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Mr. Brent St. Denis

Standing Committee on Industry, Natural Resources, Science and Technology

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● (1530)

[*Translation*]

The Chair (Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.)): Good afternoon, everyone.

[*English*]

Good afternoon, everyone. I'm pleased to call to order this Tuesday, February 22, 2004, meeting of the Standing Committee on Industry, Natural Resources, Science and Technology. We have with us a number of excellent witnesses who have agreed to help us with Bill C-21.

Welcome, ladies and gentlemen.

Just before we start with our witnesses, I'll let members know that we'll wind this part of the meeting up at about 5:30 p.m., and depending on the bells we will either start clause-by-clause on Bill C-9 or come back after the vote. Likely we'll be starting after the vote.

I also want to mention that you've received a letter from Monsieur Crête concerning his request to look at some appointments to the Canadian Tourism Commission. Any member can bring forward such a request. If there's agreement to that, we would like to schedule this for April 6. We have 30 business days in which to review appointments. April 6 gets us within that timeframe, I think, quite comfortably.

After today the next meeting on Bill C-21 is Monday, March 21. When we come back the week after next, we will on the Monday have our industrial strategy study focusing on textiles, and the Wednesday is Bill C-19, the Competition Act.

With that, thank you again to our witnesses for appearing today. We'll use the order of appearance that's listed—more or less, I think, first come, first served—on the agenda. I would invite one speaker, or, if you're going to share your time, each organization, to try to keep your remarks to five to seven minutes, if you would. If you miss a point, you'll have a chance during the question and answer session that will follow to make any points you missed.

We have two individuals, each of whom will have their share of time, five to seven minutes. We'll start with Professor Jolin.

Monsieur Jolin, I would invite you to start, for five to seven minutes, please.

Thank you.

[*Translation*]

Mr. Louis Jolin (Professor, École des sciences de la gestion, Université du Québec à Montréal, As Individual): Thank you. Good afternoon.

I wish to thank the members of the Standing Committee on Industry, Natural Resources, Scienceand Technology for allowing me to discuss several of the provisions of Bill C-21.

Three years ago, I had the honour to be the Co-Chair of a task force on the legal status ofassociations that was established by the CIRIEC-Canada (International Center of Research andInformation on the Public, Social and Co-operative Economy). The report of the task force wassubmitted to the board of directors of CIRIEC-Canada on March 10, 2003. The task forceconsidered where the law governing associations (or not-for-profit corporations) currently standsin Quebec.

More than 15 Quebec statutes of general application permit associations or NPOsto obtain juridical personality, and this does not include the Canada Corporations Act, which is federal.

The task force concluded that the existing legal arrangement was incomplete and unsatisfactory and that Quebec should enact a genuine statute governing associations with legal personality. At the time of our work, the federal government's reform project was in the news. There had been a consultation conducted by Industry Canada. That proposed reform, which was designed to establish a new legal framework for not-for-profit corporations, was also examined by the task force and was the subject of various studies and recommendations.

I'm here this afternoon—as you said, Mr. Chairman—on my own behalf, but my views are based on the discussions and reflections of the task force that I co-chaired.

Given the limited amount of time available to me, I should like to focus my testimony on four main points: the general approach of Bill C-21, its area of application, the concept of “not for profit” and a few questions on the issuance of debt obligations.

As regards the general approach of the bill, I can only hail the desire of the federal government to modernize the legal framework of not-for-profit corporations that obtain their juridical personality from the federal government. It is an excellent approach to aim to replace incorporation by letters patent, which is a privilege, with the creation of a corporation as of right, which represents a better foundation for the law of associations recognized by the Canadian Charter of Rights and Freedoms.

The text of the Bill gives a corporation full authority as a natural person, establishes the rights ofthe members and sets out a number of requirements relating to "democratic" governance andfinancial audits. Furthermore, it pays particular attention to the authority and responsibilities ofdirectors and managers.

The provisions set out concerning these different matters are relevantoverall but, on the other hand, it is not always easy to separate those provisions that will beessentially mandatory under the new Act from those which are merely suppletive and subject tothe general by-laws of the corporations. People involved in associations will not find the newAct easy to consult.

Unlike the Civil Code of Quebec, which regards associations as a private contract amongindividuals, Bill C-21 respecting not-for-profit corporations recognizes the power of corporationsto make their own general by-laws but certainly also confirms the institutional nature of an NPO.That is a perfectly reasonable choice, although our task force opted for a more contractual approach. However, I can see how one could defend a more institutional orientation, with a set of standards and requirements provided in a fairly strict manner in the Act.

Was it necessary, however, to acknowledge in clause 6(1) that a not-for-profit corporation couldbe incorporated by only one person when everyone knows that most of these corporations consistof more than one person who associate with one another to pursue an object other than thesharing of profits with one another? There is something paradoxical to state this in respect ofwhat are in fact not-for-profit corporations, that is associations for the most part. And it is notpossible to associate with oneself.

That was my first comment.

My second comment concerns the bill's area of application. It is under this heading that the most criticisms will be expressed.

● (1535)

According to clause 3(1) of C-21, the Act applies to corporations. A corporation is defined as follows in clause 2(1):

> "corporation" means a body corporate incorporated or continued under this Act and not discontinued under this Act.

Despite the restrictions in sub-clauses 3(3) and 3(4), the application of the Bill is very broadbecause a small local corporation in a province or territory could obtain juridical personalityunder C-21. In my judgment, as in that of the CIRIEC-Canada task force, this is not acceptable.

According to subsection 92(11) of the Constitution Act, 1867, the creation of a corporation withprovincial objects falls within provincial jurisdiction and the federal government should havejurisdiction solely to incorporate corporations the objects of which are other than provincial.Most of the objects of not-for-profit corporations fall within the jurisdiction of the provinces.The very concept of person, which includes a legal person, is a subject of civil law and thus fallswithin provincial jurisdiction.

It is true that a business corporation may be incorporated federally, but this can be justified to acertain degree by the federal government's jurisdiction over trade and commerce, under subsection 91(2) of theConstitution Act, 1867.

This justification does not apply for not-for-profit corporations that areinvolved in the social services, health, culture, education, recreation, community housing andsimilar sectors, most of which are provincial objects. The existing Canada Corporations Act, at section 154, clearly provides thatincorporation under that Act is possible only when the corporation has various objects—that are national, patriotic, religious and so on in nature—to which the legislative authority of the Parliament of Canada applies. This restriction is important.

Bill C-21 abandons the obligation to set out the objects. It refers solely to activities and missions. This should not create a privileged position for the federal government unilaterally to change the division of powers. This question was raised a number of years ago when amendments were made to the Canada Cooperatives Act. A solution was reached in the course of debate and the parliamentary committee, and I believe we should draw on the approach that was taken at that time.

While express reference is no longer made to the objects, Parliament should look to theamendments made to the Canada Cooperatives Act, subsection 3(2) of which provides that:

> 3.(2) No cooperative may be incorporated under this Act unless
>
> (a) it will carry on itsundertaking in two or more provinces; and
>
> (b) it will have a fixed place of business inmore than one province.

By analogy, incorporation under the new not-for-profit corporations legislation should bepossible only for those corporations that engage in activities in more than one province and haveoffices in more than one province. That's my main criticism of Bill C-21.

My third comment concerns the concept of not-for-profit. It is surprising that clause 2(1) of the Bill does not contain any definition of "not-for-profit", which is generally defined as "any purpose other than the sharing of profits among the members". Subclause 35(1) appears to come close to providing one, but this is not enough and, as it currently stands, may lead to several interpretations.

Subclause 35(1) reads as follows:

> 35.(1) Subject to subsection 2, no part of a corporation's profits or of its property or accretions to the value of the property may be distributed, directly or indirectly, to a member, a director or an officer of the corporation except in furtherance of its activities or as otherwise permitted by this Act.

So it's not possible, unless it's in accordance with this Act. However, there's no clear and precise definition of "not-for-profit" in Bill C-21. The bill permits, on certain conditions, the sharing of profits on dissolution of the corporation or when it is converted into another form of corporation. For the CIRIEC-Canada task force and for me, the assets of a not-for-profit corporation are collective in nature. Even though the corporation has not received any grants or gifts from the public, its assets and its profits are the fruits of the actions of its members, directors and managers over several years.

● (1540)

How can we allow the last members of a corporation, who may well have been with it for several years, to take and share its property and the profits when it is dissolved or transformed?

I propose that, except where a corporation has received property from a person on condition that it return that property in the event of dissolution, as is already provided for in clause 232 of Bill C-21, the property should, in the event the corporation is dissolved, be given to another not-for-profit corporation engaging in similar activities.

The final question I want to address is the issuance of debt obligations. I'll do this in an interrogative mode, focusing less on the legal aspect and on the effects that this entire aspect may have on the behaviour of associations. The possibility of using, selling or giving by way of security debt obligations of the corporation may represent an interesting way for the corporation to fund itself.

Several provisions of the bill concern the issuance of debt obligations, but I wonder about the consequences on the volunteer activities of not-for-profit corporations, if those corporations, as they would be permitted to do under the new act, could issue debt obligations in consideration of a contribution in the form of services rendered. Will volunteers require the corporation to recognize their contributions in the form of debt obligations? Might this possibility not have perverse effects?

Here's a final question. To stay with the spirit of a not-for-profit corporation, should there not be a limit on the remuneration the corporation could provide for a contribution in cash. The act does not make any express provision for remuneration for a contribution in cash, but does not prohibit it. Those are the two issues I want to raise on the issuance of debt obligations.

Thank you for your attention.

● (1545)

The Chair: Thank you, Mr. Jolin.

[*English*]

Next is Mr. Grover of Blake, Cassels and Graydon.

We'll try to keep you to five to seven minutes.

Thank you, sir.

Professor Warren Grover (Partner Emeritus, Blake, Cassels and Graydon, As Individual): Thank you, Mr. Chairman.

I would like to start by saying that while I have been associated with Blake, Cassels for 40 years, I am emeritus Blake, Cassels now, and I do teach a little bit. I have no particular non-profit corporation. I've never acted for one, and I just do it as an academic who teaches and writes a lot of corporate law.

I wanted to start by saying that, from my point of view, it's a most welcome new statute. Basically, the statutes in most of the provinces, particularly Ontario, are so old—and so is the federal statute for not-for-profit corporations—that they are Neanderthal in their provisions. The Ontario one is so Neanderthal that everybody in Ontario pretty well uses the federal one, because the provincial one is very difficult to work with. This is a most welcome new statute, and I am very pleased the federal government is doing this.

The concept of following the format of the CBCA in large part I applaud, because everybody liked the CBCA. Eventually everybody accepted it; it is accepted in all the jurisdictions across Canada except B.C., and I'm not sure where B.C. is. As you know, they were going to change their securities law until yesterday. Now they don't know.

In any event, this will be a model other provinces will follow. It is most important you accept the kudos coming from what you're doing. It's very important to all of us trying to practise corporate law to have something that's not at least 50 years old.

In my major comments, as I've said in my notes—incidentally, in the French translation they're both *commentaires*, but the shorter ones are what I call the notes—I'm trying to illustrate certain areas that differ from the CBCA and that you ought to consider. I'll say these briefly and then come back a bit to them.

First of all, the CBCA came out in 1975 and hasn't really caught up to the concept that computers came out slightly later. It is accepting a lot of stuff filed by computer now, but they still have an enormous number of forms that simply are not required when you're dealing back and forth with computers. You need to rethink, in my view, the concept of forms, which just are not very useful with computers. For example, I've suggested the case of changing names of directors. You don't need a form for that; you just need to change the name. Most of us can figure out how to change the name without a form.

When you're using computers, it's also very important to realize it's a different storage problem. You don't have files stacking up, so the storage problem is very different. You might consider, for example, the usefulness of the concept of dissolving the corporation by the director and then allowing it to revive within a couple of years. I don't think that works any more, in the modern world. I've seen bags of these things tossed out because of not filing for two or three years. Finally somebody gets around to doing it. Then, as soon as you say you've dissolved it, somebody else comes running in to say they want to revive it. Well, why did you ever bother dissolving it? If you kept all these essential things in paper form, I would understand it; once you go to electronic form, it's different. I suggest you think about whether you can simplify what you're doing.

The second point I wanted to make is that the whole concept of financial reporting and corporate governance is very different in a not-for-profit corporation, and, to the extent it is following the CBCA model, I would suggest you rethink it to some extent. For example, the type of financial information that needs to come out for a not-for-profit corporation differs from that of a for-profit corporation. Indeed, the words say it all. A for-profit corporation is very interested in knowing what the profits are. A not-for-profit corporation isn't supposed to have any profits, by definition, so your income statement doesn't make sense as the primary vehicle.

● (1550)

What does make a lot of sense in a not-for-profit corporation and is not mandated now for for-profit corporations to the same degree is a cashflow statement. That's what people are interested in, in not-for-profit corporations: what's coming in and what's going out. It's almost all on a cash basis. Accruals don't mean the same as they do for profit corporations. I think it shouldn't be left to just the regulations. Somebody should be thinking about what they're doing with the financial reporting.

I also think you need to have in here somehow, particularly for soliciting corporations, some sort of discussion in their annual report of what the corporation has done for the year. In other words, just putting out financial information is not necessarily a good idea. That's the second point I wanted to make.

The third point I want to make is, particularly for soliciting corporations, as I understand what you are calling soliciting corporations, there is no regulatory overview at all. That is, in all other corporations that are going to the public for dollars, you have securities commissions across the country. There is no such thing for a not-for-profit, the way you're setting it up. I think that's fine, but people have to recognize, then, that somebody has to be there.

I point perhaps to a case that just happened last year in the Ontario courts that I'm aware of, where there's a national society for the advancement of abused women. They took in over a million dollars by telephone solicitations. They actually gave out to the charity for abused women less than $1,000, while $999,000 went into their pocket. This is the problem you have with not-for-profits. You need some sort of overview of some sort to help out.

What you did with the CBCA was interesting. I put that in the longer notes. When the CBCA first came out, there was a guy called Fred Sparling, who was the director of corporations up here. He went after corporations to try to get them to do things for about the first 15 years that the act was on. Then it slowly.... The director has not been that active as what I've called the *parens patriae* working as the regulator in the area.

I think you're going to have to think in terms of giving that director more power to intervene with these corporations to ask questions—not to push them around, but to try to get transparency coming out of what they're doing. In most cases there is no transparency at all. I think people who are asked to make donations should be able to go to their meetings, if that's what they're doing—their annual meeting. If they have an annual meeting, and you require them to, why don't you have it more open?

I'm just suggesting there's a difference. You don't have shareholders or directors. Directors mean less in not-for-profit corporations. Who are they directing? They're not there to protect the shareholders, as they're supposed to be partly in for-profit corporations. They're different animals. You don't need an audit committee. It's just not necessary; they're only there to protect shareholders. I don't see the same requirements.

That's where I'd like to leave it, Mr. Chairman. I'm happy to come back to talk more, and I've put in more things in the notes I've given to you.

● (1555)

The Chair: Thank you very much, Mr. Grover.

We'll move to the Canadian Society of Association Executives. I understand, David Skinner, you'll be speaking on behalf of the group.

Mr. David Skinner (Chair, Government Relations Committee and Board Member; President, Nonprescription Drug Manufacturers Association of Canada, Canadian Society of Association Executives): That's correct, Mr. Chairman.

The Chair: I invite you to proceed, Mr. Skinner.

Mr. David Skinner: Thank you, Mr. Chairman. Members of the standing committee, ladies and gentlemen, let me begin by also introducing my colleagues, Henry Walthert and Bob Hamp, who will be able to help me out on the Q and A side, as Bob is a staff member with the Canadian society and Henry and I are both association directors and executives in our own day jobs.

The CSAE welcomes the opportunity to comment on Bill C-21 and is pleased to participate in this review on our members' behalf. CSAE is a professional organization of the 1,600 men and women who manage many of Canada's most progressive trade, professional, occupational, philanthropic, and common interest organizations. An additional 600 business members who provide services and products to the sector also comprise an integral part of the CSAE membership.

While there are several concerns our members have raised with respect to the scope and intent of the act, we intend to cover the top-line issues for your consideration as you move this bill forward. Most of our concerns focus on the intent of the legislation and on moving towards greater clarity, so that when the regulations are gazetted, any unintended effects may be minimized.

Our first concern relates to the definitions section of the act, and more specifically to the definition of a soliciting corporation. The act distinguishes between soliciting organizations and other not-for-profit corporations, with different requirements that are focused primarily upon public transparency related to financial operations. We concur that soliciting organizations have a greater duty for public transparency than other organizations; however, we believe the consequence of these definitions could cause virtually any not-for-profit to become a soliciting corporation. Therefore this requires greater clarity.

Many associations, for example, do not solicit government for moneys, but even these associations may be redefined as soliciting corporations under the proposed definition. While associations may initiate joint initiatives with government departments and agencies, such projects are more often undertaken as a part of government-initiated programs. The act's intent does not appear to be to characterize such arrangements as constituting a soliciting corporation, but further clarification is required.

Another unintended effect of the definition of soliciting corporation is that virtually all not-for-profit corporations could be soliciting corporations. For example, if an industry association were to receive dues from any member company that had received assistance from a municipal government for summer student training, then the act would make the association they funded a soliciting corporation. We do not believe this is the intent of the legislation and we are seeking greater clarity on this point.

The rest of our concerns lie in the governance, privacy, and employment implications of the proposed bill. For example, the act states that “No person shall act for an absent directorat a meeting of directors.” Many not-for-profit organizations allow for directors to designate through written notice a person to act on their behalf at a specified board of directors meeting. This has been a growing trend as the membership base of many not-for-profit organizations has consolidated through mergers and acquisitions. Members insist that they be allowed proxy rights for governance, and members have had to put in place broader briefing systems that allow for the continuance of good governance through proxy processes.

We believe this provision should be amended. The most likely amendment could allow the bylaws to provide for such a proxy. We propose this be amended to stipulate that except as provided for in the bylaws, no person shall act for an absent director at a meeting of the directors.

The act also states that :

> Subject to the articles, the by-lawsand any unanimous member agreement, thedirectors of a corporation may fix the reasonableremuneration of the directors, officers andemployees of the corporation.

This raises the question as to whether or not employee compensation is subject to unanimous member agreement. If the wording had stipulated “or unanimous member agreement”, it would be clearer, and we believe that clarity is required.

● (1600)

The Chair: Could you slow down just a little bit for the interpreters? Just go a tad slower.

Mr. David Skinner: All right.

With respect to the employment impacts, we note that directors are jointly and severally liable to employees for all debts not exceeding six months' wages payable to each employee for their services while they are directors. This raises a further question with respect to limits of liability for wrongful dismissal where case law has established penalties in excess of six months.

Later in the bill a section describes how civil, criminal, or administrative actions or proceedings commenced by or against a dissolved corporation before its dissolution or within two years after its dissolution may be continued. We mention these sections since they may hold the corporation responsible for outstanding liabilities, such as the issue of wrongful dismissal, and we believe this aspect requires clarity.

Finally, we are quite concerned that the bill provides for a public accountant appointed by resolution at each annual meeting to be entitled “toattend a meeting of members at the expense ofthe corporation and be heard on matters relatingto the public accountant’s duties.” This requires clarification since it could unnecessarily add significant costs to those organizations where directors and members do not need or desire to have the auditor make a presentation.

I apologize for the swiftness of this. I think probably my eagerness to fit the five to seven minutes led to it.

The Chair: You did marvellously well even when slowing down.

Mr. David Skinner: Ladies and gentlemen, on behalf of the CSAE we'd like to thank you for your time, and we'll be pleased to answer any questions you may ask.

The Chair: Thank you, Mr. Skinner.

You've raised some very interesting points.

We'll conclude with the Canadian Red Cross Society. Mr. Reid, you'll be speaking?

Mr. Alan Reid (Special Legal Adviser, Canadian Red Cross Society): Yes, thank you, Mr. Chairman.

The Canadian Red Cross Society is, I'm sure everybody realizes, a very large Canadian national not-for-profit and charitable organization.

We certainly recognize the need for new legislation governing not-for-profit corporations in Canada. The society participated in consultations organized by Industry Canada in 2002, and those consultations appear to have influenced in many respects the form and content of Bill C-21.

We are grateful for the opportunity to be here today before this committee, and in doing so we can assure you we are broadly supportive of the reforms introduced in Bill C-21. Among those items in particular are specific authority for telephonic and electronic meetings and voting; authority to make binding and unanimous resolutions without meetings; tighter conflict of interest requirements; and a broadening of indemnification authority, including indemnity advances, which may become increasingly relevant given the current public appetite for enforcing governance accountability. Overall, we welcome the increased deference Bill C-21 extends to corporate bylaws on many issues that were formerly regulated by the CCA.

At the same time, we have some general reservations. While we support the "as of right" approach to incorporation and welcome the fact that the new model will eliminate upfront government regulation—for example, no ministerial approval of articles and bylaws—we note that the new model places a large emphasis on self-regulation and on checks and balances that rest upon enhanced legal rights and access to courts.

We find that Bill C-21 is detailed and difficult legislation and is complemented by lengthy regulations. It will pose compliance challenges, not just for small not-for-profits that operate without legal departments and/or sizable legal budgets but for large organizations such as the Canadian Red Cross.

Every new comprehensive piece of legislation presents interpretive and operational issues, and Bill C-21 is no exception. It calls upon not-for-profits to address many new challenges, for example, providing systems for tracking and allowing access to a large and changing membership, implementing procedures to meet enhanced accountability thresholds, making adjustments to financial procedures, and redoing bylaws, all of which will require careful efforts to ensure that governance provisions and practices measure up to new standards.

Because there is a lot of room for error and disputes in our adapting to this new model, we would encourage the government to support and build upon current Industry Canada initiatives to educate the not-for-profit sector through publications, websites, model bylaws, workshops, and non-binding administrative opinions on key issues, all of which would assist not-for-profits, both large and small, in their due diligence and other compliance efforts.

We note that the government's backgrounder, which is on the website—and elsewhere, I guess—states that "clear rules for the protection of directors from liability...should help attract qualified individuals to act as directors of not-for-profit organizations". However, we note also that the bill equally promises to "enhance and protect member rights" and give them power to "enforce their rights and oversee the activities of their organizations" as well as to "monitor the directors' activities".

Arguably, this bill may heighten tension between membership and directors, increasing the risk of liability rather than reducing it. While we have no doubt that well-qualified directors will continue to come forward to serve the not-for-profit and charitable sectors, it will be interesting to see how insurance underwriters will assess the balance of risks and rights and what impact this legislation will have on already steep premiums for directors' and officers' liability insurance.

Given our concern that enhanced members' rights coupled with broader judicial remedies could elevate dispute resolution costs for not-for-profits and charitable organizations, we would have preferred to see more legislative encouragement of administrative process and alternative dispute resolution mechanisms in the bill. Clause 290 gives the director authority to "make inquiries of anyperson relating to compliance with this Act", but for the most part the director, like everyone else, must rely on the courts.

● (1605)

We would hope that the legislative model will prove flexible enough to allow for less formal and less costly means of resolving member/board/management tensions, and we would encourage the government to create and finance a mandate for Industry Canada to assist not-for-profits in developing efficient and humanitarian approaches to resolving compliance issues in lieu of engaging the courts.

Aside from our broad compliance concerns that we've just raised, there are a few narrower issues arising from Bill C-21. The first is that while it may be appropriate to allow outstanding creditors access at times to certain corporate records, we think giving all creditors unqualified access to such records as members' and committee minutes is overly broad. I'm referring here to subclause 22(1), but you have my notes, so I won't refer to the section.

Secondly, we think to allow a meeting to continue after a quorum is lost can invite abuse. While we would accept that bylaws may specifically provide for this, where they do not, we think the usual rule should apply—that is, a quorum should be sustained throughout a meeting. This should be the default rule in the bill.

The third point is the extent to which subclause 163(5) can be interpreted to give a right to make nominations from the floor. I'm not sure whether it does or not. We think it should not do so and this issue should be determined by the bylaws, not by the statute.

Notwithstanding these concerns, and perhaps others we may have but haven't spoken of, we view Bill C-21 as an important legislative initiative, and we at the Red Cross—I'll speak for my colleague here—will undoubtedly gain a deeper understanding of its complexities as we work through our governance and financial procedures in our efforts to bring the society into compliance with the new regime. We would like to see the bill move through the legislative process as quickly as possible. Reform of this area has been a long time in coming, and we are anxious to get on with the task of adjusting to the new regime.

I want to thank you again for inviting us to appear. I neglected at the outset to introduce my colleague, Ms. Johanne Bray, who is general counsel of the Canadian Red Cross Society. We are both happy to be here and to do what we can to help this proceed.

Thank you very much.

The Chair: Thank you very much, Mr. Reid.

All of you have been most helpful this afternoon.

We will start with Michael Chong.

Mr. Michael Chong (Wellington—Halton Hills, CPC): Thank you, Mr. Chair.

My first set of questions I will ask of Mr. Reid and Mr. Grover.

My first question concerns the duty of care that the new legislation proposes for directors. Mr. Grover, I don't think you talked to that specifically, but do you think this will, in actual and substantive fact, increase the liability for directors in any substantive way vis-à-vis the current legislation?

Mr. Reid, maybe you could comment as to what you've heard—because you said you think it probably will increase the liability—on what financial impact that might have on organizations such as yours.

● (1610)

Prof. Warren Grover: To respond as to what I think, first of all, I know of no directors' liability that is really a large problem, because they all have insurance. Under the act as you have it, they can get the same insurance, which can cover everything—not only the duty of care, but it can cover the duty of loyalty. But as Mr. Reid said, this is becoming very expensive insurance. But no director that I know of will sit without it—or not knowingly. If he or she just doesn't know anything about it, maybe somebody will pass it by, but the directors I know all have perfect protection as it is today under these bills, but it's expensive protection.

Mr. Michael Chong: I know plenty of directors of not-for-profits, and I would even venture to say, at least from my anecdotal experience, that the members of the boards of governors or boards of directors of the majority of not-for-profits incorporated in Canada do not have liability insurance. I'm talking about rotary clubs and service clubs.

Prof. Warren Grover: But I suggest to you that those types of clubs have never had a problem with directors' liability.

Mr. Michael Chong: My question is, not under the current legislation but under the proposed legislation, do you see an increase in liability for directors?

Prof. Warren Grover: I think it's there under the current legislation. The employee one may be six months—which isn't six-month employees, it's actually any amount you owe an employee, up to six months' wages, as a measure—but I think it's there in most of the legislation now, and it has not caused much of a problem. I have seen a couple of cases in which it has, but I don't think of it as a very huge problem.

The Chair: Mr. Reid, did you want to comment?

Mr. Alan Reid: I think we'd be supportive of the clarification, or the defining, of the duty of care provisions in the bill; I don't think that's a problem, as Mr. Grover says there is. There is kind of a trend towards.... Even under the existing act, you would have that problem, so I don't see any difficulty in the wording of the new legislation.

I should say, though, whether under the old legislation or the new legislation, as a practical matter—even though, as Mr. Grover says, insurance seems to be the answer—some of the things we're facing in insurance are broader exclusions. Insurers will carve out of the coverage certain types of coverages they feel are a large exposure, and anything carved out of the policy is a potential liability exposure for the organization.

The other thing we're seeing, with the escalating premiums, is a tendency towards accepting larger deductibles under policies. Of course, as a deductible goes up, it increases...basically, the organization itself is insuring up to the limit of the deductible.

So there is a potential economical impact, but I don't think you can say it's related to this legislation. I don't know; I can't assess that. That's why I say, in my notes, it will be interesting to see how underwriters are going to look at it, but I don't think I would stand here before you and say something in the act is going to create a worse situation than we have presently. It's a big problem presently, and it's going to continue to be a big problem. This isn't going to resolve it.

Mr. Michael Chong: One of the other areas I wanted to ask you about, Mr. Grover, concerns the forms and the paperwork. I know the amount of paperwork involved with corporations, with share capital, and I don't know anybody who knows what they're signing when they sign about 50 forms to incorporate or amalgamate a business. It's unbelievable.

What part of the act are you concerned about that may tie the department's hands when it comes to trying to streamline the process for forms and paperwork?

● (1615)

Prof. Warren Grover: I'll just mention one example quickly. In incorporating a for-profit corporation, and now for a not-for-profit, when you file for your articles of incorporation you now file three documents: the articles; then you have a form for who the directors are; then you have a form for where the registered office is. They should all be together. You don't need separate forms, and then every time you change one, you have to use the same form to file on. To change where the registered office is, surely you don't need a form. They all come in electronically now, so the forms are electronic.

Mr. Michael Chong: But you're suggesting we actually codify that—put it into the legislation.

Prof. Warren Grover: Just take those forms out.

Mr. Michael Chong: Just take the forms out of the legislation... because you say, in your second point, we should actually codify it, put it into the legislation, that we're going to reduce the forms.

Prof. Warren Grover: Well, I just think—

Mr. Michael Chong: We shouldn't leave this to regulation or interpretation of the act.

Prof. Warren Grover: At the moment the forms are in sections of the act. You have to file them according to a specific section of the act, as I pointed out in my longer commentary, and all you need to do is get rid of those sections of the act. They should just follow under the application for incorporation.

But I agree, it's not just those two forms.

Mr. Michael Chong: Remove those sections from the proposed act and then just leave it to the regulatory enforcement to streamline the process.

Prof. Warren Grover: I think that's probably the way you have to go.

Mr. Michael Chong: Have you outlined in your notes the particular portions of the act from which you think these forms should be removed?

Prof. Warren Grover: I did in my longer notes. I outlined several of them. The act is fairly thick, and I did think I was supposed to stick to generalities.

Mr. Michael Chong: I was just wondering.

Thanks.

The Chair: We'll come back to you, Michael. Thank you.

Christiane Gagnon.

[*Translation*]

Ms. Christiane Gagnon (Québec, BQ): Thank you for your presentations.

Having met a number of Quebec groups over the past week, I can tell you this is a fairly exhaustive bill that doesn't very much concern not-for-profit organizations in Quebec, which see little in a federal bill that applies to them. In a number of respects, this bill collides head on with the democratic life of Quebec not-for-profit associations, for a number of reasons. First of all, the possibility of liquidating certain assets in a not very desirable way is not what the corporations want with regard to the redistribution of assets; second, having certain classes of members within a not-for-profit organization is an irritant for some Quebec associations; lastly, the fact that a person has a right to start up a not-for-profit organization undermines the association's purpose. An association is a group of persons. I believe Mr. Jolin pointed out a few irritants, and I won't discuss the major irritant, which is encroachment on the provinces' areas of jurisdiction.

Moreover, I have a question on that subject. This could apply if an organization had activities in more than one province. However, it's very easy for a not-for-profit organization to find a reason to set up in more than one province. Do you think that, for some, that could be an incentive to seek a federal charter? A single person could constitute an association. I'm afraid that might destabilize the entire purpose and establishment of not-for-profit organizations. This bill seems to be made for certain types of associations and not for other types of not-for-profit organizations. I believe Mr. Grover said that a distinction should be drawn. Some of them raise funds, but there's also the social mission. It's virtually absent from this bill. Perhaps that's why Quebec corporations don't feel very concerned. But I pointed out to them that, although they didn't feel concerned, the application of this bill, as it is presented at this time, could have a negative impact.

I'd like to hear Mr. Jolin explain to us how it could be destabilizing for the Quebec network of not-for-profit organizations.

● (1620)

Mr. Louis Jolin: Currently, in Quebec and other provinces, there is a vast network of voluntary and community organizations. It's not by chance that all the provinces have statutes enabling not-for-profit corporations and associations to obtain juridical personality. So the provinces have assumed their authority in this area.

The statutes are very old in certain provinces. In others, as in Saskatchewan, they passed a new law a few years ago. So some provinces have modernized their law of associations more quickly. It should be acknowledged at the outset that it is the provinces' responsibility to bring together citizens who want to pursue all types of objects other than the sharing of profits, and to do so in areas of provincial jurisdiction.

In that sense, it's important that all the provinces pass new legislation on associations. The Government of Quebec has organized a consultation, which went reasonably well, in view of the proposals that were put forward, but that nevertheless mobilized people, who felt associations legislation was necessary in Quebec. I think you can say the same thing about other provinces, particularly Ontario, where the legislation on not-for-profit organizations has not been reviewed for a very long time.

I think this is a provincial issue. However, there may be some interest in providing for associations to have federal juridical personality, where they clearly carry on activities across the country or have offices in more than one province. That would facilitate a lot of things for them.

I think this should be very clearly stated in the federal act. Why does section 154 of the Canada Corporations Act refer to "objects, to which the legislative authority of the Parliament of Canada extends," whereas no mention of objects is made in Bill C-21? We could take advantage of Bill C-21 to clarify the fact that this is a statute aimed at associations operating across Canada.

To answer your more specific question, I'd say it's not enough to say that the association must carry on activities across Canada; there should be a second criterion, that it have offices in more than one province, which is slightly more restrictive.

Cooperatives currently operate in this manner, which is quite restrictive. Most cooperatives obtain their juridical personality from Quebec or from the provinces, and only a few cooperatives have federal juridical personality. That would be enough.

More specifically, you should look at clause 4, which states:

> 4. The purpose of this Act is to allow the incorporation or continuance of bodies corporate as corporations without share capital, including certain bodies corporate incorporated under various Acts of Parliament, for the purpose of carrying on legal activities...

The words "in more than one province" could be added here. It would be enough to add them.

The bill states that the association's articles of incorporation shall set out "the name of the incorporation" and "the province where the registered office is to be situated". It could refer to two provinces, at least, where offices of the association are located. That would be enough to restrict the application of the federal statute. I think that all the provisions of this very complex act of more than 300 clauses are essentially aimed at large corporations, not small local associations.

So it shouldn't be suggested that any local association could obtain juridical personality at the federal level. I don't think it's within the federal government's jurisdiction to deal with that.

● (1625)

Ms. Christiane Gagnon: For example, what's required of directors under this bill could frighten away a lot of small not-for-profit corporations. There was some fear that this responsibility would be so major in terms of oversight by the businesses's management that it would frighten away certain directors of NPOs, who won't necessarily have all the required qualifications. They would be very intimidated if they were supposed to have so many responsibilities. They might be interested in the organization's purpose and social mission, but no longer want to be involved out of fear of making mistakes or being prosecuted. That's why the NPOs would be reluctant to obtain federal charters.

The Chair: Thank you, Christiane.

[*English*]

A short commentary.

[*Translation*]

Mr. Louis Jolin: It should not be forgotten that the Civil Code of Quebec already has sufficient provisions for corporate directors. You need only refer to the Civil Code provisions regarding the liability of corporate directors.

[*English*]

The Chair: Merci. We can come back to that.

Denis Coderre, then Brian, please.

[*Translation*]

Hon. Denis Coderre (Bourassa, Lib.): Thank you very much.

[*English*]

Mr. Grover, I'd like from an academic point of view to go a little bit further on the issue of jurisdiction.

[*Translation*]

I think Mr. Jolin has raised a point that should be elaborated upon.

[*English*]

From your own point of view, from an academic point of view, do you believe, like Mr. Jolin, that Bill C-21 is a bit too expanded and that we should just take care of the federal component? And as a whole right now, do you feel we're getting involved in provincial jurisdiction?

Prof. Warren Grover: I do not think it's a problem. I think if there's provincial legislation there that's helpful, the small not-for-profits will use it if they think it's less onerous than the federal. Frankly, I think since the CBCA came in, what's happened is people can choose. You can choose to incorporate in Quebec or Ontario or wherever you like, and people choose on the basis of what they think the best legislation is and not on the basis of what our Constitution says is a provincial thing or a federal thing—to some extent, I mean. You can't incorporate a bank provincially, but if you have a choice, in Ontario at least, you can either incorporate in Ontario or federally, and I'm saying right now the Ontario act is so Byzantine that we tend to use the federal act, even though it's also quite hopeless, but it's not as hopeless.

I'm saying if all the provinces got together and made sense of all these statutes, that would be one thing. But that's not likely to occur. I see the federal statute as giving them the choice. They're not forcing people from any province to use this statute if they think it's onerous.

[*Translation*]

Hon. Denis Coderre: Mr. Jolin, in fact, you're saying that Bill C-21 as a whole would be *ultra vires*. This act could be challenged on the basis that it operates in areas of provincial jurisdiction. I think I follow you when you talk about clarifying the question of objects, as in the old act. If it concerns more than one province, do you think we should specify that? At that point, would this kind of bill no longer be a problem for you?

Mr. Louis Jolin: I'm trying to apply the comment to the other clauses of the bill. Bill C-21 would no longer refer to objects, but rather to the mission and activities. Relying more on the Canada Cooperatives Act, which refers to activities in more than one province or offices in more than one province. No reference is made to objects in the case of cooperatives.

The Canada Corporations Act refers to "objects to which the legislative authority of the Parliament of Canada extends". If you delete the reference to objects in Bill C-21, something I would agree on, you have to find something roughly similar.

There's one thing I object to, and that's the absolute reference to the Canada Business Corporations Act. Don't forget that, when you refer to not-for-profit corporations, you're in what's called the area of social economy, or the voluntary and community sector, where there are cooperatives, associations and mutual associations. Associations and not-for-profit corporations are much more like cooperatives than business corporations. In that sense, I think it's very appropriate to draw not only on the Canada Business Corporations Act, but also on another act such as the Canada Cooperatives Act.

● (1630)

Hon. Denis Coderre: Personally, I've been in the community sector for 20 years. We know it's always the same people who have to live with the way things work. Let's talk strictly in terms of flexibility.

[*English*]

I'd like Mr. Grover and Monsieur Jolin to respond, and maybe others if they want to get involved,

[*Translation*]

Would you prefer us to pass a bill that would provide for a fairly broad framework and that we set out the details and regulations? We can't continually submit the bill to the House of Commons for it to change things.

[*English*]

Would you prefer that we focus more on the bylaws and the regulations so that we can have a kind of framework legislation, but at the same time have enough flexibility because of the reality of what's going on in the field, instead of putting everything in and trying to be as perfect as possible within the law and having many more loopholes, I would say, in the future and we'll have to go through the parliamentary process all over again?

Mr. Grover.

Prof. Warren Grover: I hope you don't have to go through the parliamentary process all over again, because—

Hon. Denis Coderre: I don't know, a democratic deficit sometimes....

Prof. Warren Grover: I realize that, but you're far further ahead than you were in 1974, I think it was, when Professor Cumming did the first not-for-profit statute federally, or tried to.

But to my way of thinking, if you go to regulations, your regulations should only be in little areas; it shouldn't be the whole thinking of the act. That's what I would think, anyway, that you shouldn't use regulations to now really define what Parliament has done. Regulations are fine to do the little bits at the end—the fine tuning, if you like—but in my view, the overview is why you have a Parliament.

The Chair: Do you have a comment, Mr. Skinner?

Mr. David Skinner: Yes. We would also favour the simplest possible legislation that gave the regulation-making authorities...and then deal with the situation through the regulatory process, mostly because this is a dynamic and growing area, the area of volunteerism.

Somebody mentioned earlier about very small organizations, and so on. I'm on the board of directors of a local fly-fishing club. There are millions of these small organizations, and there's nothing in this act or the provincial one—and I stand to be corrected on it—that compels any organization to be incorporated. Therefore, if you have an overly complex legislative framework, the choice of small organizations then becomes, if we can get directors' and officers' liability insurance, why even bother incorporating, because it's too complicated, too overly burdensome, and so on?

So we're very much in favour of having the simplest piece of legislation as possible that states principles and then expounds the principles through regulation.

[*Translation*]

Hon. Denis Coderre: The question of creating a single director association is a problem for me, and I think we should discuss it.

Another question that concerns me a great deal is privacy.

Clause 25, I believe, states that Industry Canada may authorize organizations not to disclose certain information. Do you think that the privacy mechanisms set out in this bill are really adequate? We don't really know where information can eventually wind up.

[*English*]

The Chair: Merci, Denis.

Are there any comments, any takers?

Monsieur Jolin.

● (1635)

[*Translation*]

Mr. Louis Jolin: In fact, the thing is to strike a balance between the right of the members of an organization to have information that is as accurate as possible on the activities of their organizations and privacy. There are other statutes that protect privacy, and they also apply.

I agree with the gentleman from the Canadian Red Cross Society, who says that allowing creditors access to this information may be going too far. So the idea would be to restrict that access mainly to members and to provide more limited access to creditors. There may be possible slip-ups there, but I must say it's not something that particularly grabs my attention.

[*English*]

The Chair: Merci.

Brian, and then Werner.

Mr. Brian Masse (Windsor West, NDP): One of the big concerns I have with this bill is the effect on medium-sized and small charitable organizations, their ability to navigate the new legislative requirements. Currently, they face a lot of problems related to audits, having to come up with money for that, for lawyers. You mentioned insurance for the boards of directors, not only insurance for their members but also for their facilities. They've really struggled. I know the organizations I've served on in the past, employment-wise and also as a board member, are very much stretched thin.

Mr. Reid, I thought you brought up an interesting point, which I'd like to hear about, and I'd invite all panel members to talk about it. You mentioned specifically having a create and finance approach for compliance from the government to assist those organizations. How important is it, in your opinion, to follow that up? Maybe you can give a little bit of detail on that.

I'm really concerned about that aspect, because we would literally take services away from people by tying up more lawyers and auditors for many organizations that quite frankly have higher degrees of accountability in terms of their money than just about anybody else, because they don't have any money. So my concern is about the cost that would be incurred by the small or medium-sized or even larger ones.

Mr. Alan Reid: All I can say is we use the existing services that are provided and we consult on the website. We look for the policy directions from the administrative branch of the department. All these can be improved, but I think there's tremendous potential with the Internet to do a lot of education.

Personally, I found the act very difficult to deal with because it's a very big piece of legislation and not all of it applies to us. We have to pick and choose. But on an issue-by-issue basis, that's one area where the department could be helpful—to take a particular issue such as a director's responsibility, whatever it is, and do some kind of a little memo drawing the relevant sections together so people can see what the issues are. I don't think that's a big chore, but I think it's enormously helpful. When we did the consultation, for example, the department put out very useful packages and dealt with the consultation on an issue-by-issue basis. It is much easier to deal with the issues in a consultation than it is to pick up the bill and try to get through it and the regulations and try to address the issues for an exercise such as appearing before this committee.

I think there's a lot of scope for helping not only small organizations but even large organizations like ourselves. Neither Ms. Bray nor myself is an expert in corporate law. We have responsibilities because we have to monitor and assist the directors with their governance responsibilities, but we're not experts. We need help, and in the past we found a lot of useful help through the administrative branch. That's why we pitched that idea in this presentation, because I think you can do a lot administratively with this legislation.

Mr. Brian Masse: Does anybody else want to comment?

Prof. Warren Grover: Just to make a brief comment, you're thinking of small and medium-sized organizations. They won't use this act if they think it's so complex. They'll use other acts. There are loads of little golf clubs incorporated, I know, all over the country, and little provincial things that don't seem to have very many problems, but the federal CBCA has become the model for the whole of Canada. This will become the model, I think, and provinces will reduce the complexity for smaller organizations that are just within one province, which I think will happen. But I think it's a good act. I don't think you have to worry. I don't think the CBCA force only large companies to go under it, although I think now over 60% of the large companies in Canada are under the CBCA, which wasn't true before it started.

● (1640)

Mr. Alan Reid: Could I address this? I think it came up a little bit before. I can't claim to be totally familiar with the legislation, but my general impression is that there is a lot of flexibility in this bill and there are a lot of attempts in this bill to make it accessible to small organizations. For example, the audit requirements are different for small organizations than they are for large organizations.

And not every section of this long piece of legislation applies to every corporation, which is why I say I think with a little assistance and a little guidance it can be a useful tool, a much more useful tool than the present provisions of the CCA, even for small organizations. I wouldn't want to have the impression left that this bill is only for mega not-for-profits like the Canadian Red Cross. There's a lot in it that will benefit smaller organizations as well, if you can surmount the accessibility issue.

Mr. Brian Masse: If I can follow up on another quick question, Mr. Reid, you suggested some alternative dispute resolutions. Do you have any suggestions in terms of what those types of dispute resolution mechanisms would be?

Mr. Alan Reid: The standard ones are things like mediation. I think it's the standard mechanism. Again, it's encouraging people, maybe educating people on how to use these mechanisms. I'm not suggesting that the services be provided by the government, but to a large extent it's a mindset. Instead of saying you have members' rights and you have to enforce them through the courts, maybe come up with alternate ways for people to exercise members' rights, rather than getting involved in a class action or a long, drawn-out piece of litigation that's expensive for everybody.

Mr. Brian Masse: I think that's a very constructive element because you can stop things from getting worse.

The Chair: Monsieur Jolin.

[*Translation*]

Mr. Louis Jolin: Paradoxically, I'd say that, if you want the small associations not to adopt this act, but rather those of the provinces, you should leave it as it stands. Currently, the bill has more than 300 clauses, and you see how they're drafted in a federal statute: they include more clauses and more paragraphs. There are nearly 1,000 provisions. This legislation has been made in such a way that it's very hard to digest. So leave it like that; very few small corporations in the provinces will want to obtain their legal personality under the federal act when they see it as it stands. That's a joke.

Having said that, I think that the importance of associations in Canadian society, associations engaged in activities across Canada, should also be recognized in a federal statute. I'm thinking of NGOs, of large associations in the health field and other sectors. Even for those major associations, the structure of the bill as it stands is hard to digest. I think there would be a way to leave a certain number of things to the regulatory authority. A very large number of clauses concern the issuance of debt obligations. Is it necessary to put all that into the act? I know perfectly well that it appears in the Canada Business Corporations Act, but it seems to me this bill contains a disproportionate number of clauses on the issuance of debt obligations relative to the other provisions in the bill. That's a comment that's been made by virtually everyone. The bill could be drafted more simply. In that way, it would be of greater service to those who are going to use it.

I want to address one final point and to hear what you have to say on the subject. And that's the possibility of defining not-for-profit in the act. It's nevertheless surprising that the clause on definitions in a statute on not-for-profit corporations contains no definition of not-for-profit. You know there are a number of interpretations. Some say that a not-for-profit corporation can't make a surplus. Yes, a not-for-profit corporation can make a surplus. The definition of a not-for-profit organization is that its members do not share in the profits. It seems to me there should be a definition of not-for-profit in this bill.

● (1645)

[*English*]

The Chair: Mr. Skinner, do you want to make a comment?

Mr. David Skinner: Yes. It was around the comment on definitions that we made earlier. The overall objective of the bill is to encourage better governance of not-for-profits and the attendant responsibilities to make sure that not-for-profits operate in a way that society would think they should be accountable. That's an objective that I think we support. But I would go back to the burden of the act vis-à-vis whether any of the small to medium-sized organizations, clubs, if you will, would be classified as soliciting organizations or not depending on the kinds of things they do. The burden is much higher for soliciting organizations.

A small local community club that does a bowl-a-thon and goes out and gets people to sign up for $10 if the people bowl for two hours—would they be soliciting organizations and then be subject to all of these burdens? If the answer is yes, then a lot will not incorporate. They will just get their directors' and officers' liability insurance separately and look for other ways. You have a massive statute, and people will start to say, forget about it. I argue for simplicity and clarity in definition.

The Chair: Thank you, Mr. Skinner.

Thank you, Brian.

Michael, Jerry, and then Christiane.

Oh, Werner, go ahead.

Mr. Werner Schmidt (Kelowna—Lake Country, CPC): Thank you, Mr. Chair.

Thank you very much for your presentations. I think they are very thoughtful and very thorough. I am impressed with the expertise that each of you represents. I'd like to ask my first question of Mr. Grover, who has written corporate law.

Mr. Grover, many of the provisions in this act seem to parallel the provisions that are under the Canadian Corporations Act and they're almost parallel in certain areas. I'm wondering whether in fact the same detail that is in that act has to apply in this act simply because this is a not-for-profit organization whereas those are. There's always a lot of money involved, not to say there isn't much money involved here, but there's a different kind of interest in the membership of the shareholders than there is in the membership of a not-for-profit organization. Could you address that question?

Prof. Warren Grover: Yes. I think you mean the CBCA.

Mr. Werner Schmidt: That's correct, the Canada Business Corporations Act.

Prof. Warren Grover: Yes. I certainly agree with what I believe I hear my friend saying, for example, all this stuff about debt, which goes on for 65 sections.... It just seems very excessive for a not-for-profit corporation. It doesn't seem realistic to have 65 sections talking about debt, which could be much more simplified.

So I agree you could simplify certain parts of it. But I also think that people dealing with corporate law are familiar with the CBCA sort of overview, and while I'd like to see some simplification, I think people are familiar with it and like it.

Mr. Werner Schmidt: That's not the point, though. The point here is there's a principle. I think all of you presenting this afternoon indicated that what we want to do here is create a situation that is simple, that is transparent, and that makes the operation of a corporation like this accountable and responsible for the money the public entrusts to an organization like this. I think that was your basic tenet.

Why would one impose a very formal structure such as the CBCA onto something like this? That's the question. Why would you do that?

Prof. Warren Grover: Well, I guess the CBCA is seen, from at least a corporate lawyer's point of view, as a very facilitative act, not a very draconian act.

Mr. Werner Schmidt: This is really interesting, because the current not-for-profit organizations are under the CBCA, and yet every one of you, I think, made the observation earlier in this presentation that we needed to have a change because the provisions are draconian. Now it's the other story. Which one of those is correct?

Prof. Warren Grover: I'm just saying the CBCA is not thought of as a draconian statute.

● (1650)

Mr. Werner Schmidt: Well, what's draconian about...?

The Chair: Not-for-profits are under the Canada Corporations Act.

Mr. Werner Schmidt: Oh, that's the one we're talking about. My apologies; I have the wrong reference. I take it all back, and please don't record that.

I was talking about the Canada Corporations Act. My apologies. I saw the light.

The other question I have has to do with the transfer of funds that could exist with, let's say, the United Way, for example. I won't use the Red Cross because I don't know that much about it. But I know the United Way, in certain of its incorporations, has in fact two parts. There is the current operational side and then there's a foundation, and the revenues from it actually pay for the administration of the operational side.

What is that connection, and how does it fit into the provisions of this act as you see it?

Prof. Warren Grover: My understanding is there are many foundations, and they're used in different ways. Quite often, they are used not to do the day-to-day running of a charity but rather for capital structures. Those are the ones I've seen a lot of.

I'm not that familiar with what the United Way is doing with their double structure, but it may well be that they're trying to differentiate between what is going out to service the community on a day-to-day basis and what they're getting as an overlay in order to be able to get the money to go through the community. They need a structure at the top, and that's usually where the foundation is.

Mr. Werner Schmidt: I think somebody here made the point that every charity organization could become a soliciting organization, because if they ask for some money, they'll ask for money on both of these counts: one to do the operations in the community, the other one to support the foundation, the revenue from which can go to the funding of the other. I know that exists, and I'm just wondering whether the provisions in this act as you've read them would in any way cause a difficulty there.

Prof. Warren Grover: I don't think so, but might I suggest this really ties into CRA and whether you can get a charitable....You have to become registered as a charity under CRA, and that is really the key to being able to solicit to any extent. At least in my experience, that CRA registration is absolutely critical to talk people into sending you any donations. So I think this does need to tie in to CRA, perhaps in the language here.

[*Translation*]

Mr. Louis Jolin: I think the wording of clause 233 of Bill C-21 is a problem.

Mr. Skinner, you also testified on the wording of this clause. It states:

> 233.(1) This section applies to
>
> (a) a corporation that is a registered charity within the meaning of subsection 248(1) of the Income Tax Act;
>
> (b) a soliciting corporation; and
>
> (c) a corporation that has, within the prescribed period: [...]
>
> (ii) received a grant...

It also states:

> (2) The articles of a corporation shall provide that any property remaining on dissolution, other than property referred to in section 232, shall be distributed to one or more qualified donees, within the meaning of subsection 228(1) of the Income Tax Act.

The term “qualified donees” is quite restrictive. My position is this. I feel that every non-profit corporation, upon dissolution, should distribute its property to another not-for-profit corporation engaged in similar activities, not necessarily to “qualified donees, within the meaning of subsection 248(1) of the Income Tax Act”, which is much more restrictive. I feel the not-for-profit aspect is there at the start and at the end of a corporation. Property should be redistributed to a corporation, whether or not there has a solicitation. You are right about the wording of clause 233: a small organization that has received a small subsidy from the Government of Quebec or from the government of a province or from a municipality would be required to redistribute, not to a not-for-profit organization pursuing similar objects, but to a qualified donee within the meaning of subsection 248(1) of the Income Tax Act.

I think clause 233 should be completely reviewed.

● (1655)

[*English*]

Mr. Werner Schmidt: This act applies to organizations like the Canadian port authorities or the Canadian airports, all of which are technically not-for-profit organizations as defined here because they do not have share capital. That is very different from a United Way or a Red Cross operation, yet this act is purportedly covering both kinds of organizations. Do you see a problem there?

The Chair: Thanks, Werner.

Does anyone have comments?

Prof. Warren Grover: I understand that the CCA, the existing act, also does that. It covers both types of organizations. The problem with the CCA—and I'm back to taking out the B in there—is it simply doesn't relate to how any organizations now work in corporate thinking, so I don't foresee that this new act will be worse for any reason such as you are suggesting, if you see where I'm coming from.

Mr. Werner Schmidt: Will it make it better?

Prof. Warren Grover: I think it will be much better.

The Chair: Thank you.

Jerry, then Christiane.

Hon. Jerry Pickard (Chatham-Kent—Essex, Lib.): Thank you very much, Mr. Chairman.

Thank you for coming today—

The Chair: Jerry, just a moment.

Christiane.

[*Translation*]

Ms. Christiane Gagnon: I thought it was my turn.

[*English*]

The Chair: It is Jerry and then you.

[*Translation*]

Ms. Christiane Gagnon: All right. Thank you.

[*English*]

Hon. Jerry Pickard: Are we okay now, Mr. Chair?

The Chair: Yes, Jerry, go ahead.

Hon. Jerry Pickard: A long process has been leading up to the introduction of the act, and obviously the previous act was not meeting the needs of most not-for-profit corporations. As I understand it, there were also some major problems with the regulations in those acts.

The stated direction of the department and the goals to come forward with this act were first to modernize the act and improve corporate governance and accountability. In a public we have today, it is critical to make sure accountability, openness, and transparency are there. In large fundraising organizations, certainly, that is critical.

The other major intent of the act was to eliminate unnecessary regulations, which may cause more.... When you take unnecessary regulations out, you may have to put more specific things in the act—which probably causes a thicker act to be put in place—to try to deal with the different things regulations would normally have done and to make sure the non-profit sector has one envelope of material they can work in.

Some really good suggestions came forward. I really liked the idea of some type of summary of what a small organization can do, the step-by-step process by which they can meet the requirements of the act. Possibly that would be a step the department should be doing—helping small organizations that wouldn't have a lot of accountants and lawyers as background people to give them a step-by-step process.

I see this as a result of a lot of consultation between all different levels of non-profit organizations, and from what I thought I heard at the table, at least, I hear a positive response about most of the aspects. We do need to clarify some of the definitions as to what was said by a group of people. We welcome it to be brought in quickly and be put in place, was another comment.

Do you see any major flaws that have not been dealt with by the department through their consultation and through the things they've done with the organizations? They brought back an act like this. Are there major gaps that should be looked at?

● (1700)

Mr. David Skinner: Our comment was that we do support the direction, because we do believe its intent is to provide greater transparency and good governance. CSAE is all about educating and helping our members move towards those kinds of good governance rules, stay nimble on their feet, and do all the right things to ensure the members of those associations get good value for the money invested in those organizations. So we totally concur with all the objectives.

We don't see any major gaps, but what we do see is a need to clarify in many areas, because sometimes those great intentions, when they get put into legislation and eventually regulation, create unintended effects. I've been through a lot of consultations for a lot of legislation over the last 25 years that I've run an association, and many times I've seen that a year or so later, when the dust settles and people have to come in and satisfy the technical requirements, they suddenly realize they don't think it is what was intended—but they end up with just what it says.

We're very much in favour of interpretive bulletins; we work on other pieces of legislation and regulation in that manner. We're very much in favour of getting upfront clarity—even with the intent, testimony, committee records, and so on—as to how we can preserve some of the good intent and avoid the unintended effects as we go forward.

I go back to my soliciting versus non-soliciting and the principle that financial transparency is that those who pay should be aware of how the money is spent. Therefore, we agree with that. Soliciting tends to be public—therefore, the public should know—and non-soliciting tends to be members of less public organizations, be they trade organizations or clubs. We want to make sure when we define these things that we don't cast a broader net than was intended. But generally speaking, it's a good direction.

Mr. Alan Reid: Yes, speaking for our organization, I'm sure we'll find some mild irritants as we work through the statute, but overall I think our assessment is that it works for us and for organizations like ours.

[*Translation*]

Mr. Louis Jolin: I think the three major points I raised are not only formal, but also substantive irritants.

I took part in the consultations organized by Industry Canada in 2002. The work carried out within CIRIEC-Canada and the entire debate that has taken place in the past four months on the plan to reform the law of associations in Quebec have raised a certain number of points, and these are the three that I've put forward.

I believe a not-for-profit corporation should not be constituted by a single person, that there should be at least three persons, because not-for-profit organizations are first and foremost associations of persons. So that should be recognized.

Second, the application of the federal act should be limited. This is a substantive question, not merely a formal issue. It should be limited to associations that are engaged in activities in more than one province and have offices in more than one province.

The third substantive question is the fact that the property of an association, no matter which association, whether or not there have been solicitations, must be redistributed, upon the association's dissolution, to not-for-profit organizations carrying on similar activities. There should not be any appropriation or privatization of that property.

These are three substantive issues.

As for the rest, having attended the consultations, I believe the bill contains some very good elements, although it is complicated and very detailed. We want to come up with a single act rather than a number of regulations. The fact that an association can be constituted by filing articles of incorporation and not by obtaining letters patent, in particular, is a very good direction.

[*English*]

The Chair: Okay, Jerry, very briefly.

Hon. Jerry Pickard: I think Mr. Grover was going to make a comment.

I want to ask, Mr. Jolin, do you know where the idea of one on the board as a minimum requirement came from? I'm not sure, as a novice.

The Chair: Professor Grover, do you know?

Prof. Warren Grover: I can answer that because it comes out of CBCA. We used to have to have three incorporators in every provincial jurisdiction I'm aware of and in the federal jurisdictions. All it amounted to was finding three people to sign in. At my law office, it was me, my secretary, and the next guy's secretary. Those became the three. This seemed to be irrelevant.

I understand what Mr. Jolin is saying, and that is, in a not-for-profit organization, you're always going to have more people. In fact, to put three of these people who just send in the articles of incorporation on the board wasn't doing very much. Do you see what I mean?

● (1705)

Hon. Jerry Pickard: If you do it out of your office and it didn't make any...that was the way it was, and that's the way it would be in this. Okay, that's clear. Thank you.

Prof. Warren Grover: Almost all incorporations are done that way. That's why I say the CBCA is a very facilitating act. This is the one thing I was trying to say. The other thing, which I think goes to the point you've been making, is as long as you understand that the director is going to need some money to get the right people in around him, if you look at the CBCA, he has rules all the way through: this is what you should do to do an amalgamation, this is what you should do.... So I think the point being made around the table is that he has facilitated it. Over the years he's built up in the concordance of the act a whole bunch of policy statements and how he sees these things coming. So I think it will happen, assuming they're given enough money to run a proper bureau.

Hon. Jerry Pickard: It would happen through a normal process rather than a demand in legislation.

Okay. Thank you.

The Chair: Thank you, Jerry.

Christiane, then Michael.

[*Translation*]

Ms. Christiane Gagnon: I'd like to go back to what you said, Mr. Jolin, and to warn the committee.

You said that the property of an association should be transferred to a corporation whose objects are the same as those of the association that is winding up its business. Consider, for example, social housing, in which the government has put a lot of money. Social housing is public in nature and the assets of those organizations would fall into the hands of a corporation that shares neither their intentions nor their purpose. I think that's what you're referring to when you say there could be a problem.

Mr. Louis Jolin: Yes. Of course, I'm thinking of the associations that receive subsidies or public funds. That's already provided for by clause 233. However, I feel that clause is too specific, since it refers solely to qualified donees within the meaning of the Income Tax Act. I'm also thinking of organizations that have not received public money, but whose supporters or members have worked on a volunteer basis for years and years to build up assets. Why should only the last members of an association be able to share the property?

In Quebec, there was a network of not-for-profit outdoor recreational areas, and those areas were privatized. Under provisions similar to the current provisions of the Quebec Companies Act, the last members appropriated that collective property that had been built up through the commitment of volunteers over many years. I believe it is very important to prevent this kind of appropriation, but not only in the case of organizations receiving gifts. For example, social housing has received public funds.

Ms. Christiane Gagnon: That's an example, perhaps an extreme one.

Mr. Louis Jolin: For them, obviously, but even for other organizations.

Ms. Christiane Gagnon: Thank you for giving me some examples.

I'd like to go back to the question of the constitution of an association by a single person. I'm from Quebec, and some witnesses from the rest of Canada told us that this is a good and transparent act and that they're satisfied with it.

How can the fact that there's a single person facilitate matters, when that isn't at all consistent with the associative nature of a not-for-profit corporation? It contradicts the very spirit of an association. Don't you see any disadvantages in that?

I spoke to Messrs. Grover and Reid, who seemed to be very positive about this aspect of the act. Don't you see a contradiction in it? Don't you see that it's inconsistent with the definition of a not-for-profit organization? The provisions of the act should be consistent with this type of business. Don't you think this thing contradicts the spirit of an association, which must be composed of more than one person?

● (1710)

[*English*]

The Chair: Mr. Grover, do you have a thought on that?

Prof. Warren Grover: I hope I've understood what you've said. This is this one-person idea. All the one person is for is to get the corporation started. The one person won't stay as one person. It will now branch out. But it is facilitative to be able to have just one person send in the form and deal with the administrator on the other end. I don't know of any corporation that winds up with only one person, other than professional corporations.

[*Translation*]

Mr. Louis Jolin: You have to distinguish between procedure and the substance of the question. Subclause 6(1) of the bill states:

> 6.(1) One or more individuals or bodies corporate may incorporate a corporation by signing articles of incorporation...

Nothing in the bill states that there must be a minimum of three persons in such a corporation. Ultimately, I think one could allow a single person to sign the documents rather than three, but it should still be ensured that there's a minimum of three persons in an organization. It also states that the articles of incorporation shall set out "the number of directors or the minimum and maximum number of directors". There could be only one, as there could only be one member. Nothing in the bill sets any guideline in this regard. That's what's serious. It's not so much the fact that only one person signs. It's the fact that you can have an association with one person and a single director.

In my opinion, a not-for-profit corporation is an association of persons. A business corporation is an association of capital. It is understandable in a business corporation that a single person may hold all the capital, but a non-profit corporation is an organization of persons: there should at least be three.

Ms. Christiane Gagnon: The bill refers to classes of members. It states that there may be more than one class of members, but only one class may vote on the board of directors. Wouldn't there be a danger here of influencing the decisions of the board of directors? Don't you see this as a danger? Those who feel so moved can answer.

[*English*]

The Chair: Or any of the others, if you have thoughts on this.

Go ahead, Mr. Grover.

Prof. Warren Grover: I'm not sure I'm understanding exactly. There is a lot of stuff in here about members, and the act, to my way of thinking, clearly thinks you're going to have a list of members, that there are going to be many members of the corporation, and those members will have the right to elect the directors. That's how the act seems to be set up, as I read it.

Now, can you distort a corporate act by having only one person as the only person in it? Sure you can. I can be the only holder of Grover's Holdings, which is my investment company; I don't need three people. I tend to agree with my friend that in a not-for-profit corporation it's very unusual, but there are some foundations where somebody such as Li Ka-Shing is setting up a foundation, and if only he wants to be there, bless him. He's setting up a charity for the whole of Canada, and it's only he. He's the only person contributing. He's put in, I think, $4 billion. If that has one person...? Yes.

The Chair: Mr. Reid.

Mr. Alan Reid: I just want to comment, too, that it's perfectly acceptable for the not-for-profit sector to have different classes of membership. In our organization, for example, we have what are called national representative members who vote at annual meetings, and we have a lot of other members—many, many members—who have rights to attend and to speak and participate at meetings, but they don't have voting rights there. But they have voting rights in other regional meetings—and so on.

Depending on the complexity of your operation you're going to have classes of membership, and there are going to be different rights attached to them, just as you have different voting rights that attach to different classes of shares in business corporations. I don't think there's anything wrong or anything anti-democratic about that.

Again, I like the word "facilitative". I think the act is facilitative. I think what it says is there has to be transparency, though. If you're going to have these different classes, that has to be set out. It has to be clear who has what rights.

● (1715)

[*Translation*]

Mr. Louis Jolin: I agree with Mr. Reid that there may be a number of classes of members. That's not a problem.

[*English*]

The Chair: Michael, and then unless I see any other indications, we'll just have a quick minute for Werner at the end for a last question.

Michael.

Mr. Michael Chong: I have a number of very quick questions. My first quick question is for Mr. Grover.

You mentioned in your notes that the CBCA requires an audit committee to be formed. The current proposal uses the word "may". I take it you don't want to see that whole clause taken out of the proposed legislation; it's just that you don't want to see it made mandatory. Is that correct?

Prof. Warren Grover: That is correct. I don't think you need an audit committee, basically.

Mr. Michael Chong: Yes, but there's no problem leaving that section in, because it says the board "may" form an audit committee. That's what it currently says.

You don't have a problem with that?

Prof. Warren Grover: I don't have a problem with anything facilitative.

Mr. Michael Chong: Okay.

The next question I had concerns access to the membership lists, the registered members. Does anybody on the panel here have any concerns regarding access to the membership list?

Prof. Warren Grover: I don't have any.

Mr. Michael Chong: No? You don't think it could be potentially open to abuse?

The Chair: Ms. Bray, do you want to jump in on that?

Ms. Johanne Bray (General Counsel, Canadian Red Cross Society): Yes. I just wanted to say that I think it's not consistent with the privacy legislation, and we'll have to be careful about that. Perhaps there's room for improvement in that direction. It hasn't been a concern that we've expressed thoroughly in our paper, but certainly it does clash with the privacy legislation.

The Chair: Go ahead, Michael. We're good for five minutes.

Mr. Michael Chong: Okay.

Mr. Skinner?

Mr. David Skinner: I'm secure with that, in the fact that the Privacy Act is more specific than this general.... Generally speaking, the specific overrides the general, creating the prominence of one over the other. The Privacy Act we would determine to be more relevant to protecting specific information than the general provisions of this bill.

The Chair: Are there any other comments?

Mr. Michael Chong: My next question has to do with not-for-profits that are religious organizations. Part of the act's proposed legislation stipulates that there's no redress in the courts if a member applies for relief regarding an action taken by the organization if that action is based on tenet of faith. I was wondering if anybody had any comments on that portion of the proposed legislation, if they saw any potential problems with it in terms of insulating religious organizations from liability when their organization makes a particular decision to act in one way or the other and some member doesn't like that.

The Chair: Do we have any takers on that question?

Professor Grover.

Prof. Warren Grover: I did make a comment in one of my things that you have to be careful as to what is a religious organization. I don't have any problems if you're talking about the actual religious organization, say, a church or a religious organization of some sort. But if you start to go down from there to include, for example, not an organization that's part of the religion but the setting up of an educational institution, or you are proposing to get donations for an educational institution, I don't think that's a religious organization, even if the donations are going to an educational institution that happens to be of the faith, whatever that faith is. I'm saying I think you have to be a little bit careful on how wide you make this before.... Partly facetiously I would say, you don't want the tenet of the faith to be that we are now going to hopefully keep sending money over to the IRA or something.

● (1720)

Mr. Michael Chong: Let me ask you the question differently then. Do you think the tenet of faith provisions in the legislation are sufficient to protect religious organizations from undue proceedings in the courts?

Prof. Warren Grover: I think they are. My comment was on the other side.

Mr. Michael Chong: No, I understood that one in your notes.

My other question concerns your comments, Mr. Grover, and your notes, where you mention that you think the director of Industry Canada should in some way assume the role of what the OSC or other provincial regulatory bodies do when it comes to regulating not-for-profits. Do you think clause 290 in the bill, which currently gives the director the authority to investigate and make inquiries regarding the act, is sufficient in the legislation for the director, or do you think it needs to be expanded on?

Prof. Warren Grover: I think it needs to be expanded on a bit, and I tried to make that point in one of the longer pieces I wrote in my submission. The appointment of an inspector may be a useful thing to allow a director to go after. The courts have been very reluctant to appoint inspectors, and there are very few examples of them, but it seems to me that's what you need in this type of organization. I don't think the oppression action will work well for not-for-profits. I don't see members going to spend a lot of money.... What are they asking for? Almost all the oppression actions are asking to be paid by the directors or by the corporation for things that have hurt this individual who brings the action. With a member, you don't get that so much, so I think you need some help from the director in there. That was done, as I said, with the CBCA when it started out. The director was very much more involved.

Mr. Michael Chong: Not through regulation but set out within the act. Okay.

My last question concerns directors' liability. You're suggesting that even if directors have insurance, that the court be able to assess costs against a particular director beyond the insurance paid out for penalty.

Prof. Warren Grover: No. I was trying to make a slightly different point, and if I said that, that's not what I mean to say. What I'm trying to say in there is if directors have no monetary liability because of insurance, which I think is true, then the court should have an ability to say, “But you clearly acted poorly, so we're not going to let you be a director for another year”. Take away the ability—

Mr. Michael Chong: So not a monetary penalty but a—

Prof. Warren Grover: Monetary penalties are not working.

The Chair: Last at bat, Werner, play chicken with the bell.

Mr. Werner Schmidt: Yes, play chicken with the bell.

Well, Mr. Chairman—

The Chair: We are still on the record, by the way. Members have gone ahead to get ready to vote. We're on the record still.

Mr. Werner Schmidt: Referring back to the members and classes of membership, and specifically with the access to membership lists, as it ties in with classes, there are classes of members who are automatic members because of the donations they might make to an organization like this, but they want to be anonymous in terms of their membership existence with the organization.

Under the provisions of this act, it seems to me the transparency provision makes it impossible for anyone to be an anonymous donor or member of such an organization. Is that correct?

Mr. Alan Reid: Correct me if I'm wrong, but I don't think just because you're a donor you're a member of the organization. Certainly under our bylaws there is the requirement for an application. I think under the act there has to have been an acceptance by the directors, as I recall. I'm going from memory.

● (1725)

Mr. Werner Schmidt: I appreciate that. I know that's how yours works, but I know of at least one. Well, there are more. I could name one, but I'm not going to do that now because that's exactly what they didn't want.

The organization where that exact provision exists wanted to be protected by the provisions of the act, and in their opinion, this act does not provide that. Consequently, they feel they will sever completely their donations because they are now automatically members of the organization and they want no part of that.

Yes.

Mr. David Skinner: I've looked at a couple of sets of bylaws and organizational structures on my own outside of CSAE. This act would not actually prevent any organization from structuring their classes of participation in the organization such that an anonymous donation could be made outside of the bylaws stipulating what constituted a membership.

Within the current state of affairs, many organizations are structured just as you say—you make a contribution, therefore you are a member. If the bill passes, those organizations that wish to protect the anonymity of those donors would have to make a bylaw change. As every organization that is going to continue under the new act must submit new bylaws in any case, I think there is adequate leeway and opportunity for organizations to structure their bylaws in order to protect some of that anonymity.

Mr. Werner Schmidt: Yes, but the provisions of the act are that a register of members has to be kept. If in their bylaws they say this person is a member, does that become a problem?

Mr. David Skinner: Yes, that is a problem. That's why I was saying that the bylaws would have to be amended to clarify what an actual member is with the requirements for transparency in mind.

The Chair: Thank you very much.

Michael, you just want to make a quick statement.

There's also a quick statement over here by Jerry.

Mr. Michael Chong: Actually, Mr. Chair, I want to ask you whether or not for future committee business we could discuss focusing on a particular issue that came up today.

The Chair: During this session?

Mr. Michael Chong: No, which came to my attention today, unrelated to Bill C-21.

The Chair: You should just send a note to the clerk.

Mr. Michael Chong: Okay, but I'd like to—

The Chair: Do you want to put it on the record?

Mr. Michael Chong: Yes, I want to put it on the record.

The Chair: Just put it on the record.

Mr. Michael Chong: Today it was reported in *The Windsor Star* that the Canadian Nuclear Safety Commission wrote a fairly scathing report on AECL's Chalk River nuclear facility. Since both these agencies fall under the industry department's area of responsibility, I would like to ask the members of the committee if they'd be willing to focus on this at our next committee meeting. In particular, if we could have representatives from those two agencies come before committee to explain what exactly happened last June, and in particular explain the discrepancy between the AECL's accounts and what the Canadian Nuclear Safety Commission reported....

The Chair: We'll take that as notice. It'll be on the next list for the business of the committee.

Mr. Michael Chong: After the vote?

The Chair: No, we're not having a business meeting today. It'll be on the list for the next business meeting. I'll explain that to you in a second.

Jerry, very quickly, and then we're going to suspend.

Hon. Jerry Pickard: Ladies and gentlemen, there has been a fair amount of discussion about protecting and making secure directors and their liability. As separate organizations, if you have specific comments that you could put down in some form and forward to our clerk so that we as a committee could actually deal with those concerns more directly, I think that would be helpful for the committee's direction. Thank you.

The Chair: With that, Jerry, thank you.

Thank you all very much.

I'm going to suspend the meeting only. We'll be back here after the vote to continue our work on Bill C-9.

I want to thank our witnesses for their very helpful time with us this afternoon. There's never enough time to get all your ideas, but we appreciate what you've done for us today.

Merci beaucoup.

We're suspended until after the votes.

● (1729)

(Pause)

● (1815)

The Chair: I'd like to bring the meeting of the Standing Committee on Industry, Natural Resources, Science and Technology back to order on this February 22.

We're going to start a clause-by-clause consideration of Bill C-9.

By Standing Order 75(1), clause 1 automatically goes to the end. I propose that we also do clause 2 at the end—it's referred to as standing a clause—simply because there are amendments proposed that, if adopted, would have consequences.

Is that agreed?

Some hon. members: Agreed.

The Chair: Okay. On clause 3 there are no amendments proposed. Are there any amendments on the floor on clause 3?

I am not aware of any amendments to clause 4.

(Clauses 3 and 4 agreed to on division)

(On clause 5—*Minister to preside*)

The Chair: I invite you to look at your package of amendments. On page 4, you have government amendment G-2. Does anybody wish an explanation?

We need a mover.

Hon. Denis Coderre: I so move.

The Chair: Mr. Coderre is moving G-2. Are there any questions?

Are you going to speak to it, Denis?

Hon. Denis Coderre: It's pretty clear by itself.

The Chair: Sébastien, do you have a question on G-2?

[*Translation*]

Mr. Sébastien Gagnon (Jonquière—Alma, BQ): One aspect of the proposal is a problem for me, the term "agreements". I don't know how far my colleagues are prepared to go, but I propose we delete the words "and agreements related to distinct sectors".

[*English*]

The Chair: We'll invite the minister to comment.

[*Translation*]

Hon. Jacques Saada (Minister of the Economic Development Agency of Canada for the Regions of Quebec): I didn't understand the motion.

The Chair: Sébastien, would you repeat it, please?

[*English*]

I'm sorry, Sébastien, he didn't pick it up.

[*Translation*]

Mr. Sébastien Gagnon: I said that... In fact, I could let Mr. Coderre present his amendment. It's clear.

Hon. Denis Coderre: Yesterday, in light of the evidence, it was clear things also had to work for the industries. So it's important that there be certain ad hoc sectoral agreements. In my opinion, this amendment is entirely consistent with what the minister presented to us and with the evidence as a whole. I feel very comfortable with that.

Mr. Sébastien Gagnon: I'd like to move a subamendment, that the words "and agreements related to distinct sectors" be deleted.

The Chair: Please repeat that slowly.

[*English*]

You're going to strike out the words....

[*Translation*]

Mr. Sébastien Gagnon: I move that we delete the words "and agreements related to distinct sectors". I want to keep the words "including cooperation agreements with Quebec" and to delete the words "and agreements related to distinct sectors".

[*English*]

The Chair: Is there any discussion on the subamendment?

Mr. Schmidt.

Mr. Werner Schmidt: Which one are we looking at now?

● (1820)

The Chair: We're on G-2. You need to go to the package of amendments.

Mr. Werner Schmidt: Yes, I know. They've been separated.

The Chair: It's on page 4 at the bottom, a handwritten "4". It will be almost a nearly blank sheet.

While we're waiting for Mr. Schmidt to find his reference, Mr. Minister, did you want to comment on that?

[*Translation*]

Hon. Jacques Saada: Mr. Chairman, we've had sectoral agreements with Quebec for a long time, particularly with the tourism sector, where we support organizations for the promotion of tourism outside Canada, whereas Quebec supports tourism locally. These are agreements that have been in existence for a very long time, and there are a number of them in a lot of areas.

I find it hard to understand what's troubling in the fact that we have sectoral agreements.

[*English*]

The Chair: Okay.

Werner, are you ready to carry on?

Mr. Werner Schmidt: Yes, carry on.

The Chair: Are there any other comments on Sébastien's subamendment?

(Subamendment negatived [See *Minutes of Proceedings*])

The Chair: Now back to the main amendment. We voted on the subamendment proposed by Sébastien on G-2. Now we're going to amendment G-2 as it's—

Mr. Werner Schmidt: No, no. What was the subamendment?

The Chair: Now we're at amendment G-2.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Okay. Let's go to CPC-1 on page 6.

Do you have a mover there, Werner?

Mr. Michael Chong: I'll move it.

The Chair: Michael Chong is moving CPC-1.

Did you want to speak to it?

Are there any other comments?

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: On Bloc amendment BQ-2 I'm going to have to do a legal interlude here, an interregnum. I have received advice from my legislative clerk that Bloc amendment BQ-2 and later on Bloc amendment BQ-7 and Conservative amendment CPC-3, if you read them all, relate to the transfers of dollars, funds, to the province of Quebec. I am inclined to deem them inadmissible. If there are comments from either side, I could try to explain—I am not a legal expert—that it is outside the ambit of the bill to allow for a transfer of funds like that.

Are there any comments? Otherwise, I'll simply rule it inadmissible.

Paul.

[*Translation*]

Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ): The fact that it's inadmissible applies to this, doesn't it? The argument can't be served up to us again later. There'll be another one, and we think it should be admissible. For this one, it's all right.

[*English*]

The Chair: For the moment I'm declaring Bloc amendment BQ-2 inadmissible, but when I come to BQ-7 and to CPC-3, I will deem those two amendments at their time inadmissible. Then we can have a discussion. How's that?

[*Translation*]

Mr. Paul Crête: All right.

[*English*]

The Chair: So for now, Bloc amendment BQ-2 is off the table.

On BQ-3, are you, Paul, or Sébastien, going to speak to BQ-3?

[*Translation*]

Mr. Sébastien Gagnon: I move that Bill C-9, in Clause 5, be amended by adding after line 5 on page 3 the following: (3) The Minister shall exercise his or her powers in a manner that will respect the regional development priorities of the Government of Quebec.

It's important that both work in cooperation. In a previous speech, the minister told us that the two had to work in a complementary fashion. For that to happen, the minister must respect what the Government of Quebec has already done when he intervenes so that those actions are complementary to those of Quebec.

That's consistent with the testimony we heard at the start of the week: witnesses wanted there to be cooperation, but always in a manner consistent with what's already being done by Quebec.

● (1825)

The Chair: Any comment, Mr. Coderre?

Hon. Denis Coderre: Mr. Chairman, we completely disagree on that.

First, complementarity doesn't mean that we have to be subordinated to what the Government of Quebec is going to do. The Government of Quebec has priorities, and the Canadian government has priorities as well, which doesn't mean that the two can't agree. Since the minister exercises other powers that have nothing to do with the Government of Quebec, completely different agreements can be reached. This kind of amendment would be an obstacle for us.

The Liberals will vote against the amendment.

The Chair: Are there any other comments?

Mr. Paul Crête: I think this amendment is very important because it would, in a way, define the way regional development should be done in Quebec. It's important that everyone present here who believes that the provinces have a particular responsibility confirm that development from province from province, from region to region of the country, must be done in a manner consistent with the priorities of the region concerned.

Since we're studying the bill that concerns the Economic Development Agency of Canada for the Regions of Quebec, this applies to Quebec today. I think it's very important. I invite all the members to think clearly about it and to support this vision of development. We've heard evidence to that effect. This is also a key point if we want to ensure that Quebec's priorities are respected in future.

The Chair: Mr. Saada.

Hon. Jacques Saada: Thank you, Mr. Chairman.

Let's be clear. The sole purpose of this subamendment is to ensure that the federal government can no longer take any regional development initiatives, unless it's in the context of what has been decided by the Province of Quebec. That's contrary not only to the government's intention, but also to the Constitution of Canada. Consequently, this amendment cannot be supported.

The Chair: Are there any other comments? Sébastien.

Mr. Sébastien Gagnon: The purpose of this amendment is not to prevent the minister from fully exercising his powers. There are authorities and areas of jurisdiction in Quebec. The authorities are groups, committees or events, like the Quebec Summit and the Youth Summit. There we stated certain priorities based on areas of jurisdiction. For example, human resources are a Quebec jurisdiction.

In reality, we want to prevent the Government of Canada from competing with the Quebec government. That would be totally pointless.

We want the minister to be able to exercise his powers in his areas of jurisdiction, in his own way of operating and based on his own priorities, but he has to respect what's already being done in Quebec. That's important. Consensuses have been formed. That would enable Quebec to operate independently. Furthermore, another amendment that we're going to move would enable him to lend Quebec a hand, in accordance with his areas of jurisdiction and priorities. We have to prevent this kind of competition, which we regularly see and which is harmful to the region. As a result of this competition, we wind up with half-baked development because Ottawa has resources and Quebec has resources. We have to prevent this kind of competition.

Mr. Minister, you talked a lot about complementarity, and my amendment is consistent with that perspective. We're going to respect Quebec's established priorities, and the federal government will have its own areas of expertise.

[*English*]

The Chair: Pablo, Paul, and then Denis.

[*Translation*]

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): Thank you, Mr. Chairman.

I think we can respect priorities without being subjected. What troubles me in this amendment is that it subjects the powers of the minister and of the Government of Canada to those of the Government of Quebec. I find that unreasonable.

[*English*]

The Chair: Paul.

[*Translation*]

Mr. Paul Crête: That may be a matter of perspective. Let's look at what you're talking about.

The bill states: 5.(1) The Minister shall preside over the Agency.

(2) In exercising the powers and performing the duties and functions under this act, the Minister may enter into agreements with the Government of Quebec or any agency of that government, or with any other entity or person.

Then we propose to add: (3) The Minister shall exercise his or her powers in a manner that will respect the regional development priorities of the Government of Quebec.

We're not imposing anything unacceptable on him here. This implies that, when he exercises the powers conferred on him under the act and those conferred on the agency placed under his authority, the minister will have to take into account the regional development priorities of the Government of Quebec.

Yesterday, during the evidence, we talked a lot about the fact that there's currently a lot of arbitration at the local level. That involved the CFDC, a CLD and an RCM. It was said that, on that level, people managed to work things out, but that it was necessary to provide a more specific framework for the way the work was done between the two levels of government. It's precisely in that line of thinking that we're introducing this amendment. The idea here is to clearly establish the ground rules so as to put an end to the battles we've had in the past and that we're still having. Between the two levels of government, each wants more of the pie, and that doesn't help achieve harmonious development.

Ten, 15 or 20 years ago, there were agreements between the two governments designed to regulate or govern regional development as a whole. Rather than maintain the system of agreements, we're proposing here that the minister simply ensure that he operates by taking the Quebec government's priorities into account. In that way, he'll have more flexibility than there was a number of years ago. At the same time, this offers a solution to the problem we were told about and that is the subject of criticism, that the framework wasn't clear enough. However, if we don't agree to this amendment, it will remain very unclear; the pointless disputes and exchanges will then continue to occur. That's ultimately what we want to avoid. We want to ensure we achieve good results.

Yesterday we were told that, in each of the regions, on a daily basis, they had to circumvent federal ways of doing things so that they could operate. Do you remember the gentleman from Abitibi who told us that the only reason they could have a general manager at the CFDC and at the CLD was ultimately that the public servant from Montreal was too far away to get there and didn't have the funds to pay the expense. So they managed to find a solution at the local level. But those same people repeated to us that it was very important that federal action be harnessed. Mr. Proulx, who is a local and regional development specialist, said so as well. His analysis, which goes into greater depth than what we usually see, showed that a much more structured framework was required in order to achieve a certain objective of efficiency and effectiveness.

For those reasons, I think this amendment is appropriate, Mr. Chairman.

● (1830)

[*English*]

The Chair: Denis, Brian, and then we're going to vote.

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, with all due respect for my colleague Paul, I believe this bill is a question of status and not of power. Subsection 36(1) of the Constitution Act, 1982 was entirely clear. The Government of Canada is entitled to invest in regional development. All he's saying—even though it brings a certain refrain to my ears—is part of a mission. Here we're talking about complementarity, and we must not set precedents that will restrict the minister's power.

In that sense, Mr. Chairman, we completely disagree with this amendment. We will therefore vote against it.

[*English*]

The Chair: Brian.

Mr. Brian Masse: I don't interpret this as a threat to the bill in terms of limiting the government to be able to invest and to be involved. I think the bottom line is it can't undermine, negate, cease, or conflict regional priorities. So I don't think it's the be-all or end-all.

The Chair: If you'll be quick, Paul, then we're going to vote. Very briefly.

[*Translation*]

Mr. Paul Crête: Mr. Chairman, I have a right to speak to this point in order to provide an explanation.

I repeat: we're living in a different time. If we had a majority government before us, it could steamroller us and impose its vision. However, it's a minority government, and that's the result of voter choice. Voters expressed the desire for things to be done differently, for there to be other models and ways of doing things and for members to have some influence over the laws so that they're more consistent with the reality they want.

In that sense, I believe our amendment is reasonable. I repeat that the idea is not to go back to official agreements so that the minister has to obtain Quebec's consent every time he wants to move his little finger. That's absolutely not the case. Instead, it's to ensure that, when he takes action or proposes strategies, he does so with respect for Quebec's priorities.

It may occur, for example, in the context of a program like Regional Strategic Initiatives, for example, that actions taken by the federal government must absolutely be consistent with Quebec's priorities. We currently don't have a guarantee that they will be. However, there are situations where the arrangement is neither beneficial nor effective in terms of regional development.

I hope your amendment will be supported by a majority of the members here present. If we want to show that we can do things differently, the opportunity has arisen.

● (1835)

Hon. Denis Coderre: It's not because we have a different point of view that we're in favour of using the steamroller. The absolute truth belongs to no party, and we know the regions as well as the members of the Bloc Québecois.

[*English*]

The Chair: Excuse me, it's not a point of order.

I believe the points have been made quite well on all sides.

[*Translation*]

Mr. Paul Crête: I agree with you that it wasn't a point of order. I didn't say that the Liberals weren't entitled to defend their position. I didn't say they didn't have a choice. They're presenting their way of seeing things and we're presenting ours, which is a different vision. We hope a majority of the committee members will opt for that vision.

I said we had a new opportunity before us in the context of a minority government. In that respect, I hope we'll manage to make ourselves heard. The Conservative Party wants to show that it would take a different approach to managing the federal government. However, it's concrete actions like the proposed amendment that will enable us to determine whether it's ready to act.

A respect-Quebec approach is one that could apply to other work on regional development agencies. It seems to me it could in fact apply to many other regions. For a party that advocates this type of decentralization, one of the concrete ways to show it is to ensure that the federal government respects the economic direction taken by a province. That's what we want to see in the bill.

[*English*]

The Chair: Sébastien.

[*Translation*]

Mr. Sébastien Gagnon: We've talked a lot about situations where there's been a duplication of services. Some of the arguments from witnesses highlighted this problem.

What's important today, in the context of this clause, is to really emphasize this complementarity which the minister has praised and to make it more valid, more official. For example, there are CFDCs and CLDs in the region. The two programs of these organizations should be prevented from competing, or at least from being at odds. There's a risk there of utterly pointless competition. We constantly have to talk about complementarity. For example, if the Government of Quebec offers a business a loan guarantee, it's important that the federal government play a complementary role through a financial measure or a program. A financial package could be a good option in that case.

For entrepreneurs, that additional amount may make the difference between starting up or not starting up. There could also be grants, modest or major, depending on the case. In both big and small projects, complementarity is important. For example, the federal government could choose to invest in infrastructure, whereas Quebec could intervene with a financial package, working capital or employability.

Through this clause, we want to prevent the kind of competition that has already been observed. For example, there could be competition for an election. You always have to be aware of the kind of situation where the thing is to know who'll be the first to get the project or who will intervene at the expense of the other. In addition, the federal government might not want to invest in projects in which Quebec would invest a little more money than it; it might find that doesn't give it enough visibility. It's really important to avoid this kind of attitude. And yet it occurs. I can attest to that, since I come from Saguenay—Lac-Saint-Jean and work there with small communities. You sense it's becoming more and more tangible.

The approach to take is one of respect. I briefly referred to the summit that brought together Quebec and the regions, during which consensus was reached in a number of areas. The issue back home was the creation of a regional development fund. The minister told us he was facing a number of problems regarding accountability. And yet you have to manage to permit this kind of initiative.

For example, according to the Auditor General, it would appear that we're unable to be properly accountable. I think that's false, and we can find mechanisms that can help us in the context of such ad hoc projects. This project is important, Mr. Chairman, we're talking about a fund of approximately $700 million. Quebec has agreed to contribute to it, as well as private sector companies. Alcan, for example, has agreed to invest several tens of millions of dollars in it. We can't let an opportunity like this go by or be insensitive to it.

We have to acquire an action lever. Today that's what I'd like to give not only the government, but the minister as well. He talked to us about accountability, and, on that point, I'd like to give him every means to intervene and act on this type of request. This one comes from Saguenay—Lac-Saint-Jean, but other initiatives could come from elsewhere in Quebec, be it Abibiti, the Gaspé or Huntingdon, where we know there's a textile crisis. We have to give the minister all possible flexibility, but always in the context of complementarity. I emphasize that point.

That's why I invite all my colleagues to agree with me. As I said, this won't prevent the minister from operating, as some colleagues might claim. For my part, I want us always to be able to avoid the kinds of disputes we've known in the past. In any case, this is consistent with what the witnesses told us. Whether or not they were the government's witnesses, everyone agreed that this cooperation and complementarity were important, that they would enable us to be much more effective. That effectiveness is the basis of economic development, and thus of our businesses. This vision and this complementarity are necessary.

Thank you.

● (1840)

The Chair: Mr. Saada.

Hon. Jacques Saada: Thank you, Mr. Chairman.

I'd like to raise four points. First, I thought I was clear in my presentation before this committee. I denounced the fact that we were being accused of causing duplication, when the CFTCs were in fact in existence roughly 10 years before the CLDs were created. The duplication was thus caused by the creation of the CLDs, not by the presence of the CFDCs. You can't cause duplication, then denounce the fact that it exists and want to remove the first of the two organizations that was created: that makes no sense. It's illogical.

Second, with all due respect for my colleagues, I must say that they merrily tend to confuse complementarity and subsidiarity. Being complementary doesn't mean that you should be subjected to the decisions of the other party. Which leads me to my third point. The amendment is not a wish, as Mr. Crête said earlier. It creates an obligation to subject the regional development objectives of the federal government to priorities and initiatives of the Government of Quebec. That's not a wish, it's an obligation. Let's call a spade a spade.

Lastly, we're talking about regional consensus in the Saguenay. However, it's interesting to note, Mr. Chairman, that the federal government did not take part in those discussions, but that a discussion involving the federal government was made. As regards the creation of the CLDs, an arrangement was concocted from which the federal government was excluded, but which also involved the federal government. In my mind, the bottom line is clear: the idea is to make it so that the federal government is nothing but a cash cow with no right to inspect the way regional development is being managed. I believe the amendment is very clear in the circumstances. It's an intention that I respect, but that is not at all ours.

Consequently, I would invite my colleagues to vote against this amendment.

[*English*]

The Chair: I'm going to call the question then on—

[*Translation*]

Mr. Paul Crête: I ask that there be a vote on division, if possible.

[*English*]

The Chair: Okay, a recorded vote.

(Amendment negatived: nays 8; yeas 3)

● (1845)

The Chair: So Bloc amendment BQ-3 is defeated.

(Clause 5 as amended agreed to on division)

(On clause 6—*Designated areas*)

The Chair: We have Bloc amendment BQ-4, which is on page 9. I just want to point out that, if adopted, this amendment applies to Bloc amendment BQ-1.

Did you want to propose it?

Do you have a question, Brian?

Mr. Brian Masse: Thank you, Mr. Chair, I have a question. In terms of the definition of "enterprises", does that include cooperatives?

The Chair: The answer is yes, the word "enterprises" includes cooperatives.

Sébastien, are you going to introduce Bloc amendment BQ-4?

[*Translation*]

Mr. Sébastien Gagnon: I'd like to move a minor amendment, with your permission, Mr. Chairman. I would like paragraph (a) of the amendment to read: (a) promote economic development in the regions of Quebec where low incomes and/or low economic growth are prevalent or where opportunities for productive employment are inadequate;

We must not come to a dead end in three years; that's why I'd like to add "and/or". Will you allow that, Mr. Chairman?

[*English*]

The Chair: So you're moving it. Could you read paragraph 6(a) again? Just read it as you would propose it so that the translators and the recorders have it. Read all of paragraph (a).

[*Translation*]

Mr. Sébastien Gagnon: All right.

(a) promote economic development in the regions of Quebec where low incomes and/or low economic growth are prevalent or where opportunities for productive employment are inadequate;

● (1850)

[*English*]

The Chair: Did everybody see that? It's "and/or slow economic growth".

[*Translation*]

Are there any other comments?

Mr. Sébastien Gagnon: Yes. Let me explain the motion.

We want to replace the concept of the constitution of designated areas. The purpose of the designated areas, which was criticized by most of the presenters, was to give the minister discretionary authority. In view of declining employability, the situation was very tough in all Quebec regions, particularly in Abitibi, the Gaspé, Saguenay—Lac-Saint-Jean and elsewhere.

We need to go back to the agency's old mission, taking all these concerns into account. The words “may, by order, establish as a designated area, for the period set out in the order” must therefore be moved from this notion of designated area. I don't want an area to be designated arbitrarily. In any case, the minister is already intervening in targeted, already designated areas.

This amendment takes the Quebec government's regional development priorities into account, while continuing to promote the economic development of the Quebec regions, to emphasize long-term economic development and to diligently focus efforts on small- and medium-size businesses. As the witnesses noted, there is no definition of designated area, and it's not stated how it will be designated. You have to be objective in all things, for all regions. All the witnesses said that the old agency worked very well in the context of this mission.

Thank you.

The Chair: Thank you.

Denis, please.

Hon. Denis Coderre: Mr. Chairman, paragraphs 6(a), (b) and (c) are not really a problem for us, but, in order to be consistent with what was done for the previous amendment, I ask that the words “while respecting the regional development priorities of the Government of Quebec” be deleted.

The amendment would thus read as follows:

> 6. The Minister shall exercise his or her powers and perform his or her duties and functions in a manner that will...

We would accept the rest.

Mr. Paul Crête: Mr. Chairman, on the subamendment.

[*English*]

The Chair: That's okay.

There's a subamendment that essentially strikes out the phrase *en anglais* “while respecting the regional development priorities of the Government of Quebec”. So it would read then, “The Minister shall exercise his or her powers”.

Is that correct, Denis?

Hon. Denis Coderre: Yes.

The Chair: Okay. So it's a subamendment that has been accepted by the Bloc.

[*Translation*]

Mr. Paul Crête: No, it's not accepted. I want to discuss it.

The Chair: I tried.

[*English*]

The Chair: Werner, we have a subamendment, so we're speaking to the subamendment first.

Mr. Werner Schmidt: I don't want to speak to the subamendment.

The Chair: Do you want to speak to the subamendment?

[*Translation*]

Mr. Paul Crête: Yes.

The committee refused on the previous amendment:

> (3) The Minister shall exercise his or her powers in a manner that will respect the regional development priorities of the Government of Quebec.

This time, our motion was different in nature, since it stated:

> 6. The Minister shall, while respecting the regional development priorities of the Government of Quebec...

It appears that respecting priorities is not acceptable to the Liberal majority. I note that.

[*English*]

The Chair: Let's dispense with the subamendment. No further comment on the subamendment.

(Subamendment agreed to on division [See *Minutes of Proceedings*])

The Chair: Now we're back to the amendment as amended. Werner wanted to speak on the amended BQ-4.

Mr. Werner Schmidt: Before I make my comments, I'd like to make sure I understand exactly what the subamendment was or what the correction was.

Under paragraph 6(a), it now reads “promote economic development in the regions of Quebec where low incomes and/or slow economic growth are prevalent and/or where opportunities for productive employment are inadequate”. Is that correct?

The Chair: No, not the second “and/or”, the first “and/or”.

Mr. Werner Schmidt: The second “and/or” isn't there. Okay.

My comment is the same whether you have only the first or the second. What this suggests is that any one of those three elements would be sufficient to guide the minister. I want to make sure I understand it correctly. Is that the intent of that change?

The Chair: With the “or”, yes.

Did you have a comment, Mr. Minister?

Hon. Jacques Saada: Just one linguistic comment, if I may.

[*Translation*]

The word “et/ou” doesn't exist in French; it's not correct. The word “ou” may be inclusive or exclusive. Consequently, “ou” alone is enough. That covers “et” and “ou”.

[*English*]

The Chair: Okay. We'll trust the translation will be accurate as reflected there.

I'm going to call the question.

Oh, I guess as it was proposed by Sébastien *en français, et/ou*....

[*Translation*]

Hon. Jacques Saada: It's incorrect in French.

The Chair: What's the exact grammatical rule for that in French?

Hon. Jacques Saada: The word “ou” in French includes one or the other or both. Consequently, you don't write “et/ou”; you only right “ou”.

[*English*]

The Chair: Okay. So may I record then that

[*Translation*]

in the French version, the word is “ou”, and, in English,

[*English*]

it is “and/or”.

Hon. Jacques Saada: In English it's “and/or” and in French it's only “*ou*”.

The Chair: Is that clear? Is there agreement on that interpretation? Okay. I'm going to call the question on BQ-4 as amended, and the amendment of Sébastien has been accepted, in taking out the phrase as Denis has done.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 6 as amended agreed to on division)

● (1855)

The Chair: I'm not aware of any amendments to clauses 7 to 9.

(Clauses 7 to 9 inclusive agreed to on division)

(On clause 10—*Object*)

The Chair: We have several amendments. We'll start with Conservative amendment CPC-2 on page 10.

Are you moving that?

Mr. Bradley Trost (Saskatoon—Humboldt, CPC): No, Mr. Chair. We're removing it, but we are going to be making another amendment to clause 10. We have a French and an English version here.

The Chair: Okay. Give us a second to see if it fits now or at the end of the group.

Paul.

[*Translation*]

Mr. Paul Crête: Did I understand that he withdrew the one he was presenting?

[*English*]

The Chair: CPC-2 is taken out.

[*Translation*]

Mr. Paul Crête: They're real friends.

[*English*]

The Chair: I need a moment to check with Joann. I thank Joann, by the way, for her help.

Brad, we're going to do BQ-5, G-3, and then we'll do that one because of the sequence. It'll come last.

We'll try our best here. Let's go to BQ-5 on page 11. This is good for the brain.

Just to make you aware—

[*Translation*]

Mr. Paul Crête: Are we on G-3?

[*English*]

The Chair: Bloc amendment BQ-5 and government amendment G-3 are embedded, shall we say. They're mixed up, because the government amendment only changes the number 1 in parentheses. It is a numbering issue. The substantial point here is BQ-5, so let's deal with it.

Are you going to introduce that, Paul or Sébastien? Then we'll deal with the question of the numbering, which can be done by the Journals Branch.

[*Translation*]

Mr. Sébastien Gagnon: The old mission of the agency, as it operated in recent years, encompassed the problems the regions encountered. The idea behind the motion is to go back to the old mission, that is to say the long-term economic development of the regions, by paying particular attention to slow economic growth regions. Once again, as I said earlier, the “et” would become an “ou”: “ou à celles qui n'ont pas suffisamment de possibilités d'emplois productifs”.

Perhaps the minister can make a suggestion. I imagine it's along the same lines. It was simply to include all the regions that have experienced economic slowdown and lost jobs.

Thank you.

● (1900)

[*English*]

The Chair: Denis, then Paul.

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, the Liberals are consistent and will vote in favour of BQ-5 for the reasons given from the outset. We are members from Quebec. We are proud of that, and we work very hard for the regions. Within the limits of our powers, we agree on everything related to that.

[*English*]

The Chair: Paul.

[*Translation*]

Mr. Paul Crête: My remarks were very technical: the word “et” should be replaced by the word “ou”. I hope you noted that. As for the rest, we'll let the public judge it.

The Chair: All right.

[*English*]

Is everybody agreeable to that change in the French version, “*économique ou à celles*”? Everybody agrees to that.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Amendment G-3, then, is basically an editorial change. We don't really need an amendment just to add the number 1 in front of “The object of the Agency is to promote”, so we're going to skip G-3.

[*Translation*]

Mr. Paul Crête: The government need only withdraw it.

The government is prepared to withdraw it, and we're pleased with that.

[*English*]

The Chair: Amendment G-3 has a second part. Are you going to introduce that, Denis?

Mr. Werner Schmidt: We're going to have two votes on that one?

The Chair: No, the first part is taken care of—

Mr. Werner Schmidt: —as a technicality.

The Chair: You need to propose just part (b), Denis.

[*Translation*]

Hon. Denis Coderre: I withdraw G-3.

[*English*]

The Chair: Okay, amendment G-3 is withdrawn.

Now we can go to the motion by the Conservatives. Brad, are you going to speak to CPC-2.1?

Does everybody have a copy? I will read it into the record slowly.

[*Translation*]

Mr. Paul Crête: No. We could make copies and we'll study it when we have them. Why aren't copies made beforehand?

[*English*]

Mr. Bradley Trost: We only have three copies. More were supposed to have been made and distributed.

The Chair: There are three motions. You had better get copies, Brad. You have motions—

[*Translation*]

Mr. Paul Crête: If we discuss it without copies, we'll get mixed up and we don't like that. I like things clear.

[*English*]

The Chair: Brad, somebody is arranging for copies.

We have two more amendments on this sheet for later on. Please get some copies done, somebody.

For the moment for clause 10, the one we're on, would it be acceptable that I read the French and English amendments proposed by the Conservatives? Paul, would you accept that? I will read both versions.

[*Translation*]

Mr. Paul Crête: Read it. If it's clear, that'll be fine; otherwise, we'll need copies. We can't talk about something we haven't seen.

[*English*]

Mr. Brian Masse: Why don't the Conservatives give us their copies? They know the motion.

Mr. Peter Van Loan (York—Simcoe, CPC): We'll have to take a moment once everyone has copies, because there are clearly some typos and translation problems in it.

The Chair: I'm going to read it anyway while we're deciding whether we can accept it or not, while we're waiting for copies.

Clause 10 would be amended by adding, after line 16 on page 4, the following—

[*Translation*]

Mr. Peter Van Loan: After line 18, in English.

[*English*]

After line 18 in English.

[*Translation*]

The Chair: After line...

[*English*]

Mr. Peter Van Loan: That's one of the corrections. It should be after line 18 in English and after line 16 *en français*.

The Chair: It's line 18 in English—

Mr. Peter Van Loan: Yes, line 18 in English.

The Chair: —and line 16 *en français*:

> In carrying out its object, the Agency shall take such measures as will promote cooperation and complementarity with Québec and communities in Québec.

Mr. Peter Van Loan: Just so everyone understands it, the reference to subclause 10(3) should not be there at the start.

[*Translation*]

The Chair: Here's the text in French.

> Dans le cadre de sa mission, l'Agence s'engage à favoriser la coopération et la complémentarité avec le Québec et les collectivités du Québec.

Paul.

● (1905)

Mr. Paul Crête: We've just carried amendment BQ-5, and it adds nothing more; it only complicates the situation. It lessens the importance of economic slow growth regions.

I don't have the text. I'd like to take the time to think about it because we're saying that, to promote the long-term economic development of the Quebec regions, you have to pay particular attention to economic slow growth regions. However, the amendment moved here states that you have to take into account all the communities. I wonder whether we wouldn't be weakening the one we've just carried that the minister agrees on.

Hon. Jacques Saada: With your permission, Mr. Chairman...

Mr. Paul Crête: It's the Conservatives' amendment.

Hon. Jacques Saada: I'm reading the amendment, and that's not at all the intention I see in it. As much as we were opposed to subjecting the federal government's decisions to provincial decisions, the spirit of cooperation must reign as much as possible between the two. As I understand it, this amendment in fact promotes this spirit of cooperation.

The Chair: Denis.

Hon. Denis Coderre: Contrary to what my colleague and friend Paul said, we're not talking about the minister's power; we're talking about the object. The object, and I agree with the Conservatives, is to emphasize complementarity and cooperation not only with Quebec, but also with its communities. In that sense, this amendment is complementary to the fact that the minister must first help those in greatest need. His object is to promote cooperation and complementarity.

I congratulate the Conservative Party on this contribution.

The Chair: Sébastien.

Mr. Sébastien Gagnon: I'm moving a subamendment. Since the mission must be comprehensive, I want to remove the words "and communities in Quebec".

It's an object, and it's supposed to be general. This affords the minister a broader field of action. It's therefore enough to talk about cooperation and complementarity with Quebec. That opens the door to other organizations. There's no problem.

[*English*]

The Chair: Let's deal with the subamendment by Sébastien. Does everybody understand what Sébastien is proposing?

[*Translation*]

He deleted the words "and communities in Quebec".

[*English*]

In English he took out "and communities in Quebéc". I guess nobody has copies yet, but it will read this way:

> In carrying out its object, the Agency shall take such measures as will promote cooperation and complementarity with Québec.

Mr. Peter Van Loan: The actual amendment was a little bit different. It has just been forwarded to you, but the translation is still coming.

[*Translation*]

Mr. Paul Crête: Mr. Chairman, we've just had proof of what I was saying. We were talking about a document, but it wasn't the right one.

[*English*]

The Chair: This is not the same as what I just read, Peter.

Mr. Peter Van Loan: It's the same thing, just a better translation *en anglais*.

[*Translation*]

Mr. Paul Crête: Flip it over; you were mistaken.

[*English*]

The Chair: So you're telling me the French is the same.

[*Translation*]

Mr. Peter Van Loan: It's exactly the same thing in French, I believe. Leave the French.

[*English*]

The Chair: I will read the version with Sébastien's subamendment, and then you'll listen to the English. We won't read the English.

[*Translation*]

> Dans le cadre de sa mission, l'Agence s'engage à favoriser la coopération et la complémentarité avec le Québec.

[*English*]

That is the version as subamended. Sébastien removed "*et les collectivités du Québec.*"

I'm going to call the question.

Denis.

Hon. Jerry Pickard: Just one second. Can we look at the wording here? We just got it, and it's different from what was read.

The Chair: Just read the French, Jerry.

[*Translation*]

Hon. Denis Coderre: It's the same thing in French, Mr. Chairman. I think you have to retain the words "les collectivités". It's precisely because we're sensitive to the regions that we want to put the emphasis on that. If we said only "avec le Québec", that might mean the capital. In terms of communities, we agree with the Conservative Party. We're going to vote against this subamendment.

● (1910)

[*English*]

The Chair: Does everybody have copies now? No?

We're going to call the question on the subamendment. Again, it just takes out the phrase "and communities in Québec".

(Subamendment negatived)

The Chair: We're back to the amendment as proposed by the Conservatives.

[*Translation*]

In French, it reads:

> Dans le cadre de sa mission, l'Agence s'engage à favoriser la coopération et la complémentarité avec le Québec et les collectivités du Québec.

[*English*]

Mr. Werner Schmidt: Just a minute. Is that "in Québec and communities"?

The Chair: It's exactly the way it was presented by you.

(Amendment agreed to on division [See *Minutes of Proceedings*])

The Chair: Do we have those copies for the next rounds, guys? We do? Okay, good.

Paul.

[*Translation*]

Mr. Paul Crête: Our subamendment was defeated, but we're nevertheless in favour of the Conservatives' amendment to clause 10.

[*English*]

The Chair: Let the record show that it was unanimous for the Conservative amendment CPC-2.1.

(Clause 10 as amended agreed to on division)

(On clause 11—*Powers*)

The Chair: There's another Conservative amendment at clause 11. We're going to call this clause 11 amendment by the Conservatives CPC-2.2. We have to be sure it's in the right order. We have to decide where it goes.

[*Translation*]

Mr. Paul Crête: What's the number of the amendment, Mr. Chairman?

[*English*]

The Chair: We're on clause 11. We're probably going to start with amendment BQ-6. I just have to see if the new Conservative motion comes in at the beginning or later on.

On BQ-6, Sébastien ou Paul, s'il vous plaît.

[*Translation*]

Mr. Sébastien Gagnon: We move that clause 11 be amended by replacing lines 23 to 25 on page 4 with the following:

> Government of Canada, and with the government of Quebec, establish policies to ensure that the implementation of all federal programs in Quebec meets the best interests of the regions of Quebec, especially rural regions;

That's in response to the presentations of the witnesses, who wanted better cooperation between the Government of Quebec and federal agencies. We have to establish and reinforce that cooperation.

The Chair: Are there any comments?

Denis.

Hon. Denis Coderre: Mr. Chairman, the Liberals entirely agree to cooperate, but that's not what this is about here, and for the same reasons as earlier, we're going to vote against this amendment. This bill must define a status, not the way the Government of Canada must work through its minister.

● (1915)

The Chair: Are there any other comments? All right.

[*English*]

Okay. I'm going to call the question on amendment BQ-6.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Now we're going to the amendment by the Conservatives that I'm calling CPC-2.2:

[*Translation*]

That Bill C-9, in clause 11, be amended by adding after line 25 on page 4 the following:

> (a.1) design and implement mechanisms facilitating cooperation and collaboration with Quebec and its communities;

[*English*]

Did one of you gentlemen move that?

Brad, are you moving that? Do you want to speak to it?

Mr. Bradley Trost: Not particularly.

The Chair: Does anybody else want to speak to it? No? Okay. I'm going to call the question.

(Amendment agreed to on division [See *Minutes of Proceedings*])

The Chair: Let's continue with government amendment G-4, on page 15.

Are you going to move that, Denis?

[*Translation*]

Hon. Denis Coderre: Just give me a second. We already have mechanisms, and we're also going to work for the development of the communities in Quebec. So it's complementary, Mr. Chairman.

[*English*]

The Chair: Do we need a clarification?

An hon. member: We're going to be very "complemented" when this is all over.

Mr. Werner Schmidt: If this bill makes it to third reading, I'll be very surprised.

The Chair: Does somebody want to make a strong argument in favour of G-4?

(Amendment agreed to on division [See *Minutes of Proceedings*])

The Chair: We're now on amendment G-5, on pages 17 and 18.

Denis.

[*Translation*]

Hon. Denis Coderre: I'll state the same reasons as earlier. We're talking about the object as such, and we want to add that we're putting forward cooperation agreements and sectoral agreements. That's in compliance with the other elements and the minister's power. We think the object must now reflect those agreements.

[*English*]

The Chair: Sébastien.

[*Translation*]

Mr. Sébastien Gagnon: The Bloc Québecois will oppose this amendment for the simple reason that we want there to be consistency in cooperation. We want cooperation to be more structured so as to take into account practices within authorities in Quebec. We want to avoid any risk of arbitrary action in certain places, or action that does not respect what's already established, such as in decision-making processes or in the way things are done in Quebec, particularly in the regions.

The Chair: Do you have any other comments? No.

[*English*]

Okay. I'm going to call the vote on government amendment G-5.

(Amendment agreed to on division [See *Minutes of Proceedings*])

● (1920)

The Chair: On Conservative amendment CPC-3, you told me before, Werner, that you were not going to proceed with amendment CPC-3. So amendment CPC-3 is withdrawn, and had you proposed it, I would have declared it inadmissible.

On Bloc amendment BQ-7, for the same reasons, Paul and Sébastien, as I said at the beginning for amendment BQ-2, with the advice of the legislative clerk, Joann Garbig, it is inadmissible in calling for the transfer of funds to the province of Quebec. I assume it would apply to any province should similar wording be offered in any other bill, according to the royal recommendation, and it's outside of the ambit of the bill. So I would deem that inadmissible. But you're free to make comments and twist my arm and all that.

[*Translation*]

Mr. Paul Crête: Mr. Chairman, I'm a bit surprised that you've ruled amendment BQ-7 inadmissible because it doesn't concern automatic cash transfers. It also states that the agency "may" enter into agreements with the Government of Quebec. There are therefore no obligations in that regard.

In my opinion, the amendment should be considered admissible since there are no obligations for the government to act on what is requested. This in no way affects the question of Royal Assent for those two reasons.

The Chair: Mr. Saada, over to you.

Hon. Jacques Saada: Mr. Chairman, I understand my colleague's motion, but the fact that the word "may" is used in subclause 11(1) is already a problem in itself. It's a problem because I can't. I simply do not have the power to sign such agreements within my prerogatives. That exceeds the powers invested in me as Minister of Economic Development Canada as regards destination of funds. I don't have that power under the mandate given to me. So this goes too far relative to what we're trying to do.

[*English*]

The Chair: Paul.

[*Translation*]

Mr. Paul Crête: Mr. Chairman, I'd like us to agree. On the advice given to you, you found that this was inadmissible.

Let's look at the question of admissibility. I said I thought it should be considered admissible. Let's begin by resolving this question, and, if we do so, we'll debate the content. I've given you my arguments. I hope it will be considered admissible and I appeal from your decision.

[*English*]

The Chair: There's a procedure for challenging a chair's ruling. As a matter of procedure, just for the record, with no disrespect to Joann, I checked with the House clerk, Bill Corbett, who confirmed as well the inadmissibility of the amendment. But that said, it's quite within your right to challenge the ruling, so I have this little script I have to read. It's not a debatable matter, so immediately you're going to be asked to vote that the ruling of the chair be sustained. There's no debate on a challenge, which I do not take personally; it's just a matter of business.

The question is that you're being asked to sustain my ruling that amendment BQ-7 is inadmissible.

Those in favour that the ruling of the chair be sustained?

Some hon. members: Agreed.

The Chair: The ruling is sustained and we cannot deal with Bloc amendment B-7.

(Clause 11 as amended agreed to on division)

(On clause 12—*Duties*)

The Chair: Now we have Conservative amendment CPC-3.1. You have it in front of you.

[*Translation*]

It is moved that Bill C-9, in Clause 12, be amended by adding after line 26 on page 6 the following: (g) in the context of the Minister's cooperation with Quebec.

● (1925)

[*English*]

I'm going to read that again because I've been handed a slightly different version.

Is this is the official version here, Brad?

Mr. Bradley Trost: Yes.

[*Translation*]

The Chair: It is moved that Bill C-9, in Clause 12, be amended by adding after line 26 on page 6 the following: (g) in the context of the Minister's cooperation with Quebec.

[*English*]

There's a problem. The English has (a), (b), and (c), and the French just has (a), (b), and (g). We can't do that.

Mr. Bradley Trost: Good enough. It doesn't bother me one bit.

The Chair: It's not admissible.

I've just declared the Conservative amendment inadmissible.

Mr. Bradley Trost: It won't affect my plan, if anyone was wondering.

The Chair: Okay.

(Clauses 12 and 13 agreed to on division)

(On clause 14—*Head office*)

The Chair: We have amendment BQ-8 on page 21 in your package.

Sébastien or Paul.

[*Translation*]

Mr. Sébastien Gagnon: The reason for this is simple. We want the agency's head office to be in Quebec and the agency not to be oriented toward Ottawa. We also wouldn't necessarily like it to be in Montreal. It must be understood that all the communities, in Lac-Saint-Jean and elsewhere, are very sensitive to this. We'd like all of Quebec to be considered for the agency's head office. We'd like it simply stated: "in the Province of Quebec".

[*English*]

The Chair: Denis.

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, although I'm very proud to be a member from Montréal-Nord, and I'm very inclusive because Montreal is part of Quebec, we accept the fact that the head office of the agency may be fixed anywhere in the Province of Quebec. That's called openness. Even people from Saguenay—Lac-Saint-Jean will agree on that.

[*English*]

The Chair: Paul.

[*Translation*]

Mr. Paul Crête: We may even be ahead of the announcements that will be made by the federal government in the budget tomorrow or in the coming weeks regarding staff decentralization. We've already seen staff decentralizations, 10 or 15 years ago, like that involving the staff of the Canada Customs and Revenue Agency, and we dream of seeing similar decentralizations again. If federal government employees lived in a Quebec region, that might help us obtain more acceptable decisions.

The Chair: Are there any other comments?

[*English*]

(Amendment agreed to)

(Clause 14 as amended agreed to on division)

The Chair: Colleagues, I'm not aware of amendments for clauses 15 through 28.

(Clauses 15 to 28 inclusive agreed to on division)

(On clause 2—*Definitions*)

The Chair: Clause 2 had been allowed to stand, so now in clause 2 we have a motion, BQ-1. Go back to your first page.

Do you want to introduce BQ-1, Sébastien or Paul?

[*Translation*]

Mr. Sébastien Gagnon: We agreed to amend clause 6, as well as the object. We therefore propose that clause 2 be amended by deleting lines 12 to 14 concerning the concept of "designated area" and lines 15 to 17 concerning the notion of "designated community", since those matters are no longer addressed in clause 6.

Clause 6 was amended, and it referred to this concept of "designated area". The idea is to be consistent with what's already been adopted. The purpose of the amendment was to delete the concepts of "designated community" and "designated area" from the definitions of clause 2 of the bill.

The Chair: Are there any comments?

[*English*]

You're not withdrawing BQ-1.

Paul.

● (1930)

[*Translation*]

Mr. Paul Crête: I'd like to make sure that everyone has clearly understood. This is an amendment whose purpose is to ensure certain consistency between the various parts of the bill. Since the concepts of "designated community" and "designated area" have been deleted in one place, it would be logical that the definitions of those concepts no longer appear in the act, regardless of the debate we've had on content.

[*English*]

The Chair: Yes, BQ-4 passed.

Is any other explanation needed on BQ-1?

Mr. Werner Schmidt: Is that not redundant then? Is that what you mean?

The Chair: Paul, you can answer Werner's question.

[*Translation*]

Mr. Paul Crête: We reviewed all the clauses of the act, and we've come back to clause 2, which concerns the definitions. The definition of "designated community" no longer means anything in the act, since it was deleted from another clause. The word "community" has been introduced, but the concept of "designated community" is no longer there. The act will contain a concept that can't be found anywhere.

[*English*]

The Chair: Jacques.

[*Translation*]

Hon. Jacques Saada: My Bloc Québecois colleague is entirely right. From the moment we've agreed to an amendment concerning this area, at one specific place in the text—which we couldn't be aware of at the outset—this amendment BQ-1 becomes automatic. I think we can support it without any problem.

[*English*]

The Chair: We should support it.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Next is amendment G-1, on pages 2 and 3.

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, in view of what we've heard from our witnesses and since I'm sensitive to the NDP's view on this point, I think the definition of "enterprise" should read: "enterprise" includes a social economy enterprise.

[*English*]

The Chair: Okay.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 2 as amended agreed to on division)

(Clause 1 agreed to on division)

The Chair: Shall the title carry?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall the bill as amended pass?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall I report the bill to the House?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

The Chair: I'd like to thank Joann, the clerk, for helping us with this tonight, and of course Louise and the other staffers here and the minister and his staff for being here.

[*Translation*]

Hon. Jacques Saada: I'd simply like to thank all my colleagues for the extremely civil and constructive manner in which they debated this bill. I want to thank everyone, regardless of whether or not they agree, for the way this was done.

Thank you, Mr. Chairman.

[*English*]

The Chair: I have a point of order here. To the officials and the minister, feel free to leave. Please take some food. I'd hate to waste it, staff or members.

Werner has a point of order.

Mr. Werner Schmidt: My point of order, Mr. Chairman, is to thank you for the sandwiches, the delicious lunch we had, and the speed with which you got through this evening's proceedings.

The Chair: Well, it was with your cooperation.

Michael wants to ask something.

Mr. Michael Chong: I'm wondering if we have unanimous consent to go in camera for a very short time to talk about future business.

The Chair: We have a quorum. Michael is asking for unanimous consent to go in camera for a couple of minutes.

Some hon. members: Agreed.

The Chair: Okay, Michael, quickly. To the others, we have to clear the room.

Thank you very much.

[*Proceedings continue in camera*]

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