



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Finance

FINA • NUMBER 006 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Monday, November 18, 2013

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Chair

Mr. James Rajotte

Standing Committee on Finance

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• (1530)

[English]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call this meeting to order.

This is the sixth meeting of the Standing Committee on Finance. We are televised today. Our orders of the day are pursuant to the order of reference of Tuesday, October 29, 2013, the study of Bill C-4, A second act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures.

We're very pleased to have with us many officials from the Department of Finance and other departments to analyze this bill for us and to help us address our questions and comments on the bill.

In particular, we have three Department of Finance officials before the committee today: Mr. Ted Cook, senior legislative chief, tax legislation division, tax policy branch; Mr. Sean Keenan, director, sales tax division; and Mr. Geoff Trueman, general director, analysis, tax policy branch.

Welcome, gentlemen, and thank you for being with us.

Colleagues, I propose that we proceed this way. There are obviously three parts to the bill. I've asked Mr. Cook to give a brief opening statement focusing in particular on some of the items that members of the committee have identified to me as areas which they wish the committee to focus on.

Mr. Cook will give a brief opening statement and then we'll have questions from members. There will be an allotted time for questions, and we will proceed in the normal questioning order. I am proposing that we do it by parts. We'll start with part 1, move to part 2, and then do part 3.

Mr. Cook, could we have your opening statement at this time, please.

Mr. Ted Cook (Senior Legislative Chief, Tax Legislation Division, Tax Policy Branch, Department of Finance): Thank you, Mr. Chair.

I understand that there were three measures in particular from budget 2013 that the committee had expressed a particular interest in. I'll provide just a brief overview of each of those three measures. Then we'd be happy to answer any questions the committee members might have.

The first measure has to do with labour-sponsored venture capital corporations, or LSVCCs.

This measure would phase out the federal LSVCC tax credit. The federal credit will remain at 15% when it is claimed for a taxation year that ends before 2015. It will be reduced to 10% for the 2015 taxation year, and to 5% for the 2016 taxation year. The federal LSVCC credit will be eliminated for the 2017 and subsequent taxation years.

The measure will also end new federal LSVCC registrations and the prescription of new provincially registered LSVCCs for tax purposes. An LSVCC will not be federally registered if the application for registration is received after March 20, 2013. A provincially registered LSVCC will not be prescribed for the purposes of the federal credit unless the application was submitted before March 21, 2013.

The second area of interest relates to mining expenses.

With regard to mining expenses, pre-production mine development expenses—these are certain intangible expenses, such as sinking a mine shaft or removing overburden—are currently treated as Canadian exploration expenses for tax purposes, and are therefore fully deductible in the year incurred. They are to be treated as Canadian development expenses, which are deductible at a rate of 30% per year on a declining balance basis. The transition from Canadian exploration expenses to Canadian development expenses will be phased in over the period from 2015 to 2017.

In addition, the accelerated capital cost allowance provided for certain assets, such as plant facilities, roads, and airstrips, acquired for use in new mines or eligible mine expansions is phased out over the period from 2017 to 2020, other than for bituminous sands and oil shale, for which the phase-out was announced in budget 2007.

The last measure relates to the additional deduction for credit unions.

The first budget implementation act, Economic Action Plan 2013 Act, No. 1, included amendments to phase out over five years the additional deduction available for credit unions. The additional deduction provides credit unions with access to the small business tax rate that is not available to other corporations.

This measure remedies a technical issue with that phase-out. In particular, it ensures that during the phase-out period, the portion of the credit union's income that is not eligible for the additional deduction is taxed at the rate of 15%, the general corporate rate. This measure applies to taxation years that end after March 20, 2013, and is therefore consistent with the phase-out of the additional deduction.

Those are my comments, Mr. Chair.

•(1535)

The Chair: Thank you very much for your opening comments.

We'll begin members' questions

[Translation]

with Mr. Caron, please.

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): Thank you very much to all three of you, and to Mr. Cook in particular.

I would like to ask you some questions about the elimination of the labour-sponsored venture capital tax credit. As I am sure you know, Ontario also eliminated this tax credit in 2005.

Before returning to the Ontario example, I would like to know if you carried out any impact studies on the level of venture capital. It is extremely difficult to access such capital. The FTQ Fonds de solidarité and Fondation, in Quebec, are the two major funds in Canada; they are extremely active and have placed Quebec among the ranks of jurisdictions that have the highest amount of venture capital. Have you analyzed the impact this measure will have on the level of available venture capital in Quebec and in Canada?

[English]

Mr. Sean Keenan (Director, Sales Tax Division, Department of Finance): I would say we don't have a study per se. We anticipated that with the elimination of the credit there would still be an incentive for people to invest in LSVCCs because they are eligible investments under the registered retirement savings plan.

The government has also introduced a new venture capital action plan which is a new approach to supporting venture capital in Canada. That new plan is being put in place and will support venture capital in Canada.

[Translation]

Mr. Guy Caron: Are you telling me that the Department of Finance has not done any impact studies to determine how the elimination of the tax credit will affect the level of available venture capital in Quebec and in Canada?

[English]

Mr. Sean Keenan: We don't have any specific studies that...

[Translation]

Mr. Guy Caron: To go back to the example of Ontario, which eliminated the tax credit in 2005, this had a very serious impact on the level of available venture capital. As of 2005, the amounts available in Ontario dropped precipitously. Currently, even though Ontario has a significantly higher GDP than Quebec, both provinces are at the same level as compared to the Canadian average, that is to say that both Quebec and Ontario have 36% of Canadian venture capital reserves. In short, both provinces are at the same level, even though Quebec has a far lower GDP. So that had a considerable effect on the availability of venture capital in Ontario. I would expect that the effect will be the same on the venture capital available in Quebec.

[English]

Mr. Sean Keenan: The situation in Ontario is a little bit different from the situation in Quebec in the sense that the two funds in

Quebec are very well established. They have a much different approach to raising funds in the sense that they have a lot of payroll deductions that individuals can make, and the infrastructure for making contributions is dramatically different from what was in place in Ontario at the time. To make a direct comparison to suggest that the Ontario experience will be the same as the Quebec experience is not.... The situations are different.

[Translation]

Mr. Guy Caron: The existence of the tax credit is a recognition of the fact that these funds have a lower yield in the beginning, especially during the first years. There is a longer-term rate of return, since Quebec law requires that a minimum of 60% of the capital in these funds be invested to either save or start up businesses. This means that their rate of return is much slower than that of other funds, that could now become more attractive to investors or savers. Was that aspect considered?

•(1540)

[English]

The Chair: Could you give a brief response, please.

Mr. Sean Keenan: I think it's fair to say the government thought, given the concerns about the LSVCCs and the impact they were having on the venture capital market, that there was a better approach to supporting venture capital in Canada through the venture capital action plan. The new approach will be a better way to support venture capital than the labour-sponsored venture capital corporation tax credit was.

The Chair: Thank you.

We'll go to Mr. Keddy. Again, we're just focusing on part 1 in this round.

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): We're just on part 1.

The Chair: Yes.

Mr. Gerald Keddy: I'm assuming that includes the lifetime capital gains exemption.

The Chair: Yes.

Mr. Gerald Keddy: Very good.

The explanation in the budget on increasing the lifetime capital gains exemption from \$750,000 to \$800,000, so you get half of that, have you costed that out? In most cases, quite frankly, where there are partnerships involved, it is not an \$800,000 capital gains exemption but a \$1.6 million capital gains exemption, and that's the same for fishing property, or forestry property, or farm property.

Mr. Ted Cook: In terms of the costing, are you talking about investments through partnerships as opposed to directly?

Mr. Gerald Keddy: Absolutely.

Mr. Ted Cook: There is no difference in specific costing. The costing we have used in the budget is based on the \$800,000. As you point out, it's available with respect to either qualified small business corporation shares, or qualified farm property, or qualified fishing property.

Mr. Gerald Keddy: My question is that if there are two partners, that essentially doubles. Have you figured out the cost of that doubling to the treasury?

Mr. Ted Cook: You are right in the sense that if there are two partners, then each—

Mr. Gerald Keddy: They can both claim the full capital gains exemption.

Mr. Ted Cook: —individual has their own capital gains exemption.

The costing we have in the budget would be the full costing, which includes that for each individual who is able to claim it directly or indirectly through a partnership. The lifetime capital gains exemption is approximately \$35 million per year going ahead.

Mr. Gerald Keddy: Thank you.

My other question—and I think we're still working on part 1 here—was on the closing of tax loopholes. We're going to extend the reassessment period for a reportable tax avoidance transaction by, I think, three years.

Mr. Ted Cook: That's correct. It's three years from the time the missing information is provided to the CRA, and it's in respect of those particular transactions, be they tax shelter or reportable transactions.

Mr. Gerald Keddy: Regarding tax shelters, you mean when the returns are not filed on time. I guess that's the plan here.

Are we going to be able to track down more people who are not entirely forthcoming with tax returns by doing this? How do we find those individuals?

Mr. Ted Cook: In terms of how we do it, individuals have their own reporting obligations for the income tax return. As well as the actual income tax return obligations, there are these additional reporting requirements, which are for tax shelter promoters and people involved in these reportable transactions. There's a second layer of reporting. As well, in prior budgets we introduced additional penalties with respect to tax shelter reporting in particular if reporting isn't done as required.

This measure just layers on another aspect, because the purpose of the reportable transaction reporting and the tax shelter reporting is to assist the CRA in conducting a thorough review of the tax affairs of participants. If the participants haven't been forthcoming with respect to their reporting, then their files are going to remain open from an audit perspective for a greater length of time until the correct returns have been filed.

• (1545)

Mr. Gerald Keddy: If they fail to correctly report foreign income, let's say from a specified foreign property, on their annual income tax return, we know that's illegal, but in all honesty how many Canadians are generating an income from foreign properties and not reporting it?

Mr. Ted Cook: Well, that's always a difficult question, because how do you know—

Mr. Gerald Keddy: But we've made a law here and I want to know how many people we're going to encompass under it.

Mr. Ted Cook: We don't have any particular figures on how many additional reports we're expecting.

I would just point out that you've kind of shifted. There are actually two measures contained in part 1. One relates to reportable transactions and tax shelters. That gives an additional three years to CRA in respect of those particular types of transactions. The second measure relates to what we call the foreign income verification statement, the T1135, and that is a separate measure. If information is missing from that and there's foreign income that's not correctly reported, that will open up a taxpayer's entire year for an additional three years. That has to do with the complexity and the difficulties in tracking down foreign income.

Mr. Gerald Keddy: In layman's terms, if it's flagged, then the additional three-year assessment comes in.

Mr. Ted Cook: That's right, and that's consistent with some existing provisions in the act where corporations are engaged in international transactions. Obviously, international transactions are more difficult for the CRA to audit, and this ensures they have the additional time necessary.

Mr. Gerald Keddy: Thank you.

The Chair: Thank you, Mr. Keddy.

Mr. Hsu, please, for your round.

Mr. Ted Hsu (Kingston and the Islands, Lib.): Thank you, Mr. Chair.

With respect to the labour-sponsored venture capital corporations tax credit that is being phased out, according to Finance Canada's tax expenditure report, the tax credit provided \$145 million in tax relief in 2012. I was wondering if you could, first of all, confirm the number of Canadians who received this tax credit. Is it something like 300,000?

Mr. Sean Keenan: Yes, it is. According to the latest information that's available on the CRA website, it's in that range.

Mr. Ted Hsu: Okay, and how long do individuals have to hold an LSVCC share in order to benefit from the tax credit? Is it eight years? Does Bill C-4 change that time period?

Mr. Sean Keenan: The tax credit is provided up front at the time the individual purchases the shares. They can claim the LSVCC credit on their tax return for that taxation year. The credit is received up front. One of the conditions is that the shares must be held for an eight-year period. If they are sold within that period, then the tax credit goes back. The rules are slightly different in Quebec, in that they have to be held until the person reaches the age of 65.

Mr. Ted Hsu: Does Bill C-4 change that?

Mr. Sean Keenan: No.

Mr. Ted Hsu: Thank you.

Have you done any analysis on how the phase-out of this federal tax credit will affect or impact venture capital funds which currently are eligible for the tax credit?

Mr. Sean Keenan: As I said previously, in provinces where there is a provincial credit there is a financial incentive for individuals to invest in LSVCCs. The purchase of the shares also continues to be an eligible investment under registered retirement savings plans, so they're still an attractive investment opportunity. The government has introduced a new approach to supporting venture capital in Canada, through the venture capital action plan. The idea is that the venture capital industry in Canada will be better off as a result of this new approach.

Mr. Ted Hsu: Switching now to mining expenses, how many mining companies in Canada are expected to be affected by the measures in Bill C-4 to increase tax revenues from the mining sector? This is with regard to the accelerated capital cost allowance. How many mining companies?

Mr. Geoff Trueman (General Director (Analysis), Tax Policy Branch, Department of Finance): I couldn't give you a specific number of mining companies in any particular taxation year; their attributes may change from taxable to non-taxable. The measures with respect to accelerated capital cost allowance, though, and the change to the classification of pre-production would primarily affect intermediate or senior companies that are in the process of opening a mine or have an operating mine, as opposed to junior companies, which would not be affected.

• (1550)

Mr. Ted Hsu: Was there an examination of how these changes will affect rural and remote communities where mining activities are a significant part of the economy?

Mr. Geoff Trueman: I think it's fair to say that when you look at these provisions, they have both grandfathering and transition, the grandfathering so that projects already under way continue to receive the tax treatment, and then the transition over a fairly lengthy period so that the effect is phased in over time. Those were the same provisions that were paralleled in the oil sands industry when those were enacted in budgets 2007 and 2011.

Certainly the idea is to give the mining industry ample opportunity and time to plan for those changes and to not affect projects that are already under way, and in the recognition that, yes, mining is an activity that occurs in most provinces and territories across Canada, and often in those rural areas.

Mr. Ted Hsu: The Conservative Party has certainly argued that higher corporate taxes lead to fewer jobs. As part of the research done in preparing Bill C-4, did the department do any analysis on how the tax measures referred to in paragraph (k) of part 1 in the summary of Bill C-4 might impact employment in the mining sector?

Mr. Geoff Trueman: As I say, I think the key thing to look at in these measures is the fact that with the grandfathering and the transition, they will take place slowly over time.

The idea is to provide greater neutrality in the corporate tax system and to have investment decisions made in the mining industry undertaken based on economic fundamentals.

As you are also aware, certainly the government has put in place a number of measures on the other side to facilitate mining in this country, things such as the regulatory review that was announced in the previous budget.

The Chair: Thank you, Mr. Hsu.

We'll go to Mr. Saxton, please.

Mr. Andrew Saxton (North Vancouver, CPC): Thank you, Chair.

Thank you to our witnesses for being here today.

I'd like to follow up on Mr. Hsu's questions as well.

Bill C-4 expands on the government's ongoing effort to make the tax system fair across industries. It follows through on our government's G-20 commitments to eliminate inefficient fossil fuel subsidies.

Can you elaborate on the phase-out of tax preferences that have favoured the mining industry?

Mr. Geoff Trueman: As noted, the idea behind measures being put in place to improve neutrality in the tax system is essentially to put the mining industry on an equal footing with other industries. Doing that involves removing some long-standing preferences in the tax system regarding the capital cost allowance system and the treatment of capital property.

These moves parallel changes that have already been announced and enacted in budget 2007 and budget 2011 regarding the oil sands sector. There were additional changes in budget 2012, including the phase-out of the corporate mineral exploration tax credit as well as changes to the Atlantic investment tax credit, which affected mining and oil and gas.

These further Canada's commitment under the G-20 to phase out inefficient fossil fuel subsidies as they affect oil and gas and also as they affect the coal mining sector as part of mineral exploration and extraction.

Mr. Andrew Saxton: Thank you.

Bill C-4 also encourages businesses to invest in clean energy generation technologies.

Can you provide details on how this measure will expand biogas production?

Mr. Geoff Trueman: That refers to the changes we're making with respect to class 43.2. Class 43.2 provides an accelerated capital cost allowance for certain assets that are acquired for clean energy generation.

Two changes are included in Bill C-4.

First of all, there is biogas production equipment that uses a broader range of feedstock. Eligibility is currently limited to equipment that uses sludge from an eligible sewage treatment facility, food and animal waste, plant residue, and wood waste. Bill C-4 proposes including equipment that will use pulp and paper waste and waste water, beverage industry waste and waste water, and separated organics from municipal waste. It simply expands the range of eligible feedstocks and will allow biogas production to take place on a more comprehensive scale.

Second, a broader range of cleaning and upgrading equipment that is used to treat gases from waste to obtain biomethane will be included. This simply expands the range of eligible equipment so we can facilitate that on a more comprehensive basis as well.

• (1555)

Mr. Andrew Saxton: As was asked earlier regarding tax loopholes, C-4 closes a number of overly exploited and outdated tax loopholes.

Can you address the positive effects this will have down the road?

Mr. Ted Cook: In terms of the types of loopholes that are addressed, there is certain planning with respect to leveraged life insurance and leveraged insured annuities. More particularly, there are also changes with respect to the taxation of trust attributes and corporate loss trading transactions. Those are types of transactions that seek to use corporate losses and business losses incurred by trusts as essentially a commodity that can be traded between entities.

The measures would mean losses could be used only under appropriate circumstances, thereby allowing the tax system to prevent a particular taxpayer who has incurred a loss from using it for anything other than to recoup it in the operation of their business, instead of being able to transfer it to other taxpayers.

Mr. Andrew Saxton: Do you have any estimates as to how much tax revenue will be generated as a result of closing these loopholes?

Mr. Ted Cook: To give you a couple of examples of the types of revenue impacts we're looking at with respect to character conversion transactions, there are approximately \$55 million per year. Trust loss trading has been, as noted, \$70 million per year. With respect to the leveraged life insurance arrangements, that's in excess of \$100 million per year. It's significant.

Mr. Andrew Saxton: Thank you, Chair.

The Chair: Thank you, Mr. Saxton.

[Translation]

Mr. Caron, you have the floor again.

Mr. Guy Caron: Thank you very much.

Mr. Keenan, I want to continue with you on the topic of the labour-sponsored venture capital tax credit.

We have determined that no impact studies were done on the effect this measure would have on the level of available venture capital. I would like to know if impact studies concerning the level of savings were carried out, given that this is a very important incentive in that regard. Indeed, this has allowed Quebec savings to develop considerably. I am referring to impact studies on the level of savings, in light of the changes that are going to be made.

[English]

Mr. Sean Keenan: I couldn't point to anything specific on the level of savings, but I do know that in terms of individual savings in Canada, especially for retirement savings, there's a tax preferred savings regime that's in place where individuals receive an upfront deduction for their contributions to their retirement savings plans. That regime applies in the same manner across a multitude of eligible investments of other pensions.

LSVCCs are certainly, as I mentioned before, an eligible investment for an RRSP contribution. Will that change people's savings behaviour? We think the incentives are already in place for individuals to save.

[Translation]

Mr. Guy Caron: I ask the question because it is clear that if I am an investor, I want to know whether I will have a return on my investment for my retirement. If I know that by investing in labour-sponsored funds, I am going to have a lower rate of return and a longer-term one than if I invest in a far more speculative fund, for instance, I may indeed turn toward other options. In this way, the 15% reduction in the tax credit is going to influence savers' behaviour. In light of that, we may expect a decrease in the level of savings, and we may see many investors turn toward other vehicles. That is why I would like to see an impact study.

I have a brief question; I would like a clarification. According to the government's 10-year venture capital plan, it intends to invest \$400 million. We are not talking about a \$400 million investment every year, correct? I am talking about the amount the federal government is going to invest in its venture capital plan.

• (1600)

[English]

Mr. Sean Keenan: The investments in the venture capital action plan are \$400 million.

[Translation]

Mr. Guy Caron: So we are not talking about an amount of \$400 million per year, but rather about a single, one-time amount of \$400 million.

[English]

Mr. Sean Keenan: It is a \$400-million investment.

[Translation]

Mr. Guy Caron: Fine.

I would like to know if a comparative analysis was done, and I would like to hear your thoughts about this.

I know that the Minister of Finance met with representatives of the labour-sponsored funds, i.e. the Fonds de solidarité FTQ and the Fondation of the CSN. Since they saw that the drop in revenue related to the tax credit would be a problem, the representatives made him an offer. They suggested the possibility of limiting the number of shares issued, and thus of limiting the tax expenditures. They suggested investing \$550 million in private funds in Quebec—the labour-sponsored funds will surely invest in private venture capital funds—with the possibility of investing everywhere in Canada, not just in Quebec. In addition, \$400 million from these two funds would be invested in private funds outside Quebec, including \$120 million in the two national funds of the Venture Capital Action Plan.

In all, the two funds proposed an investment of approximately \$1.5 billion, but the minister rejected the offer.

Was a comparative analysis carried out on the advantages provided by that level of venture capital as compared to the government plan, and on the advantages of the available level of venture capital in Quebec and in Canada?

[English]

Mr. Sean Keenan: I'm not the expert on the venture capital action plan in terms of how much the funds are.... There's a certain amount of leveraging taking place in that plan.

I would say that the government has gone out and established a review panel, led by Mr. Tom Jenkins, to look at how to support venture capital in Canada. It came out with a report which said that a venture capital action plan was a better way for the government to use its resources in that area, that the labour-sponsored venture capital corporations tax credit has been the subject of many studies where it's found to be not an effective way to direct support to the venture capital industry, and that this new venture capital action plan is a better approach to supporting venture capital.

[Translation]

Mr. Guy Caron: What I gather from what you have told me is that there was no impact study on the level of venture capital, nor on the effect this could have on savings behaviour. Nor was any comparative analysis done on the proposal made by the two funds and the minister's proposal.

[English]

The Chair: A brief response, please.

Mr. Sean Keenan: I don't have a response.

The Chair: Okay, thank you.

I'm going to Mr. Hoback now, please.

Mr. Randy Hoback (Prince Albert, CPC): Gentlemen, it's great to see you this afternoon.

I want to talk about electronic suppression of sales software, ESS, or zappers.

Could you give us an overview of what zapper software would be and what it does?

Mr. Ted Cook: Certainly I can give you a brief overview.

I would say to the chair that the official who is the subject matter expert will be up for part 2, so if you want to have—

Mr. Randy Hoback: Would you prefer that I park it until part 2?

Mr. Ted Cook: If that's okay with the member.

Will I bring him up?

The Chair: Well, we're doing part 1 now.

Is it both part 1 and part 2?

Mr. Ted Cook: There are equivalent amendments with exactly the same wording in both parts 1 and 2.

The Chair: Okay.

[Translation]

Mr. Mercille, welcome. You have the floor.

[English]

Mr. Pierre Mercille (Senior Legislative Chief, GST Legislation, Department of Finance): Good afternoon. My name is Pierre Mercille. I'm the senior legislative chief in the sales tax division of the Department of Finance.

The amendment in respect of electronic suppression of sales software is both in part 1, for the Income Tax Act, and in part 2, for the Excise Tax Act. The sales tax division was the lead division in respect of this measure.

Electronic suppression of sales software is commonly known as zappers. It can have basically two forms. It can be a hidden component of the accounting operating system at the point of sale in a cash register. That's usually referred to as phantom-ware, but for simplification we call them zappers. A zapper, per se, is usually something that is not included in the software. It's an addition, or something you can have on a USB key, or it can be on the website. It allows the person who uses that software to selectively delete some of the sales transactions in the records of the system. It can in some cases create a virtual second till. When the auditor comes in, the first thing he will see is the modified, the falsified, record from the business. With more extensive analysis, in some cases the CRA can find there were sales that were deleted using software.

The amendments in both part 1 and part 2 provide administrative monetary penalties for the use, possession, acquisition, manufacture, development, possession for sale...basically all sorts of actions that you can do with this software. There are administrative monetary penalties, and there are also more serious criminal offences that can apply, again, for the same use, possession, acquisition, manufacture, sale, offer for sale.

Basically these amendments are there to combat tax evasion by sending a very strong warning to people that there can be severe consequences for using it. It's also there to deter the development and sale of that software.

•(1605)

Mr. Randy Hoback: Okay.

Do you have any idea of the size of this type of corruption, which I'm going to call it for lack of a better word, that is ongoing right now in the Canadian economy?

Mr. Pierre Mercille: The Department of Finance doesn't have these kinds of numbers. It's very difficult to have numbers in that respect because it's basically fraud. Nobody reports the amount that they fraud. There can be cases and numbers being extrapolated, but even the people who write on it don't really agree. Some people have made these numbers public, but I'm not saying whether they are good or not.

The restaurant association estimates that in Canada it could be up to \$2.4 billion in sales that are being evaded. The Quebec government has published some numbers—again, I'm not saying if the numbers are good or not because we don't have a position on that—and they see revenues of maybe \$400 million a year in Quebec.

Mr. Randy Hoback: I see you have this legislation coming into force on January 1, 2014 or upon royal assent, whichever is later.

Mr. Pierre Mercille: Yes.

Mr. Randy Hoback: What do you have right now to combat this type of crime?

Mr. Pierre Mercille: Right now there is provision in the legislation for when you do a false statement and things like that. In the more severe cases, maybe fraud and things like that can be invoked under the Criminal Code. These amendments were put in place following a recommendation by OECD. They have a group who studied this and they recommended a specific offence for all the actions I mentioned: use, possession, acquisition, manufacture, development for sale, and sale of the software. Those were their main recommendations to address the problem. Basically, the goal is to say to people that if they use that, or if they sell that, or if they develop that, there will be severe consequences.

Mr. Randy Hoback: It's another tool in the tool box.

Mr. Pierre Mercille: Yes, it's actually a request from the Canada Revenue Agency to do that.

You mentioned coming into force. The provision for coming into force was announced in budget 2013 in March. The coming into force was decided to be the later of royal assent or January 1, 2014 to give time for businesses to stop using it and to do voluntary disclosure if they don't want to be caught in the future. Also, it gives time to those stores that may not even know that this exists in their software, because it may be hidden and they don't have the code to make it work. It gives them time to check their system, so at the end they can have peace of mind if the CRA discovered that they would not be subject to the penalties.

Mr. Randy Hoback: You'll do some advertising or notification to make business owners aware of that.

Mr. Pierre Mercille: This is a responsibility. In addition to the budget announcement and the news release when these measures were announced by the Department of Finance in September, the CRA is responsible for communicating the message that if you have this software you should get rid of it and not use it.

• (1610)

The Chair: Thank you.

Thank you, Mr. Hoback.

We'll go to Ms. Nash.

Ms. Peggy Nash (Parkdale—High Park, NDP): Thank you, and welcome to the officials. There are dozens of you in the room today, and that means we're examining another omnibus budget implementation act. Welcome back and I'm sorry we are in such a time crunch dealing with so many different topics. I'm sure that Canadians watching the proceedings will be confused as we jump from topic to topic over the course of this meeting.

I want to ask a question in part 1 about credit unions. In budget 2013 there was a surprise tax hike on credit unions that will see their taxes increase from 11% to 15%. This will cost them, I'm told, over \$200 million over the next five years. I know that this was dealt with in the Budget Implementation Act in the spring. At that time, we asked about the rationale for making this change. We didn't really get much in the way of answers that recognized the distinct nature of credit unions as opposed to Canada's large banks. Since that time I've had the opportunity to meet with many more credit unions, not only the ones in my own community, but also many across the country.

They have told me what this will mean. Because of this tax hike on credit unions, there are many community investments they will not be able to make, and there are a number of community projects they will not be able to fund as they have in the past.

This may be a difficult question for officials and more appropriately asked to the minister or parliamentary secretary, but given that you are here today, I ask you, have there been subsequent impact studies on this change?

I also want to ask a further question about the elements addressed in this BIA.

Mr. Geoff Trueman: Thank you, Ms. Nash. I'm happy to take that question.

For us the measure is really about the neutrality in the tax system. Credit unions had access to the small business rate on a basis that was not consistent with other small businesses in Canada. Credit unions prior to the proposed measure in budget 2013 were able to shelter income beyond the \$500,000 small business limit and without reference to the taxable capital limit that all other small businesses must respect. In that context the measure is about neutrality. It puts credit unions on the same footing as all other small businesses. Many credit unions will be unaffected by this measure. Those that are small, that are below the taxable capital threshold, will by and large be able to shelter their income up to \$500,000 and will be unaffected. The measure has its primary impact on those larger credit unions that have taxable capital beyond that limit and have income in excess of \$500,000.

The small business deduction came into being in the early 1970s in a form that was very different, and it's changed over the years with the introduction of an annual limit and a taxable capital threshold. We've also seen the narrowing of the differential between the general corporate income tax rate and the small business tax rate. All those factors argue in favour of promoting a more neutral tax system as has been the government's stated objective to put the corporate tax system on a more neutral and equitable basis across different types of businesses. That's the fundamental policy rationale for the change to credit unions.

I can also tell you that since the announcement in the budget we have had discussions with the credit unions and have met with them. We've been able to discuss these issues with them on occasion.

• (1615)

Ms. Peggy Nash: Thank you.

The Chair: Very briefly, please.

Ms. Peggy Nash: Were there consultations with the credit unions prior to making this change? Has there been any study of the impact in terms of community disengagement, that is, in terms of funds that will now not be flowing to small and large communities across the country as a result of this change and corresponding provincial tax hikes as well, which will have a huge impact on credit unions?

Mr. Geoff Trueman: To take those in turn, certainly on a neutrality enhancing measure such as this it would be uncommon to consult with industry ahead of time. There were no consultations with the credit union industry ahead of time. In terms of community involvement, that would be something credit unions would certainly be better placed to comment on than myself.

With respect to whether or not a province offers an initial deduction to a credit union, provinces still have the latitude to make that choice on their own. Currently in Canada it's about fifty-fifty. Some provinces offer an additional deduction and other provinces do not.

Ms. Peggy Nash: Am I through my time, Mr. Chair?

The Chair: Colleagues, I don't have any more government members.

How many more questions do you have, Ms. Nash, a couple more?

Ms. Peggy Nash: Just on this last piece—

The Chair: Okay.

Ms. Peggy Nash: Yes.

The Chair: Why don't we do this and then we'll move on to part 2.

Ms. Peggy Nash: Oh, no. Sorry.

We have another—

The Chair: I don't have a government round so we'll start another NDP round.

Ms. Peggy Nash: Maybe I can just split my time with Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): Sure.

Ms. Peggy Nash: For some communities the tax hike on these not-for-profit businesses is quite significant and will withdraw significant funds from the community. It really was a big surprise. There was no advance notice. I would argue that while there would be no verification given ahead of time, often there is consultation.

I have one quick question. Where did the request for the change originate? Second, because an error was made in the last Budget Implementation Act that would have, in fact, seen credit union taxes go from 11% to 28%, and thanks to KPMG for catching that and this BIA would fix that change, it does speak to the haste with which these changes are made in budget implementation acts which are of a large omnibus nature. We're glad about the correction but we disagree with the original change from 11% to 15% tax hike.

Could you answer that last short question?

Mr. Geoff Trueman: Sure. We certainly do our utmost to ensure the accuracy of our legislation. This was an unfortunate error that did occur. Perhaps it's a complex provision to work through. We do apologize for that error. I would note that this bill will correct it, so there should not be any difficulty for the credit unions in that respect.

The measure does have a five-year phase-in mitigating to some extent the impact you were talking about. Absolutely the tax burden on credit unions is projected to increase, but there will be that five-year transition period leading in.

Ms. Peggy Nash: Where did the request for the change come from?

Mr. Geoff Trueman: Every year the department examines a number of options for changes to tax policy. I couldn't pinpoint where this one would come from, in particular, but it certainly falls within the theme of greater neutrality in the tax system.

Ms. Peggy Nash: Thank you.

The Chair: Mr. Rankin, you have a couple of minutes.

Mr. Murray Rankin: Yes, very briefly, thank you.

Thank you, witnesses, for being here.

My question is about restricted farm losses, which is in part 1. I'm not sure who will tackle that.

The new law purports to respond to last year's Supreme Court of Canada decision in the Craig matter. We have received a lot of concern from the Canadian Federation of Agriculture.

A headline from the *The Western Producer* on October 31 noted, "Tax law changes discourage farmers, Income Tax Act New limits on writing off farm losses 'troubling'"

Apparently the federation is concerned that the changes to the restricted farm losses are going to hurt small farmers and new farmers. As you know, many family farms and new small farmers rely on sources of income outside the farm to make ends meet. This bill apparently, and I'm asking for clarification, proposes to eliminate the deductibility of farm losses if people on the farm have another source of income, even if they're transitioning to running a farm full-time.

Did the department consult with the Canadian Federation of Agriculture about this change, or consult with young farmers about how it's going to have an impact on the viability of starting new farms?

As well, just how much money is the government going to save with these proposed changes?

● (1620)

The Chair: On the question of consultation and the question of revenue, Mr. Cook, go ahead.

Mr. Ted Cook: In terms of the revenue from this measure....

The Chair: It's a consultation....

Mr. Ted Cook: It is just \$5 million in terms of the revenue—

Mr. Murray Rankin: The revenue that will be saved as a consequence?

Mr. Ted Cook: That's correct.

Mr. Murray Rankin: What was the consultation record with this change?

Mr. Ted Cook: I can't speak directly to the consultation. I can talk about the response to the Supreme Court decision.

Mr. Murray Rankin: I was not concerned about that. There is so much concern about young farmers and people trying to get into this business. The letters are quite poignant. I wonder who you talked to—

Mr. Ted Cook: Well—

Mr. Murray Rankin: —to save \$5 million?

Mr. Ted Cook: It's not about that so much as...all this measure does is return the law to what it was prior to the Craig decision. The Moldovan decision was made by the Supreme Court of Canada in 1971, I think, under the interpretation of section 31 at that time. CRA has administered that since 1971.

Craig was a decision in 2012 which had to do with a high-income professional who lost hundreds of thousands of dollars. All this measure does is seek to return the state of the law to what it was prior to the Craig decision. All it's trying to do is get at the type of tax planning that can occur in situations.... Farmers can take advantage of cash-based accounting. They have certain tax benefits that aren't available to other taxpayers. The concern is that when you mix farming with other sources of income, when you have high-income professionals, they can be used to generate significant losses and significant changes.

Certainly the target of this is not meant to be farmers starting out; it's just to return the state of the law to what it was prior to the Craig decision.

The Chair: Thank you.

Mr. Hsu, you have two questions, and then we'll move on to part 2.

Mr. Ted Hsu: Thank you.

With regard to the phase-out of the accelerated capital cost allowance provisions for the mining sector, in budget 2013 there were some financial estimates going up to 2017-18, but this item won't be phased out until 2020.

Mr. Geoff Trueman: Right.

Mr. Ted Hsu: How much will revenues be increased because of this measure in 2021 when the accelerated capital cost allowance has been completely phased out?

Mr. Geoff Trueman: I'm happy to respond to that for you. I have an answer prepared, so let me refer to that.

It won't be fully phased out until 2021. It becomes more difficult to project the revenue gained that will be realized. The cost of the accelerated allowance will obviously vary considerably from year to year, based on developments at the project, industry, and economy levels. Many factors could certainly change during that period.

Subject to those caveats, the annual revenue gain on a nominal cashflow basis, once the measure is fully phased in, was forecast to be roughly \$75 million.

Mr. Ted Hsu: Thank you.

The last question is about the tax rate on credit unions. The last budget implementation bill accidentally raised that to 28% instead of 15%. It seems like a pretty big mistake. I'm wondering how this happened. Was there something missing from the work that parliamentarians did, or was there something in the department? How did this happen?

I'm glad it was caught, but maybe we should be figuring out how to improve things.

Mr. Ted Cook: Just to clarify, it was a drafting error made at the Department of Finance. What it related to is not the rate of tax that would apply to credit unions after the phase-out.

During the phase-out period, 80% of the income would be eligible for the additional deduction.

That extra 20% during the phase-out period—20%, and then 40%, and then 60%—wasn't properly accounted for in a cross-reference in the act. As a result, that income would not have been eligible for the general rate reduction. It would not have been included in full rate taxable income, with the result that this income would have been subject to tax at 28% as opposed to 15%.

Now, once the phase-out period was over, our view is that the system would have returned to the state it should be. Credit unions weren't looking at 28% tax going forward. The economic effect would have been to shorten the phase-out period to somewhere between two or three years as opposed to the five years that was indicated.

In terms of how it happens, when we're drafting we try to make our best evaluation of whether we have things nailed down.

As you probably know, all the measures that are included in this bill were released for consultation in September. The measures that are more complex or would benefit from consultation tend to be put in the second bill and are released for consultation, and this gives practitioners a chance to review the legislation.

I would note that we didn't get any comments on our proposed fix with respect to credit unions. Everyone seems to accept that it works.

We thought that we had it dialed in and ready for BIA 1, but we did not.

● (1625)

The Chair: Thank you, Mr. Hsu.

Thank you for that clarification, Mr. Cook. That is certainly helpful to the committee.

Mr. Ted Cook: My pleasure.

The Chair: Colleagues, I believe that's it for part 1.

Could I get an indication on whether colleagues have questions for part 2?

My understanding is, Monsieur Mercille, you will be staying for part 3. The rest of your colleagues can stay as well.

We will move now to part 2.

I don't think we need a briefing at this point on the Excise Tax Act amendments, so I'm going to move directly to questions. I'll start with Mr. Van Kesteren, please.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Chair.

I'm going to go to Mr. Mercille.

I recognize that we've touched on this, but I want to understand this zipper thing a little bit more. I'm going to give you my Coles Notes and tell me if I have this right. Somebody has a cash register and they hook this little thing in, and they'll ring something up, and it will just take it off or put it somewhere else, and kind of mess around with things. Okay.

We generate in taxes and excises in a year \$220 billion, \$240 billion. Is that about right, in our budget?

Mr. Pierre Mercille: In GST, HST, I believe it's—

Mr. Dave Van Kesteren: In all revenues....

Mr. Geoff Trueman: Up around \$200 billion would be close.

Mr. Dave Van Kesteren: This is something I don't think too many people would think about. It makes sense. Obviously, we're in a technological age so people would start doing those things.

We spent a lot of time in the past talking about tax cheats overseas. I know this is a tough question. I've always been somewhat suspect of the fact, and I've argued this as well, but I haven't found too many people who are really excited about April 30, or whenever the day is when we have to pay our taxes. Most people are a little reluctant to do that, and if possible, will find a way to pay fewer taxes. Of course, when we go beyond that, when we break the letter of the law, it becomes a tax issue and we have to prosecute. Does Revenue Canada have any idea of what percentage may be being cheated at the tax level?

Mr. Geoff Trueman: I don't want to speak on behalf of the CRA this afternoon, but it's fair to say that the CRA certainly employs its audit resources in a comprehensive manner. You have drawn the distinction between international and domestic activities, for example. The CRA would clearly look at both those parts of the tax system, but I can't give you a specific number in terms of an estimate of either underground economy or tax evasion. CRA does not put out a number on those.

• (1630)

Mr. Dave Van Kesteren: Again, I know you don't represent CRA, but is there a belief that there is more on the offshore, or is there more right here, the enemy within the gates?

Mr. Geoff Trueman: It would be beyond my scope of competence to comment on that. I don't have the detailed knowledge of where the CRA directs its audit resources at that detailed level.

Mr. Dave Van Kesteren: Let's very quickly go back to the zipper. Is this a port?

Mr. Pierre Mercille: It can have many forms. It can be a hidden command in the system itself. It can be on a USB key. It can be accessible to a website. It has many forms, but in the end it's the same thing. It's to selectively delete some sales for the purpose of tax evasion.

Mr. Dave Van Kesteren: Is that something you get on the Internet? Is it something you can buy in the back alleys?

Mr. Pierre Mercille: To my knowledge, some of that software is available on the Internet. Also, sometimes it's a hidden component in some of the software being sold. You may have it and you don't even know unless you have the code to prompt a new screen that allows you to do something of that nature. It's computer science. It can be in

many forms, but in the end it does the same thing. The amendment here tries to target such forms of that software.

Mr. Dave Van Kesteren: Chair, how much time do I have?

The Chair: You have one minute.

Mr. Dave Van Kesteren: Okay.

We've skipped from part 1 to part 2. Are we into part 3 at this point?

The Chair: No, but I'd like to move to part 3 as soon as possible.

Mr. Dave Van Kesteren: I don't have any further questions, Chair, unless you have something you wanted to ask.

The Chair: Thank you, no; I'm happy to move on.

Mr. Hsu, please, briefly.

Mr. Ted Hsu: Thank you.

I have a question on the GST and HST on paid parking. I understand that the purpose here was to end the tax dispute between the federal government and 10 municipalities on whether the federal government was owed GST on revenue from municipal parking meters. I was wondering if you could first give a bit of background. In particular, which municipalities were involved in this appeal before the Tax Court, and how much revenue was at stake in this appeal?

Mr. Pierre Mercille: I don't have the list with me of all the municipalities involved, but it's available by consulting the files of the Tax Court. I believe there were more than 10.

Mr. Ted Hsu: Okay. How much revenue do you think was at stake?

Mr. Pierre Mercille: Yes, there was a dispute, but the federal government is not conceding that the taxpayer would have won. This tax dispute has been going on for a very long time, and it seems to never proceed in the courts. I think from the numbers available from the Tax Court you can find something between \$50 million and \$60 million.

Mr. Ted Hsu: Okay. From what you just told me, do you expect that if this measure does not pass, the municipalities would then resume their appeal at the Tax Court in an attempt to keep more of their parking revenues?

Mr. Pierre Mercille: If the amendment doesn't go forward, basically they will try their appeal and it will be the Tax Court that has to decide.

Mr. Ted Hsu: Okay.

Budget 2013 included the same provision with respect to GST on paid parking that would have applied to charities, but the measure for charities has not been introduced in legislation. What feedback did you get from charities about this measure in budget 2013?

Mr. Pierre Mercille: Mainly the hospital community made comments because they would have been negatively affected. Basically, the reason the government has not included the amendment in this bill is that the government continues to consult with all those affected by this technical measure and its intent.

Mr. Ted Hsu: So it may never be introduced in legislation.

Mr. Pierre Mercille: It's for the Minister of Finance to make an announcement, not for me.

Mr. Ted Hsu: Thank you.

• (1635)

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

I want to thank our officials. I assume the four of you will be staying here, but we will now be moving to part 3.

I will go division by division to make it easier for you. I would ask us all to be as brief and succinct with our questions as possible. We will call those officials for part 3, division 1, dealing with the Employment Insurance Act, the EI hiring credit, the EI premium rate, and EI fishing regulations.

I'd like to welcome our officials here. I understand we have officials from CRA, from Human Resources, and from Finance. I understand that one of you has a brief overview of this division. Is that correct? We will ask you for a brief overview, and then we'll have questions from members.

Ms. Ryan.

Ms. Annette Ryan (Director General, Employment Insurance Policy, Skills and Employment Branch, Department of Human Resources and Skills Development): We have three items, Mr. Chair, the EI premium changes, the hiring credit update, and the changes to fishing regulations. I know you want an overview of the fishing issue and we're prepared for all three.

The Chair: Who is doing what here?

Ms. Annette Ryan: Mike Duffy will cover the EI premiums, which is first up in the legislation. Ray Cuthbert from CRA will cover the hiring credit, and I'll cover the fishing regulations.

The Chair: Again, perhaps we could do that as briefly as possible please.

Mr. Michael Duffy (Director, Legislative Policy Analysis, Employment Insurance Policy, Skills and Employment Branch, Department of Human Resources and Skills Development): Thank you, Mr. Chair.

Division 1 will amend the Employment Insurance Act to set the rate for employment insurance premium rates for 2015 and 2016 at \$1.88 for every \$100 of insurable earnings. That's effectively the freeze announced by the government on September 9, 2013. It will also establish that the premium rate for 2017 and onward will be set based on a seven-year break-even rate mechanism. It will repeal the Canada Employment Insurance Financing Board Act and related provisions to that act, and the permanent dissolution of the CEIFB. It will also put in place a mechanism to ensure that for 2017 and beyond, the EI premium rate will be set by the Employment Insurance Commission.

The Chair: Thank you.

We'll go to Mr. Cuthbert, please.

Mr. Ray Cuthbert (Director, CPP/EI Rulings Division, Legislative Policy Directorate, Canada Revenue Agency): My name is Ray Cuthbert. I'm the director of the Canada pension plan and employment insurance rulings division in the legislative policy directorate of the Canada Revenue Agency.

I'm here to talk about the hiring credit for small business. It's essentially a similar credit as in the prior two budgets, with the exception that the base year's ceiling has increased from \$10,000 to \$15,000.

How does it work? Employers who had employer EI premiums in 2012 of \$15,000 and who have had an increase in 2013 are entitled to a credit. The credit is calculated as the difference between the two years. It must be greater than \$2, but not exceeding \$1,000. It's calculated automatically by the Canada Revenue Agency when the employer's 2013 T4 information return is processed.

• (1640)

The Chair: Thank you very much.

Ms. Ryan, please, for your presentation....

Ms. Annette Ryan: My name is Annette Ryan. I'm director general of employment insurance policy at Employment and Social Development.

I'll speak to the changes to the fishing regulations.

In the 2012 economic action plan, the government introduced a new permanent and legislated approach to the way EI benefits are calculated with respect to variable best weeks. Effective April 7, 2013, all regular claimants now have their weekly EI benefit rate calculated based on the best weeks of insurable earnings during the qualifying period reflective of the local unemployment rate. That was the policy intent of the national variable best weeks change that was made.

Prior to the variable best weeks, however, there were two different methods of calculating how fishing income would be included in the EI benefit rate calculation for regular benefits. There was a technical error in the drafting of those regulations which this legislation aims to adjust. For regular claimants with fishing income, the introduction of the variable best weeks introduced, essentially, a fork in the road in that a common treatment was needed to capture the treatment of fishing income within regular claims.

In drafting the treatment of the regular claimants' fishing income, the fishing income was inadvertently in line with an additional best weeks benefit rate calculation method rather than the previous more inclusive method that included essentially all of the fishing income in the qualification period. This regulatory double correction, if you will, for best weeks was essentially that technical error the budget implementation act aims to correct.

To remedy the situation, the EI fishing regulations are proposed to be amended to allow all regular claimants with fishing income to have their gross fishing earnings over the qualifying period added to their regular employment in the best weeks, as had previously been the case in the best 14 weeks pilot projects. This will allow for more inclusive treatment of fishing income and correct the anomaly created by the technical amendments. The intent is to apply this change retroactive to the time of the regulatory change of April 7, 2013, so that all current claims may be corrected in the most timely manner possible.

The Chair: Thank you for your presentation as well.

We'll begin members' questions with Ms. Nash, please.

Ms. Peggy Nash: Thank you, Mr. Chair.

Thank you to the officials for being here.

My questions start with the EI Financing Board.

I'd like to begin by asking you what the balance in the EI account was before it closed back in January 2009, before this fund was created.

Mr. François Masse (Chief, Labour, Market Employment Learning, Department of Finance): That would be \$57 billion.

Ms. Peggy Nash: The balance was \$57 billion.

Mr. François Masse: That's correct.

Ms. Peggy Nash: What was the balance of the new EI operating account that was subsequently created at that time?

Mr. François Masse: The balance of the new EI account was made available in the recently released economic and fiscal update. As of, let's say, 2013-14, the cumulative balance is a negative \$5.3 billion, so it's in deficit right now.

Ms. Peggy Nash: You just said that on January 1, 2009, the old EI account was at \$57 billion. What happened was the EIFB was created and that's why the old account was no longer maintained.

Back in 2009 when the new account was opened, the EIFB, what did it contain at the time?

Mr. François Masse: I'm sorry, are you asking about the new account, when it was created?

Ms. Peggy Nash: When it was created in 2009.

Mr. François Masse: When the new account was created, the balance started at zero.

Ms. Peggy Nash: Okay, so the old account had \$57 billion.

Mr. François Masse: That's correct.

Ms. Peggy Nash: The new account had zero.

Mr. François Masse: That's correct.

To be clear, though, the old account was an accounting mechanism built to record transactions over time. There was no physical cash account there. Closing the old account resulted in no fiscal impact.

Ms. Peggy Nash: Okay, but the moneys that were generated in the old account, the \$57 billion, were premiums collected presumably from employers and employees who had paid their EI premiums.

•(1645)

Mr. François Masse: The \$57 billion was an accounting mechanism tracking the balance of premiums. There was no physical bank account.

Ms. Peggy Nash: Right, but the \$57 billion was money that employers and employees had contributed.

Mr. François Masse: The \$57 billion figure comes from the accounting entry. It's related to the contributions; that's correct.

Ms. Peggy Nash: So these premiums were paid in. The new account had zero. What happened to the \$57 billion?

Mr. François Masse: Again, because that \$57 billion was the result of an accounting mechanism to track those transactions, there was no physical cash balance, no physical cash account. So when the account was closed, that was another accounting entry that had no fiscal impact in the year in which—

Ms. Peggy Nash: When you say there was no accounting entry, the \$57 billion in premiums that employers and employees had paid into the EI fund was basically rolled into general revenue. Is that correct?

Mr. François Masse: The fact that the account was closed is slightly different from rolling it into the general revenue, because there was no transfer of funds.

Ms. Peggy Nash: So what happened to the \$57 billion?

Mr. François Masse: Again, the account was simply closed.

Ms. Peggy Nash: So those premiums were in general revenue, then.

Mr. François Masse: That's correct.

Ms. Peggy Nash: Okay.

The CEIFB was created to set the EI rates independently. Is that correct?

Mr. Michael Duffy: That's right.

Ms. Peggy Nash: In how many years did the CEIFB set rates completely independently of the federal government?

Mr. Michael Duffy: I'm not a hundred per cent on, but I think it was.... In the first couple of years, when the legislation was put in place for the CEIFB, the mechanisms for them to actually set the rate hadn't been fully established. It took a couple of years before they actually set the rate. I think in total, there were one or two years in which the board set the rate.

Ms. Peggy Nash: For one or two years they set the rate. Are you saying that for two years they set the rate without intervention from the federal government?

Mr. Michael Duffy: Well, when you say intervention by the federal government, the rates are basically set by mechanisms in establishing the legislation, and when the board set the rate, it followed those mechanisms.

Ms. Peggy Nash: How much was spent on or by the CEIFB, the financing board, in each year of its existence and in total? How much did they spend?

Mr. Michael Duffy: I don't have the total number for each year, but in the last year of operations, their budget came in at \$1.2 million.

Ms. Peggy Nash: At \$1.2 million.

The Chair: Could you submit the answer for the other years to the committee later on?

Mr. Michael Duffy: Yes.

The Chair: Thank you.

Ms. Peggy Nash: This body was created in 2009. At that time, all of this money that had been contributed by workers and employers was put into general revenue. There was nothing in the fund so it started out with zero, at a time when we were still dealing with high unemployment from the most severe recession, from the great depression.

This fund has never really operated in the way it was meant to, and we still don't have the money that was eliminated back in 2009

The Chair: Okay, ask the question.

Ms. Peggy Nash: —and now it's going to be changed again. Why?

What good has the board been?

Mr. Michael Duffy: I'm not in a position to judge that question.

I can explain that the new mechanism coming in 2016 for purposes of establishing the 2017 rate is designed to be open, transparent, and will be set by the EI Commission, which is a tripartite body with representation of both business and labour. Going forward—

Ms. Peggy Nash: The government consistently ignored the advice of the board, so I'm wondering why the board was even set up.

The Chair: We'll have to return to that in a later round.

Thank you, Ms. Nash.

Mr. Keddy, go ahead, please.

● (1650)

Mr. Gerald Keddy: Thank you, Mr. Chairman.

Welcome, witnesses.

Before I start I'd like to recognize the change to fisheries EI that's in the budget. That was a needed change and it was important that it be brought in. We've encouraged fishermen for years to be multi-species fishermen, to be stakeholders in their industry, to work outside their industry, and then to turn around and not be able to combine fishermen's EI and regular EI was an oversight by the government.

I think you actually mentioned this in your remarks, but I didn't quite hear you. How far back will that be retroactive?

Ms. Annette Ryan: The changes will go back to April 7, 2013, so essentially the previous treatment of income will be put back in place.

Mr. Gerald Keddy: So it will be for most of this fiscal year.

Ms. Annette Ryan: That's correct.

Mr. Gerald Keddy: Thank you.

I have another point for clarification. There is a lot of discussion on the \$57 billion that never existed. I don't think that's a surprise to anybody. That money had gone into general revenue and had been eaten up over the years. The government's position of starting afresh with real principled accounting on a real principled accounting basis is one which I think all employees and employers will understand. It's a good move.

When you look at the rationale for determining EI premium rates based on a seven-year period, where does that come from? What was the basis of that?

Mr. Michael Duffy: The seven years represents a period long enough to cover the business cycle. At one time the legislation referred to setting the rate so that the EI account would balance over the business cycle. By using seven years, this legislation sets a fixed timeframe. It's a rolling seven years so it doesn't really matter when the business cycle begins or ends, but it's long enough to cover a period of decline and the rebound in the economy.

Mr. Gerald Keddy: Thank you.

On the hiring credit for small business, we look at the challenges that small businesses face across the country. In budget 2011 a temporary hiring credit for small businesses of \$1,000 per employee was announced, but in the extension in budget 2012... You're estimating that 560,000 employers will take advantage of this hiring credit for small business, which had been successful in supporting small businesses across Canada. That looks like an increase from 2011, but how much of an increase would it be?

Mr. François Masse: The most recent numbers we have from 2011 showed 549,925 employers receiving the credit. Preliminary estimates for 2013 are pointing at 560,000.

Mr. Gerald Keddy: It's a small increase.

Mr. François Masse: It is.

Mr. Gerald Keddy: I certainly support the changes to EI, but we're promoting stability and predictability for employers and employees by freezing the rates for three years. After the rate freeze, with the legislation as it's in place now—and you have to consider that we'll leave \$660 million in the pockets of employees and employers—we should have a system that's fair, open, transparent, and sustainable.

Say yes, please.

Mr. François Masse: We agree.

Mr. Gerald Keddy: Good. Thank you.

The Chair: Thank you, Mr. Keddy.

Mr. Hsu, go ahead, please.

Mr. Ted Hsu: I want to follow up on something which I think is related to one of Mr. Keddy's questions.

The minister's fiscal update last week mentioned that the EI account is projected to balance in 2015 and will be going to roughly a \$5.6 billion surplus by the end of 2016. The fiscal update also projects that the EI rate will fall in 2017 from \$1.88 to \$1.47.

With that kind of surplus in the EI account by 2016, what's the rationale for freezing EI rates at \$1.88 for so long? Could it fall in 2016 instead of waiting all the way until 2017?

● (1655)

Mr. François Masse: First of all, it's a good point. There's a substantial level of uncertainty in those forecasts, because when we're saying to look two or three years down the road in terms of the total employment situation, it's hard to guess.

That being said, the announcement in September 2013 was to freeze the rate for three years to provide predictability and stability for employers and employees, and they clarified back then that the new mechanism would kickstart in 2017.

Mr. Ted Hsu: Nobody is going to be shocked if... I mean, it's not a shock to the economy if you decrease it. I realize it's uncertain, but an uncertain decrease in EI premiums is not so scary.

Mr. François Masse: One point to know, though, is that under the current mechanism, right now the cumulative EI operating account is in deficit. Under the current mechanism whereby it's getting balanced on a yearly basis, the EI rate would actually increase as of next year. By freezing the rate for that period, you actually avoid that increase up to the point where you're getting back into surplus, and then the new mechanism applies.

Mr. Ted Hsu: Okay.

Thank you, Chair.

The Chair: Thank you.

I'm going to take the next round.

Mr. Masse, I do think the question of the account needs to be clarified, because I meet with groups that tell me the government took \$57 billion in cash away from employees and employers, that they took that money and they just put it somewhere else. As employees and employers, they want the \$57 billion in cash. As has been pointed out by other members, when you have a statement that says there's \$57 billion in an account when there's actually no cash in that account, that creates a real problem in terms of perception.

My understanding was that on an annual basis, the nominal surplus, the surplus that was supposed to be in that operating account, was actually used for other expenditure purposes by the government. Therefore, during that whole period of time, there was never a surplus in that account in terms of cash.

Mr. François Masse: That is correct.

First of all, I will acknowledge that it is confusing. The account was always a notional account; there was no cash balance. It was recommended by the Auditor General back in 1986 that the EI account be consolidated with the accounts of the Government of Canada. However, because of that confusion and other factors, it was decided back in 2010 that retroactive to 2009, the EI account would be closed.

Just to be very, very clear, because that was a notional account as an accounting mechanism, there was indeed, as you said, no cash amount in that account, and when the account was closed, there were no revenues rolled into the general revenue fund. The account was simply closed.

The Chair: Okay. From what year was there an actual surplus that then was used for other expenditures? When did that start? You talked about the changes in 2010. When did that actually start?

Mr. François Masse: That would have been over many years. To be honest, I don't have the breakdown by year right in front of me, but that's something I could forward to the committee, sir.

The Chair: Yes, but it was over a period of many years—

Mr. François Masse: Before that—

The Chair:—and the Auditor General made the recommendation, I think in part because of the confusion created by a number like \$57 billion which people then attach to. They then say to the government that it should spend that \$57 billion, which they believe to be a cash account, on other items, when in fact it's a notional account, as you've said. There's no cash in there.

Mr. François Masse: That's correct.

The Chair: Okay. I just wanted to clarify that. I appreciate your clarification.

[*Translation*]

Mr. Côté, you have the floor.

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you very much, Mr. Chair.

I must thank my colleague Mr. Keddy for having increased the self-esteem of every actuary in the country, by talking about the employment insurance account balance sheet. I am sure they will appreciate this enormously.

To follow up on Ms. Nash's questions, I would like to talk about the problem related to the increase in premiums, a regressive measure taken by the government. That increase is a greater burden on the middle class, as well as on small and medium businesses.

Did you carry out a study on the impact of the increase in those premiums after the old fund was closed?

• (1700)

Mr. François Masse: Following the closure of the old fund, the premiums were set so as to balance the fund over time. To achieve that, the premiums are set on an annual basis, with the objective of balancing the fund so as to ensure that there will be no net impact.

When were the premiums increased, when were they decreased? These decisions vary from year to year. I have a yearly breakdown that I could send you if you wish.

Mr. Raymond Côté: We know that the old fund was closed in a very bad context. It was a particularly difficult period regarding employment insurance benefits that were supposed to be paid. If the old fund had not been closed, would we have seen differences in the contributions collected from workers and enterprises?

I will reiterate that the maximum insurable earnings for an employee are \$48,600, and the employer must pay an amount that is equivalent to 1.4 times the employee's contribution. Were any studies done on the impact maintaining the old fund might have had on contribution levels?

Mr. François Masse: That would be a hypothetical answer. In addition, I can confirm that in 2009, there was no increase as compared to 2008. It was \$1.73 per \$100 of insurable earnings. It was maintained at \$1.73 in 2009-2010. Afterwards, it increased to \$1.78 in 2011, to \$1.83 in 2012 and to \$1.88 in 2013-2014, which is in compliance with the current policy of ensuring that the fund stays balanced.

In fact, during the recession, the decision was made to keep the level of contributions lower than what would have been necessary to balance the fund, because of the difficult economic situation. So at that time, we did not bring in any increases. Since the recovery has begun, the rates were increased slowly in order to bring the fund back into balance.

The government's current decision is to maintain a freeze on the levels in order to avoid the increase which had been planned in the 2013 budget.

Mr. Raymond Côté: Let's go back to my first question. Has there been a study on the impact of these increased contributions on small and medium businesses?

Mr. François Masse: Personally, I have no information indicating that a study was done on that particular aspect.

Mr. Raymond Côté: Can you tell me if the government wanted to measure that impact?

Mr. François Masse: I am sorry, but I cannot comment on the advice and analyses that are provided to the government.

Mr. Raymond Côté: Thank you very much.

I yield the floor to Mr. Caron.

Mr. Guy Caron: So you are confirming that the contributions are set so as to balance the current fund. This means that the \$57 billion that was invested as contributions by employers and employees since the beginning of the fund have simply been ignored.

I am trying to understand how that amount can simply be ignored and how you can act as though it no longer exists. The Supreme Court decision regarding the \$57 billion fund stated that the government could take that amount on condition that it continue to grant benefits normally and ensure that the program continue to function.

Moreover, the contributions are determined by the amounts accumulated in a fund created in 2009. The \$57 billion is a notional amount, but real people contributed to it. However, it is as though it no longer exists for the purposes of the government's decisions. Is that true?

Mr. François Masse: It is impossible for me to confirm what the policy was with regard to the fund prior to 2009. I can tell you that from the moment the new Employment Insurance Operating Account was created in 2009, from its inception the clear objective was to ensure that it would be balanced, and that its balance would be zero. Until now, the period was to be one year, but as of 2017, it was announced that there would be a seven-year period, following consultations where we were asked to provide a predictable and stable method.

• (1705)

Mr. Guy Caron: You are telling me that the decisions concerning the employment insurance program are taken independently of the \$57 billion amount that existed previously. The decisions are thus taken solely in relation to a fund that started at zero.

Mr. François Masse: Indeed, in 2009, the stated policy was that as of that moment, we would look toward the future. That is how the fund was to remain in balance. It was a policy decision.

[English]

The Chair: Mr. Duffy, do you want to comment on that?

Mr. Michael Duffy: One thing I could add is that the spending on the EI program is independent of the balance in the account. It's a statutory program, so benefits are paid on the basis of entitlement. If people qualify, they are able to get an entitlement, and benefits are paid on that basis. The government guarantees that everybody will get their benefits irrespective of the balance in the account. The account is a notional account for purposes of informing the rate-setting process. With the new rate-setting process that came into place in 2009-10, the new account was put in place to start things anew. But the balance in the account does not have an effect on benefits paid, because it's a statutory program.

The Chair: Okay, thank you.

We'll go to Mr. Saxton now.

Mr. Andrew Saxton: Thank you, Chair.

My first question is in regard to measures relating to indirect foreign investment by financial institutions. With the proposed changes, Canadian financial institutions would not be permitted to indirectly acquire control of, or indirectly acquire or increase a substantial investment in, a regulated foreign entity operating primarily outside of Canada that is engaged in the business of banking, insurance, cooperative credit, fiduciary services, or dealing in securities.

Can you explain the rationale behind this proposed amendment?

Mr. Michael Duffy: I'm afraid this is outside the scope of our expertise.

Mr. Andrew Saxton: Is this not part of part 3?

Mr. Michael Duffy: I think it's a different division.

Mr. Andrew Saxton: Is it? Okay, I'll come back to that at a later time.

What about the Canada Pension Plan Investment Board Act? Are the proposed amendments not part of your scope either?

Mr. Michael Duffy: No.

Mr. Andrew Saxton: Okay, I have some more.

What about the Financial Administration Act when it comes to the central clearing of over-the-counter derivative transactions? This is not part of yours, either? Geez, I'm striking out here.

Is Dominion Coal Blocks also not part of yours?

Mr. Michael Duffy: No, it has to have EI in it.

Mr. Andrew Saxton: Okay, we'll have to save that. Perhaps my colleague Dave would like to ask a question.

The Acting Chair (Mr. Dave Van Kesteren): I'm in the chair.

Mr. Andrew Saxton: Regarding employment insurance, how about the hiring credit for small business? Does that fall within your category?

Mr. Ray Cuthbert: That we can do.

Mr. Andrew Saxton: Thank you.

In recognition of the challenges faced by small businesses across the country, budget 2011 announced a temporary hiring credit for small business of up to \$1,000 per employer. Could you please give me the rationale for that?

Mr. François Masse: Yes, sir.

The credit was created in recognition of the important role small businesses play as job creators in the Canadian economy. It was in the context of the economic downturn. It was a decision taken to reduce the burden on small businesses, so as to help them create jobs.

Mr. Andrew Saxton: With regard to the hiring credit, is this an increase from 2011 when it was introduced?

Mr. François Masse: The hiring credit was created in 2011. It was renewed in 2012. In 2013 it was extended and expanded. I would turn to Ray for the details on how it has been expanded.

Mr. Ray Cuthbert: Apart from the years involved, which is the extension, the expansion is the ceiling in the base year. The amount of employer EI premiums required has gone from \$10,000 to \$15,000. Employers who have employer EI premiums in the base year, which is 2012, of \$15,000 or less can qualify for a credit. That's the expansion. It has gone from \$10,000 to \$15,000.

• (1710)

Mr. Andrew Saxton: Thank you. I have no further questions, Chair.

The Acting Chair (Mr. Dave Van Kesteren): I want to go back to something our previous chair tried to clarify. I think there's still some confusion with the EI fund. I wonder if we could ask you, Mr. Masse, to provide some history for the committee. You mentioned this began back in the 1980s and in the 1990s there was no money left.

The intent is for the premiums to be paid out when necessary; it's not to build some massive fund. I think that's what we tried to clarify a little bit earlier: the transparency part of this was that people could see where the moneys were going.

Could you provide the history of the fund as it grew and as that money was taken out? Sometimes if we put things on a piece of paper, it's a whole lot clearer.

Mr. François Masse: Here are you referring to pre-2009 or post-2009?

The Acting Chair (Mr. Dave Van Kesteren): I'd like to see it go back possibly to maybe 1986 or something like that, if that's possible.

Mr. François Masse: Absolutely we can do that, yes.

The Acting Chair (Mr. Dave Van Kesteren): Okay.

Do we have any questions from the NDP?

The Chair: Sorry about the musical chairs.

We have about 20 minutes left and we have a number of divisions to get to.

That is it for division 1, as I understand it. I want to thank our officials very much for being with us this afternoon and this evening. We appreciate your answers very much.

Colleagues, I understand we do not have questions on division 2, Financial Institutions, so we will not need those officials to come forward.

As I understand it, I'm hoping we do not have questions on division 3.

Mr. Hsu, do you have a question you want to state for the record? We have 18 divisions to get through. Unless we stay later tonight or we add another session, I'm not sure we can do this.

Mr. Ted Hsu: I would like to ask it, but I can state it, and then, hopefully, Mr. Chair, you would let somebody ask it. I'm not the chair, but if I could state it, that would...

The Chair: You have one question on division 3, then.

Mr. Ted Hsu: Yes.

The Chair: Okay.

Let's bring forward those two officials from Finance, and hopefully we can get this question dealt with very quickly.

This is part 3, division 3, Financial Institutions (Investment).

We'll just wait until the two officials get settled.

Mr. Ted Hsu: As soon as you give me a nod or something, I'll start.

The Chair: Yes.

We'll welcome Mr. Rudin and Ms. Ryan back to the committee.

Thank you for joining us here this evening.

Mr. Hsu, your question, please.

Mr. Ted Hsu: Thank you.

I think this is something that only officials can answer.

I understand that the intent of this section on foreign financial institutions is to tighten a perceived gap in the finance minister's authority that was established in Bill S-5. How was this gap in the minister's authority uncovered? How did we discover this gap?

Mr. Jeremy Rudin (Assistant Deputy Minister, Financial Sector Policy Branch, Department of Finance): After Bill S-5 was passed, in discussions with some representatives of the industry, it was brought to our attention that some members of the industry were of the view that not all of the transactions the government intended to be covered by this provision would necessarily be covered by this provision. They contended that it would depend on how the transaction was structured. The government's position is that this needs to be clear and that this amendment will create that clarity.

Mr. Ted Hsu: Okay. That's it.

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

I want to thank our two officials for being here. Thank you for answering that question so directly.

We'll now move to division 7, which deals with Dominion Coal Blocks.

We have officials from Finance and officials from NRCan. I understand one of you has a very brief opening statement on this.

Mr. Halverson, you have the opening statement. Please proceed.

• (1715)

Mr. Soren Halverson (Senior Chief, Corporate Finance and Asset Management, Department of Finance): Good afternoon.

I'm Soren Halverson. I work in the economic development and corporate finance branch of the Department of Finance. With me is Elisha Ram, my colleague also at Finance. Tim Gardiner of Natural Resources Canada is also here.

On August 30, 2013, the Government of Canada announced that it was considering an open and competitive sale for two parcels of land in the Kootenay area of British Columbia known as the Dominion Coal Blocks. These lands were acquired by the Government of Canada in 1905 in exchange for subsidies that were provided to construct the Crowsnest Pass railway.

The potential sale stems from a general review of the corporate assets of the government that was initiated in 2009. The divestiture legislation that is presently in the bill would provide for the authority for the crown to dispose of all or any part of the Dominion Coal Blocks. It would give the Minister of Natural Resources the authority to dispose of it with the approval of the Governor in Council. Also, the minister would have the authority to grant easements over the land and take any actions required to prepare the blocks for disposal.

The Chair: Thanks very much for that brief statement.

I'm going to begin with Mr. Rankin, please.

Mr. Murray Rankin: Thank you, Chair, and thank you to the witnesses.

Those who are watching might wonder why we are talking about the Dominion Coal Blocks in a budget implementation act. I don't understand it either, but it's another omnibus bill so I guess Canadians won't be surprised.

This has to do with the beautiful East Kootenay area I know very well. I look at the objective of this and I'm not entirely clear why the government wants to divest itself of this public asset. In your introduction you alluded to that.

Why is there a desire to sell this land?

Mr. Soren Halverson: As you mentioned, the land is situated in a beautiful area of the country. It's also an area that is well known for the high quality metallurgical coking coal resource that is available there. Parts of the Dominion Coal Blocks have been identified as being very prospective from that perspective, so a sale of these lands would permit the development of this resource, which would contribute both to the economy of the region and more broadly to the Canadian economy.

Mr. Murray Rankin: In the notes the Department of Finance prepared, it notes that a third of parcel 82, one of the two Dominion

Coal Blocks, is an area that overlaps with the Flathead watershed. It notes that three years ago Prime Minister Harper committed to ensuring the sustained protection of the Flathead watershed.

I'm having trouble understanding how the divestiture for metallurgical coal advances the Prime Minister's commitment to the protection of this area.

Mr. Soren Halverson: The contemplated action doesn't necessarily involve the divestment of all parts of the parcels for coal mining. As I mentioned there are areas that are more prospective. As you mentioned there are also areas of the parcel, the Flathead, which have been acknowledged both by the provincial and federal governments as being a high quality pristine area, and the federal government does not intend to sell that portion for coal mining.

Mr. Murray Rankin: The material also talks about consultation with the Ktunaxa First Nation, yet clause 244 refers to the extinguishment of any rights of third parties and refers to an example of the Canadian Pacific Railway.

What about the extinguishment of aboriginal title should that exist in the area?

Mr. Soren Halverson: The aboriginal right is based on constitutional principles and would not be extinguished through the provisions of this act.

Mr. Murray Rankin: The government has mused about the protection of the Flathead as a national park, and it seems as if you have talked about that possibility here as well.

Is that something the Government of Canada, notwithstanding this divestiture, is interested in pursuing?

Mr. Soren Halverson: To my knowledge there is no contemplation to convert this area to a national park. However, having said that, there is an existing commitment to its ongoing protection, so I think those two statements can exist simultaneously.

• (1720)

Mr. Murray Rankin: Thank you, Mr. Chair.

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

I'll go to Mr. Van Kesteren, please.

Mr. Dave Van Kesteren: Mr. Halverson, maybe you're answering the questions. Have I got this right? Are the Ktunaxa supportive of the potential sale?

Mr. Soren Halverson: I'm going to turn to my colleague, Mr. Gardiner. His department is responsible for taking the lead on consultations with the Ktunaxa.

Mr. Tim Gardiner (Director, Energy Systems Management, Petroleum Resources Branch, Department of Natural Resources): Thanks for the question.

We've been engaging in a consultation process with the Ktunaxa First Nation since March, as well as other affected first nations. It's an ongoing discussion. Terms are being discussed. At this point I don't think they have expressed support one way or the other.

Mr. Dave Van Kesteren: How might a potential sale benefit their community?

Mr. Tim Gardiner: Most of the Ktunaxa First Nation's five operating coal mines in the area provide significant economic benefits in terms of GDP, business sourcing opportunities, and employment. Additional coal mines, which could be the result of the divestiture should a buyer propose such a development and it passed appropriate environmental assessment tests, etc., obviously would produce more employment and similar benefits to the mining operations currently in place.

Mr. Dave Van Kesteren: So consultations are in place. There is a benefit; the consultations are still in place, and all parties are engaged.

This isn't anything unusual. This is a prelude, basically, to what must take place if at some point there is going to be an area that is going to be mined. Is that correct?

Mr. Tim Gardiner: Is the question in relation to the discussions with the Ktunaxa First Nation?

Mr. Dave Van Kesteren: No, it's in relation to the federal government making these preparations, selling the land.

Mr. Tim Gardiner: If I understand your question, in the consultations with stakeholders that are occurring right now, yes, it is a normal part of government business as part of the contemplated divestiture to work with potentially impacted stakeholders to ensure we've taken into account their perspective in the contemplated action.

Mr. Dave Van Kesteren: Thank you.

The Chair: Thank you, Mr. Van Kesteren.

We'll go to Mr. Hsu, please.

Mr. Ted Hsu: Thank you.

I just want to check with Mr. Gardiner. Do I understand you correctly that the government's understanding of the position of the Ktunaxa is that they're not supporting or opposing this sale? Did I hear correctly? What is your understanding?

Mr. Tim Gardiner: It's part of an ongoing dialogue right now. The contemplated action would impact them. We're discussing at the moment potential measures that could be put in place to mitigate those impacts. Their support presumably would be a function of those discussions which are ongoing.

Mr. Ted Hsu: So it's not clear to the government what the final position of it is.

Mr. Tim Gardiner: It's an ongoing discussion at the moment.

Mr. Ted Hsu: Can you describe the federal government's current obligations, liabilities, and rights in connection with these properties? How would the federal government's obligations, rights, and liabilities be affected by this sale?

Mr. Soren Halverson: In their totality? Are you referring to a broader concept of obligations and rights than just in reference to the aboriginal issues?

Mr. Ted Hsu: No, broader than just the aboriginal issues. Are you selling obligations and liabilities?

Mr. Soren Halverson: I see. It really is too early to discuss the specifics around what the sale would entail, but the notion would really be that the federal government is stepping away from

significant parts of this property, therefore ceding the property to provincial jurisdiction, effectively.

Mr. Ted Hsu: And the liabilities and obligations as well?

Mr. Soren Halverson: All of the aspects that come with land ownership would then be transferred to another party.

Mr. Ted Hsu: Okay.

The Chair: Thank you.

I want to thank our officials very much for being with us. Thank you for responding very clearly to our questions. We appreciate your time here.

We will now move on. I do have questions on division 12, dealing with the Canada Pension Plan Investment Board Act. We have officials from Finance. My understanding is that there are just questions, that there is no request for an overview.

We'll call our officials forward.

We have Mr. Rudin, Mr. Calof, Mr. Wright, and Mr. Paterson.

Mr. Rudin and Mr. Wright, welcome back. Welcome to the committee.

I understand, Mr. Saxton, you have a question for them.

● (1725)

Mr. Andrew Saxton: Yes, thank you, Chair.

Thanks to our witnesses for being here.

My question is regarding the proposed amendment to the Canada Pension Plan Investment Board Act, which would allow for three non-resident directors to be elected to the board.

First of all, the pool of assets that the investment board oversees is close to \$180 billion. It must be one of the largest in Canada, if not the largest in Canada, and probably one of the largest in the world as well. I'd imagine that a significant portion of that fund is invested overseas. Simply because of the sheer magnitude of the fund, you can't invest it all in one place.

Can you tell me approximately what percentage of the fund is invested overseas at this time?

Mr. Jeremy Rudin: Sure, I'd be glad to.

In terms of the overall fund, more than half of the assets are invested abroad. If we subtract from the calculation the part of the fund that is in legacy, essentially provincial bonds that relate to the earlier structure that governed the investment of the CPP funds, it's closer to three-quarters.

Mr. Andrew Saxton: Can you explain how large the board is right now?

Mr. Jeremy Rudin: There are currently 12 members on the board, as established under the act.

Mr. Andrew Saxton: So we're looking at allowing up to 25% of the board to be non-residents of Canada. I assume that the rationale behind this is that, since a significant portion of the funds are invested overseas, it would be helpful to have members on the board who have expertise in overseas investments. Is that the rationale behind it?

Mr. Jeremy Rudin: Exactly. It will also increase the overall pool of qualified candidates for these important jobs.

Mr. Andrew Saxton: This would allow for up to three members to be non-residents. It doesn't require that three members be non-residents. Is that correct?

Mr. Jeremy Rudin: That is correct.

Mr. Andrew Saxton: That's fine. Thank you very much.

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

I want to thank our officials. I understand, Mr. Rudin, that you'll be staying for division 13.

Mr. Jeremy Rudin: Yes, I will.

The Chair: Mr. Hsu, I believe you have questions on division 13.

Mr. Ted Hsu: Yes, I have one.

The Chair: Would you state your question to Mr. Rudin, then.

Mr. Ted Hsu: The question is simply that this section is a result of a B.C. Court of Appeal decision which found that Canada's anti-money-laundering and anti-terrorist-financing regime contravenes section 7 of the Canadian Charter of Rights and Freedoms.

Can you explain how Bill C-4 addresses a response to that B.C. Court of Appeal decision?

Mr. Jeremy Rudin: Yes, I'd be glad to.

As you mentioned, there was a recent British Columbia Court of Appeal decision on the application of the anti-money-laundering legislation to the legal profession. That decision made reference to potential problems that would arise out of sections 11 and 65 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, or PCMLTFA, as we like to refer to it.

In the government's view, the concerns raised by the court were about the potential implications of the act as drafted. They did not arise from the intentions that the government had in the original drafting of the act. The government decided that, since the the Court of Appeal found some ambiguity in the interpretation, these provisions should be clarified.

In the government's view, the goal is not to introduce substantive changes to the act, but rather to clarify the original intent. In particular, the proposed amendment to section 11 would clarify that reporting entities, those that have responsibilities under the act, would not be required to disclose any information to FINTRAC, the federal financial intelligence unit, that is subject to solicitor-client privilege. This amendment would clarify that this applies under all circumstances, including when FINTRAC is auditing the entity's compliance with its obligations under the act.

Similarly, with respect to section 65, allow me to give a little bit of background. Entities have requirements under the act. For example, they need to ascertain the identity of people with whom they are transacting business. They need to keep records of their transactions. Section 65 of the act as currently drafted allows FINTRAC, which is the regulator that administers these regulations and audits compliance with these regulations, to disclose non-compliance information to law enforcement for the purpose of a criminal investigation. The purpose of this is to assist in the enforcement of the PCMLTFA. This is done only in very serious situations where there is a possibility

that there has been a criminal offence committed because of the lack of compliance with the provisions of the PCMLTFA itself. This is a pretty limited circumstance. There has to be very serious non-compliance with the obligations of the PCMLTFA for it to be a potentially criminal offence. There have been about 40 such disclosures since 2001, or about three or four per year.

These amendments would clarify what the government would argue has always been the intent. These disclosures to law enforcement of non-compliance with the obligations under the PCMLTFA can only be used by law enforcement to investigate potential criminal non-compliance with the PCMLTFA. The disclosures cannot be used to investigate any other crime that the person or entity being investigated under the PCMLTFA may have committed, or to investigate a crime that a client or counterparty of the person or entity being investigated under the act might be involved in.

• (1730)

The Chair: Thank you very much for that clarification. I want to thank you for being with us this evening.

I understand there is one question on division 14, the Mackenzie gas project. We will ask the officials from CanNor to come forward. It is my understanding that after division 14, we will move directly to divisions 17 and 18, to officials from Treasury Board. We will let the official from PCO go this evening. We are going to move to division 17 after this.

We welcome our officials from CanNor. Mr. Bloom, Ms. Ledgerwood, welcome to the committee.

We have one question from Mr. Hsu.

Mr. Ted Hsu: Thank you.

Bill C-13, in 2006, also had \$500 million for the Mackenzie gas project impact fund. Can you outline the difference between budget 2006 measures in Bill C-13 and the measures in Bill C-4?

Mr. Mitch Bloom (Vice-President, Policy, Planning, Communications and Northern Projects Management Office, Canadian Northern Economic Development Agency): Sorry, is your question what is the difference between the two bills?

Mr. Ted Hsu: What is the difference between the \$500 million for the...? What's the difference between the two bills—

Mr. Mitch Bloom: I understand.

Originally they had intended to have the administration of this fund conducted through a crown corporation that would have been established to administer the fund going forward. This bill eliminates the crown corporation model and replaces it instead with an approach that would have criteria established by a minister named by the Governor in Council, and then administered subsequent to that without a crown corporation.

Mr. Ted Hsu: Okay.

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

Thank you for that very direct response to the question. I appreciate your time here this evening.

Colleagues, perhaps we could do divisions 17 and 18 together. The officials are largely the same. I think it makes sense. They are all from Treasury Board.

We welcome Mr. Dennis Duggan, Mr. Graham, Mr. Drew Heavens, and Ms. Benbaruk to the committee.

Can we start with questions, colleagues, or would you like an overview?

Okay, just questions.

Welcome to the committee. We are dealing with divisions 17 and 18.

We will start questions with Ms. Nash, please.

• (1735)

Ms. Peggy Nash: Thank you, Mr. Chair.

Welcome to all the officials.

My first questions are about the process of making the changes to this act.

The last time there was a similar degree of change to the public sector labour law in Canada, how long a study period was there? How much time was allocated to the study of those changes?

Does anyone there know?

Mr. Dennis Duggan (Senior Policy Analyst, Compensation and Labour Relations Sector, Treasury Board Secretariat): Yes, that would have been the process that resulted in the Public Service Modernization Act in 2005. The period involved a series of studies and reports going back to 2000, I believe, PS 2000, and there was the report commonly known as the Fryer report, and then there was another study internally. That and the various task forces involved resulted in the Public Service Modernization Act, which amended the PSSRA, created the Public Service Labour Relations Act, and amended the Public Service Employment Act and the FAA.

Ms. Peggy Nash: From what I hear you describing, there was a significant consultative process in terms of the study that took place. You talked about a task force and various studies that were undertaken to take a look at those changes. Was there a similar process this time in terms of the changes that are being proposed?

Mr. Dennis Duggan: No. What did happen between 2005 and this particular process was the five-year review that was conducted with respect to the PSMA, but as far as the specific consultation process is concerned, no.

Ms. Peggy Nash: Okay.

Why was this process different from in previous years?

Mr. Dennis Duggan: When we looked at it in terms of the five-year review, we were aware of certain aspects and experiences from the years since the act was amended, but—

Ms. Peggy Nash: Can you tell me which labour stakeholders were consulted in preparation of the drafting of the legislation?

Mr. Dennis Duggan: None that I'm aware of; that of course, is because it was part of the budget implementation act.

Ms. Peggy Nash: So no labour organizations were consulted. Were any labour law experts consulted for these changes?

Mr. Dennis Duggan: Our internal advisers were.

Ms. Peggy Nash: So internal experts....

Were there individuals involved who have experience in the collective bargaining and arbitration process other than government officials? Was any outside expertise sought?

Mr. Dennis Duggan: Not that I'm aware....

Ms. Peggy Nash: Okay.

The Chair: We'll come back to you, Ms. Nash.

We will go to Mr. Keddy, please, for the five-minute round.

Mr. Gerald Keddy: Thank you, Mr. Chairman.

This whole issue of workplace safety obviously is an important issue and is not to be confused with workplace safety issues that are brought forward that are found to be false, or misleading, or frivolous. When these revisions were brought in and the attempt was made to find some balance, I guess I want to go back to the original program and how many workplace safety complaints came forward that were deemed to...that nothing came of them.

Mr. Drew Heavens (Senior Director, Compensation and Labour Relations Sector, Treasury Board Secretariat): I think you're referring to the changes proposed by labour in the Canada Labour Code.

• (1740)

Mr. Gerald Keddy: Yes.

Mr. Drew Heavens: We're actually not the experts in that area. There are people from Labour Canada that deal with division 5 of the act.

Mr. Gerald Keddy: Okay. That was my question, Mr. Chairman.

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

We'll go to Mr. Hsu please.

Mr. Ted Hsu: I'm good.

The Chair: Then I will go back to Ms. Nash, please.

Is that correct?

Ms. Peggy Nash: Yes. Thank you, Mr. Chair.

I was asking about consultation and input on the changes. It's my understanding from your comments that outside of government officials, there were no labour unions or labour law experts who were consulted. Were there any business organizations, business lawyers, officials, or experts who were consulted on these changes?

Mr. Don Graham (Executive Director, Compensation and Labour Relations Sector, Treasury Board Secretariat): Not that I'm aware of.

Ms. Peggy Nash: So there were no consultations with any organizations.

There were no meetings with business associations or labour associations, in order to make these changes.

Mr. Don Graham: No.

Ms. Peggy Nash: No.

Okay.

Is it standard procedure to rewrite a piece of legislation so fundamentally without consulting directly with any of the people who might be impacted by those changes?

Mr. Don Graham: I don't know that we're qualified to comment on what's standard process.

The discussions that were held were internal and it was with the people who had been involved in, obviously, all of these processes.

Ms. Peggy Nash: Okay.

Minister Clement, the minister responsible, has said publicly, he has told Canadians that he's not going to say how these changes will be put to use until after they've been enacted. It seems kind of a curious way to make policy.

When you were looking forward and making these changes, your goal in making these changes, could you explain to us which public sector workers did you see being stripped of the right to strike? Minister Clement was commenting specifically on the right to strike and he said, "We'll tell you afterwards how it's going to be implemented."

Were there specific workers you had in mind when you saw removing the right to strike from some public sector workers?

Mr. Don Graham: I think the change that you might be referring to, and I'll let my colleague Dennis Duggan speak to that, is the one that deals with essential services.

Ms. Peggy Nash: That's right.

Mr. Don Graham: Essentially the provision is that any group that has positions that are 80% or more designated essential will be utilizing the arbitration route as opposed to the strike route. I think the basis for that was the fact that these groups, obviously by the reason of the number of positions that are designated essential, it does impact on their ability to strike. That would be the reason why arbitration is the route that they would be going on.

Mr. Dennis Duggan: Well, specifically there is a statutory right to strike, but the right to strike as far as that goes is certainly not new in the public service. The designation of employees for purposes of safety and security of the public as an essential service has been a feature of legislation in dealing with collective bargaining since 1967, when the public service staff relations act was introduced.

What's changed over the years is the form that we've utilized to reach the conclusions about who should be designated. The most recent iteration is the essential services agreement which came out of the changes made in 2005 to the PSLRA.

Ms. Peggy Nash: I'm almost out of time so let me just say that I do have concerns about how lax the wording is. I understand the point you're making about essential services, but I'm wondering what limits there are in this legislation on the ability of the federal government to declare workers essential. In the past they have had the full rights of others in collective bargaining. It was very open.

The Chair: A brief response, please, sir.

Mr. Dennis Duggan: The ability is inherent in the law itself, in that the definition of safety and what is essential has not changed. The definition has just been moved from the definitions section into the section that particularly deals with ESA, and it has to be for the safety and security of the public.

• (1745)

The Chair: Thank you, Ms. Nash.

[*Translation*]

Mr. Caron, you have the floor.

Mr. Guy Caron: Briefly, I am going to pick up where Ms. Nash left off.

The word "essential" is open to a relatively broad range of interpretations. At what point would this require a decision from the government? If there is a difference of opinion in the definition of the word "essential", who will make the final decision?

[*English*]

Mr. Dennis Duggan: Under the proposed legislation, the employer has the exclusive right to make that decision.

Mr. Guy Caron: The exclusive right to...?

Mr. Dennis Duggan: To make that decision of what's essential and the positions that would be designated to perform that essential service.

If there is a challenge to be made, there is a possibility, if they so desire, to refer it for judicial review. Part of the process we've entered into is to require a consultative period. It would exist once the bargaining agents have been notified of the positions that are designated, so that they can be engaged and have an input into the process.

[*Translation*]

Mr. Guy Caron: If I understand correctly, there isn't much that could prevent the government from declaring the majority of public servants to be essential workers, if it decided on such a broad interpretation of the word "essential".

[*English*]

Mr. Dennis Duggan: The check is that the law, the definition, hasn't changed, and it has to be for the safety and security of the public.

[*Translation*]

Mr. Guy Caron: Is there also a definition of health and safety?

[*English*]

Mr. Dennis Duggan: Not per se, no.

Mr. Drew Heavens: There is a definition in the act as to what an essential service is—

[*Translation*]

Mr. Guy Caron: A definition which...

[*English*]

Mr. Drew Heavens: —and it hasn't changed.

Mr. Dennis Duggan: Well, it's the same as what was there before.

[Translation]

Mr. Guy Caron: I am talking about constitutionality. A few experts have suggested this. For changes regarding arbitration and essential services, the wording of the act could be a violation of collective bargaining rights. These rights are protected by the Canadian Charter of Rights and Freedoms. Can you confirm that the Department of Justice examined the way the legislation is worded in light of these concerns?

[English]

Ms. Dora Benbaruk (Director and General Counsel, Treasury Board Secretariat Legal Services, Department of Justice): The Department of Justice has dealt with the concern.

[Translation]

Mr. Guy Caron: So he did glance at this and state that according to his expertise, this complies with the provisions of the Canadian Charter of Rights and Freedoms?

[English]

Ms. Dora Benbaruk: I am not at liberty to disclose the advice. However, I can suggest that because the bill is here and to the best of my knowledge, the minister has not consulted with the House of Commons to the extent that there would have been an inconsistency with the charter. That is all I can say.

Thank you.

[Translation]

Mr. Guy Caron: Fine. I think I understand.

My next question concerns a case that is currently before the Supreme Court. The opposing parties are the Saskatchewan Federation of Labour and the provincial government. That legislation is similar to what is being proposed here and it is currently before the Supreme Court.

You cannot necessarily tell me why these changes are being proposed before a decision is handed down, but what would the impact of a decision be, whatever it is, with regard to the legislation which is before us?

[English]

Mr. Drew Heavens: I'll take a crack at it. We're familiar, obviously, with the case that's ongoing and is before the Supreme Court as we speak. The position the Government of Canada took in that case is consistent with what's in the legislation being proposed. It intervened at the appellant level, so it's consistent with that.

[Translation]

Mr. Guy Caron: I'm going to rephrase my question.

If, in the case at issue, the Supreme Court hands down a decision that is favourable to the Saskatchewan Federation of Labour, will that invalidate the provisions of the federal bill we have before us?

• (1750)

[English]

Mr. Drew Heavens: It would actually depend on exactly what the Supreme Court would say. Obviously, we'd have to compare and review the legislation at that time.

[Translation]

Mr. Guy Caron: Thank you.

The Chair: Thank you, Mr. Caron.

[English]

I simply want to get clarification on a couple of points.

Mr. Heavens, you referred to the definition of what is an essential service. Can you provide the definition for this committee?

Mr. Drew Heavens: Perhaps Dennis can point to it quicker than I can.

The Chair: Mr. Duggan.

Mr. Dennis Duggan: It's in what would be section 119 of the PSLRA, clause 305 of the bill.

The Chair: To clarify, that definition does not change.

Mr. Dennis Duggan: No, it's exactly what is in the definition.

The Chair: Can you read the definition into the record, please?

Mr. Dennis Duggan: Yes. It reads: The employer has the exclusive right to determine whether any service, facility or activity of the Government of Canada is essential because it is or will be necessary for the safety or security of the public or a segment of the public.

The Chair: I appreciate that.

One of the reasons the government says it's advancing this legislation is that to improve the predictability of the collective bargaining process, the notice period will be increased to 12 months.

Could you speak to that briefly, please?

Mr. Dennis Duggan: Certainly.

Currently the notice to bargain period is four months. Right now the average period it takes to negotiate a collective agreement is anywhere from 18 months to two years, and sometimes longer. As a consequence, you have in many instances in negotiations, huge periods of retroactivity involved.

The idea in having a longer notice period is so that the parties have sufficient time to negotiate a settlement and reduce the significant numbers of months between the expiration date of the collective agreement and the signing of the new one. That would give currency, which is a benefit for the individual employees as well as the employer and the bargaining agent.

The Chair: Thank you.

I also want you to address the issue of written decisions, that to enhance the collective bargaining process in the future, these amendments will require that written reasons be provided for these decisions.

Can you speak to why that's important?

Mr. Dennis Duggan: Currently there is no requirement that reasons be provided for the decisions of arbitration boards or conciliation...public interest commission reports, rather. As a consequence, what was really meant by the decision is sometimes an issue between the parties.

The real intent here is to have transparency about the rationale. In that sense, hopefully, there would be more clarity and better acceptance of the decisions.

The Chair: The parties understand why the decisions are made. The rationale is thereby provided.

Mr. Dennis Duggan: That's correct.

The Chair: Okay. I appreciate that.

Thank you very much.

[*Translation*]

You have the floor.

Mr. Raymond Côté: Thank you very much, Mr. Chair.

I thank the witnesses for being here with us today.

I'd like to go back to the definition of "essential services". I have to admit that this is beyond me. Essentially, the basic definition does provide a certain guideline. However, the public service affects an enormous number of people.

Could you give me some examples of sectors or categories of employees who would be completely excluded from the definition of "essential services"?

[*English*]

Mr. Dennis Duggan: Excluded, off the top of my head, no. I can tell you that there is one example of a service that is considered essential, and that would be, for example, our correctional service officers.

[*Translation*]

Mr. Raymond Côté: We agree on that, but if the government declares that a service is essential, we will have to deal with that. If

the government decrees that one of its services is essential, even though it is not covered by the definition, what recourse would those employees, their bargaining unit, their union, have left? Would they have to go before the courts?

• (1755)

[*English*]

Mr. Dennis Duggan: As I mentioned earlier, the initial process would involve a consultation period with the bargaining agent in question, but beyond that it would be judicial review.

[*Translation*]

Mr. Raymond Côté: Fine.

I'm going to give the rest of my time to Ms. Nash.

Ms. Peggy Nash: I don't have any questions.

[*English*]

The Chair: I want to thank all of our colleagues.

I want to thank all of our witnesses for being here, and especially for staying late tonight so that we could finish the first part of the study of this bill. We do appreciate that very much.

I'd also like to thank all the officials of the committee, *les interprètes*, and all of the logistics officers for staying late. We do sincerely appreciate that as a committee.

Thank you, all.

The meeting is adjourned.

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