agent of the employer in the process of collective bargaining."[55] The Treasury Board would be empowered to act for the government in -[56]

> ...all matters relating to personnel management, financial management, general administrative policy and the control of organization and establishments. It would be expected in fact to concern itself generally with the quality of management in the public service.

The Treasury Board would have the power to delegate its authority to deputy heads and other "chief executive officers".

This concludes our treatment of the background and substance of the legislation. In the next chapter we shall turn our attention to an examination in detail of the Public Service Committee to which this legislation was sent.

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54. ibid.
55. ibid., June 6, 1966, p.6011
56 ibid.

Chapter 3: The Public Service Committee, Style and Structure

The Committee was composed of 36 members, 24 members of Parliament and 12 Senators. A quorum was 10 members. The proceedings were mainly carried by the House members. Average attendance among the Senators was only 3.1 as compared with 11.4 M.P.s.[1] Thus the combined average attendance of 14.5 would seem to be quite good. The committee was only prevented from meeting because of failure to get a quorum on one occasion.[2] The party breakdown of the membership was Liberals, 12; Progressive Conservative, 8; New Democratic, 2; Social Credit, 1; and Ralliement Creditiste, 1. The Creditiste member only attended twice out of 41[3] sessions and the Social Credit member, Mr. Leboe, attended only six meetings before he was replaced by Mr. Patterson who attended five meetings.[4] Thus only three parties really actively participated. While the N.D.P. only had two members, both attended frequently and contributed a great deal.

Before going on we should point out that it was intended

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1. see Appendix 1.
2. "The Special Joint Committee of the Senate and the House of Commons on Employer-Employee Relations in the Public Service of Canada.", Minutes and Proceedings of Evidence, p.570. (from now on cited as "Proceedings".).
3. The figure 41 refers to all sessions relating to the three bills including the session that did not get a quorum. The committee had some other peripheral tasks concerning pension legislation. (See Minutes and Proceedings, No. 1-5 & 28-33.)
4. An official said that he felt Mr. Patterson contributed a fair amount to the Committee. This must have been at the informal level and happened only late in the proceedings since the Committee was well on in its work when Mr. Patterson became a member.(see Appendix 1)

from the start that the Committee would have reasonable power to change the legislation although the extent of its work could not have been foreseen at the beginning. The Committee was probably allowed this independence for several reasons. First of all, as was pointed out by an official,[5] civil service matters can be potentially explosive as most members of Parliament consider themselves experts in such matters, and they also may have a strong vested interest in certain civil service structures, such as patronage, which are rooted in the past.[6] Thus it was best to handle this substantial revision of the public service structure in a non-partisan manner and one way of doing this is to give independence to a committee.

The committee method also made it possible to give a strong voice and role to members who represented civil service constituencies and those who represented union interests, or who were at least well versed in matters of collective bargaining. Into the first category would go Richard, Bell and Tardif, who represented Ottawa-Hull constituencies, and McCleave who was from a Halifax constituency where many government dockworkers, etc. were employed. The two N.D.P. members, Lewis and Knowles, had more experience in matters of collective bargaining and

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5. personal conversation.
6. An experienced and distinguished scholar of Canadian Government once remarked that "a good many M.P.s. have never really accepted the Civil Service Act of 1919".

could better articulate union points of view. Emard, a Liberal member, had also had experience in union affairs and at some points during the proceedings appeared to be speaking for the Confederation of National Trade Unions.[7] Orange had also had experience in civil service matters. One official felt that the committee was formed primarily with a view to the type of representation which we have described.[8]

The inclusion of the Senate may have been for several reasons. It facilitated the achievement of quorums and it may have been in the mind of the government that the granting of the right to strike to most public servants would run into opposition in the Senate and thus the inclusion of Senators on the Committee might facilitate easier passage of the bills in the Senate. Indeed on several occasions, it was the Senators, more than the M.P.s., who questioned the granting of the right to strike.[9]

Another official pointed out that another reason for the use of a committee of this nature was that it had been done in somewhat the same way in 1961,[10] although in that year it was not a joint committee that was used and it did not have nearly the degree of independence that this one had.

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7. See below, chapter 4.
8. personal conversation.
9. for example, see Proceedings , pp.533-536, 609-610, 877.
10. personal conversation.

We shall now consider the role of the Joint Chairmen and some related points of interest on the procedure of the Committee. There was no apparent conflict between the Joint Chairmen, probably because Richard, representing the House, quickly emerged as the dominant figure. (From now on we shall refer to him as "the" Chairman.) It was generally acknowledged that Richard was a very good Chairman and that this was an important factor in contributing to the success of the Committee. When the bills moved to Committee of the Whole both the main opposition critics, Bell and Lewis, complimented his work.[11]

The dominant themes in the Chairman's work were impartiality and flexibility. As to his impartiality, on several occasions he accepted the procedural advice of Stanley Knowles over the advice of James Walker, the "government man" on the Committee and parliamentary secretary to the Minister responsible for the legislation, Mr. Benson. The following excerpt from the proceedings will illustrate the point.[12]

> The JOINT CHAIRMAN (Mr. Richard): Where do we go from here? Shall we proceed with the next group of sections?
>
> Mr. WALKER: Mr. Chairman, I am always interested in tying up little bundles as we go along. Would it create confusion if we approved the ones on which there has been general discussion?....

11. Debates, (unrevised), Feb. 17, 1967, pp.13159, 13161-13162. The officials were also quite complimentary of the Chairman's work.

12. Proceedings, p.905. For other examples of the same thing see pp. 461, 670-671.

Mr. KNOWLES: There are too many cases where Dr. Davidson has said that we will have to have further discussion of where the staff people have amendments to make.

The JOINT CHAIRMAN (Mr. Richard): I do not think we could do that, Mr. Walker. We should rather deal with the whole section.

Another illustrative example of impartiality came late in the proceedings when there was discussion relating to the creation of a subcommittee to deal with political activities of civil servants.[13]

Mr. KNOWLES: Mr. Chairman, because this is an all-party rather than a government measure, I suggest that the committee consist of the chair, or both chairmen, plus one from each party.

The JOINT CHAIRMAN (Mr. Richard): That is what I had in mind.

. . . . . .

Mr. KNOWLES: Well, that is giving the Liberals a little edge by virtue of the chairman, but you fellows are so impartial up there -

The JOINT CHAIRMAN (Mr. Richard): Well, we have not been throwing our weight around very much in this Committee, as you may have realized...

The Chairman was quite flexible with regard to procedural matters and the range of discussion permitted during the proceedings. Even when a procedural decision had been made and yet was not being followed by the members too closely, he did not assert his

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13. ibid., p.1208

authority too much, but rather, let the Committee follow its own course.[14] For example, if a clause had been previously agreed to but a member wanted discussion reopened for some reason, there would be no trouble doing this.[15]

A wide range of discussion, even when it was not really relevant to the bills, was always permitted. The following exchange took place early in the proceedings and it indicates the impartiality of the Chairman as well as his flexibility and the latitude he permitted the Committee.[16]

> Mr. WALKER: Mr. Chairman, does everybody agree with me that there is some danger, when examining witnesses who are appearing before this committee...of getting into another field entirely, namely, the detailed examination of the conditions in the postal service as related in this Montpetit report. I think that the Chairman will have to have the wisdom of a Richard to tell us when we are getting into an area that, in fact, has not been referred to this Committee at all. We are examining public service employer and employee relations. This is a very interesting subject, perhaps more juicy than some of the other subjects referred to us.

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14. For example, at one point both Bell and Knowles asked that consideration be given to whether or not the I.R.D.I. Act should be amended rather than having a new bill, before clause by clause study takes place on C=170. The Chairman did not express a point of view but rather let the members of the Committee decide and they decided to do clause by clause study first. The Committee then proceeded to do exactly what it had decided not to do and the Chairman let them go on for seven pages of transcript before calling their attention to their own decision. See, Proceedings, pp.869-877.
15. See, Proceedings, pp.1120-1121.
16. ibid., p.461.

> The JOINT CHAIRMAN (Mr. Richard): Mr. Walker, I would suggest that we spend as much time as possible on the bills so that we can decide about them as soon as possible. I would much prefer, providing the asides are not too many, that we not have to come back, maybe in the spring, to study those matters which we could deal with now, provided the members show a little bit of aptitude when questioning these men while they are here.
>
> Mr. WALKER: Well, so long as it has a direct relation to the subject matter that we are discussing.
>
> The JOINT CHAIRMAN (Mr. Richard): Well, I think the subject matter, Mr. Walker, is pretty large, when we are studying public service bills.

Another example of the wide range of discussion was during questioning of a representative of the Letter Carriers Union of Canada in which the Committee discussed such questions as whether the Post Office should become a crown corporation and whether or not it is a monopoly.[17]

When procedural discussion arose and could not be settled quickly, the Chairman referred it to the Steering Committee[18] which decided the order of witnesses and other procedural matters. This committee performed its job well and procedural discussion seldom came up in the full committee. Mr. Lewis later complimented the clerk of the Committee "who by some miraculous accomplishment knew exactly what we had left out, what we had stood aside and when we came back to it and why."[19]

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17. ibid., pp.585-590
18. For example see ibid., pp.257, 625-626.
19. Debates,(unrevised), Feb. 17, 1967, p.13162. There were some minor procedural errors in the proceedings. Clause 21 (C-170) was carried twice (Proceedings, pp.924-925,939); after they had agreed to stand clauses they were carried (pp.1097 & 1130), the first time it was caught right away, the second not until p.1165. Clause 51 (C-170) was carried (p.977) and then reopened (p.1122) without anyone realizing that it had been previously carried.

Overall, the Chairman permitted a great range of freedom but we do not mean to imply that he was lazy in his duties. There were several occasions when he disciplined members for getting away from the matter at hand.[20]

There was only one incident in the proceedings that seemed to produce friction between the Chairman and some of the members. This occurred after a motion by Knowles, seconded by Lewis, that the Government Printing Bureau be transferred to Part II of Schedule A, C-170. This would have put them in a special category in the new bargaining procedure where they could bargain directly with the management of their own department as a separate employer. The motion was defeated and then the following exchange took place:[21]

> Mr. KNOWLES: Can we have the names recorded, please?
>
> The JOINT CHAIRMAN (Mr. Richard): I am reluctant. I would point out, or maybe I should not point out, the Civil Service Commission -
>
> Mr. KNOWLES: Mr. Chairman, did you hear my request? I would like to have the names recorded.
>
> The JOINT CHAIRMAN (Mr. Richard): The 'yeas' and 'nays'.
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> . . . . . .
>
> Mr. McCLEAVE: He is not only blind but deaf.

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20. For example see Proceedings, pp. 237, 959, 960, 610
21. ibid., pp. 1072-1073

Mr. KNOWLES: I am asking you to have the names recorded, the 'yeas' and 'nays'.

The JOINT CHAIRMAN (Mr. Richard): Well, if you insist.

Mr. KNOWLES: Yes, I do.

Mr. WALKER: Shall we vote on that?

Mr. KNOWLES: I have no objection.

The JOINT CHAIRMAN (Mr. Richard): I am sure you want to use this information to good purpose.

Mr. KNOWLES: Mr. Chairman, I object to that comment. It is my right to ask for the 'yeas' and 'nays' and I suggest that you should grant it and stop all this fuss.

The JOINT CHAIRMAN (Mr. Richard): There is no fuss, I did not hear you. It is most unusual.

. . . . . .

Mr. LACHANCE: Mr. Chairman, is it really the practice to always have the names recorded.

The JOINT CHAIRMAN (Mr. Richard): Yes, on request.

Mr. LACHANCE: I think that others will remember this Mr. Chairman.

The JOINT CHAIRMAN (Mr. Richard): Sometimes it is good to abide by the regulations.

In the above situation, Richard, who was being criticised from both sides, his own party and the opposition, did his best to handle the matter lightly and with humour.

Several people said they were disappointed when they found that Mr. Richard would be the Chairman because he was not expert

in the subject matter of the legislation. However, for the most part they changed their minds in light of the success of the Chairman.[22] Although the Chairman himself represented a civil service constituency (Ottawa East) he did not seem to have any "axes to grind" with regard to the legislation.

One official said that he was bothered at first by the Chairman's permissive attitude toward the opposition members but he later saw that this had very positive effects. The opposition members seemed to appreciate their freedom and tended to reciprocate the goodwill on issues which the officials and the Liberals felt were important.

Another official thought that Richard's performance might be indicative of a new kind of committee chairman, one more interested in preserving an harmonious atmosphere and getting a good piece of legislation through, rather than doing a "snow job" in order to help his career in the party.

The harmonious atmosphere which the Chairman helped to create was reflected in the interaction of the Committee members. Although it has been pointed out that a non-partisan, cooperative atmosphere is more generally true of the committees than it is of the House,[23] there can be little doubt that it was particularly true of this

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22. personal conversation
23. D. Lewis, Debates, (unrevised), Feb. 17, 1967, p.13162.

committee. This was evidenced by the good natured exchanges between the members,[24] and more important, by genuine cooperation and understanding between the members. They often seemed to be really interested in what the others had to say and sometimes were even convinced.[25] Almost all of the interaction which could be called partisan took place amid an atmosphere of good humour.[26] Mr. Bell said that he had never been a member of a committee "which worked more harmoniously, more assiduously and with more complete freedom from political partisanship."[27]

Some of those who observed the proceedings noted that often any difficulties that arose were quickly worked out informally between the members. It was also pointed out, in personal conversation, that another contributing factor was the expertise and experience brought to the Committee by several of its members, particularly Lewis and Bell, who were well versed in labour and civil service matters respectively.

It also should be mentioned that the good relations prevailed despite certain points of substantive disagreement among the members which could have escalated into more heated exchanges.

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24. For example, see Proceedings, pp.263, 281, 443, 763, 544, 875.
25. " " ibid. pp.467, 773, 978
26. " " ibid. pp.252,258
27. see above, p.13.

Most of the proceedings took place after the summer of 1966 in which there had been a great many strikes in Canada and there was some degree of public reaction against them. While there were many discussions over how far the right to strike should be granted to public employees, they were always conducted in good faith and restraint.[28]

Throughout the entire proceedings there were only two outbursts of angry partisan exchange.[29] Both involved the member for Russell, Mr. Tardif. The first argument was provoked by Mr. McCleave who chided Tardif for his absences from the committee and this resulted in a short argument which was quickly smoothed over by the Chairman and Mr. Lewis.[30] The second incident involved a heated exchange between Mr. Lewis and Mr. Tardif over the dismissal of public employees for reasons of safety and security. The argument came to involve the controversial Spencer case and it was this which seemed to inflame Mr. Tardif. Mr. Lewis presented his arguments in a heated but effective manner and soon had other members of the Committee won over to his point of view so that Mr. Tardif desisted.[31]

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28. For example, see ibid., pp.615-616
29. The member for Russell drew unfavourable criticism from an official who felt that his only interest in the Committee was preventing public servants from getting political rights since this might threaten his position as an M.P. from a civil service constituency.
30. ibid., pp.1056-1057
31. ibid., pp.1176-1182. Also see Chapter 4 for further treatment of this issue.

The next two important areas to be considered are the relationship of the committee with the government and its relationship with the officials. There is naturally some overlap in these two areas since the officials are to a large extent agents of the government. However, to a significant degree, the officials were an independent entity vis-a-vis this Committee since they had spent so much time over the previous years preparing the legislation, and the government permitted them a fair amount of independence in dealing with the Committee. We shall first consider the Committee's relationship with the government.

The Minister of National Revenue, who was responsible for the bills, outlined his position to the Committee at the first session. He suggested that the Committee would have a reasonable degree of independence.[32]

> ...The Government has proposed solutions...which it believes are reasonable and workable in the context of the basic objectives of the legislation. I make no claim that the solutions proposed in these difficult areas are the only possible solutions. There are undoubtedly other ways to deal with these issues...we will give very careful consideration to alternative proposals advanced by this Committee. However, the ultimate test of any proposal must be its capacity to support the objectives of the legislation. I think I may say on behalf of the government that we will support alternative proposals that we believe are consistent with the basic objectives of the legislation, but that we will be bound to oppose proposals for changes in the bills which fail to take account of the total objective.

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32. ibid., p.201.

The Minister went on to say that while he would be available to the Committee for further consultation, he really did not expect to be called back, at least until "all of us have had an opportunity to listen to and assess the views of employee organizations and others who may appear before the Committee."[33] The Committee should really expect to do most of its work with "officials of the Preparatory Committee on Collective Bargaining, the Civil Service Commission and the Treasury Board who have been closely associated with the development of this legislation [who] will be on hand to provide technical guidance to the Committee in its analysis of the legislation."[34]

The Minister never again appeared before the Committee.[35] This somewhat unusual occurrence can be explained by several factors. Several of the officials who would appear before the Committee had worked on the Preparatory Report[36] and had great experience in the public service and were therefore better able to defend the legislation than was the Minister. Also the legislation had been developed to a fairly sophisticated stage already and the Minister felt that it did not really need his further attention.[37] One of the most important officials who would work with the Committee,

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33. ibid., p.209
34. ibid. pp.209-210
35. Contrast this to the 1961 case when the Minister virtually dictated the most important clauses to the committee. See above p.14.
36. They were G.F. Davidson, J.D. Love, S. Cloutier, P. Roddick.
37. Based on personal conversation with an official.

Dr. Davidson, Secretary of the Treasury Board, enjoyed the full confidence of the Minister, even to the point where the Minister would back initiatives made by Dr. Davidson. He also knew that Dr. Davidson could handle himself very well in front of parliamentary committees.[38]

Two other factors help to explain the Minister's absence from the remainder of the proceedings. It was felt by an official that the Minister was relatively "loose" about his public image in that he did not feel that he had to personally check everything that happened in his field of responsibility and he was willing to delegate authority.[39] Also, the Minister's parliamentary secretary, Mr. Walker, was a member of the Committee.

In our discussions with the officials we found some disagreement over Walker's role. One official felt that while he often appeared quiet and unforceful, he made sure that things were done in a low key, persuasive manner which did not offend the opposition. On the other hand, another official thought that he was too weak in his role and several times would have lost control of the situation had he not been helped out by Lewis and Bell. These officials were concerned with different aspects of the legislation so, in theory, they could both be correct.

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38. personal conversation
39. personal conversation

The second view need not necessarily be interpreted in a pejorative sense. If the initiative sometimes lay with such men as Bell and Lewis, who were well versed in the subject matter, this may in fact only indicate the high degree of non-partisanship and cooperation which existed in the Committee. If the talents of the members are used to the fullest possible extent, then one would not expect the initiative to only lie in one place. It may be to Mr. Walker's credit that he permitted this to happen. His actions may have allowed him to get cooperation from the members on other matters. This may have been particularly true in the matter of political activities where the opposition did not put up as much of a fight as one might expect over a provision they found unsatisfactory.[40]

In a small incident involving the Postal Workers, a degree of independence from the government, and the members' sensitivity to this independence, was suggested. (However, the incident may reflect no more than courtesy on the part of the government.) The Canadian Union of Postal Workers and the Letter Carriers Union of Canada telegraphed the Prime Minister on October 3, 1966, notifying him of a resolution passed at a joint mass meeting which requested the Prime Minister to instruct the

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40. see below, pp.49-54

Public Service Committee to not finalize their proceedings until after the Montpetit Report was made public. The Prime Minister replied to the telegram, in part, as follows:[41]

> ...You will appreciate that it is for the Joint Committee to arrange its business as it decides, but I shall bring your telegram to the attention of the Joint Chairmen. They will undoubtedly report the resolution to the Joint Committee which, I feel sure, will want to give the Letter Carriers' Union of Canada and the Canadian Union of Postal Workers an opportunity to make submissions in the light of the Commission Report.

The Committee responded to this as follows:

> Mr. KNOWLES: I think we should give them that assurance now. I am sure they understand that the Prime Minister does not instruct this Committee, but we wish to do it anyway.
>
> Mr. BELL: I am sure it is the wish of everyone to hear them at the appropriate time on our own initiative and not on the instruction of the Prime Minister.

The progress of the Committee, which was not much, on the matter of political activities for civil servants is illustrative in evaluating the Committee's relationship with the government, and, as it turned out, with the Liberal Party in Parliament.

In his submission to the Committee, the Minister of National Revenue seemed to be giving them a free hand. He stated that the "Committee might find it desirable to come to grips with this problem... if the Committee can reach a consensus on this problem

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41. Proceedings, pp.310-311

as it relates to individuals, I do not think it will be difficult to adjust the relevant provisions of the collective bargaining bill."[42]

The various associations and unions which appeared before the Committee were, on the whole, not very interested in the question of political activities for civil servants. The Professional Institute took no interest in the matter, at least at the federal level,[43] and the Postmasters just wanted to "stay out of political activity and tend to [their] own business."[44] Thus there was little pressure from this direction on the Committee.

The matter was not considered in the Committee, except for some questioning of witnesses, until quite late in the proceedings. Mr. Walker presented a draft amendment which was the "government's position on this whole question...the government [has] looked into this whole matter and has [had] discussions with many interested people and the results of their discussions are before you today in this drafted amendment."[45] This provoked a reaction from two of the Committee members.[46]

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42. ibid. p.207
43. ibid., pp.429-430
44. ibid., p.459
45. ibid., p.1204
46. ibid., pp.1204-1205

Mr. KNOWLES: We are right at the start digressing a bit from what I thought was the understanding, namely, that we would arrive at a party consensus. Now we have a government proposal and it is moved and seconded by two government supporters.

Mr. HYMMEN: If anybody else wants to second it -

Mr. WALKER: I just want to get it on board.

Mr. KNOWLES: It is not just the moving and the seconding that bothers me. Why could we not have had some meeting where we could have come up with a consensus instead of having this issue, which the government said it was leaving to the parties on the Committee, now resolved by a precise draft which comes to us from the government.

Mr. WALKER: I would just say that we have to get it on board...we are just trying to get something concrete on this. This is not put forward as a government proposal, it is a proposal which the government finds itself able to accommodate and it had their approval.

Mr. BELL: Then I have misunderstood very much what Mr. Walker said, I thought Mr. Walker indicated in his remarks that the government had considered this and this was it. I took it as really being an ultimatum from the government.

Mr. WALKER: Well then, I should have gotten up earlier this morning to sort out the right words.

The JOINT CHAIRMAN (Mr. Richard): I did warn you before you came in and I thought you had thought out your position and how you would say this, but it is all right; let us begin again.

Mr. WALKER: It is clear now that this is not put forward as a government proposal. The government would approve as far as they are concerned.

Mr. Walker's government approved proposal was not printed in the proceedings[47] but it was summarized by Mr. Lewis as follows

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47. ibid., p,1205

> ...Mr. Chairman, the effect of this proposal is as follows... that any member of the Civil Service, at whatever rank, is permitted to be a member of a political party; to attend a political meeting; to contribute to a political party or to the election of a member, but no employee in the Civil Service...can work on behalf of a candidate...[or] be a candidate without first applying to the Public Service Commission and receiving from the Commission permission to run as a candidate, and the necessary leave of absence... No public servant can work in any campaign.

The Committee went on to agree to discuss the matter in a special sub-committee comprising one member from each party and the Chairman. This meeting was held on January 23, 1967 in camera.

The next day a formal proposal was presented to the Committee which, as Mr. Lewis pointed out, did not go as far as the original proposal.[48] It did not satisfy the leading members of the Committee. Mr. Bell stated that he did not agree with it but that he would not contest the matter in committee.[49] David Lewis and Stanley Knowles presented a counter-amendment which was defeated in a recorded vote.[50]

The action of the Committee on this issue was not what one would have expected from the apparent guideline given by the Minister. This can be explained by Mr. Walker's statement on the matter.[51]

> Mr. WALKER: ...I must say that my proposal does not coincide with my own personal opinions. I will explain this:

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48. ibid., p.1280. In this new proposal, civil servants could not be members of political parties.
49. ibid., p.1286
50. ibid., pp.1282, 1293. (Results of recorded vote are on p.1225. The Conservative members joined the NDP in the vote.)
51. ibid., p.1286

> Mr. Lewis' amendment tonight is not a great deal different from the one which I put before this Committee myself as a basis for discussion, but I have reluctantly come to the conclusion that - and I speak very frankly - I am out of step with the majority of my own colleagues. I am not speaking about the government; I am speaking about the members of my own party. It could well be I suppose, that my idea of what I thought the employees wanted just does not coincide with the lack of any demand that has been placed on me [by them] to give [them] rights...I should not be inclined to impose my ideas on a public service which at this particular time may not be ready for it or may not want it.

We pointed out above[52] that there was indeed little pressure on the Committee by the interest groups to expand the area of political activities but presumably there would have been little negative reaction among public servants had the sphere of political activities been extended. Thus we should give more weight to the first part of Mr. Walker's statement, that his action was in response to conservative sentiments in the Liberal backbenches, and not to his implication that he was acting in response to what the civil servants wanted. Since there was no pressure in this area, the government yielded to its rank and file members' views.

The officials seemed generally satisfied with what was adopted and pointed out that there had been considerable informal discussion on this point.[53]

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52. See above, p.50
53. Personal conversation.

The Committee did finally recommend that their proposal be reviewed in one year's time,[54] confirming that, as a body, the Committee was not really satisfied with what it had recommended.

We shall now consider the relations between the officials and the Public Service Committee.

One of the very unique factors of this Committee was the interaction which took place between the members and the officials. The officials were able to operate in an independent capacity vis-a-vis the Committee in that they did not have to take constant recourse to ministerial direction. One official pointed out that while there is generally tension between officials and M.P.s. this was not the case here. Points at issue were often worked out to a mutually satisfactory solution at the informal level.[55] Another official described his experience with the Committee as "something every civil servant should go through" in that he had seen an idea develop into legislation in a constructive, harmonious manner.[56] From the other side of the desk, the leading opposition M.P.s. were quite complimentary of the officials.[57]

We indicated above[58] some of the reasons why the officials had the degree of independence which they did. Suffice to say

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54. Proceedings, (Report), p.1317
55. personal conversation.
56. personal conversation
57. Debates, (unrevised), Feb. 17, 1967, pp.13159, 13162.
58. pp. 46-47.

here that many of the officials had worked for years preparing the legislation and this had to be respected by the Committee.

Many of the changes which were made in the legislation came as a result of long discussions between members of the Committee and officials where each would move from his original position through a process of give and take to a consensus. This sort of thing often happened between Dr. Davidson and Mr. Lewis. We shall give two rather long examples of this because it was through this sort of dialogue that the Committee was able to make many of the important changes in the legislation and they illustrate part of the uniqueness of the Committee in that important arguments were put to the officials rather than government figures.

The first example concerns the issue of the timing of the negotiations and the routes to be followed, negotiation or arbitration. Originally the bargaining agent would have to make its choice, negotiation with the right to strike or compulsory arbitration, before bargaining actually began. Then, once the choice had been made, it could not be changed for three years regardless of the length of the agreement. At first Mr. Lewis opposed both of these provisions claiming that they introduced rigidity into the bargaining and also put the bargaining agent at a disadvantage.

However, Mr. Lewis changed his mind on the first point and continued to press for the second.[59]

> Mr. LEWIS... the choice [could] be made prior to notice to bargain, so that everybody knows exactly what route they are going in the set of negotiations. I had, as you know, originally thought that the choice should be made later in the day, but there may be, and there probably is, a great deal of logic and justice in the notion that when the two parties sit down at the table they should know exactly what route they are going - that they will both be in an equal position.
>
> Now, why can that not just apply across the board? ...You should not have a three year thing here...[When] both sides know what they are faced with...all this three year period can just be removed...
>
> Dr. DAVIDSON:...May I say, Mr. Chairman, that I have been greatly heartened by the position that Mr. Lewis has taken on the question of the point at which the exercise of the option might be found to be acceptable to him as a member of the Committee. This to us seems to be a pretty crucial point. I am also aware of the arguments of both sides on the three year proposition, and I would like to suggest that the Committee give us a little further time to think over this three-year proposal.

They did think it over and when they came back to the Committee on this point they had accepted Mr. Lewis's proposal.[60]

> Dr. DAVIDSON: The change in Clause 37, Mr. Chairman, can be stated briefly by saying to the Committee that if, and I say "if", Mr. Lewis is still willing to accept the change that he said he was willing to accept if we did something last day, if that willingness still persists, we are willing to make this change.
>
> Mr. LEWIS: Like all collective bargaining carried on in good faith, we have arrived at the sensible conclusion.

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59. Proceedings, pp.1116-1117
60. ibid., p.1153

The next example concerns the exclusion of personnel from bargaining under Bill C-170. The subclause under consideration would have excluded personnel where there was a "conflict of interest" between their responsibilities to the bargaining agent and the employer. The example illustrates the spirit of give and take, the high level of argument and the scrupulous attention to detail.[61]

> Dr. DAVIDSON: ...I think we do wish to make it clear that persons to be covered by subclause (vii) here should be persons where there is a very real conflict of interest...
>
> Mr. LEWIS:...I think that subclause (vii) is an unnecessary clause and one which is based on a totally false philosophy concerning collective bargaining. An employer frequently assumes that because an employee is in a bargaining unit there is a conflict of interest between his work for the employer and his membership in the bargaining unit. It is just not true...I simply do not see the slightest reason for this catchall phrase except that somebody - and I am not accusing anybody - is so distrustful of the collective bargaining process ...that they want to have some clause under which they can find some way to yank someone out of the collective bargaining unit. There is no possible justification for this clause... Who would be affected by the presence of this subclause who is not already capable of being included in any one of the other subclauses?
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> Dr. DAVIDSON:...they [who drafted the subclause] are distrustful of their omniscience and of their ability to foresee precisely at this point in time every conceivable situation where there might be a legitimate basis for the employer putting to the employee organization and to the

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61. ibid., pp.1098-1102. For other examples of the "negotiations" between members of the Committee and officials see pp. 753, 964, 981. (Pages cited indicate the end of the discussion).

board the proposition that in a given situation there is a conflict of interest which justifies that person's exclusion from the bargaining unit...

Mr. LEWIS: May I interrupt, Dr. Davidson, to ask why do you have the Staff Relations Board? That is a matter of experience, and if subclause (vii) said something like this:

> "or anyone who in the opinion of the Board should not be a member of the bargaining unit".

I would have no objection...

Dr. DAVIDSON: But surely, Mr. Chairman, that is the exact effect of the clause as it is drafted.

Mr. LEWIS: No, because "a conflict of interest" is far too wide a phrase.

Dr. DAVIDSON: Mr. Chairman, with respect could I ask Mr. Lewis to turn his attention to [other parts of the clause which] clearly provide that where the employer thinks he is justified in putting up for exclusion an individual coming under this he first of all in effect puts it to the union and if the union agrees, that person is so excluded. If the union disagrees, then it is put to the board to decide. Does this not, in fact, result in the same thing?

Mr. LEWIS: Yes, that is why you do not need the final subclause (vii). I am sorry I interrupted you. What was the example [you were going to give]?

Dr. DAVIDSON: Before giving my example could I merely point out to you, Mr. Lewis, that in dealing with managerial exclusions we are certainly limiting [them] much more strictly than [they] are limited in the legislation dealing with outside industrial relations. The Industrial Relations and Disputes Investigation Act has a far more extensive provision for managerial exclusions than does this legislation, because every person at the supervisory level is automatically excluded...

Mr. LEWIS: I beg your pardon.

Dr. DAVIDSON: Is that not correct?

Mr. LEWIS: No, sir. The definition does not include a manager or superintendent or any other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations.

Dr. DAVIDSON; Yes, and then it goes on to refer to groups of people, members of certain professional classes.

Mr. LEWIS: Yes, but they are different; they are under a separate act.

Dr. DAVIDSON: Perhaps I overstated the proposition, but I would still contend that managerial exclusions... are more extensive under the Industrial Relations and Disputes Investigation Act...

To come to the point that Mr. Lewis had made, the example I gave before is the example of a supervisor in a hierarchial structure who is supervising a supervisory person at a lower level...

Mr. LEWIS: Certainly, and do you think the board, if it has any sense at all, is going to leave in the bargaining unit a supervisor who is above one who is not in the bargaining unit?...What frightens me...is that you could have a supervisor who...[has] no authority at all other than assigning work - what in outside industry is called a "straw boss"...You make an argument that because he or she supervises 300 people, or has the duties of assigning work to 300 people, there is a conflict of interest by reason of those duties...

Dr. DAVIDSON: Mr. Chairman could I just ask Mr. Lewis under what clause he would see that person being excluded?

Mr. LEWIS: Under the general -

Dr. DAVIDSON: There is no general provision at all. This is the general provision.

Mr. LEWIS: You are assuming for one thing, Dr. Davidson, that the certification will indicate all the classes that are excluded; that you are going to get a certificate that will say that all the classes above such and such a class are excluded. To answer your question I would have to take a precise look at the matter that is before us.

Dr. DAVIDSON: Could I just say to Mr. Lewis I sincerely believe that there would be no provision under any of the other subclauses for the exclusion of the type of person I used by way of illustration. I fail to see where any other -

Mr. LEWIS: I could certainly put him under subclause (vi).

Dr. DAVIDSON: Confidential?

Mr. LEWIS: Well, he certainly is if he is a supervisor. I am sure you can find a place for this particular person you have designated in any one of these. You can put him under subclause (v)...

Dr. DAVIDSON:. Could I merely draw to Mr. Lewis' attention that as far as subclause (v) is concerned it applies only to those persons required to deal "formally" on behalf of the employer with the grievance presented. Certainly the mere fact of the supervisor who is between the other two supervisors being consulted, or is talking to his upper or lower supervisor, would not involve him as a person who is required to deal "formally" with the grievance procedure.

Mr. LEWIS: I am ready to move the deletion of this subclause, but because we have gotten along without this sort of thing I urge Dr. Davidson to consider replacing this clause, despite the fact he said the board makes these decisions. But the Board makes the decisions on the basis of - let me now argue this point - the precise category set out in subclauses (iii), (iv), (v) and (vi), and if he wants a catch-all the only proper one, in my respectful submission, is one that will say, "or who, in the opinion of the board, should be excluded by reason of his duties, and responsibilities to the employer." If you put it that way and you leave it to the board, I have no objection .

> Dr. DAVIDSON: Mr. Chairman, could I offer a suggestion here that I think might meet Mr. Lewis' point? I would certainly be prepared to consider something along the line he suggests if this clause were brought up as subclause (iii)...
>
> Mr. LEWIS: I have no objection.
>
> . . . . .
>
> Mr. LEWIS: May I suggest the wording I gave? I honestly do think it is better. It is better from your point of view. It gives the board wider latitude...I am prepared to leave to the board the job of developing the jurisprudence out of the experience as to what class is properly within the unit. I do not think we should write that.
>
> Dr. DAVIDSON: I am quite agreeable to bringing back for the consideration of the Committee, Mr. Chairman, a wording that would attempt to meet this.

During the proceedings the officials worked closely with the members on a number of matters. In one case Dr. Davidson suggested the procedure for the clause by clause study of Bill C-170 and this was adopted.[62] If a member of the Committee wanted to put on the record something more for the benefit of his constituents, rather than the Committee, he would sometimes inform an official beforehand that he was going to make a "speech" and the official need not worry.[63] An official also made reference to attending a "Liberal caucus", that is, a meeting of the Liberal members of the Committee to discuss aspects of the legislation.[64] Late in the proceedings the following exchange took place:[65]

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62. ibid. pp.867-869
63. personal conversation.
64. " "
65. Proceedings, pp.1275-1276

> The JOINT CHAIRMAN (Mr. Richard): Does the Committee agree to permit Mr. Lewis to withdraw his amendment, and allow the proposal Mr. Walker has suggested, including the amendments which have been proposed to be re-edited and made part of the recommendations of this Committee?
>
> Mr. LEWIS: I assume, without any offence to Mr. Walker, that Dr. Davidson and Mr. Roddick had something to do with the authorship and that they wrote with their hearts.
>
> Mr. WALKER: I did it all myself.
>
> Mr. KNOWLES: The record will not show Mr. Walker's smile.

Often the discussions with officials did not relate directly to the bills under study but they did cover important areas of mutual concern. When Mr. Carson, Chairman of the Civil Service Commission, was questioned by the Committee several members vented their frustrations concerning appointments to the civil service. The dialogue which followed cleared things up to some extent.[66] In another case Mr. Carson was able to inform the Committee that the Civil Service Commission welcomed inquiries and recommendations by M.P.s. on behalf of constituents who were applying for work in the civil service. This seemed to come as a surprise to some of the members of the Committee.[67]

An official, in personal conversation, emphasized that he felt a considerable exchange of information had taken place between himself and the members and that what he felt to be a traditional distrust

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66. ibid., pp.553-556
67. ibid., pp.562-563

between public servants and members of Parliament had been overcome, to some extent, through the Committee. He went on to say that as a result of his experience with the Committee he had undertaken a project to better inform M.P.s. on certain aspects of his area of specialty in the civil service. Another official mentioned that the face to face meetings which he had with the members during the proceedings had usually resulted in his personal estimation of the various M.P.s. going up, and this may cause him to give more weight to the opinions of these M.P.s. in the future. It should be added that, as a result of the proceedings, his opinion of one member went down sharply.

We now turn our attention to the relationships of the Committee to the various groups which appeared before it. The Committee met virtually every association and union which would have any part to play in the collective bargaining process. The groups would normally read their written presentations and then submit to questioning and general discussion sometime later. In the next chapter we shall see what some of the specific demands were and how they were received by the Committee. Here we shall concentrate more on the style and tone of the discussions.

Most of the hearings were conducted in the fall of 1966

after a summer of many strikes in Canada and growing union "militancy". Thus, at first glance, one might expect to find some heated discussions in the Committee over the right to strike in the public service, etc. However, this was not the case.

Some of the union presentations were quite militant such as the following submission by the Union of Postal Workers.[68]

> Mr. W. KAY (President, Union of Postal Workers):...This is a matter of such grave importance to postal workers that if no other procedure is made available to us, allowing us to bargain under the I.R.D.I. Act, then we would urge that the Post Office Department be legislated into a crown corporation. We are certain that it is no secret to the Hon. members of this committee that a majority of the members of the Canadian Union of Postal Workers are prepared on very short notice to withhold their labour power in order to achieve one or the other of these two objectives: either that the I.R.D.I. Act be opened to permit postal workers to bargain under its procedures by direct amendment of that statute, or, the conversion of the Post Office Department to a crown corporation. We would not pretend to influence this committee by threat, and we want it clearly understood that no threat is being made: we are merely informing the committee of the deep and abiding sincerity in which the postal workers approach the issue of full and free collective bargaining.

One could have expected some of the more conservative members of the committee to react unfavourably to this sort of language but this was not the case. On the contrary, the Committee later did discuss the alternatives suggested by the Postal Workers, that is, whether or not the Post Office could become a crown corporation and whether the substance of

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68. ibid., p.303

C-170 could be better achieved by amendment to the I.R.D.I. Act.[69]

On several occasions members did question the right to strike with union spokesmen but the discussions were never heated or unreasonable.[70]

One of the major factors which facilitated an easy dialogue between the interest groups, the unions in particular, and the Committee was the presence of Mr. Knowles and Mr. Lewis, who were both relatively more experienced in labour matters and members of a party which claims much of organized labour as part of its constituency. There were several cases where one or the other of these men would modify or clarify a witness' position and this would promote understanding on both sides. The following will illustrate the point and also relates to the Postal Workers' submission which we quoted from above.[71]

> Mr. KNOWLES: So far, Mr. Kay, I have been asking questions which obviously suggest agreement between you and me. I now have a question on which you may not agree, and I am not arguing with you or trying to force you to change your position. I would like to get something clear for the purposes of this Committee. You have said, if I may try to boil down your position, that there are two things you want: one is a crown corporation and the other is to be under the I.R.D.I. Act rather than under Bill No. C-170.

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69. ibid., pp.585-590, 870-877
70. For example see ibid., pp.533-536, 609-610
71. ibid., pp. 612-613; for other examples see pp.595, 605, 627

May I ask this: are you wedded absolutely to those two propositions, or would it be fair for some of us to say that what you really want, no matter how you get it, is genuine collective bargaining, and to be regarded as having an approach to your work different from that of the ordinary civil servant?

Mr. KAY: We are wedded to the proposition that we come under the I.R.D.I. Act, and even if it is necessary to make the Post Office a crown corporation.

We are not wedded to the fact that the Post Office Department should, or might, become a crown corporation. We only say that if it is necessary to make the Post Office a crown corporation in order to give us the provisions which the I.R.D.I. Act gives, then, by all means, we support the principle of the Post Office becoming a crown corporation....

Mr. KNOWLES: You realize that there would be problems in terms of bookkeeping and accounting if the Post Office became a crown corporation? The whole capital structure might have to be looked at, and the profit-and-loss picture might be a big question mark.

Mr. KAY: Yes, we are aware of that...

Mr. KNOWLES: All right Mr. Kay. I do not want to suggest that I am causing you to modify your position in your brief at all, but I think you have made this point clear, that you are not wedded to the crown corporation idea, as such, but rather you put it forward as a means of coming under the I.R.D.I. Act rather than under Bill C-170.

Mr. KAY: Yes.

Mr. KNOWLES: I am not going to go any further in trying to get you to modify your position, but you will appreciate that on this Committee we may have to do some compromising, and you will realize that we will be trying to approach your position. If, for example, we cannot get you under the I.R.D.I. Act, we will, nevertheless, try to get changes in Bill C-170 which would make it a little more of a genuine collective bargaining act. That would be better, but you still might not be willing to give it a try.

Mr. KAY: Not really; because we would want to be separated from the remainder of the civil service.

Mr. KNOWLES: Then, if I may say so - and I was not trying to lead you in this direction - you have in effect confirmed my two previous statements, that the basic things you want are genuine collective bargaining, of a kind you get under the I.R.D.I. Act, and to be treated as a different animal in collective bargaining agreements than classified civil servants. I am stating your basic desires?

Mr. KAY: That is correct.

It was not always a case of getting the unions to modify their positions. In one case a union was not asking for enough. The example we shall cite also indicates the independence which the Committee had. The conversation took place between Mr. Knowles and Mr. Eady, Executive Assistant to the President, Canadian Union of Public Employees.[72]

Mr. KNOWLES: Mr. Eady, I hope you will find a fair amount of support in this Committee for your contention that clause 36 of the Bill requires this choice between arbitration and conciliation to be made too soon. I wonder, however, and I confess I ask this question in light of briefs from some of your labour colleagues who have appeared before us, whether you have not offered to make the choice still a little too early. You said a moment ago rather dramatically that if you were an employer and knew that the employee had already tied his hands behind his back by accepting arbitration, that you as an employer would take advantage of that. I wonder if that is not the situation if employees have to make this decision immediately after certification. I think the brief of the Canadian Labour Congress went into some detail as to what goes on in negotiations and how each side has the right

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72. ibid., pp. 477-478

> to plan its own strategy. I think the contention in that brief was that this choice should not have to be made until the dispute is taking place. The I.R.D.I. Act specifies certain times within which these decisions should be made. I put this to you: have you not, in the spirit of compromise, offered to accept the requirement to make this decision a little too soon for the good of the employees [?]
>
> Mr. EADY: We discussed this in our brief and I think that we underestimated the Committee. We thought the attitude so firm on this question that there would be very little likelihood of moving this clause in any major direction...

As acknowledged spokesmen for labour in Parliament, Mr. Lewis and Mr. Knowles might have been expected to act solely on behalf of the unions. However, we have shown their role to be more that of "moderator" and "interpreter" in these areas. On the issue just referred to above, Mr. Lewis later changed his mind and opted for the reverse of what the unions had wanted.[73] On the other hand, the role of straight union spokesmen was operative at other times. In one case Mr. Knowles attempted to get the Government Printing Bureau shifted to Schedule A, Part II of C-170, so that the printers would bargain with the Bureau as a separate employer rather than with the Treasury Board.[74] The effort failed. It may have been only a function of Mr. Knowles' membership in the International Typographical Union.[75]

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73. See above, pp.55-56
74. Proceedings, pp.1062-1073, 1163.
75. Mentioned in Ibid., p.478

We shall now deal briefly with the problems of time and physical facilities, problems which have always plagued past committees. The Committee experienced the normal difficulty in getting a room in which to meet, although this appears to have happened only early in the proceedings. At the end of the second session the following discussion took place:[76]

> Mr. BELL: When will we meet again Mr. Chairman [?]
>
> The JOINT CHAIRMAN (Mr. Richard): You might appreciate, Mr. Bell, that at the present time we cannot hope to meet immediately because next week, for one thing, there are no rooms available for any committee.
>
> An Hon. MEMBER: Why not?
>
> The JOINT CHAIRMAN (Mr. Richard): Well, those are the instructions I have received. For one thing, the rooms are taken up by the Caribbean Ministers Meeting, and the two or three committees which are meeting, I understand are on estimates...
>
> Mr. BELL: Well, I appreciate the importance, Mr. Chairman, of the Caribbean Ministers Conference, but these are the Parliament Buildings in which the business of the Government of Canada is conducted and I would suggest that the Caribbean Ministers go to the Chateau Laurier or some other place...

There were also some problems with translation facilities. Mr. Benson's speech was not available to the Committee in French.[77] On another occasion the Committee did not have translation from English to

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76. ibid., pp.256-257.
77. ibid., pp.211-212.

French.[78] One rather serious omission of translation was late in the proceedings when an important amendment, having to do with the "community of interest" problem, was not available in French even though the member most concerned was French speaking.[79]

In concluding this chapter we should briefly mention the role of the senators on the Committee. Judging by the written transcript, the senators, on the whole, did not play an active role in the Committee proceedings. However, there were several Senators who did attend the proceedings[80] fairly regularly and at times they participated constructively in the discussions.

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78. ibid., p.227
79. See Chapter 4, pp. 74-79 for further details of this issue. The omission of translation was mentioned on ibid., p.1241.
80. See Appendix I.

Chapter 4: The Public Service Committee: Some Results

Richard Bell calculated that the Committee made 49 amendments "of substance" to Bill C-170 alone.[1] Whether or not this is literally true there were a great many areas in which the Committee was able to make substantial changes. In this chapter we shall look at a few of these areas, drawing examples from all three bills.

The first point we will consider concerns the definition of the original bargaining units. As C-170 was first drafted, the power to specify and define the occupational groups which would provide the basis for the bargaining units lay with the Governor in Council. It also had the power to set the date upon which employee organizations would be permitted to apply for certification as bargaining agents in each occupational category and it had the power to set the dates of the original bargaining schedule.

The unions were all opposed to this, as was Mr. Lewis. He suggested to Mr. Heeney that the original authority should lie with the Public Service Staff Relations Board which could receive proposals from the government as to what the bargaining units should be, hear rebuttals,

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1. See above, p.14

if any, from the potential bargaining agents, and then make a binding decision. Mr. Lewis pointed out that in private industry it was usually the union which made the original proposal on the bargaining unit to which management would then respond and then a decision would be made by a board. He also said that although the original definition of the bargaining units could later be contested after two or three years, it would be unlikely in practice that this would ever happen. Mr. Heeney responded that the Act had been written as it was to provide for flexibility at the outset of the bargaining process and that if Mr. Lewis's suggestion were to be accepted the resulting arguments over the definition of the bargaining units might delay the introduction of collective bargaining for years.[2]

The government and the senior officials at the Treasury Board took note of Mr. Lewis's criticism. When the matter came up again, during clause by clause study of the bill, the particular clause which covered this matter was introduced in a substantially changed form. Dr. Davidson pointed out that the Bureau of Classification Revision had now completed its work[3] which it had not done when

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2. Proceedings, pp. 630-639
3. The Bureau of Classification Revision was established under the Civil Service Commission to re-classify most position in the public service as a necessary prerequisite to the introduction of collective bargaining and departmental de-centralization. (See Proceedings, pp.691-700 for an explanation of its work).

the bill was originally drafted, and this fact "together with a careful examination of the criticisms submitted by different employee organizations, and the observations made by members of the Committee itself, has led us to conclude that certain changes.. are possible and desirable".[4]

As it now stood the Public Service Commission would be given the responsibility for defining the occupational groups and the Public Service Staff Relations Board would define any additional categories if they were needed. The fixing of the dates for application for certification would be done by the Staff Relations Board and the dates concerning the schedule of bargaining would be put into the Act itself.[5] Later, Mr. Lewis commented, "As I have been so critical many times, may I say that this redraft strikes me as a very intelligent one."[6]

When the legislation was first introduced it was often criticised for being too detailed, or trying "to cross every 't' and dot every 'i'". Some, like Mr. Lewis, who made this criticism, were successful in "loosening up" the Bill (C-170). The following cases are some examples of this.

In the original C-170 Clause 52 stated that when the parties entered arbitration their "negotiating relationship" terminated. The officials argued that this clause was necessary to stop the

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4. ibid., p.945
5. ibid., pp.944-946.
6. ibid., pp.1109

"parties from seeking arbitration lightly."[7] That is, once they had entered arbitration they could not negotiate anymore since their negotiating relationship had legally terminated. Mr. Lewis argued that the clause was unnecessary and that it might in fact prevent the re-opening of negotiations when it was desirable for both parties to do so. This argument was eventually accepted and the clause was deleted.[8]

In Clause 70 of the original C-170 there was a provision which ordered that the arbitration tribunal could not give any reasons for its award. Mr. Lewis argued that although this might often be desirable, it seemed to be an unnecessary restraint on the arbitrator. He was again successful in bringing the Committee to his point of view.[9]

One of the most important and controversial issues covered by the Committee was the issue of "community of interest" in the bargaining units. The original plan of the legislation was that the occupational groups would be identified on a national basis. One employee organization or bargaining unit would represent one occupational group for the whole of Canada.

During the proceedings Mr. Emard, a Liberal from Vaudreuil-Soulanges, Quebec, attacked this principle. He argued that -[10]

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7. ibid., p.979
8. ibid., pp.977-980, 1122.
9. ibid., pp.1014-1017.
10. ibid., p.976 (Translation)

> ...[we can speak] of natural units but I could also speak of community of interest...We have to consider the size of the country [and] the difference in language and culture of the different concerns of people as individuals, and also, I think, we must have consideration for those who do not accept present representation. In addition to the fact that Confederation was built through a system of individual units...I believe that Bill C-170 should not impose on public servants in each group only one association, but rather allow them a certain choice...which would be exercised by allowing all organizations which have succeeded in having over 10 per cent of employees in one group to participate in negotiations...

In effect he was arguing that the Public Service Staff Relations Board in certifying the bargaining agents be allowed to use "community of interest" as one of its criteria in judging the legitimacy of claims. If more than one bargaining agent existed in an occupational group, a council of employee organizations would bargain for the group.

Privately, some of the officials were very disturbed over this idea. One of them felt this would threaten the whole principle of the legislation and another described it as "hanging over the Committee to the very end." The source of the idea was attributed to lobbying by the CNTU in the Quebec caucus of the Liberal Party and was referred to by some officials as the "CNTU amendment". As a counter-weight to these thoughts we should mention that another official was not very disturbed at all by this amendment.[11]

Dr. Davidson, who was the witness before the Committee when

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11. Personal conversation.

the amendment was proposed, responded as diplomatically as possible. He pointed out that the matter "was of the highest political importance, and a matter on which a person in my position should not presume to express an opinion...without first having been briefed [by the government]".[12] However, he went on to say that he felt that as the legislation was written he did not see any restraint on the Board from recognizing community of interest if it wanted to. He then stated that the overall object of the legislation before the committee was to create a bargaining structure comparable to that in the private sector and that he would "venture to suggest that what Mr. Emard is suggesting is something which will carry us in advance of the point which has been reached in collective bargaining legislation under the Industrial Relations and Disputes Act."[13]

The same evening Mr. Emard presented a motion, seconded by Mr. Lachance, which would amend C-170 so as to give effect to his idea.[14] At the time, Mr. Bell registered strong protest to the idea.

> Mr. BELL: Mr. Chairman, lest silence create any illusion that there is agreement in this Committee with this proposal, I would like to say at once that I disagree with it completely and I think that the new effect of this would be to tear the Public Service of Canada into fragments. There would be total disaster in the Public Service...

12. Proceedings, p.970
13. ibid.
14. ibid., p.985.

One is also tempted to believe that the "government man", Mr. Walker, shared similar sentiments to Mr. Bell. Earlier in the day, when Dr. Davidson had responded to Mr. Emard's proposal, the following brief exchange took place.[15]

Mr. LEWIS: (to Dr.Davidson) You prefer terra firma.

Mr. WALKER: The more firma the less terra.

Two days later, on November 24, Mr. Emard spoke on a question of personal privilege in the Committee in response to a newspaper article which had criticised his proposal.[16]

> Mr. EMARD: Mr. Chairman, I was extremely surprised to see an English language newspaper attribute motives to me that I never had, relative to the amendment that I presented at Tuesday's sitting of the Public Service Committee and I wonder whether this opinion as expressed in the Press, is shared by members of this Committee. Therefore, to avoid any misunderstanding, I should like to make a clarification.
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> I want to say that I am neither a nationalist nor a separatist. At the present time, I am antiseparatist, at least so far I have been...

The next day Mr. Lachance withdrew the amendment which he and Mr. Emard had earlier introduced and put forth another which was designed to accomplish the same thing.[17] This amendment died somewhere in the informal proceedings as it was never discussed again in the official record.

On the last day of the proceedings, January 24, 1967, Dr. Davidson explained how the Public Service Staff Relations Board

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15. ibid., p.970 (emphasis in original)
16. ibid., pp.1006-1007 (translation)
17. ibid., pp.1074-1075

would be guided by the Act in certifying bargaining units. He said that if a "bargaining unit based upon an occupational group concept would not permit satisfactory representation of the employees included therein" then other criteria such as community of interest could be used.[18] This would mean that the Board could recognise community of interest if it could be shown that satisfactory representation could not be achieved in the normal way, but the Board would not be obliged to recognise community of interest. Under Mr. Emard's original proposal, the Board would have been forced to recognise it if a reasonable case could be made for its existence.

Mr. Emard responded to this as follows:[19]

> Mr. EMARD: Mr. Chairman, at last evening's meeting we were told that Clause 26, Subsection 5, could replace the amendment which my colleague, Mr. Lachance, and I had suggested. I am trying to make some kind of link between the amendment as we proposed it and the clause in question, and it is very difficult for me. I do not want to complain without reason, but for a month now, we have been waiting for this amendment, and this morning, we are faced with an amendment drawn up exclusively in English. It is very difficult for me, not being a lawyer, to try to understand this legal terminology, having it only in English...I really do not know what to do.

Mr. Lachance also expressed a similar objection but did point out that in the clause as amended, objections to the Public Service Staff Relations Board's rulings could be made

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18. ibid., p.1240
19. ibid., p.1214.

at the initial certification stage. Thus certain structures could not become entrenched before they were challenged. This had not existed in the original C-170.[20] The Chairman advised Mr. Emard that he could object during third reading of the Bill in the House.[21]

Mr. Emard mildly protested that despite objections the Board could do what it wanted to and that he doubted whether he could muster much support in the House if he brought up the matter there.[22]

Here the matter ended and the clause was passed. It would seem that what was finally adopted was not in Mr. Emard's favour. Indeed an official pointed out that he felt the final provision was pretty close to the way it was originally meant to be. He also said that it took considerable informal negotiation between officials, French and English speaking Liberals, before a compromise could be reached.[23]

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20. ibid., p.1241
21. ibid., p.1241
22. ibid., p.1242. He might have received more support than he thought in the House. Later in the year the same principle was invoked by the CNTU to the Canadian Labour Relations Board over the representation of C.B.C. French network employees. The principle involved was supported by Gerard Pelletier, then parliamentary secretary to the Minister of External Affairs, who advocated a change in the I.R.D.I. Act to incorporate the principle and change the procedures and composition of the Canadian Labour Relations Board.
Debates, (unrevised), June 23, 1967, p.1904.
23. Personal conversation.

We now turn to a consideration of the appeal provisions in the legislation. Great interest was taken in the appeal procedure by the opposition members of the Committee.

Bill C-182 would originally have amended the Financial Administration Act so as to give the Governor in Council the right to dismiss or suspend any public servant in the interests of the safety or security of Canada. This was almost the equivalent of a similar provision in the old Civil Service Act. Mr. Lewis objected strongly to this and pointed to the controversial Spencer case where an employee had been dismissed without a hearing of any kind. Mr. Lewis went on to suggest that the Act be amended so that the employee in question could be heard "in his defence before a special commissioner appointed by the Governor in Council, and the commissioner may hold such hearings in camera and receive such evidence in such a manner as he in his absolute discretion decides."[24] This provoked a heated exchange with Mr. Tardif but Mr. Lewis was supported by Senator Fergusson.

Dr. Davidson pointed out that the amendment before the Committee already constituted a significant restriction when compared to the old Civil Service Act which allowed the Governor in Council to dismiss an employee for any reason whatever.[25]

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24. Proceedings, pp.1176-1177
25. For the whole discussion see pp.1176-1182.

However, eventually an amendment was adopted which incorporated Mr. Lewis' suggestion.[26]

In the consideration of Bill C-181 a controversy arose over the matter of appeals. Mr. Lewis suggested that there be a separate review body to which appeals concerning the decisions of the Public Service Commission on promotion and appointments could be made. This appeal board, if it disagreed with a decision made by the Commission, could refer the matter back to the Commission for a second look, and the Commission would make the final binding decision.[27]

Mr. Cloutier, speaking for the Civil Service Commission, said that the appeal division was at present separate from the operations of the Commission and that the Commission, after all, was impartial as between employee and employer in the public service.

Mr. Lewis argued that although the appeal division was separate in fact it was not so in law and that although the Commission was theoretically independent, many employees did not consider it so. In fact it was the public service associations which had pressed for a separate appeal body. He then moderated his position slightly by saying that he did not care if the appeal board was established from the ranks of the

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26. ibid., pp.1228-1229
27. Entire discussion is contained on ibid., pp.778-788.

Commission so long as the law recognized it as a separate body.

It began to appear, as Mr. Cloutier pointed out, that Mr. Lewis was really asking for a statutory base to the current practise. Mr. Bell then stated that he agreed with Mr. Lewis and that the legal appearance of total independence of the appeal body was desirable to give the appellant confidence. He made reference to the fact that he had recently introduced a private members' bill the effect of which would be to set up a private appeals board. He went on to say that he felt that the matter was perhaps the most controversial in the entire bill and he introduced as "a matter of record" the amendment which he had proposed on his private member's bill.

The committee succeeded in having the Act changed so that in the case of an appeal, the appeal would be made to a board established by the Commission and its decision would be binding on the Commission. However, in a case where there had been no closed competition a public servant would not be allowed to appeal unless "in the opinion of the Commission" his "opportunity for advancement...[had] been prejudicially affected."[28] Mr. Lewis attempted to have the words "in the opinion of the Commission" deleted because, he argued, whether or not a person had been "prejudicially affected" might itself be a point of

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28. See Bill C-181, p.10, Clause 21.

contention on which the right to appeal should exist.[29] His motion lost. However, it would appear that the main point had been won.

This concludes our treatment of some of the substantive changes made in the legislation. We have by no means covered all the areas where change was made but we feel that we have covered enough so that the reader will agree that the Committee was able to have a substantial impact on the legislation and has been able to see how this was done.

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29. This paragraph based on discussion on Proceedings, pp.856-860.

Chapter 5: Conclusions.

In this concluding chapter we shall generalize from the experience of the Public Service Committee to the committee system in Parliament. First we must look at the major reasons for the success of the Public Service Committee which we believe lie in the roles of the Chairman, the officials and some of the members of the Committee.

Mr. Richard conducted the proceedings in a non-partisan, relaxed, yet stimulating fashion. This atmosphere encouraged the members to fully express themselves and study and improve the legislation. By acting with a light hand, the Chairman allowed the initiative to rest with those who were best suited to have it.

The Chairman seemed to go out of his way not to frustrate the members and to permit full freedom of discussion. In Chapter 3 we noted his tolerance of a wide latitude of discussion.[1] This must have taken some degree of patience on his part. There is little question that the issue of whether Bill C-170 should have been substituted by amendments to the I.R.D.I. Act was beyond the terms of reference of

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1. See above, pp.38-39.

the Committee and it was quite unlikely that the government, at that point, would have agreed to scrap their legislation and begin anew. However, some of the Committee members were anxious to talk about this point and it seems that by letting them go on about it for a while, the Chairman was able to "get it out of their system". Had Mr. Richard not allowed this wide range of discussion the result may have been frustration among the opposition members, disharmony between them and the Chairman and a longer debate in committee of the whole.

In theory committee chairmen are elected by their committees, however, in practise they are appointed by the government. Often members of the government party are given chairmanships to test their ability as a precondition to higher appointments, such as parliamentary secretary, or as compensation for not receiving a higher post.[2] Thus there is only a random chance of getting a good chairman, qua chairman. We have seen the positive effects of a good chairman and thus it would seem that the system of appointment should be revised. Perhaps the British system, in which committee chairmen are appointed by the Speaker,[3] could be considered.

At the beginning of the Committee's work there were some who wondered whether Mr. Richard should be better versed in public service matters.[4] They later changed their minds. We might ask, however,

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2. see above, p.6
3. G.M. Carter, The Government of the United Kingdom, (New York, 1962), p.92
4. see above, pp.41-42.

if the chairman should be expert in the subject matter of the legislation. We argue that he should not be. Expertise may often be combined with strong, fixed opinions and, as a consequence, less tolerance of diversity of opinion. It would seem, therefore, that the person who has control over procedure should not be an expert. On the other hand, we do not suggest that the chairman have no command of the subject matter under consideration. It is necessary that he give some guidance to the committee and so he must have some idea as to what is important and what is not. Based on the experience of the Public Service Committee, the primary concerns of the chairman should be the full and free expression of opinion by the members and interest groups, the reconciliation of diverse points of view (if those who disagree cannot do it themselves) and the creation of a better piece of legislation.

What we have written above suggests that in the new committee system in the House of Commons it will be desirable to prevent the emergence of specialist chairmen. This problem, if it becomes one, could be solved by a system of rotating chairmen.

Some credit for the success of the Committee should go to Mr. Walker. As we pointed out in Chapter 3,[5] he did not try to force the government position and he used a quiet, low key manner of persuasion when dealing with the other members of the Committee.

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5. See above, pp.47-48.

Of course, given the independent role which the officials were allowed to play, there was not really a strong government position for Mr. Walker to enforce. Also, given Mr. Richard's non-partisan manner, he would have had trouble enforcing a strong position if there had been one.

A major factor in the outcome of the Committee was the fact that the government permitted the officials to carry the burden of defending, explaining and adjusting the legislation. When the officials take the lead the proceedings can be more productive for two reasons. First, the officials presumably have no partisan sentiments in the "political" sense.[6] That is, while they may strongly identify with the government and they would certainly be committed to legislation which they had a major hand in preparing, they do not a priori think that anything an opposition member says must be disagreed with. Thus they find it easier to carry on a constructive dialogue with members of the opposition. The same applies in reverse. An opposition member can more easily feel that an official is right than he can a minister with whom he spends most of his Parliamentary time in disagreement. Second, when there is a direct dialogue between committee members and officials who can make decisions, things can be done more easily and quickly. Members have a higher feeling of efficacy because they are interacting directly with the people who

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6. On whether or not this may be the case, see J. Porter, The Vertical Mosaic, (Toronto, 1965), pp.451-456.

are making decisions and time is not wasted while the officials and members of the government confer. It would seem to be virtually inconceivable that some of the changes made as a result of long discussions between Dr. Davidson and Mr. Lewis could have been made had any other conditions prevailed.

The officials were men of competence and they had spent a great deal of time preparing and defending the legislation; they were well versed in its provisions and quite capable of defending them. Nevertheless, the Committee made many substantial changes in the bills. This happened because the Committee itself had expertise which was able to counter that of the officials. Despite the fact that the Committee had a good chairman, a weak government "presence" and could deal with quasi-independent officials, it would have been able to do little unless the members themselves were able to take advantage of the situation.

Several members contributed a great deal to the Committee's output. Those most often singled out for praise by officials were Mr. Lewis, Mr. Bell, Mr. Knowles and Mr. McCleave, the first two in particular.[7] Our own observations tend to confirm this but we feel that, based on the written transcript of the proceedings, Mr. Lewis stood out above all the rest. The reader will no doubt have noted that the name of Mr. Lewis has been prominent in the examples we have drawn from the proceedings.[8]

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7. Personal conversation.
8. See above, pp.55-61, 71-74, 80-83.

Needless to say, these examples were not chosen because Mr. Lewis was in them. He played a dominant role in the proceedings and was most often involved in the important changes made in the legislation. He was able to do this because of his experience and knowledge in matters of collective bargaining.

It would seem to us that had Mr. Lewis not been a member of the Committee the officials would have been able to overwhelm the members with their arguments. However, perhaps if Mr. Lewis had not been there, another member would have emerged to play a similar role.

The performance of Mr. Lewis underlines the fact that if committees are to be effective, it is not just a matter of their being given independence, but also, and equally important, of them being able to take advantage of an independent position. Whether this happens will be largely a function of the expertise of the members of the committees. Without this they are no match for the officials. If M.P.s. are not willing to specialize it is difficult to imagine how they can be effective at the level of actually legislating when legislation is becoming increasingly complex to meet the demands of a complex society.

A necessary corollary to this argument is that research facilities and funds available to M.P.s. should be substantially increased. Mr. Lewis became expert in his field before he became an M.P. as did most other members who have specialized knowledge.

The research facilities of the committees themselves are also inadequate and need to be improved, but this is secondary to the main point. An improvement in the research facilities of the committees without a corresponding improvement in the facilities of M.P.s. is not recommended because the specializing process must be an ongoing thing and not dependent on what a committee happens to be doing at a certain time. If a member is to learn he should have independent control over his means of learning.[9]

We shall now move on to a more general treatment of parliamentary committees by considering this case study in relation to the theory of modern parliamentary institutions as presented by Bernard Crick.[10]

Professor Crick argues that the nature of parliamentary government has changed from that of "cabinet" or "party" government to a structure which is governed "absolutely" by the Prime Minister who is restrained only by general elections. The conventions of the constitution are now those rules which govern the continuous election campaign, most of which is carried on in parliament. Parliament is no longer the body which creates and overthrows governments but rather it is the forum through which parties gain access to the ear of the electorate through the media.[11]

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9. In this paper little attention was paid to the problem of committee research because little research appeared to be required except on the question of political activities of civil servants. (Proceedings, p.1215.)
10. B. Crick, The Reform of Parliament, (London, 1968).
11. ibid., pp.25-26

The traditional model of responsible government has changed, he argues. In the traditional theory it was the people who created and influenced parliament which in turn created and influenced the government. In the new model parliament influences the people who create and influence the government.[12] During a general election the focus of attention is on which party leader will be elected to office and once the election is over, it is the Prime Minister and his government who are held responsible for policy, not the parliament. The government does not seek the "will of the people" from parliament but rather from opinion polls and the media. In order to substantially influence the government, parliament must first influence the people.

Professor Crick goes on to argue that it follows from the above that parliament should spend less time on the details of legislation and more on probing and publicising the conduct of the administration.[13] It is the government in concert with an ever-growing bureaucracy which runs the country and parliament cannot hope to play a major role in this process but it can and should discover how the country is being run. However, this is not being done. In order that it can be done there must be more "parliamentary control" which he defines as follows: "Control means _influence_, not direct power; _advice_, not command; _criticism_, not obstruction; _scrutiny_, not initiation; and _publicity_, not secrecy."[14]

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12. _ibid._, p.28
13. _ibid._, p.27
14. _ibid._, p.80 (emphasis in original).

The present structure does not allow adequate parliamentary control because of secrecy and the rise of the specialist bureaucracy.[15]

> The problem...is one of lack of development, or in some cases of the decline of devices for informing and communicating authoritatively...
> So much skilled staff work goes into the drafting of modern legislation and the formulation of policy that it is hard to see how criticism from the Floor can hope to be informed and even modestly effective unless M.P.s. have some, even remotely, equivalent source of knowledge, or way of getting it.

He goes on to argue that a reformed, specialist committee system will also be crucial to the creation of genuine parliamentary control.[16]

> Any complex matter put before any large association of men is commonly dealt with in four ways: by appointing a small committee; by giving that committee as precise a definition of its functions as possible; by giving the committee as much time as possible; and by including among the committee technical experts or giving it access to experts.

The essence of prime ministerial government would not be weakened by a system of specialist, standing committees and research oriented, specialist M.P.s.[17]

> None of the fundamental controls by which the leader of an elected majority maintains his Party's power are in question... But what has happened is that the complexity of modern legislation and administration has made the civil service, with its sources of specialist information, and its elaborate inter-departmental committee systems, far too much the exclusive source of information both for policy making and the evaluation of policy. The Opposition Members, or even the Government backbenchers, have retained formal rights and occasions of criticism, but they will continue to lack the ability to make really informed criticism unless they can specialize or employ specialists of their own. If the cry is raised that there would be danger of creating a 'counter bureaucracy', one might ask just what is thought to be dangerous in that. On the contrary, it is one of the pressing needs of our time that the M.P. should not have to depend entirely upon the Government bureaucracy for the knowledge on which he will wish to evaluate their problems.

15. ibid., pp.81 & 83.
16. ibid., p.83
17. ibid., p.181

Professor Crick's thesis is addressed to British institutions but we feel that it is, for the most part, applicable to Canada since it is meant to solve problems similar to those which the Canadian Parliament faces and there are, in general, many similarities between Canadian and British political and social structures.

The main thrust of his argument, as we have seen, is to increase parliamentary scrutiny through the use of specialized committees and specialized, informed M.P.s. However, our case study has illustrated that through these same structures parliament can also improve its capacity to legislate, at the level of detailed consideration of legislation. Parliament was able to give advice to the government through the medium of this Committee. The general principle of the legislation was not challenged and hence ministerial control was left intact.

It may be argued that the committee structure which we are advocating is incompatible with the concept of ministerial responsibility.[18] That is, since ministers are responsible for the actions of their officials, the officials cannot be permitted to play any

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18. This argument used to be virtually taken for granted. In 1955 when the Special Committee on Estimates was to consider estimates of a department, the minister responsible for the department had himself made a member of the committee. "His presence...made each challenge of his estimates from any quarter take on the characteristics of a vote of want of confidence in the Government". All questions directed to civil servants had to go through the Minister. Ministers varied widely in the degree of freedom they permitted their officials. (See, N. Ward, The Public Purse, p.265-267).

kind of independent role vis a vis committees. The structure we suggest does not question the concept of ministerial responsibility but it does question whether this responsibility should be carried to the extreme of prohibiting constructive dialogue between officials and M.P.s. If the minister cannot trust the officials to articulate responsible positions consistent with the goals of the legislation then one is tempted to wonder why the minister employs those officials in the first place. Also, if officials are denied the opportunity to discuss openly with M.P.s. legislation which they are probably more familiar with than the minister one may question whether this is an evasion of another responsibility of the minister; that of producing the best possible legislation.[19]

Another way of looking at Professor Crick's concept of parliamentary control is to think of it in terms of learning capacity. It could be said that Professor Crick, in his critique of modern parliamentary government, really seeks to improve the learning capacity of the government, parliament and the people. By adopting this perspective, we can more easily evaluate the costs and gains to the structures with which we are dealing, which will result from change.[20]

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19. It might also be argued that the officials, when testifying before parliamentary committees might be beguiled by the crafty politicians. The experience of the Public Service Committee indicates that the officials are quite capable of holding their own. Indeed an official told us that other top officials are being recruited partly on the basis of their ability to deal with committees.

20. This concept is a loose application of Karl Deutsch's theory of political communication and control. (The Nerves of Government, New York, 1966). A major outline and application of the theory of "autonomous, self-steering political systems" is beyond the scope of this paper. However, we feel that his notion of learning capacity (Chapter 10) can be adapted for our purposes.

We shall assume that the government always wants to learn. One way it can do this is by receiving advice and criticism. However, the government will not accept advice just because it is offered. It will accept it only when two conditions apply. First, the advice must be good advice. Second, and more important, the government must have the capacity to recognize good advice when it is offered; in other words, it must have the capacity to learn.

How can the government have the capacity to learn? This very general question can only be partially answered here. We will suggest that the type of committee structure suggested by the experience of the Public Service Committee will improve the capacity of the government to accept good advice and that this can be done at no major cost to the government.

The government will learn best from those whom they are inclined to listen to and the government will be more inclined to listen to someone it trusts. It is virtually self evident to say that the government trusts the bureaucracy more than the opposition. It depends on the bureaucracy for much of its information, policy initiative and support. The bureaucracy is a major arm of the government; the opposition is a structure in competition with the government which seeks to replace it. Also, the government acknowledges certain officials as experts in their fields. Thus, if advice is tendered to the government by an official, who has been convinced the advice is correct, the likelihood of the government accepting this is higher than had the

advice been given by, for instance, an opposition member, or even a backbencher in the government party.

Assuming that M.P.s. do have good advice for the government on specific matters, then it would seem that the chances of this advice being accepted are higher if it goes through the bureaucracy. However, this raises the question of why an official should trust opposition members, or ordinary M.P.s. in the government party. There are two main reasons. First, in terms of the level or stage of the legislative process which we are dealing with, (i.e. the detailed criticism of legislation), the bureaucracy wants good advice even more than the government. At this level the determination of how well legislation will work is made. The application of the legislation will be the responsibility of the bureaucracy, and they want it to work well because it will create fewer problems for them in the future. The government will take the credit for the embodiment of the general principle of the legislation and only if the administration of the statute breaks down to a significant degree will it again become a serious problem, significant enough to threaten the government with electoral reprisal. Thus, the bureaucracy has a strong vested interest in good advice.

Second, although there may be tension between officials and opposition members, officials do not feel threatened by the opposition to anywhere near the same extent that the government does. Thus the atmosphere in a meeting between officials and opposition members will

tend to be more open and congenial.[21] The only suitable mechanism for this kind of interaction is the parliamentary committee.

This improved learning process will be of real benefit to the government. Better legislation means fewer future demands will be made of the government by outside bodies and the bureaucracy itself. The morale of the bureaucracy will be increased because they have a better piece of legislation to work with and they have been permitted to play a quasi-independent role. This will be a gain for both the government and the bureaucracy.[22]

There are, of course, some costs. The government, when it allows its officials independence, admits that officials play a significant role in policy formation. The government also concedes that the opposition have some good ideas. No government, we suppose, wants to admit these things. However, these costs are small. There has been no direct challenge to the main principle of the legislation and nothing has altered the fact that the government has the ultimate control. Patterns of influence may have changed, but patterns of power have not.

The process of learning through committees is posited on the notion that there are M.P.s. willing and able to offer good advice and criticism in committees. While this was certainly the case in the Public Service Committee it is not always the case. While it would appear that both the government and bureaucracy gain through the

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21. see above, p.87-88.
22. The government will also gain if less time is spent at the committee of whole stage. See above pp.14-15.

use of a more open committee system it is not clear that the M.P. will gain overall.

The gains to the M.P. would appear to be as follows. He has the satisfaction of knowing that he has helped to produce a better piece of legislation. His feeling of personal efficacy has increased. He has no doubt learned something more as a result of his efforts and this learning may help him in the future, such as helping him to express more informed criticism in the House. As a result of his interaction with the various people involved in the committee(s) he has probably increased his sources of information. If he succeeded in changing the legislation in favour of an interest group he may derive positive benefits from that group such as electoral support. Also, his reputation in parliament will probably go up because of his efforts and this may increase his chances of promotion in the future, that is, when his party comes to power he has a better chance of getting a ministerial post, or, if he is a government party M.P., he may be considered for the post of parliamentary secretary etc. Lastly, if his reputation for being expert in a certain field is high, people may come to him for advice and this will increase his influence and prestige.

While the above gains are considerable, the M.P. also faces some costs and what could be called "non-gains". First, we shall consider the costs. The M.P. will have to expend considerable time and energy

to learn his field and study the relevant legislation with which he must deal. This expenditure will be high particularly because of the lack of research and other facilities. This costs him time and resources which could be spent on his constituents. This in turn could result in the "ultimate cost", electoral defeat.

The above cost might be eliminated if the M.P.s. prestige outside the House were to rise significantly. However, from the viewpoint of his constituents his work is largely invisible mainly because it will be ignored by the media. Thus the "non-gain" to the M.P. is that his public image vis-a-vis other M.P.s. will be substantially unchanged.[23]

How each M.P. weighs the above gains and costs will vary. However, we suspect that on the whole most M.P.s. will not feel that it will be of positive benefit to them to participate actively as informed specialists in a strong committee system unless further changes were to be made in that system. The first and most obvious change would have to be the provision of adequate research facilities and staff to each M.P., but this would not solve the problem because the M.P. would still lack motivation to fully use these resources unless he felt that somehow he would get public credit for his efforts.

It is beyond the scope of this paper to delve deeply into this problem of motivation. However, we can suggest a few areas of possible improvement. The answer lies along the lines of increasing the public prestige and influence of the M.P. If the specialized committees were slightly decreased in size, guaranteed a continuing life through

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23. One study has indicated that Canadian M.P.s. are oriented toward specialized, policy making roles. (N.C. Thomas and A. Kornberg, "The Purposive Roles of Canadian and American Legislators: Some Comparisons", Political Science, Vol. 17, No.2, Sept. 1965, pp.36-50). Yet despite their orientation, they do not specialize, which would tend to confirm our hypothesis that they are held back by the costs of specialization.

the sessions of each parliament, given an adequate grant to cover research needs and given a permanent research staff, the prestige of the committees would rise somewhat as would the prestige of the M.P.s. who serve on them. A decrease in size would make it more difficult for members to get on the committees and would automatically focus more attention on those who were members. We would further suggest that the committees be given a little more independence. By this we mean the power to initiate some form of discussions (investigation is too strong a word) with various sections of the bureaucracy and others (interest groups etc.) for the purpose of gathering information not necessarily relevant to legislation before the committee. The committees could also have the power to write reports of their findings and have them published, and the power to establish subcommittees to perform similar tasks. Activities such as these would draw more attention from the media to the active M.P.s. on the committees, and thus give them a higher payoff for their efforts.[24]

To summarize this last chapter: we have seen from the case study of the Public Service Committee that a parliamentary committee can be quite effective in reshaping legislation. The specific reasons

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24. These changes would also greatly improve Parliament's ability to perform its scrutiny function which eventually results in a better informed electorate. See Appendix II.

for the Committee's success were the independence and fairness of the Chairman, the access which the Committee had to officials who were able to make decisions which in turn would influence the government, and the fact that several members of the committee were willing and able to work hard. Using Bernard Crick's model we saw that if modern parliamentary democracy is to function properly, Committees such as the Public Service Committee must become more the rule than the exception. When this happens, both the government and the bureaucracy can increase their learning capacity and sustain no major costs. However, M.P.s. whose vested interest in learning is less than either the government or bureaucracy, have less motivation to participate in the system. The problem then is to increase gains to M.P.s. without imposing unacceptable costs on either the government or the bureaucracy. This can be done by increasing the research resources of M.P.s. and by increasing the prestige of committee work.

APPENDIX 1

In Tables I and II we show the attendance records for the House of Commons and the Senate. A name written into one of the horizontal columns indicates a substitution. For example, Mr. Orange started out as a member of the committee but on October 25 was replaced by Mr. Rochon. Mr. Orange then replaced Mr. Munro on November 10 and was himself replaced by Mr. Langlois on November 29. Then he replaced Mr. Isabelle on December 16. One wonders, incidentally, why this high number of substitutions involving one member had to be made.

Only 11 out of 24 M.P.s. attended 20 or more meetings (50%). They were Richard (41), Walker (39), Bell (37), Knowles (37), Hymmen (35), McCleave (29), Lewis (26), Chatterton (25), Emard (25), Lachance (23), and Tardif (20). We noted in the paper that fewer than 11 members really actively participated.[1] Based on this, it would seem that smaller committees would work. Attendance alone, needless to say, is not the sole indicator of participation. Mr. Lewis, who participated the most actively,[2] ranks seventh in the top 11 attenders.

Senate participation was necessary on six occasions to complete the quorum of 10 (session numbers 2, 12, 18, 23, 41). No quorum was achieved at session 15.

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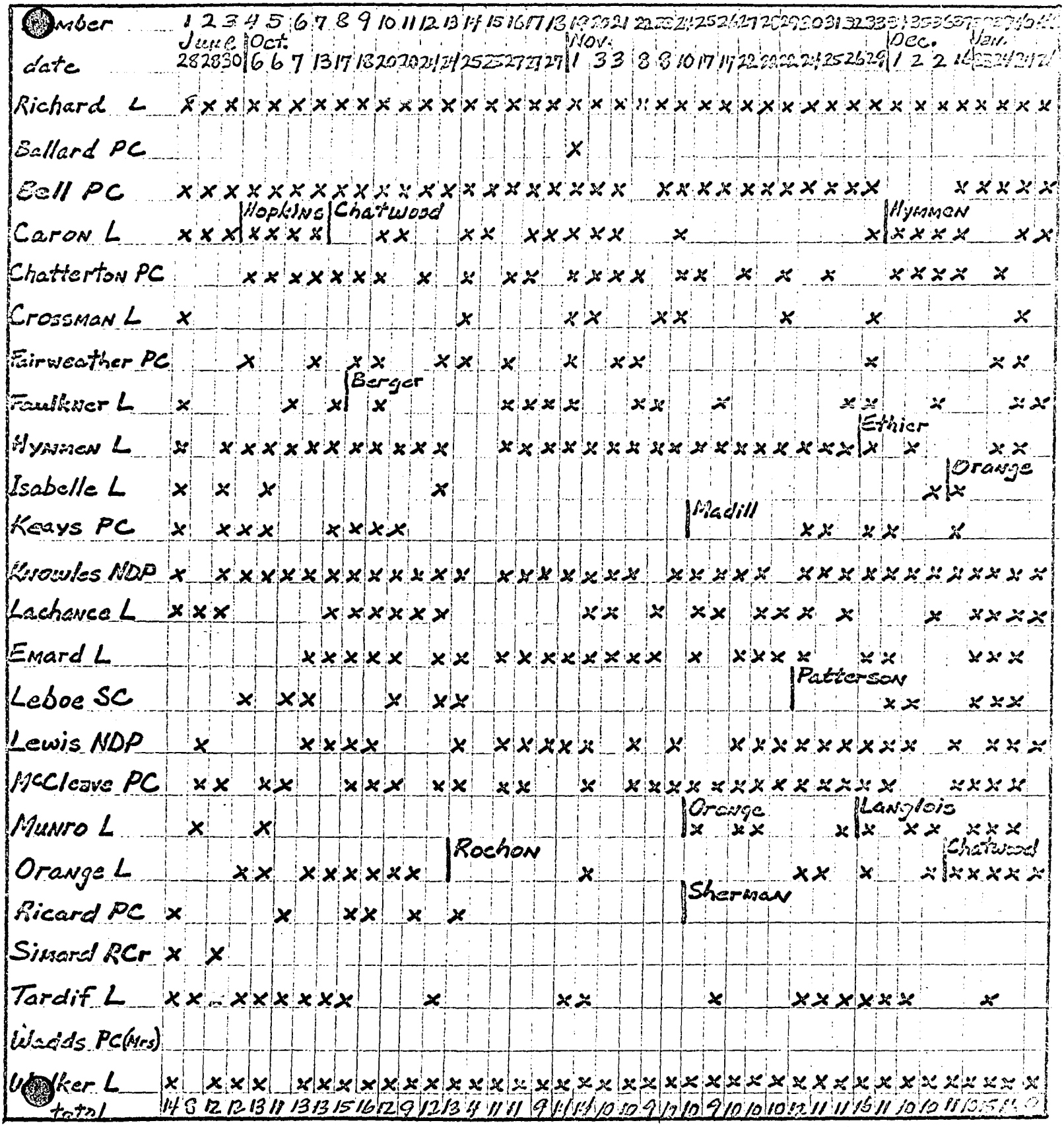
1. see above, p.88
2. " " , p.88-89

TABLE 1



ATTENDANCE: MEMBERS OF PARLIAMENT

TABLE 2

number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41
date	June 28	28	30	Oct 6	6	7	13	17	18	20	20	24	24	25	25	25	27	27	Nov 1	3	3	8	8	10	17	17	22	22	22	24	25	26	29	Dec 1	2	2	6	Jan 23	24	24	26
Bourget	x	x	x				x	x	x	x	x	x	x	x	x				x	x	x		x	x	x	x	x	x	x	x	x		x	x	x		x	x	x		x
Beaubien																																									
Cameron	x							x	x	x							x	x		x				x	x	x	x	x		x										x	x
Choquette																													x												
Croll	x									Denis x	x	x	x		x	x	x	x	x			x	x			x	x	x		x				x			x	x		x		
Davey																																									
Deschatelets	x	x	x		x	x				x										x	x	x	x		x	x					x	x	x	x			x				
Ferguson(Mrs)	x	x					x	x	x			x		x		x	x		x	x	x	x	x		x								x	x	x	x	x	x	x	x	x
O'Leary (Antigonish)	x		x		x	x		x																																	
Hastings																																									
Quart(Mrs)																																									
Roebuck										MacKenzie x						x	x	x		x	x	x	x	x	x					x	x	x		x				x	x			
total	6	3	3	0	2	2	2	4	3	5	2	3	2	2	2	3	4	3	3	5	4	4	5	3	5	4	3	3	2	4	3	2	3	5	2	1	4	4	3	3	2

ATTENDANCE: SENATORS

APPENDIX II

The substance of this thesis was primarily concerned with the legislative function of committees. However, as we mentioned several times throughout the paper, parliament can and should play an important role in scrutiny of the administration (government and bureaucracy).

We also dealt with the problem of learning capacity related to specific legislation. This concept should also be applied in a more general sense; that is, the study of the access of various political structures to information relevant to their functions. To use Deutschian terminology, we can say that the learning capacity of a political structure increases with the number of open, feedback channels to which it has access, or, stated another way, with the number of "frequencies monitored".

If we accept the developmental concept put forth by Almond and Powell,[1] that the secular trend in political development is toward structural differentiation and subsystem autonomy, then the Deutschian concept of learning capacity becomes extremely important for the analysis of political institutions. Stated simply, the various structures and subsystems must know what others are doing; they must be able to "talk" to one another. Given the secular, developmental trend, informal communication channels may break down and the theorist must turn his

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1. Almond, G.A. and Powell, G.B. Comparative Politics: A Developmental Approach, (Boston and Toronto, 1966), p.22.

attention to the creation of more formal channels.

The concepts of structural differentiation and subsystem autonomy certainly apply in our area of study. Bills C-181 and C-182 redefined the Public Service Commission and the Treasury Board and in so doing eliminated an overlap of functions (structural differentiation). These bills also created a more de-centralized civil service in line with the Glassco Commission recommendations (subsystem autonomy). Bill C-170 accorded the right to bargain to civil servants (autonomy) and created the Public Service Staff Relations Board and a complex bargaining and arbitration structure (structural differentiation).

Our purpose here is to demonstrate, using a crude form of systems analysis,[2] the unique position of parliamentary committees as structures to promote the learning capacity of other governmental and political structures.

We have constructed in Figure 1 what could be called a micro-systems model which shows the route of legislation through the formal governmental structures after the original input stage and before the final output, that is, after acceptance by the political executive of the principle involved and before the law is actually applied.

At point A the cabinet has given the bureaucracy the go ahead

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2. Systems analysis is merely a tool with which to study and demonstrate the interrelationship of various subsystems and structures as they relate to certain activities.

to write legislation which will incorporate certain ideas which the cabinet has accepted as desirable. At point B the bureaucracy has completed this task and it is then up to the cabinet to approve what the bureaucracy has done (they will probably consult all along) and decide when to introduce the legislation into Parliament. At these stages there will be informal, secret consultation between the government and the bureaucracy and within the bureaucracy. Also, they may consult informally with outside groups.

At C the legislation receives first and second reading. Here there will be formal interaction (debate) between government and opposition at a general level. There will be no discussion at the formal level, although it may take place at the informal level. There will be some feedback to the bureaucracy but because of the general nature of the debate, the feedback will be relatively diffuse and intermittent (i.e., dependent on whether officials attend parliament to listen, read Hansard or on what may happen to be reported, or what they may happen to see in the media).

At D the legislation goes to a specialized committee. Here direct formal interaction may take place between the government and the committee, officials and the committee, interest groups and the committee, others (i.e., individual citizens, other M.P.s.) and the committee, and between M.P.s. on the committee. Informal interaction may take place in any number of ways. More important is the quality of interaction which can take place at this level. Discussion can take place on a broad range

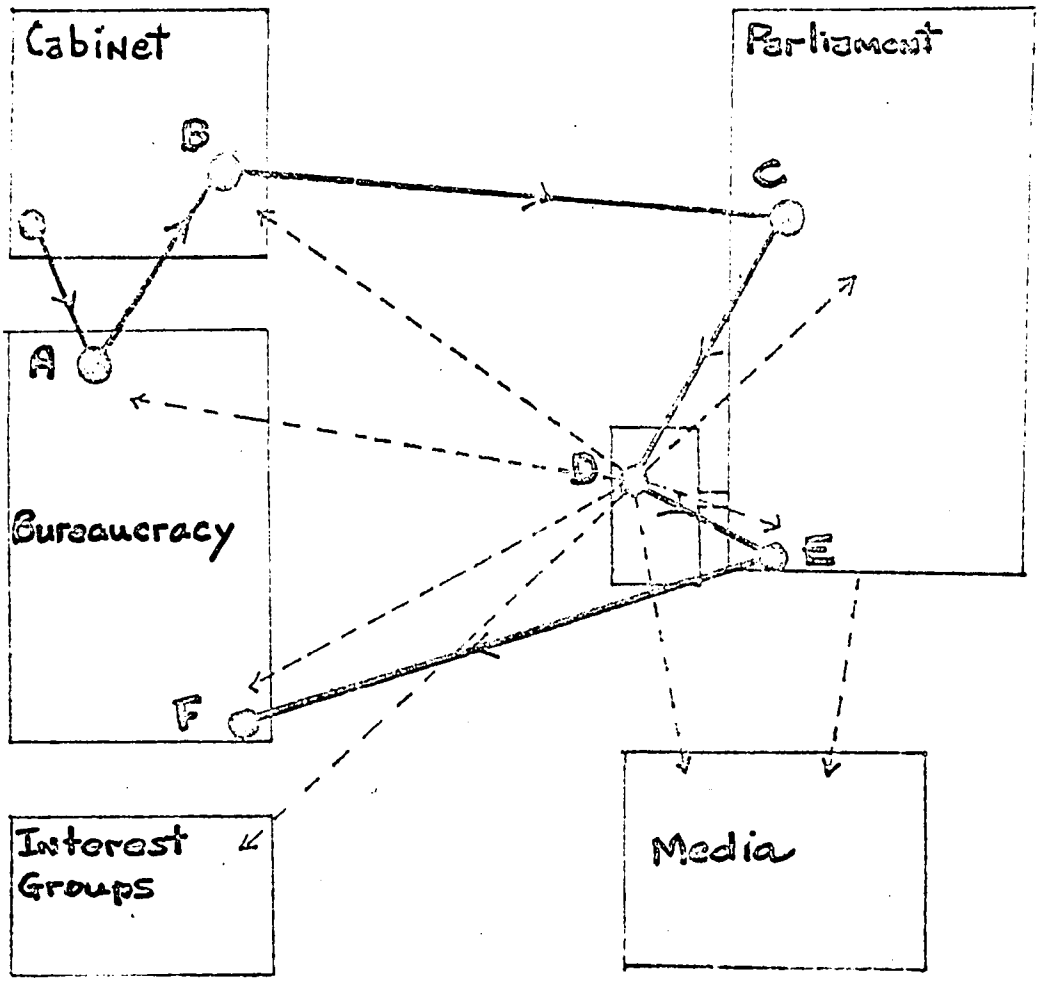
of subjects and because of the atmosphere which can exist there can be greater appreciation and understanding of other points of view. There will thus be a feedback of information to the government, bureaucracy, parliament, interest groups and the media. In other words, each part of the political system can have a better knowledge of what the other parts are doing.

The two feedback lines into the bureaucracy indicate that information is fed into the bureaucracy which will help it with future policy formation and with the application of the legislation (F). The two feedback lines into parliament indicate that parliament will be better able to scrutinize the administration and will be better equipped to handle legislation at third reading (E).

This model deals with legislation and communication but the learning process can be fostered by the committee system just as effectively when committees deal with estimates.

FIGURE 1

System model of law making and information feedback showing the strategic position of the parliamentary committee.



Route of legislation ——→

Feedback - - - - - - →

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