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Chair

Mr. Brent St. Denis

Standing Committee on Industry, Natural Resources, Science and Technology

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● (1535)

[*English*]

The Chair (Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.)): I'm pleased to call to order this June 1 meeting of the Standing Committee on Industry, Natural Resources, Science and Technology. We are continuing our clause-by-clause study of Bill C-37.

Colleagues, a couple of pieces of paper are going to be handed out to you, and I would like to attempt to summarize, if I can, what I think our work is today. We may get done; we may not. If we don't, then I propose we schedule Monday for continuing our clause-by-clause study of Bill C-37, but we'll see how we're doing a little bit later on.

If I understand the work of our last clause-by-clause meeting, we basically have four areas in which we need discussion. Two are rather complicated areas, and two are rather simple areas.

The first area is an issue raised by James. It was previously amendment C-1, which for today's purposes is L-1. That's just because it's sort of coming from the chair. It is an L-1 amendment that has to do with CRTC orders coming back to the House and committee, and so on and so forth. I'll ask in a moment, after I do my wrap-up, for James to start us off on that discussion. Without putting words in his mouth, I believe his idea was to make sure there was parliamentary oversight of orders.

Also, I had raised the issue about creating a scenario in which orders that came to the House and committee, if we didn't do something to create a time certain, could rest there in limbo indefinitely. So we'll discuss that.

In the second area we have the charities exemptions, the business relationship, the political exemptions, and so on. Those were amendments proposed by all parties at the last meeting. We agreed I would use the Conservative motion as the infrastructure, but we would import the political wording of the NDP; we're going to have a good discussion of that today as well.

Then we have two relatively easy areas. One is the three-year versus five-year review of the bill and whether the report should be in four months or six months. I think there was a consensus that it should be six months, because at least you're into September. The fiscal year ends at the end of March; count six months, and then you're into September. Otherwise, we're not here in July anyway. So that would give the officials two months' more time to make sure the year-end report was in place.

Is that a fair summary of the four areas? We have orders; then the charities, business relationship piece second; then three-year review versus five-year; and then the four months versus six months. Am I missing anything we need to discuss?

Brian.

Mr. Brian Masse (Windsor West, NDP): There is still another amendment we had with regard to outsourcing.

The Chair: On the outsourcing, do you want...? Maybe we'll just put it on the table. Just give us an outline of what it is, and then we'll—

Mr. Brian Masse: It's related to the U.S.A. PATRIOT Act and keeping the information in Canada so it's not susceptible to the U.S. A. PATRIOT Act.

The Chair: Okay. Has that amendment been circulated? Is it the original one?

Mr. Brian Masse: It's originally in there.

The Chair: Okay, the U.S.A. PATRIOT Act. I'll add that. There are five areas, then.

We'll start with the orders piece. You were circulated what is labelled L-1. I met with the researchers at one o'clock, trying to find a little tighter reflection of what James was getting at, at least in the way it was drafted, so you have L-1, page A, and L-1, page B. I could attempt to explain the difference, but maybe I'll first ask James to discuss the orders—what he was trying to get at, and where he thinks things are right now—and then we'll discuss the different versions and see which of them, if any, gets us where James and all of us want to go.

Mr. James Rajotte (Edmonton—Leduc, CPC): Thank you, Mr. Chairman.

The intent of this was to ensure that Parliament, through the House of Commons, the Senate, and this committee, would have some overview over any proposed changes to this legislation. In particular, I think the valid concern was raised that the CRTC does issue orders on a regular basis, and we certainly don't want to slow that up. We don't want to create too much of a bureaucracy, so I was certainly open to amendments in terms of restricting it more to serious changes—for instance, to the list of exemptions or something substantive like that.

That was the intent. Perhaps, Mr. Chairman, you could have someone identify exactly for us the differences between the A and B versions of amendment L-1.

The Chair: I will give an overview, and then I'll ask Andrew, Doug, and Sam, our researchers, to correct anything or add to my comments.

Again, we just wanted to provide a certainty of timing such that when an order came to the House—and you're suggesting you could limit it to orders respecting exemptions—there was certainty that it would come back to the CRTC, that it wouldn't be caught in limbo. That was really the only point I was getting at when I raised it.

In both cases, L-1a and L-1b, the committee has 20 sitting days, and then the House would have 10. In both cases, when it comes to the House from the CRTC, it's deemed reported to committee, and the committee has 20 business days to deal with it. If it doesn't do anything, it automatically comes back to the House, and the House has 10 days. If the House does nothing, it automatically goes back to the CRTC. So when it's an issue that's not on anybody's radar, there's a sort of default approval of the order by the House.

The difference between L-1a and L-1b is that L-1a refers to the House of Commons, whereas L-1b refers to both the House of Commons and the Senate.

With great respect to the Senate, they don't sit as many days as the House. They sit, what, three days a week? So if you use the same formula—20 plus 10 to get the 30 that we talked about, James—it just means that much longer on the Senate side to achieve the same number of sitting days.

As your chair, I'm inclined.... Once we're done with Bill C-37 here and it goes to the Senate, if we just send it with a reference to the House, the Senate could then decide, in its own way, whether it's concerned about the issue and, if so, could incorporate its own formula. Or we could simply say that whatever the number of days is for the House side, that would apply for the Senate side, even though we know it would automatically take longer, because there are fewer sitting days per quarter in the Senate.

Did I describe that reasonably well? Does that make sense?

● (1540)

Mr. James Rajotte: Just as a question of clarification, if the House then does intervene on an additional exemption category, for instance, would the Senate then have to render an opinion on that or not?

The Chair: I would assume that this would happen concurrently. If you chose the two-house approach, it would go concurrently, and each would act independently.

Mr. James Rajotte: Then if we chose just with the House of Commons, would the Senate constitutionally then not have to render an opinion?

The Chair: I thought, from my advice, no. We're not talking about a bill.

Mr. James Rajotte: So you could in fact limit it to the House of Commons.

Mr. Andrew Kitching (Analyst, Library of Parliament): You could limit it to the House of Commons.

The Chair: Yes. And that's the L-1a version.

By the way, the only difference between L-1 and L-1a and L-1b is that L-1 didn't have the automatic deeming provision. I don't think L-1 is even on the table. I think we want to have the automatic deeming so that if things don't get taken care of by the House or the committee, it gets done anyway.

So we're really down to the question of, if we're going to go down this road, somehow incorporating the limitation of orders to the exemption category, and whether you want both houses or one.

Any comments on that, Jerry?

Hon. Jerry Pickard (Chatham-Kent—Essex, Lib.): Mr. Chair, is the goal here to have periodic oversight, looking into the legislation to see how it's working, or is it to scrutinize each of the decision-making processes we would see in the CRTC?

It seems to me that we really need a broader expanse, not having each regulation passed by the committee or by the Senate or by Parliament. It seems to me that we need some mechanism to periodically review what's happening within it. If there are changes, we need to discuss those to see that they're implemented and working properly. I don't think we want to handcuff them so that the CRTC, or whoever the regulatory body is going to be, has to submit everything to committee as we move forward. I'm afraid we may be handcuffing too much.

Coming back to James, to achieve what we need to achieve, would it be satisfactory to do a regular review by this committee or by the Senate committee, or by both, on a periodic basis?

The Chair: We'll have a fairly informal discussion today for everyone's best understanding of this.

James.

Mr. James Rajotte: I think it's neither, in fact. I do support the review. My intention here is not to tie up the CRTC decisions on orders that are of a non-significant or non-substantive manner. So it's neither of the two that you presented, Mr. Pickard.

If, for instance, the CRTC decides there should be an added exemption category, which would be a fairly unique decision, I think, different from the orders it renders on a typical basis, you would allow certainly the House of Commons some mechanism by which to review the addition of that category. That's what I'm talking about, not reviewing everything. A periodic three-year review of the entire act is separate from what I'm recommending.

● (1545)

Hon. Jerry Pickard: Okay.

Maybe I could go back to our officials. Under that circumstance, do you see a way where such major structural changes as adding exemptions and that type of thing could come back to this committee without sending back all the things that could be caught in this statement, so that the committee has to review the wide...? It could be all kinds of things.

Mr. Michael Binder (Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Department of Industry): Everything is possible. We could probably draft such a text. I would just go back to the fundamentals, that the chairman of the CRTC can be called at any time, at your behest, to testify and to argue for what they've done. They submit annual reports. So there are lots of oversight possibilities for the commission. But if it's the desire of this committee to come up with something strictly on exemption, I'm sure that such a narrowing of orders could be defined.

Just as a minor point, I don't know if you've seen what the chair has written to you. It's really, truly an unprecedented kind of—and I'm not trying to be disrespectful—micromanaging of a quasi-judicial body. Rather than assessing the program as whole, you're going to try to assess every decision they make.

I mean, it's your decision, but that's the kind of observation I would make.

The Chair: James.

Mr. James Rajotte: First of all, I indicated that I was open to that. It was my understanding, as of yesterday, that perhaps the government would come forward with some language stating that specifically, that it would relate this just to exemption categories. That hasn't happened, so I think the chairman has presented a reasonable amendment.

If we look at new subsection 41.01(8) in the amendment, it says:

> An order may be made under this section without being laid before the House of Commons if the order amends an existing order and the Commission is of the opinion that the amendment made by the order is so immaterial or insubstantial that subsection (1) should not be applicable in the circumstances.

Perhaps, Mr. Chairman, you or one of the drafters can clarify that, but I think it addresses the concern that Mr. Binder raised.

I would just put that on the record.

The Chair: Further to that, I consulted with the researchers here. If you look at L-1a, new subsection 41.01(1) starts with, "The Commission shall provide the Minister with a draft of any order", and it ends with, "in respect of a national do not call list".

If, instead of "in respect of", you had, "that would exempt any person from being listed on", that would make it clear that the order has to, would relate to; that would exempt any organization from being listed on it.

Mr. Doug Ward (Committee Researcher): Any person or organization.

The Chair: Okay.

You know, we're doing something unique here today; we're making a minority work, so we're negotiating around the table.

If our researchers are satisfied in the sense of this being an order—and Mr. Rajotte is agreeing that this clause is limited only to orders with respect to exemptions—wouldn't that address the point you made, Mr. Binder?

Mr. Michael Binder: It would restrict it strictly to exemption and presumably be significant exemption.

The Chair: And you still have the insignificant, immaterial, or insubstantial piece later on.

So what I propose, if it's okay, before we—

Yes, Jerry.

Hon. Jerry Pickard: I still want to try to make the point, at least. The NDP has asked for a second government amendment, G-2, and we've talked about reviewing this process three years after we bring it into place.

At that point in time I think we could make some clear recommendations, but think about the process from this point going forward. We probably have 18 months before we can get this up and running, or 20 months, and then we'll have basically one year of the program operating, and if we accept the NDP amendment—which I think is a good amendment, by the way—of reviewing this whole process in three years, there's only one year of operation, and in that time period I think a lot of things can be worked out so that we can come back and review that package, and do it in, I think, a most thoughtful way.

If we start having it that every time there's going to be a change in that first year they have to report back to this committee, we'll bog things down dramatically, and I really don't think we'll have that even flow. So I'm appealing to the committee group to look at.... We can call the chair of the CRTC in at any time. We can call the administration in at any time. We can allow them to put things together in the first 18 to 20 months, have it up and operating for a year, and we'll have them back at the committee looking at every specific detail that's happened, if we wish to do so.

You have a timeframe set within a year of operation, which is going to take a very careful look, so to me, the NDP amendment to government G-2 is really going to resolve a lot of this problem.

● (1550)

The Chair: You raise a good point, Jerry. But just consider that James has agreed to amend his motion to provide that orders should relate only to the exemption orders, and then coupled with the review...that will likely go to the three-year review. So the question the committee members have to ask is, do you want some experience, up to three years' experience, with the order provision or without? In other words, what kind of experience do you want to be evaluating, with or without? That's a question I will put later today or Monday to the committee.

So if there's nothing else, I think we can move on to the—

Mr. Werner Schmidt (Kelowna—Lake Country, CPC): There is something else, Mr. Chair, and we should deal with this one first. I have a question on a different subject, but it's on this amendment.

The Chair: After Werner makes his comment, I'm going to ask Doug, and Sam, and Andrew to double-check their wording on this to reflect the amendment on limiting it to the exemptions, so that maybe we can deal with it today, maybe we don't, and then we'll deal with it as an amended amendment.

Werner.

Mr. Werner Schmidt: My question has to do with the distinction between the House of Commons and a House of Parliament. The two amendments are very different on clause 7 in particular. We talk about both Houses of Parliament, but it looks to me.... I'd like to have this clarified, is clause 7 exclusive of one House or the other?

The Chair: Look at amendment L-1a.

Mr. Werner Schmidt: I'm looking at amendment L-1b.

The Chair: I see.

Look at amendment L-1a. It refers only to the House of Commons.

Mr. Werner Schmidt: Which one do we have before us?

The Chair: We are going to have to decide whether we want, at this stage, to include both the Senate and House of Commons in the order of reference that James is proposing, or whether we just want to refer to the House of Commons and let the Senate decide how it wants to deal with it, if it wants to deal with it at all.

Amendments L-1a and L-1b are essentially the same, except that in the case of amendment L-1a it's just the House of Commons, and in the case of amendment L-1b it's both Houses.

Mr. Werner Schmidt: Then my clarification takes on another dimension, and that has to do with the bicameral nature of Parliament. What happens with all legislation that comes before the House? Does the House of Commons ever have legislation that it passes in exclusion to...in other words, the Senate has nothing to say about it?

The Chair: Our researchers have indicated that...I mean, we're not talking about an order. It's not a bill. So if the bill were ultimately passed with the provision that it only go to the House, then it wouldn't have to go to the Senate. The Senate may have something to say about this when it sees Bill C-37, after the House is finished with it, but if Bill C-37 were passed with just the House reference, then in the future, the Senate would have....

● (1555)

Mr. Werner Schmidt: Okay. I understand the clarification. Thank you very much.

The Chair: Is that fair? You have the right to correct me here at any time.

Mr. Werner Schmidt: Now, will this get us into the same kind of problem we had with the...with...?

Hon. Jerry Pickard: Jean Chrétien.

The Chair: Who pledged, I think—

Mr. Werner Schmidt: Yes, that's right, with regard to the lower-priced generic drugs going into the....

The Chair: It could. It could. That's why—

Mr. Werner Schmidt: That whole thing was stopped for over a year simply because the Senate didn't like that. They wanted to be on that committee.

The Chair: That's why, when we put this question, we're going to have the two versions, equally corrected to provide for the orders just for exemptions, but one House only, and one House and Senate.

So you'll have to think that through: do you want the Senate dealing with it now or later on?

Hon. Denis Coderre (Bourassa, Lib.): We should deal with both, because we know what will happen afterwards.

Mr. Werner Schmidt: Yes, I think we've had experience with it.

Hon. Denis Coderre: That's it. I mean, why are we bothering to talk about it?

The Chair: What's the sense of the group? Should we do House and Senate at this—

Hon. Denis Coderre: Of course, both houses.

The Chair: Okay. Keep in mind that the Senate sits fewer days per week. The House sitting is longer. It would take longer to get 30 days in the Senate, simply because they sit for less time—just so you're aware of that.

So we're not going to vote on that. We're not going to vote on anything until we have it all done, obviously.

Hon. Jerry Pickard: Mr. Chair, I'm still going to put my appeal back in. Do we really want to micromanage at that level in committee?

The Chair: We'll deal with that with the vote, Jerry.

Hon. Jerry Pickard: I realize that, but we're going to now draft another piece of information going forward. I don't know generally, but I've heard one group suggest they wanted to micromanage. I don't believe we want to micromanage, and others have an input.

Do you really think micromanaging in this case is right? Before we draft all this, is that the view of the majority of the members of this committee?

The Chair: Is there more debate on this? I mean, this will be resolved when we vote. I think it's all on the table.

Hon. Jerry Pickard: But we'll be doing a lot of work if that is not the view of the committee.

The Chair: No, no, the work has been done. We're going to add six or seven words to provide for the adjustment that James has accepted. Our staff might already have it done. But we're not going to put the question now.

Paul, then James.

[*Translation*]

Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ): I very quickly read the letter concerning the issue raised by the CRTC. The arguments pertained to the overall situation, specifically with respect to a possible review of this act in three years and the fact that it is not necessarily relevant to create a complicated mechanism immediately. To my mind, these arguments are reasonable, especially given the situation of both houses, the whole issue of drugs may recur.

In any case, comments made since last week lead me to think that we still do not have a finished product. I do not want to slow things down, but I have the impression that we still have some homework to do. Before voting on the inclusion of this clause which would provide for all orders to be put to a vote at the House, I want us to take time to think, even if it means hearing from a representative of the CRTC once again. We have to make sure that we are not inventing a totally inappropriate mechanism.

[*English*]

The Chair: James, and then Denis.

Mr. James Rajotte: Following up on that, I'm entirely willing to work with members of this committee, and obviously I'll accept the majority vote. If members feel it would be worthwhile to bring the CRTC before the committee before we vote on this, I'm certainly willing to accept that.

I do want to set the record straight on something, though. Mr. Pickard says it's micromanaging. It's not micromanaging. He mentioned it could take two years to set up this list.

Now, is that the government's official position, that it's going to take two years to set up this list? I believe he stated that on at least two occasions.

He also says there would then be the three-year review, so it would only be a year until the first review.

I'd like to get the government's position on record as to whether it's going to take two years to set up the list.

Secondly, I'm talking about substantive changes. I've said this a number of times. I believe Parliament ought to be able to review substantive changes to legislation.

Mr. Chairman, I think the amendment you propose, that it's deemed adopted if the House or this committee does not act on it within a reasonable time period, is a reasonable one to make here. This differs from the three-year review, which, as we all know, sometimes does not occur within that time period. We've all had experience with that.

Quite frankly, if one talks about micromanaging, if we don't have something like this, then every time, say, an exemption category comes forward, instead of actually having a committee review it, we would do what I believe Mr. Pickard has suggested—that is, we would call the CRTC chair here. It seems to me that this would be more invasive of the CRTC than simply having the House review it; if it doesn't even make a statement, it's deemed adopted within, I believe, 30 sitting days.

So I think it's a reasonable amendment, and I'm still putting it forward. Obviously, following up from Mr. Crête, I'm willing to have the CRTC present to the committee and argue as to why it should not be here.

● (1600)

The Chair: Denis, then Brian.

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, I believe we have to be clear. If our work affects the House of Commons, we must be respectful of both houses. This is why I had made the motion. We cannot say that it will be submitted only to the House of Commons, knowing full well what may happen afterwards, based on previous experience with other bills.

That being said, I do not agree with my friend Paul because I believe that on the contrary, we do know. Personally, I agree with the parliamentary secretary. We are not here to replace the CRTC, if so, we would be redundant. In fact, that would create a precedent. We would be trying to do the work of an organization that has a regulatory role and we would have to make sure that the bill evolved over time. I don't believe that it is necessary to hear from the president of the CRTC once again. He would only provide us with an answer we have already, as he sent it to us in writing.

In my opinion, we must hold a good debate amongst ourselves. We are ready to vote and decide if, yes or no, we feel that it is a matter of micromanagement. I believe that it is the case and that if it is a matter of politics, that the issue is one of determining what role the House of Commons plays before a committee, and before a quasi-judicial organization. We must, therefore, take a position on those matters. We can put this off indefinitely, but we won't get anywhere.

In fact, it is not necessary to receive further information. We must take a position and decide whether or not we agree with a school of thought. Should we do the work of a quasi-judicial organization, which is already structured, and which, in any case, is accountable? Or do we need to go further by tabling this with the House of Commons and the Senate, as a show of respect for both parliamentary institutions?

In conclusion, Mr. Chairman, I don't believe we need to hold any further meetings. At some point, we have to get the job done. In my opinion, we must decide. In the light of what was said and bearing in mind the openness of all members, the committee must take a position more quickly.

The Chair: Brian, over to you, followed by Paul.

[*English*]

Mr. Brian Masse: To be fair, the Conservative amendment brought forth by Mr. Rajotte came more from an accountability perspective, really, than that of micromanaging, to begin with. So we can get into that language all we want, but I think that was the intent when it started.

Bill C-9 was brought up. Bill C-9 languished because we waited for regulations to get finished. Then there was a final movement to the Senate, and they were left off it for..... Actually, they weren't left off; we had the discussion here at committee, and they were chosen not to be part of that actual review for fear of it obstructing the addition of some drugs on that list.

I feel a similar sense here, as we move through Bill C-37, and that's why I think it's important that we review it in three years. I'm concerned that we would get to the point where it can't function, but I think the suggestion to have the legislatures draft something and to debate it is a reasonable one—it is a significant amendment—and if not, to have the CRTC come forth here. I've noticed more and more in the last few years that a lot of things are moving behind the regulations, and there's a big issue around that.

So I don't think the intent is to micromanage. We don't need more work here. At the same time, I think the aspect of due diligence is part of this.

● (1605)

The Chair: Paul, then Mr. Binder.

[*Translation*]

Mr. Paul Crête: I do not want to drag things on for the sheer pleasure of it, but I believe that we have to decide whether or not the three-year clause should be included. If it is absolutely certain that the committee will agree to reviewing the act in three years, the decision will be a less difficult one to make. In fact, it will be easier to vet a bill which is currently acceptable if it is to be subject to an assessment fairly quickly. The opinions that we have received in writing are all recent. That requires that we adjust very quickly. Nonetheless, in this context, I would be willing to consider such a possibility.

[*English*]

The Chair: Before I go to you, Mr. Binder, we'll go to members first.

Jerry, are you going to answer the question about the three years versus the five?

Hon. Jerry Pickard: The government would support the NDP amendment of three years. We have no problem with that.

On the second point, I would point out to Mr. Rajotte that I did say 18 to 20 months, and I believe that by the time we get the regulations in place, the regulator, everything set for the list to go after the legislation is approved.... We don't know exactly what the timeframe is, but I think that's within reason, talking about 18 months to 20 months.

The Chair: Mr. Binder, and then I'm going to try to wrap up at this stage, if I could.

Mr. Michael Binder: Just so that we emphasize the accountability, I'm sure you're all aware that any decision of CRTC is appealable, so there's another process in place where, after such a decision comes in, people can appeal to the GIC, to government. So it's not an easily rendered decision that then goes without any further discussion. There's a process in which you can have appeal to cabinet and then tabling in the House. We have to be careful about not constraining the regulator here.

The Chair: Unless there's a burning desire to speak more, I'm just going to wrap up this stage of our discussion. We may or may not conclude today, but when we do, you're going to be asked to vote on essentially the concept of reviewing CRTC orders on the subject area of material exemptions and, at the same time, whether we include one or both Houses in that. And that's what voting is about.

We're going to go to the next principal area of discussion. We've all received correspondence, and it's L-2.

By the way, the next round is going to be called R-1 for Rajotte, when we come back to the orders. It will be R-1.

Let's get to the discussion of the charities exemption, which is L-2. There are three broad targets, I guess. The CRTC proposed basically no exemptions. The amendment put forward by the Conservatives had the limited exemptions to charities registered under the subsection 248(1) of the Income Tax Act. Then we had amendments from the Bloc and the NDP, which wanted to broaden the charities definition beyond that. Paul and Brian had approached it from two different directions, and both were valid in their own way.

So I'd like to open up the discussion of whether you feel you lean towards the CRTC, no exemption, the Income Tax Act subsection 248(1), or whether you want to broaden it based on your experiences.

Maybe we'll get Brian to start off on this one.

Mr. Brian Masse: Thanks, Mr. Chair.

I have two amendments I would like to propose that can be circulated. Essentially, to start with, we believe we should broaden it and have all charities. I think it's very important not to distinguish and make winners or losers of the charity systems. We have a whole slew of organizations that would not get an exemption that I think would be unfair. Let me read a few of the examples: Greenpeace; the Toronto Police athletic associations; the Toronto Professional Fire Fighters' Association; Special Olympics Manitoba; the International Firefighters and all their locals; the Canadian Professional Police Association; the National Action Committee on the Status of Women; the Lions Clubs; and the World Wildlife Federation. These are examples of those charities that wouldn't be exempted. We feel this is the wrong way to go about doing this.

I think the legislation is a good, solid step for consumers. There are issues around charities and businesses, but I'd prefer to see us take a good piece of legislation, and if we have problems with groups and organizations in the future, they can be added; hence, the three-year review. It's good to hear we have a general timeframe, an idea of when it's going to happen, so we can act on it right away. This way we don't create winners and losers, and we get a chance to set up a good, strong base, a footprint for how to run this. We wouldn't have winners and losers and confusion out there in charities.

We're taking it once again from the Alberta provincial common law definitions, which seem to be very reasonable. We hope this legislation would have that as kind of a principal basis. If we have problems, we can then move forward.

Charities will also have to know that there is a system in place, and if there are problems and abuse, they eventually could be added to this legislation within a relatively quick period of time.

So that's why we feel that we would prefer to have exemptions for all charities at this particular point in time and to go forward from there.

● (1610)

The Chair: Just before I go to Michael, to clarify for the group, your amendment basically puts back into what we're doing today that wording on charity exemptions that you had last week. Right? It's the Alberta definition, basically, of a charitable organization.

Mr. Brian Masse: Absolutely, and Bill C-21 is coming forward in the future as well. So we have these anomalies out there.

This is pretty damn important for me and my party, because we don't want to have winners and losers and confusion among the charitable organizations out there. We can actually set up a strong template. It might be smaller than what was originally contemplated, but at the same time it could be better and fairer legislation at the end of the day.

The Chair: Michael, please.

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

With all due respect to Mr. Masse, I don't think we should go down this route.

Let's first of all clarify the terms here. We're not talking about charities; we're talking about not-for-profits. If we are to accept this amendment and include not-for-profits in the exemption, then you might as well not have a do not call list, because you're talking about tens of thousands of organizations in this country, encompassing everything from hospitals to service clubs—anybody can go and incorporate a not-for-profit firm and start soliciting people and using telemarketing calls.

I think it's reasonable to exempt those charities as defined by Revenue Canada. I think when we start broadening the definition, we're almost running counter to the very idea of a national do not call registry. You might as well not even bother to have one. So I strongly disagree with broadening this definition.

I'll just finish by saying that we have to keep in mind here that this doesn't mean that not-for-profits can't call people; it just means they can't call people on the list.

The Chair: Thank you, Michael.

Jerry, and then Paul.

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

I wish to go back to the purpose of the do not call list. In my opinion, it is a consumer piece of legislation, and that consumer piece of legislation, in a truly democratic forum, allows consumers to make a decision: do you wish to receive telephone calls from businesses or do you not wish to receive telephone calls from businesses? That is basically the concept of the do not call list.

Then charitable organizations enter the debate. There's no question that they're there; they are a critical part. What is wrong with giving the consumer the second option: would you like to have telephone calls from charities or would you not like to have telephone calls from charities?

In this way, the consumer who says, “I don't want businesses to phone, but I will accept telephone calls from charities”, has the right to make that decision for themselves. And it does not restrict anybody who would normally say, “Hey, I don't want them to phone me”, because for all the other people who don't respond to that, and say, “No, I don't want charities to phone me”, they would be limited, but all the rest of the population could be phoned by those charities.

It really treats a group of people in a democratic way, allowing Werner to make his decision, James to make his decision, Michael to make his decision, and Brad. Each person can then make a decision: yes, I will receive charitable calls, or no, I will not.

To me, two lists is really the best answer, because it gives both worlds opportunity, I think, to make those calls. Lots of people want to stop businesses from phoning but are quite willing to receive charitable calls. The calling pattern in Canada, as we all know, shows that a very high ratio of calls comes from the charitable organizations, so we need to take them into account. But taking them into account and at the same time allowing the consumer, that person who we are really trying to serve from this Parliament, to make his own decision—rather than this committee making the decision, based upon the lobby groups and others who have come forward, which is really, I think, anti-democratic, to my way of thinking—is the democratic decision that this committee should really stand up for. We should stand up for the consumer and make sure the charitable organizations have that option of phoning, but a separate list for them. That's the answer.

● (1615)

The Chair: Thank you, Jerry.

Paul.

[*Translation*]

Mr. Paul Crête: I was made aware of a legal opinion brought forth by a Calgary law firm. With respect to the possible repercussions on freedom of speech, they write the following:

> By not exempting all non-profits from Bill C-37, Parliament is at risk of violating the right to free speech of non-profits as held by the Alberta Court of Appeal in Epilepsy Canada v. Alberta (Attorney General).

In the conclusion, they write that it would be relevant to provide in this bill an exemption for all these companies. We know that this exemption was made exclusively for charities as defined by the Income Tax Act. As for the rest, they write the following:

> We urge you to consider the legal implications as the Canadian Charter of Rights and Freedoms makes no such distinction in the protection of the free speech rights of all charitable organizations.

From what I understand, by adopting an overly restrictive definition or list, we run the risk of being legally challenged in the Charter. Such a legal suit would be well founded, whereas the case itself would be difficult to defend. One can make a host of arguments, but it remains nonetheless that a three-year review would allow us to determine whether or not the initial list was too broad.

If we establish an exemption for registered organizations as defined by the Income Tax Act, we would be giving ammunition to those who opposed this. However, if we broaden the definition, this restriction would no longer exist. We would be protected. Lastly, this legal caveat justifies obtaining further information. To my mind, this confirms our initial position.

You may have noticed that over the last week, testimony made before us did not come from those who may benefit from the situation; we heard from organizations in great need of money, who must undertake consultations. We run the risk of seeing these people run a sprint to obtain the fiscal deduction in order to be able to make telephone calls. By restricting the list, I believe that such a distorted effect would ensue.

[*English*]

The Chair: Thank you, Paul.

Denis.

[*Translation*]

Hon. Denis Coderre: Where does this start? Where does this end? I believe that we need a legal opinion, but this is also a matter of balance. If we remove these control measures, if there's too much leeway and if the definition is too vague, how can we make the national list of self-excluded subscribers efficient? At some point, it is also a matter of feasibility; one must be pragmatic. I believe that it is possible to walk and chew gum at the same time. We can harbour a sense of balance all the while protecting the consumer. We are not taking away freedom of speech, the primary goal is to protect the consumer. In this sense, we need benchmarks and parameters to make sure that the bill is viable and will achieve the desired objectives. I don't know if this act will go before the Supreme Court, but you are probably giving people who are here today a few ideas, Paul. Some lawyers will be happy.

Mr. Paul Crête: Yes, but they will not make big profits.

Hon. Denis Coderre: I know what you think about the Supreme Court; you certainly do not want to go there. One thing is certain—I think some limits have to be set. I would be in favour of having section 248 of the Income Tax Act as a guideline, a parameter to ensure a certain degree of efficiency. Otherwise, we will have some problems.

● (1620)

[*English*]

The Chair: Any other comments?

James.

Mr. James Rajotte: Thank you, Mr. Chairman.

It almost seems that we have two issues here. One is the issue of should we just establish the two lists, as Mr. Pickard suggested, and I respect that view. I think the problem is that only works if you only allow one exemption category.

So if the committee decides, for instance, that charities, however we define them, will be the only other exemption category, the two lists might work, but, Mr. Chairman, as we've defined it, we have charities, existing business relationships, political parties, nomination contestants, surveys. I don't think we can set up five or six lists, and I don't think it's fair to ask this person, do you want to be on the regular do not call list, and then, do you want to be called by any one of these four or five groups?

Maybe Mr. Pickard can address that. That's why I don't think the two-list idea works there.

I think in response to Mr. Masse, there's a valid point in the sense of the organizations he lists. I don't think any of us should say these are not charitable organizations. They may not be defined as such by Revenue Canada. I think the problem, though, the concern I would have, following up on Mr. Chong, is that the amendment that is presented, to me, is so broad that it goes way beyond the list he presented. I don't know how you would actually have any parameters whatsoever. It seems that even a hockey team seeking funds for something would be allowed under this list. It seems almost any group of people that came together could really justify under all of these organizations or under the charitable purpose definition....

Maybe Mr. Masse can address that point, but I think it's just so broad...and perhaps Mr. Binder wants to comment, but I don't know how Industry Canada or the CRTC would possibly work with parameters that are as broad as that.

The Chair: Brian, did you have anything to say?

Mr. Brian Masse: I guess there could be people or organizations that go out and try to create those types of parameters to be able to stay off the list, but I think there are other laws that could deal with that.

The problem I'm worried about is we're getting legitimate organizations that actually have problems with this list that for whatever reason have chosen not to go through the Income Tax Act to get the charitable receipt status the others have. They are going to be left off, and they are going to be in a difficult situation.

Seeing that we're going to have such a quick review of the legislation as it is anyway, I think it's the best way to start.

So I don't have that problem. I know it dilutes it to a certain degree in terms of who is not on the list. I understand that. I appreciate that argument. I think it's a valid argument, but at the end of the day, I still think we're going to make legitimate organizations winners and losers because they're not under the categorization of the Income Tax Act, and I don't think it's fair to victimize some of those groups. If we get abuse, we're going to have to deal with it.

The Chair: If I understand what you're proposing, Brian, it is that if we're going to sensibly agree on a three-year review, you would prefer that it be reviewed with the experience of three years with the larger definition than with the experience of three years with the smaller definition. Is that a fair statement?

● (1625)

Mr. Brian Masse: Exactly, Mr. Chair. Either we can grind this down, because we were moving along and we've had some other arguments and some different things presented, or we can move it along and get at least a foundation started and then decide to go from there at that point. That's the perspective I'm taking, because we've had some complaints about whether witnesses have been shortlisted off the system for the hearings and stuff like that. There are a number of different things evolving around the circumstances of this.

I think we had a lot of people who were quite frank but who maybe didn't pursue this as aggressively as to their own responsibility at the end of the day, but the reality is that it appeared that Parliament was grinding to a complete halt. Once again, I would err on the side of caution on this one, get something founded, and go from there in terms of seeing if it's missing the mark by being too broad-ranged.

The Chair: Mr. Binder.

Mr. Michael Binder: I have a couple of facts.

Somebody actually estimated there are 161,000 organizations that consider themselves to be non-profit, 80,000 of which are registered. The advantage of having them registered is that we know them by name; they are listed. You actually know that, so you can have a sort of accountability; you can actually find them. Remember, this is going to be a complaint-based system; a consumer will complain about somebody not complying. If you don't know who they are, and the non-profit definition varies across the whole country, it's very ambiguous. We have never been able to actually define who is a non-profit and who is not with any great certainty. It's going to be almost impossible to manage.

The last point I'd like to make is that the ongoing business relations apply to charities too and to non-profits, so even if you're not on the list, if you have an ongoing relationship, if you are Greenpeace, you are allowed to solicit because you have an ongoing relationship. The only thing that will get affected is a cold, unsolicited call, and I thought this was what the list was trying to prevent here.

The Chair: Jerry.

Hon. Jerry Pickard: This is just to respond to Mr. Rajotte's comments with regard to the four sections we're talking about. One, we do have regular business contacts; two, we have charitable groups; three, we have political parties or those who are representing political parties, such as candidates and that group; and four, we have business market connections.

To me, they are four separate issues, and I don't think we can say that what fits one has to fit the other. For instance, during political party elections or other contacts, you have the right, given by Parliament, to contact people in that way, and I don't think a piece of legislation here would change that. The CRTC has already affirmed that, and it would be a major change if there was ever a suggestion that would change.

The term “existing business relationship” is there to make sure many of the complaints we've heard in the last two months, many of the complaints we've heard in the last time period...we allow business to function in a normal way. I heard my colleague next to me come forward and say there is a real issue with insurance companies, because if they come out with a new policy or they come out with a change to the standard policies a person may have, they may want to contact that person and tell them about those changes. Well, if it's a life insurance policy, it's quite likely that person has not been contacted in the last 18 months.

But we as a committee are looking at an 18-month timeline. It may be appropriate for many businesses, but in this particular example I don't think it would be appropriate if a life insurance company came out with changes, wanted to contact the people who had life insurance policies, but couldn't do it because we had a restriction. That's why we have to be less restrictive in the legislation and allow the regulator more flexibility in dealing with this, particularly in the early stages of development.

Now, when we come back three years hence and we review this, as has been suggested by other parties, I think we can look very carefully at how the process is working and ask, are the regulators doing an adequate, decent job? If questions come up, we can deal with them, but if we limit the flexibility at this stage, we are going to upset some of the business cycle. I know that and I think you know that. We're going to create problems for ourselves with unintended results; we don't intend to hurt them, but I think we can.

I guess I'm trying to give more flexibility to the regulators up front, to make sure they have the parameters we want but not hamstring them by the legislation. Allow them to develop the proper regulations that are required in order to move this forward in a way the consumers will be best served in this country. That's my view.

● (1630)

The Chair: Thank you, Jerry.

Denis is next, and then Andy.

[*Translation*]

Hon. Denis Coderre: I would like to talk about financial products and services.

[*English*]

I used to be a life insurer. It's not only an existing relationship; it's an ongoing relationship, and the product evolves with different stages.

[*Translation*]

For example, if a person signs a temporary insurance policy for five years, a number of things can happen during that time. In that case, there is a very special relationship between the agent who sells a financial product—it could also be a mutual fund, or whatever—and the person who signs the contract. If we agree to this 18-month period, we are in some ways harming consumers who should be able to get this type of call. That is why we should eliminate the reference to 18 months.

The other question is somewhat more philosophical. It has to do with the contractual relationship, the business relationship, particularly as regards financial products. As a result of deregulation, if you purchase an insurance policy in a caisse populaire, the latter can call you back to try to sell you other types of services. Where should this stop? This is where we should be thinking about consumers.

There is also the issue of the contractual relationship. Does it exist between the agent and the consumer, or between the company and the consumer? There is a distinction that should be made between an insurance broker, for example, and a company that can sell all types of products. However, in both cases, if a person has a contract, a temporary, 5-year policy, and if the agent leaves after two years and the 18-month period is over, does that mean that the company cannot call the person in question?

There are other situations with respect to basic financial services and financial planning which do require this type of flexibility. Our role is to protect consumers, Mr. Chairman, but also to ensure that we can serve the interests of consumers properly. There is a difference between an unexpected visit and the business relationship, which seeks precisely to serve the individual as well as possible. I think that as regards the issue of

[*English*]

“existing relationship”, we should get rid of that 18 months. We should keep that flexibility.

Now, since we will change in three years, or take note of what's going on in three years, we can put up some regulations with respect to that. The case with that kind of relationship is that it's to serve the consumer well and at the same time be flexible so that it is manageable too. But there are some facts of life in certain businesses that we have to take note of.

The Chair: Andy, Brian, and then Michael.

Mr. Andy Savoy (Tobique—Mactaquac, Lib.): Thank you, Mr. Chair.

Jerry, I was interested in your proposal and intrigued by the approach, but I'd like a couple of clarifications. In the four categories, you didn't mention the public opinion surveys and the polling. You mentioned them, but you didn't mention whether we would have to ask that question.

Number two is, when you define a charity in that question, would it be defining it as "for charitable purposes" or as a charity under the Income Tax Act?

As I say, I'm intrigued by the proposal, but I think we need more definition and we need to flesh it out a bit as well.

Hon. Jerry Pickard: Would it be okay if I respond to that, Mr. Chair?

The Chair: Sure. Go ahead.

Hon. Jerry Pickard: These are very good questions.

Let's talk about charities, or non-profits—whatever we're going to classify them under. I could use this example. Somebody comes knocking at my door and says they represent the Heart and Stroke Foundation. Another person knocks at my door and says they represent the Heart and Stroke Association. A third person comes and they represent Heart...for something.

We all run into it. I now collect all kinds of material and check them all out on the Internet and then make donations to the groups. But I have no way of judging how many different organizations there are, in some way. I can understand, then, that if we go to a regulator who has to decide whether this is a charitable organization or not, he has no reference to make. He doesn't have something that says these are the charitable organizations recognized in Canada.

Mind you, we have, under section 248 of the Income Tax Act, all the registered charities. If some of the organizations Brian or other people have mentioned wish to enter into that list, they can make application to that list; they have that option. In that way, it's the Revenue Canada people who can decide, with their expertise, whether this is a legitimate organization or not. But we can't leave that to a regulator who doesn't have the same financial access to those organizations.

Without the financial access—Michael has put that across very clearly—and without that kind of control, we don't have a way of administering this program. It would be totally outside our ability to determine whether this organization would fit it or not. That's the difficulty we have.

I don't know whether that covers what you're concerned about, but that's where I see the problem.

● (1635)

The Chair: I'm going to Brian, Michael, then back to Andy—or did you want to finish up your intervention now, Andy?

Mr. Andy Savoy: If it's on the same topic, I don't mind going.

The Chair: We're all talking about the charities piece. Is it on the same topic, Andy, or something else?

Mr. Andy Savoy: It's on the same topic, about a specific situation.

You mentioned the charitable purpose, about which I agree. It's a little bit tough to get around, potentially, but policemen's charity balls, firefighters who raise money for charitable purposes.... I don't know if there is a way to get around it in the regs, but it's something I think we have to consider very seriously, because they're a big part of many communities.

Hon. Jerry Pickard: And where they're raising funds, I believe they can make application as a charitable organization.

The Chair: We'll come back to that, okay, Jerry?

Brian, then Michael.

Mr. Brian Masse: What I'd ask, in terms of our process in the committee here, is this. In Bill C-21, the government treats all those Lions Clubs, for example, the same as every other charitable organization, and modernizes the regulations. So why is it the position that for this particular element they're treated differently? I can't reconcile that duplicity in position. I think when Bill C-21 is done in three years, you're going to see those elements incorporated anyway for many of those organizations, and you'll actually have modernized regulations. Why would you treat them differently for this bill from the way we treat them for another?

The Chair: Michael.

Mr. Michael Chong: I go back to what I said initially. I think we have to use our terms correctly. When someone talks about a charity, they're generally talking about a not-for-profit that has also been approved by Revenue Canada or by the minister as a federally registered charity. Charities are a subset of not-for-profits. The number of charities out there is significantly smaller than the number of not-for-profits.

Concerning the definition of a charity, you have to make an application to register as a charity, and you can issue tax receipts. The definition of charity is based on very old common law. It's three types of organizations: those that build bridges, believe it or not; those that are there for educational purposes; and those that are there for benevolent purposes.

So let's not mix up the terms. I think what your amendment's proposing is that we exempt not-for-profits. Sure, they may have what you call charitable purposes, but I don't think we should use the term "charity", because we're just going to confuse everybody at the table here.

The Chair: Do you want to get back in, Andy, on this one?

Mr. Andy Savoy: No, I'm fine for now.

The Chair: Okay.

Clearly there are lots of interesting views on this subject.

Paul.

[*Translation*]

Mr. Paul Crête: I would like to hear the reaction of the other parties with respect to C-21, because we will have to study this bill soon. We want all of these people to be covered by the other bill. What we will be offering them will come with some regulatory requirements—reports to fill in, forms to complete, and so on. In just over a week, we will be creating two categories of organizations that want to engage in solicitation. In both cases, their vocation is not different, but their acceptability as regards tax law is.

There is a problem here. Logically, the two situations will have to be somewhat similar. If, on the one hand, under C-21, we ensure that organizations have many obligations to meet and, on the other hand, we tighten the screws on many of them by prohibiting them from making telephone calls, we will be enforcing a double standard. We must absolutely find a solution to this problem.

● (1640)

[*English*]

The Chair: Okay. Clearly we're not going to be voting today. We'll target for Monday.

Are there any further comments on the charities question before I try to create a synopsis of what roads we have to consider going down? Is there anything else?

Basically I will put this to you Monday. The fundamental question you're going to have to ask yourselves between now and then is, do you wish to go to the initial proposal of the CRTC, which was to have an opt-in, opt-out?

Did you have a comment, Denis?

Hon. Denis Coderre: A point of clarification. Especially on the fact of the existing relationship and the 18 months piece, I just want to have a clear process. Does it mean that on the clause-by-clause we have to promote another amendment? I think it came from Brian: what are we going to do with that? Or how do we manage it?

The Chair: I think maybe we should discuss the 18—

Hon. Denis Coderre: As a whole, how do we manage? It's the story of my life.

The Chair: Denis, I think we're going to maybe have a chat about the existing business relationship, anyway. It's all in the same amendment, but it's a separate piece. I'm just talking about the charities for a moment.

On the charities question, do you want to go to the original proposal of the CRTC, which was, when you called in you had a choice whether you wanted to be on a do not call list for charities as well as for commercial calls. Or you might prefer an enlarged definition of charities, as Brian, and the Bloc, and Paul had proposed.

Whatever that definition is, we're going to work on that, although the one on the table right now is the one that Brian proposes, which is the Alberta definition of charities. If you do enlarge the definition, or keep it tight, does the three-year review provide the opportunity to have the right kind of experience, whether you limit the definition or enlarge it? That's what our job will be, and we'll try Monday to get your best answers on that by your show of hands.

On the list of things I wanted to discuss today was the 18 months piece. It was not in the original government's CRTC proposal, which was that it would be an existing relationship that could be different, I suppose, Mr. Binder, depending on the sector.

I'll invite comments by members first on that, starting with Denis, then Michael, and then maybe I'll get you, Mr. Binder, to comment at the end.

Hon. Denis Coderre: Mr. Chair, I've made my point. I think basically if it's an existing relationship and it's based on a contract—the best example is insurance—I don't see why we should define an amount. I don't think we should put amounts, a timeframe, as a matter of fact; I believe we should keep it as is. But I think we need to have a good discussion on that.

[*Translation*]

The importance of the deadline was mentioned. Now, in many cases what we have is a contract signed between two consenting parties. In the world of financial services, as they say in English, there is an ongoing issue. Every year, the agent speaks to his client and a lot of things can happen, amongst others, a birth. That is the best example you can give to show that you need a very flexible piece of legislation dealing with basic financial planning.

At the end of the day, we shouldn't be restricted to any kind of schedule whatsoever. In any case, that does not serve the consumer's interest. The worst thing that could happen, especially in that kind of contract, is that the consumer will decide to go elsewhere. If it's too restrictive, you won't be serving either the cause or the very purpose of this bill. In my case, I agree on the—

● (1645)

[*English*]

existing relationship, but definitely not the 18 months. We shouldn't even put a timeframe there.

The Chair: Okay, Michael.

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

I have a couple of questions.

In your amendment G-1, under paragraph 41.2(2)(a), you define an existing relationship as something that is made under section 57. Maybe the witnesses could clarify what an existing relationship is. That would help us out.

Mr. Larry Shaw (Director General, Telecommunications Policy Branch, Department of Industry): It simply would leave it to the CRTC to define what the existing relationship would be, as the amendment would create an exemption for an existing relationship.

Mr. Michael Chong: You don't have that currently defined, then.

Mr. Larry Shaw: The commission does have it currently defined.

Mr. Michael Chong: What is that?

Mr. Larry Shaw: I believe 18 months is what they use now.

Mr. Michael Chong: But 18 months from what?

Mr. Larry Shaw: From a sale within 18 months.

Mr. Michael Chong: My question relates to Mr. Coderre's point, which I think is a valid one. I'll give you an example, and maybe you can tell the committee whether or not this constitutes an existing relationship.

There are a lot of private label credit cards out there. Somebody signs up for the private label credit card, they use it for a couple of years, and then they stop using it and it becomes inactive—for years. After three or four years the company decides—let's say after four years of no activity on the account—it's the trigger point for cleaning up the account, and they trigger a call through their call centre to this cardholder to see whether or not they've moved or they're still around. Would that be allowed? Is that an existing business relationship under your rules?

Mr. Larry Shaw: Well, it's not under my rules.

That's not an active relationship, so I would say no, it wouldn't be allowed.

The Chair: Could I interrupt, Mr. Shaw?

On that question, I would say that even though he or she is not using the card, the customer is getting a statement every month.

Mr. Michael Chong: No, most private label credit cards, if they go inactive...they'll issue statements for a certain amount of time, but they stop issuing statements after six months or a certain number of months of inactivity to save themselves postage. But often they have these internal procedures, where after a certain number of years they'll try to contact the holder to verify the address and clean up the account and the like. I foresee a potential problem here, because I think it's reasonable to consider that an existing relationship, if somebody has not explicitly cancelled their credit card and is holding that card.

The other example is life insurance policies. Let's say I sign up for a 10-year term life insurance policy. I sign on the dotted line and get all the paperwork done and all the testing done, and then five years into the policy the underwriter or the broker decides it's time procedurally to follow up with this policyholder. That's another similar example.

Mr. Larry Shaw: If I may, though, one of the problems is that it's well accepted that the existing rules are not effective. Basically, this hasn't been reviewed substantially of late, and one of the purposes of putting the legislation in place to set up a credible, effective system would in fact be to review those rules and put in rules that do work. You can't blame the problems of the current system and expect them to carry forward.

Mr. Michael Binder: But it's very instructive, if I may add one point. In the American system, they decided to have an exemption for business relations, but they allow the FCC to regulate this, precisely for the reason you've said: because they can then set up different parameters for different situations based on public hearings, etc., and they can be flexible in the regulations.

● (1650)

The Chair: Jerry, James, and Paul.

Hon. Jerry Pickard: Thank you, Mr. Chair.

I'm going to relate a personal circumstance exactly supporting what Michael has said, and he's dead-on.

I had a Sears card that was inactive for 24 months. As a result, they billed me $25 because of an inactive account. I had money in it. They took $25 out automatically. They could not have contacted me under the legislation that's being put forward. So if I have an inactive account at Sears for 18 months, what happens? This goes for a lot of people.

It's to the consumer's advantage to allow the regulators the flexibility to deal with the business cases as they come forward to the regulators. I think we have to allow that flexibility, that micromanagement, to be left to professionals. Eighteen months is only something that's picked out of the sky. It has no relevance to a lot of business transactions. I think we could curtail their ability dramatically if we're not careful with that.

I would totally support what Michael and Denis have said. We need to get that 18 months out of it, but we also need to give the flexibility to the regulators to be able to control, in a proper timeframe, where required.

The Chair: James.

Mr. James Rajotte: Thank you, Mr. Chairman.

I take Denis' points very well. I think they're very well made. That was certainly not the intention with our amendment, not to allow people, for instance, with a life insurance policy.... I'd also add mortgages and things like this. We thought those would certainly be considered existing relationships. I know the optometrists have contacted many of us as well. So we should try to include them in this definition.

I'm certainly open to amending my amendment or to working with the government's amendment to do that. Perhaps if we said “within the confines of a contract”...because if you're in a mortgage, you're in a contract. The 18 months, frankly, would just be at the end of that mortgage, whenever it is.

I want to get some clarification. In response to Mr. Chong's question, I thought Mr. Shaw said that section 57 had the 18 months as well. If he could just precisely identify for us, perhaps just as a help to our drafters here, what is the difference between the way it's defined in my amendment, “existing business relationship”, and the way it is in the government's amendment, if section 57 also deals with the 18 months....

The Chair: I was just going to ask the same question, because it might be that the government's proposal and all the opposition parties' proposals are all 18 months, regardless.

Mr. James Rajotte: Yes, and maybe then the guide is to somehow define it as “within an existing contract”, that it covers all these other cases. I don't know exactly how to do it, but I'd like a clarification.

Mr. Larry Shaw: If I may answer, section 57 is the commission's general power to make regulations or rules more generally. It's an omnibus power that allows them to make and establish rules. That's all.

Mr. James Rajotte: So it's not an 18-month timeline.

Mr. Larry Shaw: No, that's not in there. In fact, I can read the entire section for you, if you wish.

The Chair: If it's not long, go ahead, Mr. Shaw.

Mr. Larry Shaw: Yes, it's very short. It's only one sentence:

> 57. The Commission may make rules, orders and regulations respecting any matter or thing within the jurisdiction of the Commission under this Act or any special Act.

So it's just a general power to make rules.

The Chair: To clarify, the 18 months you referred to—

Mr. Larry Shaw: The 18 months is in there. That's a rule that is made under section 57.

The Chair: Oh, so it does exist?

Mr. Larry Shaw: Yes.

The Chair: You would have to withdraw it to satisfy Denis' concern, for example. If Denis won the day, you'd have to withdraw that rule.

Mr. Larry Shaw: The point I was making to Mr. Chong was that one of the things that would follow the passage of Bill C-37 would be a review, in fact a real establishment of all those rules. The present system doesn't work, so people haven't taken it seriously. They are taking it seriously now that they see there's a likelihood of a national list being put in place. So it's a different environment altogether.

● (1655)

The Chair: I'll let James finish up, and then we'll go to Paul.

Mr. James Rajotte: As a follow-up question, if I were working for a life insurance company or doing mortgages, that section and this clause in this bill would not necessarily mean that they were protected within the existing business relationship. They would still have to leave that up to the CRTC if we adopted the government amendment. Is that correct? We're not certain at this point.

Mr. Larry Shaw: It separates the two things. It creates an exemption for an existing business relationship and gives the CRTC the authority to define what's an acceptable business relationship.

Mr. James Rajotte: I'm not sure that responds to our concern about allaying their concerns, because instead of bringing their concerns here, they would have to go to the CRTC and raise the same concerns.

The Chair: The question is, do you want to give guidance in law to the CRTC on the period of time?

Paul.

[*Translation*]

Mr. Paul Crête: The 18-month period was set up with the purpose of finding a simple solution, connected to time, to settle the question of what a telemarketer is. If we do away with this definition, we'll have to define what is acceptable and what is not all over again. Doing this with a timeline was the easy and simple solution. If you get rid of the timeline, you'll have to know what businesses are really doing telemarketing because you won't be able to exclude them simply through the length of the relationship.

The idea of the length of the relationship was interesting because when there hasn't been anything done for 18 months, names disappear from the list and they're not allowed to phone them up anymore. So it's a very simple mechanical rule. If it isn't defined through time, it will be defined another way. This matter gives rise to a huge debate. In fact, we can't be content with getting rid of the 18-month reference and saying that all the relationships were covered by the legislation. What will we use to replace that 18-month period? I don't know how we can do without it.

As for the bill, what process will we use to come up with amendments that we can vote upon? Personally, I don't even know what the government's position is anymore. A bill was introduced. Maybe we need a corrected version of what the government wants to put forth and then we could propose amendments. In that sense, I seriously doubt that we'll be able to vote on the amendments Monday. I am looking at Wednesday.

[*English*]

The Chair: Jerry, are you going to be helpful on that question?

Hon. Jerry Pickard: Yes, I'll just go directly back to my colleague's question about what the position is.

We all know that existing business relationships differ dramatically. So for whatever reason, we were starting to focus on time to limit those abilities, but we realized the shortcomings of focusing on a particular time, like 18 months. This committee can't micromanage that short kind of time period. So one business, like the insurance agencies, may have a legitimate reason for having a longer time period. Others may have a very short time period to be able to deal, and other groups will contact clients every month. Others will contact them every six months, for billings and all that kind of thing.

So there are different categories, and if we try to micro-define them all, it will drive us all crazy. So try to be open and allow the regulators to focus on that first year of their operations. If we're not satisfied, at the end of that time period we can go back and look at restrictions to this legislation.

To me, micromanaging is not smart regulation. We have all talked for days and months in this committee about putting smart regulations in place. If we know that what we're debating here right now is not smart for a lot of businesses, why in the hell are we doing it? My view is, let's get to what we feel as individuals is the smartest decision to make. To me, it's to leave it open to the regulators to make that decision.

● (1700)

The Chair: Go ahead, Paul.

[*Translation*]

Mr. Paul Crête: Mr. Chairman, I just want to say that this 18-month period idea was suggested by the person who does this work in the U.S. When we held a teleconference, that person told us that it was a simple rule that worked well. I'm not opposed to setting it aside, but if we do that, we can't just think that we can let the legislation go ahead for 18 months without any definition. If that were to be the case, we'd have problems because we would not have done our work. If we eliminate this 18-month period, then we have to find another way and we have to know what definition we'll accept. If we say that any old business relationship will do, there will be a whole public debate and everyone will tell us what we should have included in the legislation. We have to find a way around it. The three years can be used if we choose an interesting model. If we decide there is no model at all and that people will tell us later on if it's working or not, we'll have a few more problems.

[*English*]

The Chair: Go ahead, Denis, and then I'll ask Mr. Binder to jump in.

[*Translation*]

Hon. Denis Coderre: Paul, you are brilliant, but not enough.

That is not the issue. Why should we regulate something that is already regulated and defined? That is why the government amendment refers to section 57. We don't have to define what an existing relationship is, because that is already defined by the CRTC. In fact, I have given you some good arguments to use in front of the CRTC. People will find a way to change the CRTC regulation in relation to that definition.

In terms of the purpose of Bill C-37, we are showing that we can be flexible and appreciate what an existing relationship is. At any rate, that is already regulated by section 57. Why be redundant by telling the CRTC what to do, when it has already set its own parameters? Here is an excerpt from amendment G-1, which reads as follows:

> a) made to a person with whom the person making the telecommunication, or on whose behalf the telecommunication is made, has an existing relationship, as that expression is defined by rules, orders or regulations made by the Commission under section 57; or

That answers your questions, and I expect you to enthusiastically support this amendment.

[*English*]

The Chair: Mr. Binder, go ahead, please.

Mr. Michael Binder: In the way of process, if the bill passes without the 18-month...CRTC, in order for them to establish the list, will have to come up with the rules. It's a very technical thing, like when you download your data, or when you upload your data. They will engage in a public hearing, they'll get all the representation, and they will come up with the number. It may be the same number; it may be different.

The Americans have made some amendments in that it'll be very flexible. The instruction here is, thou shall define the business relations to the CRTC.

The Chair: Could we have Michael, and then I'll try to wrap this discussion up so we can have a chat about the PATRIOT Act and Brian's concerns—and the riot act?

Michael, go ahead, please.

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

I'm not sure if this was brought up, but I have more of a practical question. Will this do not call list apply to a sole proprietor? Let's say someone who runs a local car repair garage who had a client come in four years ago and was rifling through his old invoices, sees that this client hasn't been in for four years, calls up the client, and then this person complains.

One of my general concerns is that if we are going to apply this to very small businesses like this, these businesses have absolutely no resources to comply with the national do not call list. There's just no way. Some of these guys don't even have computers—they're just operating on carbon copy invoices—and they wouldn't have the first clue how to download a national do not call registry.

Maybe the witnesses could answer that.

The Chair: Mr. Binder.

Mr. Michael Binder: I believe this would not be deemed a telemarketing call.

Mr. Michael Chong: How would you differentiate between that and a mass telemarketer calling?

● (1705)

Mr. Michael Binder: The regulator came up with the definition of solicitation for the purpose of getting.... There is the ongoing issue of volume. Do you do this once, or is it for a whole set of customers? Rules are going to be set up in there, and I don't believe they would deem that particular garage mechanic to be a telemarketer.

[*Translation*]

Mr. Paul Crête: Mr. Binder, I would like you to give me more of an explanation of your answer, because it is possible that everyone understood what he or she wanted to understand.

You were saying that if we do not define that in the legislation, then the CRTC will have to. What did you mean by that? Do you consider that to be a good solution or do you think it would be passing the buck to the CRTC when it would be in our interest to define that ourselves?

Mr. Michael Binder: Yes, that is the solution the FCC chose in the United States. The FCC decided on an 18-month period in its regulations. That was not in the act.

Mr. Paul Crête: Basically, you are saying that by leaving the definition up to the CRTC, we would ultimately be applying the same procedure as the Americans.

Mr. Michael Binder: That is right.

[*English*]

The Chair: I think Paul's question sort of summarizes the question we'll have to deal with, which is whether we want to legislate 18 months—more or less, but we have 18 months on the table—or whether we want, as was originally proposed, to simply authorize the CRTC through the legislation to create that definition. I believe, Monsieur Binder, the CRTC will authorize consultations on a number of questions as you build toward implementing a do not call registry.

Should the committee leave the 18 months out, that is one of the questions you will deal with. If the committee puts the 18 months in, well, then that's a question you're not going to have to put to the stakeholders, I suppose.

The question you'll have to answer when you vote on this is basically, as Paul is putting it, do you want the CRTC to further consult and come up with...? It may not be 18 months, it might be two years—who knows?—based on, as Jerry says, the different needs of different stakeholders.

Paul.

[*Translation*]

Mr. Paul Crête: In such cases, which carries greater authority, the act or the regulations? In other words, if it is the CRTC, a CRTC decision could potentially be challenged. However, if it is in the act, that would probably have greater authority than if it were simply included in the regulations. If it were included in the regulations, could that cause problems?

Mr. Michael Binder: I don't think so. There are many ways to challenge a regulation. However, statutes are inflexible. If it is in the act, there will be no choice, it will have to be 18 months.

Mr. Paul Crête: Okay.

[*English*]

The Chair: James.

Mr. James Rajotte: Going back to Denis' point—he raised some valid points about life insurance policies and what not—I don't think we'd be being responsible as a committee if we were to just say we have all these concerns from companies that will not be within the 18-month period—which is a valid point—so we'll just push all this to the CRTC. I think we've done a fair amount of work here. If we improve a little bit on what we have to get the examples that Denis and others have brought forward, I think it would better for this committee to do that rather than to just push it all off to the CRTC, especially with all of the legitimate concerns that were raised by groups that appeared before the committee. It's as if we didn't listen to anything they said; we just ignored everything they said, so why didn't we just have the CRTC do it initially?

I think we're actually fairly close here. We can make a couple of changes to address the concerns of Denis and others, and that's what we should do.

The Chair: Jerry, and then Paul.

Hon. Jerry Pickard: One of the solutions to meet both of those concerns, James, on that particular point within the regulations might be to have, as soon as the CRTC has their public hearings, all the input affecting this particular issue. We, as an individual group, have had lobby organizations come in, but we haven't had that kind of open public hearing with all of the different groups that could come forward. Why don't we ask the CRTC to submit the regulation that they develop in respect to this back to this committee once it's done? That way we do have that ability, and we also have added information as to the collection of data from the CRTC and their recommendation on more of a professional level.

● (1710)

Mr. James Rajotte: Well, if they can do it before we pass a law... because if we pass a law, and they do it and come back—

Hon. Jerry Pickard: Well, we can look at those regulations at any time. We have the opportunity to look at the regulations at any time, so we can review those regulations as a committee. All I'm saying is have them bring those regulations back.

The Chair: Through the chair, please.

James, do you have any comment on that before I go to Paul? Okay.

Paul.

[*Translation*]

Mr. Paul Crête: For your information, I would like to point out that we asked virtually the same questions of Mr. Richard French, CRTC vice-chairman, telecommunications, when he appeared.

At the end, when he was asked whether it was preferable to have this done by the CRTC or to have it in the act, he told us that his strong preference was to have Parliament take a stand. If this is not clarified in the act, the CRTC will have to conduct studies, consultations, and other things. I just want to remind you that the CRTC representative would prefer to have this clarified in the act.

[*English*]

The Chair: Denis.

[*Translation*]

Hon. Denis Coderre: Let us not dwell too long on this matter, but I think that we are right in both cases.

There are those who think that we should follow what is being done in the United States, because it worked, whereas others want us to refrain from micromanagement so as to avoid redundancy. I think that this argues even more strongly against including space-time coordinates in the definition of the current relations. This is how we should look at the issue.

There are two factors to consider. The legislation must be flexible, it must be pragmatic and it must protect the consumer. Also, it should not create a new environment with other potential problems for legitimate businesses that are working hard to protect consumers. This is what we must pay attention to.

I think that you have just strengthened the argument whereby there should be no definition of an 18-month term as such. A bill can always define an existing relation, but if we impose too many restrictions on times and places, there will always be good reasons to oppose that.

The CRTC and the committee both have a regulatory procedure for changing certain regulations. We will have three years to see how it works, and this will allow us to gather valuable information for making future changes in the rules.

Legislation must not be substituted for regulations. If we begin working on this issue, we are placing restrictions on ourselves, especially in a field like financial deregulation and the mergers of businesses that provide financial services. Many things change every month, every year. If we place too many restrictions...

Our role is not to change the legislation, but to ensure that the legislation can adapt to changes and leave us enough leeway with regulations so we can regulate specific and individual cases.

I have nothing further to say about this. These are my convictions.

[*English*]

The Chair: Thank you, Denis.

So as you meditate over the weekend on different things, the question then is, does the committee want to lay out the period of time for a business relationship or allow the commission, through its consultations, to come to that?

I do want to give a little bit of time, because I think the issues of the three-year review are pretty well settled. Are we okay with the annual report being six months after the end of the fiscal year? Are we going to try that instead of four months? Okay.

Brian, do you want to broach the concerns about the U.S.A. PATRIOT Act?

Mr. Brian Masse: I'm not sure about “meditate”. It's more like “comatose” at this point.

In regard to the PATRIOT Act, the long and short of it is that once information goes out to the U.S., there's no way to account for what happens to that information, how it's used. You have absolutely zero recourse. You don't even know what's happening with it.

I don't want to get into whole details about that; I don't think it's appropriate. But the Treasury Board did a privacy audit related to this issue back in October. Maybe this committee can get a response. That was related to outsourcing. We can make a request to the Treasury Board. That would be helpful, I think, to get the response from the government's work on that.

● (1715)

The Chair: Brian, is your concern here that if under free trade an American company were to get the contract to maintain the registry, or even if the registry were maintained in Canada, it could somehow be accessed in the States? I'm not sure what your concern is.

Mr. Brian Masse: My concern is about its leaving Canada. As long as it's maintained in Canada, it's fine. But if it's outsourced outside of Canada, there's a problem. Suppose the CRTC outsources it to an American company that does the data processing, say, in Minneapolis, then all that information is accessed without the CRTC even knowing. That's how the PATRIOT Act, section 215 works.

The American Civil Liberties Union is contesting this section. You don't even have the ability to know when and where that information is being accessed, how it's being accessed, or how it's being disposed of. That's the concern. When Lockheed Martin won the census contract for Statistics Canada, they had to provide additional security mechanisms that amend the contract to prevent this from happening. But it's done in Canada, so it's not susceptible to the PATRIOT Act. So you can still have an American company, any company, but the issue is the data not leaving the country.

Hon. Jerry Pickard: Under a lot of business agreements, our calling centres might phone anywhere in North America and vice versa. American call centres could phone into Canada. We want to make sure the Canadian consumer is protected. What information is there in this call list that we're talking about? One, there's a date; two, there's a telephone number. Those are not highly secure pieces of information. A telephone number and a date, that's all this list entails. There's nothing attached to it that I think would be a security matter. If there is, it's so low that you could get more detail out of any telephone book.

Mr. Brian Masse: It's your right as an individual, your right of privacy, to make a decision about who or what is going to be contacting your own home. Quite frankly, I think it would merit greater negotiations. This government doesn't appear to be serious about Canadian privacy. This is an opportunity to negotiate with the U.S. about other privacy invasion stuff. It's quite reasonable for you to ask. I've got an amendment on the table. The Treasury Board has gone through an audit on this, and it's reasonable to want to see what the audit found. If their findings are that there's not a threat, fine. Why don't we have that information presented to this committee? I think it's a reasonable request. It's something that the President of the Treasury Board committed to back in October of last year. It should be available. Do we have the specifics about what happens when somebody calls in? This went back to the early debate we had. I didn't see the answer in any of these documents that came back to us. Did anybody from anyplace call and put anybody's phone number on this do not call list and register anybody?

The Chair: Like a nuisance neighbour.

Mr. Brian Masse: Right. We didn't get an answer. We were supposed to get to that information. Can you go on a website and register somebody else for a do not call list?

Hon. Jerry Pickard: That was discussed during the last—

The Chair: You were at the meeting.

Mr. Larry Shaw: There are various methods of confirming it, but the biggest one is that the call comes from the telephone number that's being registered. They also check back against the websites, by calling back to the number that's registered or tests like that.

Mr. Brian Masse: We know it's more than just a number and a phone.

Mr. Larry Shaw: That's just to confirm it. Once the confirmation's done, the database consists simply of six data points. That's the telephone number and the relevant dates.

Mr. Brian Masse: I'd like to have for Monday the procedure of how the data is going to be accumulated. What happens? If somebody calls in, the material has to be accumulated somehow. If I can just go down to a payphone or call off my own phone and then put somebody else on, I don't see—

● (1720)

Mr. Larry Shaw: But you couldn't do that. It has to come from the telephone number that's being put on the list.

Mr. Brian Masse: So nobody's going to say, "You're so and so?" You mean if I have a number under my wife's name, I can call in and have it removed, even though it's our phone number that we share?

Mr. Larry Shaw: The assumption is that you have control over the telephone that's used. Generally, people think it's a good thing to be on the do not call list.

Mr. Brian Masse: I still see problems with—

The Chair: I assume you're available, Mr. Binder, you and your team, for Monday? Maybe when we come back to the question—and we're going to try to vote on Monday, yes—and before we call the vote on Brian's amendment, you might be able to just summarize a response to the concerns that Mr. Masse has raised.

Mr. Werner Schmidt: Mr. Chair, are you winding up now?

The Chair: Do you want to say something, Werner? Go ahead.

Mr. Werner Schmidt: Oh, yes, I want to say something. But that's not the point—

Voices: Oh, oh!

Mr. Werner Schmidt: Mr. Chairman, what I want to ask about is procedure, and where we go next as a committee. We've had a very detailed discussion, very broad-ranging. I thought we had sort of come to a conclusion earlier, but judging by this discussion today, we're probably not as close to a conclusion as I thought we were.

If Michael Binder and his staff are going to come back here with some more information, and we're going to have some other things happening, I'm suggesting, Mr. Chairman, that we have a really concise statement made by our analysts and by our legal drafters to say, look, these are the things that we think you agreed to, but now let's have a look at how these things would actually work.

Then we could have a round again and actually not do the vote on Monday but defer it until Wednesday. We'd then go fast on Wednesday—just boom, boom, boom.

The Chair: I'm a realist. Let's come back Monday. Today I came in with the intention that if we could, we would try. We'll come back Monday, and if we can, we'll try, and we'll go from there.

Jerry.

Hon. Jerry Pickard: Mr. Chair, I'm a pragmatic realist.

If we have basic agreement by the majority of this committee—you've outlined what the four points are, where we're at—we could get a general sense of both where this committee is and where we can go. That would speed up the process immensely. We've discussed it in detail. It's all in front of us. Why can't we just zip through those four issues, see where everybody is, and move on?

The Chair: That's what we're going to try to do.

Hon. Jerry Pickard: Good.

The Chair: But I think the process we're undertaking here is actually a wonderful process. I'm very impressed with everybody's input.

Paul.

[*Translation*]

Mr. Paul Crête: I agree with Mr. Pickard. If, during the coming days, we could get this bill amended and restructured by the government and if it were sent to each one of us, you could see if there are any divergences left. I think that there will be far fewer divergences.

Hon. Denis Coderre: Yours is the one that we are interested in.

Mr. Paul Crête: Just come and see us, and we will talk.

Seriously, I think that we should both go through this step before going on to the next one. I think that we need to know what the government's position is as a whole, and see whether there are any remaining differences. We do not have to go through the committee procedures, it would be enough just to check with each member. Probably, two or three minor points will be left. We will propose amendments and put them to a vote.

[*English*]

The Chair: Excellent suggestions.

What I propose to do is meet the researchers tomorrow afternoon, on your behalf. They've all been here listening to this, as we all have. We'll try to get some advice from the minister's office on the gap that Paul referred to. We'll go back at it on Monday and just see. Each time we do this we're getting closer. This is a very good process. There's nothing wrong with what we're doing, nothing whatsoever.

Paul.

[*Translation*]

Mr. Paul Crête: If there are any preliminary things to discuss, we can do it all in just one hour, if we meet on Wednesday.

[*English*]

The Chair: That's probably what will happen. We don't know how many weeks we're here, but we do know we're here Monday and Wednesday for sure. Let's come back and wrestle over this some more on Monday. We'll try to get something to you by Friday, or Monday morning, depending on how our discussion goes tomorrow with the researchers, so that we can arm-wrestle some more.

If there are no further final comments, we're adjourned. Well done.

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