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# **Standing Committee on Industry, Natural Resources, Science and Technology**

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**Chair**

**Mr. Brent St. Denis**

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## Standing Committee on Industry, Natural Resources, Science and Technology

Thursday, December 9, 2004

• (1530)

[English]

**The Chair (Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.)):** I'd like to call to order this December 9 meeting of the Standing Committee on Industry, Natural Resources, Science and Technology. Today we are starting a study of Bill C-21, an act respecting not-for-profit corporations and other corporations without share capital.

We have a number of officials from the department here to help us, and I believe Monsieur Gauthier will be speaking for about 20 minutes. There's quite a bit of material. We will have lots of time for members around the table to ask questions. We know it's a fairly extensive and sweeping bill, if I could use those terms, so we look forward to that.

Just before we start, I want to advise members that we will have our next meeting on Tuesday on our industrial strategy study. We will have the Canadian Council of Chief Executives, SNC-Lavalin, the Canadian Chemical Producers' Association, and the Canadian Association of Petroleum Producers. They have all agreed to come and help us on Tuesday, and then next Thursday we will continue with Bill C-21.

I would also like to let you know that Werner and I have been talking, as I have with others, about taking advantage of the early meetings we've had on our industrial strategy study to see if we can somehow take that experience and not change our strategy study but refocus it to make it easier for the clerk and myself and the researchers to plan, going forward. I don't think Werner wants to make this a formal proposal, although I will get it translated and will circulate it with an invitation for other members to submit their own ideas—but only if you agree, first of all, to a refocusing of our strategy study for planning purposes. Over the period of time before we come back in February, maybe we can agree to leave it the way it is, or, just for work purposes, change it a little bit, or substantially, whatever you decide makes sense.

At some point today, while we have quorum, I'll have to ask the committee to agree to a budget for Bill C-21, which you have in your packages. As with all budgets, there are maximums.

Brian.

**Mr. Brian Masse (Windsor West, NDP):** Just in regard to the first point, I would like to get some clarification about whether this is a subcommittee. It seems to me out of character for the committee to meet independently to change the order of business.

**The Chair:** No, no.

**Mr. Brian Masse:** I'm misunderstanding it then, as I thought the

**The Chair:** All I was going to do, Brian, was to circulate to everyone informally by e-mail the idea that Werner has come forward with.

• (1535)

**Mr. Brian Masse:** Okay, great.

**The Chair:** And then I invite colleagues on all sides to read his proposal, compare it with the original study, and see if it makes sense or whether they have their own ideas on it. So by e-mail we could come up with a consensus on how we would phrase it going forward, based on the experiences we've had so far. So it will just be an informal e-mail communication to try to get a consensus. Then at some point in time we can sit down at a meeting. But let's do some preparatory work ahead of time. We're not a subcommittee.

Fair enough?

**Mr. Brian Masse:** Yes, thanks.

**The Chair:** Is anybody prepared to move the budget?

**Mr. Brian Masse:** I move the budget.

**The Chair:** Is there a seconder of the budget?

**Mr. Werner Schmidt (Kelowna—Lake Country, CPC):** Are we looking at \$63,200?

**The Chair:** Yes. It's based on the normal values attached to witnesses. It is a maximum, and hopefully we won't need all of that, but it depends on how many witnesses colleagues want to hear.

**Mr. Werner Schmidt:** I have a question, Mr. Chair. The question is, if we don't need all of this for the bill, could we allocate whatever is left over to our study of the strategic thing, in case we need it?

**The Chair:** My understanding is that each bill or each study has to have its own allocation.

**Mr. Werner Schmidt:** I see.

**The Chair:** So if we don't spend it.... We're looked at in terms of our global spending, and if we had 50 bills in a year, we would need money for 50 bills; if we had 10 studies, we'd need money for 10 studies. So I don't think it's a matter of having to worry too much about—

**Mr. Werner Schmidt:** I'm not worried about the bills; I'm worried about our study.

**The Chair:** Yes. I think if we need more money for the study, because we have a budget approved for that so far, I'll bring forward a revised budget to the Liaison Committee.

**Mr. Werner Schmidt:** Okay, then I'll second that.

(Motion agreed to)

**The Chair:** What we have just passed is an amount of \$63,200 maximum for a study of Bill C-21, which will allow us up to 50 witnesses if necessary. Thank you, colleagues.

With that, we're going to proceed to the work of the day.

Thank you to Mr. Gauthier.

Mr. Lennon, I think, is here, and Coleen Kirby as well. To the three of you, thank you for being here.

We'll invite Mr. Gauthier to start us off. Thank you, sir.

[*Translation*]

**Mr. Gilles Gauthier (Director, Corporate and Insolvency Law Policy Directorate, Policy Sector, Department of Industry):** Thank you Mr. Chairman and members of the Committee. I am pleased to have this opportunity to discuss Bill C-21, an Act respecting not-for-profit corporations and other corporations without share capital. I should mention that I have other officials with me in the room, as well as Ms. Jane Burke-Robertson, a private sector lawyer who helped us drafting this bill. If need be, I will call on them to help answer your questions.

Mr. Chairman, this bill represents seven years of policy development, consultations and legislative drafting. It responds to needs expressed by a wide range of voluntary organizations, individual directors and officers, the legal community and the accounting profession, to name but a few.

Our overriding goal has been to come up with a statute that meets the needs of the voluntary sector while at the same time making those that solicit funds from the public or government more open and accountable.

In so doing, it strikes a balance between privacy concerns and transparency; the rights of members and the requirement for directors to act in the best interest of the corporation; and the need for establishing a sound corporate governance regime against the desire of corporations for as much flexibility as possible.

As you know, the not-for-profit community is diverse. There are more than 160,000 not-for-profit organizations in Canada, 18,000 of which are federally incorporated. They are present in a multitude of activities, including important partnerships with government for servicing the needs of Canadians. Examples encompass charities, private foundations, religious groups, curling and golf clubs, airports, cultural and environmental groups, business and consumer associations.

Each type of organization has its own specific requirements and one of the reasons for the length and complexity of the bill is the need for a corporate statute that can be applied to all of them.

The detailed provisions in Bill C-21 reflect the development of a whole range of practices that have evolved since the existing Canada Corporations Act was implemented in 1917. They have been

modelled on what can be found in all the modern corporate statutes such as the Canada Business Corporations Act, the Canada Cooperatives Act, as well as recent provincial not-for-profit laws.

The objective of the Bill is straightforward. It is to provide the volunteer and not-for-profit sector with a state of the art corporate law framework which will give the organizations easier access to incorporation, facilitate their internal governance by providing clear standards and rules, and foster accountability.

This will by no means address all the changes facing the not-for-profit sector. It does, however, represent a concrete step designed to make it easier for organizations to avail themselves of the protection afforded by a modern corporate law.

• (1540)

[*English*]

Mr. Chairman, the bill will apply to all existing federally incorporated not-for-profit corporations and to other corporations without share capital, as well as to any entity that decides to incorporate under it in the future.

There are basically no jurisdictional limitations to the application of the bill, except that the organization must not have share capital, must not be a financial institution or an education establishment, and, of course, the organization ought to be created to carry out legal activities.

The bill contains 19 parts. A synopsis of each part has been provided to the committee. In the interest of time, I will focus on the areas of the bill that will significantly change the landscape for federal not-for-profit organizations. Suffice it to say that several parts of the bill essentially replicate standard commercial law practices with respect to financing instruments, debt obligation, trust indentures, organizational change, liquidation and dissolution, and receivership.

All of these provisions closely parallel what is contained in the Canada Business Corporations Act and therefore reflect ongoing law and practices. When you take all of these parts together, they represent close to 100 of the 330 clauses of the bill.

Of course, not all of these provisions are relevant to all organizations, but they are nonetheless essential to a comprehensive governance framework law.

The process of incorporation is laid out in part 2 of the bill. The bill proposes a system of incorporation "as of right". It means that incorporation is granted upon the simple filing of the articles of incorporation using a specified form and payment of a fee. This will greatly expedite the process of incorporation. What used to be done in a couple of weeks under the current system of "letters patent" will now be done in a day or two, or even within a few hours, since electronic filing will also be allowed.

Moreover, it will also be possible for organizations to establish different classes of membership, based on regional or other grouping, allowing all the necessary flexibility to have a decision-making structure that corresponds to their needs. Once incorporated, an organization will have the legal capacity of a natural person, that is, it will be able to conduct activities in its own name, enter into contracts, or own property. This is spelled out in part 3 of the bill.

Organizations will need to keep corporate records, that is, registers of members and directors, minutes of meetings, financial statements, etc. All of these requirements are laid out in part 4 of the bill.

Provisions regarding the appointment of directors and their rights and obligations, as well as those of lead officers, are contained in part 9 of the bill. An organization must have at least one director, except where the organization solicits funds from the public or receives money from the government, in which case a minimum of three directors is required. Directors are charged with the responsibility for the management of the corporation. The essence of the directors' duties, as set out in the bill, is that directors must take an active role in the affairs of the board, pay proper care and attention to their responsibilities, and, of course, act in the best interests of the organization.

This is what we call the standard of care, and it is well developed in Canadian corporate law and, in our view, perfectly applicable to the not-for-profit sector. Irrespective of the size and nature of a not-for-profit organization, its members, or the public more generally in the case of a soliciting organization, have a right to expect that directors of the organization will indeed act honestly and in good faith in the pursuit of the organization's mission.

• (1545)

In case of a dispute as to what the proposed duty of care means exactly, the courts have an abundance of experience in dealing with disputes of this nature, including in fact in the recent Supreme Court decision, where that concept was further elaborated.

The bill also provides a clarified defence for directors against unwarranted liability, which will be expressly linked to the duty of care. A director who meets the prescribed standard of care will be protected by a "due diligence" defence. In other words, directors will not be liable if they pay proper attention to their job and apply themselves to it to the best of their ability and in the best interests of the organization. The organization will be permitted to indemnify directors in case of legal actions against them, provided of course that their behaviour was again in accordance with the standard of care. It will be possible for the corporation to purchase insurance against liability for their directors and officers.

During the consultations that led to the development of this bill there was very broad support for the establishment of a clear standard of care and a due diligence defence as a means of reducing uncertainty and helping organizations to attract qualified individuals to serve as directors. The inclusion of an explicit standard of care and a due diligence defence will correct what is generally perceived as one of the major shortcomings of the current law.

Finally, the bill contains a conflict of interest provision, requiring directors to disclose any conflicts that may be present in material

transactions of the corporation and to refrain from taking part of the decision where appropriate.

Mr. Chairman, corporations under this act are intended to be member driven. Organizations are given more flexibility to develop the bylaws that fit their needs and those of their members. This contrasts sharply with the current situation under the letters patent system, which requires that bylaws be submitted to the government for approval before they can become effective.

All the members' rights are outlined in part 10 of the bill. They are designed to promote active participation and encourage members to properly and effectively oversee the activities of the corporation's directors. Measures available to members include access to corporate records, including the registers of members and directors, access to a list of members and their addresses, copies of the financial statements, and any report of the public accountant. The current law has few of these provisions.

The provisions governing access to membership lists also contain a number of safeguards to prevent misuse and address the privacy concerns that were frequently raised during our consultation process.

First, the general public does not have a right of access to membership lists, only the members. Second, an individual may only retrieve the membership lists once per year and must sign a statutory declaration affirming that the list will only be used for specific purposes that are set out in the act. Third, a corporation or an individual member can also apply to the director appointed under the act and ask for authorization to refuse access to corporate records if disclosure would be detrimental to an individual or the organization as a whole.

Part 10 also allows members to requisition a meeting of members and to make proposals at such meetings. There are provisions for providing notice of meetings to members and to permit absentee voting, such as mailed-in ballots. These provisions allow each organization to determine in its bylaws the best method for it. To ensure fairness, the regulations under the act will set out the range of options available, and, if necessary, permission can be sought to the director appointed under the act to use an alternative method not mentioned in the regulations.

• (1550)

Finally, members will have the ability to seek remedial action if their rights have been impaired, using the remedy provisions of the act pertaining to oppression remedy or the derivative action to enforce their rights. These are outlined in part 16 of the bill.

More robust members' rights made it necessary to deal with the concern expressed by religious organizations that a member could attempt to challenge one of its decisions in court on the basis that his or her rights have been oppressed. The bill provides a faith-based defence to ensure that where a decision of a religious organization is based upon its doctrines or tenets of faith, that decision cannot be overturned by the courts.

The concept of “tenet of faith” is not defined so as to permit the courts to apply it on a case-by-case basis. In fact, Canadian courts have, in numerous instances, been called upon to assess the effects of an action based on tenets of faith on an individual, using principles of natural justice. It is expected that courts will develop similar reasoning in the context of applying this particular provision.

The provisions governing financial accountability are found in parts 11 and 12 of the bill. The financial reporting requirements will differ depending on two criteria: whether it is a “soliciting corporation”, one that solicits donations from the public or receives government grants; or a “non-soliciting corporation”, one funded directly by its members. The second criterion pertains to the size of the corporations measured by their annual revenue levels. These thresholds will be defined in the regulations.

Accordingly, the bill sets out categories to determine whether the corporation will be required to conduct a full audit or whether a review engagement, which is a somewhat less rigorous and certainly less expensive process, will suffice. For the smallest corporations, members, if they unanimously agree, can dispense with any formal financial review.

All corporations will have to provide ready access to their financial statements and the report of the public accountant to all its members, directors, and officers. In addition, soliciting corporations will have to file their financial statements with the government, that is, Corporations Canada, in order that the information be available to the public. Disclosure of financial statements is one of the important tools to provide greater transparency and accountability to the millions of Canadians who make donations to charitable organizations.

Taken in their entirety, the financial reporting requirements under the bill will provide far more flexibility than the current law, which makes, by the way, annual audit mandatory for all organizations even though we know that this is not respected in a large number of organizations. At the same time, accountability will be greatly enhanced with the explicit requirement of making financial statements and public accountant's reports readily accessible by members, and in the case of soliciting organizations by the general public.

The bill provides for the appointment of a director under the act, who is in fact the same director appointed under the Canada Business Corporations Act. This director is the head of Corporations Canada, a unit of Industry Canada responsible for the administration of all federal corporate law statutes. The director will be responsible for general administrative matters as laid out in part 18 of the bill. He will also possess investigative powers to deal with issues raised in the administration of the act and will have the ability to apply to a court to seek a remedial order.

However, it should be noted that Canadian corporate law rests first and foremost on private enforcement, hence the emphasis in the act on the accountability to members and reliance on application before the courts. This is laid out in parts 15 and 16. A number of corporations are currently incorporated under special acts of Parliament and are governed by part 3 of the Canada Corporations Act. There are over 200 of such entities, most created over 50 years ago.

Part 19 will bring those corporations that do not have share capital under the framework of the bill and make them subject to the same basic reporting obligations, that is, filing of annual reports and the holding of annual meetings.

● (1555)

In addition, part 19 will expand the provision regarding name change, liquidation, and dissolution for these corporations. This will reduce the need for another special act to modify these corporations, as is currently the case.

In recent years, several members of the Senate have expressed concerns about how cumbersome and expensive it is for corporations to make changes to their charters via legislative amendments. This will be rectified under the proposed bill, allowing some of these changes to be made through an administrative procedure, instead of by a legislative amendment. However, the bill does not remove the right of Parliament to propose and pass legislation concerning these types of corporations.

[Translation]

Mr. Chairman, the final thing I wish to discuss before taking questions is the transition process. Not-for-profit corporations currently under the Canada Corporations Act will have three years to continue into the new statute.

Since Parts I and II of the Canada Corporations Act will no longer have any application, they will be repealed. That way, there will be no confusion in the market place, no duplication or contradiction in the rules applying to not-for-profits.

There will be no fee for this process. If a corporation does not apply for transition within the three-year period, the director appointed under the act will initiate the process of dissolution, during which additional communication will be made to the corporation to confirm its status. Every effort will be made to track down every corporation currently incorporated under the Canada Corporations Act and inform them of the new Act and every effort will be made to assist them in the transition. For example, we will be developing model articles of incorporation and model by-laws that will be made available to the public. This will make it much easier for small not-for-profits, who may not be able to afford legal counsel, to make the transition.

For new organizations who may wish to incorporate federally, the incorporation fees will be set by regulation. Currently, it costs 200 dollars to apply for incorporation status, plus an additional 30 dollars to file the mandatory annual summary. Based on our analysis to date, it does not appear that the fee structure will need to be modified to any significant extent. We hope to complete this analysis early in the new year. As it is the case now, the fee structure will need to provide for cost recovery.

Mr. Chairman, time has prevented me from discussing all the features of the act, but I hope I have at least added some clarity to the main points. My colleagues and I will be pleased to answer your questions and those of the members of the committee. Thank you.

•(1600)

**The Chair:** Thank you, Mr. Gauthier.

We will start with Mr. Michael Chong.

[English]

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

I have a number of questions about a number of aspects of this bill, but before I ask some specific questions I just want to find out a little bit about the volunteer sector initiative that produced this bill. In particular, I'm wondering if the VSI has actually been completed. Secondly, did all the \$94.6 million that was originally allocated to that get spent?

That's just a very short question. I have others after that.

**Mr. Gilles Gauthier:** Thank you.

I'm not sure I can give you a full detailed explanation here. This was one of the projects identified under the VSI back in 1999 and 2000. But given the particularity of this project, being a fairly technical piece, it was somewhat distinct from the overall VSI process.

I believe you'd need to obtain information on the overall VSI process from the Department of Social Development, which has the lead responsibility for that program.

**Mr. Michael Chong:** One of the things I've been hearing—there have been numerous reports about this, and this is part of the VSI initiative—is that the not-for-profit sector, the volunteer sector, has been under a lot of pressure over the last number of years. In particular, the number of volunteers in Canada has been down over the last number of years. The people who are volunteering are volunteering ever more hours per person, and they're being stretched. So this VSI initiative was part of an attempt to strength the third pillar of Canadian society.

One of the interesting things I see in this bill is that there is a sort of higher degree of accountability, reporting, and whatnot. But at the same time, a lot of the things that have been requested by that industry were incorporated as part of a broader approach to drafting some of their concerns.

I'd be interested to hear your perspective on the additional reporting requirements in this bill and the additional liability provisions. I know the minister has said that the additional liability is actually reducing the liability, because whereas under the old act there was a much bigger potential liability, the new act puts in the current standard of care provisions and duty of care. But I'm not sure if in the real world we're actually going to have a situation where charities will have substantially more liability. Many of these director positions are not paid positions. I know this because I sit on the board of two not-for-profits. This may make people more reluctant to sit on these boards, and it may cause some charities to take a look at taking out director's insurance, which is just another added cost.

Maybe you can tell this committee if you have considered this aspect of the legislation.

**Mr. Gilles Gauthier:** Thank you for the question.

Certainly the bill will make it much easier for organizations that wish to incorporate. Currently the letters patent system is very cumbersome for organizations. That aspect certainly will be greatly improved by proceeding with incorporation as of right. There was *unanimité* during our consultation process on that aspect.

On the liability and the difficulty organizations often face in attracting people to serve on their boards, clearly this was also an area where further legislative guidance was necessary. So at least there is increased predictability in the system. Will it change things overnight for the organization? That's hard to predict, but by having in the statute a clearly defined standard of care and a clearly defined due diligence, neither of which currently exists in the Canada Corporations Act, we believe this will remove the degree of uncertainty that is currently felt by organizations.

On the question of purchasing insurance, the bill provides an explicit clause to allow organizations to purchase what we call D and O insurance. I know this is an area where organizations are doing a lot of work, teaming up together and working with the Insurance Bureau of Canada to try to pool resources and be in a better position to have rates that fit their financial requirements.

Generally speaking, we feel that providing that additional legal certainty should at least help the directors know what they're up to when they agree to serve on the board.

•(1605)

**Mr. Michael Chong:** My other question is on charitable status. I know that's not part of this, but charities are a subset of not-for-profits. One of the big complaints from that sector is that the charitable registration process is convoluted and not transparent, especially for those charities seeking to register under educational guidelines.

I'm wondering if you gave any consideration, or if there was any consideration given by the department, when the bill was being drafted in the early stages to streamlining that process and the rules for that process, much in the same way you did for the registration of corporations under this proposed bill.

**Mr. Gilles Gauthier:** No, there's nothing specific. In fact, the discussion was to ensure there was no unfortunate crossover. We had many discussions with officials from the Canada Revenue Agency. Under this bill you incorporate so that it in no way, shape, or form affects the treatment that will be applicable to you under the Income Tax Act. In fact, we have drafted this to prevent any crossover.

**Mr. Michael Chong:** From a departmental view, I understand the logic in that, but for many charities that are both not-for-profits and registered charities, it's a single government. Many of them are wondering why one part of the system was changed and the other one wasn't.

I have one final question. It's more of a technical question about one aspect of the bill. Some of the not-for-profits of this country have been incorporated under a special act of Parliament. In reading the Library of Parliament notes and in looking at the bill, I see that only certain sections of the bill apply to these specially incorporated entities. Could you tell the committee why that is?

**Mr. Gilles Gauthier:** Essentially, we wanted to preserve the framework that is already embodied for the special act corporations. There was no intention through this bill to change the structure that was already provided for under these special acts. It was simply to make it easier and apply the generic obligation that pertained to their annual meetings and names.

We're simply not affecting any of the rights and obligations that these special act corporations have. We're simply transferring that under the ambit of this bill and providing a little more flexibility for proceeding with changes to the charter for these special act corporations. Now you have to go through legislation to change a charter.

**Mr. Michael Chong:** Okay.

**Mr. Gilles Gauthier:** Apart from that, there's no change.

**Mr. Michael Chong:** I have another quick question. Over the last number of years there have been a number of not-for-profits, and specifically federally registered charities, that have been deregistered because they were considered by the government to have been associated with or to be terrorist organizations. Has the deregistration of these certain charities over the last number of years had any impact on the not-for-profit status of these entities? Does this bill have any impact in relation to that?

• (1610)

**Mr. Gilles Gauthier:** I'm not aware of anything that would have occurred as a result of that process. I'm not even sure there has been any deregistration under that particular provision.

You can proceed to dissolve corporations if there is evidence that they are not carrying out legal activities. There is an explicit provision that provides rights for anybody, including the director appointed under the act, to file an application in the court to proceed with the dissolution of a corporation. That would be a measure to act upon, if there was a concern about illegal activities.

The other major change that we're bringing forward is the obligation to report financial statements. That obligation does not exist now and will be a fundamental instrument to ensure there is some transparency in the financial affairs of organizations.

Perhaps my colleague could add to this.

**Mr. Wayne Lennon (Senior Project Leader, Corporate and Insolvency Law Policy Directorate, Policy Sector, Department of Industry):** The Charities Registration Act allows for a procedure to essentially take charitable status away from an organization, but it doesn't affect its corporate status. It would still remain a not-for-profit corporation but wouldn't be allowed to give out income tax receipts or not pay taxes.

**Mr. Michael Chong:** That's the current regime. Would this change it?

**Mr. Gilles Gauthier:** No.

**Mr. Michael Chong:** That was my question. Thanks.

**The Chair:** *Christiane, s'il vous plait.*

[Translation]

**Ms. Christiane Gagnon (Québec, BQ):** Thank you. I am a new member of the Standing Committee on Industry, Natural Resources, Science and Technology. I am also on the Standing Committee on

Human Resources, Skills Development, Social Development and the Status of Persons with Disabilities. In this committee we deal with issues related to social development. Some of its members, including Mr. Crête, will watch very closely what happens on this file. We are going to meet with not-for-profit organizations.

I have some of the same questions as my colleague from the Conservative Party. I too wonder how small not-for-profit corporations will be able to find their way through this bill. Will they be able to understand it? Will they have all the tools required to make sense of its direction and try to get changes or amendments made to facilitate their compliance?

I was told that there are 160,000 of those corporations and that 18,000 are located in Quebec. Is this true?

**Mr. Gilles Gauthier:** There are 18,000 organizations with a federal charter.

**Ms. Christiane Gagnon:** This leads me to ask how this is being harmonized with the provincial charter of Quebec.

**Mr. Gilles Gauthier:** Each organization has the choice of incorporating at the federal level or at the provincial level. This is not being changed by the bill. Since smaller corporations are often more familiar with local requirements, they might be more interested in incorporating at the provincial level. However, nothing in this bill prevents them from incorporating at the federal level.

You asked how they are going to make sense of the system and if the bill is flexible enough. We made one very important change to the legislation: we are giving much more flexibility to corporations to establish by-laws in various areas. This allows them to introduce their own governance rules according to their needs or their financial resources and expertise.

You must understand that the framework of the bill, even if it may seem rather technical, is quite simple. After incorporation, each organization drafts its own by-laws. Incorporation becomes a simple matter of filling out a one and a half page form. Thereafter, you have legal status and your by-laws determine the mode of operation of the organization. We will propose model by-laws. We will also draft model incorporation applications in order to make things easier for small organizations who may benefit from having a model on which to base their own articles of incorporation.

• (1615)

**Ms. Christiane Gagnon:** What percentage of those 18,000 not-for-profit corporations with a federal charter are large corporations? Do you have any idea? How many are small organizations and how many are large?

**Mr. Gilles Gauthier:** Unfortunately, our present data bank does not allow us to readily establish the nature of these organizations. One would need to look at them one by one in order to make a determination. Some are very large, but there are also very small ones.

**Ms. Christiane Gagnon:** This brings me to my second question. You provide for greater access to information, such as membership lists. You know there are costs related to providing membership lists. They can be very long and there are costs associated with this.

**Mr. Gilles Gauthier:** The bill says that an organization can charge a fee for providing a membership list or sending out additional copies of financial statements. The organizations can charge costs.

**Ms. Christiane Gagnon:** Can it charge a fee to a person who wants a copy of the membership list?

**Mr. Gilles Gauthier:** Yes.

**Ms. Christiane Gagnon:** This is an improvement since very often small corporations do not have the means to comply with legislative requirements. So this is an improvement.

I will cede the other half of my time to Mr. Paul Crête. He probably has other questions to ask.

**Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ):** In the briefing notes that were handed out, my attention was drawn to one specific aspect. It has to do with the concept of "mission". A corporation which is not acting in accordance with its mission "would be open to allegations that it was not acting lawfully".

I did not see in the bill any definition of the terms "mission" or "mission statement". Could this not create problematic situations? An organization could be accused, for example, of having activities which are outside its mission. In such a case, this organization could introduce a legal challenge to prove they acted in accordance with their mission, but there is no definition of what a mission is. At least, I did not see any.

**Mr. Gilles Gauthier:** The mission will have to be defined in the articles of incorporation at the time of incorporation.

**Mr. Paul Crête:** Are you talking about the mission of the corporation?

**Mr. Gilles Gauthier:** There will be a very simple and general definition.

**Mr. Paul Crête:** What I mean is that there is no definition of the term "mission" in the bill itself. The term "mission" is not defined. If there is a legal challenge, it does not matter whether the organization acted in accordance with its mission or not. It seems to me that the absence of a definition of "mission" in the bill could give rise to problems.

**Mr. Gilles Gauthier:** It is true that the bill does not define the word "mission". The intention is this: there should be in the articles of incorporation a rather general statement of the general purpose of the organization. This provides the organizations a much greater degree of latitude. Presently, with the letter patent or charter system, the object section defines very narrowly all activities that the organization can pursue. If some activities fall outside the ambit of the charter, this would surely be a violation of the articles of incorporation. The new act will allow for much greater flexibility since the mission will be defined in very general terms by the organization itself at the time of incorporation. Thereafter, it will have the right to exercise all the rights and obligations of a corporation.

**Mr. Paul Crête:** It seems to me that this reform is based in part on the concept of social economy. It is a concept that was developed more specifically in Quebec where not-for-profit organizations act in a way similar to for-profit corporations but without a profit motive.

Are there any provisions in this bill to allow greater development of this type of economy, the social economy?

**Mr. Gilles Gauthier:** Absolutely, since the title makes reference to...

• (1620)

**Mr. Paul Crête:** Excuse me. I have had to deal with an employment insurance bill that did absolutely nothing to ensure the availability of jobs. Consequently, I see little relationship between the title of a piece of legislation and its consequences.

**Mr. Gilles Gauthier:** I was going to say that it applies to any entity without share capital. It is not restricted only to those who do not generate profit. Quite the contrary, because some generate profits but redistribute it to their members or use it for other purposes. The bill simply requires that there be no share capital, therefore no distribution of dividends, etc. An organization that is active in the area of the social economy and which does not have share capital will be able to incorporate under the act.

**Mr. Paul Crête:** Very well. I still have some time left. The Department of Economic and Regional Development and Research of Quebec, the MDERR, set up several programs to assist businesses. Very often, they exclude not-for-profit corporations. Is this bill going to improve this situation. Could we do this through this legislation?

**Mr. Gilles Gauthier:** I would imagine that eligibility criteria to government programs are established by that government.

**Mr. Paul Crête:** Yes, but I believe that one of the reasons is the absence of an economic structure similar to those of business or management corporations. These are rather people offering a social service, often on a voluntary basis.

If we want a social economy to develop in parallel with the traditional capitalist economy, is this legislation going to be of assistance?

**Mr. Gilles Gauthier:** If one of the conditions to be eligible to a program is that the organization must be incorporated, then obviously the organization can make use of this bill to incorporate without share capital and thus become eligible.

This increases the possibility for organizations to incorporate even if their purpose is not to make a profit. The determining factor is the structure of capital. If they do not have share capital, they will be able to incorporate under this legislation.

**Mr. Paul Crête:** Thank you.

**The Chair:** Make it quick.

**Mr. Paul Crête:** Yes. You said earlier that you do not have a breakdown by size of the 18,000 businesses that are federally incorporated. Without asking for precise figures, could you tell us approximately the average sales figure of these organizations. Their financial statements would surely show that, for example, 12,000 generate sales between \$50,000 and \$200,000 a year and 3,000 over 1 million dollars. Is there no way to find out if these 18,000 businesses are large or small and to get a breakdown by size?

**Mr. Gilles Gauthier:** Since the present Act dates back to 1917, there is no reporting requirement. Therefore we have no financial reports for these corporations. We are totally unable at the present time to differentiate.

However, if it is of any use to the committee, we could provide a sample of a few pages of organization titles that are incorporated under the present act.

**Mr. Paul Crête:** The reason for the question is to determine if the act suits the needs of large as opposed to small organizations. It is one aspect we were asked to check.

**Mr. Gilles Gauthier:** The bill suits organizations both large and small. Whenever there was a need to differentiate by size, we have done it, such as in the provisions dealing with financial reports. In those sections, there are different provisions depending on the size of the organization. However, in our view, the overall structure applies both to small and large organizations.

• (1625)

**Mr. Paul Crête:** Thank you.

[*English*]

**The Chair:** Merci, Paul.

Andy Savoy, please.

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

Thank you for coming.

[*Translation*]

My questions are along the same line as those of Paul Crête.

[*English*]

In terms of small organizations, on Tuesday we heard from small and medium-sized enterprises—manufacturers, independent businesses—and one of the criticisms they had of government programs was that, as an example, the R and D tax credit program was cumbersome for small companies to become engaged in and to apply to. It was costing them \$10,000 in accounting fees, for example, to access a program that they may get \$10,000 or \$5,000 back from. So I have concerns.

In rural Canada, and my riding is entirely rural, we are very reliant upon the volunteer sector. It's critical to our communities. I would argue this is probably more so in rural Canada than elsewhere in terms of the net benefit to our communities that our voluntary sector provides.

Following on what Paul said, in terms of small not-for-profit corporations, I think we have to be very careful that this bill does not act as a deterrent to either directorships or just in the navigation of the bill itself. Along that line, was there any consideration given at all to different-sized corporations? I know you answered that in Paul's question, but I really think that in looking at this we have to realize that there are going to be more resources required by NPCs to deal with Bill C-21. If that is the case, it's obviously going to be a deterrent to volunteers in the directorships.

Is there any way we can alleviate that burden, if you will, on small NPCs? What feedback did you receive during crafting of the bill from small NPCs, and how was it given? In your mind, how did you research that issue specifically—how small NPCs would deal with the additional accountability provisions in the bill itself?

**Mr. Gilles Gauthier:** One of the primary points that came up during the consultation process was the cumbersome nature of the

current incorporation process, which is a deterrent for a lot of small organizations. The fact that we're moving to incorporation as of right, whereby you only fill out a standard form of a page and a half, was welcomed by all the small organizations.

Once you're incorporated and under this bill have the legal protection it contains, especially in terms of the director and liability, and the fact that directors should have the ability to defend themselves if they behave to the best of their competence in serving as board members of the organization, I think that should help a great deal to minimize the degree of uncertainty that currently exists for small organizations.

The main concern we heard during the consultation process was on the financial reporting obligations, and indeed that imposing an audit on a very small organization didn't make much sense. It would consume 5% or 10% of the annual revenue of the small organizations. That's why we've decided to have these different thresholds. We have also worked with the accounting profession to better refine the concept of review engagement, which is a lower kind of financial review of the books, still done by a third person, but it is a much more expedited process and therefore less costly. By providing this ability, I think it should help to alleviate the concerns the small organizations have in terms of the financial reporting obligations.

• (1630)

**Ms. Coleen Kirby (Manager, Policy Section, Corporations Canada, Department of Industry):** The other thing is that when it comes to navigating through the bill, unless you're a corporate law expert, reading this periodically doesn't help. We hear from the legal community all the time asking questions with respect to it.

If we take the CBCA as an example, we have 180,000 corporations of which 800 are public. We are used to dealing with small corporations, so the result is that for any of the major processes somebody wants to go through, we have policy statement and information kits and we have help lines, both online and telephone lines. Our aim for this will very much be to put out documents written not in legal language of the statute but in a language that most people can understand.

Our biggest concern at the moment is the transition we're requiring everybody to go through. The current transition kit is sitting at about 20 pages in English because we are trying to write it in a way they will understand what it is they have to do—a clearer checklist, model bylaws, model articles of continuance, and clear steps on what they're going to have to try to accomplish to do this transition. We know that some of these organizations, small or large, have people who don't necessarily totally comprehend what is being required.

It's not a new requirement for us. It's something we know is coming. Even though we know we're well down the line from implementation, we are already trying to develop forms and policies to try to explain what it is they need to do and to provide them with a mechanism to get help without having to refer to a professional.

Some of these organizations have in-house professionals and are going to.... But if you set up a really simple corporation with a single class of membership and minimal requirements, it will not be difficult for a lot of these corporations to conduct things. Right now they should be holding annual meetings. They should be telling members they're having an annual meeting and that people can turn up.

They're already filing a one-page form with the government each year, or should be. So a lot of the requirements aren't going to be new. It's just a slightly different process, and a flexible process. Instead of saying, thou shalt do this, we're saying you have to choose one of the following that makes sense to you.

In a curling club or a golf association, a notice on a bulletin board that the annual meeting is coming up should be sufficient. If you're running a large cross-Canada corporation, sticking up a notice on a bulletin board somewhere is not going to help you. Then maybe it's an e-mail to everybody. Maybe it's a mailed-out package. It's what makes sense for the corporation, what they want to do, how the members want to receive the information, and how much expense they want to go through.

We throw it to the corporation to work out what works for them, big or small. It's up to them. You may be dealing with \$100 million, but you may only have five members; therefore, it's easier to simply send everybody an e-mail. You may be only dealing with \$20,000, but you may have 200 members, in which case you want to choose a different process that works for you.

If we got into a classification system, what classifies as big and what classifies as small? Do we do it based on money? Do we do it based on numbers? Do we do it based on where people are located? Do we do it based on what type of organization it is? This way, we allow the corporations flexibility to do what works for them.

**Mr. Wayne Lennon:** It should also be remembered that great chunks of the bill would have absolutely no application to small not-for-profits in trust indentures and debt obligations, in liquidation and dissolution. Although the bill is fairly daunting at first glance, much like the CBCA, a businessman of a small company can incorporate and use the bill and go about his business without actually paying attention to a vast preponderance of it. And that's the same with this.

**Mr. Andy Savoy:** The difference between soliciting and non-soliciting corporations is a little grey in my mind. Does a corporation accept donations from the public or funded from government, for example? How do you differentiate between soliciting and non-soliciting for the purpose of the bill? Could you just clarify that for me?

**Mr. Gilles Gauthier:** The definition of soliciting appears in the front part of the bill. Essentially you're a soliciting organization if you request donations from the public or receive government grants in any of the previous three years. You're a non-soliciting organization if your financing, essentially, comes from the members, like a golf club. It's the membership dues; therefore, you're in a non-soliciting organization. United Way, of course, would be a soliciting organization.

•(1635)

**Mr. Wayne Lennon:** You're also a soliciting corporation if, even though you don't ask for money, you receive money from a

corporation that is a soliciting corporation. You can't set up a shell somewhere else, get them to get donations from the public and transfer them to you, and say you're not a soliciting corporation. You would be defined as such.

**Mr. Andy Savoy:** That's great. Thank you.

**The Chair:** Andy, thank you very much.

Brian Masse, please.

**Mr. Brian Masse:** Thank you, Mr. Chair.

I had a chance to actually be part of the consultation process for the VSI in my community. This is surprising in itself. This would not rank high in terms of the charitable organizations' prioritization of where...the movement they need to see to progress their organizations and also to serve the different constituencies they have there....

I am curious. In your opening statement you talk about several years of policy development and consultations. How close is this draft to when you started your original process, and what's the difference over that several years? What has shaped or changed in that time?

**Mr. Gilles Gauthier:** The consultation paper, the framework that was used in the 2001 and 2002 consultations, contained basically the same element. We did ask questions about whether it would make sense to have a classification system. We certainly invited comments about the access to membership lists. We presented various options—no access at all to membership lists or unlimited access. It was the same thing for financial information. What sort of mechanism was best to ensure transparency? During the consultations some were saying that every organization, whether or not they were soliciting, should make their financial affairs available to the broader public. Others had a different view.

The framework, as it relates to the core elements, the method of incorporation, the rights of members, the financial reporting, was essentially part of the element of the framework that was subject to the consultation in 2001 and 2002.

**Mr. Wayne Lennon:** I don't know if you had a chance to see it, but in the briefing books that were distributed there's a summary of the consultations and some errata.

**Mr. Brian Masse:** I just wonder whether your drafts, though, had changed. From where you started out several years ago to where you are today, I'm wondering whether or not there was a specific movement on any particular piece.

**Mr. Gilles Gauthier:** Not really. The major point that came through during the consultations was the general feeling that a classification system would probably not work.

**Mr. Brian Masse:** Okay.

**Mr. Wayne Lennon:** There was a lot of fine-tuning on what the definition of a soliciting corporation was, for example, on where the threshold should be, on how they would apply—all the questions that were coming out here.

**Mr. Brian Masse:** Okay. Now, with your process for incorporation that can be done on the Internet or electronically, it will be done almost automatically now, and I'm glad it's moving quicker; it's a benefit to everyone. My only concern is how we can assure that we don't have any fraudulent organizations or applications that come forward. Are there any penalties for that? Further to that, when and how will you discover them? Is it when they perhaps, for example, don't comply with their annual reporting? What type of budget do you have for this type of assurance?

I spent the majority of my career in the not-for-profit sector prior to this and we were always dealing with some organization that was, at times, misrepresenting some of the issues. They were very specific ones. Later on they got into the solicitation of money and funds, and other representations in the community abroad didn't have the proper directorship and all those things reflective of what they were advocating for.

What types of safeguards are in the system so that somebody doesn't go through this process and create a fraudulent organization that's not representing the community?

**Ms. Coleen Kirby:** It's not usually the corporation that's fraudulent; it's how somebody is choosing to use it. Having the corporation set up doesn't usually cause a problem, and creating the corporation itself is not the fraud. A lot of the focus of the bill is very much on transparency and responsibility. If members know what the corporation is doing, members have a much better chance to determine that somebody is trying to commit a fraud, trying to raise money for a particular purpose and using it for an illegal means.

Anywhere the members have a right to do an investigation or have a remedy, the director, under the bill, has the same—

• (1640)

**Mr. Brian Masse:** I'm not being clear enough. How do you know that if somebody filed electronically that's who they are and that's the structure of their organization and their existence and so on? What other communication is happening between—

**Mr. Gilles Gauthier:** You're quite right. In moving to a system of incorporation as a right, there is hardly any review that is done at the time of incorporation. People apply, they fill out their form, and they define their articles of incorporation. They get the incorporation. There is no review at that point. Then the bill provides a lot more scope in terms of keeping up with the organization, whether it's through the obligation to report to members or through their annual returns to the director appointed under the bill. Therefore, it's after it is incorporated that there will be increased ability for members or the government to act, if there is suspicion of fraud or—

**Mr. Brian Masse:** What resources do you have to follow that up? Here is the thing. I file electronically, making up an organization, whatever it might be. When would their first point of contact be that there might be some type of analysis of the validity of the application? What types of resource are you provided to ensure...? Does it have to happen, for example, if I don't file an annual report at the end of the year or comply with any of the reporting that's necessary? Where do you really get the first tag of connection, aside from just electronic, through this process?

**Mr. Gilles Gauthier:** Obviously, by any complaints members would bring to our attention.... Then we could use any of the

investigating power the bill provides to ask for clarification from the corporations, or take action as necessary, including applying to the court to get an inspector to go and do an analysis of what's happening in that particular organization.

**Mr. Brian Masse:** So if I and ten of my friends decide to incorporate over the Internet, unless there's a complaint from one of those individuals, or we don't comply, then there's no real contact, you can just form your organization? Doesn't there seem to be a problem there? That's what I'm—

**Mr. Gilles Gauthier:** Well, incorporation as a right is a method used in all corporate law in Canada, or even in the United States. It is done that way for business as well. So there's no difference there.

**Ms. Coleen Kirby:** There's no need to justify why you need a corporation. If you want to create one and it does nothing, you're perfectly justified in doing that.

**Mr. Brian Masse:** I'm just concerned about how this technology changes and some of the practices.

**Ms. Coleen Kirby:** What we have found most interesting is that when we get electronic filings, they are far more likely to be accurate—

**Mr. Brian Masse:** Right.

**Ms. Coleen Kirby:** —adhere to the law, and be better than if they come in on paper.

We have discovered that when people don't like something on the form and they want to avoid the question, they do it on paper, because that's the way to try to slip it in. The electronic environment is actually far safer than the paper environment—which I know surprises most people, but that has been our experience so far. Our problems are all paper problems.

**Mr. Brian Masse:** Another curious change is the voting system that's going to be available for absentee voting and mailed-in ballots. Those are very controversial ways of voting.

There's a split. Some municipalities even have that for municipal voting, actually, in terms of mail-in, and some don't. What's the driving factor at the end of the day to recommend those two forms of voting?

**Mr. Gilles Gauthier:** These are permitted means of voting and are essentially aimed at maximizing the participation of the members. If you have a national organization, it might not be that feasible for people to show up at the annual meeting to vote. So it's logical, then, to provide for mail-in ballots, because you increase the democratic aspect of the process.

• (1645)

**Mr. Brian Masse:** Is there a standardized format that has to be followed, or is it up to the organization to determine how mailed-in voting is performed?

**Ms. Coleen Kirby:** Mailed-in balloting is right now permissible, but it's done under policy, not under the statute, because the current act is silent.

**Mr. Brian Masse:** Yes.

**Ms. Coleen Kirby:** The way we've set it up is that there are certain absolute minimums associated with the various options for absentee balloting. We let the corporation choose. They choose by the members putting something in their bylaws, and they have to establish the rules themselves. So whether it's mail-in balloting, or sent through a telephone, or Internet....

In the business environment, it's always that you're either in the room or you send a proxy. A proxy solicitation can be fairly expensive. We've tried to broaden it, particularly since mail-in ballots are one of the options already being used by a lot of these corporations.

**Mr. Brian Masse:** Is there any provision for funding for those organizations to do any of that? I know some are strapped. Will they be required to do this then?

**Ms. Coleen Kirby:** No.

**Mr. Gilles Gauthier:** No, it's permitted—

**Mr. Brian Masse:** I misunderstood.

**Ms. Coleen Kirby:** They don't have to use it. If they want to say you only vote if you turn up in the room, that's all they have to do. That's the minimum they have to do. After that, it's up to them.

**Mr. Brian Masse:** Very good.

Lastly, I have one question with regard to the up to three years for assistance to make sure everybody is onside. What type of funding do you have for that? What type of budget is being allocated for you to do your outreach in terms of being able to contact organizations?

**Mr. Gilles Gauthier:** It's all part of our ongoing budget allocation. There is no incremental funding associated with that particular initiative. We think we can manage that within our existing resources.

**Mr. Brian Masse:** Will there be any advertising, or will it be just direct contact? I guess that's what I'm looking for, how—

**Ms. Coleen Kirby:** Our main aim is direct contact. In theory we have or should have an accurate address for every single corporation. When we tabled the bill, we did a mass mailing to them three to four weeks ago to say, "The bill has been tabled. If you want to have input, this is where you contact Parliament. You're going to have to do the...."

We'll do direct contact, because we should be able to contact these guys directly.

**Mr. Brian Masse:** Yes, but that's assuming that especially the smaller ones haven't moved around. If you didn't hear from them, it doesn't necessarily mean they like what you did.

**Ms. Coleen Kirby:** Since you must file an annual summary each year—

**Mr. Brian Masse:** Yes.

**Ms. Coleen Kirby:** —and in the annual summary the first question is "What is your address?", if you haven't been filing, then you're not in adherence with the current act, in which case, there's not much we can do, and in fact we're going to start.... If we enforce the law, we dissolve them for not filing.

**Mr. Brian Masse:** So it's three years to do that.

**Ms. Coleen Kirby:** Yes.

**The Chair:** Thank you, Brian.

Michael is next, and then Christiane and Brad.

**Mr. Michael Chong:** My first question is on paragraph 21(1)(g) of the bill, which requires the not-for-profit to have a list of members. Is it the department's intention to also have addresses and phone numbers as part of that register of members that the not-for-profit would have to keep a list of?

**Mr. Gilles Gauthier:** Yes.

**Mr. Michael Chong:** I have some very big concerns about this, because I think it's going to lead to a potentially big headache. In publicly traded companies there are shareholders. From time to time, because of shareholders' actions, or because of votes that need to be taken, people need to access that shareholders list—for instance, to distribute voting ballots, or information circulars, or what have you about something that's going on that affects shareholders and their rights. But that's never done directly by the group that wants to make the change. That's always done through the company holding the shares.

Generally, that's the practice, right?

**Mr. Gilles Gauthier:** Right.

**Mr. Michael Chong:** Typically, then, it's not a situation where a person who wants to lobby the shareholders has an information circular, or what have you, circulated via the broker dealer or the investment dealer, those holding the shares in trust.

In this particular situation, names, addresses, and phone numbers are going to be available to any member who so requests it. Yes, they do have to sign a statutory declaration, but there is no guarantee that this somehow won't leak out, or get out there, or be used for marketing purposes or what have you, or be used maliciously.

I know there's a statutory declaration, but how do you prove that this indeed was the person who leaked the information out there? How do you know that the person using this information, the third party, did actually get the list from someone else and not from the person who signed the statutory declaration? Is there not a better way for us to allow members to lobby the membership on a particular issue without giving them the entire list? Is there not a way to safeguard the people who choose to become members but who may not necessarily want their names out there?

For example, maybe it could be mandated that the directors and officers of the not-for-profits could circulate among their members any submission made by another member, or something like that. If somebody gets that list....

Let's say you have a not-for-profit that has a membership list of 50,000 people, many of whom signed up and paid their \$5 without the expectation that, first of all, their names could potentially be made public, and second, that they could be used for somebody's marketing purposes. Suddenly they may have this exposure, notwithstanding the statutory declaration.

•(1650)

**Ms. Coleen Kirby:** We tried to put in the bill a balance between these things. If members are going to oversee the corporation, we need them to be able to talk to each other. If directors are the only ones who know who the members are, and it's the director who's committing the fraud by stealing the money, how do the members get together to find a way to kick the director out? Conversely, there is obviously a major privacy issue.

The way we've tried to deal with this is through the statutory declaration, the limit on the uses of the information. We have also put in place offences associated with using the information. The offences we have in this bill go further than those in PIPEDA. It's whoever has the information and uses it, not necessarily the person who got it. If I legitimately got the information and gave it to somebody else and they used it, you could still charge them.

So we tried to find a balance between the need for communication and the need for access. Right now, corporations should be collecting this information. If you hold an annual meeting, and you have to tell all your members when to come, corporations had better have a way to get hold of their members.

**Mr. Michael Chong:** Let's take a hypothetical example here. Somebody signs up to an organization, and they do so with the expectation that their name will not be in the public realm. Another member gets hold of the membership list and it somehow gets leaked to a reporter. It's reported in a newspaper, by a reporter, that a particular person is a member of this organization. In that case, you're telling this committee that—

**Ms. Coleen Kirby:** The reporter could be charged.

**Mr. Michael Chong:** Okay.

**Ms. Coleen Kirby:** They could be fined a maximum of \$5,000 and six months in jail for use of the information in an inappropriate manner.

**Mr. Michael Chong:** Regardless of who they obtained it from?

**Ms. Coleen Kirby:** Yes. And that's the criminal side. Obviously, because there's been a breach, you could go after them on a civil remedy as well.

**Mr. Michael Chong:** Can you just refresh—

**Ms. Coleen Kirby:** The offences are all in clause 260.

**Mr. Michael Chong:** Yes, okay.

That's all I have.

**The Chair:** Thank you, Michael.

Christiane, s'il vous plaît, and then Brad.

[*Translation*]

**Ms. Christiane Gagnon:** You said earlier that any organization is free to incorporate under a Quebec charter or a federal charter. What reasons could a not-for-profit organization have to want to incorporate federally? What are the benefits? Do you know the reasons?

**Mr. Gilles Gauthier:** I imagine that with this bill, there might be substantial advantages, since the legislation of Quebec is almost as archaic than the federal one. Indeed, the government of Quebec tabled recently a series of proposals to reform its own legislation on

not-for-profit associations a few months ago. The structure is more or less the same. If both systems were to be modernized along the same lines, then the organizations would again have a choice. It is not a matter of jurisdiction, but of free choice on the part of the organization.

•(1655)

**Ms. Christiane Gagnon:** I would have thought that the reason for incorporating under a federal charter could be that they wanted to be active in an other province and that this would facilitate their operations.

**Mr. Gilles Gauthier:** Not necessarily. An organization with a provincial charter is perfectly able to have activities in other provinces.

**Ms. Christiane Gagnon:** Is there no limitation?

**Mr. Gilles Gauthier:** The only restriction is that they cannot move their headquarters to another province.

**Ms. Christiane Gagnon:** Okay.

**Mr. Gilles Gauthier:** Apart from that, there is no limitation.

**Ms. Christiane Gagnon:** So it is a matter of choice. Agreed.

[*English*]

**The Chair:** Thank you, Christiane.

Brad.

Mike, if you have one after, that's fine.

**Mr. Bradley Trost (Saskatoon—Humboldt, CPC):** I'll let Michael ask his.

**Mr. Michael Chong:** I have a question related to clause 260. The fine in clause 260, which is \$5,000—and that's a maximum fine—seems to me to be low, considering the potential damage that could be done.

I'll go back to my original example. If somebody signed up with the expectation that their name would not be in the public realm and it's reported in the newspaper, it goes to court and the paper gets fined \$2,000. They pay the fine; it's cheaper than to litigate or fight it further. It's no skin off their noses. In a big operation, \$2,000 doesn't seem to be a big slap on the wrist. Yet somebody's reputation has been damaged.

Was there talk about increasing that or having another threshold?

**Mr. Gilles Gauthier:** Well, that particular fine is pursuant to a criminal proceeding, a summary conviction, but there is still the ability of an individual to use civil remedy and to claim damages, which could be—

**Mr. Michael Chong:** But there are no civil provisions in this bill. You're talking about through other civil means?

**Mr. Gilles Gauthier:** Yes, that's right.

**Ms. Coleen Kirby:** If your reputation has been hurt, then you'd fall back on the normal defamation suit.

A summary conviction offence under the Criminal Code is only \$2,000 or less than two years in jail. Our fine is actually higher than the Criminal Code's.

**Mr. Michael Chong:** Yes, but I guess what I would say is that the standard for Criminal Code offences is substantially higher than for a civil suit. So as a deterrent, yes, it's there, but it's a fairly high standard that needs to be met. You have to have a burden of proof and whatnot, which you don't have in a civil case. And there are no civil provisions in this bill.

I'm still concerned about a scenario where—and I can see it happening—somebody gets hold of a membership list. People have signed up with the expectation that their names are going to be private, and suddenly they're not; they're in the public realm. The damage to their reputations could be significant, and there doesn't seem to be....

We might consider putting in a higher criminal penalty than exists, or putting civil provisions in the bill that meet a lower burden of proof. Therefore, there would be a higher level of deterrence.

**The Chair:** Thank you, Michael.

**Mr. Wayne Lennon:** One possibility could be.... You mentioned shareholder lists. Under securities, in the law now anybody can get hold of the list of beneficial shareholders of a publicly traded corporation. Not through the broker; they can actually get a list of the shareholders. People who don't want their name on that list can request that it be stricken from it. I suppose you could do that for not-for-profits, but then you'd be getting into small not-for-profits having basically two lists of members, those who want their names divulged and those who may not.

If the object of the exercise here is to keep the burden of paperwork or other things down for corporations, it wouldn't necessarily work for them.

**The Chair:** Thank you.

I think the last question is to Brad, unless Werner has something after Brad.

**Mr. Bradley Trost:** To finish off on Mike's point, my understanding is that political parties aren't covered under this.

But that is a real example. It happens all the time in Saskatchewan by both the left and the right. We get hold of the list of the other guys, and the goonery and the intimidation that goes on is just disgusting. Jobs are threatened; people have been fired. I can name people on both sides of the equation in Saskatchewan who have been purged because they're from the wrong political persuasion.

Unfortunately, it's standard operating practice, which really shouldn't be in Canada. And there's no way you can prove it. We all know what goes on if we've been in politics.

That's just a comment, to rethink how it might be to protect people.

• (1700)

**Mr. Gilles Gauthier:** There's always the possibility that an individual will seek an exception from the director of a corporation to have the list, or even his or her name, not released. There is that process.

**Mr. Bradley Trost:** It was just a general comment to finish off. I understand you're fully aware of it.

I have first a very broad question, which will introduce where I'm going here.

It was noted there's a whole realm of not-for-profit corporations dealing with a million and one things, with different intentions and different ways of doing things. What was the thought in grouping them, by and large, all together in one substantive piece of legislation, instead of breaking them up between, say, soliciting, non-soliciting, religious separate, non-religious, etc.? What was the overall general thinking behind that?

**Mr. Gilles Gauthier:** Often it's very difficult to classify an organization. An organization lives through time and sometimes changes its orientation a bit in the process. Sometimes they are involved in more than one. A religious group can also have a public benefit kind of focus as well. It becomes very difficult to parcel things out in such a way.

That's the practical problem.

Also, more fundamentally, in terms of the structure, the basic structure should apply irrespective of the nature of the organization. You need to have a board of directors. You need to have annual meetings. You need to have corporate records and financial reporting. These kinds of basic structures should be applicable to all of them—as long as there's enough flexibility for the organization to adapt to the various requirements through their bylaws. And in a number of areas, the bill will provide that flexibility.

**Mr. Bradley Trost:** One of the other areas I'm particularly concerned about is that in putting together the act, the defence for religious groups, by and large, was left to the general application of the courts, to whatever the past precedent has been. I'm a little concerned that we don't have the specifics laid out. I'll give you a few examples of just how intricate this thing can get.

Let me back up here a little bit.

Regarding the tenet-of-faith argument, for example, I come from a very small denomination. I'm a North American German Baptist. We don't have the world's most thorough statement of declaration of faith. We have general, basic, overall principles, particularly normative for a Baptist, unlike a Catholic or something of that nature.

I guess my concern is that things that are implied or that are practice are not always specifically covered. I'll give an example of the church my grandparents are from and that my dad grew up with. They dismissed one of their preachers because he had alcohol at his wedding. Now, the rest of the world thinks that's a little bit funny, but we don't. Alcohol is historically forbidden. That's not explicitly written down in any tenet of faith.

So I'm a little concerned that when we let the courts have the latitude, certain specific things are not protected. If he wanted to come back and say he wanted his job back as assistant pastor or whatever, what sort of general overall defences would be there?

Allowing for the overall jurisprudence of the courts, I'm just openly saying that I don't trust the general jurisprudence of the courts. Why not put something specific in here?

This is not to expand on what's been in the news today.

**Mr. Gilles Gauthier:** The issue here is that it will arise only when a member is challenging a decision of the organization—through the oppression remedy, for instance. And the organization will then be able to use the tenet of faith as a defence for the decision they made.

The court isn't going to examine whether that particular tenet of faith is reasonable per se. The court is not there to judge whether your framework under your particular religious group is an appropriate one. It will only look at it in terms of whether the action in the specific circumstances was reasonable in terms of the duty and responsibility of members for a member of that organization. The reasonableness test applies to the effect on the individual and not per se to the nature of the tenet of faith itself.

• (1705)

**Ms. Coleen Kirby:** The other problem is, if you write it down, judges interpret the words you choose. We tried to come up with a definition for religious corporation at one point. We did a bit of exploration in that area and concluded there was no way we could come up with a definition of religious corporation. How do you deal with a humanist group? If you think of the straight Judeo-Christian tradition, talking about “a” god makes sense. If you start talking about some of the other religions, there isn't “a” god; there are ten gods. It is just not possible.

Where it is possible for a judge and a court to be able to determine that a group is or is not a religious corporation, that's the question they have to answer, and they have the flexibility of determining it, instead of saying “The words say they have to have the following four criteria and they only have three of them; therefore, we chuck them out”. There is risk sometimes with definitions.

**Mr. Wayne Lennon:** And there is no faith-based defence now, so under the oppression remedy a member could challenge any decision. At least this provides some kind of baseline for the defence of the corporation saying, “It's part of the tenets of faith” or “Those are our doctrines”.

The example we have bandied about where one wouldn't apply it is, for instance, in the case of a house of worship that is no longer viable when the organization decides to sell it. That's strictly a commercial application, by and large. It wouldn't necessarily be a tenet of faith. A member who feels oppressed by that could still launch his or her action. You could come up with a whole range of doctrinal or tenet-of-faith circumstances like the one you raised, and it would be up to the court to determine what that balance would be.

**Mr. Bradley Trost:** That is a very interesting answer, sir.

Here's a question in which I'll use a similar illustration to keep broadening the point. I'm curious about interlocking jurisdictions—federal-provincial, Canada-United States. Again, I'll use my home denomination as an example.

The North American Baptists are a Canada-U.S. combined denomination of about 60,000 people. We have churches all across Canada, and as Baptists we say the individual church has ultimate supremacy and authority. It's very much a doctrine where we are congregationalists. We very much object to either the Presbyterian or the episcopacy systems that most of the others are known for. We have a multi-level jurisdiction here: we have Canada, we have the United States, we have the denominational structure, and we have the supremacy of the local church.

Using that as an illustration, how do the interlocking jurisdictions affect what is both local and national—the local church and the national structure, which is very separate from other national churches with dioceses—and also linked with the United States when you're cross-registered? The overall denomination has its headquarters in Illinois; the Canadian headquarters is, I believe, in Edmonton. But we're all one part and the same, and the local churches are individually structured. I'm sure there are other organizations—the lodges, etc.—that do this too.

How would that work?

**Ms. Coleen Kirby:** It comes back to who is the corporation. Is the local church the corporation? Is the national organization the corporation? If it's an international organization, then the head office would have to be here.

To give you an example, the Catholic church and the Anglican church happen to like to do corporations based on dioceses or on a church level, so we have a fair number. The bishop of “fill in the blank”—

**Mr. Gilles Gauthier:** [*Inaudible—Editor*]

**Ms. Coleen Kirby:** That happens to be one, but there are a number of them, and I have to admit I cannot pronounce all the names and I don't know where they all are.

If you're having a problem, you're going to sue a particular corporation. Trying to prove what is a tenet of faith is going to be a case of bringing in experts, the same as in any other court case. If you're having a disagreement on somebody's mental capacity, you bring in experts on one side, and the other side brings in experts, and the judge, in the end, determines what the final case is. But if the corporation is just a local church, then very likely they will be concentrating on what the tenets of faith for that local church are.

• (1710)

**Mr. Bradley Trost:** So very much you have to choose what your primary place of corporation is. As I said, there are interlocking jurisdictions. You have Baptist churches that belong to two or three denominations; some belong to none. It's the equivalent of having someone who's both a mason and in a Knights of Columbus lodge at once—there may be a slight stretch there. Ultimately they have to choose where they are incorporated and then interlink from there.

**Mr. Gilles Gauthier:** Also they have to define the members, because it's not necessary that a religious group define as is done in the Catholic context. Not every person attending mass is a member in the proper, corporate sense of the word. The membership may simply be the various local churches that are members of the diocese. It's both how you structure your corporation and how you define membership, and it is up to the organization to define it.

**Mr. Wayne Lennon:** I could be a member of a particular diocese and attend services all the time in another one, but it's where I've voluntarily chosen to register as a member and where that corporation has voluntarily chosen to incorporate.

**Mr. Bradley Trost:** Okay. I guess, then, they'd choose wherever it would be easiest, and even for suing or taking action against it you'd have to do it based upon the prior action of the organization.

**Mr. Gilles Gauthier:** That's right.

**Mr. Bradley Trost:** And how would that apply, again, for the international context?

**Ms. Coleen Kirby:** If you were a corporation that was international and you're incorporated under this act, your head office must be in Canada, so courts in Canada have standing. A fair number of religious organizations already have multiple levels of corporations that are interconnected. I know one in particular that simply has no representation from Ontario. The rest of the country is covered through four corporations, but not Ontario. They've never explained to me why. It's just something about Ontario, I guess.

**Mr. Bradley Trost:** They view themselves as the whole nation.

**The Chair:** Thank you, Brad.

The last words go to Werner.

**Mr. Werner Schmidt:** I just have a couple of questions. I don't know how long we want to stay here, Mr. Chair.

**The Chair:** Oh, six o'clock, seven....

**Mr. Werner Schmidt:** Okay.

**The Chair:** But 5:30 is preferred.

**Mr. Werner Schmidt:** I understand that.

**Mr. Brian Masse:** You'd perhaps be by yourself, Mr. Chair.

**Mr. Werner Schmidt:** Yes.

I think this is a very interesting piece of legislation. It's been a hard birthing process, I'm sure, and the complications in it are many. We've just touched on a couple of them.

I was going to ask you, can the big corporations such as a port authority or an airport authority, which are non-share corporations, incorporate under the Corporations Act?

**Mr. Gilles Gauthier:** Yes.

**Mr. Werner Schmidt:** They can?

**Mr. Gilles Gauthier:** Yes. The current 19 major airports in Canada are all incorporated under the Canada Corporations Act—

**Mr. Werner Schmidt:** Yes, but—

**Mr. Gilles Gauthier:** —and therefore they can continue under this.

**Mr. Werner Schmidt:** Okay, my apologies, then, but I don't clearly understand. This act is designed to cover non-share corporations.

**Mr. Gilles Gauthier:** Yes.

**Mr. Werner Schmidt:** Does the definition of a non-share corporation automatically put it under this legislation, or can it apply to be a corporation under the Canada Corporations Act without shares?

**Ms. Coleen Kirby:** I'm not sure we totally understand. Right now, part II of the Canada Corporations Act covers corporations without shares. This act also covers corporations without shares. They're the same.

**Mr. Werner Schmidt:** But isn't one of the provisions of this act to eliminate—

**Mr. Gilles Gauthier:** Yes. After the end of the transition period the existing Canada Corporations Act will be repealed, and the only

way to incorporate federally for a non-share capital corporation will be through this piece of legislation.

**Ms. Coleen Kirby:** At no point will there be an option available to incorporate under this or the Canada Corporations Act. It's either the new one or the old one.

**Mr. Werner Schmidt:** If that is correct, then it means that if this legislation is passed as it exists now and a port authority has no option but to be incorporated under this act or not be incorporated at all—

**Mr. Gilles Gauthier:** That's right.

**Ms. Coleen Kirby:** —or provincially....

•(1715)

**Mr. Werner Schmidt:** Of course. I agree, and that would apply to those kinds of situations.

Now, the other question I have is this. Is a corporation that's covered under this act subject to all of the other corporate laws, or do they have exemptions from some of the other laws, like suits... registered as individuals or as corporations?

Let me perhaps be a little more specific. That question is too ambiguous, and I appreciate that.

Let me go to the position of a charitable organization registered under the Income Tax Act as a charitable organization. If it has registered as a non-shareholding corporation under this act, if it is a not-for-profit corporation, and if it now develops an enterprise that does generate profit, what happens now? Does it now have to register under the Corporations Act, or is it still legitimately not...?

**Mr. Gilles Gauthier:** It is still quite legitimately under this piece of legislation because it doesn't have share capital.

**Mr. Werner Schmidt:** So the one criterion of not having shares is good enough?

**Mr. Gilles Gauthier:** Indeed, and the only thing that matters then is, what do you do with this profit? If you want to keep your charity status, well, then you'll have to—

**Mr. Werner Schmidt:** That's a different issue.

**Mr. Gilles Gauthier:** Exactly. But here the only thing that matters is that you don't have share capital.

**Ms. Coleen Kirby:** Although these corporations are usually called not-for-profit...I think the United Way of the greater Ottawa-Gatineau region has announced earning \$10 million in the last three months in their fundraising. I think they earned a profit; they have more money than it cost to collect it. So the problem with not-for-profit is that it is very misleading.

It's harder to understand the concept of no share capital, but it is a more accurate reflection, because the share says you don't take the money and pay it in dividends. But if you're a charity, you'd better be making more money than it's costing you, which means you're making a profit.

**Mr. Werner Schmidt:** I have just one final question, Mr. Chair, if I might. It has to do with the power of the director, who has the right to do three things, I think, according to my cursory reading of the act. He has the right to dissolve a corporation. He also has the right to amend articles if he doesn't like them, under certain conditions. The third one is that he has the option to either investigate personally or have a court order an investigation.

**Ms. Coleen Kirby:** The director under the act has a number of obligations, one of which is to issue certificates. Now, this includes the certificate of incorporation, the certificate of amendment, reorganization, amalgamation—a bunch of that. Before he's allowed to issue a certificate, he has to have received a document. So in the case of an amendment to articles, before he can issue the certificate, he has to have received articles of amendment. Before a corporation or its directors are allowed to send articles of amendment to the director, they have to get the approval of their members. So the director doesn't get to amend articles just because he wants to. He can only do it in response to a decision by the members and the corporation itself.

With respect to investigations, the director has minimal powers for ensuring compliance with the act on an administrative level. If the director wants to get involved in more of an in-depth investigation, he must apply to a court and get a court-appointed inspector. That may be him, but he has to have it done through a court, so he's court-supervised.

With respect to dissolution, the only time the director can dissolve a corporation without going to court first is when the corporation has not been adhering to the administrative side of the act. Perhaps you don't have any directors, you haven't been filing your annual returns, and you haven't been paying the fees, for example. If somebody gets a certificate of incorporation and the cheque bounces and they can't manage to get the money in, you're allowed to dissolve it as a penalty.

But there's a relatively limited list of things the director can do without seeking court approval first.

**Mr. Werner Schmidt:** Thank you.

**The Chair:** Thank you, Werner.

If colleagues will indulge me, I'll ask a short question. I'm trying to anticipate the calls we all might get from our local Legion, Lions Club, or Rotary at some point in the future with this bill as is, or amended, should that happen. Just tell us in a really quick description, how does life change the day after this is passed or in the months that follow for a local Legion, Lions Club, Kiwanis—you name it—the clubs that serve our constituents?

• (1720)

**Ms. Coleen Kirby:** There is a two-part answer to that. The first is, all of them are going to have to go through the transition, which is going to involve a review of their bylaws and the creation of articles.

**The Chair:** That's a review by their members.

**Ms. Coleen Kirby:** By them of their bylaws and the creation of articles of continuance. The articles of continuance are going to be about a two-page document, max. If you have relatively modern bylaws, there probably won't have to be a lot of radical changes. If you haven't reviewed your bylaws in 40 to 50 years, there's probably going to be a more in-depth review that's required.

The second stage is on the day-to-day basis of the normal corporation that's not going through a radical reorganization or anything else. They're going to have to file an annual summary, which they already do; it's going to be a new one-page form. They're going to have to hold an annual meeting, which they should already be doing. They're going to have to produce financial statements, which they should have to do already. They may have to do some kind of a financial review; that one could change, depending on their category.

The big change in the financial statement is that they actually have to give it to their members now, which they're not required to do at the moment, although some do; we know that. They are going to have to make sure they tell members there's an annual meeting coming up. Again, these are fairly normal things they should already be doing. A lot of them are; there won't be a radical change in a lot of their day-to-day operations.

For those who are not adhering to the current act—and we know there are a fair number of them—there is suddenly going to be a stronger emphasis on certain things they are going to have to do. They can't just say okay, the act says I have to do an audit, but I don't feel like doing it, so we're not going to. That's where the radical change is going to come.

**The Chair:** If I could, I'll just summarize. For those who are following the current, accepted guidelines, life shouldn't change radically.

**Ms. Coleen Kirby:** Other than undergoing the transition, it shouldn't change radically.

**The Chair:** Thank you very much.

I want to thank our witnesses for helping us today, and maybe at some future time, once colleagues have had a chance to hear from witnesses from the public and non-profit sectors, we may need to have officials back in to help us as we evolve further questions. Thank you very much.

I'd like to remind members that we're going to have a short business meeting near the end of Tuesday's meeting on the government House leader's question on appointments. There's a process wherein we either leave everybody on the list—which I think we should do, personally—or take people off the list. Secondly, there's the motion that 24-hour notice be bilingual.

With that, if there are no other questions, we're adjourned.

Thank you, everybody. Have a good evening.







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