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Chair

Mr. James Rajotte

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• (1125)

[English]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call to order the 69th meeting of the Standing Committee on Finance. Our orders today are pursuant to Standing Order 108(2), the study of tax treatment and characterization of personal services businesses.

We were scheduled to meet from 11 a.m. until 2 p.m. We have the Canada Revenue Agency from 1 p.m. to 2 p.m. We have two organizations with us, and four people will be presenting on this issue to the committee.

I apologize to the witnesses for the shortened time period. We had an unexpected vote in the House. I do not believe we will have another, so we shouldn't be interrupted again.

I understand the speaking order has been agreed to. We will start with the Canadian Federation of Independent Business; second, Monsieur Jean-Pierre Mathieu; third, Monsieur Paul-André Robitaille; fourth, Monsieur Olivier Guerrero; fifth, Monsieur Fernand Garceau; and finally we will hear from Travaillleurs Autonomes Québec Inc.

We'll go to opening statements from the CFIB. After the last presentation we'll go to members' questions.

[Translation]

Mr. Richard Fahey (Senior Vice-President, Strategic Development, Montreal Office, Canadian Federation of Independent Business): Thank you, Mr. Chairman.

My name is Richard Fahey and I am the Senior Vice-President of Strategic Development at the CFIB. My organization represents 105,000 SMEs across Canada, of which 24,000 are in Quebec. Out of this number, we have approximately 11,000 self-employed members in Canada of whom 3,000 are in Quebec, making this the largest national association of self-employed workers.

Today's presentation will focus on the definition of the term "personal services business", subsection 125(7) of the Income Tax Act, and its impact on the tax deductions that a self-employed worker, particularly in the informatics sector, can claim.

When this provision was created, in the 1990s, we had two prominent cases, two reasons or fundamental objectives in mind. The Metro grocery store chain had made changes that affected delivery drivers, the people who distributed the groceries. These employees had been laid off, then rehired immediately after as independent workers in the transportation sector. There was also

another problem, and that was that some professional athletes were incorporating themselves in order to be able to deduct expenses when in fact their only employer was the sports team with which they had a contract. These two cases led to subsection 125(7) of the Income Tax Act.

Let us now examine the issue from the self-employed workers' viewpoint. I will provide you with data taken from surveys commissioned by the CFIB. First of all, in early 2000, we commissioned two surveys to better understand what motivates people to become self-employed. It turned out that their top reason was to be their own boss, to have some flexibility, to create their own job and to improve, to some extent, their financial situation.

The same questions were asked in 2007 as part of a joint Hewlett-Packard and Ipsos Reid survey. We can see that a very large percentage of people want to be their own boss. Indeed, when we asked these self-employed workers whether they consider themselves to be self-employed workers, workers or entrepreneurs, 82% of them responded very clearly that they view themselves as entrepreneurs. Essentially, they view their business as one that would eventually expand over the years. This decision to go into business is an important one.

In Quebec, we have discussed how we should view dependent self-employed workers, namely, those who have a small number of clients. It should be pointed out that "dependent" does not mean "exclusive". However, 86% of these dependent self-employed workers also view themselves as entrepreneurs. In early 2000, Quebec tried to treat dependent self-employed workers as salaried employees, but the self-employed workers refused to agree to this status, as shown by the survey results at the bottom of page 3.

More recently, in 2005, the government proposed to include self-employed workers in part III of the Canada Labour Code. We surveyed our members at that time, and 52% replied that they were not interested.

If you look at a breakdown of the undecided—you know how surveys work—you realize that 62% of entrepreneurs do not support the proposal whereas 38% of entrepreneurs would accept self-employment being included in part III of the Canada Labour Code. Thus, CFIB concluded in 2005 that there were no compelling reasons to change the status of self-employed individuals in Canada.

Let's now briefly discuss—and this will be the final point of my presentation—the evolution of self-employment in Canada. It is a myth to believe that the self-employed are forced into starting their own businesses. They do by choice, independently of economic cycles.

According to the latest labour force survey from Statistics Canada, there were close to 2.8 million self-employed Canadians, which represents about 16% of the current workforce. Despite a dynamic job market since the 90s, the self-employed sector grew by 4% per year on average.

An interesting fact that you will see on the graph at the bottom of page 4 is that the ranks of the self-employed are growing. There was an 8.5% increase in employees, whereas there was an 18% increase in the incorporated self-employed during the same period.

If we look at the numbers of the self-employed, we realize that today, there are more women in the labour force and hence a greater proportion of female self-employed workers, but there are also more older self-employed workers who decide to build a bridge to their retirement.

Currently, according to the 2006 Census data, about two thirds of independent workers are men and one third are women. The greatest growth has been noticed in the case of self-employed individuals in the 45-to-64 age group, as you see in the graph on page 5. This is therefore a bridging mechanism towards their retirement.

With the aging of the Canadian population, these highly-skilled workers decide to continue working from home and remain a part of the labour force which is essential for Canada. Treating self-employed individuals as salaried employees is showing them a lack of respect, and could discourage these people from launching new businesses becoming self-employed or setting up a small business, an SME. This would only aggravate Canada's severe labour shortage.

We need to facilitate self-employment and contribute to the overall competitiveness of the Canadian economy. On that note, you will see that Canada's macroeconomic reality applies quite relevantly to the status of independent workers in the computer industry.

And now, I will hand over to Jean-Pierre Mathieu.

Thank you, Mr. Chairman.

• (1130)

Mr. Jean-Pierre Mathieu (As an Individual): Ladies and gentlemen, members of the committee, good morning.

I am Jean-Pierre Mathieu. I am an engineer by training and I have a masters in project management. I have been working for approximately 25 years. I became self-employed in the year 2000. In 2006, my company received assessments from the Quebec Ministry of Revenue for the years 2002 to 2004. The following year, the Canada Revenue Agency also sent me assessments.

Today, I will show you how the economic organization of the information technology industry, which we refer to as IT, does not align with the criteria used to decide the status of personal services businesses, or PSBs as we refer to them. In order to do so, I will begin by describing the organization of the IT market.

In our industry, the demand for computer services comes mainly from the major employers. There are definitely private sector businesses, but also the public sector, the federal government, provinces and municipalities, along with their departments, govern-

ment organizations, and commercial crown corporations like Canada Post and Hydro Quebec.

In terms of supply, businesses compete with each other in order to satisfy demand. First of all, there are a few major consulting companies and IT businesses such as CGI and LGS-IBM which are in fact the two biggest in Canada. Second, there are several average-size consulting companies as well as employment agencies specializing in IT. Finally, there is a high percentage of small businesses, including the self-employed entrepreneurs.

To give you an idea, in 2008, 86% of information technology businesses employed fewer than 10 people.

It is typical of our industry that companies become incorporated, as a preferred way of functioning. Eighty per cent of self-employed IT workers are incorporated, contrary to other sectors where only 20% are. The status of registered entrepreneur is rather unusual.

Subcontracting is also typical of the industry. The major work providers, particularly the public sector, are not hiring much. They prefer to beef up the staff on their projects through subcontracting rather than hiring more employees.

Another common characteristic is that the major work providers generally do business with the major IT companies for big projects. The result of this situation is that it is very difficult, if not impossible, for self-employed entrepreneurs to offer their services directly to the final client. They are obliged to go through big consulting firms or employment agencies who only act as intermediaries. The business relationship is therefore generally threefold: the self-employed entrepreneur, the intermediary, and the final client.

Sometimes, the relationship is multipartite, which is to say that there are several intermediaries between the work provider and the entrepreneur. A two-party relationship or bipartite relationship, that is to say with a direct link to the client, is also rather rare.

Speaking of this bilateral kind of relationship, I want to point to the case of the Treasury Board of Canada which deals with employer-employee relationships in its policy on government contracts on its website. In 2006, the year that I received my assessments, Treasury Board had set a deadline of 20 weeks for the signing of a service contract with a self-employed person in order to prevent there being any employer-employee relationship.

However, nowhere is there a time limit mentioned in the official documents of the Canada Revenue Agency beyond which the business relationship may be considered as being an employer-employee relationship.

Now that I have given you an overview of the organization of the IT market, I will present an overview of how work is organized within the parameters of a computer project.

Computer systems development is carried out in project mode. A team is tailor-made to produce a computer system. Projects are by definition unique and temporary. There is a beginning, a more or less lengthy middle, and an end. Project duration varies. A small project can last less than a year and require only a few people. On the other hand, a major project can last several years, be divided into several stages, require hundreds of people and cost tens if not hundreds of millions of dollars.

Computer systems development is complex and involves a multitude of activities. I will list a few for you: analysis of the client's needs, the design and programming of software, the setting up of hardware, field trials, and implementation.

An self-employed entrepreneur may be involved in one or several activities according to their expertise. For example, a business analyst would only be involved at the outset of a project in order to analyze the needs of the client. A programmer would be involved from the start of programming until the implementation stage. Finally, a project manager would head up the project from the beginning to the end. One can see that the period of time the services are offered can be shorter or longer.

Moreover, IT professionals provide service according to accepted standards and practices. In our business, best practices are to be found grouped in specialized texts such as the *PMBOK Guide*, or *Project Management Body of Knowledge* for project management, and the ISO 9001 standard for quality, which you are certainly aware of.

• (1135)

These are international standards which don't belong to the clients, nor to the consulting firms, but everyone applies them.

As you know, unless a person is in the business of fixing computers, people who work in IT usually have to make many small interventions, and they normally work in the client's office. In fact, they are usually on site all the time during regular business hours, because they have to meet and interact with the people who are working on projects. The service is delivered using the client's information systems.

How does Revenue Canada interpret this? How does it assess the fact that we work on site, full-time and during regular business hours, and that we participate in meetings? It sees these things as monitoring indicators because it says that we participate in the organization of the client's work.

Further, how does Revenue Canada assess the fact that we work on clients' information systems? It is another control indicator because the client provides us with the tools and the equipment, whereas we don't bring in our own.

I have a third example. How does Revenue Canada assess the fact that we fill in time sheets, which is a good project management practice, in order to follow the progress of the entire project?

The Chair: Could you please slow down for the interpreter?

Mr. Jean-Pierre Mathieu: I will slow down. I'll repeat...

Mr. Thomas Mulcair (Outremont, NDP): Mr. Chairman, I would like to say something. It's like at the Supreme Court. Quebec attorneys now plead in English before the Supreme Court because otherwise they have to slow down for the interpreters. This is unfair, because it takes away from their time. If they have to speak more slowly, it means they can't say as much in the time allotted to them, which is unfair.

• (1140)

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): It's from English into French.

[English]

The Chair: Okay.

I was asked—

[Translation]

Mr. Thomas Mulcair: In order for people to understand, Mr. Chairman, let me add that since I have been here, I have never heard a committee chair ask an anglophone to slow down, but I have often heard them ask francophones to slow down.

[English]

The Chair: Mr. Mathieu, do you have a copy of your presentation?

[Translation]

Do you have a copy of your presentation?

Mr. Jean-Pierre Mathieu: I don't have a brief.

[English]

The Chair: On your point, Mr. Mulcair, I was asked by a member to...because the interpreter needed more time. I was listening in French. I'm just trying to make sure members can hear what the witnesses are saying.

I apologize for the interruption.

Please continue, Monsieur Mathieu.

[Translation]

Mr. Jean-Pierre Mathieu: I'll repeat the third example. How do the taxation authorities view time sheets, which are a good project management practice that help monitor the progress of the project as a whole? This would be another monitoring indicator because by providing time sheets the client can supposedly monitor our work.

I have a fourth example. When we're working on a project with a team for a longer or shorter period of time, how do the tax authorities interpret that situation? These are integration factors for them, because we're told that we have been integrated into the client's organization.

I'll give you a fifth example. If we bill the client based on an hourly rate, how is that interpreted by the tax authorities? We're told that this is like a salary.

My next example is the following: if we organize our work schedule ourselves in terms of variable schedules, leave and vacation without interfering with the progress of the project, how is that treated by the tax authorities? The tax authorities tell us that we are considered as being employees because employers now offer their employees flexible schedules.

My last example, but not the least, is the following: How do the tax authorities consider tripartite relations? We're considered as employees of an intermediary, as employees of the end client or as employees of both at the same time, which is my situation.

I will conclude. Given how our industry is economically organized, given how information technology work is organized, given how most of the factors involved in the organization of our work are interpreted to our disadvantage by the tax authorities, I would state that the manner in which the status of personal services businesses is determined is in contradiction with our way of operating. I would also state that, practically speaking, most independent information technology entrepreneurs are potential PSBs, and for that reason subsection 125(7) of the Income Tax Act and the interpretation guides have to be reviewed and amended so that they reflect our industry's way of operating and so that IT professionals can practise their profession as independent entrepreneurs, without having PSB status being held over their heads like the sword of Damocles.

Thank you.

The Chair: Thank you very much.

Mr. Robitaille, you have the floor.

Mr. Paul-André Robitaille (As an Individual): My name is Paul-André Robitaille. In 1998, I started a company and I went into business. Since then I have started several other businesses. In 10 minutes, it is very difficult to describe the extent of the despair that my family and myself have experienced since the spring of 2006, when we received our notice of assessment from the revenue department.

I did a lot of research before deciding to go into business and when I did that, I consulted with professionals, mainly accountants. I was never told about this PSB concept, not in 1998, nor in 2003 when I started my other business. Perhaps that is normal, given that these are anti-avoidance measures, therefore punitive measures that usually target a restricted group of individuals. It had nothing to do with our business. None of the accountants raised it. If I had known what the intentions of the tax authorities were, I would have never left the well-paid job I had with Hydro-Quebec in order to go into business. As Mr. Fahey said earlier, going into business was my choice.

At the end of the 1990s, we learned that the taxation department had warned the larger consulting firms about the risks they were running when they used registered self-employed workers. Almost all the subcontractors had to set up a company. That was when the trap was set, in a scenario worthy of the Vincent Lacroix, Bernie Madoffs and company.

In my case, I install SAP software packages for clients, in this case large businesses. I believe these are the highest-selling software packages in the world. I therefore work in the context of projects representing several tens of millions of dollars and unfolding over several months and in several stages. I therefore have nothing to do with the day-to-day workings of these businesses.

In the case of the Gaz Métro project, the technical team included 14 consultants, of which 13 were self-employed individuals, and one was an employee of the intermediate company, CGI. That gives you an idea of how our industry works. Was I, from a legal point of view, in some way the subordinate of CGI? No one from CGI nor from the client ever came to tell me what to do or to monitor my work. On the

contrary, I was the one with the expertise. The only time I set foot in CGI's building was to sign a service agreement with that business.

In the course of his work, the self-employed IT worker incurs various expenses. This happens in all businesses. Those expenditures included computers, specialized software, printers, fax machines, Internet access, telephone lines, cell phones, paper, business cards, accounting and legal costs, professional association dues paid to the FCEI and the AQIII, that is, the Association québécoise des informaticiennes et informaticiens indépendants, symposia, travel, accommodation, and, very importantly, training.

Training is fundamental for all computer specialists. It is an issue of survival for us as self-employed individuals, because our area is constantly and quickly evolving. Training costs are huge, varying between \$500 and \$700 a day. One course can easily take two weeks. During their training, self-employed workers have no income. It is therefore very difficult and demanding, in terms of time and money, for a self-employed worker to remain in demand. That is one of the biggest risks we face. However, officials tell us that we face no risks, whether they be financial or other.

How do the tax authorities react to training costs? In order to ensure the quality and relevance of my own services within a specific mandate, I left the project for one week to do some training in Toronto. I received no payment during that week but I spent \$5,000 on courses and accommodation. This is what the tax authorities told me: "Mr. Robitaille, we regret to tell you that given that you are considered by us to be an employee, you cannot deduct this expense. Furthermore, we have disallowed all of your expenses, including your accounting costs. An employee who uses an accountant to do his income tax statement is not eligible for that deduction". And yet, a consulting firm or a client who decides to send an employee for the same training can deduct all costs related to that training. In fact, I would not be surprised if they could even deduct the employee's salary. Is that not an illustration of a "double standard"?

Clients use us at specific times because for the most part we are super specialists, at the very leading edge of information technology. That is in fact the niche of self-employed individuals. The fact that the technical team for the Gaz Métro project was made up of 14 consultants, including 13 self-employed individuals, is an illustration of this. I can tell you that the Gaz Métro people had very good things to say about our service. You can see those comments on CGI's website, actually.

● (1145)

In short, it is easy to become a self-employed IT worker, but it is much harder to remain so. We have to deal with the ups and downs of the market and the risk of our knowledge becoming obsolete.

The reason I am before you today is because the name of my business was on a list of CGI subcontractors, which Revenue Canada used as a basis to lay charges against a whole bunch of people, without prior verification of the facts and because it has limitless power and full impunity. The original accusation was solely based on the Carreau decision, a first instance decision, it goes without saying—and the CGI standard contract.

The November 10, 2009, issue of *Le Devoir* revealed that the crown jewel of Canada's IT consulting sector was abolishing 500 jobs and would hire 500 new people in its offices in India, claiming that it could not do otherwise because it was acting at the request of its clients. Honestly, it is unbelievable that Canadian companies are asking to work with people in India. All joking aside, is there an economist who can tell me what impact the outflow abroad of capital will have on the Canadian economy? What is being done in the meantime to replenish the state's tax coffers? Self-employed workers are being attacked, yet we spend our money in Canada.

I will now talk about the advantages of working for oneself. Self-employed workers reflect the dynamism of individuals who no longer count on governments and corporate welfare bums to secure their future. We only count on ourselves. We invest in ourselves. We represent the new tertiary economy and we operate within virtual networks of contacts. We are the new creators of jobs. I dare you to name one large corporation that has created new jobs without receiving any kind of subsidy in the last ten years. Because of our specialized skills, we are helping Canadian companies to be more competitive on a global scale. Therefore, we help to create jobs. We are healthy competition for the large consulting companies that are increasingly outsourcing their jobs abroad.

Before concluding, I would like to raise a couple of other issues. Who will benefit from our disappearance? Make no mistake, if we are found guilty, it will mark the end of self-employed IT workers. What can one say about a law that attacks only the little guy, the most vulnerable guy, the guy who takes all the risks and who does all the work? What is the point to this anti-avoidance law? What is the underlying spirit of this law? Since the Income Tax Act is based on the principle of voluntary declaration, how am I to know whether my next job will be as a contractor and not as an employee? How can one predict such a thing? Are we not perverting the spirit of the law?

Originally, this law was probably aimed at professional athletes who, by way of complex financial manoeuvres, hid their money abroad to avoid paying taxes. But now, all of us are being tarred with the same brush and labelled guilty as charged, and Revenue Canada is hoping for a tax bonanza.

In conclusion, I would say that this issue is not a legal one, but rather a political one, and especially an economic one. Bureaucrats are forcing us to defend ourselves in court, which will result in an economy based on court rulings paid for by our savings. Rather, this vision should come from our lawmakers and not from our judges, who must apply laws that are not commensurate with the new economy and globalization.

To verify the application of this punitive law, the judge who will hear my case will ask himself the following question: Was Mr. Robitaille working as an employee or as a contractor? If the answer is that I am considered an employee, then my family and I will end up on the street. If the answer is that I am a contractor, then I will owe Revenue Canada nothing. We will only have lost tens of thousands of dollars in legal fees, and the last four years of our lives will have been marked by stress and anxiety, not to mention grey hair and hair loss!

It is high time that we have a public debate on this issue and that people speak more openly about this situation.

Thank you.

• (1150)

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

Mr. Guerrero, you have the floor.

Mr. Olivier Guerrero (As an Individual): Good morning, Mr. Chairman and committee members. Thank you for taking the time to hear my remarks.

My name is Olivier Guerrero; I am a Canadian citizen, and president and shareholder in my own IT consulting company called Conseils GO & See Inc., which was created in March 2000.

I am here today to tell you about the unfair legal action being taken against me by the MRQ and the CRA, namely, because the MRQ decided to consider me a PSB. I created my federally chartered corporation myself, using all of the information I could obtain from the government and by consulting documents and Internet sites. At the time, and today, it was not indicated anywhere that I could set up as a PSB. To obtain more details on the status of PSBs, I had to do specific research using highly technical terms on government websites in order to know what a PSB was.

For 10 years, I did as all businessmen do and prepared my annual federal and provincial tax returns, paying my GST and QST instalments. My corporate tax returns, both federal and provincial, never contained any irregularities.

One fine day in February 2008, I received a call from an MRQ auditor who told me that according to his analysis of my file, my company was a PSB. His argument was that I had been with the same firm for several years and that, consequently, I was considered an employee. He also announced that a new assessment for previous years would be produced, because as such, the only eligible expenses for a PSB are salaries paid and the taxation rate must be adjusted upwards since I am not the owner of a real business. After several months of contact with the auditor, I finally received a notice of assessment for several tens of thousands of dollars, for which the cumulative interest represented almost 20%. Five weeks later, I received a notice of assessment from the CRA, which was based on the MRQ decision. The bill doubled. I immediately paid the notice and the two from the government, because I am an honest citizen and I do not want something like that hanging over my head. However, I had to borrow money from the bank to do so. I challenged both levels of government. The MRQ rejected my appeal, and at present, I am taking steps to file a complaint in court so that I can continue to follow up on my file. That is a brief overview of my situation and how I got there. I would now like to explain just how absurd the notion of PSB, as it stands, is.

Very simply put, PSB status can be determined in two different ways, based on criteria that are completely subjective and discriminatory, in my view. The first is punitive. You are told that you must go back three years and pay interest because you did not do things properly. The second is on a voluntary basis. To my mind, this leads to a highly unusual paradox. I am being criticized for having offered my services to a consulting firm for several years.

The first year, I have no reason to think I might have PSB status, as I am working as a consultant with the company. The client is satisfied with my services, and offers to renew my contract for another project. I declare my income the following year the same way. Did I have any reason to question my status? I don't think so. However, I'm really unlucky, because the client feels that my services are very good and decides to offer me another contract. In the end, I should tell myself that since I have been with the firm for three years I should consider myself a PSB. How do I do that? Is there a form to declare that I am a PSB? How do I indicate that to the government? If I do so voluntarily, will I face a punitive process? They will tell me that I have been doing that for three years and that I will have to pay interest. I don't know how to position myself.

According to arguments put forth by the government, a company must take risks. In reality, isn't the aim to create a loyal clientele, as the fewer the risks, the better the company will fare? Why, in my case, would that become a means of discrimination?

• (1155)

Must we punish the good people who offer good service? Or should I be bad and change contracts every three months? How can I plan how to carry out self-assessment? What are the criteria, beyond all reasonable doubt, that I can take into consideration?

I will continue describing the paradox looking at another aspect, that is the situation I find myself in and because of which I have had to borrow money. I was labelled as a PSB because they wish to see me as the employee of a company I do not own. As a company, what benefits do I have compared to a permanent employee of the company to which I offer my services? Overall, I do indeed earn a bigger salary, but compared to the list of advantages that a permanent employee has, my advantages are quite slim. Moreover, as is the case for my friend Mr. Robitaille, I have to pay the management costs of the business, whether they be fees to register with the government, accounting fees, professional association dues, the cost of equipment, software, and training.

As far as employment insurance is concerned, I do not have the right to contribute and even less to benefit from it. An employee working 35 hours per week, for example a permanent employee, simply goes home once his day is done. I however must provide approximately five hours of work per week throughout the year in order to ensure the survival of my business and do the administrative work. This is unpaid time.

The employee enjoys training programs. When I am in training, however, I cannot bill for the cost of it nor am I paid. It is therefore a loss. On the other hand, my freedom as an entrepreneur is something I consider an advantage, for which a price must be paid. I made this choice to have that freedom. I want to be able to make my own decisions, but the government is denying me that.

Finally, the ultimate irony in this story is that I am being accused of acting as an employee. By declaring me a PSB, I am obliged to remain a business, but I am not granted the right to be one. I do not have the right to deduct my expenses. As a PSB, my tax rate is approximately 50 percent, whereas with the deduction granted to a small business, the rate is 19 percent. It is 38 percent for large businesses.

Do you believe that such tax rates allow me to remain competitive with my competition? Am I being discriminated against in the end? Do we want to snuff out independent entrepreneurs to the benefit of companies that, by the way, take advantage of subsidies? These same companies are also quick to decamp and invest in foreign markets such as in China or in India. I lose all around. I ask you the following question: is a PSB an employee or a business?

I hope that my presentation has convinced you that the law must be changed and objective criteria defined to limit these kinds of excesses. Canadian micro-businesses will not be able to remain competitive and develop if they have to bear this kind of a burden. We want to create wealth in Canada and not in other countries.

I am sent you a document entitled *EPSP = employee or enterprise?* which contains some of the arguments that I have just made before you. In conclusion, I would like once again to thank you, ladies and gentlemen members of Parliament, for having listened to me.

• (1200)

The Chair: Thank you very much.

Mr. Garceau, you have the floor

Mr. Fernand Garceau (As an Individual): Good afternoon, Mr. Chairman. Good afternoon, members of the committee.

My name is Fernand Garceau. I have been an independent IT worker since 1994, and I have worked in this business since 1980. The name of my company is Techno-DBA inc, and it is federally registered. I take care of my own future by choosing my own life and disability insurances. I manage my own training and I also manage my pension fund which I must build up for myself. Moreover, I am constantly keeping up my network of contacts in order to be able to find new contracts when necessary. Before beginning, I would like to point out to you, as an independent worker, that there is no work done on the black market by my company.

Now, I am going to describe the difficulties. In November 2005, I was contacted by the MRQ (the Quebec Ministry of Revenue) for an audit. My accountant provided all of the documents requested by fax, because there was a snowstorm and the auditor uses a wheelchair to get around. Afterwards, I received a notice of assessment for the period from 2003 to 2005, with retroactive interest of course, supposedly because my business is a PSB. At that time, I had no idea what a PSB was.

Following that, I received two more assessment notices from the MRQ, for a higher amount each time, in order to shut me up. However, no one was ever willing to meet with me to clarify this situation. If you look, I have a document addressed to Mr. Ménard dated March 2009, in which 13 questions are asked, which proves that the government wanted to make us contribute without talking to us, because these questions should have been asked in November 2005, that is before I was accused of being a PSB. Now, it would seem that these steps are being taken in order to prepare a file for the court. If you check, you will see that you all received this document. It is a document addressed to my lawyer, Mr. Ménard.

If you go through all the documents that were sent, you will notice that in one of these, the audit report from Revenue Québec—I don't believe you have it in hand—there is an all-out attack on computer experts. I will quote what is written there:

Furthermore, the current file is part of a special project for the same kind of business. Given that we are talking about a network of people, the majority of these files will possibly be challenged. The accountant confirmed to us that they will be challenged.

This is something we received from the government.

Now, I will talk to you about the CSST (Quebec Workmen's Compensation Commission) and employment insurance. Given that my business was considered to be a PSB, I told myself I would look around to see the lay of the land. I therefore checked with the CSST in order to see if I was an employee. If you look, you will see that there is document from the CSST. I don't know if that document was sent to you. In this document, it states: "We are informing you that as the head of your company, you are not covered by the CSST." I am therefore considered to be a company by the CSST.

Then, I checked with employment insurance, and that was much more difficult. I had to wait six months to get an answer from the Canada Revenue Agency. I sent my first request on January 28, 2009. I received an answer on July 29, 2009, without mentioning the reminders I had to send. If you look at the Canada Revenue Agency documents, you can read the following:

Following our analysis, we have decided that during the above-mentioned period, Fernand Garceau was an employee. However, this is not insurable employment pursuant to paragraph 5.2(b) of the Employment Insurance Act given that he controlled more than 40% of the votable shares of Techno-DbA.

If I understand correctly, in the eyes of employment insurance, I am an employee of Techno-DbA, because I pay myself a salary. However, I am not insurable because I hold more than 40% of the voting shares.

I would like to know how I can be considered to be a company by the CSST, an uninsurable employee by employment insurance, and a PSB by the MRQ and CRA! As you can see, the worst-case scenario is always imposed on the independent worker.

•(1205)

Not only do we have no protection, but the notion of PSB doubles our tax rate by disallowing all our expenses. If you look at the documents that were handed out to you, you will see a comparative table. I am sure you have seen it, because it was on the table. This table compares a small business to a large business, a PSB with salaries and a PSB with dividends.

In this table, you can see that a small business with an income of \$140,000 has a cash flow of \$31,200. You can see this on the last line of the table. In the far right-hand column of the table, you can see that a PSB with dividends and the same income ends up with a deficit of \$23,000.

I will now discuss the criteria used by the revenue agencies to distinguish a salaried worker from a self-employed worker.

Revenu Québec has established six criteria: subordination in the performance of work; financial involvement; ownership of tools; independence with respect to clients; employment for specific work; and the attitude of each party.

As concerns Form RC4110-98f of the Canada Revenue Agency, the criteria are: control, the provision of tools and equipment, the opportunity for profit or risk of loss, and integration. I will not go into the part concerning special criteria.

Now if you look at the document sent by Revenu Québec, you can see that the agency blithely proceeds to use criteria to define us as a PSB, but without ever consenting to meet with us. What you must realize is that these criteria are very old and have never been reviewed. In addition, this law seems to have been put in place for amateur and professional sport. An interpretation bulletin exists on this subject, and I think that it has been handed out.

I would now like to discuss the criteria. Can someone explain to me why the legislation unfairly favours large businesses? Why does a business with five employees no longer have to fulfil the same criteria as self-employed workers, who are often alone and must look after all aspects of their businesses, including accounting, training and so forth?

Let's take the example of a permanent consultant for a large firm, CGI or IBM, who works on site for a client and who has exactly the same working conditions as I do. Why doesn't this large firm have to fulfil the same criteria? If I am ineligible because of these criteria, why doesn't the law apply to the large firm in the same way? There is a double standard when it comes to self-employed workers, who are exploited by their own revenue agencies.

Now, what about intermediaries and the end client with regard to these criteria? There is no problem for them, because we are incorporated into corporations. Currently, they are not the object of legal proceedings, even though they are the ones who control the application of the criteria. They can play with my company as they see fit right now, and there is nothing I can do to protect myself, except to terminate the contract, pay a penalty and leave.

I would ask you now to look at the articles I appended that deal with Macroscope. These are newspaper articles and I don't believe they've been translated. You can see that by using the Macroscope methods, which were developed by DMR, Revenu Québec establishes a control mechanism concerning the carrying out of IT projects, and the same goes for CRA.

Is it right that the most important criterion in the eyes of Revenu Québec, that is, control, should be used by its employees to deliver their famous IT project, and that this criterion should then be used by the auditors to invoice us? To manage an IT project, control is required, just like when you build a bridge, and it must be done on site, like the building of a bridge as well.

Revenu Québec knows the drill: it earned a "nota" in 2008. If you look in the "nota" document, you will see that the CRA was part of this IT development.

Our professions have worked this way for decades, and because the governments need money, they are attacking self-employed workers by using an old law. The economy, technology and other sectors have progressed greatly, but the legislation hasn't. It's just as absurd for us to have several clients as things stand now than it would be for a dentist to have only one client in his chair during a whole year.

You can read the newspaper articles for proof of what I am saying. I did append them, even though you don't have them yet. Do you really think that a computer expert who is working on the equipment of a large business, which is referred to in this document, could provide his own equipment?

•(1210)

If we need 9,000 gigabytes, that is, the memory the department needs to develop a new system, do you think a computer expert could provide this equipment? It's absolutely impossible.

Given that technology has evolved, employers are now allowing permanent employees to work from home. In future, will I be considered a permanent employee, given that permanent employees now have the right to work from home like I do?

As concerns the email from Mr. Jolie, director of the CRA Business and Partnerships Division, and the document received from that same agency, why does the CRA continue to attack self-employed workers by upholding its decision, even though it has never requested any information about my company, and even though it bases its decisions on those of Revenu Québec? Does the CRA check what Revenu Québec says? Is it normal that the rights of the taxpayers should be flouted by an auditor who has the power to decide whether or not he will conduct a more in-depth analysis?

With all the actions I have undertaken, I am sure that the CRA is very familiar with my file. In addition, as you can see by reading Mr. Jolies' email, it would seem that the only solution to our problem is an amendment to the act. And to do this, we must turn to the members of Parliament.

I am thus asking the committee for an amendment to the current act, in order to protect the 2.5 million self-employed workers in Canada from abusive action by the Canada Revenue Agency.

Thank you. That ends my presentation.

The Chair: Thank you very much.

Mr. Sabourin, the floor is yours.

Mr. Mario Sabourin (President, Travailleurs Autonomes Québec Inc.): Good morning Mr. Chair and members of the committee, thank you very much for giving us the opportunity to meet with you to tell our story.

Travailleurs Autonomes Québec is an organization that was created in Quebec for the purpose of representing self-employed workers. It represents just over 5,500 self-employed Quebec workers, including people in the heavy transportation industry, distributors, IT workers, real estate agents and a number of owners in the taxi industry. Our organization is associated with the Syndicat des Métallistes (United Steelworkers) and with the Fédération des travailleurs et travailleuses du Québec, the FTQ.

One of the mandates of our organization is to represent self-employed workers before the appropriate authorities and to develop the tools that they require. For example, concerning the problem with Revenu Québec, we called on accountants, tax experts and lawyers to have them study this topic as a whole.

We also conducted an in-depth analysis. We asked our legal counsel to study the issue and tell us how we could make

improvements in a simple fashion. Amending the entire Income Tax Act could be very complex. We thus asked solicitor Leblanc to compile a document. He will be presenting it on behalf of the Travailleurs Autonomes Québec.

That concludes my presentation. Thank you.

•(1215)

Mr. Patrice Leblanc (Lawyer, Travailleurs Autonomes Québec Inc.): Good morning. Thank you for having invited us.

As Mr. Sabourin explained, we took a quick look at the provisions of the act. As we understand it, a person who operates a business is entitled to deduct expenses he or she has incurred to earn income, as stipulated in section 18 of the Income Tax Act. Naturally, by definition, this excludes employee status, given that an employee does not incur expenses to earn an income.

According to what I have learned, some very clever people realized during the 1980s that the creation or interposing of a company between the client or principal and the employee could allow the employee to claim deductions. Naturally, that includes the small business deduction, as set out in subsection 125(7) of the act. That is what triggered the amendment and the anti-avoidance provisions that you have heard of and that prevent this type of very clever tactics.

Naturally, creating a company severs the working relationship. We thus consider that with these anti-avoidance provisions, the act is pursuing a legitimate objective, as has already been the case. However, CRA's interpretation of this provision does not, in our opinion, take into account the real situation of self-employed workers, especially those who work in very specialized sectors such as information technology.

I am raising this issue because in section 125(7) of the act, the criterion used to define a personal services business is extremely vague. This section states: where it can "reasonably be regarded" that the shareholder of the company providing the services to a client could be an employee of the client. Now that could apply both to Jean-Pierre and Fernand. In my opinion, determining what is reasonable is the crux of the matter.

The problem is also that presumptions are used to infer things. These presumptions may be linked to specific circumstances. A whole array of criteria may be used, such as work organization, schedules or many other things. Naturally, when you put all this together, CRA bureaucrats are quick to state that they are dealing with an employee.

So let's come back to the crux of the matter. By the very nature of their work, IT experts deal with different realities. As Mr. Garceau said, an IT worker who must develop computer hardware or software for a large business cannot move the computer system into his home office. This type of constraint means that at first glance, his status would seem to correspond to that of a PSB, under subsection 125(7). However, when you look more closely at the situation, you can see that given the nature of his work, a close analysis must be done to determine whether it is or not a PSB. Does this require that the CRA issue a new interpretation bulletin or other measures to better inform these people as to where they stand? The criteria used to determine what a PSB is have not really evolved in technological sectors. In my opinion, that is a major problem.

The other major problem arises from the fact that entrepreneurs, businesses and even governments demand that these people be incorporated into corporations because they want the working relationship to disappear.

• (1220)

They don't want to pay employment insurance premiums and to have to take on these burdens, these payroll taxes. They are complicit to some extent given that they have helped give birth to a presumption by Revenue Canada that these workers are PSBs.

Could the Standing Committee on Finance not propose a form requiring the work providers to inform Revenue Canada that they are requiring the subcontractor to incorporate, and that they can then intervene when there's any issue of opposition?

Furthermore, these people live in uncertainty for 12 months, and the following year, they might have to pay assessments if they indicated in their income tax return that they were entitled to the small business deduction and to deduct their expenses. This creates uncertainty for them, which is also a problem.

I don't know whether, in such cases, there could be recourse to an advance ruling or a simple mechanism like that. For example, it could be established that in the next 30 days, if the department is unable to make a determination on the status of that worker, the burden of proof would be reversed and we would then presume that the worker is not a PSB. Furthermore, if there are any assessments, the department will have the responsibility of showing that it is one.

In my opinion, this kind of measure could help these people. There may be many others. We are giving you some suggestions, but ultimately it is up to you, the wise members of the House of Commons, to find solutions.

Whatever the case might be, there is a gap between the evolution of the legislation and the evolution of technologies. Mario and I have prepared documents for you. I hope that they will help you continue your study.

Thank you.

[*English*]

The Chair: *Merci beaucoup.*

Please understand, Mr. Fahey, that you have 30 seconds for a final wrap-up.

Mr. Richard Fahey: Thank you, Mr. Chairman.

First of all, I gave the clerk a letter from the Association québécoise des informaticiennes et informaticiens. They represent more than 1,000 computer people involved in the industry in support of CFIB's position.

What we have tried to present, Mr. Chairman, is the reality of the industry, which is imposing on those self-employed contracts the fact that they be incorporated, and now, because we're questioning their incorporation, they are squeezed by the agency.

We have three specific proposals. We could respect those contracts, and the ARC could do that. Secondly, an interpretation bulletin could be issued, much like we did in the artists' community in Quebec and in Canada. Finally, there could be a modification of the law that would tag the benefits of the big corporations onto the determination of a salaried person for the self-employed.

Thank you.

The Chair: Thank you very much.

We will begin members' questions with Ms. Jennings for seven minutes, please.

[*Translation*]

Hon. Marlene Jennings: Thank you, Mr. Chair.

I want to thank all the witnesses for being with us today.

I can't tell you how happy I am to meet you and to see that the Standing Committee on Finance is undertaking a study on this issue. I had the pleasure of working on this file with my Bloc Québécois and NDP colleagues as well as with my Liberal colleagues. We worked hard to make sure that the committee would look at this issue.

If I've understood correctly what everyone is saying, the phenomenon of self-employed workers or entrepreneurs is nothing new or temporary. It will continue and will continue to grow.

Mr. Fahey provided data to the committee, on behalf of his association. Unfortunately, I don't have the English version. On page 4, it reads as follows:

[*English*]

In fact, Canada has seen significant growth in self-employment over the last couple of decades, especially among those who incorporated. The 2006 census shows that while there was an 8.5% increase in employees between 2001 and 2006, there was an 18.6% increase in the incorporated self-employed during the same period.

• (1225)

[*Translation*]

If we look at data that has come out since the beginning of the recession, we note that there are even more people looking for entrepreneurial work.

I'm going to read something to you and I'm going to ask what you think. This is a motion that I gave notice of already in the House. I won't read it in full, because it takes up a full page.

(a) amending subsection 125(7) of the Income Tax Act to include a provision under which a business would not be defined as a "personal services business" if there were a clear "supplier-client" service contract in effect rather than an "employee-employer" contract, regardless of the number of workers employed by the supplier; (b) to amend the Income Tax Act to define a "supplier-client" service contract as one that (i) describes a specific deliverable that the supplier is to provide to the client and stipulates that under no circumstances do the parties intend to establish an employer-employee relationship, (ii) stipulates that neither party may have access to benefits provided by the other's human resources unit, including employee benefits, promotions, training, and career planning;

It goes on to read: "[to establish] a separate tax rate", etc.

I'm going to ask the committee members for permission to distribute this document—it is bilingual—to everyone, including the witnesses.

I know that you haven't seen everything. However, do you think this is something that the government should look at, in consultation with all the stakeholders, in order to see if this might be a solution? This is the 21st century after all.

Mr. Richard Fahey: Ms. Jennings, without having read the text of the motion as such, the interpretation by the Canadian courts, be it the Supreme Court or the Federal Tax Court—is very clear. Essentially, there are provisions to deal with fraud or tax evasion.

However, this case is about the way industry imposes operating procedures. To my mind, when there is a contract—and there is a contract between the two—the contract specifically stipulates that it is not an employment contract, that it is a service contract between two corporate bodies. All our revenue agencies, both in Quebec and Ottawa, need to do is respect the contract. That is what they are refusing to do, because they reject the self-employed status.

Hon. Marlene Jennings: Would anyone else like to comment? If not, I have other questions.

Mr. Fernand Garceau: I want to comment.

At present, we know that interpretation bulletins regarding the act have been drafted. The interpretation bulletins contain a host of criteria.

Currently, the biggest problem with the act is the rule about "five employees" which is still in place and which puts self-employed workers at a disadvantage. As long as that rule is in place, the MRQ and the CRA will continue to have the authority to come looking for us, because that is how the act is written.

I believe the interpretation bulletins are useful, and they could clearly help us to resolve our problem more quickly. However, I think that in the longer term, the act must be amended and the rule about the "five employees" must be removed, because it truly discriminates against us. Currently, because of the "five employees" rule, we are treated differently from large corporations. They can do what they want. At present, they can change the interpretation bulletin, and in a year, because they might need more money, they can set up a new contract. We will end up facing the same problem.

• (1230)

The Chair: You have 30 seconds left.

Hon. Marlene Jennings: I will give others the floor.

The Chair: Mr. Laforest, go ahead.

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): Thank you, Mr. Chairman. I will be sharing my time with my colleague Mr. Paillé.

Thank you for coming and presenting your different points of view. They enable us to see that there is indeed quite a range in the understanding and definition of your different statuses, among other things.

Mr. Leblanc and Mr. Sabourin, you both talked about the definition. You also talked about the large companies that basically force the contractors they hire to be incorporated.

That goes back to what Ms. Jennings was saying. Shouldn't the solution involve those who are handing out the work who would make a statement regarding the details of the contract? In your view, shouldn't that be the approach? You put that forth as a potential solution.

Mr. Patrice Leblanc: [*Editor's Note: Inaudible*] we don't need to do that. It is clear that if the act were amended, that would not be necessary.

Mr. Jean-Yves Laforest: Mr. Garceau, you stated, for your part, that no work was being done under the table with your various clients, in terms of what you receive from them.

Mr. Fernand Garceau: That is correct.

Mr. Jean-Yves Laforest: You are presenting one point of view. I'm asking you the question, but it is also related to what Mr. Fahey was saying with respect to all members of the Canadian Federation of Independent Business.

Do you get the impression that undeclared work is a consideration for the various revenue agencies or the Canada Revenue Agency? Would their assessment of the number of people working under the table for large companies contribute to creating solutions like those they brought forth in 2006?

Mr. Fernand Garceau: I cannot speak for other specialties, because everyone knows that there is undeclared work happening everywhere. However, in our field, IT, it is impossible, especially because we work with large companies, because we work on large computer systems.

Earlier on, I was referring to equipment. The only thing we make use of is our brain power to be able to use... We use the equipment that is there, but it is thanks to our brain power that we operate things.

So, it is impossible for clandestine work to be happening in our field because we are always billing the client. Everything is set up in this manner. The same applies to our expenses, everything is there. For our part, undeclared work, as far as I'm concerned is non-existent, for sure. I would say that for most IT professionals, very little of that must be happening, if at all.

Mr. Jean-Yves Laforest: Are there other people doing the same work as you who have not been advised of the changes?

Mr. Richard Fahey: Certainly. Also, IT professionals are not the only ones being sued. Today, you are hearing the situation for people in IT because it is the most striking aberration, in our opinion, given the structure of our industry.

There are certainly other self-employed workers who are being denied self-employed status, who are considered employees and who are being assessed by revenue agencies. That is clear.

Mr. Jean-Yves Laforest: Are there some who avoid it? I'm looking at the issue from the other side. It is an issue of fairness as well.

Mr. Paul-André Robitaille: From an IT perspective, in our field, it's as though a sample had been taken. Personally, I'm a member of the Association québécoise des informaticiennes et des informaticiens indépendants, the AQIII, which is the largest in Quebec, I believe, representing over 1,000 self-employed professionals like myself.

When I talked about this, when it happened, people assumed that if I had been fingered by tax authorities it was because I had tried to pull something. The authorities cannot just show up like that. Listen, you! We need to talk. So, I was allowed to present my personal case to the AQIII board. From that point on the AQIII got involved because it realized that if I were considered guilty, it was possible that 95% of our members were, because my record as a businessman is exemplary.

• (1235)

Mr. Jean-Yves Laforest: Thank you.

Mr. Paillé.

Mr. Daniel Paillé (Hochelaga, BQ): On that point, other professions will probably end up in the mousetrap at some point.

I believe the problem was mainly due to having only one client, and not related to having five employees or less. From what I understand of your presentation these two aspects are the problem.

Given the fact that time has passed quickly, I also get the impression that we are facing interpretation problems, that the Quebec Revenue Ministry and the Canada Revenue Agency interpret the law in a narrow, strict and very conservative manner.

Do you not believe that some indication as to another way of interpreting the law could suffice? Is it necessary to change the legislation?

The problem I foresee, considering your situation, the notices of assessment you've received and the interest you have accumulated, is that you will all have gone bankrupt before any change is brought in, given the slow pace of government change. The tides move very slowly, if you will. That is what I fear.

Do not all answer at once.

Mr. Jean-Pierre Mathieu: With respect to the number of clients per year, when I met with revenue department officials and I mentioned, for instance, that I could have two clients at the same time, in other words work two days at one client's and three days at another's, I was told that there were employees working two days at one employer and three days at another, and that they were considered employees.

I asked another question wondering what would happen if I were to work three months for one client and have a four-month contract with another, and then another contract for the rest of the year. I was

told that there were people who would go from one employer to the next over the year, and that they were considered employees.

No matter what we do, we are always being told that we are employees.

[English]

The Chair: *Merci.*

Mr. Sabourin has had his hand up for some time.

Monsieur Paillé, the time is up, but can we have Monsieur Sabourin and Monsieur Garceau, *brièvement, s'il vous plaît?*

[Translation]

Mr. Mario Sabourin: Briefly, these things aren't mutually exclusive, and nothing prevents you from doing both: you could ask officials to give people more leeway, and you could also bring in amendments. I quickly looked at the proposal we have before us, Ms. Jennings' motion; it seems excellent to me, and it could solve a number of problems.

I would also like to get back to what this gentleman was saying earlier on, in that some people are working under the table. Some are self-employed by choice. They decide to be self-employed, it is a choice, and they proceed. The information they receive, with respect to legislation, labour standards, the CSST, the Income Tax Act, and the definitions are not the same. It creates a problem for the revenue agencies. In other cases, it is the person offering work who finds a way for people who should be employees to operate as though they were self-employed. However, the fallout always affects the self-employed individual, never the person trying to conceal the situation.

The Chair: Thank you.

Mr. Garceau, briefly, if you will.

Mr. Fernand Garceau: Recently, I had a discussion with the CRA auditor, because I had losses in 2008 which I carried over to the year 2005. At some point in the discussion, I told this lady that it was very difficult to fight the government bureaucracy. She told me that their goal was to find new evidence against the self-employed group to establish a standard case and pursue assessments. It was clear based on her comments.

So, what is very clear is that they will come up with a second Carreau case. Obviously, there are only approximately 50 or so assesses today. They have put a stop to assessments and they are going to court. They will stall things until such time as they go to court. When that happens, they will move to the next step: assess the others and get them to pay.

[English]

The Chair: *Merci beaucoup.*

We'll go to Mr. Wallace, please.

• (1240)

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

I want to thank you for coming. I apologize, I will have to speak to you in English.

I'll be frank with you. I've been on finance for almost four years and this is the first time I have heard of the issue. Just for my education—we're all from the province of Quebec today—is this a Quebec issue or is it nationwide?

I will take an answer from anybody who can answer that question.

Mr. Richard Fahey: Mr. Chairman, certainly those present at the table today are all Quebec entrepreneurs.

Mr. Mike Wallace: Right.

Mr. Richard Fahey: That is the issue we've been fighting in Quebec, here in Ottawa. I am convinced, though, that those same principles are applied elsewhere in Canada. Like you—you said you had never heard of the issue—we had never heard about the issue, and probably other self-employed have never heard of the fight that the computer industry self-employed are currently taking on in this respect. I would not restrict that to a Quebec issue. Yes, this is the presentation today, but I'm sure the CRA is applying the very same rules across Canada.

Mr. Mike Wallace: When I looked at the bulletin, or the CRA booklet on the self-employed, I saw a section that reflects the province of Quebec. I just wanted an understanding of whether the issue you're dealing with comes out of that three or four columns or if it's nationwide.

The Chair: Mr. Wallace, Mr. Leblanc also wants to comment.

Mr. Patrice Leblanc: My understanding is that this is a national issue. We met Mr. Jolie from the ARC in the spring, and examples were given to the same effect.

Also, I wanted to mention to you that the criteria under which companies are defined as being personal businesses might differ in Quebec from Canada because of the *Code civil*. The definition of an "employee" in Quebec is different and there's a different test. That might be important to you as well.

Mr. Mike Wallace: The reason I've asked, to be frank with you, is that I had an individual business myself and I never had any issues.

I want to be clear. I think there are a few issues that you've brought forward here today. Maybe through the interpretation I'm not catching that. I think Ms. Jennings' motion deals with one part of it.

I heard also—and I'll use training as an example—that if you're self-employed and you go to training yourself, if you're listed under the personal business category, you're not able to deduct that. However, if I were defined as a small business because I had five employees or whatever, I could deduct it. Is that correct?

I want to be clear on another issue I heard about so that I understand it, because we'll eventually have CRA people in front of us who I'll want to ask these questions to.

On the interpretation at present—we'll use the computer business as an example—if you're doing consulting in a computer company, let's say at a large credit union in Quebec.... They normally have an employee-employer relationship with the people who work there, but if you come in and do three months of computer consulting for them and you have a contract with them, how does CRA interpret it? What is the issue? I need to understand what that issue is.

If you're not able to deduct your expenses and so on while working for them, is the company, the credit union, able to deduct you as an employee? Is it going both ways? I need to know that.

Mr. Richard Fahey: There are two elements to your comment. There's one that Mr. Paillé raised as well.

On the implementation of computer programs, software, what we're talking about is a huge CRM—customer relationship management—enterprise resource product. They're huge financial monitoring systems and they take months and months to implement. Usually it's between one to two years of implementation for those big systems. In the example of the credit union, should it be implementing a CRM system, those self-employed computer industry specialists would work hand in hand with the employees but never be considered as employees and never have the benefits like the employees of the credit union, such as pension benefits and so on. Yet they're being considered employees from a fiscal tax point of view.

That's where the inequity is even greater. The determination for these guys is that they're considered employees, but the agency does not turn around to the credit union, or the big firm like Hydro-Québec, and tax them for payroll taxes. So the inequity is wonderful throughout.

That's why CFIB is defending those self-employed and entrepreneurs.

• (1245)

Mr. Mike Wallace: There are always two sides to every story, and we haven't heard the other side yet, but would you say, in fairness to CRA, that they're applying the law as it's presented today, or do you think there are different interpretations in different areas?

Mr. Richard Fahey: The issue we have today is the interpretation of that provision. That interpretation can be different for this guy or that guy, or for me or somebody else. So it is an interpretation. That's the first element.

The second element is that they're going beyond the relationship stated between the parties. They're saying, "I'm a corporation; you're a corporation; we have a service agreement." But the agency is saying it's not really a service agreement, that you're really an employee, without benefits from the employer, and on the other hand, no payroll taxes are being imposed on the big business.

Mr. Mike Wallace: Thank you.

The Chair: Thank you, Mr. Wallace.

Monsieur Mulcair, s'il vous plaît.

[Translation]

Mr. Thomas Mulcair: Thank you, Mr. Chairman.

Mr. Jean-Yves Laforest: I'm sorry, Mr. Mulcair. I have a point of order, but I will be brief. I simply wanted to remind Mr. Wallace who said that he had never heard of this situation that I introduced a resolution in committee for us to address this issue. He told the witness... Mr. Menzies had gotten us a meeting with him.

The Chair: Mr. Laforest, this is not a procedural matter.

Mr. Mulcair, you have the floor.

Mr. Thomas Mulcair: Thank you, Mr. Chair. First of all, I would like to thank all of the participants. I had the pleasure of meeting with a number of them on this matter. Before I begin, I would like to acknowledge and thank the interpreters who do exceptional work and make a significant contribution. My previous comments were based primarily on the frustration we experience when it is only francophone speakers who are asked to slow down. Nevertheless, we are always sincerely in full admiration of the work they do.

I would also like to say that this really points to a basic question of fairness. If we follow through with the proposed motion, as the NDP wishes, we would also draw the attention of government tax collectors to the real problem of fairness between those who provide work and those who perform it. If we have to reveal something that may be perceived as a way of getting around the law—you decide to do this by contract, but in fact you are an employee—there are consequences and there should be some for the employer, the one setting this up, if that is truly the problem.

Mr. Chair, should the committee adopt this motion, I believe it will produce a very desirable effect. I would also like to point out—and I would like to hear Mr. Fahey on this issue—that this is the subset of a growing labour problem today. I very recently met with a claims expert who works out of her home. There are no more offices, people are working with their laptop computers and BlackBerrys. We are living in a new world and our tax legislation is behind the times. We are talking about employment insurance and how to ensure that people in this situation will have access to it. I would like to hear Mr. Fahey on this matter. What does his group, the Canadian Independent Business Federation, think?

• (1250)

Mr. Richard Fahey: Mr. Chair, we are very clear about this matter. We spoke about this in our presentation. Self-employment is a reality of our economy stemming from globalization and job specialization. This is a growing reality today. Data from the 2009 labour force survey indicated that there were 2.8 million self-employed workers as of October 2009, and that this group considered itself—and this is important—to be entrepreneurs. They are the beginnings of the company, the SME and perhaps the major corporation of the future. This status of self-employed worker is, in many cases, transitory.

But I would like to caution you. We have observed that older self-employed workers, aged 45 to 64, are very experienced. They want to use this as a bridge to retirement and continue helping companies and providing services in their area of specialty. The informatics sector is watching today's debate and tomorrow the same principles will apply to building appraisers who are self-employed workers. It is the same thing.

Mr. Thomas Mulcair: Mr. Leblanc, you have had an opportunity to take a look at the motion that has been presented. I would like to ask you a fairly important question, since you are the one who is supposed to provide legal and technical advice.

Should the motion be adopted, would it provide a solution to the problem? It would be pointless to do all of this work if it did not provide an appropriate solution to the identified problem.

Mr. Patrice Leblanc: In my opinion, this motion is an excellent solution, although it does cover a wide range of issues. In my opinion, paragraph (c) is pointless—and I say this with all due respect for the work done by Ms. Jennings. If the company is not a PSB, a personal services business, the right tax rate will be used. Nevertheless, it seems to me that this is an excellent solution to explore.

Mr. Thomas Mulcair: Mr. Chair, I would like to repeat that the New Democratic Party will be supporting the motion, subject to a final technical verification. I have met with people. Aside from the technical, legal and legislative considerations, our analysis must give consideration to human beings and their families.

The Chair: Thank you, Mr. Mulcair.

Ms. Jennings, you have the floor.

Hon. Marlene Jennings: Thank you, Mr. Chair.

At the outset, I would like to thank my colleague Mr. Mulcair for supporting the motion I tabled in the House. On the subject of this motion, I would like to mention that my colleague, Ms. Hall Findlay, has raised two aspects that could be amended.

First of all, the second line of paragraph (c) states that there will be a "[...] a separate tax rate for self-employed workers equal to the tax rate for small businesses;". Ms. Hall Findlay is saying that, further to testimony we will be hearing from the Canada Revenue Agency with respect to the impact on income, this rate may be separate. Personally, I think that the rate should remain equal, but I am sensitive to the arguments raised by my colleague.

The second matter pertains to the third line of paragraph (d), where it says: "[...] a self-employed worker or an employee of another company [...]". She is suggesting that we replace this part with: "[...] an entity or company including a non-incorporated or sole ownership company [...]". Her wording is a little bit more complete.

I would like to go back to the issue of inequality and inconsistency in legislation. I find it very interesting that the Canada Revenue Agency can decide that the contract of an incorporated company is not valid—after all, it is not a court of justice—that the contract between the provider and another company is not valid, that the individual should be treated tax-wise as an employee and that these laws do not apply to large corporations.

The same company, who is now deemed to be an employee, is denied employment insurance because, according to the latter, it is not an employee. In addition, we are told that, according to the CSST—I would imagine there is not too much difference with the Canada Labour Code—it is, in fact, a company.

You will agree with me that, sooner or later, the government will have to review the Canada Income Tax Act in its entirety so that it reflects the reality of today's society with respect to the economy and companies. I see that several of you are in agreement.

I would like to ask another question.

Yes, Mr. Garceau?

• (1255)

Mr. Fernand Garceau: I would simply like to raise another issue.

Care must be taken to ensure that if paragraph (c) were amended to change the tax rate, if the tax rate were ever increased, that there be paragraph (f) which ensures that the amendment would apply retroactively from 2002. We have to ensure that none of the self-employed workers experience problems, because this measure would have an impact on a lot of people.

Hon. Marlene Jennings: Yes, thank you. That is right. I got the answer I wanted. Thank you very much.

The Chair: Mr. Paillé, you have two minutes.

Mr. Daniel Paillé: A comment. I am assuming that neither your costs to come here nor the loss of income will be deductible. When you contribute retroactively and are therefore declared..., does the employer, the company who hired you and who most certainly deducted the fees associated with your company from its taxable income, also receive a notice of contribution in order to charge all of that back?

Mr. Mario Sabourin: No.

Mr. Daniel Paillé: How can you explain that, other than to say that it is a horrible tax inequity?

Mr. Richard Fahey: That is why we are here.

Mr. Daniel Paillé: A single department of revenue, now that would be much better, no?

Some voices: Ah, ah!

Hon. Marlene Jennings: You cannot be asking that of witnesses.

Mr. Daniel Paillé: With all due respect, that was a statement.

A member: Mind you that was [*Inaudible—Editor*].

Mr. Daniel Paillé: They thought that was funny.

The Chair: Thank you for your presentations here today.

[*English*]

Colleagues, we will suspend for a minute or two, and then we will bring forward the officials from the Canada Revenue Agency.

Thank you very much for being with us here today.

- _____ (Pause) _____
-
- (1300)

The Chair: Colleagues, can I ask you to find your seats, please? We will begin with the second panel here today.

We have with us three officials from the Canada Revenue Agency. We have Ms. Lucie Bergevin, director general, audit professional services directorate, compliance programs branch; we have Mr. Wayne Adams, director general, income tax rulings directorate, legislative policy and regulatory affairs branch; and thirdly, we have Ms. Susan Betts, director, technical applications and valuations, audit professional services directorate.

Welcome to all of you. You've obviously heard the previous panel and the concerns they've raised. I don't know if you do have an opening statement, but you certainly have the opportunity for an opening statement, and then we will have questions from members.

Do you have an opening statement?

[*Translation*]

Mrs. Lucie Bergevin (Director General, Audit Professional Services Directorate, Compliance Programs Branch, Canada Revenue Agency): Yes, I do.

May I begin?

The Chair: Absolutely.

Mrs. Lucie Bergevin: Good afternoon, Mr. Chair and members of the committee.

My name is Lucie Bergevin and I am the Director General of the Audit Professional Services Directorate.

With me today are Mr. Wayne Adams, Director General of the Income Tax Rulings Directorate, and Ms. Susan Betts, Director of Technical Applications.

A personal services business is defined in subsection 125(7) of the Income Tax Act, as a business that provides the services of an "incorporated employee" to an entity, where the "incorporated employee" would otherwise reasonably be regarded as an employee.

From a tax perspective, the critical issue relating to a personal services business is whether an incorporated individual is considered to be an employee of the client or an independent contractor, when providing services to a client.

Let's say an employee who is a resident in Canada resigns from his job with a corporate employer. The individual establishes a new corporation. He has his new corporation enter into a contract to provide his services back to his previous employer. The individual is referred to as an "incorporated employee".

In effect, the "incorporated employee" could be using the new corporation to convert employment income into active business income of the corporation, which would be eligible for the small business deduction. Consequently, the "incorporated employee" would benefit from the lower tax rates offered by the corporation.

Therefore, the key question is this: if it were not for the service corporation, would there be an employment relationship between the individual providing the service and the entity receiving the service?

In fact, the personal services business income tax legislation came into effect in 1981 to prevent employees from incorporating simply in order to gain access to the small business deduction and favourable tax rates.

In practical terms, the goal of this provision is to create a level playing field in that incorporated individuals, who are in reality considered to be employees, are treated the same way for tax purposes as a regular employee.

If an "incorporated employee" falls under the income tax definition of a personal services business, it is subjected to corporate tax at the full corporate rate.

In addition, subsection 18(1) of the Income Tax Act limits the deductions that a personal services business can claim to generally only those deductions that employees can claim. The corporation cannot deduct the variety of expenses that would be available to other types of businesses.

Examples of expenses that are not deductible by a personal services business include bank charges, office supplies, professional fees, repairs and maintenance, capital cost allowance and advertising expenses.

An exception is provided where the corporation employs more than five full-time employees. The business will not be considered to be a personal service business and it will therefore be eligible for the lower tax rate and usual business deductions.

In conclusion, whether a person is an employee or a self-employed contractor is a question of fact, which can only be determined following a complete analysis of the service contract. CRA has a guide RC4110, Employee or Self-Employed, which assists in determining the nature of the contract.

Thank you Mr. Chair, and we will be happy to take questions from members of the committee.

• (1305)

The Chair: Thank you for your presentation.

Moving on to questions from members, we will begin with Ms. Jennings.

Hon. Marlene Jennings: Thank you, Mr. Chair.

Let us take the example of an incorporated business that has filed a number of annual tax returns over the years. At one point, the Canada Revenue Agency wakes up and decides that it is not dealing with a small business but rather an employee. Therefore, you carry out an audit of the past three or five years and issue a notice.

At that point, do you get in touch with the clients, that person's business clients, to inform them that the contract they signed with the small business is no longer valid under the Canadian Income Tax Act? And will they be asked to pay employment insurance premiums? In Quebec, you have to contribute to the QPP. At the federal level, there is the Canada Pension Plan and Old Age Security. Do you do all that?

Mrs. Lucie Bergevin: I will answer part of your question and then ask my colleague to follow up.

As a general rule, the CRA's auditor will contact the person who is being audited. Referrals of cases from the Quebec region are the exception. That issue was raised earlier. I cannot say whether contact is established in such situations. Besides, each audit is unique. That is why no single, general rule can apply to all audit situations.

Hon. Marlene Jennings: What you have just said reveals an unfairness. You say that you are unable to determine whether contact was made or not because you receive the notices from Revenu Québec. I think, however, that such an obligation should be included in the agreement. Moreover, you say that all cases are different. It is therefore possible that the large corporation be required to pay contributions and file tax returns for those same revised years, and that the person's status change altogether, ie, as an employee of the

corporation. Under those circumstances, the person should receive all the benefits that he or she was not entitled to during those years. But you are telling me that no compensation is given.

• (1310)

Mrs. Lucie Bergevin: As a point of clarification, I would like to say that what we are talking about is whether the person being audited was contacted.

Hon. Marlene Jennings: No. That is not what I asked you. Either I was not being clear, or you did not quite understand. I gave the example of a situation in which you would decide to audit a small personal business and, as a result of that audit, determine that the person could not be considered as a personal business under the law, but rather an employee.

Given those conditions, do you contact all the clients with which the small business dealt during the years covered by the retroactive audit, in order to notify them that you changed the person's status? Do you tell them that the person was in fact an employee of the company, and is required to revise its own income statements and submit to the Canada Revenue Agency the employment insurance benefits to cover those years or, for that matter, any other benefits that you collect on behalf of the agency? Is that something you do?

Mrs. Lucie Bergevin: I will ask my colleague, the director of technical applications, to respond.

[English]

Ms. Susan Betts (Director, Technical Applications and Valuations, Audit Professional Service Directorate, Canada Revenue Agency): Sure.

First of all, in terms of any contact we would have with...I'm going to call them a service recipient, in section 241, the confidentiality provisions would prevent us from going to the service recipient and saying that we've had a look at your service provider and changed the characterization. So we'd be prevented from doing that.

The other question that I sort of want to address is to make a distinction between contracts between two parties and the impact those contracts have on the tax regime in terms of the tax effects those have. The distinction I want to make there is, if the person who's providing the service is a corporation, then we don't effectively say they don't have a corporation anymore, because in law they do have a corporation. So in terms of us going back to the service recipient and saying they have to contribute EI and CPP for this person, that's not the way the law works.

If they were not incorporated, there may be an issue where that is something we would have to look at from an audit perspective, but we can't legally change the effect of what is in place. And if they do have a corporation then—

Hon. Marlene Jennings: Excuse me for interrupting. One minute.

What you're saying is that while you say you cannot legally say they're not incorporated—because legally they are incorporated—the agency can say that their contract they signed with a client is not valid and therefore you are not going to allow the taxation, the reports, their

[Translation]

income tax returns, tax returns,

[English]

that they have filed diligently. You are not going to allow any of the deductions because you have deemed that the contract is not valid and therefore they're subject to a whole other rate of taxation with other rules regarding what's deductible and what's not deductible.

I have a difficult time on the one hand in that you can do that legally, the law allows you to do that, but you're saying at the same time that the law doesn't—

The Chair: Okay, question—

Hon. Marlene Jennings: —allow you to do the opposite.

The Chair: Let's hear an answer.

Ms. Susan Betts: The distinction is that just because somebody has a corporation doesn't automatically make them a personal services business. There are the four factors that have to be evaluated in every case—

Hon. Marlene Jennings: You're missing the point.

The Chair: Do you want to finish, Ms. Betts? You have a few seconds left in this round.

Ms. Susan Betts: Go ahead.

[Translation]

Mrs. Lucie Bergevin: I would like to add that we work under the Income Tax Act. Subsection 125(7) helps us make a determination about a personal services business, or PSB.

• (1315)

The Chair: Thank you.

Mr. Paillé, you have the floor.

Mr. Daniel Paillé: I want to stick with this subject. This is how I understand it. Let us suppose that you determine that an individual is an incorporated employee, to use your terminology. I am talking about a regular person who could have been, for example, employed by company ABC. You come along and tell this individual that he or she is no longer considered to be an entrepreneur who has provided services to company ABC, but, rather, an incorporated employee and that, therefore, his or her expenses, which include—as you well explained—financial charges, bank charges, etc., are no longer deductible. You have the power to reclassify entrepreneurs as incorporated employees; but, company ABC who contracted with the entrepreneur, and who therefore claimed the entrepreneur's fee as a deductible expense, will be unaffected.

Mrs. Lucie Bergevin: The Canada Revenue Agency has a team that monitors large employers. The members of this team ensure that these large employers pay the taxes that they owe. If I understand you correctly, you are asking me if we make a referral when we carry out an audit.

Mr. Daniel Paillé: Exactly.

Mrs. Lucie Bergevin: I would refer you back to section 241 of the act that prevents us—

Mr. Daniel Paillé: I understand the rule, and as a former public servant, I understand your duty of confidentiality. However, to once

again use an expression that you used, is there not a manifest unfairness in the tax regime given the privileged position you have with regard to the various provincial taxation departments? You receive information from Revenu Québec, and you apply it at the federal level—the flood gates are open. However, you are telling us that the act does not allow you to take any measures against the company that signed the contract as it is a third-party signatory. That is hugely unfair.

[English]

Mr. Wayne Adams (Director General, Income Tax Rulings Directorate, Legislative Policy and Regulatory Affairs Branch, Canada Revenue Agency): You have a good observation, but I think it's casting it in a bit of an unfair light. Parliament, through the Income Tax Act in 1981, set out the law that said where the specified shareholder, the principal shareholder, is essentially carrying out the duties of employment, tax outcomes fail. It did not say that you then ignore the corporation or recharacterize the individual. It just says if it could be reasonably considered that the person is carrying out employment duties, which tracks back to the 1800s and your master-servant concept and has kind of transcended through a couple hundred years. We're not talking about a principal-agent relationship here; we're talking about a master-servant relationship. Parliament decided it would effect an outcome that said that corporation will not be eligible for the small business deduction and will not be eligible for other expenses. It did not say that you ignore the corporation, treat the person as an employee, and go back to the payer company and assess EI.

I think the outcome you're looking for is, would we go back to the company and assess EI? That is an option that the EI legislation could add, that where it's determined that payments are made to personal services corporations, there will be an additional assessment of EI. I think that recommendation is available to you. But it isn't an inconsistent action by the revenue authorities.

[Translation]

Mr. Daniel Paillé: Yes, but it remains that paying tax is not a choice.

Mr. Jean-Yves Laforest: I would like to follow on from what my colleague was saying. In your presentation, Ms. Bergevin, you said that one of the main issues the amendment to the act was trying to address was the case of an individual employed by a corporate employer who resigns, establishes his own corporation, and contracts his former employer. Were there any other reasons behind the amendment?

What is more, we know that a lot of public servants do exactly the same thing. They retire and then win contracts with the federal government. Has any particular attention been paid to the status of people who retire and then provide service to the federal government on a contract basis, while at the same time getting their pension? Is that something that has been audited?

• (1320)

Mrs. Lucie Bergevin: With regard to your first question, it is indeed just one example. It is a question of fairness. When the act was amended in 1981, the objective was to be fair both to employees and individuals the Revenue Agency considers to be employees. It was just an example to illustrate the principle.

With regard to your second question on people who resign from the public service and then contract with the federal government, they are taxpayers like you and I and are therefore subject to our risk evaluation system. We have processes for evaluating risk and determining which audits to carry out. These people are not treated any differently than any other taxpayers.

Mr. Jean-Yves Laforest: Fine, thank you.

[English]

The Chair: *Merci, Monsieur Laforest.*

Mr. Menzies, please.

Mr. Ted Menzies (Macleod, CPC): Thank you, Mr. Chair.

And thank you to our witnesses.

I hope you were here earlier to hear some of the compelling presentations we had. It is very troubling, and it's troubling in a couple of different ways. Coming from Alberta, I've never heard this raised.

My colleague asked whether it is just a Quebec issue, so that's one question I have. Why is it different for a backhoe operator in the oil patch in Saskatchewan or Alberta?

Mr. Wayne Adams: I don't believe it is solely a Quebec issue, and I don't believe it would apply differently in any province.

This issue that has come up has involved incorporated specialists, whether they are engineers...and other situations perhaps. A backhoe operator having the cost of his own tools, his own backhoe, would be a lot different from an employee backhoe operator. It wouldn't be typical for an employer of employees who operate heavy equipment in the oil patch or Fort McMurray to expect them to bring their own tools or equipment to work. That could be one difference. With high-tech, maybe it isn't as apparent that you would have a correlation there.

But I can assure you that it's not a Quebec issue. We have had litigation and reviews of individuals who might be considered personal services businesses in all provinces.

Mr. Ted Menzies: To expand on that, we have the same high-tech contractors, if you will, in other provinces. I'm still struggling with why this hasn't been raised. I think we have an agreement from our previous witnesses that it's not just Quebec, but is it something that is administered differently in Quebec?

Mr. Wayne Adams: No, it isn't. There's a focus in Quebec, under the Civil Code, about subordination, so maybe that question of control becomes a more focused analysis. But with respect to the question of whether it would apply equally if people are conducting themselves in the same way in the high-tech industry in other provinces, we'd likely arrive at exactly the same answer.

The Chair: I am sorry, we do have bells. We can find out exactly what the vote is on.

An hon. member: It is ways and means.

The Chair: I do need unanimous consent to proceed when the bells go. Do I have that consent?

Let me explain this. When there are bells, we have to stop the meeting, unless there is unanimous consent to proceed with the meeting.

An hon. member: We'll come back after. We can't take a chance on this.

The Chair: There is no unanimous consent, so we will endeavour to come back afterwards.

Mr. Mike Wallace: Otherwise, can we have them back?

• (1325)

The Chair: Colleagues, perhaps it would be better to have them back later. They could be 30-minute bells. That is the issue.

The meeting is suspended.

•

_____ (Pause) _____

•

• (1350)

The Chair: We're back to meeting 69 of the Standing Committee on Finance. Thank you for your patience.

I have four minutes left in the question time for the Conservatives, and then we have a seven-minute round for the NDP, which will likely take us right to 2 p.m.

Ms. Block, please.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chair, and thank you to our guests for being here with us this afternoon.

I heard you say in response to my colleague across the way that you do a complete analysis of the nature of the contract in order to determine the nature of the relationship. Could you tell me what criteria you use to determine that a business is a personal services business rather than a small business that is eligible for the small business tax deduction?

• (1355)

Mrs. Lucie Bergevin: We look at four factors in trying to determine whether it's a PSB—in other words, whether it's an employee versus an independent contractor.

The first factor we look at is control. Control means we look to see whether the payer of the service controls the what, when, and where: what the worker does, how the worker does his business, and where he does his business. That's part of what we look at. We also look to see whether there is a subordination aspect to it.

The second factor we look at is the opportunity for profit or the risk of loss. So we look to see whether the independent contractor could make a profit. We look at things such as, is he able to negotiate a contract; can he have additional clients? In terms of the risk of loss, we look to see if he's bearing some of the risk associated with the work he does. Could his expenses be higher than his income?

The other factor we look at is the tools. Who owns the tools? Normally in an employer-employee relationship the tools are owned by the payer, so we look at that, at how much investment has been made in the tools and who is responsible. Who bears the risk for maintenance, insurance, cost of repairs, and so on?

Integration is the last factor we look at: to what extent is the work done by the worker integrated into the payer's business?

Ms. Susan Betts: I would just add that it's a determination of whether you are considered to be an employee or self-employed.

In terms of whether that then leads to the designation as a personal services business, there are a couple of other factors to consider. The legislation says, if not for the corporation, you would have been considered an employee—those are the factors that Lucie just talked about—but also, you or someone related to you has to own more than 10% of the shares of that corporation, and if you don't have more than five full-time employees throughout the year, that then signifies that you are a personal services business.

Mrs. Kelly Block: Thank you.

The Chair: Thank you, Ms. Block.

Monsieur Mulcair, s'il vous plaît.

Mr. Thomas Mulcair: *Merci, monsieur le président.*

Mr. Adams, earlier you told us that under the employment insurance legislation a company such as CGI that had hired a bunch of people as independent contractors, once they're determined to have not been and they have to pay taxes as individual employees and not as independent contractors, CGI, which never paid its employment insurance, under existing legislation won't even have to pay it back. So there's a retroactive effect with regard to the employee but not the employer. Is that your testimony before this committee?

Mr. Wayne Adams: No, I think that's unclear. If CGI had engaged a number of independent contractors, unincorporated entities, and it was subsequently determined that they were—

Mr. Thomas Mulcair: I'm talking about an incorporated entity.

Mr. Wayne Adams: You started with independent contractors.

Mr. Thomas Mulcair: But I'm asking you about an incorporated entity. My time is limited, so please answer that question.

Mr. Wayne Adams: On your question, if CGI engaged a number of corporations to perform services and it was subsequently determined that those corporations were personal services businesses, there still would not be any EI implications for CGI.

Mr. Thomas Mulcair: Right. So the employees can get hit retroactively but not the employer. That's your testimony.

Mr. Wayne Adams: No, they are not employees. CGI engaged—

Mr. Thomas Mulcair: If they're not employees, how come you're taxing them retroactively as such?

Mr. Wayne Adams: No, we're taxing them as...their corporations are personal services businesses. It didn't undo the corporate form. It didn't characterize them as employees.

Mr. Thomas Mulcair: No, that's not germane. The question is, the employer has made money by saving on employment insurance deductions at source qua employer. The employee is now being told that even though they were incorporated, you've determined—somehow you managed to put the Quebec Civil Code in there—there's not a link of subordination, so you're going to pay your taxes going back for many years and the employer's not even going to get banged out for his EI.

Now we're going to go to you, Madame Bergevin. CGI was receiving a subsidy of at least \$10,000 per year per employee to install itself in certain sectors of the City of Montreal. To achieve those subsidies, CGI had to prove they were indeed employees, otherwise it would lose those subsidies. So they were getting it both ways, and the employees were taking it both ways.

The employees are now getting banged out because they created a corporate structure to allow them to do that work, but CGI, with all its resources and connections and contacts, was able to convince the government to maintain them as employees so that CGI could get its tens of millions of dollars a year of subsidies, and yet the people who just testified in this room and who are still sitting here, and their families, are getting banged out because they're no longer considered to be, properly speaking, independent contractors, and they are employees because of that.

The reality is, and that's why it comes up in the rest of Canada—how come we don't see this anywhere else? It's because of those subsidies that CGI put that many human beings in that position. How come you didn't investigate that? How come you only go after the employees and you never go after the employer?

● (1400)

Mrs. Lucie Bergevin: I can't speak to this case because I don't have all the facts, first of all, and I don't know exactly what transpired. I'll be honest, I don't know that I have a full understanding of your question as it relates to CGI and what they needed to do to get *la subvention*.

Mr. Thomas Mulcair: Different places were set up by the Government of Quebec—*Cité des multimédias* was one of them—where companies that were in the computer sector could get a subsidy of at least \$10,000 per employee. Of course, they had to make the determination that they were indeed employees and not independent contractors, because otherwise they wouldn't qualify for the subsidy.

Mrs. Lucie Bergevin: But that's under a different jurisdiction.

Mr. Thomas Mulcair: Of course it is, just as it's under a different jurisdiction for employment insurance, and we can say no, no, the employees will get hit retroactively, but the employer will never have to pay the employment insurance, even though they should have. Of course it was the Province of Quebec giving the subsidy, but what's pertinent here is that the initial revision of all their cases started with the Quebec revenue department. It was transferred to you, and you had to make the same determination, that contrary to their affirmation they're independent contractors and they should be subject to certain financial and fiscal and taxation rules. You're going after them now, saying no, all this while you were simple employees.

CGI had a strong corporate interest in convincing you and the Quebec department that they were employees because otherwise they lost those subsidies; that's what this is all about. That's why nobody from any of the other provinces has ever seen anything like this. That's why they are indeed the only ones who are in this case. It's because of that system.

So why is everything aligned against the employees? Why doesn't the employer ever take the hit? Why isn't there a level playing field? It's that way at EI; it's that way at Revenue. Have you made recommendations that this be changed or are we just going to continue hitting the individuals who are hard-working, who have done nothing wrong, who have done everything by the book—including your book? Are you at least going to change your interpretation bulletins? This is grossly unfair.

Mr. Wayne Adams: They aren't Lucie's bulletins to change right now; they fall within the responsibility of the branch I'm involved in. We wouldn't be able to comment on your views of what the company engaged in, regardless of whether we knew or didn't know what happened, whether they were motivated for the reasons you have described. It may be an issue that will have to be resolved once your statements here before the House have been out in the public domain, but it's not really a tax issue.

Mr. Thomas Mulcair: It's galling to hear you say it's not a tax issue.

[Translation]

For the people affected, it is a tax issue, because it affects their living standard. They have mortgaged their house, and they have lost

several years' worth of income because of this tax decision. So yes it is a taxation for those men and women who have worked extremely hard and who have always fully complied with the rules. It is in the interest of big employers to ensure that these people continue to be treated as employees. That is way that it has been interpreted in Quebec, and you are following it slavishly.

These workers are being left to pick up the pieces. Everything is always stacked against the employee and in favour of the employer. That is what is grossly unfair here and that is what I find so reprehensible. I appreciate that you do not have the final say on this issue, but I hope that given what you now know, you will report back that this situation is unfair. Thank you.

[English]

The Chair: *Merci, Monsieur Mulcair.*

Unfortunately, the time is up. This is an issue that members, including me, have some questions on for clarification. So as a committee we may revisit this in the future.

I want to thank you for being here with us. If there's anything further you'd like distributed to members, please do so through the clerk. We will ensure they get it.

Clearly an issue has been raised, and the committee will likely want to address it in the future.

Thank you very much for being here.

Colleagues, the meeting is adjourned.

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