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Mr. Brent St. Denis

Standing Committee on Industry, Natural Resources, Science and Technology

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● (1530)

[*Translation*]

The Chair (Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.)): Good afternoon, everyone.

[*English*]

I'm pleased to welcome everyone here to the Monday, March 21, meeting of the Standing Committee on Industry, Natural Resources, Science, and Technology.

Today we're continuing our study of Bill C-21, an act respecting not-for-profit corporations. We have as usual a very good set of witnesses to help us with this bill, and we thank you all for being here.

We'll use the order in which you are listed on the agenda. I would ask you to limit your remarks as much as possible, if you could, to five to seven minutes—I will start signalling you after that—so we'll have lots of time for questions.

With that, I believe we're going to start with Teresa Douma from the Canadian Council of Christian Charities. Teresa, we'd invite you to start.

Mrs. Teresa Douma (Vice-President, Legal Affairs, Canadian Council of Christian Charities): Hi, everyone. Thank you very much for the opportunity to appear as a witness before the committee.

By way of background, the Canadian Council of Christian Charities has roughly 2,500 direct-member charities across Canada, representing about 15% of all charitable receipts.

I have just a general comment. The CCCC applauds the efforts that have gone into creating Bill C-21. Our primary request is that the committee recommend to Parliament that the bill be passed, with some noted amendments.

We have five recommendations that I believe will improve Bill C-21 in respect of its application to charities generally. The first is to delete the availability of the oppression remedy. The second is to not permit employees to sit as members of a charity's board. The third is to define “soliciting corporation” and “non-soliciting corporation” a bit more clearly. The fourth is to maintain the practice of defining corporate purposes via the present system of objectives. The fifth is to incorporate into the application for incorporation a requirement that applicants identify the provincial laws that will impact on the characterization of their property as trust property—and I will try to explain that better.

First of all, in terms of the oppression remedy, I would echo the information in the supplement to the draft framework on a new not-for-profit corporations act. That's the discussion on page 37 regarding the oppression remedy.

Our concern is that the unpredictability created by the remedy and its availability will deter charities from using the federal corporation at all. Our second concern is that the application on a faith-based defence is also unpredictable, and that this will also deter religious charities from using the federal corporation act because of the availability of the oppression remedy. Our third concern with the oppression remedy is that the financial cost of defending such applications, whether or not there is merit, would be prohibitive for charities in terms of the financial expense. And our last concern with it is that the remedy seems to be a tool that is tailored and appropriate for the for-profit world, but not a very good fit for the not-for-profit world.

Moving on to the second item, employees as directors of the board, clause 126 permits paid employees to be directors. Further, in paragraph 142 (5)(a), it says directors may vote on their own remuneration. The CCCC takes the position that it's inappropriate for an employee to be a director in the charitable sector and that it's a conflict of interest. It puts the employee in a position of reporting to him- or herself. Our recommendation is that this not be permitted.

In terms of the definition of “soliciting corporation”, it would be of assistance if this were more fully defined. From hearing the individuals who drafted the act, I have the understanding that it was their intent that “non-soliciting” means a corporation that asks only its members for money, and that the corporation would become a soliciting corporation as soon as it asks non-members. By way of example, a church that raises its money only by passing the plate would be non-soliciting until the point at which there is a non-member present who might contribute. Is it the intent to catch a church, for example? Some clarity would be helpful.

In terms of the use of a statement of mission versus the traditional use of objectives, we do assist many charities in their applications for charitable status. We recognize that often when a charity just looks at its mission statement, the statement is either too broad or too narrow. The mission statement makes sense in the context of the charity's objectives, but on its own it just sometimes creates confusion as to what the charity's purpose really is.

● (1535)

For a charity to get registered charitable status and also be a corporation, there's a two-step process. The first step is incorporation, and the second step is the application. My concern is that the mission statement requirement will make it into a three-step process, and Canada Revenue Agency will not approve it as a charitable corporation and will send it back for amendment. So maintaining the present use of objects will assist in streamlining the incorporation process.

My last comment is on charitable property as trust property. Clauses 32 to 34 provide that a corporation does not hold any property in trust unless that property was transferred to the corporation expressly in trust. The CCCC's concern is that the common law in the provinces may take the view that all charitable gifts are for a specific purpose or purposes, notwithstanding that the transfer itself did not include that express statement.

In order to assist registered charities from inadvertently breaching the law under a provincial jurisdiction, it would be helpful to include in Bill C-21 subclause 7(2)—the information that has to be included in the application—a reference to the provincial law that would apply. In Ontario, for example, the Charities Accounting Act states: "Any corporation incorporated for a religious, educational, charitable or public purpose shall be deemed to be a trustee within the meaning of this Act". So there are differences in the position of the treatment of property as trust or not trust. Making applicants itemize this in their application for federal incorporation will at least help them know of the land mines that are out there.

That is a quick summary of our presentations, and I thank you for your time.

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

We'll move to Don Bourgeois.

● (1540)

Mr. Don Bourgeois (Lawyer, Carter and Associates, As an Individual): Thank you very much.

This bill is an important piece of legislation, perhaps more so than it appears at first blush, so my major comment is to get on with it and have the bill sent back to the House so it can be enacted.

The need for new modern and flexible legislation for the incorporation and governanceof not-for-profit corporations has been recognized since I was in highschool, and probably even earlier. When I was in university, the federal government proposeda new not-for-profit corporation in 1997. I'm now two years from retirement, and I'm hopeful the bill will be passed before I retire.

My primary recommendation therefore is to move the bill along. We are all aware of thepolitical situation in the House and the potential for an election. As a result, my desire, and I think the desire of the officers and directors of more than 18,000 not-for-profit corporations, is that this bill be enacted before any other political action is taken.

The bill is not perfect, but having drafted legislation, regulations, and other statutory instruments, I have yet to see a perfect bill. Assessments of perfection really come from the perspective from which one sits. In my view, the department's lawyers and policy advisers have done a very good job in implementing the suggestions that have come forth for new legislation over the very long and thorough consultation process Industry Canada undertook. Nevertheless, I am here to comment, and I have a few views on what I consider to be weaknesses in the bill.

In subclause 6(1), a minimum of three incorporators is more appropriate for these types of corporations than a single incorporator. The vast majority of the corporations without share capital will be either charitable in nature or membership-based. In my view, one incorporator is simply not appropriate. If an organization cannot find at least three people to sign the application for letters patent, it probably should not be incorporated in the first place.

I echo the comments on mission statement by Ms. Douma. It's important to have specific objects for corporations. A mission statement tends to be vague and ambiguous, especially for legal purposes. Also, on the interaction between that and paragraph 7(1)(e), it's unclear how that would operate.

Given that the corporation will have powers of anatural person, the concept of a mission statement can also be problematic and overly flexible. No doubt the policy rationale behind it was simply to deal with the ultra vires issue that has been problematic for a large number of corporations. But it would allow a corporation with anambiguous mission statement to operate businesses, such as a chain of gas stations—under a mission statement to operate well in the marketplace. That comment also ties into clause 16 of the bill.

On the classes of membership in paragraph 7(1)(c), I suggest that's really a matter that should be left to the bylaws, and the approach should be the opposite: that it not be mandatory to be in the application itself.

In subclause 28(1), again the onus should be reversed. That's particularly the case if there's a single incorporator. Subclause 28(1) deals with corporate finance and what may or may not be in if it's permitted...it should be "if permitted by the bylaws". It allows those who are the members to have the final say on corporate finance.

Clause 32 deals with the interaction with the law of charities, and expressly in trust. I also echo the comments of Ms. Douma about the lack of clarity and the potential problems, especially when you tie in the mission statement aspect in clause 7, as opposed to objects.

Part 6 is really the problematic section. It deals with debt obligations. It's not readily understood, and in my experience, what is not readily understood is open to abuse, whether it's inadvertent or deliberate. Again, if you tie that in with the mission statement concept, it's not too difficult to develop a system in which a not-for-profit corporation ends up being a for-business operation in all but name.

On clause 126 and the number of directors, I would submit that, similar to incorporation, there should be a minimum of three directors, regardless of whether it's a soliciting or non-soliciting corporation.

● (1545)

In that context, in clause 139, if there is to be an executive committee, that is one thing, but the concept of a managing director as a single director is overly flexible for this sector. Most of these corporations have a public purpose, and that public purpose should be reflected in more than one decision-maker at the director level.

Clause 143 may prohibit the election of officers directly by the membership. Instead of the directors electing the officers, many corporations of this nature do have the membership doing it. The way it's phrased is problematic.

The soliciting and non-soliciting corporations issue is one for which there is probably no clear or right answer. Should a soliciting corporation be soliciting forever? If it's a charitable corporation, it probably should be. I don't have a firm view on the balance, but I'm sure others will also raise the issue—and Ms. Douma has raised it. I raise it just to identify it as an issue.

Clause 239 is also potentially problematic. That clause deals with dissolution and what happens to remaining assets. In the case of a charity, where the assets are really held by the corporation for the purposes of the charitable object, is Her Majesty the Queen in right of Canada going to be holding those assets for that charitable purpose or not?

On the transition, I leave that to the experience of Industry Canada with the Canada Business Corporations Act, but there probably should be a safety net after the three years. Currently the policy is that after three years you've been weeded out. That may be problematic, based upon experiences in other jurisdictions.

Again, thank you for inviting me to be a witness. I appreciate the opportunity, and I trust my comments will be of assistance to the committee.

The Chair: Thank you, Monsieur Bourgeois.

Carole Presseault, on behalf of the CGA Association of Canada.

[*Translation*]

Ms. Carole Presseault (Vice-President, Government and Regulatory Affairs, Certified General Accountants Association of Canada): Thank you, Mr. Chairman.

[*English*]

Thank you for your welcome this afternoon and for the opportunity to appear before the committee.

The certified general accountant, or the CGA, designation is the second largest and fastest growing accounting designation in the country. Together with our provincial and international affiliates, CGA-Canada represents 62,000 certified general accountants and students.

Obtaining the CGA designation is a rigorous and comprehensive process. CGA students must successfully complete courses in financial and management accounting and auditing, as well as courses in economics, law, management information systems, and quantitative methods. Many of these courses include sections specifically dealing with the not-for-profit accounting sector.

After completing the educational levels of the program, candidates complete the professional admission comprehensive examinations. In addition, applicants must complete approved work experiences that meet specified competencies, generally for a period of up to three years.

All told, these educational, practical, and examination requirements ensure that individuals attaining the CGA designation are fully qualified to offer their clients the highest level of professional accounting services and advice. The presence of CGAs in the Canadian marketplace ensures competition and choice for business organizations and individuals.

As a professional accounting organization, we strongly support the objective of providing a modern, transparent, accountable framework for the governance of the not-for-profit sector in Canada. CGAs across the country recognize and actively support the important role the not-for-profit sector plays. Many of our members work in the sector as CFOs; others provide public accounting expertise and services.

We encourage our members' involvement in the sector by offering educational courses and seminars that provide information specifically dealing with not-for-profit accounting issues. Volunteer work for the not-for-profit sector is recognized as part of a member's continued professional education credits; and most importantly, we provide free liability insurance for the work that CGAs do for the not-for-profit sector on a pro bono basis.

While we support the goal of enhancing transparency and accountability, as pursued in the bill, we do want to make sure that access to qualified, competent public accountants is not unduly restricted. In this regard, we have some concerns regarding the definition in the bill of who is qualified to be a public accountant. We believe it is too restrictive and that it may prevent qualified and competent CGAs in some provinces from acting as auditors for not-for-profit corporations.

Clause 179 of Bill C-21 defines who is qualified to be a public accountant for the purpose of the act. This clause dictates that a public accountant be a member in good standing of an institute or association of accountants established by provincial acts, and also that the individual must be independent of the corporation. We fully support these requirements.

But paragraph 179(1)(b) adds the following requirement, that the person must “meet any qualifications under an enactment of a province for performing any duty that the person is required to perform under sections 187 to 189”. We would assert that this provision will lead to a number of inequitable outcomes and will unnecessarily restrict the choice of auditors for not-for-profit corporations.

Let me explain briefly why we strongly oppose this provision. Paragraph 179(1)(b) will create different requirements for auditors, depending on the province of residence. No matter what province a CGA chooses to reside or work in, if they have achieved a CGA designation and are practising public accounting, then our association and our provincial affiliates have ensured they have the educational knowledge and practical experience needed to do their jobs professionally and ethically. Despite this, some provinces, specifically Quebec, Ontario, and Nova Scotia, have had in place long-standing barriers to CGAs that restrict them from undertaking public accounting duties, such as acting as auditors. These restrictions are not based on objective criteria. Bill C-21 would have the effect of reinforcing those artificial and arbitrary barriers in those provinces.

Practically, paragraph 179(1)(b) can lead to confusing and contradictory scenarios. For example, a not-for-profit organization in Vancouver can retain a qualified CGA to act as its auditor, but a similar not-for-profit organization in Halifax or Trois-Rivières cannot hire the same CGA to do the same job—or in fact another individual residing in that province with the same qualifications. There is no public policy rationale for this.

● (1550)

[*Translation*]

Moreover, section 179(1)(b) would also unnecessarily restrict auditor choice for not-for-profit organizations. Limiting a company's access to qualified CGAs could increase costs and in smaller communities, could make finding an auditor difficult.

Obviously, the bill must ensure that the people who audit not-for-profit companies are qualified—it is a question of public protection—but the restrictions must be based on measurable, qualitative criteria such as education, experience and qualifications instead of geography. We would submit that section 179(1)(a), which already ensures that anyone auditing a not-for-profit company must be a member in good standing of an institute or association of accountants incorporated by the legislature of a province, already achieves this objective.

We are also concerned that Bill C-21 is inconsistent with other federal statutes. For example, under the Canada Elections Act, the Canada Post Corporation Act and the Canada Mortgage and Housing Corporation Act—to name three—CGAs are qualified to act as auditors, no matter where they reside or work, provided that they are recognized as such by their professional association.

Mr. Chairman, I don't have to tell you how stringent the reporting and audit requirements are under the Canada Elections Act, you've lived through them. If a CGA is qualified to be an auditor of record for the purposes of the Canada Elections Act, what possible reason could there be to restrict them from acting as an auditor for a not-for-profit corporation?

[*English*]

We are not asking that the federal government intrude in an area of provincial jurisdiction. Paragraph 179(1)(a) already recognizes the role of the provinces to regulate professions, but we are asking you, as federal legislators, to ensure that the Canadian government leads by example with a single uniform standard of qualification for an auditor, under the bill, that would apply everywhere in Canada.

I would like to thank you. My colleagues

[*Translation*]

Mr. Stobo and Ms. McGeachy would be pleased to answer your questions.

[*English*]

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

Thank you all for being very respectful of the time and for therefore giving us lots of time for questions.

For that purpose, we will start with Michael Chong, and then Paul.

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

Thank you to the witnesses for appearing in front of our committee.

We've had a number of witnesses raise concerns about the clause in the bill that deals with the right of members to seek redress through the courts, and also the clause in the bill that deals with exempting religious organizations on the basis of a tenet of faith. My question is directed to Don Bourgeois about this.

Some people have suggested that we tighten up the definition of religious corporation. Some have suggested that we be more explicit about what is a tenet of faith. Other people have suggested that we just remove these portions from the proposed legislation. I'm just interested to hear what your opinion is on this issue.

● (1555)

Mr. Don Bourgeois: As with a number of these policy issues—and it is a policy issue that shows up in the legislation—there is no right or wrong answer. However, the history in charitable and not-for-profit organizations is not to have an oppression remedy. Although some jurisdictions permit it, most jurisdictions do not permit it, as far as I know.

My personal view is that an oppression remedy is probably not an appropriate one when dealing with a charitable organization in particular. For a member-based organization, where it's not a charitable one but it's something like the Canadian Bar Association or the parliamentary association and so forth, let the normal course go.

There is still the opportunity for judicial review by the courts, certainly in Ontario and I believe at the federal level as well, if there has been an abuse of the process. The courts don't intervene very often, but they have intervened, because membership in an organization is contractual in nature. That has been recognized by the courts. So there is a remedy already for a member who feels they've been abused or that the procedural rights of the corporation have in some fashion been abused.

So the oppression remedy is good in concept to try to deal with issues, but I think it's a very heavy-handed remedy for the charitable and not-for-profit world.

Mr. Michael Chong: My other question has to do with the new standard of care proposed in the legislation for directors who sit on boards of not-for-profits. Do you see any issues around this new standard of care in terms of attracting directors to not-for-profits, or do you see this being in the legislation as a benefit for not-for-profits?

Mr. Don Bourgeois: One of the big issues in governance of not-for-profits now is the ability to attract and retain directors—and officers as well where the director is also the officer. There is being created in the legislation an objective standard for duty of care or standard of care, and that's an important move forward. That is one area where it does parallel—not to parallel more closely—the duty and standards of care that exist in the business corporations.

That being said, even though that exists—and Parliament has indicated that, even in the Income Tax Act and in other legislation—the courts will still come in, as they did in the Corsano case, which is a taxation case, and superimpose a subjective standard as well. So it's an important statement by Parliament of what the standard of care ought to be, and it's not the subjective standard; it's more like what is the "reasonable person" test out there.

Mr. Michael Chong: Another question I had concerns another issue that has been brought up in the past, one I think you also talked about, which is the issue around the different types of not-for-profits, whether they be soliciting, non-soliciting, or what not. How would you propose the legislation deal with these different types of corporations? Should we define them more explicitly, and is the number we have appropriate—I think there are six types now—or does that need to be streamlined?

Mr. Don Bourgeois: Again, it's one for which there's no good answer. That's why I waffled in my opening remarks and why I'll waffle again on it here. I don't know the answer.

Concerning soliciting and non-soliciting, as Ms. Douma pointed out, what happens to that member who goes to that church that Sunday or Friday evening, or whatever, instead of another congregation they belong to? There is a similar situation with Boy Scouts. Because a Boy Scout troop sells apples on apple day, they are now a soliciting corporation, in effect.

I don't really have a good answer, Mr. Chong, on that issue. I think soliciting and non-soliciting make sense in concept. As with many of these things, my recommendation is to allow that to be dealt with through regulation.

● (1600)

Mr. Michael Chong: Another area of concern that's been brought up in the past—and I address this to all the witnesses—is around the issue of allowing anyone who's a member access to the entire membership list if they request it, including names, addresses, and contact details. I'm just curious as to what the witnesses' opinions are on this, because it seems to me it's open to potential abuse, where somebody gets their hands on the list and uses it for purposes other than what the legislation prescribes.

Mr. Don Bourgeois: It is open to abuse. However, it is in the Ontario Corporations Act. It's in the current legislation as a policy, and it does allow for the members to speak to each other, to raise issues amongst the membership, and in effect to lobby, to do the political work, if they want something passed at the annual general meeting or at another point. It provides that access to the basic information they need in order to make contact with their other members.

There are built-in safeguards about abuse of it, and as I recall, there are penalty provisions dealing with abuse of this. People do have to sign documents saying they are going to use it for this purpose.

Now, that is always open to abuse, and people will sign documents without intending to comply with them. Most people do attempt to comply with what they sign, and in my history—I've been dealing with charitable and not-for-profit corporations for about twenty years—I haven't come across a significant case of abuse in that situation.

The Chair: Are there any other questions about Mr. Chong's question on the lists? Is there anything else?

Mr. Michael Chong: I have one short question. It goes back to a previous question and has to do with soliciting and non-soliciting categories of corporations.

In essence, we are trying to have some transparency and accountability here. What do other jurisdictions do to ensure transparency and accountability if they don't use these different categories of not-for-profits?

Mr. Don Bourgeois: The current Canada Corporations Act establishes charitable corporations, corporations that are charitable in nature that may not actually seek registration as charities under the Income Tax Act, and not-for-profit corporations. It establishes the three as a matter of policy within the Industry Canada information kit.

The Ontario Corporations Act has evolved over the years. At one time there was pre-approval, and there is still pre-approval if it's going to be a charitable corporation. The public guardian and trustee pre-approves the corporation, so it's there as a charitable corporation and has certain restrictions. For example, it can only borrow money for its day-to-day operations or for a mortgage. Non-charitable corporations under Ontario legislation can borrow money for any sorts of purposes, including future activities.

Each jurisdiction deals with it in its own way. Generally it's been charitable versus non-charitable, membership-based organization versus charitable corporation.

Mr. Michael Chong: I was thinking more along the lines of full audit, no audit required, or a simple—

Mr. Don Bourgeois: In Ontario, under the audit provisions you have to have a full audit. Until about a year ago, CGAs were not allowed to do the audits. They are now allowed to do the audits under the Public Accountancy Act in Ontario. If the corporation was not a corporation and had revenues under $10,000, the members could elect not to have an audit done; otherwise, under the Ontario legislation, audits are mandatory. Different jurisdictions have similar relief by regulation.

● (1605)

The Chair: Thank you, Michael.

Paul is next, then Denis.

[*Translation*]

Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ): Thank you, Mr. Chairman.

My first question is for the Canadian Council of Christian Charities. You are requesting that the oppression remedy be removed from the bill. You state that it "will deter charities from using the new federal legislation altogether."

Do you have something else to propose, since oppression can present itself in many ways? If we simply remove the remedy, we will open the door to the possibility of oppression. I can understand that you would have preferred it to be framed differently, but I would like to know if you have thought about another way of providing this kind of protection for people who may be affected by this abuse.

[*English*]

Mrs. Teresa Douma: Presently, just as in a corporate world, directors of not-for-profits are treated as fiduciaries to their corporation, and there is accountability in law in their roles as fiduciaries. So presently that is quite a protection that is available, and it could protect in cases of abuse.

There is that already, and on the oppression remedy, as I understand it, in the corporate world there is a conflict between meeting up with the concepts in law on fiduciary and the concepts in law on oppression remedy. I do think there is protection.

Another point is that some organizations, such as ours, have standards in place to which all member charities must agree. For example, in our organization we review our members every three to four years to make sure they are accountable and maintain the standards to which they have agreed to be held. It is self-regulation.

[*Translation*]

Mr. Paul Crête: First of all, as regards the issue of oppression, I understand that you would prefer to keep what currently exists, rather than having what is contained in the bill. You would rather keep the current way of doing things instead of adopting the new model proposed in this bill. Is that correct?

[*English*]

Mrs. Teresa Douma: In terms of protection for abuse, yes. I'm saying that what exists presently is sufficient, and that I think for various reasons the oppression remedy might itself be an avenue for abuse in that it could waste a charity's resources if they had to defend an oppression remedy.

[*Translation*]

Mr. Paul Crête: You also say that if the wording remains as it is, what is meant by a "decision based on a tenet of faith" is not clear. I understand that organizations that are members of your council are okay, but in an act, we must also foresee situations where people might be involved in oppression. There have even been some acts of terrorism that ultimately had religious connotations.

In your opinion, does the existing protection make it possible to prevent this kind of situation?

[*English*]

Mrs. Teresa Douma: Through the variety of laws that exist presently, such as the Anti-terrorism Act, I think there is sufficient protection through the common law remedies and legislation such as these.

[*Translation*]

Mr. Paul Crête: I have another question, and this time it's for the CGA representative.

If, in accordance with your wishes, the reference in the bill to provincial legislation is removed, are we sure this legislation can't be challenged? In other words, if it were drafted that way, is it a sure thing that this legislation would take precedence over existing provincial legislation?

● (1610)

Ms. Carole Presseault: That's a good question, Mr. Crête.

Mr. Paul Crête: You may answer for all situations, but my question is about the situation in Quebec. The situation may be the same in some of the other provinces.

Ms. Carole Presseault: I think section 179(1) states quite clearly that regulating professional orders comes under provincial jurisdiction. Even if the second part were removed, the fact remains that the institute or professional order is incorporated under provincial legislation. At the same time, the same issue would apply equally with other federal legislation defining the qualifications of a public accountant.

[*English*]

Mr. Stobo, I don't know if you want to add something on the legal side of it.

Mr. Gerry Stobo (Partner, Borden Ladner Gervais LLP, Certified General Accountants Association of Canada): Yes, thank you for the opportunity.

In fact, the federal legislation would take paramountcy in any conflict with provincial legislation that may exist. There has been a case in fact on this point involving the Canada Elections Act. The court decided in that case that the Canada Elections Act, which allowed a CGA in Ontario to perform an audit in respect of the candidate's finances, took paramountcy over provincial laws in Ontario that prevented CGAs from conducting audits.

So the short answer is yes, this legislation would be an answer to any provincial laws, and it would be paramount over those provincial laws.

Ms. Carole Presseault: Could I just add that it wouldn't be paramount over the right of a provincial association to regulate its members.

Mr. Gerry Stobo: No, absolutely not. It would have no impact on that.

[*Translation*]

Mr. Paul Crête: Basically, we want to avoid passing legislation that would be challenged in court; that would put money in some lawyers' pockets but otherwise would not solve much of anything.

I understand that if the text is left as is, the paramountcy of the provincial legislation is clearly established, whereas if the reference to that is removed, as Mr. Stobo just said, the federal legislation can be applied without necessarily repudiating the provincial legislation, but by ensuring that it takes precedence over that. For example, the Canada Elections Act sets limits, in Quebec too, but the claims of the CGA would not allow for the Canada Elections Act to limit audit authority to them alone.

Ms. Carole Presseault: It's an interesting question because that's not an entirely black and white scenario. It would be quite straightforward if it were.

However, the issue of audit authority for Quebec CGAs is quite unique in Canada. A CGA, a certified general accountant in Quebec, is entitled to audit the financial statements of many not-for-profit organizations. Any organization can be audited, as long as no fees are charged. The following example is always given: a CGA can prepare audited financial statements for the cities of Trois-Rivières, Quebec, Montreal or Sherbrooke, but not for the local corner store if any fee is charged. Section 24 of the Quebec Chartered Accountants Act restricts accounting authority to chartered accountants, but there are several exceptions.

The scenario in Quebec is quite different. A reference was made to new legislation coming into force in Ontario that would authorize CGAs, CMAs and CAs to act as public accountants, as long as they are licensed. Quebec CGAs are licensed to act as public accountants by their professional order, which in turn derives its mandate from the Office des professions du Québec. So the situation is similar, except that there are several exceptions to the Quebec legislation. Is that clear?

[*English*]

Mr. Gerry Stobo: That's right. That's absolutely right.

[*Translation*]

Mr. Paul Crête: I'd like to come back to the Canadian Council of Christian Charities. I'd like some explanation with respect to the definition of soliciting. You refer to that at point 4 of your presentation. You say it's not easy to determine whether an organization is a soliciting corporation or not, and if it is, when that is decided. You say you want those definitions made clearer. What type of clarification would you like to see?

● (1615)

[*English*]

Mrs. Teresa Douma: Yes. At present the definition does not say even so much as that you are a non-soliciting corporation as long as you ask money only from your members. That is not in the act, but it was the intent of the individuals who drafted the act. Putting something like that in the act would help to clarify it to some extent.

I guess that would be a big step in clarifying it, to that point.

The Chair: Merci, Paul.

Denis, then Brian.

[*Translation*]

Hon. Denis Coderre (Bourassa, Lib.): Thank you, Mr. Chairman.

I would like to focus on two points. With respect to the Canadian Council of Christian charities, I am wondering about the issue of abuse and the very existence of these organizations in terms of links with the public.

You say that the current legislation is okay. But, in terms of perception, would not it be in your interest to be seen to be in favour of transparency? There is a perception problem there.

[*English*]

When we're saying that we should get rid of that abuse and that what we have now is enough...there's a difference between having some legislative framework and at the same time focusing more on accountability. And of course, everything regarding faith can be questionable for certain people.

Don't you think it would be in your interest instead to work on the perception level and say that maybe we should do a little bit more on the regulations to show that finally.... I'm not saying you have something to hide, but in a sense, it's not living in your own cocoon; it would be more open, so people wouldn't have any concern about money that you raise regarding your faith, which I respect, as a matter of fact.

Mrs. Teresa Douma: The CCCC would be the first to promote accountability in charities. Financial accountability was actually the reason we came into being. So absolutely, we would support that—

Hon. Denis Coderre: But it's among yourselves—the accountability. It's within your own group.

What I'm saying here is whether there is a way to maybe propose, for the purpose of public opinion, that it's not just issues regarding your own organization—and I salute that. It's also to find a way to have some tools to work with, so Mr. and Madam Public will also be able to have some insight into what's going on in your organization.

Mrs. Teresa Douma: I would just add that we are interested in public accountability for the whole charitable sector. We certainly invite non-Christian charities to become members of ours.

In terms of public accountability, just for instance, every charity must file the T3010 within six months of their year end. There is an abundance of financial information in that form, which is publicly available. I understand that the financial disclosure requirements introduced in this bill go beyond the information in the T3010, so in terms of financial accountability and use of resources in programs and so on, I think there's a lot of information available.

Hon. Denis Coderre: I have a tendency to think like Mr. Bourgeois about the number of administrators. I think that for funding organization one is not enough; we should push forward with three. It's like justice: you need justice, but also the appearance of justice. The fewer questions you have to ask yourself beforehand when you create a body, I think, the better, in the people's interest.

Maybe on a more philosophical note, do you believe we should have a kind of framework legislation just based on principles and be more specific in the regulations, so that if we have to adapt ourselves to new realities, instead of going back all the time to Parliament we can have a process within standing committees? The tendency now —when I was an immigration minister we started it—is that not only the legislation but the regulations also should be part of the legislative process, and the standing committee would be a great asset to the process itself. Do you believe we should be more general within the law and then be more specific in the regulations, as more appropriate if we have to make any changes in the future?

That's a planted question; it sounds good. What do you think?

● (1620)

Mr. Don Bourgeois: I agree with that. Especially given the process in place at the federal level, which is different, with pre-publication in the *Gazette* and so forth providing an opportunity for comment, I think regulations are a useful way to deal with issues to make the statutory regime flexible and responsive. If we have to wait the same length of time to make major revisions to this legislation, then it will be the 22nd century.

Hon. Denis Coderre: We won't be here at that time, I guess, even at my age.

[*Translation*]

Ms. Presseault, there are two overlapping questions that have to do with representativeness. In my view, legislation has to be well-crafted and should not be restrictive. If we feel that the auditing can also be done by CGAs, our role is to ensure that there is some compatibility, some consistency with the reality in the field.

How do you respond to the compatibility question between, for example, the provincial power and the Government of Canada's ability to put in place this kind of measure or to deal with this kind of issue? I understand the question from my colleague, Paul Crête. However, our role is also to enact legislation that is based on some reality.

How can you, in a way, attempt to kill two birds with one stone? How can you state that there is consistency? CAs are of course going to say that they are the real auditors. I would not want to create conflict between your professions.

Is it somehow up to us to do this work, or does there first have to be a change to the Professional Code? As a mater of fact, the Professional Code—and I am speaking for myself here—is in need of some changes. If you take the definition of auditing, a CGA, in my opinion, is fully qualified to do auditing work. You are professionals, you are governed by a professional order, and I am...

I agree that the act has to be changed and improved in terms of consistency among provisions, so that audits can be done by CGAs too. Help us to help you. What type of arguments could be used to that end?

Ms. Carole Presseault: Thank you for your question. I will try to answer it.

First of all, subsection 179(1) is quite clear. Public accountants are public accountants because their association, incorporated under provincial legislation, states that they are public accountants. I do not want to bore you with all of the restrictions and steps public accountants have to take to meet the experience, ethics and examination requirements in order to qualify, but they are there. I think it is recognized that this comes under provincial jurisdiction. Here, the insertion of the other part of subsection 179(1) is unnecessary to ensure the protection of the public.

You asked me what the competition would say. That may be the argument they would give you: it is to protect the public. The public is protected by the fact that the Professional Code or the Office des professions sets out the procedure and conduct for professional orders. This is more about a framework for modernizing the legislation governing not-for-profit corporations in Canada.

Nor is it about strengthening monopolies that have been around for 50 years. That is the reality, there is a need for reform in Quebec. That reform has nothing to do, as I said before, with the public interest. To us, it is a small clause that leads us to think that it is a matter of access and choice, and ultimately, smart regulation. The headlines in today's newspapers say that the president of the Treasury Board is on the verge of launching a smart regulation initiative. This part of the bill or our recommendation fits squarely into that.

Finally, I would say that it is a federal bill and that according to the Canada Elections Act and other legislation I mentioned, including the Bank Act, which I did not mention, the federal government is fully entitled to define the qualifications of a public accountant. In our view, ultimately, the same thing should be found in all federal legislation, because a national standard is important.

I do not know whether that answers your question. But thank you for giving me the opportunity to clarify things.

● (1625)

[*English*]

The Chair: Thank you.

Thank you, Denis.

Brian, then Werner.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Continuing with clause 179, after you started your comments you made a good case on a subsequent page with the example of the Canada Elections Act. Where do you think the motivation for the distinction comes from anyway, in terms of...? Where is it that the particular skills, maybe, or deficiencies are the basis for such a distinction?

I do have concerns. One of the biggest concerns I have about this bill is the effect on smaller not-for-profit organizations' viability. Having worked in the sector for 10 years, I can tell you that you have to go out to people and ask for donations or do it through fundraising at bingos and other things. If you say you're doing it to be able to provide an audit, people don't come out and give. Increased costs in these types of administrative capacities or functions really turn off the support needed to grow programs and services that communities very much need, and which not-for-profits are very good at providing.

I turn that over to you, or to anybody else who has a comment, before my second question.

Ms. Carole Presseault: Okay. I see your question as having two parts.

The first part is on the educational requirement. You asked why we think that is there. We're not sure why it belongs in there, and when we look at other federal acts, we're not sure where it comes from. We had discussions with the department and we had not expected to see that additional provision. What it does is reinforce historical tensions and historical inequities that have existed.

To your larger question, the most important question we have here is the question of viability and the question of access to qualified and competent auditors, because this bill is also about fiscal probity and financial probity; it's about ensuring that the dollars are spent. One means of testing that is through the provision of audited and financial services, the provision of prepared financial statements.

We all know there has been a tremendous impact on the audit business over recent years, and corporate failures have been at the source of that. There has been a rationalization of the audit profession, and we are told that many people are leaving the profession. The first clients they are dropping—and this is anecdotal—are the small and not-for-profits. So we do not want that sector to be unduly penalized. We hope that removing paragraph 179(1)(b) will provide access. Using back-of-the-envelope calculations, up to about 2,000 possible candidates would qualify as public auditors under the bill. So we would improve access with the improved choice.

As I mentioned in my opening remarks, our provincial associations very much support in a very tangible way the provision of audit services on a pro bono basis, and we would hope that our members would heed the call.

Mr. Gerry Stobo: Mr. Masse, if I can just add a couple of points, in the initial concept proposal that was distributed by the department a couple of years ago when they were contemplating the work that was needed to generate the bill we're now talking about, there was no provision such as paragraph 179(1)(b). We thought that was the right thing. It was the modern way. It would have increased the pool of auditors available to do this work.

Madame Presseault mentioned that it would provide for about 2,000 more auditors. In fact, as our calculations show, there would be 2,000 to 3,000 more public accountants available if we took out paragraph 179(1)(b). That's more public accountants to the already large number of CGAs, CAs, and CMAs who are performing these functions across the country.

● (1630)

Mr. Brian Masse: I'd like to turn our attention to a curious part of the bill that CCCC have raised. It's point three in their submission on employees as directors of the board, and clause 126 in particular. I'd invite comments from all panellists.

One of the intentions of this bill is to increase transparency, public confidence, and accountability in boards of directors. I think clause 126 does the exact opposite of that. My real concern comes about—not in many cases—when you have high-profile cases, because boards of directors are often recruited by the executive director. Over time they have personal relationships, or they get individuals from circles of their lives who are very valuable in contributing to the progression of the organization. But at the same time, this can lead to some very awkward conflicts of interest, in the least.

Compounding that is their direct influence on the process. It's not only the fact that the person can vote and participate; it's also being present in the room. In organizations I've belonged to as a board member, we often had staffing discussions in confidence, in camera, without the director's presence at that time, because it was treated like other personnel matters. The director would participate for her subordinates, not allowing those members of the organization to be part of the governance and...[*Inaudible*]...to the issues over their employment.

So I offer that out in terms of that. I think it's a step back in some of the goals of the actual bill. I would certainly encourage expansion on that issue, if there's any contradiction to my opinion on that—or support.

Mr. Don Bourgeois: Certainly in Ontario, if the corporation is a charity—and the law of charity of Ontario still applies to federal corporations carrying out their activities in Ontario—an employee cannot be on the board of directors. That's fairly clear. I think you would find that in the other common law provinces for charities as well, because the basic aspect of charities is moneys and assets being held in trust. The directors are akin to trustees, according to the case law.

There is a difference, though, between a charity and a not-for-profit organization. This bill talks about soliciting versus non-soliciting, to some extent, but it's not directly on point in that. There may not be anything wrong in the chief executive officer, for example, sitting on a corporation without share capital, or somebody in a housing co-op who is also an employee in the housing co-op—those sorts of situations where the normal conflict of interest rules that exist for corporations can apply. Those are as follows: I will not vote or discuss the matter, I will not participate in the discussion, and I will not attempt to influence a decision. Those are the normal fiduciary duties of a director in common law .

So with respect to charities, I think it is important that they not be in there. There is an interesting constitutional issue around this. Subsection 92(7) of the Constitution Act, 1867 provides the constitutional jurisdiction over charities to the provinces. But that's always constrained by the other constitutional authority of the federal government under section 91, or peace, order, and good government, and so forth. So this could probably, in some cases, override a provincial restriction if it's seen as being comprehensive in nature.

So the long-winded response is that I think it is a problem for charities. There is potential for that issue overriding, even into common law jurisdictions, where there's strong case law as well as statutory provisions that prohibit it.

Mrs. Teresa Douma: I would agree that it's a step back, especially in terms of public perception of whether or not in fact there is an abuse there. Particularly with charities, most governing statutes will require that a director may not obtain any benefit from their position as a director. I think the public would perceive that as a benefit if someone were a director and an employee. I guess that would also support our position that it's inappropriate.

The Chair: Thank you very much.

Werner, and then Jerry.

● (1635)

Mr. Werner Schmidt (Kelowna—Lake Country, CPC): Thank you, Mr. Chairman.

I would like to express my appreciation to the witnesses here. They have raised very significant issues and contradictions and problems with the bill.

You've ranged from the bill being too specific to the bill not being specific enough, almost having extreme opposite positions on the same bill or piece of legislation. I was rather intrigued by the comment that Mr. Bourgeois made that we've been at this for such a long time that we should get on with it.

An umbrella-type question might be, if we pass this legislation, would it be better then what we've got?

Mr. Don Bourgeois: Since you raised my name, it's a thousand times better than what we have.

Mr. Werner Schmidt: That much? Well, that's pretty good.

The next question has to do with the mix that's taken place here between provincial jurisdiction, federal jurisdiction, and the interaction between them. I was particularly intrigued by the suggestion made by, I think, Madame Presseault, on the CGA. I think the words used were that you would love to see a uniform standard of qualification across Canada.This is very interesting, Mr. Chairman, because if we really had that, you would have come to grips with the turf war between professions, the turf war between provinces, and the turf war between educational institutions and the self-administration of professional organizations—engineers, accountants, or whoever.

I was wondering, have you thought through how you could actually achieve that? I think it's a great idea. I'd like an answer because I think it's a wonderful idea.

Ms. Carole Presseault: I can answer that. I thought I was more of a realist than that. I thought, did I say that? I have my lawyer present so he can say....

Actually, in answer to your question, there is a uniform standard of qualification; CGAs have uniform standards of qualification.

Mr. Werner Schmidt: It says right here on page four: “But weare asking you, as federal legislators, to ensure that the Canadian Government leads by examplewith a single uniform standard of qualification for an auditor under the Bill that would applyeverywhere in Canada”. What a breakthrough that would be if we could do that.

Ms. Carole Presseault: It would indeed be, wouldn't it?

Let me talk to you about what we were thinking. First of all, I'm not sure I said it, but I will say it again if I haven't: CGAs are all trained to one standard within Canada. It doesn't matter if you're a CGA practising in P.E.I., British Columbia, or Nova Scotia; you are trained to the same national standard. All accountants—all accountants, no matter what designation—as they prepare an audited financial statement, prepare it to the same financial reporting standard, the one set out as being the standard in the Canada Business Corporations Act regulations. It's a standard set by the Accounting Standards Board of the Canadian Institute of Chartered Accountants.

Mr. Werner Schmidt: I think I know where you're going with this.

Ms. Carole Presseault: But the third one, Mr. Schmidt, we're referring to is to have one national definition within federal legislation of what constitutes qualification for a public accountant. This is simply what we're seeking today before your committee, that the federal law defines who may be qualified.

Mr. Werner Schmidt: I'm going well beyond that and really taking you up on that point. I think it's such an important point that this committee could really have a breakthrough in Canada if we could actually achieve that. I think it would be tremendous.

I'd now like to go to Mr. Bourgeois, because I think the point you made, sir, about part 6 had to do with debt obligations. You made the observation that “The broad scope of this Part would permit the holders of debt obligations to control, in effect, the corporation such that it is no longer a “not-for-profit” corporation but a corporation with shares in all but name”. That's a very significant observation, because if it's true, then membership in a not-for-profit organization is meaningless if that particular organization has significant debt obligations to individuals or other corporations.

Mr. Don Bourgeois: One approach to doing that, for example, is if membership also requires the person to provide a loan to the corporation at prime plus 5%.

● (1640)

Mr. Werner Schmidt: It could happen.

Mr. Don Bourgeois: It's not inconceivable whatsoever, especially if you want to avoid the soliciting and non-soliciting aspect of it. In that case, as a debt obligator you have certain rights under part 6. Now, I don't fully understand part 6. I read it through about four times and I don't understand it. That's why my primary recommendation is to get the legislation on and deal with that by regulation instead, as to the type of debt obligations a corporation can enter into and the circumstances under which they can enter into them. You would in effect have somebody, as a membership, being able to get certain rights to force votes through the debt obligation.

Mr. Werner Schmidt: Especially in housing co-ops. That would be a perfect example.

If we do what you're suggesting and go to regulation on this, isn't that a little bit dangerous? Under the Canada Corporations Act on for-profit organizations, this type of issue is very clearly covered in the legislation, not in the regulations. So wouldn't we be really virtually delegating to cabinet in this case, or to the minister in particular, the creating of legislation in fact, rather than Parliament?

Mr. Don Bourgeois: I don't think Parliament is able to deal with these things in a timely fashion. Given 100 years—the last major statutory amendments were in 1917, and 1950 for the statute—a lot of stuff ought to be done by regulation, because Parliament's time ought to be spent dealing with other matters.

Mr. Werner Schmidt: That's not my question. Is the whole business of debt regulatory or legislative?

Mr. Don Bourgeois: I think it's regulatory in nature.

Mr. Werner Schmidt: Okay. That's really what I wanted to know.

Mr. Don Bourgeois: That's because it deals with some of the details related to what these corporations may do and how they may do it, such as raising funds. It may be different for certain corporations such as trade associations or business associations, where we have different public policy issues, than for charities or neighbourhood associations.

Mr. Werner Schmidt: We're not dealing just with charities here. We're dealing with not-for-profit, non-share capital organizations, such as port authorities and co-ops.

● (1645)

Mr. Don Bourgeois: That's correct.

Mr. Werner Schmidt: Those are huge issues. Housing co-ops can enter into mortgage agreements with financial institutions, and with CMHC, to be very specific on that score. A port authority can go to any financial institution and incur debt, and it can even go into debenture situations, some of which are subordinate and some of which are even unsecured. It can go to that degree. If there's no legislated protection, that becomes a pretty serious matter.

Mr. Don Bourgeois: There are two aspects to it. Certainly the port authorities have specific legislation dealing with debt. What I'm concerned about is not so much the handful of large corporations; my concern is more the 17,500 that are relatively small and open to potential issues around debt obligations.

Mr. Werner Schmidt: My point is simply that this legislation is to cover all of those situations. That's my concern—and that we be fair with all of these people.

Mr. Don Bourgeois: That's right. Regulation does allow you to be fair.

Mr. Coderre indicated another alternative to having the regulations dealt with. Regulations are put in the *Gazette*, and there is a comment period for regulations, unless it's an emergency situation. So Parliament has established a process already that doesn't exist in other jurisdictions, including Ontario.

Mr. Werner Schmidt: I wouldn't entirely disagree. The interesting thing is that what you didn't mention, and I thought you would, is that in one part of this legislation there are detailed, almost regulatory provisions, and then in other sections we have virtually no regulatory.... For example, you took exception to the mission statement because it was just too general; you could do anything under the mission statement. So we have this confounding contradiction within the bill, from highly specific, to almost regulatory, to so ambiguous as to allow almost anything to happen.

Mr. Don Bourgeois: On the mission statement, the simple solution is that the corporation shall have objects.

Mr. Werner Schmidt: I agree. But anyway, I've made my point.

The Chair: Thank you, Werner.

Jerry is next, then Paul, then Brad.

Hon. Jerry Pickard (Chatham-Kent—Essex, Lib.): Thank you.

I want to go back to a couple of comments that were made a little earlier. Mr. Bourgeois, you suggested that we should have several signatures—three possibly—on a charter. Prior to your testimony, others have come in and said the practice of it really is a good idea, but it's not practical. When we take this material, oftentimes in a lawyer's office it's passed to a secretary and she signs it, it's passed to somebody else and they sign it, and the lawyer signs it, and they're all part of the organization, or however it's done in the organization.

Could you suggest any way by which we come forward and suggest a means by which we can make sure the three signatures aren't just an office signing into the organization and it's really practically one group or one person making the signature? That was the point that I think was raised quite strongly.

Mr. Don Bourgeois: If people are going to do that, that sort of criminal act is a hard one to control. In my experience, I have incorporated under the Canada Corporations Act, as well as under the Ontario Corporations Act, with upwards of twenty signatures, with Canadian corporations, people living outside of Ontario, down in the United States, and elsewhere, and the mail seems to work fine to get the signatures and the various other attesting documents that are necessary. So it would be a very unusual circumstance, in my experience, of having difficulty getting three people to sign a document.

Hon. Jerry Pickard: Yes, but the point I'm raising is that oftentimes it's just one under a group of people in an office.

Mr. Don Bourgeois: If it's a fraudulent type of situation—

Hon. Jerry Pickard: If that's a common practice, I would doubt that it would be fraudulent.

Mr. Don Bourgeois: It's not a practice that I know of in terms of doing it. I have never had a problem getting signatures on documents.

Hon. Jerry Pickard: No, and I don't think they were saying that either. They were just saying this is a very common practice. My thought was that if that's a common practice, how do we overcome that common practice in this bill?

Mr. Don Bourgeois: The three signatures is one approach to dealing with it. If in fact it's three individuals in the same legal office, that again isn't my practice, but it may be the practice of other lawyers. The three signatures that I have are those of the incorporators, who are also deemed to be the first directors. As a result, the ones that I get to sign are the ones the organization has determined are going to be the directors.

Sometimes I will suggest to them that they only do three, and then, by the bylaws, there are provisions to increase the number of directors to twelve or from six to eight or whatever it is, because of the practicalities of getting twenty or thirty signatures at times with large boards.

Hon. Jerry Pickard: So the signatories in your practice have been chartered members.

Mr. Don Bourgeois: Yes, the ones who are going to be the first directors. I don't sign as a lawyer just to get the signature on the document. I do the paperwork. The people the organization has decided are going to be the first directors.... Under the current Canada Corporations Act, they're also the ones who take the bylaws and say those are going to be the bylaws they're going to operate under. In my practice, I work with them as closely as possible to make sure those bylaws relate to how they, as directors, see the organization going.

Hon. Jerry Pickard: That makes a lot more sense to me than what I had heard previously.

Yes?

Mrs. Teresa Douma: Just to add a comment to what Mr. Bourgeois has said, it wouldn't be difficult to define that the minimum of three directors must be at arm's length, and you can define arm's length as not working with each other.

Just as a second point, as we educate the public about the liabilities and duties of being a director, it stops people from just signing on quickly, because they appreciate the responsibility of doing so.

Hon. Jerry Pickard: It creates an onus on each individual's behalf.

● (1650)

Mrs. Teresa Douma: That's right.

Hon. Jerry Pickard: To the CGAs, on this conflict between the provinces and the federal government, it's my understanding that it basically exists in three provinces. You have the right to do the auditing in seven of the ten provinces. Is that what I can gather from what you said?

Mr. Gerry Stobo: In fact, it's changing almost on a daily basis, as Mr. Bourgeois mentioned. In Ontario the law is evolving, and we soon expect that the law to permit CGAs and CMAs to perform public accounting in Ontario will be enacted as well.

What we're really left with at the end of the day will be Quebec, whose laws prevent CGAs from performing audits and review engagements for compensation. They can do it—and they do it now—without compensation. They're not allowed to receive compensation at the moment.

And in Nova Scotia, historically CGAs and CMAs have not been able to perform public accounting, although in Nova Scotia the public accounting licensing authority is permitting some CGAs access to that function.

Hon. Jerry Pickard: Just to carry that one step further, if the situation remains as it is in the legislation presently, if Ontario changes its practice, as you said it was in the process of doing now, there wouldn't be a necessary effect in Ontario. Nova Scotia is coming along on the same line. That leaves Quebec as the key province that you have concerns about. Is that correct, or is that overstating what you said?

Mr. Gerry Stobo: Let me just put a small nuance onto Ontario. While the legislation permitting CGAs to perform public accounting has been passed, it has not been enacted. It has now been four years since Ontario was told that its public accounting regime was inconsistent with the Agreement on Internal Trade and that province was told to change its law. So it has been a long time, and while we expect that the laws in Ontario will soon be enacted, we don't have any certainty that they will be.

And yes, Quebec does remain the other holdout, although last week CGA New Brunswick launched a challenge to Quebec's public accounting laws, under the Agreement on Internal Trade. That challenge is similar to what was brought four years ago challenging Ontario's public accounting laws.

But even if we are successful—and I have no doubt we'll be successful before the internal trade panel—in showing that Quebec's laws unfairly prevent CGAs from doing audits, that may be a long time in coming. We may win the battle, but it may be years before the government enacts the necessary changes.

Hon. Jerry Pickard: One of the major problems the federal government does have in dealing with the provincial legislatures is that there is always this battle about infringement or actions that override the provincial authority. Is what you're asking basically putting us in a position, at the federal level, to override the Court of Appeal of Québec, which basically has upheld their right of authority on who can do the auditing?

Mr. Gerry Stobo: We're not asking the federal government to infringe on provincial governments' authority to regulate professions. That will remain as it is. This legislation doesn't affect that. The provincial legislation will always be there to determine who can practise public accounting. It's key that the provinces be able to determine that, and it's within their jurisdiction to do that. This law doesn't affect that. The provinces will still be allowed to determine who can and who cannot practise public accounting.

What we're asking is that the provision that prevents qualified public accountants in some provinces—Quebec being one example—from performing those duties in those provinces, like Quebec and Ontario, and to a lesser extent Nova Scotia, be taken out. The provinces still have authority to determine who can do public accounting in those provinces, and this legislation doesn't affect that.

● (1655)

Hon. Jerry Pickard: Just as one further question to that, do you believe there would be a backlash from Quebec if we decided to go the direction of including this nature of a settlement, where you could go forward? Would there be a backlash in Ontario and Nova Scotia as well?

Obviously to each action there is going to be a response. What do you think the response of Quebec, Ontario, and Nova Scotia would be?

Ms. Carole Presseault: On the Quebec issue, the Office des professions du Québec, which is the umbrella organization that oversees all regulatory bodies, has a strategy to reduce interprovincial trade barriers. In that respect, we believe this legislation, with the amendment that we are proposing, would reduce interprovincial barriers. Again, I'll reiterate Mr. Stobo's comment. Subclause 179(1) clearly states that it is provincial jurisdiction to regulate professions.

The Chair: Thank you.

Paul, and then Brad.

Mr. Bourgeois, did you want to make a comment?

Mr. Don Bourgeois: Just as a comment, currently under the Canada Corporations Act there is no definition dealing with who does the audit. The minister's policy manual or information manual in effect provides that it doesn't even have to be a CGA or a CMA or anyone else. The audit can be done by anyone who is at arm's length. They even make recommendations as to the type of person who could, so long as they're not an officer or director or related to the officer and directors. I could do them even though I have no accounting background whatsoever.

The Chair: Thank you for that, Mr. Bourgeois.

Hon. Jerry Pickard: Do you think that's adequate? If not, what's the solution?

Mr. Don Bourgeois: Given the nature of this legislation, I think the federal government or Parliament can enact, under the Constitution Act, legislation dealing with incorporation, and that can dictate who can do audits. Because they are federal incorporations operating across Canada, that would not override the provinces, because they're not necessarily at each other's throats on these issues. They're federal corporations, and Parliament can decide who is going to be qualified to do the audits.

Hon. Jerry Pickard: Under what you're describing, anybody could designate a busboy to do the audits in a firm. That's what exists.

Mr. Don Bourgeois: Apparently. I think they have to be over 18 and not bankrupt in order to do audits, and not be related to the people who are on the board of directors.

The Chair: Thank you, Jerry.

Paul, please, then Brad.

[*Translation*]

Mr. Paul Crête: My questions are not about this, but I think it's in our interest to find a solution that doesn't seek to upset the constitutional order of Canada. So we will take into account your proposed solution. This is a bit of a joke, but you know that Quebec was just authorized by the Supreme Court to keep margarine white. It's the only place in Canada like that. So if you go to court, watch out for the result.

On a more serious note, my question is for Mr. Bourgeois. It has to do with your comment on the transition. I'd like you to explain your comment. You say: “My inclination would be to have the continuation as a matter of implementation of the statute.” So explain to us what you want and how that is different from what is in the current legislation.

[*English*]

Mr. Don Bourgeois: Part of it is that the transition provision provides for a three-year period. At the end of the three-year period, in effect the corporations that they haven't transferred over no longer exist. Particularly for charitable corporations, the problem becomes that they then fall under the dissolution clause. In Ontario, that poses some problems under the Charities Accounting Act primarily, but also under the Charitable Gifts Act, because even though they're federally incorporated corporations, they still have to comply and do the reports to the public guardian and trustee.

The issue then in the common law provinces is that all of those assets are being held in trust. If that's the case, the assets—the building, the investment funds, the contracts, the leases, and all the rest of it—are being held in trust. You don't have a situation in which the corporation wants to dissolve. It's being dissolved by fiat of law. As a result, all of those assets are now owned by Her Majesty the Queen in right of Canada. Is Her Majesty the Queen going to be paying the salaries of these individuals? Is Her Majesty the Queen going to ensure that the assets are being used in accordance with the objects of the corporation?

● (1700)

[*Translation*]

Mr. Paul Crête: And your solution?

[*English*]

Mr. Don Bourgeois: Not a good one. I think the three-year time period sounds like it's a good one. I think it's more a caution that as this goes on, you will have a number of corporations that will be completely oblivious to what's going on and you will have them in default.

I think of the experience in Ontario, for example. When there were changes to the Business Corporations Act, a number of these fell through the cracks. And those changes were for the filing requirements. The filing requirements were changed so that you had to file on an annual basis, and there were dozens and dozens of these corporations that were dissolved. In fact, the cabinet had to put in a quick way to revive them.

As well, you can in fact have certain contracts become null and void because of it. The contracts provide that you have to continue to exist in law. If this corporation no longer exists in law, a contract is therefore no longer in place.

The Chair: Merci, Paul.

Brad, please.

Mr. Bradley Trost (Saskatoon—Humboldt, CPC): Thank you.

I just want to commend the witnesses for all having done an excellent job today. This has been very informative, and I appreciate that.

To the Canadian Council of Christian Charities, I specifically requested that you come, so I'm very pleased that your submission lived up to what I was hoping for.

You've all done a very good job of highlighting some very specific specifics, which will help us when we're working with amendments. As is the case for more than one member of this committee, I'm fairly new to this bill. I'm going to ask some broad generalities in order to give me an overview of scope, so that I can understand better and apply some of the specifics that you've highlighted. Just to start off with what may seem like the most basic of basic questions, probably to Ms. Douma and then possibly to Mr. Bourgeois, respond to this just in the very general, basic sense.

With your experience with incorporation, Ms. Douma, how hard is it? What is the regulatory burden, etc.? Say I want to set up a small federal or provincial charity for homeless members of Parliament—in the future, possibly one day, just in case I don't get re-elected. How hard is it in a very practical sense? I don't want the easy line. What would I generally have to do to give me a bit of a basic background?

I've never done this before, so how hard would it be under the current legislation, future or generally, provincially? This is the sort of advice you'll be giving to people who are coming in and saying they want to set up a charity now. What do they have to do? Run me through a little bit of the background, because as far as how it applies to the average citizen in the street is concerned, the first thing is how this legislation is going to do that.

I would appreciate your opinion.

Mrs. Teresa Douma: The first question we always get is what the options are for giving themselves some governing documents, and what the differences are between the jurisdictions and which jurisdiction is best. Generally what we do is put to them what the differences are in terms of how they will be affected, and we let them decide what they think is the best fit for them.

In terms of helping them educate themselves on the process, because oftentimes they want to think about it for a while, we often refer them to the resources available on the Internet, such as the current instructions for the federal corporation. Ontario, for example, has the *Not-for-Profit Incorporator's Handbook*. Other legislation has sample bylaws. So where those resources are available, we always point individuals to them. Doing that is very helpful.

Mr. Bradley Trost: For the average person who wants to do some good work, would you consider the current regulatory burden to be relatively light right now both provincially and federally, or is it starting to get heavier and more onerous?

Mrs. Teresa Douma: I personally would consider it to be fairly light, but I also have experience in the sector. For the average citizen, I think it's still very intimidating and overwhelming, because they generally have no legal experience. For them, I think it would be medium to high.

● (1705)

Mr. Bradley Trost: That's where I want to go on this one here. Would this current legislation reduce or increase that bureaucratic threshold? And if it increases it, how can we reduce it? Again, those are very broad questions. And again, more than one person may want to jump in on this one.

Mrs. Teresa Douma: By way of the example of going to the mission statement, I think the intent was to streamline the incorporation process. In practicality for charities, I think it will add to the burden. I don't expect that charities that incorporate on their own will get it right in consideration of Canada Revenue Agency's requirement that their purpose be charitable. They will be required to go back and amend their articles of incorporation to make their purpose charitable. That's an example of where I think there's an increased burden on them.

Mr. Don Bourgeois: In my view, this bill is a thousand times better than what we have now, and in part that's because it clarifies a lot of the issues. The simple one is the statutory test as to what are the duties and what is the standard of care for directors.

In my experience, you don't really need to hire me to do most incorporations. People will hire me to do them because they don't like the law, but that doesn't mean the law is not accessible. On the Internet, the Industry Canada site and the various other sites are exceptionally good sites that set out the process. The staff are very good, in my experience, in assisting people to go through the process.

So I'm not of the view that there is currently a regulatory burden, nor do I view this new bill, if enacted, as being a regulatory burden or increasing it. What it does do, importantly, is clarify. It answers a number of the questions on which right now, when I or other people provide advice, you can't really give good, clear advice.

There are always these policy choices. On the soliciting or non-soliciting, for example, should it be a quarter of a million dollars or a half million dollars? Most of these corporations are at the $50,000 to $100,000 level, so they're not going to have to do the full audit. They opt for the review engagement or even the lower standard, based upon the designated corporation. So the bill in itself currently provides for some flexibility around it, and it's a risk-based approach as well.

I don't know if that's the answer to your question. I don't think this creates any new regulatory burden. One of the things it does do is create an incorporation by right. You don't have to wait. Industry Canada has made leaps and bounds over five and ten years ago, when it would take a year to get an incorporation. I did one recently and it took six weeks, and they were apologetic for taking so long. So if I had a right to do it, I think I could do it in a week.

Mr. Bradley Trost: I'll follow up and go on a slightly different tack, and I don't really know if anyone will be able to answer this question. Looking through legislation and thinking about things, I think it goes a little bit to the question, how do you define things?

We talked about soliciting versus non-soliciting. Werner and I were talking about a couple of comments on this. What is a member of a not-for-profit organization? That may seem to some people fairly obvious, but I'll use an illustration. I'll use myself again. I used an illustration when I was talking to the drafters of legislation, the civil servants, and I'll use a similar one again.

I'm a member of a North American Baptist General Conference Church, Melville Baptist. I hardly ever attend there. It's where my folks grew up, not too far, but I am an adherent—which is different in Baptist-speak—of a Baptist General Conference Church in Saskatoon, Saskatchewan. So where am I really a member? Where I go to church in Saskatoon, the BGC, where I give my money, where I've taught in the church and worked for close to a decade? Am I or am I not there? Different organizations have different memberships. How do we clarify that under legislation? I can think of so many different religious denominations of the Protestant equation that define it in fifty different ways. How do you clarify it?

Another one, before I give up talking here, is what is the difference between profitable and—how did you say it, again, Werner?—not-for-profit?

● (1710)

Mr. Werner Schmidt: When does a not-for-profit organization become profitable?

Mr. Bradley Trost: You look at religious organizations that run businesses on the side too.

I don't know if anyone can work with those two generalized questions there and help me out on that.

Mr. Don Bourgeois: I'll try.

With respect to membership in a religion, it's different. I'm Roman Catholic. Not that it's time for confession, but I haven't been to church for a number of years, so does that make me not a Roman Catholic? I'm still a member of the church, but not of a parish.

Mr. Brian Masse: What about same-sex marriage?

Mr. Don Bourgeois: That's a provincial issue.

An hon. member: [*Inaudible*]

Mr. Don Bourgeois: It's a federal issue. I don't know. It's a federal and provincial issue.

The membership in an organization can be done by a number of methods, and the bill allows and maintains that flexibility. So you can be admitted as a member to a corporation by the directors. You may recall that I commented earlier that membership is really a contractual relationship. So I contract, I pay my $5 and become a member, and I agree to uphold the bylaws, to fulfill the objects of the corporation, and so forth. Membership can be on a yearly basis, a five-year basis, whatever the organization says. That's different from membership in a religious organization or, in that sense, from an adherence to a faith.

With respect to profit and not-for-profit, the basic difference between profit and not-for-profit and charity is slightly different, and it's what happens to the surplus. The way I prefer to think of it is this. In a business context you're talking about profit, because the purpose of the business is to make a profit and for the distribution of that surplus between revenues and expenses to be dispersed to the shareholders. In a not-for-profit organization, the surplus is to be used for the purpose of the corporation, which is not to distribute to the membership; the purpose is to improve society in some fashion. A charitable organization is slightly different, but it's really a not-for-profit organization.

That's also the approach taken in the Income Tax Act. You can have an organization that is a corporation without share capital, but once its assets achieve more than $250,000 in surplus, or a certain amount, Canada Revenue Agency, in the courts, has a test to determine at what point that corporation without share capital or non-profit organization in effect becomes a business activity. They're not clear-cut, but there are factual tests to make that determination.

The Chair: Thank you.

Are there any other questions?

If you'll indulge me, colleagues, I have a quick question.

Oh yes, Ms. Douma.

Mrs. Teresa Douma: I do agree with my colleague here and I would add that I think it's appropriate for not-for-profits and charities to define their own membership regarding on what terms they'll be accepted and also on what terms their membership will be terminated. I think it's appropriate for them to have the flexibility of determining that themselves.

In terms of the ability of a not-for-profit to have a business, the Income Tax Act restricts it to related business. While it's a little bit grey in terms of what can be carried out as a related business, there are some parameters around that, and again, the surpluses have to go to the charity or the not-for-profit.

Mr. Bradley Trost: So you would recommend that this definition of membership be whatever the not-for-profit clearly sets out on its own?

Mrs. Teresa Douma: In their bylaws. That's the appropriate place, yes.

Mr. Bradley Trost: So assuming they do it clearly and don't just do the implied, which some groups have done, it should all be okay?

Mrs. Teresa Douma: Yes.

The Chair: Thank you, Brad.

I think Werner has a question.

Mr. Werner Schmidt: Yes, it's a very short question and it relates directly to this issue.

If an organization does not clearly specify in its bylaws who is a member, does it then follow that anyone who has donated money or something in kind can become a member?

● (1715)

Mrs. Teresa Douma: I don't believe you would want that situation.

Mr. Werner Schmidt: Well, there are a number of organizations that are exactly in that position.

Mr. Don Bourgeois: A donation for the purposes of the Income Tax Act is one in which there is a giving of an asset or money for which there is nothing coming back. The only exception to this that the Income Tax Act and Canada Revenue Agency recognize is that if you make a donation for $100, for example, and you're automatically a member of the Kitchener-Waterloo Art Gallery, you are allowed admission to the art gallery. But it's free admission anyway, so it's a nominal thing. But that's in the bylaws of that particular organization.

So if it's based upon a donation, then it's in the bylaws. There's no default provision of that nature.

Mr. Werner Schmidt: That's the current situation.

Mr. Don Bourgeois: Yes, there's no default for donations—

Mr. Werner Schmidt: I appreciate that.

I raise the question because there are instances now, with the proposed legislation, where apparently—at least, that's the concern that has been expressed to me by several people—the donor does become a member, or could be considered a member, quite outside the provisions of the Income Tax Act.

Mr. Don Bourgeois: I'm sorry, I didn't pick up on that in my reading of it.

Mr. Werner Schmidt: That is very interesting, because this has been picked up by several organizations. I think we want to make sure, Mr. Chairman, that in this legislation that does not automatically happen.

I think the point that was made both by Teresa and by Don is that it's very critical that it be covered specifically in the bylaws. But if it isn't, there has to be some kind of protection for these people, and the reason is that the disclosure of membership lists is a proviso of the bill, which means that other members could contact those people, and these people may not want to have their privacy invaded in this way. I think that's the real issue here.

The Chair: Do you want it very clear that a donor would have to consciously make an effort to become a member—

Mr. Don Bourgeois: That's correct.

The Chair: —or that they would be aware they are becoming a member if the bylaws are—

Mr. Werner Schmidt: Yes, exactly.

The Chair: Absent that, a donor is simply a donor, not necessarily a member.

Mr. Werner Schmidt: Precisely.

The Chair: Thank you, Werner.

A short question from me, colleagues, if there are no others. This is a question for Ms. Presseault of the CGAs.

In the proposed legislation, it says that soliciting corporations that have revenues between $50,000 and $250,000 per year may decide to forgo an audit if they pass a special resolution and, instead, choose something called a review engagement. From what's provided, is it clear to you what a review engagement is, versus an audit, versus no audit? It's obviously somewhere in between. Could you give us a quick synopsis of what a review engagement is?

Ms. Carole Presseault: I'll start with a few comments and then I'll ask my colleague Ms. McGeachy, who is really the specialist in this area.

We did work very closely with Industry Canada on those definitions. The definitions and the general understanding of what constitutes a review engagement or an audit are very well defined in the handbook that all accountants use. We also have—

The Chair: It's a well-known—

Ms. Carole Presseault: It's well known. In fact, our member associations produce a brochure—which I use, not being an accountant—that says "your guide to understanding financial statements", and it clearly defines what audits and reviews are.

Dawn, do you want to expand very briefly?

Ms. N. McGeachy (Public Practice Associate, Certified General Accountants Association of Canada): Sure.

Basically, it's the assurance that you assert over the financial statements that defines the difference between review engagements and audits. Just very quickly, for a review engagement you have what's called negative assurance, which is a little bit lower standard than an audit, where you state that nothing has come to your attention to say that in all material respects the financial statements are not fairly stated. The audit, which is a higher standard, says that the statements, to a reasonable assertion level, state that in all material respects the financial statements are fairly stated; and there are additional procedures that you perform in order to provide that additional assurance.

I'd be happy to expand, but you....

● (1720)

The Chair: No, that's good. Thank you. I was more concerned that it was an established set of criteria, and obviously it is.

Paul.

[*Translation*]

Mr. Paul Crête: It is not directly in the legislation before us, but often governments, in giving grants or assistance, have criteria stipulating that above a certain amount, there has to be an audit. I don't know whether it's possible, but we should make sure that the amounts stipulated in the legislation are consistent with general government practice. I don't know whether it's possible to establish that equivalence, but it often happens that small organizations aren't used to that and don't have the means to pay for a full audit. So they don't do it, and when they want to take advantage of a government program that requires an audit, they don't have one, the deadline comes and it's too expensive. There are things like that to be considered.

Ms. Carole Presseault: Mr. Crête, you raise a very important question that was brought to our attention. Clearly, with a more rigorous accountability framework, we have seen that a number of small not-for-profit or community organizations in Quebec have had to change accountants because they weren't able to come up with audited financial statements. They weren't accepted because the financial statements hadn't been done by a chartered accountant. So it's an important question.

We are also studying the draft regulations that were tabled on levels, in order to ensure that they will be appropriate within a new governance framework.

Mr. Paul Crête: Are you talking about the regulatory framework for this legislation?

Ms. Carole Presseault: Yes, for this legislation.

Mr. Paul Crête: Mr. Chairman, do we have the regulatory framework that applies to this legislation? We are apparently studying a regulatory framework to ensure that the amounts are equivalent.

I just want to check whether we can get that information.

[*English*]

The Chair: Is there anything else?

With that, I would like to thank our witnesses very much for their help today. You've advanced the cause. We have a few more meetings on Bill C-21, but you've added quite a bit of assistance in the process.

I'd like to mention we have Mr. Crête's letter about l'Institut du chrysotile. If there's agreement, on Monday, May 30, which is the next session on industrial strategy, we will invite l'Institut du chrysotile here to our meeting.

With that, colleagues, we're adjourned. Again, thanks to our witnesses.

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