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**Chair**

**Mr. Brent St. Denis**

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## Standing Committee on Industry, Natural Resources, Science and Technology

Wednesday, April 20, 2005

•(1535)

[English]

**The Chair (Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.)):** Could we get our witnesses to the table please, as we call to order this Wednesday, April 20 meeting of the Standing Committee on Industry, Natural Resources, Science and Technology.

Bonjour, tout le monde. Good afternoon, everyone.

We're starting today a study of Bill C-37, an act to amend the Telecommunications Act, more commonly known as the "do not call" legislation.

We're blessed to have a number of very good witnesses this afternoon, but before we go to the witnesses, I just want to tell committee members that if anybody believes we have to do any travel as a committee in the next year, let me know. I don't think we do, but let me know, because we have to propose to the liaison committee, more or less very soon, any future travel for budget purposes.

Also, the government has proposed a few very helpful amendments, I believe, to Bill C-37, so that we have those on record for information purposes before we have testimony and questions.

Unless colleagues have any objections, I would ask Jerry to just take a brief minute or two or three to summarize the amendments.

Jerry, if you would, please. Then we'll move to the witnesses.

**Hon. Jerry Pickard (Chatham-Kent—Essex, Lib.):** Okay.

We're proposing three amendments, and certainly I think everyone has discussed some of the aspects of those amendments with colleagues and with other people in business.

The first one we propose is one that would set out an exemption for people with existing relationships. That would allow businesses that have existing relationships either with persons, clients, or groups to continue with those.

The second amendment we propose would exempt charities, with certain conditions that would be met under a new section. The intention of this exemption is to allow individual Canadians who register with national do not call lists to specify or decide whether or not they would receive calls from charities. This envisages the idea that it would allow Canadians to have a special choice on this particular issue. We realize how important charities are to the process, and call lists apply to charities as well. Hopefully, this amendment would help those charities move forward.

The third amendment is one interpretation, as I understand it, from English to French and making sure the consistencies are there. That's 41.1, I believe.

**The Chair:** Okay, Jerry?

Very good.

Our witnesses and members are aware of the amendments the government is proposing.

Paul.

**Hon. Jerry Pickard:** Excuse me, I skipped over one item. After it comes into effect, there's a review after five years.

[Translation]

**Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ):** Are you only presenting them to us for now? Can we ask for clarification right away?

[English]

**The Chair:** Go ahead.

[Translation]

**Mr. Paul Crête:** The government amendments have been tabled. I would like to be sure that the amendment concerning charities excludes political parties. Several groups have made two representations to us to the effect that it should be charities and political parties.

Can you confirm to me that this is already in the Act or that there is another explanation? We can't find it.

[English]

**Hon. Jerry Pickard:** You don't approve of exemptions for political parties?

[Translation]

**Mr. Paul Crête:** No. We would like political parties excluded, but this is not clearly stated. We would like to know whether this is in the current Act.

[English]

**Hon. Jerry Pickard:** You're absolutely correct, Paul, that it doesn't appear clearly. The fact is that political parties have been given exemption through CRTC regulations in the past.

I believe that would be consistent with the policy we have now, and I'm quite certain that that exemption would remain in place, and I think it would as well for those who are doing survey work and that type of work, which we explained at our last meeting.

**The Chair:** Thank you, Jerry.

Maybe what we could do, Paul, is just get a statement from the CRTC of its intentions with respect to that, just so there's assurance that the policy would be carried forward. Maybe that can be covered today in fact. With that, Paul, let's continue, and we'll raise it with our witnesses. How's that?

[Translation]

**Mr. Paul Crête:** Can I ask questions later about other aspects of the amendments?

[English]

**The Chair:** Okay, maybe during your questions, or do you want to do it now?

Okay, go ahead.

• (1540)

[Translation]

**Mr. Paul Crête:** My other question also has to do with charitable organizations. The wording is: "by a registered charity within the meaning of subsection 248(1) of the Income Tax Act". This therefore means those who have a certificate stating that they can collect money and issue income tax receipts. The wording also says "or on behalf of". Does this mean that charities not recognized under the Income Tax Act would receive the exemption?

[English]

**Hon. Jerry Pickard:** I'd have to get a clarification on that. I don't have a clarification. I'm sorry about that, Paul.

**The Chair:** It may be that our witnesses could possibly deal with that during the question and answer period.

**Hon. Jerry Pickard:** With CRTC, public hearings, hopefully, will go ahead, and at that point they can put certain issues within the regulatory process in order to deal with that issue.

**The Chair:** It's a good question, whether a charity is registered or not, because some charities are operating pending their registration with Revenue Canada.

With that, we're going to proceed to our witnesses. Thank you for being here. Our first set of witnesses are from the CRTC.

Mr. French, you will be speaking for the group?

Given that we have quite a few witnesses today, we would ask witnesses, this group and the following groups, to try to keep your presentations to five to seven minutes so that members will have lots of time for questions.

Thank you.

I'd ask you to start, Mr. French.

[Translation]

**Mr. Richard French (Vice-Chairperson, Telecommunications, Canadian Radio-television and Telecommunications Commission):** Thank you. Good day Mr. Chairman. I will be very brief.

I see that you have already got to the heart of the matter. I have with me Barbara Ursel, Legal Counsel with the CRTC, and Mr. Arthur Gottlieb, of the Gottlieb Group, an independent consultant. We have retained his services to advise us on a number of technical

aspects about establishing a do not call list. I will distribute a copy of my presentation, but I don't intend to read it in full.

[English]

We could mention three or four major points and proceed immediately to questions, which I sense is what the committee would regard as most appropriate.

Members of the committee will be aware that we have been empowered by Parliament to deal with telemarketing, but we have indicated that there are a certain number of missing pieces with respect to our powers to do so. The law essentially is a response to those missing pieces and to other concerns that Parliament and the government have expressed.

It is certainly the case that at the moment there is a problem with telemarketing, as indicated to us by the fact that of 49,000 calls we received from the general public last year, some 9,000—roughly 20%—concerned issues related to telemarketing.

The exemptions the government has tabled, it seems to me, provide a good basis for discussing that issue. I won't go further on the status quo as it currently stands with the CRTC, except with respect to specific issues that members will wish to raise.

I would note that there are some implementation issues, in particular the recovery of the start-up costs, and I'd underline that at the moment there is no clear indication of what the government's intentions might be with respect to recovering the costs of just under \$2 million, which we estimate would be one-time start-up costs. Furthermore, our best efforts to plan a rapid calendar for implementation indicate to us that it will take some 19 months, at the fastest, between the time Parliament passes the law and the time we could begin to operate a national do not call list.

With respect to exemptions, one major point that I would like to leave in the minds of the committee is that from the point of view of the commission, we would very much welcome the guidance of Parliament on this subject. It's extremely helpful to the commission to have Parliament pronounce on such questions of fundamental social values as what is and is not appropriate in the way of telemarketing.

[Translation]

The Commission can, of course, and will if necessary hold public hearings to determine... [Technical difficulty]... full exemptions or clarify the various issues. The Commission still feels that it is preferable for Parliament to be the body to rule on it.

[English]

Thank you very much.

I'd be glad to try to answer any questions.

**The Chair:** That's great. Unusual. Thank you for that, Mr. French.

[Translation]

**Mr. Richard French:** I have previously been in your position, Mr. Chairman.

•(1545)

[English]

**The Chair:** I had to come out of my nap earlier than...just teasing. Well done.

Brad, are you ready to ask questions?

**Mr. Bradley Trost (Saskatoon—Humboldt, CPC):** I have a few questions.

We always reference, whenever we listen to this debate, the American experience. I'd like you to expound a little bit on what you've learned studying theirs. I'm also very curious if there are other countries in the world.... I mean, Europe is a different place. We see countries like Finland, where they're all going to cell phones. And I don't know the marketing practices of other countries. Maybe Japan or China or Europe are very different.

Could you expound on the American experience, the key lessons and the key problems they've had that you've studied to help you draft and know where you're going? Also, have you had any studies of other countries? The more similar they are to Canada, I suppose, the better.

**Mr. Richard French:** The American experience is one that we've studied in some depth. I will try to summarize it very briefly. If you have detailed questions, Mr. Gottlieb is the Canadian expert on the American experience in this regard.

Let me say that the American experience suggests, number one, that it is administratively feasible for a reasonable cost to provide substantial, though not complete, protection from telemarketing annoyance calls and that the establishment of such a do not call list will attract a large proportion of households. We're looking at about 65 million households currently registered in the American do not call list. Actually, there are 85 million households; 65 million within the first two years and 85 million as of now. That's a substantial portion of U.S. households, and it would indicate there is an interest in this kind of protection.

It was also indicated that it's not a minor administrative and technical challenge. It would be important that care and proper planning, rather than simply haste, would apply to the process of establishing the list.

**Mr. Bradley Trost:** Let me ask this again. Are there any other countries you studied that you know have done this, for example, Switzerland or Sweden?

**Mr. Richard French:** We are studying the United Kingdom. I speak to you having lived for five years in Germany and the United Kingdom. I can tell you that there isn't the kind of telemarketing there that we have in North America. It's not as intense.

**Mr. Bradley Trost:** There are the cultural differences, which don't create the legal necessity.

**Mr. Richard French:** That would be an overstatement, but there is a difference in commercial practice, which means the issue is less lively politically than it is in North America.

**Mr. Bradley Trost:** Okay. On the American legislation, did they go to an exemption-based system? For example, did they set up one for charities and one for commercial? What exemptions did they

have? Was this a blanket? Could you expound again on those details?

**Mr. Richard French:** Arthur, I'm going to ask you to list, if you would, the American exemptions.

**Mr. Arthur Gottlieb (Principal, Gottlieb Group Inc., Canadian Radio-television and Telecommunications Commission):** Okay. The ones I can recall off the top of my head are charities, political parties, previous business relationships, marketing surveys, and the like, that are not meant to solicit money from the person who is being called.

**Mr. Bradley Trost:** They're basically the ones we've been talking about here.

**Mr. Arthur Gottlieb:** Right.

**Mr. Bradley Trost:** I understand the political parties exempting themselves, but why did they not in the United States?

I haven't quite figured out where I'm going here. I can understand that charities need the resources. I can also understand that tends to be the bulk of the calls in some areas. I can understand the interaction back and forth.

Why would the Americans not care? Is it because they want to protect the non-profit sector? Was that their reasoning? Is there anything else you can add to that?

**Mr. Arthur Gottlieb:** No. In terms of what the reason was for that exemption, I didn't go that far back, but I would imagine it's probably something, as we've said.

**Mr. Richard French:** Yes. Please be clear that our study of the United States' experience has been less for guidance with respect to the exemptions than for the administrative and technical complexities involved. Whatever we would say about the political process that led to those exemptions would be speculation.

**Mr. Bradley Trost:** Fair enough. Following up on something, this is not directly related, but could a do not call registry have some positive influence on this?

Unfortunately, Canada has had a bit of a reputation in certain areas for fraudulent calling. Does this tool have any effective use against that, or is that completely unrelated and it wouldn't be useful to crack down on fraudulent calling?

**Mr. Richard French:** I think it's largely unrelated, Mr. Trost.

**Mr. Bradley Trost:** It's largely unrelated. There would be no overlap with the ability to use—

**Mr. Richard French:** Well, unless there's a ring to the kind of fraudulent cases you're evoking that I'm not aware of, I would think it would be peripheral to this particular concern.

•(1550)

**Mr. Bradley Trost:** Okay. I have a final question. Are there any legal, shall we say, constitutional, freedom of speech types of questions involved in this one?

We're dealing with another piece of legislation coming up. It has been somewhat amusing to watch the lawyers argue back and forth over AMPs in the competition bill, and we're going to have a "constitutional". If we go forward with this legislation, I don't want any hang-ups—no pun intended there, but it is the point—because of anything, freedom of speech, challenges, or details. What problems, if any, have been noted as far as that?

**Mr. Richard French:** I'm going to ask my colleague, our legal adviser, Barbara Ursel, to respond.

**Ms. Barbara Ursel (Legal Counsel, Canadian Radio-television and Telecommunications Commission):** Certainly anything the government would be doing or the commission would be doing would be subject to the charter.

We have taken note of the experience in the United States. There have been both statutory and U.S. first amendment challenges to the U.S. national do not call list. Congress took steps almost immediately to address statutory issues. The first amendment issues have worked their way through the courts. The system, as you know, is certainly up and running now. That overlay will always be there. I'm not in a position to predict how it will go. So much, as Mr. French has said, depends on the exact rules themselves, which will be a combination of what is set out in legislation by Parliament and the rule-making proceeding by the CRTC where the i's get dotted, and the t's crossed. That is what the rule will be that will be subject to it. That is the subject of a process to come.

**Mr. Bradley Trost:** Fair enough.

**The Chair:** Thank you very much.

I appreciate that. We're going to need to move along because we have a big group after this delegation.

Paul, please.

[Translation]

**Mr. Paul Crête:** Thank you. The brief is very well put together. I would like to comment on some of the things in it.

In your text, what is discussed is calls made by political party representatives. It includes the following, and I quote:

Political calls made with a view to getting out the vote are not solicitation and therefore are exempt. However, a call soliciting a contribution to a political party is not exempt.

Currently...

**Mr. Richard French:** That is the status quo at the Commission.

The fact nevertheless remains Mr. Crête, that the sanction of law would require another public process, namely hearings, during which this question could be discussed again, and the Commission might draw a different conclusion.

**Mr. Paul Crête:** Allow me to return to the last sentence in your brief, which states: "If Parliament has not legislated with respect to exemptions, this will be covered by the Commission's public process as well."

If the Act includes a number of exemptions, am I to understand that you are going to consider that Parliament has reviewed the whole question of exemptions and that you do not need to study that

issue? Would you be prepared to study all possible exemptions not provided for by Parliament?

**Mr. Richard French:** That depends on Parliament and whether or not it leaves us the latitude required to do so. Parliament will tell us whether it wants us to add exemptions following our public hearings.

**Mr. Paul Crête:** The current Act allows for the inclusion of exemptions, but some measures required by the CRTC rules may not be included. Would you like rules to be imposed upon the CRTC?

**Mr. Richard French:** I have already said that the CRTC will be very attentive to the guidance of Parliament and the government in the form of an Act or statute.

We would very much prefer to have Parliament pronounce on these issues.

**Mr. Paul Crête:** Good. Would you go so far as to say that you would like all the work you have completed thus far to be incorporated into the Act.

**Mr. Richard French:** No Mr. Crête, I would prefer that you base your opinion on your values, and on the decisions of the majority.

**Mr. Paul Crête:** What I mean is that your document could be used to establish whether your experience might be able to help us decide whether it should be included in the Act or not.

**Mr. Richard French:** I would say very respectfully that our experience is not very satisfactory, either for us or for consumers who receive telemarketing calls.

**Mr. Paul Crête:** Is the Americans' experience any clearer on this matter?

**Mr. Richard French:** Apparently 80 per cent of people whose telephone number is on the do not call list are satisfied or have noticed a decrease in the number of unwanted calls.

**Mr. Paul Crête:** All right.

According to your brief, you don't make a distinction between solicitations by charities and those by private organizations. And I quote: "Therefore, charities have never been exempted from our rules."

In the amendment that has been proposed, there would be an exemption for charities. Are you in favour of this amendment?

• (1555)

**Mr. Richard French:** Please forgive me for saying, Mr. Crête, that we cannot share our personal opinions with you because we have not collectively decided on what line to take if the government were to decide to submit an amendment.

If the government decides to do so, it is up to Parliament to pass it and, if it does, up to us to implement it.

**Mr. Paul Crête:** However, your document also says, and I quote:

...the evidence brought before the Commission in its telemarketing public proceedings didn't persuade it that there was any material distinction, in terms of nuisance, inconvenience and invasion of privacy, between a call made to solicit on behalf of a charity and one made to solicit on behalf of a commercial organization...

**The Chair:** In which section can we find that, if you please?

**Mr. Paul Crête:** It's on page 5, in the middle of the fourth paragraph:[...] didn't persuade it that there was any material distinction, in terms of nuisance, inconvenience and invasion of privacy, between a call made to solicit on behalf of a charity and one made to solicit on behalf of a commercial organization...

In spite of your experience in this area, you appear to be saying that there is no difference between the two.

**Mr. Richard French:** That is correct. People who have appeared before us have indicated that a call from a charity irritated or bothered them as much as a call from a business.

**Mr. Paul Crête:** Okay. Please excuse the flurry of questions. The document mentions setting a deadline for an existing relationship. What reasonable limit would you suggest? From what point on should an existing relationship be considered dead?

**Mr. Richard French:** The American deadline is one year if a financial transaction was made with the caller, and three months if it was a survey or a request for information.

[English]

Sorry.

[Translation]

We are suffering from the delay in the translation.

**Mr. Paul Crête:** We understand that; we are used to it.

[English]

**Mr. Richard French:** The delays in the American law are eighteen months if you've had a financial transaction with the company and three months if you contact them and say, "I'd like to have some information".

[Translation]

It is from 18 months to 3 months, depending on the circumstances, Mr. Crête.

**Mr. Paul Crête:** What is your opinion on the subject? Are these time periods reasonable?

**Mr. Richard French:** As we did not adopt the concept of an existing business relationship, we have no time period, but this will be discussed at the public hearings we will be holding if the Act comes into effect.

**Mr. Paul Crête:** Okay. My final question relates to the implementation and operating costs. I understand from your presentation that you would like to see it in the Act, or for the government to confirm that it will assume part of the costs.

**Mr. Richard French:** We would like to see the one-time implementation costs made recoverable from the telemarketing companies, as the current bill provides for the operation of the database. It would be impossible to recover these costs, at least the way the bill stands now. We are worried about costs that could not be recovered from the telecommunications firms. Basically, we think that they are not responsible for telemarketing excesses.

**Mr. Paul Crête:** So you would like an amendment to include implementation costs.

**Mr. Richard French:** We would like an amendment or a regulation that would enable us to recover the implementation costs from the telemarketing companies themselves.

**Mr. Paul Crête:** On page 4 of your presentation, in speaking of a separate administrator to whom you would delegate administrative tasks, you say: Our practical experience has been to work with consortia of affected persons to choose an administrator. Bill C-37 is modelled after these provisions.

What transparency can there be when you have to make this kind of choice? What would apply in the case under consideration?

**Mr. Richard French:** We plan to create a consortium that would include, apart from us, the telephone companies and the marketing associations. This consortium would call for tenders, and the various possible contractors would bid. On the basis of their capacities, we would choose the project that strikes the consortium as the most likely to be appropriate in the medium term.

• (1600)

[English]

**The Chair:** Merci, Paul.

Lynn, and then Brian.

**Mr. Lynn Myers (Kitchener—Conestoga, Lib.):** Thanks, Mr. Chairman.

I have a general question and then a few more specifics.

I wonder if you, in your own words, could tell me why you are the appropriate body to design, implement, and manage this do not call list.

**Mr. Richard French:** In all honesty, I'd rather simply respond to you, Mr. Myers, that a previous Parliament endowed the CRTC with the moral responsibility, if not the powers, of controlling telemarketing. The CRTC is not preaching for a call. We will do the very best job we can if in Parliament's wisdom it decides to bestow this responsibility on us.

**Mr. Lynn Myers:** Fair enough. Being more specific, what telemarketing rules do you already have in place, if any?

**Mr. Richard French:** They're described in the handout in general terms, but in practice—and let me be honest with you, I've been in my current position for less than two months—it's my understanding that it has proved for various reasons impossible to actually implement these exemptions and to implement a framework for controlling telemarketing that has turned out to be satisfactory. The experience has been more one of trying than of succeeding, and more one of administrative and juridical complexity than one of actually being in the field and being in a position to gain experience at the front, as it were. I don't know if that's a clear enough answer. It's a bit of a story of frustration.

**Mr. Lynn Myers:** Let me ask you this. The commission needs or wants the ability to contract out the list to a third party. Is that correct?

**Mr. Richard French:** That's correct.

**Mr. Lynn Myers:** Why is that?

**Mr. Richard French:** It's because it is not our expertise to manage a very large database and manage numerous transactions with members of the public, with telemarketers, and with telephone companies, all three of whom will be transferring large amounts of complex data in and out of this data bank continuously. So as in the United States and in the United Kingdom, we would look for a commercial enterprise with the kind of technical and administrative expertise required that we don't have and don't think we would be likely to acquire successfully within the framework of the public service employment guidelines, and so forth.

**Mr. Lynn Myers:** I see a lot of dollar signs here. Are there safeguards in place with respect to this not spiralling out of control?

**Mr. Richard French:** At the moment there's nothing in place, because there's no instruction from Parliament, but I can assure you that the prospect of repeated other unhappy experiences is forcibly impressed on our minds, and we don't want to have that experience.

**Mr. Lynn Myers:** What are the benefits of having the exemptions defined by a regulator rather than through legislation?

**Mr. Richard French:** I don't think there are any. We think the legislators should define them. If they don't, we'll do our best, but the questions of social value that are implicit in exemptions are, in our view, better resolved by elected officials than by appointed regulators.

**Mr. Lynn Myers:** Once the legislation is in place, there will be a consultation process. Is that right?

**Mr. Richard French:** There will.

**Mr. Lynn Myers:** How do you see that unfolding?

**Mr. Richard French:** It will be the kind of process we've had in the past. If I could just refer to my notes here, there is or was a list of the people.... Did it survive? Yes.

These are the people we consulted last time, Mr. Myers: the consumer groups, phone companies, marketing and advertising associations, call centre operators and associations, charities, bill collectors, fax telemarketers, associations of financial institutions, seniors groups, survey and research groups, privacy commissioners, and thousands of individual Canadians. This we can do. It's the management of the database afterwards that we're not equipped to do.

We will carry out a public proceeding, which will give all of the interested parties the opportunity to express themselves, and we will then come to a determination with respect to those parts of the project that are not fully defined in the law. We will fill in those blanks, within the guidance the law provides us as to the will of Parliament.

**Mr. Lynn Myers:** My final question, Mr. Chairman, is this. Given all you've said and everything that's been laid out as such, what's the timeline for getting this up and running?

**Mr. Richard French:** It will be 19 months at a minimum after Parliament passes the law. The timeline is in the handout you have, Mr. Myers.

**Mr. Lynn Myers:** Thank you very much.

**The Chair:** Lynn, thank you very much.

The last word is for Brian.

**Mr. Brian Masse (Windsor West, NDP):** Thank you. What were your estimates of the cost based on? What did you do to get some projections at this point?

● (1605)

**Mr. Richard French:** Could I ask Mr. Gottlieb to answer that question, please? He's much better equipped than I am.

**Mr. Brian Masse:** Of course.

**Mr. Arthur Gottlieb:** We based it basically on the U.S. experience and on the U.K. experience. We transposed it to the Canadian context and came up with our cost that way.

**Mr. Brian Masse:** So you just based it on the numbers of calls they had and the data management time required. Is that right?

**Mr. Arthur Gottlieb:** Basically we took a much higher-level look. We took a look at how much it cost them to actually do it. We didn't necessarily take a look too much at the differences between the number of calls, etc. We just said a database is a database. Obviously it's quite a complex thing. I'm not sure there's a lot of time to discuss all the little details about it, but afterwards we can definitely get into it.

**Mr. Brian Masse:** Sure. I'm just curious, in that if we once go this route and it gets up and running and you can't make the commitments when people call to get on the list, and it takes months, it creates some expectations and it can create further frustrations. I want to make sure the appropriate resources are going to be there.

With that being said, I know you mentioned that you're not preaching for a call for this. Do you feel this is being thrust upon the CRTC? Have you had your choice of whether or not to have this? To me it feels, with some of your testimony, that we might be just pushing this because it's very convenient, with your previous role. Mr. Myers had a really good question about why you're the best choice to move forward with this.

Is this the right decision, adding this layer of responsibility to the CRTC?

**Mr. Richard French:** I guess what I'd say to you is it's not for the CRTC or for its members, such as myself, to suggest to the government how it should proceed on a question as fundamental as whether or not it ought to be a part of our mission. I can assure you, if it's part of our mission, we will do it with all the intelligence and effectiveness we can deploy.



I can easily understand why, at first glance, it finds itself with us, because there's a clause in our act that specifically addresses this question. It is a departure in the sense that it means we don't regulate the telecom carriers; we regulate the people who are using the telecom system, and that's something we don't normally do. So it's a departure for us. And it certainly would be, administratively, a major challenge to manage a database.

But all that being said, the government, as I understand it, has made a policy decision. We certainly will loyally carry out that policy decision as interpreted by Parliament.

**Mr. Brian Masse:** I think it's a reasonable question for me to ask, though. Quite frankly, we get a lot of people complaining about getting answers back on a timely basis from the CRTC. If we're going to be changing the mission to a certain degree and adding another level of responsibility, is it going to influence or negatively impact upon the ability to work on those things? I think it's a reasonable thing to ask of those who are actually in the organization on a day-to-day basis.

**Mr. Richard French:** Yes, I do too.

The answer is that we try to respond to the different pressures that bear upon us, Mr. Masse. I do not think it would be reasonable to say that because our regulatory function has been criticized from time to time for not being timely enough, this fairly separate mission would necessarily either further hamper the regulatory function or suffer itself from the same sorts of delays because it's a different thing. I don't know if I can be any clearer than that.

**Mr. Brian Masse:** No, that's fair in terms of an answer. We have guesstimates right now in terms of the budgetary requirements for this, and my concern is that you don't control that. What would you do if there was a shortfall in this particular project? Would it then be a requirement to pull from existing resources to fill that gap, or would it just then kind of leave the program in a certain status that may not be satisfactory?

**Mr. Richard French:** We would expect that the risks resulting from a miscalculation or a poor performance on the part of the contractor would fall to the contractor's account. This would logically imply that a contractor who already had a thriving business and a decent cashflow would be a more attractive potential contractor than a start-up in somebody's garage. So on the administrative side, the risks will reside with the contractor.

I think we can learn from what the Americans and the British have done. I can feel that Mr. Gottlieb is going to be around on this dossier for some time, and he knows a lot about what happened there. So in terms of a truly horrific experience with the database itself, I think we've got the experience and the capacity to manage that risk and that the risk is not large.

• (1610)

**Mr. Brian Masse:** Okay. Now when you're outsourcing this, have you looked at your RFPs in terms of securing Canadian privacy by making sure the work does not go to a U.S. company?

I guess the question there is that the U.S. Patriot Act allows Canadian information off Canadian soil to be available for use by its government agencies upon request without the knowledge of the CRTC or the Canadian public. Have you looked at that in terms of privacy issues?

**Mr. Richard French:** We haven't because we haven't got an act in our hands yet, Mr. Masse. But I can assure you that whatever we do, it will be done in the full respect of Canadian law.

**Mr. Brian Masse:** Okay. Maybe this is something that should be included in the bill here.

Thank you, Mr. Chair.

**The Chair:** Thank you, Brian.

Actually, Michael's going to jump in with a short question, and then we'll move to our next witnesses.

**Mr. Michael Chong (Wellington—Halton Hills, CPC):** At the last committee meeting I asked the witnesses from the Department of Industry about this. It has to do with IP addresses.

My only concern with the proposed legislation is that it leaves a lot of latitude to the department and, more specifically, to the CRTC to interpret the act through regulation, or to enforce the act through regulation.

There were a number of concerns raised here outside of IP addresses with regard to what exactly would be considered an existing relationship and who would be exempt. You're proposing that the existing framework would probably be the starting point, and the like, but I have a concern about IP addresses, because phone numbers and IP addresses will be interchangeable in the not too distant future, and if your do not call list includes IP addresses, then we're getting into a whole area that I don't think most of us are comfortable with—at least I'm not comfortable with—in terms of regulating IP addresses.

Have you done any research or investigation of what happens in three or four years when phone numbers and IP addresses are interchangeable? Is it the intention of the department or the CRTC to include IP addresses on the do not call list? And if so, my two cents are that I'd then be pretty reticent to approve this legislation in its current form.

**Mr. Richard French:** Let me first say, no, we haven't done any research on the subject. Two, I can't speak for the department, but only for the CRTC. Three, if people are bothered in their private life and disturbed by phone calls or other contacts that come through IP addresses, they may or may not want protection of the kind we're offering for those addresses.

In any case, the commission will be guided by what people tell us they want in the way of privacy protection and what the law requires of us in the way of privacy protection, so that Parliament, or individuals, could guide us with respect to their desire or will, and we would follow those guidelines.

We certainly are not looking to expand the purview of this legislation in some way that would violate people's interest in an unregulated Internet, or in an undisturbed private life. On the other hand, some people have told us they're willing to take a degree of government intervention in one area in order to protect a degree of their private life in another area, and we're living in the middle, within the framework that Parliament would establish.

**The Chair:** Thank you very much, all of you, as you've been very helpful.

We invite to the table Mothers Against Drunk Driving, the Canadian Association of Optometrists, and the Marketing Research and Intelligence Association. We are going to proceed to the second part of this meeting, as we continue our study of Bill C-37.

If our witnesses were here at the beginning when Mr. Pickard gave an outline of the amendments being proposed, you should certainly feel free to raise any of the concerns you may have with respect to those issues, but you might want to temper your remarks around the changes being proposed.

So with that, we'll start with Dawn Regan of MADD.

•(1615)

**Ms. Dawn Regan (Director, Finance and Fundraising, Mothers Against Drunk Driving):** Thank you very much. I appreciate the opportunity to speak on behalf of MADD Canada today about the potential impact of Bill C-37.

I want to share with you that the telemarketing activities of Mothers Against Drunk Driving are extremely important for our organization. Telemarketing for MADD Canada is about more than fundraising. It's public education, awareness, and, most importantly, an outreach effort to Canadians who can benefit from our services and programs. Not only would Bill C-37 have a devastating financial impact on MADD Canada, it would cripple our ability to effectively serve Canadians.

MADD Canada and its 80-plus local chapters have been providing service and education relating to impaired driving to the Canadian public since 1990. Our organization has over 7,500 active volunteers and over 700,000 financial supporters annually. We are Canada's largest grassroots organization on the issue of impaired driving and supporting victims of this violent crime.

MADD Canada serves over 20,000 victims, family members, and the general public. We help to rebuild lives after people suffer tragic losses. Our organization also communicates with literally millions of Canadians each year. In fact, there are about 69,000 men, women, and children who are impacted by impaired driving annually. We have public awareness campaigns, educational programs, victim services, youth outreach, and legal education, as well as fundraising efforts. The vast majority of these activities occur by using the telephone as our primary communication tool. We have no doubt that if MADD Canada and its supporters would have to participate in a national do not call list, it would destroy the ability of our organization to be effective and to meet the mission of MADD Canada.

Let me share with you a number of real stories on the potential impact of a do not call list on our organization.

First, there's the financial impact. Over 90% of our revenues each year come from the donations of ordinary Canadians. MADD Canada uses an integrated system of fundraising with our donors, and donor acquisition is an important aspect of our fundraising. Organizations like MADD Canada can experience a 35% reduction in our active donor base in as little as one year. So to maintain our

organization's programs and services, we need the ability to acquire new donors, and the telephone is the key tool to do so.

I cannot overemphasize enough the fact that we use the telephone a lot. In the past four years, MADD Canada has raised over \$30 million in donations over the phone. In fact, 40% of all the revenues raised in the last five years have come from a relationship with people with whom we didn't have a relationship in the past two years, so it's beyond the two-year model that you were suggesting earlier.

These donations are, in part, a result of cold calls, as I mentioned, and the reactivation of lapsed donors. Last year, our telemarketing efforts made 775,000 cold calls for MADD Canada, and the number of complaints received by Canadians on those 775,000 cold calls was less than 0.5%. Our calling is professional, respectful, and we keep our own do not call list to ensure that those Canadians who don't want to hear from us don't.

We believe our telemarketing success is defined by two indicators: the funds raised, and that figure of less than 0.5% who are annoyed by our calls. Bill C-37, without a full exemption for charities, would have a devastating impact on our ability to acquire new donors and raise funds. Initiating two registries, as has been suggested today, would appear at first glance not to be very helpful.

Our calculations indicate that MADD Canada's gross revenues will decrease by approximately 35% in the first year of the do not call list, and eventually by more than 50% over the next three years. Furthermore, our 83 community chapters would be devastated with the implementation of this list. The impact on the communities where a local chapter is active would be severe. Allow me to surmise that there would be a cut in our youth multimedia show, which targets 500,000 high school and elementary students each year, sobriety checkpoints with police enforcement agencies, death notification training, victim support, and materials for schools, poster, and essay campaigns, as well as public awareness campaigns like Project Red Ribbon.

Likely, after three to five years, as the full impact of a do not call list were to be felt, we would be forced to shut down the vast majority of our chapters, but aside from the considerable financial blow, it would also impact our outreach and service to victims of impaired driving. As mentioned earlier, MADD Canada provides, on an annual basis, victim services to over 20,000 Canadians. A number of these referrals come from our telemarketing efforts. The telemarketing vendor and his personnel are trained that when they call an individual who has been injured himself or herself or has lost a loved one due to a drinking and driving crash, they refer that individual back to MADD Canada to provide victim support and services. A do not call list will significantly decrease the number of victims and their families served by MADD Canada.

•(1620)

As part of our victim services, we provide support to individuals who have had a family member, peer, or neighbour who is drinking and driving. MADD Canada provides them with support and education on how to refer this type of individual to community resources to get the support they need. I can't tell you how many times we've received calls back from our supporters to thank us for saving their, or someone else's, life from drinking and driving.

By not giving charities an exemption, you will be putting more drinking drivers on our roadways, because MADD Canada will have less interaction with Canadians who want to assist someone to stop drinking and driving. Perhaps the greatest service of our telemarketing campaign is the ongoing public education and awareness programs we integrate into our fundraising efforts. I'd be happy to share those with you in our question and answer period.

It is estimated that drug- and alcohol-related crashes cost Canadians approximately \$10.8 billion a year. Impaired driving is Canada's number one criminal cause of death, accounting for slightly less than four people a day, each and every day. MADD Canada has been and still is one of the most influential organizations in changing the social behaviours related to drinking and driving. Limiting our ability through a do not call list to raise funds, contact our supporters, and offer general information to the public about impaired driving would be a severe problem for us. It would be devastating.

We do not believe this was the intent of the parliamentarians. With respect to Bill C-37, there are a few recommendations we would like to conclude with.

First, this committee has heard that in the United States the do not call list has been hugely successful. We read in the committee's hearings that over 90% of Americans are satisfied with their new system. Let's underline the fact that the American government has made an exception for charities, and Americans are satisfied with the results. If our government officials are emulating the success of our neighbours in implementing this do not call list, then make the necessary exceptions to allow charities to continue their good work on behalf of Canadians and for better communities.

Secondly, non-profit organizations are often lifelines to Canadians who need help. The work our country's charities do on the streets, in homes, with people in need is immeasurable. MADD Canada supporters serve with their hearts, many mustering their energy and commitment from their own personal experience. Our supporters urge parliamentarians to legislate a charity exemption and not to sidestep the issue by letting the CRTC decide the issue. Please ensure the proper legislative framework is in place so that charities like MADD Canada can continue to effectively pursue their mission. Please legislate in the public's interest.

We respectfully recommend that charitable organizations be exempt from Bill C-37's do not call list and that this exemption be legislated—not left to be regulated by the CRTC.

Thank you.

**The Chair:** Thank you very much.

The Canadian Association of Optometrists, Mr. Campbell, you're next.

**Mr. Glenn Campbell (Executive Director, Canadian Association of Optometrists):** Mr. Chairman, members of the committee, thank you very much for inviting us before the committee today.

I would like to introduce my colleague, Dr. Kirsten North, who is a councillor with the Canadian Association of Optometrists and is in private optometric practice here in Ottawa.

The mandate of the Canadian Association of Optometrists is to represent the interests of doctors of optometry in Canada. As the national voice of the profession, CAO works on optometry's behalf with government, industry, vision care patients, the public at large, and other health professionals. We have 3,400 members throughout Canada.

My remarks will be brief since our concerns with the legislation are narrowly focused.

First, we have no specific concern about the establishment of a do not call registry to protect Canadians from unwanted telemarketing calls. I am sure that many of our members will be quite pleased to add their home phone numbers to the list.

Second, we have no specific views on how the do not call registry should be structured and administered.

Our principal concern is about the scope of the application of Bill C-37, which is extremely broad. With one brush stroke of the legislative pen, the CRTC would be granted huge latitude to regulate an entire range of business communication that most of us would never typically describe as telemarketing.

Like other health professionals, optometrists periodically contact existing patients to remind them of an appointment, or for a follow-up or routine eye examination. This is often called a patient recall system and is done by telephone or by mail. This is not unlike dentists who call patients once a year to remind them to have their teeth cleaned and to have an assessment of dental health.

Simply stated, a patient recall system for routine eye examinations is a good preventive health care measure. Vision and ocular health conditions are not always accompanied by recognizable symptoms, and there is often increased risk to the patient if treatment is not initiated. Relying on the occurrence of obvious symptoms or a patient complaint in order to initiate an eye examination exposes the patient to unnecessary risk.

We've developed policy in this area. A copy of our policy on frequency of eye examinations is attached to our speaking notes.

While our members also have the option of sending written reminder notices to patients, the profession's general experience is that these are far less effective than reaching someone by telephone. Even voicemail reminders seem to be more effective than written reminders. We all have a natural tendency to procrastinate and we may set aside a written reminder, whereas direct contact with the optometrist's office is more likely to generate compliance.

Having our 3,400 members required to run their personal patient lists against a national registry represents both a level of effort and red tape that would be difficult and a burden for many, especially single practitioners.

We also note considerable reference to the U.S. do not call legislation as a model for the CRTC. In the United States there is an exemption provided in the do not call legislation for telephone communication between a business and existing clients; however, it is only for 18 months. The nature of proper eye care by optometrists typically suggests a longer interval. For example, in a CAO survey completed in 2003, we found that the overall average frequency for patient recall was about 71% at two years and 29% at one year or less.

In summary, we have made two recommendations for your consideration. First, we recommend that the legislation contain an exemption for organizations where there is an established business relationship, and possibly a separate exemption for health care professionals. We now know about the amendments and we look forward to reviewing them.

Second, we recommend that in these exemptions, longer term intervals be recognized in legislation. For optometrists, the intervals for contacting patients is most often 18 months to two years. Professions or legitimate businesses that communicate with existing patients or customers on a less frequent basis should not be penalized by provisions of the new legislation.

We would hope to see these exemptions defined and our recommendations included in the legislation before this bill leaves the committee.

• (1625)

We thank you for your invitation to present today, and we look forward to your questions.

• (1630)

**The Chair:** Thank you, Mr. Campbell.

Finally, to the Marketing Research and Intelligence Association, Mr. Nik Nanos.

**Mr. Nik Nanos (President-elect, Marketing Research and Intelligence Association):** Thank you very much.

My name is Nik Nanos, and I'm the president-elect of the Marketing Research and Intelligence Association. I'm also a research practitioner and the president of SES Research. I'm here on behalf of our president, Don Mills, who is currently out of the country. I'd also like to introduce our national executive director, Brendan Wycks.

Our association is supportive of Bill C-37 and a national do not call registry. However, we are recommending an amendment to provide for an explicit exemption for market and survey research.

The MRIA is a Canadian not-for-profit association representing all sectors of the survey research industry. Among other things, we accredit research practitioners and audit research organizations in Canada. Our members include over 1,600 individual research professionals, small to large research agencies, and many buyers of research services, such as financial institutions, major retailers, insurance companies, telecommunications firms, and manufacturers.

Effective January 1, 2005, the MRIA became the single authoritative voice for the market and survey research industry, bringing under one organization the now dissolved Canadian Association of Market Research Organizations, the Canadian Survey Research Council, and the Professional Marketing Research Society. We now set and enforce standards in the research industry across Canada.

Our industry has a long history of working closely with the federal government on policy issues that enhance consumer and privacy rights in Canada. The federal government, in fact, is the largest single user of survey research in the country, and that's one reason we're particularly pleased to partner with the public opinion research directorate of PWGSC to ensure that all Government of Canada surveys, whether conducted in-house or by supplier firms, will now be registered with the MRIA's Canadian survey registration system, which our industry has had in place for a number of years.

What is survey research? To put it simply, there are two characteristics that define market survey research that differentiate our work from that of the telemarketing industry. First, legitimate survey researchers never attempt to sell anything. In fact, solicitation violates our rigorous code of conduct and ethical practice. Second, survey research gives Canadians an opportunity to voice their opinions and have their influence on important issues related to public policy and products and services, thereby serving a valuable societal purpose.

Corporate and government decision-makers rely on accurate and reliable research data to make the right decisions. For example, research plays an essential part in ensuring the effectiveness of anti-smoking campaigns aimed at kids and teenagers. Research has been used to test programs designed to motivate citizens to change their behaviour on issues ranging from drinking and driving, as my colleagues mentioned before, to using seat belts, to speeding, to auto theft prevention. As you can see, market and survey research plays a pivotal role in our society in improving public policy and in really giving voice to the opinions of Canadians.

Thinking about the MRIA's role in self-regulating the industry, two of the major long-standing tenets of the market and research industry are protection of the public interest and protection of the good relationship that exists between researchers and the general public. These go hand in hand. As such, our industry has a tradition of stringent self-regulation that requires members to comply with a strict code of conduct.

In a further effort to establish safeguards and protect the public, we operate a survey registration system that monitors members' research projects being conducted across Canada. The system performs an important service, which allows the public to call a toll-free number to confirm the legitimacy of any piece of research and to ensure that the personal information and opinions they share are being collected for legitimate purposes and will remain confidential.

Survey respondents, also through this process, can file complaints against MRIA members. At this time there are no outstanding complaints.

In regard to Bill C-37, the MRIA strongly supports the government's efforts to enhance privacy and consumer rights. It is our strong view, however, that Bill C-37 should include an express exemption for market and survey research, because we are very distinct from telemarketing, which is the focus and driver of this bill. The public policy input and other societal benefits of market and survey research are, we believe, well recognized and accepted by the general public and underlie Canadians' positive and cooperative attitudes towards our industry.

An absolutely fundamental issue for valid market research is the representativeness of a sample. A do not call registry that targeted telemarketers but swept in market and survey research under the same net would be too broad. It would severely impair our industry's ability to gather the opinions of Canadians in a manner that is representative and predictive of the views of society at large. Statistical reliability is the key to good research, which in turn is the key to good policy-making.

• (1635)

Now, regarding precedence for exemption, in the U.S., the Federal Trade Commission decided that the national do not call registry should not apply to survey research. In fact, every single individual state do not call registry established prior to the national registry has exempted market and survey research.

In Canada, the discussion concerning a national do not call registry originated with the CRTC in response to an increasing number of complaints related to telemarketing, and it's important to note that the CRTC itself acknowledged in these proceedings that "no compelling evidence (existed) to demonstrate any undue inconvenience or nuisance" by market and survey research calls.

The commission also concluded that the research industry had a proven track record of responsible and sustainable interaction with the general public.

The CRTC therefore took a similar position to that of the FTC in the U.S. in concluding that market and survey researchers should be exempt from its telecommunication rules because of the industry's societal benefits.

In conclusion, while the MRIA is fully supportive, we believe it's equally in the public interest to make sure that market and survey research is exempted. We want to draw your attention to the fact that over the last ten years our industry has been in two other consultations with the CRTC on this issue. The public has been thoroughly consulted by the CRTC on this. The CRTC has been absolutely clear on the need to exempt calls that do not solicit. And, finally, it's in the public interest.

So on behalf of the association, thank you very much, and we'd welcome any questions you might have.

**The Chair:** Thank you, Mr. Nanos.

We'll start with Michael Chong, please.

Colleagues, given the number of witnesses, we're going to try to keep the questions to maybe five minutes each if you can.

**Mr. Michael Chong:** Thank you, Mr. Chair.

My question is for all the witnesses. It has to do with how you manage your do not call lists. I'm not sure if any of your organizations are members of the Canadian Marketing Association, or Canadian Direct Marketing Association—I'm not sure what their current name is—but they manage a voluntary do not call list for their members.

Are any of you members of that organization?

**Mr. Nik Nanos:** As market researchers, we're really not telemarketers, so none of our members would really be active with the formerly Direct Marketing Association.

**Mr. Michael Chong:** Okay.

**The Chair:** Do any of the others have a comment?

**Ms. Dawn Regan:** I believe our vendor is a member of the CMA, but to speak to your question about membership and do not call, we manage our own list. As I mentioned before, we did 775,000 cold calls last year, and we know that less than 0.5% of those called actually asked to be on the list. We maintain this list daily. We meet with our board of directors three times a year. If they want, they can get it monthly from us. We actually have a list of every single complaint to MADD we have received, and we monitor this very carefully.

Clearly we do not want to be offending the public. We have a very important message to impart in terms of safety, and it's not just about raising funds; it is that outreach to the public.

**Mr. Michael Chong:** I assume optometrists are not part of that.

**Mr. Glenn Campbell:** No.

**Mr. Michael Chong:** If I can go back to you, Ms. Regan, you have your own list?

**Ms. Dawn Regan:** We do. We maintain our own list. I'll say two things. MADD Canada itself maintains its own list in-house, so as people call us, mail us, fax us, or e-mail us and say "I'd like to be off your call list", we take care of that immediately. Our telemarketing vendor has its own list as well.

**Mr. Michael Chong:** So you outsource your fundraising?

**Ms. Dawn Regan:** Correct.

**Mr. Michael Chong:** And how do they manage the do not call list? Do they have their own list, or are they are part of the CMA?

**Ms. Dawn Regan:** They are part of the CMA, but they also manage their own list. So they would literally go to the Nixie file that exists at the CMA and make sure they're not calling someone they shouldn't be calling, and then they have their own list as well that they're maintaining for us.

So as they're talking to a potential donor over the phone, or talking to an existing donor, if that donor expresses that they do not wish to hear from MADD Canada again, they're adding that to our file.

**Mr. Michael Chong:** Here's the question. You're advocating that charities be exempt from the proposed regulations that flow out of the proposed legislation, so in other words you're advocating for a more open access than you currently have, because in the current environment your outsourced vendor being a member of that association has to make sure it purges its phone numbers of anybody who doesn't want to be called.

But what you're advocating—and correct me if I'm wrong—is that under the new proposed regulatory regime charities be completely exempt from the list and be allowed to call anybody.

• (1640)

**Ms. Dawn Regan:** No, I wouldn't say that. I would say that you're proposing a registry right now that doesn't exist in terms of legislation, right? A do not call registry doesn't exist. Should you add that do not call registry and charities are not exempt... MADD Canada's own experience tells us that 40% of our revenues come from that cold calling, and that would financially devastate us.

I would also say that the outreach to the public would be affected. What you'd be saying is that we could not call anybody who's added themselves to that list.

**Mr. Michael Chong:** Let me be devil's advocate here. What if this legislation doesn't pass and the CMA undertakes a massive public awareness campaign to tell Canadians that if they contact that association they can add their number to the do not call list? That would have the same effect as something that's being proposed here, would it not?

**Ms. Dawn Regan:** I don't know how to answer that. I would say we'll cross that bridge when we get to it, I suppose.

I will say again, right now, that it is something that would devastate us financially. Our outreach to the public is very important to us. We are managing ourselves very well as a charity and making sure we listen to the public who call us and say, "Do not call me". We take care of them. We ensure that we've handled their issue.

**Mr. Michael Chong:** I guess one of the problems, though, with the existing system is that many people are unaware that this association exists and that they can contact it to get off the calling lists. Furthermore, it's a voluntary association, so not everybody is mandated to be a member. So there are a lot of people who aren't on those lists.

Furthermore, I don't think it's reasonable to expect that every single person would contact every single individual organization to get on their do not call list. I think the idea here is to have a centralized list where people could call once to get off the calling lists.

You mentioned in your testimony that you thought—and I think others did as well—there might be some room for a second list, so you'd have two sets of lists, one for most organizations and one for charities. Maybe you could elaborate on how you see that working.

**Ms. Dawn Regan:** This is the first opportunity we've had to hear about this second registry. It was brought up today for the first time. We really do want a clear exemption for charities. We don't want to have that message mixed, as it were.

I'd like the opportunity to go back to our board of directors—we have a scheduled board meeting on Friday—and bring that question to them, ask the board what they would say about a second registry.

My first thought would be that it would be equally devastating. Again, we're talking about 40% of our revenue coming from cold calling.

However, let us get back to you with a written response after that board meeting.

**The Chair:** Thank you, Michael.

Very quickly, Nik.

**Mr. Nik Nanos:** If I could, I'll just add a couple of things.

One thing that MADD and the survey research industry have in common is that we have a vested interest in ensuring that Canadians cooperate and are happy with those contacts. We're not telemarketers, where we are selling, basically. Those are two different things. We have a different interest.

When MADD Canada talks about how they maintain their list and why they engage in their own do not call registry, they do that in order to keep their members happy, in order to engage in good corporate practices, because of the societal good they do. In the same way, market research companies maintain their own do not call lists, for the exact same reason—because we need Canadians to participate and cooperate. When our firm does a survey, the first thing we say in the first 10 seconds is that this is not a sales call; this is a bona fide research initiative. It's very important.

One thing I heard earlier, and this points to what you were talking about, is whether Canadians will know. I heard a little earlier from the CRTC about the costs, but in order to make this work, you have to educate Canadians and create awareness that this registry exists in the first place. It's more than just putting a piece of software in a computer. I know our association would be very willing to participate and support the government in educating Canadians about what is appropriate behaviour and an appropriate way to contact people, and clearly have that distinction. But there are costs in regard to educating Canadians and creating awareness about the list in the first place.

• (1645)

**The Chair:** Thank you, Mr. Chong.

Paul Crête.

[Translation]

**Mr. Paul Crête:** Thank you Mr. Chair.

I would like the people from MADD Canada or other agencies to give us their opinion about the following proposed amendment:

[...] in any database or information, administrative or operational system administered [...] for the purpose of a national do not call list, do not apply in respect of an unsolicited telecommunication:

[...]

b) by or on behalf of a registered charity within the meaning of subsection 248(1) of the Income Tax Act if the information indicates that unsolicited telecommunications may be made by or on behalf of such charities.

Would this amendment satisfy you? Do you feel that the amendment tabled today by the government is satisfactory?

[English]

**The Chair:** Have you seen the amendment?

**Mr. Nik Nanos:** Yes.

I can comment first. Actually, I was surprised there was an exemption in the first place. Either there should be a series of exemptions that are fulsome and reflect the direction the committee wants to go, or it should go to consultation. To cherry-pick one over another, I thought, was surprising. That's just my initial reaction.

[Translation]

**Mr. Paul Crête:** Would you prefer all exemptions to be in the Act, or should some exemptions be in the Act and others in the regulations, as is currently the case?

The CRTC representative said just now in his presentation: "Survey and polling calls are not made for the purpose of solicitation and therefore are exempt."

There is currently an exemption for surveys, but it is not in the Act. Would you like this exemption to be in the Act? I am speaking here of surveys. More generally, should all exemptions be in the Act?

After finding out about existing practices, it may be decided that what is exempted by the CRTC ought to be exempted in the Act itself so that there are not two different kinds of exemptions: those provided for in the Act and those resulting from CRTC practices.

When the CRTC evaluates new applications, it could very well say that Parliament would have placed this exemption in the Act if it had wanted to do so.

Are you in agreement with this, and with the proposed amendment? Would this amendment satisfy you?

[English]

**Mr. Nik Nanos:** Yes, I would agree. Our preference would be, to paraphrase Mr. French, for the committee to identify the societal value and goals and to clearly provide direction to the CRTC on exemptions, if the committee decides to have whatever exemptions. Our preference would be, at least for our stakeholders, to have survey market research specifically included in the act as an exemption.

**The Chair:** Are there any other comments?

**Ms. Dawn Regan:** I would say the same. As a charity, we would prefer to have the exemption in the legislation before it went to the CRTC for regulation.

[Translation]

**Mr. Paul Crête:** Did you have the time to review the amendment to see whether it satisfied you? If you cannot give a definitive answer today, you could always send us a definitive reply in writing. Does it match what you said today in your presentation?

[English]

**Ms. Dawn Regan:** Well, I would say two things. A relationship—I believe it was mentioned—would be considered an existing relationship at two years.

**The Chair:** It's 18 months in the U.S.; that's all we have here.

**Ms. Dawn Regan:** I think I mentioned earlier—I'm pretty sure I did—that a significant portion of our revenues came from people we hadn't had an existing relationship with in that two years; it went beyond the two years. In fact, I can give you some cases anecdotally where we had a relationship seven years ago. They gave us a donation seven years ago, and we were able to contact them again recently and they gave another gift. If this "existing relationship" is 18 months, we won't have that capability.

As far as a registered charity is concerned, again, we haven't had an opportunity to see the differences between one registry and two, and I believe this is what it's referring to.

I'd like an opportunity to put a written response together.

•(1650)

[Translation]

**Mr. Paul Crête:** The proposed amendment speaks of calls made "by or on behalf of a charitable organization...". This means that a registered charitable organization could award a contract to a telemarketing company to make calls on its behalf.

Does MADD Canada award this type of contract? Just now, Mr. Nanos was saying that associations like his were not telemarketing firms.

Under the current wording of the section, major organizations could have their calls made by a telemarketing firm, whereas small agencies that do not issue charitable receipts would not be entitled to the exemption.

[English]

**Ms. Dawn Regan:** In the current model MADD Canada has, we use a telemarketing vendor to make our phone calls. Most charities do.

**The Chair:** Thank you, Paul.

Jerry.

**Hon. Jerry Pickard:** Thank you, Mr. Chairman.

First, possibly, I can talk to a couple of different groups, because I think some of the information is quite critical. You should be aware that under the CRTC rulings at present, when we talk about marketing surveys and intelligence research, you're already exempt, and we anticipate there will be no question but that the exemption will remain.

Timelines have been mentioned, those in accordance with U.S. regulations and U.S. law. In Canada there was no timeline mentioned. There has not been, to my knowledge, any timeline-related intervention at this point. Unless the CRTC were to come forward with timelines, the legislation is open on that issue, which means we don't have a problem there. As far as I know, that would go back to Mr. Campbell's presentation initially.

I think also, when we talk about the ability in the legislation for contacts of previous business organizations or for previous business commitments, we opened that to a much broader category. We said "persons", and within that we opened it up to charities or personal contacts or a vast array of things that would go beyond the business connection, and therefore your follow-ups—talking about it being two years, 24 months, 18 months—could be done at any time. There was no way the government or Industry Canada, in putting forth the legislation and the amendments to the legislation, wanted to make any inhibition of your ability to do business or that of other corporations that have those concerns at heart.

It goes beyond just a client-business connection. For instance, there are many businesses that make deals with other businesses. A credit card company could bring in Air Canada to be a client; they have Aeroplan and they move forward with that.

We want those business relationships to be maintained, to continue, and to prosper. That is not in question in any regard, I understand, within the legislation. Up to this point CRTC has, in my view, supported with their rulings an open basis for telemarketing research and those types of initiatives.

When it comes to cold canvass, I hear the MADD organization, and I know other organizations face similar problems. Canadians certainly realize how important cold call telemarketing is to all kinds of research organizations. In Canada, it has been suggested the number of telephone calls we get from charitable organizations is in the neighbourhood of 60%...so it is very high.

In some ways you can think of people who say they do not want charities phoning them as that group of people who wouldn't donate to charities anyway. We're not talking about interfering with a group of people who would receive and accept telephone calls from charities. If they specifically say no, they don't want charities to phone them, it's more than likely that's the client base that wouldn't give a donation to a charity anyway.

That's why we tried to look at what the reasonable compromise and balance would be here. There are some folks who say no telephone calls from anybody. There are some who say yes, for the purpose of community good—the United Way, MADD, or the Cancer Society—they certainly would receive telephone calls. I think that is the differential we were trying to look at to create a base and see if that met the needs.

But I see your concerns within all three organizations, and I do believe the amendments that have been brought forward will help vastly with the interests of all three of you. Maybe you could comment on that.

• (1655)

**Ms. Dawn Regan:** Could I respond to that?

There are two things you mentioned. On the 60%, we don't know how that survey was done. We don't know how the questions were asked. I would suggest that those numbers are not accurate. We called 775,000 people last year. Less than 0.5% said, "Take me off your phone list".

On top of that, if you put us all in the same category, charities are not exempt. If you call and you say you want to make sure you're not on the call list for charities, they may not be thinking of their current relationships or a relationship of three years ago. In three years' time, they may forget about MADD, the Canadian Cancer Society, or Juvenile Diabetes. By putting themselves on that list, they can no longer be called by those charities because they no longer have an existing relationship. I think this becomes a bigger issue. If we can't ask, we will not get.

**Hon. Jerry Pickard:** If they have an existing relationship, with the exemption, you do have the right to phone them. That's why, within the first issue of exemption, we did persons. As far as I'm concerned, with the amendments, if you had a relationship three years ago, you have an existing relationship—unless this changes after hearings. You have an existing relationship, and you're allowed to phone.

So all of your existing relationships, you're still allowed to telephone. I don't see anything that would restrict it in what the government has put forward.

**Ms. Dawn Regan:** Did I misunderstand that there was an 18-month purview?

**Hon. Jerry Pickard:** You certainly did. That's in the United States, not Canada.

**Ms. Dawn Regan:** So that's not what we're suggesting here?

**Hon. Jerry Pickard:** That's not here at all.

**Ms. Dawn Regan:** I would go back to the 40% of revenues we raised by cold calling. These are not existing relationships for us. That's 40% of revenues from cold calling—tens of thousands of dollars. The public outreach cannot be forgotten. It's not just about raising money. It's about the outreach to the public, and those people I can't reach.

**Hon. Jerry Pickard:** You could only reach them if they haven't said, "I do not want charities to phone me". This is the limitation in the legislation. If someone said they didn't want charities to phone, the likelihood of their donating to charities is rather limited.

It may do a job of filtering out who you should be phoning in your telephone calls. You might now be phoning only people who are very receptive to those calls, and your donations might escalate dramatically. That's the other side of the coin.

**The Chair:** Thank you, Jerry.

A point of order from Michael Chong.



**Mr. Michael Chong:** I want to make sure there's no misunderstanding here. Section 41 of the 1993 Telecommunications Act, as interpreted by the CRTC, includes charities. In other words, it does not exempt charities from the do not call lists, according to the submission provided by the CRTC today.

**The Chair:** We'll take that as information and clarification.

Are there any comments on Mr. Pickard's remarks?

Mr. Nanos.

**Mr. Nik Nanos:** I think there might be an opportunity to have a clearer approach. I'm not saying we're unclear now, but if there was a tight definition of telemarketing, it would solve all of our problems right across the board. For one thing, it would help to clear up the question of exemptions.

Moreover, a clear definition of telemarketing and what the do not call registry covers would serve as a first step in educating Canadians about what this is, how they can get on the list, and how the list works. This would be better than simply announcing that we have a do not call registry and then going on to complicate it with exemptions.

Maybe there's an opportunity to look at some definitions on telemarketing activities, with a view to making it easier for Canadians to participate in the do not call registry.

• (1700)

**The Chair:** Good. Thank you very much

Brian, go ahead.

**Mr. Brian Masse:** Thank you, Mr. Chair.

I can understand your hesitation to turn over your future to an arm's-length body that won't report back to Parliament for five years. That's one of the problems we face. Once these wheels are put in motion, it really goes away from the democratic process for a while, and what happens to your charities and organizations in the interim hangs in the balance.

Maybe I can start with Ms. Regan. You mention that you do have people identified who were on a list. I guess they came from the contract that you had with the telephone marketers you hire.

I have some experience. I spent four years, through high school, in a smoke-filled hotel room with 40 people, calling about circus tickets for a marketing association. So in going through phone book name after name after name, my concern would be....

Would you be willing to have an obligation that, say, for example, charitable organizations go through the list, they identify that somebody doesn't want to be called, and you have to take that name and number and then report it, through the obligation, to the body and make sure those people then get registered? Would that be something that could be coordinated through your endeavours in terms of when you identify someone who says, "Okay, I don't want to have a call from MADD"? Then MADD—Mr. and Mrs. Jones, and such and such—takes the onerous responsibility of saying, "Make sure this information gets immediately to the do not call list."

**Ms. Dawn Regan:** You're asking should that exist, right?

**Mr. Brian Masse:** Could your organization do that? If that was one of the options available, would your organization have the capability to get back from your marketer, okay, here are the 117 names that came in of people who don't want to be bothered by us any more, for whatever reason, and then your responsibility is to make sure those names get on the do not call list?

I guess the difference would be that they'd hang out there in the balance with no connection. They're still on your list but not on the other list.

**Ms. Dawn Regan:** Practically, yes, of course. We have a database of names of people who have said "Do not call me". We have to maintain those numbers, obviously, so we know we can't be calling those numbers. In practicality, we could easily say, "Here's our list of numbers not to call".

Sure. It exists.

**Mr. Brian Masse:** Do you do any telethons? I'm sorry I don't know that.

**Ms. Dawn Regan:** We don't.

**Mr. Brian Masse:** You don't do telethons. I was asking questions about the Easter Seals.

Right now, the legislation calls for it to go to the CRTC and then come back to Parliament in five years. Is there a better window of opportunity if the rules and regulations...or would there be comfort that it would then come from the CRTC hearings and come back to Parliament to get authorization about that before being instituted? That's going to create some time issues, but would that give a level of comfort, that the CRTC would have its hearings and then bring that back to the committee here for final vetting?

**Mr. Nik Nanos:** We've been providing input for 10 years. What we've just heard is that we go back to another consultation, even though we will likely have an exemption in the regulations.

**Mr. Brian Masse:** Death by committee. I hear you.

**Mr. Nik Nanos:** We're going to support whatever you do because it's in our best interests, but the CRTC has rendered an opinion. We've seen experiences in other jurisdictions. We're still back at the table. I think there's an opportunity for the committee to move forward on this and to give some direction.

We heard Mr. French saying his preference was to get direction.

**Mr. Brian Masse:** I don't disagree with that. I think it's a fair thing for people to come to us and say, okay, make those decisions. I think that's a fair challenge to the committee.

I think the problem we have right now is whether or not we then open up for a whole series of groups and organizations and whether we have the capability to do that in terms of our time constraints now, and also the process we've set in place. So that's why I offer that if there is....

I guess that's more for the committee to decide.

I don't have any further questions. I think the presentation so far has been fairly obvious.

• (1705)

**The Chair:** Thank you, Brian.

Brad, please.

**Mr. Bradley Trost:** I agree with Brian. We've got quite a bit of mail on these topics here from various groups.

There is just one thing. Whenever I go through legislation, I'm also looking for other ways to deal with problems. There is a problem out there. People do have a certain degree of annoyance. Having once had a part-time summer job in university working for a market research firm, and having run my share of phone banks, etc., during political campaigns, I know how people can respond on the phone. I think most politicians have worked the phones pretty extensively, and we understand the two-way relationship.

What I'm looking for is any ideas you have on how to handle or lessen the annoyance the general public feels. Part of this question comes from my own personal experience. It's not just the number of calls. It's sometimes the time of call, it's sometimes the length of call, it's sometimes—you know, various things like that.

I'm a Conservative here, so I really hate to get into too much government regulation on things. Organizations are pretty often more refined tools in disciplining themselves, but maybe there needs to be some regulation or legislation, and there already is, in some respects.

Are there other things you could suggest to maybe lessen the public's annoyance, be it with your particular cause or whichever of the three you're doing? I know with door-knocking for sales, going door to door in small towns, there are regulations about hours, days, frequency, number of calls—there are all sorts of things, and probably a lot I haven't thought of. Have you given any thought to that? And could you bring out any suggestions to maybe throw in for future legislation that would leave your businesses and organizations able to conduct what you need to do, but still lessen people's annoyance with the problem?

**Mr. Brendan Wycks (Executive Director, Marketing Research and Intelligence Association):** In the market and survey research industry we have a very strong self-regulatory focus. In our code of conduct and ethical practice we do have some provisions our members must adhere to around length of call and around stating the clear purpose at the very outset when reaching a respondent, that this is a survey and research call and is not for the purpose of solicitation, which is almost always very positively received.

It might be an idea to have in the regulations some guidelines around length of call and immediately stating the purpose of the call. It may be difficult to legislate specific times at which calls can be placed, because of time zones and centralized call centres and people in different stages of life preferring calls at different times of the day, etc.

**Mr. Bradley Trost:** Are there any comments from either of the other two?

**Ms. Dawn Regan:** The CRTC already indicates to us when we can make those phone calls and into what time of night we can make those phone calls. Again, I would say we self-regulate as well, in the sense that our calls are not onerous in length. I believe that if the calls were too long or there was an issue with the callers or the time of day, we would be hearing back from those people, because we're

reaching a large volume of people each year and that's not happening.

I don't have anything to offer, other than suggesting we try to maintain ourselves in a very great manner to ensure we don't offend the public, because they're there to serve us and help us.

**Mr. Glenn Campbell:** I have just a quick comment.

It's really a new issue, in many respects, for us, because we don't have a record of public complaints about patient recalls. It just recently came onto our radar screen, primarily because of the 18-month interval. That's what has resulted in the letter and being here today.

**Mr. Bradley Trost:** I have a general comment, just to follow up.

The groups appearing in front of us in committee are not causing the problem; they're the responsible people. It's always the exceptions out there, not the rule.

I have just one last question to Ms. Regan.

As you said, your group has been very responsible and is very widely respected, I think I'm fairly safe to say, throughout Canada and among pretty much everyone. Do you think it would be too onerous if codes like those from responsible organizations like yours were more codified? Would it be an onerous problem across the board? We're just trying to figure out how to weed out the bad apples, and we're not going after the legitimate larger organizations. Take some of the practices that you, the deaf, and a few other charities have brought in letters they've sent to our offices, and possibly codify them. Would you be opposed to that? Would you think that's positive, or do you think it would impinge on future flexibility?

• (1710)

**Ms. Dawn Regan:** I think that would be positive. I think we are a group to be emulated. We hold ourselves to the highest standards.

In addition to that, you'll notice the charitable industry can of course, with Imagine Canada, adhere to certain fundraising practices. They must make sure they adhere to them. We are members of Imagine Canada. We're members of the Association of Fundraising Professionals. These are all industry-wide organizations that help us ensure we are following a code. Those codes exist, with those two organizations, to ensure that we are not annoying the public, that we are giving proper information, that we are upfront in all our dealings, and that if a complaint is lodged, we handle the complaint.

That does exist, and it's something you could emulate.

**The Chair:** Thank you very much, Brad.

Are there any concluding comments or any points you wish to put on the record to our witnesses before we...?

Oh, I'm sorry, Jerry.

**Hon. Jerry Pickard:** Thank you.

I want to comment on one further part of this, and I think it is important.

First, I want to thank you for coming forth and putting your suggested amendments on the table, because that helps us consider whether we have dealt with some of these issues adequately, or whether there are mechanisms to deal with them in an appropriate way. I believe from most of what I've heard from the three organizations that those exist.

One of the problems that was raised and suggested both by the CRTC and yourselves is that we entrench in the bill certain pieces of exemption, or comments, and so on. The difficulty is always that in telecommunication—in the phone business, in Internet, in all of the different areas—this world is rapidly changing. By entrenching certain things in legislation, your flexibility or ability to deal with the changing environment is restricted dramatically, without going at all that legislation again and again.

That's why I favour, from my personal point of view, separating the legislation and the regulations. A regulatory ability to deal with a lot of the changing problems gives an awful lot more flexibility to deal with them, and deal with them under an easier format, than is the case with legislation. Sometimes the legislation in these particular areas doesn't entrench everything right to the dot and the T. The reason it doesn't is that there are all kinds of things that pop into those fields every year. We know that is something that's going to have to be dealt with over time.

I don't think we would have been talking about a lot of things like spam five years ago. I don't think we would have been talking about do not call lists 10 years ago. But as the kinds of economic things change in society, we need the flexibility to deal with those changes as they go. That's why, rather than entrenching in the legislation, we look more to the regulations to be a little more flexible with them.

I believe each of the comments that two of the groups have made are already dealt with, and I think you're very safe with that, without question, in my mind.

The public outreach from MADD is something that... I like the idea that you can do public outreach, but I'm not sure how it can be handled. The committee will certainly listen to it, and the government will look at it, and CRTC will discuss it too, if this legislation goes forward. There are some things we can't totally protect and deal with, but I think we try to listen and be as fair to all organizations as we can, and I appreciate your comments back.

• (1715)

**The Chair:** Yes, Mr. Nanos.

**Mr. Nik Nanos:** That being said, I agree with a lot of what you say, but someone has to establish principles, or else there may be unintended, unforeseen consequences of not giving some direction; that's our only point. If there's a role, there has to be some kind of midway point in providing broad principles that are flexible enough to make sure the regulations are consistent with them, so that everyone sitting around the committee doesn't meet again in five years and realize we've created some unanticipated results that were never intended when we sat around the table today.

**Hon. Jerry Pickard:** With the regulations those can be dealt with. That's the whole point.

**The Chair:** Ms. Regan.

**Ms. Dawn Regan:** I'd like to comment that legislation is what we're looking for and an exemption for charities at the legislative as opposed to the regulatory stage. We believe there's a unique partnership between government and charities. You ask us to work on behalf of the public good and we rise to that challenge. Our contribution to our society is immeasurable.

In return, we ask that you work with us, that government protect us and ensure that we as charities are not irreparably hurt. You've heard my numbers. We respectfully submit that it is the role of the government, as our partners, to ensure we are protected and not leave that up to the CRTC. It's not their job, nor expertise, to understand charities and our particular needs. So we'd prefer that you legislate an exemption.

**The Chair:** Thank you.

Any final comments by our witnesses before we adjourn?

With that, colleagues, I just have a couple of things to discuss with you as the witnesses are leaving the table.

Thank you very much for your time today. You've given us very helpful advice. I think with that, combined with the proposed amendments, and who knows what else, the final package should be very good.

We're going to continue the meeting, colleagues. I want to talk about Bill S-18, the census bill. If we get it quickly—it's in the House now—and if there are no problems, we'll try to deal with that on May 4. Maybe it will only take a few minutes.

We're also going to receive, in a day or two, or very soon, the BDC president appointment, I think it is, unless you want to take a pass on it. We could do that on May 4 as well for maybe 15 or 20 minutes, or half an hour on S-18 and an hour and a half on the BDC. I just propose that for you to think about.

As I said at the beginning of the meeting, are there any travel plans you might have for committee? I don't have any myself, as your chair. I don't think we do have any on our plate, but for the record, we need to submit any travel plans to the liaison committee right away, because of the budget forecasting.

Unless there are questions by colleagues, I'm going to adjourn the meeting.

Paul.

[*Translation*]

**Mr. Paul Crête:** There was discussion of the possibility of having the Head of the American registry speak to us about this bill, possibly by teleconference. If there are costs involved, they should perhaps be budgeted for.

[*English*]

**The Chair:** I don't think teleconferences count as travel. That would be in our operating budget.

We couldn't get the AT&T operator, because whether we like it or not, they may bid on the job, so they would possibly be in conflict. We'll have somebody from the commission, the CRTC equivalent that oversees the system.

**A voice:** That would be the FTC.

**The Chair:** The FTC. We tried to get them for May 4, but we're working on that. That was Brian's idea. We couldn't get the operator. They have declined.

Anything else?

With that, we are adjourned. Thank you everybody.

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