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Chair

Mr. Pat Finnigan

Standing Committee on Agriculture and Agri-Food

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• (1540)

[English]

The Chair (Mr. Pat Finnigan (Miramichi—Grand Lake, Lib.)): We'll get right to it.

We want to welcome via video conference Mr. Ronald Cuming, professor, College of Law, University of Saskatchewan.

We're still doing the the PACA subject today, the Perishable Agricultural Commodities Act.

Welcome, Mr. Cuming. We'll give you up 10 minutes for your opening statement.

Thank you.

Mr. Ronald Cuming (Professor, College of Law, University of Saskatchewan, As an Individual): Thank you.

Mr. Chairperson and members of Parliament, you will be aware that I appear before the committee, as requested by the chairperson, as a result of my role as the originator and drafter of the proposed fresh fruit and vegetable products protection act. You'll also be aware that I was retained to develop the proposed act by Mr. Webber on behalf of the Fruit and Vegetable Dispute Resolution Corporation and the produce industry.

I have listened to the proceedings of the committee relating to this matter. I have taken particular note of the questions raised by members of the committee. These questions relate principally, then, insofar as my interest is concerned, to the legal structure that would be implemented should the proposed act become law. Answers to these questions will no doubt be the most important feature of my appearance before the committee. For this reason I'll keep my comments as short as possible, so there is more time for the questions.

Mr. Webber informed me that he presented to the committee a short curriculum vitae describing my professional background. Accordingly, I will only take a few minutes to refer to some features of this.

I have taught and conducted research in Canadian and international commercial law for 50 years. I drafted the secured transactions law of three provinces, and the laws of these provinces were copied in eight other Canadian jurisdictions. I drafted a new debt recovery law for Saskatchewan. The Saskatchewan model is being closely examined as a possible precedent for a few other jurisdictions in Canada.

I proposed and participated in the development of an international private law treaty dealing with secured financing law, which has been ratified by at least 70 countries, including Canada. I have acted as a consultant to Industry Canada in connection with matters relating to the Bankruptcy and Insolvency Act.

I have also acted as a consultant to a range of international organizations, including the World Bank, the United Nations Commission on International Trade Law, the Asian Development Bank, and the Organization of American States.

For a range of reasons, described by Mr. Webber, solutions to the problem that the committee is considering have been difficult to find. From a technical perspective, one reason for this difficulty is the constitutional structure of Canada. Without going into great detail, what I'm referring to is the divided jurisdiction over debt. The problem being addressed by the committee essentially involves debt.

Matters of contract and debt fall primarily within the constitutional jurisdiction of the provinces under section 92.13 of the 1867 Constitution Act. The federal Parliament does not have power, or general power at least, to legislate in relation to these matters. However, when debt results in insolvency on the part of the debtor, the matter falls within federal constitutional jurisdiction under section 91.2 of the Constitution Act.

When Mr. Webber asked me to seek a legal solution to the problem, I was cognizant of the difficulty in getting a federal-provincial solution. It was clear to me that if a solution is to be found, it must be based on federal constitutional jurisdiction and that, of course, necessarily means insolvency.

It follows that the proposed legislation cannot apply to a simple breach of contract resulting from non-payment of debt. It expressly applies only where the buyer is insolvent as that concept is defined in the Bankruptcy and Insolvency Act. If the buyer is not insolvent, but has just failed or refused to pay the seller, this is a matter for provincial law of contract and debt. However, it's relevant to note in this context that a person can technically be insolvent, even though he or she has sufficient assets to discharge his or her debt.

The general rule of bankruptcy law is that upon a declaration of bankruptcy, all of the bankrupt's property, other than property subject to security interests, vests in the trustee in bankruptcy. This property is liquidated and the proceeds are distributed among the unsecured creditors of the bankrupt in accordance with the priority regime of the Bankruptcy and Insolvency Act. However, property held in trust by a bankrupt as a trustee for the benefit of someone else is not treated as property of the bankrupt. It does not vest in the bankrupt's trustee and it is not available for distribution to the general creditors of the bankrupt. This property must be allocated to the persons for whom it is held, and these persons are generally referred to as beneficiaries.

Now, a trust that provides for beneficial interests can be created voluntarily by ordinary citizens, but it also can be created by a statute, and this, of course, is the role of the proposed act. It deems that any product supplied by a supplier to a buyer, and any property derived directly or indirectly by the buyer from a dealing with that product, is deemed to be held in trust by the buyer for the benefit of the sellers who have dealt with that buyer. The result is that the property does not become property of the buyer. It does not vest in the faulty buyer's trustee in bankruptcy. Should the trustee take control of this property, he or she must do so in full recognition of the interests of the beneficiary sellers.

The trust that would be created is for the general benefit of all sellers who have not been paid by that particular buyer and who have complied with the newest requirements of the act. In other words, a seller who has not been paid is not required to demonstrate that trust property was received by the seller from the sale of his or her product. So long as there are unpaid sellers and their product, then the trust prevails.

As Mr. Webber pointed out to you, the most valuable property that is subject to the trust is likely to be the accounts receivable of the buyer, while other property, such as cash, falls within the trust. The practical reality is that a buyer is likely to have dissipated all cash before he or she enters into bankruptcy.

I don't want to mislead you: when property that is held in trust is sold to a good-faith buyer or is used to pay the debts of the bankrupt trustee, the trust is non-effective. In other words, in order for the trust to be effective, the property must be held by the bankrupt or the trustee under the trust created in the act. Consequently, if by the date of bankruptcy the buyer has collected all his or her accounts receivable and has dissipated the money, the trust gives no protection. There's a theoretical possibility of bringing an action against the buyer for breach of trust, but a judgment against an insolvent person is essentially worth nothing.

The proposed act specifies a condition that must be met by an unpaid seller, and this is a statutory notice delivered to the buyer within 30 days from the payment date set out in the sales contract. The trust gives priority to sellers over any security interests taken by secured parties in the property of the buyer that falls within the trust. However, customers of the buyer who buy the product from the buyer in the ordinary course of business are protected. They're not subject to the trust.

● (1545)

The trust is effective if, instead of becoming a bankrupt, the buyer invokes insolvency proceedings under the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act. It is also effective if a receiver is appointed as provided in section 243 of the Bankruptcy and Insolvency Act.

The proposed act provides a mechanism involving the courts under which the trust is administered. When bankruptcy is involved, the trustee in bankruptcy may be prepared to administer the trust but is not required by law to do so.

This is a very brief overview.

The Chair: Thank you, Mr. Cuming. You are right on time, at 10 minutes exactly, so thank you.

We shall now move to questions, and we will start with Mr. Shipley, for six minutes.

Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chair.

Thank you, Mr. Cuming. It's been with some anticipation, quite honestly, that we have looked forward to having you here on video conference. It is a long way, particularly if votes sometimes interrupt our schedule. It's great to have you here to help us walk through and clarify how we can move forward with Canada's PACA solution. In your briefing, you're calling it the fresh fruit and vegetable products protection act.

What I'm wondering is this. If you have multiple sellers who get caught in the trap.... And just to be really clear, this is not about a buyer who doesn't pay or delays his pay; basically we're talking about bankruptcy and insolvency. Is that correct?

● (1550)

Mr. Ronald Cuming: Yes: insolvency necessarily, not always bankruptcy, because there could be insolvency proceedings, but yes, essentially the buyer has ceased operation.

Mr. Bev Shipley: Help me a little bit. If we have four or five sellers and at the same time their goods are received by that buyer, how do we make sure that our seller in our area would be protected similarly, in a fair way, against the other sellers who may have also gotten product to that person?

Mr. Ronald Cuming: That's a very good question. The way the act is structured is simply this. It says that any product received by that buyer, and it could be, in this context, from several sellers, or any of what we call the proceeds of that product...and this is more likely to be the case, the accounts receivable. Product has been received from several sellers and it has been resold on credit, so the real value here is the accounts receivable.

Let's assume then that this seller becomes bankrupt or invokes insolvency proceedings. The outcome is simply this. The law says that those accounts receivable are held in trust for all of the unpaid sellers who gave the appropriate statutory notice. Now, the chances are, of course, that there may well be more unpaid sellers than value in the accounts receivable, so that there has to be some method of "divvying up", if I can use that term, the value of those accounts receivable.

The promoters—

Mr. Bev Shipley: How is that divvying up determined? I didn't want to cut you off, but I didn't see it in your report.

Mr. Ronald Cuming: It's done on a prorated basis. The act would say that essentially the court would take over those assets or appoint somebody to take over the assets and the money would be distributed on a prorated basis, so that they would get a portion relative to the amount of debt owing to each of them.

Mr. Bev Shipley: I'll come back to a further question to that one, but what I want to know is this. You have a seller who goes to a buyer. That buyer is not the end result; he hasn't gone broke. Then someone, and it may be a bit of a processor or a packager, sends it to a retailer or a wholesaler who actually does go broke. Now I'm down the line, because the first buyer isn't going to pay me, because he hasn't been paid by the third one, and if he is paid, he's only going to get a small portion.

How does that work in terms of the protection of me, as the original seller?

Mr. Ronald Cuming: Maybe we can boil it down to a very simple situation. We have our buyer, who has resold to someone else who, for one reason or another, hasn't paid that buyer. That is an account receivable owing to the buyer.

Of course, if that account receivable is worth nothing because of the insolvency or bankruptcy of the person who dealt with our buyer, then, of course, there's no asset. It's an asset on the books, but it is of no value. Remember, this is a trust of assets actually received by or that the buyer is entitled to and can enforce the entitlement to. If the buyer has resold to somebody else on credit and hasn't received payment, that buyer has an accounts receivable, but if it's an accounts receivable that's worth nothing, then of course there's nothing for the trust to attach to.

Mr. Bev Shipley: Okay.

The last one I'll touch on goes back to the same idea, the case when you have the buyer with multiple.... You rather answered it, in terms of its going on a pro-rated amount that the seller would get.

Can you help me understand, from some of your analysis, across the board what sort of benefit it would be to the fruit and vegetable growers as compared with what is there now? I mean, nothing comes without risk.

•(1555)

Mr. Ronald Cuming: Yes. That's a very good point.

Let's take two scenarios, one scenario in which this act doesn't apply, in which the act isn't passed. What happens when that buyer goes bankrupt?

Well, the suppliers, the sellers, will all have a claim in the bankruptcy, but the problem, of course, is that they are just one group of creditors. All the other unsecured creditors of that buyer also have claims. When the assets of the bankruptcy are divvied up, they're distributed on a pro-rated basis, with certain priorities set out in the Bankruptcy and Insolvency Act. The point is—

The Chair: Mr. Cuming, we're going to have to stop it here. Maybe you can pursue it in the next question.

Thank you, Mr. Shipley.

Now Mr. Longfield will start with questions....

I'm sorry; it's Mr. Peschisolido.

Mr. Joe Peschisolido (Steveston—Richmond East, Lib.): Mr. Chair, thank you.

Welcome, Mr. Cuming—or I should say "Professor" Cuming. Unlike my colleague Bev Shipley, who waited for your appearance with some anticipation, I waited with a bit of trepidation.

Mr. Ronald Cuming: Oh, oh!

Mr. Joe Peschisolido: I have to say, Professor Cuming, that it brought me back a few years, during commercial law class, or insolvency class and secured creditors, when I was trying to wrap my head around concepts that you were trying, through your textbooks and your materials, to teach law students.

Welcome.

Mr. Ronald Cuming: Thank you.

Mr. Joe Peschisolido: You're very welcome.

The whole purpose of this exercise is for Canada to try to create a system here that is comparable to the American system, so that our producers of fresh fruits and vegetables can get back and have a preferential system in the American market.

Now, we've had an entity that has been trying for three years to create that entity. The Americans have said, no, that's not comparable. Why would your proposed law be different from what has been done in the past? Based on that, why would the Americans say, "Yes, your law, Professor Cuming, is fair to our producers, so we'll allow Canadian producers to go into our market"?

Mr. Ronald Cuming: Of course, I can't speak for the U.S. Department of Agriculture, but I think the answer to that is we would have, if this act were passed, a system very much like theirs. In other words, their system is based on the trust concept, and so would our system be, so that their people would get as much protection as our people would get under their system.

Mr. Joe Peschisolido: The folks came in from Innovation Canada and talked on the same points that you made about the constitutionality and the difference between provincial and federal jurisdiction. There is an existing act right now, under the Bankruptcy and Insolvency Act—I forget the section—but we were led to believe that it would be quite difficult to implement a similar system because of the differences inherent in our system compared with the Americans'.

Mr. Ronald Cuming: Well, I didn't hear their testimony on that point, but forgive me, I don't understand what they would be talking about. No doubt it would be a problem to put this into the Bankruptcy and Insolvency Act, but as a stand-alone act it's no different from what the Americans have. They have their regular bankruptcy act and this special trust system protecting certain types of suppliers. In that respect, there's a direct parallel between the two systems.

Mr. Joe Peschisolido: Yet have you had conversations with the folks over at Innovation, Science and Economic Development Canada?

Mr. Ronald Cuming: I'm sorry?

Mr. Joe Peschisolido: Have you had conversations with folks over—

Mr. Ronald Cuming: Oh no. I haven't. I'm sorry. I haven't been dealing with that. I've been dealing through Mr. Webber, for whom I'm working, but no, we haven't had those. We did have a conference call meeting, I guess, with bankruptcy lawyers from Industry Canada, as it was then. I don't want to speak for them, but of course they don't want to do this. They saw problems with it, but my interpretation was that they're not technical problems but policy problems.

• (1600)

Mr. Joe Peschisolido: One of the problems I think they put forth was that it would impact our financial system, that because you're reworking the priorities and the relationships between creditors amongst different classes, that would have a dampening effect on the financial system. How would you respond to that?

Mr. Ronald Cuming: I think the only group seriously affected would be the secured lenders who take security interests in those accounts receivable.

Of course, it's not for me to say, but this would be a policy decision. If Parliament should go ahead, it has decided that on the one hand there's an important public policy to protect suppliers, and also that those secured creditors, the banks and the big institutions, have ways of protecting themselves and would not be seriously affected by it. Again, that's a judgment call, I would have to say.

Mr. Joe Peschisolido: Thank you, Chair.

The Chair: Thank you, Mr. Peschisolido.

[Translation]

Ms. Sansoucy, you have six minutes.

Ms. Brigitte Sansoucy (Saint-Hyacinthe—Bagot, NDP): Thank you, Mr. Chair.

First, I would like to thank our witness, Mr. Cuming, for his comments.

I must admit that I was particularly surprised by the clarity of your explanations on the constitutionality of the issue before the committee today.

I would like to come back to the question my colleague Mr. Shipley asked. So that I understand this properly, could you give me an example of a scenario, with or without this act, that might help resolve the situation?

[English]

Mr. Ronald Cuming: Yes, maybe we can carry on with the scenario Mr. Shipley raised, that is, without this act, the suppliers would be just regular unsecured creditors of the bankrupt. They would share on a pro-rated basis with all of the other unsecured creditors of the bankrupt buyer.

Under this act, they wouldn't be sharing with the other unsecured creditors. They would only be sharing amongst themselves with respect to the property that's subject to the trust, so that if there is trust property, they would be in a much better position than they would if this act hadn't been passed and they were just regular unsecured creditors.

[Translation]

Ms. Brigitte Sansoucy: Thank you.

At the last meeting, Mr. Webber told us about the situation. In fact, for over 50 years, the reciprocity of access to dispute resolution services existed between Canada and the United States. The preferential rights were lost in October 2014. Yet the Canada-U.S. Regulatory Cooperation Council committed in 2011 to creating comparable approaches to protect Canadian and American suppliers of fruits and vegetables against payment defaults.

In light of your experience and your knowledge, how can you explain that, for all these years, no progress has been made to create comparable approaches to protect the producers?

[English]

Mr. Ronald Cuming: You'll have to forgive me; that is more of, I suppose, a political issue than a legal one. Why they weren't able to come up with something, I don't know. I did see a lot of study papers that were prepared exploring different approaches to this, but in all cases there was still the constitutional question, the doubt as to whether Parliament could do anything outside of areas where it has exclusive jurisdiction.

For that reason I concluded that insolvency really was the only way this could be done in a manner that would satisfy the Americans and that would be constitutionally acceptable in a Canadian context.

[Translation]

Ms. Brigitte Sansoucy: In your presentation, you explained that the jurisdictions were shared and that the issue of insolvency was the only one from a federal perspective.

Yet what we are talking about here is a constitutional issue. You told us about Saskatchewan's experience, which was a precedent, but I would like to know what work needs to be done with the provinces to come to a comprehensive solution.

• (1605)

[English]

Mr. Ronald Cuming: I have to say that from examining the matter, if you wanted a system that covered both insolvency and non-insolvency situations, you would have to have both federal and provincial legislation, the federal legislation dealing with insolvent debtors and the provincial legislation dealing with not-insolvent debtors.

I have worked for many years in the area of debt law, and I wouldn't be optimistic of being able to bring the provinces into the picture in this way. This is simply a personal point of view. I think it would take a considerable amount of time.

The approach we're proposing doesn't prevent a province from setting up trusts that would be effective in a non-bankruptcy situation where the debtor is not insolvent. That would be up to the provinces to do. But I think it's fair to say that the great bulk of problems will arise where the debtor's insolvent and therefore the role of the provinces may not be that significant.

[Translation]

Ms. Brigitte Sansoucy: Thank you.

It was said in committee that the lenders and the creditors groups say that a similar system in Canada might have a negative impact on the cost and availability of credit for businesses.

Do you agree?

[English]

Mr. Ronald Cuming: It may and it may not. The only way I can answer that is to refer to other similar situations. The Bankruptcy and Insolvency Act has been amended over the years to give preference to unpaid suppliers of tangible property, also unpaid employees, and to give priority for claims resulting from pension deductions.

In other words, the act has been amended to give special priority to other vulnerable creditors, and yet credit is readily available in Canada. Indeed, we did hear at the time that if we did that and we changed that law, credit would be negatively affected by the statistics

The Chair: Thank you, Mr. Cuming. We have to move to the next presenter.

[Translation]

Mr. Drouin, you have six minutes.

[English]

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Cuming, for being with us today. Full disclosure: I don't have a law degree background, so I may ask you to explain in layman's terms some of the terms.

Building on Madame Sansoucy's question, can you finish your comment about the special priority? I know the bank sector is worried about the superpriority. Does the special priority have priorities over banks in the...?

Mr. Ronald Cuming: My answer is, yes, it would. There's a special clause in the proposed act saying that this trust would take priority. Put it this way; this trust would affect property even though that property is subject to a security interest. There's no doubt, then, that the special priority that banks occupy, and not just banks but any lenders, when they have security interests on assets, will be affected.

For example, if our buyer had given a general security interest in all of his or her accounts receivable to a bank, those accounts receivable would be subject to the trust, and the trust would take priority. Let me just respond by saying that this is a judgment call.

Parliament will have to decide whether it is prepared to give protection to this small group of vulnerable suppliers over what are really the most powerful banks in the world.

• (1610)

Mr. Francis Drouin: When you drafted this bill, obviously you looked at the American model.

Mr. Ronald Cuming: Yes.

Mr. Francis Drouin: In the States, there was no impact on credit lending?

Mr. Ronald Cuming: I didn't research that particular point, although you may recall that Mr. Webber testified last week that his inquiries had led to the conclusion that the answer was, no, there was no significant effect on the availability of credit. But I'm sorry, that's not an issue on which I have particular expertise.

Mr. Francis Drouin: I know you worked with the industry to draft this, because I see a draft bill here. I know you consulted with the bankruptcy division at Industry Canada, but did you consult with some of the banks?

Mr. Ronald Cuming: No, not me personally.

Mr. Francis Drouin: Okay.

I'm just trying to understand the rationale here. I'll quote from page 3 of your document: "...under a deferred payment contract providing for payment not later than 30 days from the date of delivery. The sellers offering terms longer than 30 days would not qualify for protection under this Act."

What's the rationale for those who would want to set terms longer than 30 days? Is that the risk factor?

Mr. Ronald Cuming: This feature was recommended to me by people in the industry. They took the view that if you're going to grant credit for a much longer period of time, then the question of protecting you and ensuring you are covered becomes quite a bit more complex. There had to be some limit. That limit may be viewed as arbitrary, but the idea is that there has to be some way to put a fence around these claims, so to speak.

Mr. Francis Drouin: Do you know if in the United States it's the same? Do they have that 30-day clause in there as well?

Mr. Ronald Cuming: It is my understanding that they do, yes.

Mr. Francis Drouin: Okay. Great.

Could you talk to me about some of the features of the act? You consulted with the industry to draft this act, and in your opinion, you're certain that it respects the Constitution and the powers within the Constitution, as I heard from your opening statements.

Mr. Ronald Cuming: I have no doubt about that. The Supreme Court has been very clear over the years that once a debtor becomes insolvent, this falls within the provisions of the Constitution Act that give jurisdiction over insolvency to the federal Parliament. I have no doubt whatsoever of its constitutionality.

Mr. Francis Drouin: Okay. Great.

Thank you. *Merci*.

The Chair: Thank you, Mr. Drouin.

[Translation]

Mr. Gourde, you have six minutes.

Mr. Jacques Gourde (Lévis—Lotbinière, CPC): Thank you, Mr. Chair.

Thank you for being with us, Mr. Cuming.

Between the buyer and the seller, there is the trust, and the trust has a guarantee from the buyer for a certain amount of money.

But are there any checks in place?

Sometimes buyer turnover increases fairly quickly, without their going back to the trust—

[English]

Mr. Ronald Cuming: I wouldn't describe it as a guarantee. The way it would operate is simply this. When the buyer acquires product from the seller, and then resells it—or maybe doesn't resell it, but we know this is perishable goods, so it will be resold—and receives something in return, which could be cash or could be an account receivable, but whatever that property is, it will be subject to a trust.

In other words, the buyer is under legal obligation to recognize that the property is beneficially owned by the seller until the seller is paid. It's not a guarantee, as I mentioned. If the buyer sells the product and gets cash, and spends the cash, dissipates the cash, then of course there's nothing for the trustee to attach to. Therefore, the seller is not protected. It's only when there is property that the buyer receives from the disposition of the product; it's only when that property is identifiable and can be protected that the system will operate.

• (1615)

[Translation]

Mr. Jacques Gourde: It may be that an American buyer buys products from Canadian farms, but becomes insolvent fairly quickly for some reason.

Is there anything in place to prevent this kind of situation or is it just practically a done deal every time?

[English]

Mr. Ronald Cuming: If the buyer is an American buyer, then U.S. law applies. The Canadian supplier would get whatever protection that law provides. We hope, then, that if this act were passed, the USDA would declare that the U.S. system would protect that Canadian seller.

Now, if it's the other way around and it's a U.S. seller and a Canadian buyer, this act would protect the U.S. seller. It's complete reciprocity.

[Translation]

Mr. Jacques Gourde: Okay.

I don't have any more questions.

The Chair: Thank you, Mr. Gourde.

[English]

Mr. Longfield, you have six minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thanks, Mr. Chair.

I'll also declare that I'm not a lawyer, and I'm having a little difficulty keeping up with some of the language, but Mr. Peschisolido is sitting right beside me, which is a wonderful thing, always. I may be sharing some of my time with him.

I want to go to the two previous meetings that we've had, one on May 9, where we talked about the volume of risk that we're trying to manage here, and the Conference Board of Canada saying that our payment claims were about \$479,000 last year, and that it had actually gone down from 13 claims to 10 claims.

The next meeting we had, on May 16, we were speaking with Mr. Webber about the volumes again, the \$479,000 that was on an export of \$1.54 billion, but that there were also about \$18 million to \$25 million a year of other claims.

What I'm trying to understand from this is whether we're separating out what the federal jurisdiction has in risk and what the provincial jurisdiction has in risk. It seems to me that the federal portion is a lot smaller than the provincial, but it seemed you had a different take on that. Could you clarify that for me, please?

Mr. Ronald Cuming: You will have to forgive me by noting that I approach this from a technical legal point of view. In other words, I don't deal with the economics in terms of the volumes of claims.

However, let me answer by saying this. Under this system, whatever the volume, it doesn't matter whether you characterize it federally or provincially, this act would apply to all unpaid suppliers, whatever quantum of interest they may have. So there's no jurisdictional breakdown when it comes to the application of the act. If you're an unpaid supplier and you comply with the act, you get this protection, wherever you are in the country.

Mr. Lloyd Longfield: With insolvency, as a definition.

Mr. Ronald Cuming: Yes, well, insolvency—

Mr. Lloyd Longfield: Okay.

Mr. Ronald Cuming: I'm sorry, I missed your question.

Mr. Lloyd Longfield: That sentence would be: the federal part of this would be applying to cases of insolvency.

Mr. Ronald Cuming: Yes, I'm sorry, you're quite right; I should have made that qualification for sure. Yes.

Mr. Lloyd Longfield: Thank you.

I have just have one more on my time, then it's over to Mr. Peschisolido.

Early in the study I had mentioned maybe an opportunity where in the comprehensive agriculture program that's being discussed, or will be discussed, between the provinces and the federal government, maybe this risk management could be part of that discussion where the provinces and the federal government are trying to determine joint risk in agriculture. Would this topic be something that you could see falling within the comprehensive agriculture program?

•(1620)

Mr. Ronald Cuming: Again, I must apologize; as a technical lawyer, I'm really not competent to deal with what is really a political issue. But let me say this. If there is a solution that will satisfy the Americans, in my opinion it will have to be one that follows this approach. In other words, ultimately, any solution has to be implemented in law. As I understand it, this is the only way Canada could do it on a nationwide basis and satisfy the Americans. Indeed, I'm not suggesting that the satisfaction of the Americans is the sole objective here, but it's the approach that works.

Mr. Lloyd Longfield: Great. Thank you very much.

By the way, thank you for coming. I should have said that earlier. We were really looking forward to it. Your name had been mentioned in every meeting we had. It's great to meet you face to face, virtually.

Mr. Ronald Cuming: It's my pleasure.

Mr. Lloyd Longfield: Mr. Peschisolido.

Mr. Joe Peschisolido: Mr. Longfield, thank you.

Just following up on Mr. Longfield's line of questioning, based on your 50 years of expertise in law and developing statutes and regulations for insolvency and secured transactions, you don't believe, looking at your proposed law and what exists in the United States, there's any technical legal impediment for the Americans looking at this and saying, yes, this is a comparable system?

Mr. Ronald Cuming: No, I don't see any difference. The approach they use of course is to use the trust in the context of their federal system. A difference between U.S. law and our law is that their Congress has much more power than our Parliament to invade a state law. We're much more strict with our Constitution, quite properly.

It was for this reason that I concluded that the only practical way to legally implement something that would be equivalent to the American approach was to use insolvency, which is a clear federal basis for acting in this area.

Mr. Joe Peschisolido: If that is the case, then I'm not sure what the procedure is. Perhaps this committee, with the indulgence and consent of all colleagues, could present a letter to the Minister of Agriculture and Agri-Food, working together with the Minister of Innovation, Science and Economic Development, to see if we can draft something to present to Parliament in order to finally rectify this awful situation we've had for the past how many years.

The Chair: Do you want to make that a motion?

Mr. Joe Peschisolido: Yes, I do, for whoever can take what I just said and put it into motion form.

The Chair: So if I understand—

Mr. Joe Peschisolido: It would be that this committee advises or suggests to the Minister of Agriculture and Agri-Food, working with the Minister of Innovation, Science and Economic Development, to examine the model legislation put forth by Professor Cuming, and look at creating legislation based on Professor Cuming's model.

The Chair: Okay.

Mr. Shipley.

Mr. Bev Shipley: I want to thank my colleague, because as we went through this process for quite some time, one of the underlying issues was related to the complexities that it seemed to bring about.

Professor Cuming, along with, I believe, the stakeholders, if you look at the delegations that we've had prior to this, one of the reasons you're here is that they had asked us to make sure you became a witness for this committee. That being said, I think you would certainly get the support from us to move forward with it. You took something that seemed to be very complex. Sometimes, once you get through the complexities and look in the rear-view mirror, you sometimes wonder why you weren't able to do that before. But I think some of the legislation also has allowed some changes to happen.

To my colleagues and to Mr. Chair, if you wanted to bring forward a draft at our next meeting, then certainly we could review it, but on the surface, I would say that certainly we would be pleased to be a part of that motion.

•(1625)

The Chair: Thank you, Mr. Shipley.

Mr. Longfield.

Mr. Lloyd Longfield: I wouldn't put it into the next meeting. We have a schedule of studies we're trying to get done. Possibly we could look at that when we're not able to get witnesses, closer to the July period.

The Chair: Madame Sansoucy.

[*Translation*]

Ms. Brigitte Sansoucy: I fully agree with this motion. It would be worthwhile adding a deadline to the motion. It could be September 30, for instance. If we send out this intention without setting a deadline, we may find ourselves in September still wondering when it will take place.

The Chair: Go ahead, Mr. Drouin.

Mr. Francis Drouin: I understand Ms. Sansoucy's point, but we need to involve Mr. LeBlanc and take into consideration the parliamentary calendar. The committee could mention in a written letter that it must be done at the earliest possible convenience. That would be a good idea.

I know that your colleague moved a motion asking that something be done before September 30, but according to the parliamentary calendar, the deadline would be two weeks after the summer recess. I like setting deadlines, but we also have to be realistic.

Ms. Brigitte Sansoucy: I'll let you propose a date for the following week.

[*English*]

The Chair: We have a motion on the floor. I'll read it again: that the committee present a letter to Parliament to suggest a model to create legislation similar to the model presented by Mr. Cuming.

Mr. Joe Peschisolido: Mr. Chair, the letter would not be going to Parliament. The letter would go to the two respective ministers, the Minister of Agriculture and Agri-Food as well as the Minister of Innovation, Science and Economic Development.

The Chair: So noted.

Are we in favour of that motion?

[*Translation*]

Ms. Brigitte Sansoucy: Did you add “at the earliest possible convenience”? I didn't hear it.

[*English*]

Mr. Joe Peschisolido: We should add “at the earliest possible”—

The Chair: It should be at the earliest possible convenience. We're all agreed on that, no problem there.

[*Translation*]

Does anyone oppose the motion? I see not.

[*English*]

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: I believe at this stage we're out of time.

I certainly want to thank you, Mr. Cuming. It's a very complex issue and we've certainly been able to understand some of it, but again, we'll try to push this to do the best for our producers. Thank you for taking part today and have a good day, sir.

At this time, we will suspend for a few minutes, and then we will go in camera to do a little bit of business for the committee.

[*Proceedings continue in camera*]

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