



House of Commons
CANADA

Standing Committee on Industry, Science and Technology

INDU • NUMBER 007 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, March 10, 2009

—
Chair

The Honourable Michael Chong

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Industry, Science and Technology

Tuesday, March 10, 2009

•(1530)

[English]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Good afternoon, everyone.

We're here pursuant to the order of reference made on Wednesday, December 2, 2008, to study Bill C-4, An Act respecting not-for-profit corporations and certain other corporations.

I'd like to welcome our four witnesses today. From Imagine Canada, we have Madam Cathy Barr, vice-president of operations. We have Madame Susan Manwaring, a partner at Miller Thomson LLP. From the Canadian Red Cross Society, we have Madam Pam Aung Thin, who is the national director of public affairs and government relations, and Mr. Alan Reid, general counsel. Welcome to all of you.

I want to let members of the committee know that you've been given two documents, in both official languages. The first is a submission from Imagine Canada, and the second is a very in-depth comparison of the various iterations of this bill in front of us from previous Parliaments, which our analyst has prepared for us.

Thank you very much for that work.

She's also indicated that you will get an electronic copy at your office at some future time.

Without further ado, we'll start with Imagine Canada. You have 10 minutes for your opening statement.

Ms. Cathy Barr (Vice-President, Operations, Imagine Canada): Thank you, Mr. Chong and members of the committee.

I am here today presenting the submission that was actually written by the National Nonprofit Sector Task Force on the Modernization of Federal Not-for-Profit Corporations Law, which is a task force of representatives of the non-profit sector and various professionals, lawyers, etc., with expertise on non-profit law who came together to prepare this brief to the committee. They were brought together by Imagine Canada, which is the organization I represent.

I'd like to begin by congratulating the government on understanding the need to update the federal not-for-profit corporations law, which is pushing 100 years old at this point. I'm sure we're all in agreement that something needs to be done about that situation. I'd also like to congratulate all of you on your perseverance in bringing this act forward again. Again, as most of you probably are aware, it's been quite some time that all of us collectively have been working to

get some new legislation passed. So we're very grateful to see this before us once again.

Having said that, however, the task force that we brought together did feel, upon its review of the act, that the government would be missing a major opportunity to reduce red tape if it allowed the act to pass as it stands right now. Therefore we are recommending that some changes be made, and ideally that perhaps the bill could be sent back for some more consultation with the non-profit sector. We do realize a lot of consultation has taken place in the past, but very little has taken place on this current, new iteration of the bill, and we think there are some flaws in it that might be improved upon if some more consultation took place.

Specifically, I'll bring your attention to the five different areas that we highlighted in our submission. The first relates to voting rights. We feel in this case that it would be best if it were up to the not-for-profit corporation itself, through its board of directors, to determine what the voting rights of members should be. This should not be put into the legislation. It would be better left to the non-profit corporation itself, which would allow it to change the rules in this area as needed and over time.

Secondly, we feel that as the act is written right now, there is a distinction made between soliciting and non-soliciting corporations. We feel this distinction is not particularly helpful, that it could be eliminated from the act with no diminution in the value of the act, and in fact that it would be preferable for non-profit corporations to simplify the act in this way. There are other ways in which the fundraising as an activity that charities engage in are regulated through the Canada Revenue Agency and through various provincial statutes, and we don't feel that this act needs to look at those things. Therefore we would prefer that distinction be eliminated from the act. That would also serve to simplify the act quite a lot, which would be helpful for non-profit organizations.

On that point I should note that research conducted by Statistics Canada and Imagine Canada shows that over half of all non-profit organizations have no paid staff at all. Many of these organizations are very small, volunteer-run organizations, so any way in which we can make the act simpler for them would be beneficial.

Thirdly, and this sort of speaks to the same point, there are references throughout the act to various remedies that are available to members. We feel in this case that this is a situation where, again, the act could be simplified, that it would be better to create a single remedy section rather than have references to various types of remedies throughout the act. This seems to have become a part of the act because it's part of the Canada Business Corporations Act. But businesses, and shareholders in businesses, have many different concerns than do members of non-profit organizations. Therefore we feel that all these mentions in the act of various remedies are unnecessary, that we could put one section in and refer to what remedies might be necessary for members and leave it at that. It would simplify the act a great deal.

• (1535)

Fourth, we feel it would be beneficial to move more of the content from the articles of incorporation to the bylaws of a corporation. The act as now written requires that many aspects of the way in which a non-profit corporation is run be written into the articles of incorporation. Again, this will create challenges for many non-profits, especially the small ones and the ones without paid staff, because they will have to engage a lawyer and go through a big, long process to change their articles of incorporation.

It would be much easier if many of those aspects of the corporation, such as the voting and non-voting, the number of directors, and that sort of thing could be put into the bylaws of the corporation. It would be much easier, simpler, and cheaper for non-profit organizations to change those rules if they were in their bylaws.

Finally, and this goes to an overarching point, specifically we're asking that three parts of the act, parts 6, 7, and 8, which we feel are largely not relevant for most non-profit organizations, be removed. The issues addressed in these sections arise only rarely, and we feel they could be dealt with through a statutory reference to the relevant provisions of the Canada Business Corporations Act. Again, this would simplify the act a great deal. It would shorten it, and it would reduce confusion for the largely volunteer boards, etc., that run Canada's non-profit organizations and charities.

Those are the five specific points of recommendation. But our major point is to simplify the act and make it clearer, shorter, and easier to use for small and medium-sized non-profit organizations and the volunteers who run them. That's one point.

The second point is that we feel this statute should be designed to facilitate the creation of non-profit organizations and give them basic rules for how they should constitute themselves, but it should not be a regulatory statute to regulate the various ways and means in which a non-profit corporation could act.

Those are our two main points. However, we don't want any of that to suggest that we aren't interested in moving the act forward, because we definitely want that, above all.

Thank you.

• (1540)

The Chair: Thank you very much, Ms. Barr.

Now we'll go to the Canadian Red Cross Society, to Ms. Aung Thin.

Ms. Pam Aung Thin (National Director, Public Affairs and Government Relations, Canadian Red Cross Society): Thank you, Mr. Chair and members of the committee.

[Translation]

On behalf of the Canadian Red Cross Society, I would like to thank you for allowing us to appear before the committee today.

First, let me tell you briefly about the Canadian Red Cross Society mandate before I give the floor to our General Counsel, Mr. Alan Reid, who will provide you with our comments on Bill C-4.

The Canadian Red Cross Society is a volunteer-driven, non-profit, humanitarian organization dedicated to improving the situation of the most vulnerable in Canada and throughout the world. This would be impossible without the dedicated support of its more than 30,000 volunteers and members, as well as its 3,500 employees.

The society has a unique mandate: to support public authorities at all levels in Canada. The Canadian Red Cross Society plays a pivotal role in providing a link between governments, civil society and the communities we serve.

The Canadian Red Cross Society is a member of the largest humanitarian network in the world, made up of over 100 million volunteers and members throughout the world. It is a member of the International Red Cross and Red Crescent Movement. This includes the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the 186 national Red Cross and Red Crescent societies around the world.

We are here today on behalf of the Canadian Red Cross Society to pledge our overall support of Bill C-4.

I will now let Mr. Reid present our comments and recommendations in more detail.

[English]

Mr. Reid.

Mr. Alan Reid (General Counsel, Canadian Red Cross Society): Thank you, Pam.

Good afternoon, Mr. Chair and members of the committee.

I think the gist of our message is that the Canadian Red Cross recognizes the need for new legislation governing not-for-profit corporations in Canada. I want to underscore that; I think just about everybody would be in support of that. The Canadian Red Cross participated in consultations organized by Industry Canada in, I think, 2002. We recognize that those consultations have influenced, in many respects, the form and content of Bill C-4. In fact, those consultations went on over a significantly longer period than that.

In 2005 the Canadian Red Cross appeared before the committee to express its support of Bill C-21, a forerunner to Bill C-4, as well as to make some general observations that we believe still largely apply. At that time and again today, I want to mention a few particulars of the legislation that we consider to be important and things that will help us in our operations.

They include specific authority for telephone and electronic meetings and voting; the authority to make binding, unanimous resolutions without actually having to come together for a meeting; tighter conflict of interest requirements; the broadening of indemnification authority, including indemnity advances, which may become increasingly relevant given the current public appetite for enforcing government's accountability; and, overall, the increased deference Bill C-4 extends to corporate bylaws on many issues that were formally regulated by the Canada Corporations Act and ministry policy directives.

While we support the “as of right” approach to incorporation, and welcome the fact that the new corporate model will eliminate upfront government regulation—for example, there will no longer be ministerial approval of articles of incorporation or bylaws—we do note that the new corporate model places a large emphasis on self-regulation and on checks and balances resting upon enhanced legal rights and access to courts.

Bill C-4 is detailed and difficult legislation and will be complemented by lengthy regulations. It will pose compliance challenges, not just for small not-for-profits that operate without legal departments and/or sizable legal budgets but even for large organizations, such as the Canadian Red Cross, with easier access to legal assistance. In that respect, I am sympathetic with the points that have been made by Imagine Canada with respect to the voluntary sector and the difficulties some organizations will have adjusting to this.

However, every new comprehensive piece of legislation presents interpretive and operational issues and Bill C-4 is no exception. It calls upon not-for-profits to address many new challenges: systems for tracking and allowing access to a large and changing membership, especially in the case of an organization such as ours, which has a large membership and growing; procedures to meet enhanced accountability thresholds; adjustments to new financial procedures; and the redoing of bylaws, all of which will require careful efforts to ensure that governance provisions and practices measure up to the new legislative standards.

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

While it is noted in the accompanying explanatory text that the bill provides directors with an express due diligence defence against potential liability, we also note that the bill equally promises to enhance and protect members' rights and gives members additional power to enforce their rights and to oversee the activities of their organizations as well as to monitor the director's activities. Finding

ways of satisfying due diligence will become even more challenging and critical for directors than it is today. Arguably, this bill may heighten tension between membership and directors, increasing the risk of liability rather than reducing it.

While we have no doubt that well-qualified directors will continue to come forward to serve the not-for-profit and charitable sectors, it will be interesting to see how insurance underwriters will assess the balance of risk and rights and what impact this legislation will have on already steep premiums for liability insurance for directors and officers.

● (1545)

In part, this question may be influenced by the extent to which the new corporate model stimulates resorting to courts to resolve corporate governance issues. Given our concern that enhanced members' rights, coupled with broader judicial remedies, could elevate dispute resolution costs for not-for-profits and charitable organizations, we would have preferred to see overt legislative encouragement of administrative process and alternative dispute resolution mechanisms in the legislation.

Clause 293 gives the director authority to “make inquiries of any person relating to compliance with this Act”, but for the most part the director, like everyone else in the new model, may feel compelled to rely on courts to enforce compliance. We hope that the legislative model will prove flexible enough to allow for less formal and less costly means of resolving member/board/management tensions, as well as compliance issues raised by the director. We would encourage the government to create and finance a mandate for Industry Canada to assist not-for-profits in developing efficient and humanitarian approaches to resolving compliance issues, in lieu of engaging the courts.

The Canadian Red Cross, in preparing for this presentation, has chosen not to single out particular sections and clauses of Bill C-4 for specific criticism. Doubtless there are sections that might be improved, but a lot of work has gone into this bill over many years by many experts in the field. We choose not to repeat before this committee comments we may have made in the reform process that have not found their way into Bill C-4.

Notwithstanding small concerns that we may have about some of the details of certain provisions of the bill, our primary message to the committee today is that we view Bill C-4 as an important legislative initiative, and we support the change that it will bring. We will undoubtedly gain a deeper understanding of its complexities as we work through our governance and financial procedures in an effort to bring the society into compliance with the new regime.

The bottom line is that we would like to see the bill move through the legislative process as quickly as possible. We've watched it die too many times on the order paper. Reform of this area has been a long time in coming, and we are anxious to get on with the task of adjusting to the new regime.

Thank you once again for inviting us to appear before you. *Merci beaucoup.*

• (1550)

The Chair: Thank you very much, Mr. Reid, for your comments.

We'll have about an hour and 25 minutes of comments and questions from the members of this committee. We'll adjourn the meeting at 5:15 p.m., as we have votes at 5:30 p.m.

We'll begin with Madam Coady.

Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.): Thank you very much.

Thank you to both organizations for presenting before us today. It certainly is an important piece of legislation, and one that I understand has come before this committee and the House on numerous occasions, so I appreciate the fact that you're both in general support of the legislation, but you do have some concerns.

I want to speak to those concerns, if you wouldn't mind. I want to ask a couple of questions with regard to the membership issue. Both of you had addressed this issue.

I did take the opportunity, last week, to speak to the minister concerning membership and the "one member, one vote" kind of concept that the bill contains. I was given assurance that each corporation has to decide what voting rights will exist for its members—I understood that quite clearly—and that you could have everybody vote, or you could have nobody vote. It's "structure it yourself". I'm using the exact term that I received, and of course that's in the public record.

I want you to speak to the issue that I know Imagine Canada has.

Also, Mr. Reid, you commented on the interaction between directors and members and some of the concerns about membership. I want to ask specifically—if what I'm understanding is that you will have maximum flexibility around memberships—what your further concerns are, noting what was said last week to us.

Thank you.

Ms. Cathy Barr: I'll let Susan answer that one. Susan was a member of our committee.

Ms. Susan Manwaring (Partner, Miller Thomson LLP, Imagine Canada): Good afternoon, Mr. Chairman and members of the committee. It's certainly a pleasure to be here supporting Imagine Canada today.

Thank you very much, Madam Coady, for your inquiry. The bill, as it's tabled, contains a number of provisions that deal with what I would call significant changes to a non-profit corporation, whereby it is possible for a non-voting class of membership to be required to support a change. They are not all kinds of changes. They deal with dissolution. It's very technical—some substantive changes to do with dissolution.

The voluntary sector, as I think you all know, is made up of many different types of organizations that are structured very differently. The one thing that is, by and large, consistent—but for, perhaps, private golf clubs and some certain associations or sporting clubs—is that members don't have proprietary rights in the assets of the entity. The entity is structured for a public purpose, whether it be a charitable purpose or a non-profit purpose somehow. Many organizations choose to have members who have non-voting rights, for any reason, and in most instances when the entity has non-voting members, that's what those people want. They want to be able to say they support the organization, but they're really not interested in the governance question. A concern, I think, that is raised by the voting rights really comes to that, and it gets into that place where you may want to facilitate volunteers being able to say they're members, but these are not people who are interested in governance or in coming to an AGM or in supporting or not supporting things.

So are we making it simpler or are we complicating the way things are done with the non-profit?

I think the other issue that comes out on the voting rights is that in the for-profit corporations, voting rights and shareholder classes, which deal with how you own your proprietary interest in the entity, are in the articles of an entity, and they require certain separate-class voting, which is understandable because you can adjust the proprietary interest of the shareholder if you don't require that. Bringing that concept into the non-share capital world is perhaps part of the concern, because you end up perhaps making it more difficult for organizations to govern themselves and then make it more difficult for them to understand the system and how to make changes.

Currently, membership classes are in bylaws. They're not required to be in the incorporating document, and they don't have to be set out in a way that you have to file amending documents to change them. I think the way the act could easily deal with these things is to say, unless otherwise provided for in a bylaw, this will be the way you should do it, but give the entities the ability to structure themselves in a way that will make it work for what they are, if they're a sports club, if they're a charity, if they're a foundation.

• (1555)

The Chair: Thank you.

Madam Coady, do you have any other questions?

Ms. Siobhan Coady: Mr. Reid, I'm just wondering if you would care to comment on this issue of membership, seeing as you raised it as a concern between members and boards of directors having differences.

Mr. Alan Reid: I guess our concern wasn't the concern of Imagine Canada. I recognize that they have a more difficult task than we do, because they represent a broad constituency of member organizations. They have to look right across the spectrum.

I think our membership approach at the Red Cross is compatible with the provisions of the bill. There are some unique facets of our membership structure in the bylaws. Maybe I'll find out differently when the bill is passed and I have to sit down and start redoing some of this, but my initial view of it was that it wasn't going to cause us a lot of concern.

The concerns I have are really more generic. I think there's more of an emphasis on member rights now than there has been in the past. There are more avenues of access by members to what's actually going on in the organization. The requirement for maintaining membership lists is more stringent in the new legislation than in the current CCA.

All of that is to satisfy a sense that members who want to become more involved in the governance of their organization—at least to check, run, or monitor what's going on—should have access to more information. I think the more information you give people, the more room there is for conflict and dispute. There probably will be more tension between the director level and the membership level on certain issues.

I think the concern was...or my concern is—I guess I could speak for a lawyer—is that I'm not a big fan of resolving these things in courts. It's too slow, too expensive, and usually it doesn't lead to anybody coming out terribly happy.

I guess I was trying to perhaps push in the direction of saying, well, in terms of administering this new law, maybe the government should be putting more emphasis on structures to facilitate dispute resolution, without having to go down that road. That can be done informally. It doesn't have to be in the legislation. But from my point of view, it would be nice if Parliament, in the legislation, were to at least give a nudge or some support toward government taking a less court-based adversarial approach to resolving things that I think will come out of this legislation.

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

Monsieur Bouchard.

[Translation]

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chair.

Thank you also for coming to testify here this afternoon. My first question is for Ms. Barr.

Your organization recommended that the Government of Ontario not adopt a classification for NPOs. Could you explain why you took this position?

[English]

Ms. Cathy Barr: In the Ontario act? Well, I think it was kind of the same reasons that we made the same recommendation here. We really believe the complexity of the non-profit sector is too large for one act, which perhaps only gets changed every 50 or 100 years, to really take into consideration.

The reality is that the non-profit sector encompasses universities, hospitals, food banks, animal shelters, international aid organizations, political parties, actually, in some respects of how the sector is defined, and professional organizations. There are all kinds of examples of organizations for various professions. They're all part of the non-profit sector, and they can all incorporate as organizations without shared capital.

We feel that any time an act tries to classify, as in this case, the soliciting and non-soliciting organizations—in the proposed Ontario act they had a variety of ways—it's easier and more efficient not to

do that. The added benefit is so small that it's not worth the added complexity.

Susan, do you have something to add?

• (1600)

Ms. Susan Manwaring: I think it really comes down to that. I guess the philosophy that I understood from the business corporation statutes, both in Ontario and federally, is that they are basically facilitative. They set a framework that the individual can take advantage of to create the corporation they want. They don't try to regulate it per se. It's the statute that says how you create a corporation where you want to have limited liability.

I think the classification system then takes us more into regulation rather than into being a prescriptive, facilitative entity to create the corporate vehicle. On the classification issue, whether it's a charity, how you're classifying—those are issues that are relevant for tax purposes and some other purposes and are governed by other regulation. Why would we duplicate that? That's another argument against that classification.

[Translation]

Mr. Robert Bouchard: Ms. Barr, you also said that, if a classification system for organizations were included in the legislation, the government should be able to determine which type each organization should belong to—a public service agency, a religious congregation, etc. That is what you recommended.

What would you prefer to see in a classification system?

[English]

Ms. Cathy Barr: If I had to have a classification system, what would I prefer? I think Imagine Canada has been consistent in saying that we don't think there should be a classification system at all.

From my recollection of the process in Ontario, for which extensive consultations were done, they laid out a variety of options. The committee we put together for that piece of legislation said that if we had to have classification, they would prefer that the corporation itself, or the board of directors of the corporation, make the decision rather than some government entity.

But I think that was a fallback measure. Really, our position is that we feel the non-profit sector is better off without these classifications being placed in the acts. I did mention this the first time, that the non-profit sector changes a great deal over time. Fifty years ago we wouldn't have been envisioning the non-profit sector we have today. Acts change very infrequently, so we're concerned that whatever classification we come up with today won't necessarily be relevant in 2060, or 2090 maybe, when we're still living under the act that we pass today.

I think that's really the more important message, that we just don't think there should be classification at all in the acts.

[Translation]

The Chair: Do you have another question, Mr. Bouchard?

Mr. Robert Bouchard: Yes. According to the Canadian Bar Association, the fact that Bill C-4 does not include classification is an error or an oversight. It considers this to be a shortcoming, because it is in favour of classification.

Were you aware of the Bar Association's view?

•(1605)

[English]

Ms. Cathy Barr: I'll let Susan handle that one. She's more familiar with the Bar Association.

Ms. Susan Manwaring: I don't recall the Canadian Bar Association submission suggesting a classification system. I don't believe that's a fundamental aspect. I'm not sure which part of the brief... There are comments on the soliciting corporation, and there are comments on the definition and how it doesn't work.

The Canadian Bar Association concluded, having had their discussions, that rather than completely removing that, the suggestion would be to make amendments. They thought that the bar discussions would be a more effective submission.

The background on the Canadian Bar, whom I know you will be hearing from on Thursday... Originally, if you have copies of the submission on Bill C-21, it came from the charities and not-for-profit section, the section that talks about the voluntary sector. That submission suggested that the soliciting corporation not be included in the statute.

The discussions this time were with both the for-profit and not-for-profit groups together. It was felt, because changes had not been made to the legislation over the course of time, that our objective would be to make some concrete suggested legislative changes that we were hoping could be implemented before the bill was passed, which would make it more effective, rather than repeating the same submissions that have not been accepted or adopted in the past.

The Chair: Thank you.

[Translation]

Thank you, Mr. Bouchard.

[English]

Mr. Wallace.

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

I want to thank our guests both from Imagine and from the Red Cross for coming today. I'm familiar with both organizations. You obviously do great work for Canada and around the world, and we appreciate your efforts.

Also, Mr. Chair, I want to say thanks with regard to the submission from the analyst. It's excellent, and I appreciate it. I was having a look at it in terms of the comparisons.

I'm new to the committee, so just for my understanding, it looks like we've had this bill in front of us since at least 1992, eight or nine years. We have Bill C-21, Bill C-62, and now Bill C-4. Did both organizations get the opportunities to comment on its development prior to today?

Ms. Cathy Barr: Yes. Imagine Canada did.

Mr. Alan Reid: We appeared in February 2005 on Bill C-21.

Mr. Mike Wallace: So you have been here before. You've made suggestions. Maybe not all of your suggestions have been incorporated, but you have made suggestions before.

That leads me to my next question for Imagine. You say in your brief that the bill has not benefited from the consultation process with organizations who will most be affected once it's passed.

Since this has been around for almost a decade, can you justify that statement? I don't understand.

Ms. Susan Manwaring: I think the task force comment on that is that the consultation that has occurred to date has been in a forum similar to this. Everyone has been very supportive of that. But Imagine and other sector groups have been concerned that the actual bill itself doesn't really accurately reflect the character of the sector, and that somehow that hasn't come through the process. It might have been easier to have that come through the process with a consultation within the ministry, in addition to this, to support the work here.

Mr. Mike Wallace: On your appendix 1—I'm sorry, but you presented it, so I'm asking questions from it—the national non-profit sector task force that you have here, that's Imagine Canada's task force, I'm assuming. Is that correct?

Ms. Cathy Barr: We put together the task force, yes.

Mr. Mike Wallace: And when did that start meeting? Is that just a recent development or has that been around for a while?

Ms. Cathy Barr: It's been around for a while. Its membership has changed.

This task force, or a version of it, also commented on the Ontario not-for-profit corporations legislation as well. I don't know whether you're aware of the process that took place with that legislation—

•(1610)

Mr. Mike Wallace: I'm not, actually.

Ms. Cathy Barr: —but there were consultations that took place before the bill was ever introduced, I guess you would say at the ministerial level, and we did consultations in a variety of different communities. Non-profit organizations in those communities came to be heard at those meetings, so it was a very different type of consultation process. And at that point the bill wasn't written yet; it was more, "If we were going to do this or that, which would you prefer?"

Mr. Mike Wallace: Okay.

I have a couple of questions about your recommendations. If I have further questions, I may call upon you later. But first, on the voting rights, I just want to be clear on something.

I've been involved with numerous non-profit or charity organizations, including a political party. Telling my members that they couldn't vote would be a difficult thing to do. Your concern is that membership now in many volunteer organizations is so...I don't want to say "simple", but it's not the structure that it might need that...not everyone should be entitled to vote.

I've been on an economic development organization that was volunteer—but only board members on it got to vote. Not every member got to vote.

Your concern here is that the legislation says that everyone who is technically a member gets a vote. Is that basically what you're telling me here?

Ms. Cathy Barr: Yes.

Mr. Mike Wallace: And you'd like to see that changed to what?

Ms. Cathy Barr: What we would like to see is that the non-profit corporation itself can decide what the various classes of membership should be and which of those classes should be entitled to a vote.

Mr. Mike Wallace: Okay. I don't know if what you're telling me is factual. I'll have to check on that. I'm just using what you're giving me.

Ms. Cathy Barr: In terms of what?

Mr. Mike Wallace: Well, that it's automatically one member, one vote.

Ms. Cathy Barr: Actually, Susan says it's slightly more complicated than that.

Ms. Susan Manwaring: It provides for the ability to have different classes of membership, and you can call some of them "non-voting".

Mr. Mike Wallace: Okay, so non-voting.

Ms. Susan Manwaring: But then, for certain particular purposes, the statute says they have to vote separately, as a class. It's like they have a veto right.

Mr. Mike Wallace: So if the organization was closing its doors, every member would get a vote on it?

Ms. Susan Manwaring: I think it's in that circumstance, and there are a couple of others where there is substantive change. It's more like a veto right that is given to a group that historically would not have done that.

Mr. Mike Wallace: Just for my own edification, it says "eliminate the two-tier approach". Now, two-tier means some things to me in some sectors, but I'm not exactly sure what it means in the voluntary sector.

I like recommendations that give actual changes to the legislation so I can see them. What are your thoughts on this?

Ms. Cathy Barr: I think the title may be misleading there.

Ms. Susan Manwaring: It's the concept of this distinction between soliciting and non-soliciting. The act all of a sudden brings in this new concept. If it's just to set up a non-share capital corporation and it's not dealing with whether you're a charity and what kind of a corporation you are—you're just a non-share capital corporation—that would be a facilitative corporate act. It adds this concept that if you're a facilitating corporation, there are different audit requirements. There are different requirements for directorship.

So it introduces this new category of corporation—

Mr. Mike Wallace: A new level of responsibility.

Ms. Susan Manwaring: —which is questioned, partially from the point of complexity. Because as was said by Mr. Reid, many organizations that use this act will not have legal counsel, will not have the sophistication to...

It is suggested that it adds complexity when there is no demonstrable benefit.

Mr. Mike Wallace: Compared to the act that has existed for a hundred years, Bill C-4, as presented to us today, is simpler than it was in the past. Is that an accurate statement?

Ms. Susan Manwaring: To the extent that it gets into parts dealing with debts and trust indentures and various other entities, I'm not sure I could reach a conclusion on that.

It is easier to get incorporated and it doesn't require approval of bylaws, so to that extent it may be simpler. But I would not suggest the statute as a whole is simpler. I couldn't say that.

Mr. Mike Wallace: Thank you.

The Chair: Monsieur Thibeault.

• (1615)

Mr. Glenn Thibeault (Sudbury, NDP): Thank you, Mr. Chair.

Welcome to our guests. I want to welcome both organizations. In the five years prior to being elected, I was the executive director of the United Way in Sudbury, so I know both organizations quite well.

I want to talk initially to Imagine Canada. There was an initial excitement—because you can take the guy out of the United Way, but you can't take the United Way out of the guy—when I went through the bill. And yes, there is a need for revitalizing and getting this new regulation into place because it is so old. But the first thing I thought of was the 60-some organizations we were funding in Sudbury—and one of them is the Red Cross, I might add—and I can see these three-person shops, with an executive director and part-time staff and a volunteer, who have been doing this great work for our community, and we're going to drop these new regulations on them.

If we do anything to inhibit the great work of these organizations, are they going to be able to provide the services? Before I get to the next part of that question, maybe you can comment on that.

Ms. Cathy Barr: Well, it's certainly true. Your own experience is obviously very representative of the non-profit sector. The vast majority of these organizations are very small. Over half of them have no staff at all; another big chunk, about a quarter, have less than five staff. When they do have staff, they tend to be generalists, people with a wide variety of skills, who maybe have been promoted up through the ranks to become executive director, etc. So anything that adds red tape and paper, or things like that, to their lives is time they're not going to be spending delivering the services they really want to deliver.

Also, for many of these organizations, their funding does not actually provide them with any time to do this sort of thing either. So it is very difficult.

When we were looking at the act, and our task force was looking at the act, although its stated aim was to make things simpler and to reduce red tape, we weren't so sure it was going to accomplish that. In fact, it wasn't likely to reduce it, and maybe it would, as Susan was saying, in some of its sections, actually add to the red tape, or make it more complicated. A lot of that stuff doesn't apply to a lot of organizations, but they have to spend time figuring out that it doesn't apply to them. So that's definitely a challenge.

Susan, did you have anything to add?

Ms. Susan Manwaring: Sure.

I would agree in that there are parts of the act where certain amendments to a bylaw only require director approval, but other amendments require director and member approval. That's the kind of complexity that somebody has to be able to spell out really clearly for organizations in small-town Canada that don't have the resources to spend on lawyers, that don't want to have to spend their resources on lawyers. They want to know that they're doing it right.

Mr. Glenn Thibeault: That goes to my next question, and I'll direct it towards the Red Cross.

We're talking about the small shops here, and this legislation wants to help all not-for-profits and charities, from a small three-person shop to international airports, which are not-for-profits.

The Red Cross would be in a little better shape—though I don't want to make an assumption—than some of these smaller shops, because you do have the resources to be able to move forward on a lot of the things outlined here.

Is there any consideration, when you're talking about moving forward on this with the smaller branches of the Red Cross—or even some of the smaller organizations who work with the Red Cross—on how you're going to be able to implement a lot of this information in the act, when we're talking about the fact that all you're going to get is a brochure and to be told that you're on your own to implement this?

Mr. Alan Reid: Speaking for the Red Cross, we are a national organization that is incorporated under the Canada Corporations Act. And although we have 300-odd branches and zones and regions, that's all internal organization. So we are one corporation, and we respond as one corporation to the act.

That said, we're a large not-for-profit organization. There are vast sections of the act that don't apply to us. It's a matter of sorting through and finding out what applies to us and what doesn't.

I think what's going on here is that Parliament is enacting a law that covers a very broad range of corporations. It's giving us the package and leaving this, potentially, to everybody by saying, "Sort out what applies to you, and do what you have to do under the act. What you don't have to do, don't do."

I don't see an obvious solution to this at the legislative or parliamentary stage, but I do see—this is what we tried to emphasize in our brief—a tremendous role for education. I think with anything, or with any new policy you put out, education and training are vital components. We often fall down on that. I would like to see the government put some resources into Industry Canada and get them to help people with sorting this out. Industry Canada could help

administratively in terms of parcelling this thing out so that people could work with it.

I also see roles for Imagine Canada, organizations like that, to help their constituents. I'm sorry to put that on you, but....

• (1620)

Ms. Cathy Barr: Oh, if only we had the money for that.

Mr. Alan Reid: I mean, that's the nature of the world today. Information, and helping people to manage that information, is really what it's all about.

I don't see any solution by saying, "Send it back to the drafters to tell them to come up with something that's going to be simpler." I'm not convinced that's possible; it's a complex world we live in. On my part, I would rather see the resources put into education and support. Maybe they can give you more money, so you can....

There are a lot of ways to approach this kind of issue. Ultimately, it seems to me, it's a matter of education and training and letting people know what they have to do. I think once people find out what they have to do, it's probably not that complicated. It's just that you look at a 200-page bill and say, "What am I supposed to do with this? What applies to me and what doesn't? We don't have any lawyers."

Yes, it's a problem, and the question is, how do we get over that? But I don't think the secret is in redrafting the legislation because it's a complex topic and it covers such a broad range.

But that's life. That's what we have to deal with—sorry, Cathy.

The Chair: Thank you, Mr. Reid.

Mr. Garneau.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

I have a question for Imagine Canada and also one for the Red Cross.

For Imagine Canada, my first reaction in reading your brief was, wow, this is very good, because it's going to simplify what is, after all, a very complicated document. I'm not a lawyer. I'm not an auditor. I'm not an accountant. I'm a simple engineer, and—

Voices: Oh, oh!

Mr. Marc Garneau: —being a new MP, I have not yet mastered the skill of speaking before I think. My questions are probably very basic and perhaps you've explained them already, but it's number two that I wanted to focus on. Just for our information, what roughly is the percentage of non-soliciting corporations versus soliciting?

Ms. Cathy Barr: It's not even a term that is really used in the non-profit sector, so I couldn't tell you exactly. However, the way the definition is provided in the bill, it looks like very few non-profit corporations would actually qualify as non-soliciting. The vast majority, under these definitions, would be classified as soliciting, but that itself is part of the complexity of the bill.

We figure that many non-profit corporations are going to sit around trying to figure out which they qualify as, because it isn't a term that's commonly used. It's not a term that CRA uses. It's not a term that I've seen in any provincial legislation, etc.

Mr. Marc Garneau: There was an attempt, I think, in this new bill, Bill C-4, to define soliciting versus non-soliciting. In my mind, it seemed to be—perhaps I misunderstood—that a soliciting corporation went out and got funds from the public, from government, or from outside, as opposed to there being strictly contributions by members.

Ms. Cathy Barr: Yes, and that's going to be most non-profits and charities.

Mr. Marc Garneau: My assumption was that the reason for this sort of two-tiered approach had to do with greater accountability in terms of where you go and get your funds.

If I understand you correctly, you're suggesting that we really don't need to have this two-tiered system, and that we should have one system, but it should also be simpler. On the one hand, that sounds very, very appealing. Will it achieve that level of accountability, in your opinion, and at the same time not put a burden on the organizations that are the simplest organizations and that have virtually no resources? Can one find that “just middle”, in your opinion?

• (1625)

Ms. Cathy Barr: I think there are a lot of other pieces of legislation that cover the accountability piece or guidance. Right now, CRA is in the process of issuing lengthy guidance on fundraising for charities, which will require charities.... Already, charities, through their T3010 filings with the Canada Revenue Agency, are required to disclose vast amounts of information about their organizations. Also, there are other laws at the provincial level that require this kind of disclosure.

So I think our feeling is that it's just not needed in this act. Accountability is important and we value it as well. Imagine Canada runs ethical fundraising and has a financial accountability code that encourages transparency. It's something we're totally in favour of; it's just not something that we feel is important in this act. Indeed, in the way it's defined, because it's defined as getting money from other charities, etc., we feel that most organizations are going to be classified as soliciting anyway. It's actually adding unneeded complexity to the bill.

Mr. Marc Garneau: Thank you.

Mr. Reid, you are concerned about the due diligence approach to directors' versus members' rights. If I understood you correctly, you were concerned that this may lead to more engagement of the courts than we would really wish for, if you like, and you believe there should be simpler mechanisms that don't go to that level. I didn't hear any specific ones, though, and again, not being a lawyer, I would ask if there are mechanisms that are simpler and can achieve the aims that you're suggesting.

Mr. Alan Reid: I suppose the standard one would be some kind of mediation process that would help people sort out the dispute. That's something an organization can build in. That's something we can look at, as an organization ourselves, to try to forestall situations

where members are going to take to the courts and enforce their rights under the law.

Maybe that's going to be a responsibility of organizations themselves, to provide for that or to set up their own internal systems.

I have no way of predicting whether this is going to happen or not. On the due diligence side, directors have always had due diligence responsibilities informally, and in law there would be a form of due diligence defence. In other words, they could establish that they did comply with, certainly, common law requirements of due diligence. Now it's in the statute. That's a positive step.

The Chair: Thank you, Mr. Reid.

Mr. Brown.

Mr. Gord Brown (Leeds—Grenville, CPC): Thank you, Mr. Chairman.

Thank you to our witnesses for coming today.

I've served on a number of non-profit corporation boards over the years, so I have a little bit of familiarity with it. I'm sure all of you are glad the government is moving ahead to see this legislation put in place after many years.

There is going to be a change to the NGO structure in Canada, and since it's going to be easier to incorporate new organizations, do you think there is going to be an increase in new charitable organizations?

My questions are general, so if I could hear from both organizations that would be great.

Ms. Cathy Barr: I wouldn't think that just a change in this act alone would drive those numbers. They have been increasing anyway just because, you could argue, the needs in society are increasing. It is likely the numbers will continue to increase. I don't think that simply making it a little bit easier to incorporate is likely to result in some sort of rush in the creation of non-profit organizations.

• (1630)

Ms. Susan Manwaring: I would just add that, to be a charity, they would also have to get the approval of the Canada Revenue Agency. So there may be a rush of people trying to incorporate, but whether they'd get through the charitable status is....

Mr. Gord Brown: These changes to due diligence are especially important. What is your perspective on these changes? Do you think that, with these changes, charitable organizations are going to be able to attract directors who might have broader experience, who may bring more to the organizations...I won't say higher quality, but with more experiences that might be able to help?

Ms. Susan Manwaring: It's difficult to imagine. To my mind, when I look at the statute and I see that it might create greater debates between members and directors, my fear is that there will be fewer people willing to stand. There will be a fear that they will be accountable to the whim of someone's passion—they wouldn't have a monetary interest—and be subject to greater difficulty.

I'm not saying that should drive people away, but I fear there may be a sense, if insurance goes up, that it might be more difficult. We don't want it to be, obviously. We want it to facilitate greater participation. But I would not have any way of guessing one way or the other.

Mr. Alan Reid: Every time we have a change in the board of directors, I speak to them, and I have noted increasing interest in things like insurance, indemnification, these kinds of issues, the potential legal liability, but I do not sense that people are deterred. They want to be informed. They want to be prepared. They want to know the organization will protect them and stand behind them. But people who are inclined to take these positions I think are inclined to take those positions, and they will adjust to the realities of the day.

I can only remember one instance; that person didn't go away, but he was very concerned. He wanted his questions answered. We did that as best we could. I think people want to serve, and if they want to serve, I think they will deal with what they have to deal with. They're not going to be deterred because of this, I don't think.

Ms. Cathy Barr: I would add that I think that might be more the case for larger organizations than smaller ones.

One of my roles is as the director of the Insurance and Liability Resource Centre for non-profit organizations, which Imagine Canada runs. It's funded by the Ontario government. Through my work on that, I would say that among medium-sized organizations—not so much the small ones, because they're so small they hardly have time to worry about anything—there's a great deal of concern about liability. Anything that might even hint at increasing the chance of being sued, etc., I think could deter some people, particularly from the medium-sized ones. They feel reasonably well protected with a large organization like Red Cross, which would indemnify them and have the insurance in place, etc., but not so much with the medium ones.

So I think it's going to be a continuing challenge to attract directors.

The Chair: Thank you, Mr. Brown.

We're going to go to Mr. Vincent.

[*Translation*]

Mr. Robert Vincent (Shefford, BQ): Thank you, Mr. Chair.

Welcome.

My question is for Mr. Reid. Last week, I questioned the minister about the bill she has introduced to replace the old C-54. In clause 4 of the new bill, the question of a budget required to set up a not-for-profit organization is not dealt with. As a result, anyone can register. You contact the Government of Canada, you register, and you get permission to establish a not-for-profit organization.

If I set up an organization with an operating budget under \$25,000 and myself as president, vice-president and member all at the same time, there is no investigation.

Is that a shortcoming of the bill? With the wording of the new bill, is it possible that organizations like that could be laundering money?

•(1635)

[*English*]

Mr. Alan Reid: That's a tough question. I really don't think I can answer that. I've never seen it raised, and I haven't thought about it. I don't know.

Ms. Susan Manwaring: My take on it is that if somebody wants to money-launder, they will always find a way. Whether it's this statute or some other statute or finding a way, they will find one. I'm not sure the law can be structured to ensure that this doesn't happen in any kind of scenario. I don't think this enhances the risk.

[*Translation*]

Mr. Robert Vincent: They had the same reaction as you. They had never seen it and wondered whether it was possible. Under the new bill, no investigation is held if an organization's operating budget is less than \$25,000. That is open to several interpretations and can have implications for law-abiding organizations. That is where I was going with my question.

Let me go back to Ms. Barr. I found your brief interesting and I am going to continue along the same lines as Mr. Wallace. He said that there had been no consultation. You mention the names of eight organizations, but they were not consulted.

Why did no one get in touch with you to find out your suggestions?

[*English*]

Ms. Cathy Barr: Sorry, I missed the last part.

[*Translation*]

Mr. Robert Vincent: Okay.

At the end of your brief, you list eight organizations. Why did the government not consult you to obtain your help in developing the new bill?

[*English*]

Ms. Cathy Barr: The translation wasn't coming through very well, but I think you're asking about these eight organizations that we consulted.

I don't think it's that we feel that Imagine Canada wasn't consulted by the government. Imagine Canada is a national charitable organization that's relatively well connected to these sorts of activities. We've come before this committee before.

What we're saying—and perhaps it didn't come through clearly enough—is that the vast majority of small and medium-sized non-profit organizations across the country are not even aware that this bill has been introduced. It's not Imagine Canada; we feel adequately consulted, I think. But there are 161,000 non-profit charities across this country, and probably 0.0001% of them even know that this bill exists. That's what we're saying.

As I mentioned about the process in Ontario, there was a consultation process. The committee that was looking at it, or the officials who were involved in it, travelled around the province and consulted with hundreds of non-profit organizations in their communities. It's that kind of consultation process we're alluding to that did not take place in this case.

There really is a severe lack of awareness about the bill.

The Chair: Thank you very much, Madam Barr.

The floor is now Mr. Warkentin's.

Mr. Chris Warkentin (Peace River, CPC): Thank you, Mr. Chair.

I thank you for coming, both organizations, to testify before us this afternoon.

I'd like to broach the issue of voting. I think there may be, at least on my part, a necessity to understand the concern that was brought forward, specifically by Imagine Canada.

I'm trying to understand what your concern is with regard to the actual text of the bill. My understanding is that there are two different ways an organization can go. They can either have a single class of members, with every member having the same rights, or they can go to a second type of framework, in which you have different classes of membership—you can have 12 people who vote and 150,000 people who don't. That is simply left to the organization. That's the way I read the bill.

Do you have concerns with regard to the way it was constructed in the bill? I'm just trying to grapple with it so we can better understand and have a bill that better reflects your needs.

• (1640)

Ms. Susan Manwaring: That aspect of the bill is not what is being questioned. There are a few sections—I apologize, I don't have the specific sections, but we can get them to you—where it says that those 150,000 non-voting members have the right to vote about a particular decision. It's questioning that. Many non-profit corporations and charities....

I know that, in the first instance, this sounds problematic. You sort of say, "Well, what do you mean you don't want your members to have a vote?" But today many organizations have honorary members.

Mr. Chris Warkentin: Yes.

Ms. Susan Manwaring: They don't follow the ongoing operation of an entity. They don't vote. This would give them the right to basically veto a decision of the board and the voting membership if they didn't like it.

That's what we're questioning. Those are just very specific sections in the act.

Mr. Chris Warkentin: I'm wondering if you could lay those out and provide a brief to our committee so that we might be able to accurately look into those different instances.

Ms. Susan Manwaring: We would be happy to do that for you.

Mr. Chris Warkentin: We do want to ensure that the entire bill is not contradictory and that we don't provide a situation in which one portion of the act is saying one thing and another is saying something different. It is our understanding, it's our hope, that organizations have the ability to set up their organizations in the way that best suits whatever work they're endeavouring to undertake.

Ms. Susan Manwaring: Okay.

Mr. Chris Warkentin: We certainly would appreciate that information.

Ms. Susan Manwaring: Thank you.

Mr. Chris Warkentin: I don't know if there is anything more, because that seems to be what I'm hearing. Certainly there are other concerns with regard to educating the population and some other things. But that seems to be the only major sticking point I've identified from either of the testimonies in terms of actual changes to the bill.

Maybe I'm missing something; I know that there are other concerns, but I haven't heard them. I guess I've heard some contradictions in the testimony today.

Ms. Susan Manwaring: Between the two organizations, this may be the one consistency, I guess. But the other piece that there was some talk about was the soliciting corporation.

Mr. Chris Warkentin: Right. As a matter of fact, there are very few times when an organization is not soliciting, so I guess most organizations just fall into the soliciting category.

Ms. Susan Manwaring: Unless they're very closely held.... There would be a few instances when they wouldn't, but the way it's broadly worded, it appears most would. So why do we need both?

Mr. Chris Warkentin: I think there's a desire to simplify things for that very small minority who find themselves in a non-soliciting situation. Obviously they have a lesser issue of taking resources from people or other organizations and utilizing them in a way that may be contrary to what the desire was. So they may have a different position of trust than the organizations that are soliciting. You can see that a small minority would have a different type of trust relationship with the general population or the funding population.

Ms. Susan Manwaring: If it's a public benefit organization, a charity, those assets are public; they're not yours. You're supposed to be accountable to the public whether you're a soliciting corporation or not.

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

Mr. Maloway.

Mr. Jim Maloway (Elmwood—Transcona, NDP): Thank you, Mr. Chairman.

I'd like to make some observations. Probably 30 years ago people sat on non-profit boards and it was easy in those days to recruit people to sit on boards. Nobody even knew about directors' liability insurance in those days. I started hearing about people 20 years ago refusing to sit on boards unless the directors' liability policy was in effect. So non-profits went looking for them, and they were astounded when they realized how much they cost and how many hoops they had to go through to get them.

Very few insurance companies sell them, to begin with. Deductibles are \$5,000. You have to submit financials every year. That goes well when the insurance markets are reasonably priced, but every three to five years the insurance markets get themselves into big trouble and your premium can turn in the space of just one year from \$5,000 to 20,000. You tell me how a small non-profit is supposed to pay for these things. It's totally impossible.

So we have to find a way to limit the liability of non-profits. I don't know how possible that is, but we should certainly look at that option. We're going to be scaring people off. People will not sit on the boards.

Compliance costs are also a big issue. We've run into this even in our own province of Manitoba in our election laws. We practically strangled ourselves with compliance costs of the parties, trying to get it right. The laws had to be brought in, but this is one of the realities of bringing in these types of laws. So we saddle you with compliance costs that almost shut you down, and we're not really accomplishing what we want to do.

I'm familiar with a non-profit fiddlers club from Ontario that had 83 members and a couple of thousand dollars in the bank. They were senior citizens. They were having a meeting of their fiddlers society and one of them tripped and fell walking out of the building. That person hired a lawyer. The lawyer decided they were going to sue all 83 members of the fiddlers club, and that's what they did. They had to go to their home insurers and collect.

Most people don't know about these issues, but when they do hear about them it certainly scares them.

I'd also like to ask the members whether anybody made an effort to contact these 161,000 charities. Were letters sent out to let them know about this? The witness mentioned that a lot of small charities wouldn't even be aware that we are going through the third version of this bill.

I'd like to address it to Mr. Reid, because he was talking about the directors' and officers' liability issue.

• (1645)

Mr. Alan Reid: Perhaps I can first touch on the consultation issue. Industry Canada did run a very extensive consultation process, not with 160,000 corporations, but with a representative group of corporations over a period. I don't know how you would consult with 160,000. I guess you can send them a letter saying this is coming down the tubes.

In terms of insurance, yes, insurance is a big issue. A corporation such as the Canadian Red Cross can afford that. We don't like to have to pay the insurance, but it's part of our operation; within the budgets we have, it's just an operational expense we have to bear.

I don't know whether you've done a survey, Cathy, of the percentage of corporations that do have insurance.

I'm sure there are many not-for-profits in this country that operate without directors' liability. I personally sit on the board of one that doesn't have directors' and officers' liability, but that doesn't keep me awake at night because of the nature of the activity. I think many not-for-profits operate in activities that probably have very limited risk,

but with others, of course, there's greater risk. Insurance is available, but at a cost, and not everybody can afford it.

Yes, that's a problem, but it's not a problem that is created by this bill.

The Chair: Thank you, Mr. Reid.

Before we go to the next member of the committee, Madam Barr, do you have any comments on Mr. Maloway's question?

Ms. Cathy Barr: I would only say that, certainly, our experience shows that insurance is a huge issue and liability is a huge issue. I would say it's a growing issue. Many charities operate without it because they can't afford it, which puts their directors and officers at risk.

• (1650)

The Chair: Thank you, Madam Barr.

Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair, and thank you, witnesses, for appearing before us.

I wanted to just finish up Mr. Warkentin's question. His last question to you, Susan, was on why you want extra burdens for non-soliciting organizations, corporations. That was his last question before he was cut off, before his time expired.

Ms. Cathy Barr: Right.

I don't think we do. We just want one system so that all charities aren't saddled with trying to figure out which they are and which they aren't. As it stands now, charities are going to have to decide... and a given charity or not-profit might be classified as a soliciting corporation one year and a non-soliciting the next year, depending on how they get their money.

It seems very straightforward, but in practice it could be very complicated. Every year a charity will have to look at it and decide.

Mr. Dave Van Kesteren: The act is a pretty lengthy, complicated piece of legislation, and it usually is when the politicians...not the politicians, the bureaucrats, put together something. Has anybody seen the original document? What does the original document look like? Is it as lengthy as this one, the original act, the one that was drafted in 1917?

The Chair: The research analyst has informed me that the original statute from 1917 is a lot shorter, but it's also been supplemented with 90 years or so of common law and other jurisprudence.

Mr. Dave Van Kesteren: Maybe we'll have to talk to the analyst about whether this is just a culmination of those additions and such.

But my question would follow, then, to all of the organizations. Were there portions of the act that you thought really had to be changed, something you saw as being just so strenuous, just impossible? Or were you pretty much satisfied with the act as it was drafted up to this point—the current act that you're under?

That's for anybody.

The Chair: Perhaps you want to start with that, and then maybe Ms. Manwaring.

Mr. Alan Reid: We've lived with it for quite a while and we've adjusted. I certainly wouldn't say it doesn't work, but I think some of the things I identified in my brief are things that would work, or certainly would work better. Even electronic telecommunications—I think that's one of the things I mentioned.

There have been efforts through the policy people in Industry Canada to facilitate that kind of thing, working within the existing legislation, but I think it's better if there is a legislative recognition of that. So it would be things like that.

I think the indemnification has been a particular issue with us. I really welcome the changes that are made there.

So there are particular things that I think work better with the new legislation, but you work with what you have.

The Chair: I think Madam Manwaring has something to add to this.

Ms. Susan Manwaring: This is history before my time, but I believe the original act was actually designed to govern all types of corporations. What's cumbersome about it is that some of that was taken out when we passed for-profit corporation legislation. We now have a statute of which only some parts apply and you have to figure out what sections apply, where, and how it works.

It's incredibly impractical. The average person cannot read and figure it out. Getting a new statute that clearly applies to non-share capital corporations that can be used for non-profit purposes is a very worthwhile objective and initiative.

Mr. Dave Van Kesteren: Your organization represents a number of non-profit organizations. Would you have the number of organizations that you represent that fall under the faith groups?

Ms. Cathy Barr: I wouldn't say faith groups are a particular member category of Imagine Canada, no.

• (1655)

Mr. Dave Van Kesteren: There are none that you represent, then?

Ms. Cathy Barr: I would say some, but not a large number at all.

Mr. Dave Van Kesteren: Okay.

I'm a little concerned—I just found this somewhat puzzling—that in our own notes it says the following:

The proposed legislation will also make it easier for these corporations to take advantage of the protections offered by incorporation and the predictability and accountability offered by a modern corporate governance framework.

We would all agree with that.

In doing so, the law will make the sector more sustainable and self-sufficient and increase its potential as a governmental partner.

Wouldn't some of those whom you represent be a little uneasy about that? Don't they form non-profit organizations because they want to act separate from government?

Ms. Cathy Barr: I would say the majority probably wouldn't see themselves as a government partner. Some are for the delivery of government services, but many are not. They see themselves as separate.

The Chair: Thank you very much, Mr. Van Kesteren and Madam Barr.

Mr. Rota.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): Thank you for coming out. It has been very informative.

One thing in this bill is that there's a strong governance structure proposed. It's mainly related to accounting and financial matters, but it really doesn't contain anything ensuring that non-profits are carrying out activities in accordance with their mandate. Not often, but occasionally I'll get a call saying, "Okay, I got a call from somebody who's off on some tangent and it doesn't seem to be their core structure."

I'm sure that happens while you're working, and you're stepping on each other's toes trying to do something. Is that something that would help if it were included within this legislation?

Ms. Susan Manwaring: I would think that one of the positive things about this legislation is that it takes us out of the realm of an entity. If they don't just do exactly what's described in their objects, then somehow they don't have the legal authority to do it. That is gone with this legislation. That's a modernization step that I think is appropriate.

Where there is room and regulation already—I would suggest we don't need more—on the activities of non-profits or activities of charities, is through the income tax legislation. Really, this legislation sets up an environment where you can incorporate a membership-type corporation. The status of whether you're non-profit or charity is driven by the requirements of the Income Tax Act, not by this statute. I would suggest that's where they should remain. Heaven forbid we get conflicting requirements as to what qualifies where—in my view. I think for the sector, it would be much more straightforward to have regulation at the one level.

Mr. Anthony Rota: In that vein, I guess not-for-profit is not defined in this legislation. What you're saying is that it shouldn't be defined in this legislation, it should be defined basically at Revenue Canada or in the tax act.

Ms. Susan Manwaring: There is a definition of a not-for-profit corporation in the Income Tax Act. The concept of this legislation is non-share capital, meaning members don't have equity in the corporation, with the exception of private golf clubs; they fit in. The requirement of what you can do to be non-profit, therefore non-taxable, is regulated. I think the only real relevance is the Income Tax Act.

I'm not necessarily speaking on behalf of Imagine. We haven't had that discussion. That would be my view.

Mr. Anthony Rota: That was it for me. I don't know if you want to add something, Mr. Reid.

Mr. Alan Reid: I would just like to comment.

I think the act will promote stronger governance through self-regulation, and getting the government regulation out of it.

I think the overall operation of the act will be to encourage strong governance within not-for-profit corporations.

The Chair: Madam Coady, if you have a question, go ahead.

Ms. Siobhan Coady: Certainly. I do have a question on the remedies.

Mr. Reid, you raised an issue of the dispute mechanism being challenged with the way it is currently worded in the act. Perhaps you could comment on what you would prefer to see. I know that Ms. Barr and the Imagine group also have a question about the remedies section.

Mr. Alan Reid: I'm not sure that it's something you could probably build into the statute itself. I think it may be more a matter of the overall administration through the ministry, part of perhaps the educational component. I don't think you can put in mandatory mediation. If I had to sit down and draft up a provision, I don't know exactly what I would say.

I guess my concern is that I don't want to create a whole lot of rights that people are going to be running off to courts to try to enforce. Maybe it's going to be the responsibility of organizations like ours to make sure that doesn't happen by our own governance procedures.

• (1700)

Ms. Siobhan Coady: Thank you.

The Chair: Ms. Manwaring, did you have any comments?

Thank you very much, Madam Coady.

We're going to go to Mr. Lake now.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): I'll start by thanking you for coming out today and taking this time.

It's interesting; I was looking through your report here, and in appendix 1, it lists the National Nonprofit Sector Task Force. The first name on that list is Jacqueline Biollo, one of my constituents. It's been my pleasure to have an ongoing and productive discussion with her on some of these issues.

I have a couple of questions. I guess the time issue has come up. Mr. Reid mentioned this. The political reality is that we're in another minority Parliament. My colleagues across the way might be able to indicate when the next election's going to be. They may have some

knowledge of that, I don't know. It seems to me that it's constantly around the corner. This bill has come up time and time again and not been passed.

You have 161,000 people whom we're talking about consulting with, potentially. The danger in this sector is that if you invited 161,000, there's enough passion out there that they would probably all want to come. Obviously there's only so much time that we have to dedicate to consultation. We had 350 members of the public take part in the consultations between 2000 and 2002—many of them probably part of your organization. There was an additional round of consultations in 2005. The committee studied this between 2004 and 2005.

This question is more for Imagine Canada. Mr. Reid can comment, although I think I know the answer from Mr. Reid.

If you had the choice right now between the bill as it is or no bill at all because time expires again, which would you take?

Ms. Cathy Barr: Our task force was in fact quite divided on that question. I think the non-profit sector probably is too.

There is a group of organizations that would prefer this bill to the current one. There are certainly many experts in the field who believe we will be worse off if this is passed because more complex sections will become embedded in the act and will be there for the next 50 or 60 years.

So I would say that opinion is quite divided among those who are aware that this bill is here at all. I don't feel that we would even take a position on that. I would say even our task force was divided on that.

Mr. Mike Lake: Mr. Reid, do you want to comment on that?

Mr. Alan Reid: I think our position is in our submission.

Mr. Mike Lake: Okay.

Mr. Alan Reid: We think it's time to look ahead.

Mr. Mike Lake: Looking at the five recommendations for improvement from Imagine—for example number three, number four to some extent, and number five—it seems to me that we're just talking about some housekeeping in terms of those things. They don't seem overly substantive.

Regarding the remedy section, it seems to me that if the bill were to pass as is, based on what you're saying here, you could probably solve that problem simply through your organization being representative of other organizations by putting on your website a catalogue of remedies in one place that they could refer to if they had to.

I want to come back to the two-tier approach, the soliciting versus non-soliciting. I want to get some clarification. Most people would see the need for accountability for organizations that are raising money. Further to Mr. Warkentin's point, it doesn't seem to make sense to hold organizations that aren't asking for money from other people, from members of the public, to the same standard.

Are you suggesting that there should be less accountability, that looser standards should be in place for everybody?

• (1705)

Ms. Susan Manwaring: There are differences between soliciting corporations and non-soliciting corporations mainly in the areas of financial audit requirements—there's a significant difference there—and the makeup of the board of directors. I'm probably forgetting one or two things.

The main difficulty with it, and where I see that it will cause problems, is that people aren't going to know from time to time where they fit, that they will likely be more in non-compliance than compliance.

I would say you take the tougher standard and you apply it to everybody so there's one set of rules. They apply, and everybody....

I don't think the accountability should be loosened.

The Chair: Thank you very much, Madam Manwaring.

[*Translation*]

Do you have any more questions, Mr. Bouchard?

Mr. Robert Bouchard: Yes. I have a question for Mr. Reid from the Red Cross.

Mr. Reid, as you said, the Red Cross has a presence in many communities across Canada and in all provinces, as well as internationally. Your organization's purpose is to improve the situation of the vulnerable.

Do you have any reservations about Bill C-4 applying to co-operatives given that you work in humanitarian aid?

Ms. Pam Aung Thin: Can you translate the term “mutualiste” for us?

Mr. Robert Bouchard: I think it kind of means co-operative or mutual.

Ms. Pam Aung Thin: Are you talking about a multilateral system?

Mr. Robert Bouchard: I cannot translate the word, but I saw it in the translated version.

[*English*]

Mr. Alan Reid: Is your concern with some of the organizations that we work with in delivering, with other organizations that we

might “partner” with in doing our humanitarian work? Is that the concept that you're expressing?

[*Translation*]

Mr. Robert Bouchard: It is specifically to do with categories of organizations.

The Chair: I feel that “mutualiste” is the equivalent of the English “co-operative”. There are a lot of organizations like that in the country.

[*English*]

There are lots of co-ops throughout—

Mr. Alan Reid: Who are governed, usually provincially, by other legislation.

The Chair: That's right.

I think Monsieur Bouchard is referring, when he talks about

[*Translation*]

the word “mutualiste”,

[*English*]

to those co-ops that have incorporated or formed under provincial law.

That's just to clarify.

Mr. Alan Reid: I don't see that this legislation will really have any effect on any relationship such as that. I mean, unless I'm misunderstanding you, I don't feel a concern around your question.

[*Translation*]

Mr. Robert Bouchard: Okay, that is fine.

The Chair: Do you have another question, Mr. Bouchard?

Mr. Robert Bouchard: No, that is fine.

[*English*]

The Chair: Thank you.

Our questions and comments from members will end here.

Thank you very much to our four witnesses for appearing today. We thank you for your testimony. It has been helpful.

A voice: Thank you.

The Chair: We're going to adjourn the meeting. We have votes at 5:30 p.m.

This meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.