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**Wednesday, April 13, 2005**

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**Chair**

**Mr. Brent St-Denis**

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

Wednesday, April 13, 2005

• (1620)

[English]

**The Chair (Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.)):** *Bonjour, tout le monde.* Good afternoon, everyone. I'm pleased to call to order this April 13 meeting of the Standing Committee on Industry, Natural Resources, Science and Technology.

Excuse the delay. I'm sure you all understand we had some votes to take care of. Particularly, Mr. Clark, we appreciate your patience. So we're going to get right down to business.

We have a two-part meeting today. The first part is to hear from Mr. Clark, who's been nominated to continue in his position as the executive director of the Standards Council of Canada. We'll ask you to speak for maybe five minutes maximum, if you don't mind, Mr. Clark. We'll go to questions maybe, maybe not. It may not take all that long. It depends upon whether Mr. Schmidt has some good questions for you.

Thank you, Mr. Clark. Please go ahead.

**Mr. Peter Clark (Executive Director, Standards Council of Canada):** Thank you.

Most heads of agencies would welcome the opportunity to get in front of a parliamentary committee to justify their existence, not just in terms of appointment but in terms of trying to explain what the mandate of the crown agency is.

*Bonjour à tous.* I'm pleased to be here today to support the committee's review. I believe these reviews are probably a good thing.

I've now been in this position for six years. I've witnessed some important changes, both internationally and within Canada in the area of the benefits we are seeing from the use of standards.

It is a voluntary system. Standards are not regulations. The voluntary system is a process whereby affected parties, whether they're consumers, government reps, or industry people, meet in committee and come to a consensus on the desired features for a given topic impacting society, whether it's a product, a process, or a service. The key is that there's no control over the end result.

Regulation, on the other hand, represents the government's absolute responsibility for the safety of its citizens and involves such things as Health Canada's specific requirements for the performance of medical devices. On the other hand, you can also supplement regulation using the standards system and the audit methodologies used to measure conformity.

The system in Canada is efficient, is effective. My role, of course, is to promote the increased use of it, because it's been there for many years but it's kind of an invisible thing. If somebody goes headfirst into the boards with a hockey helmet on, and somehow or other the hockey helmet doesn't perform as warranted, all of a sudden standards are brought up to the fore. For the most part they work, so you don't get very many things happening. If there is a standard, things tend to work better.

Walkerton wouldn't have happened, for example, if all labs in the province had been forced to be accredited and forced to report results when things didn't get fixed up. We did go to the Walkerton hearing. We have signed an agreement with the Province of Ontario, for example, to accredit labs for clean water. The specifications are developed by the regulator, and the auditing is done by the private sector. If the results are not what is being looked for—in other words, the water doesn't test out—then there's a reporting system back to the department.

That's the kind of thing that happens in a number of different areas in government. We have an agreement with the Ontario government on sustainable forestry. We have an agreement with Health Canada on medical devices. We have an agreement with Agriculture Canada on organic crops verification.

We are promoting that kind of thing with the Ontario Medical Association for its labs, with the Ontario Department of Natural Resources on water and on soil contamination. When they take out all those old gas stations we have around here, the soils are contaminated. We need remediation. Should government be doing it? I don't think so.

The standards system can help. I am shamelessly promoting the use of a standards system and conformity assessment to supplement regulations and to become more effective tools for regulators.

When we talk about it being voluntary, I think that's the distinction I would like to make. If you drive down any highway in this country you'll see big banners on the buildings, ISO 9000. ISO 9000 is a statement that the organization has a quality system put in place to assure its customers that their products are of uniform quality. It means a lot for your credibility, especially if you're selling to other countries.

The Standards Council does not write the standards. We have several standards development organizations in Canada. We also have the responsibility to represent Canada internationally. We supply committee members and, in some cases, committee chairs to international committees to develop various standards. Canada is the leader behind the international movement for quality standards. Also, Canada has the secretariat for environmental standards, and took the responsibility to look at the new kid on the block, corporate social responsibility. There is not yet a consensus standard or management system standard for that in place, but there will be.

We are concerned that the market for Canadian goods be recognized internationally, for example, softwood lumber. You know what the problems are in the States with that, but that's not a problem that standards can resolve; that's a political problem down there. But with Japan, they were grading our lumber even though it had been graded before we shipped it to them; we had them look at our system of standards for grading lumber in B.C., and they removed that requirement from the industry. Similarly, shipments of flax were stopped in Korea, or organic soybeans in Rotterdam. We can demonstrate that these crops have met the certification requirements under the international guidelines.

Right now, the SCC spends about \$14 million, about half of which are government appropriations and rest from charging people for our services. That's better than it used to be, but there are limits; people think the service is pretty expensive. It pretty well has to be, because if you're a small organization you tend to build management systems or information systems infrastructure, and these are costly. On the other hand, we're well regarded internationally.

We operate with a Canadian standards strategy that was developed with multiple stakeholders over a two-year period and first released in the year 2000. It was just recently updated. We focus on Canada's key social and trade issues to promote greater awareness of standards and the extent to which they influence our daily lives. I always used to say, when I was in another role, that as long as you turn on the tap in the morning and the water flows and you can put the garbage bag out, or as long as everything works, you'd never even know your government was there. It's difficult, because in senior government you want it known that you're there.

Canada does provide benefits to all those parties, and I think I've covered most of them here in these notes.

We also have had major input to smart regs. We've met with the PCO bureaucrats to talk about how regulations can assist.

We are also looking at standards in health care. With that one, the balkanization of it by the provinces is creating a problem. We don't have national health care standards because, with provincial jurisdictions, there are 12 different experts; it's sometimes like having 12 different lawyers. I hope that doesn't offend anybody here.

So I think this is an opportunity for interested stakeholders to develop standards and to solve regulatory objectives while avoiding duplication and reducing costs to government. Standards are poised to play a pivotal role, supporting many of industry and government's key priorities. We'd love to make standards everybody's business.

I'd like to thank you for the opportunity to be here today. It's a treat for me, though it may not be after you ask your questions, but we'll find out.

Thank you.

• (1625)

**The Chair:** Very good. Thank you, Mr. Clark.

We'll go right to Mr. Schmidt.

**Mr. Werner Schmidt (Kelowna—Lake Country, CPC):** Thank you very much, Mr. Chairman, and thank you very much, Mr. Clark, for appearing.

I guess, in a sense, this is a review, but as far as I'm concerned it's not a review of your credentials or capabilities for carrying out the job. I think you've demonstrated amply, in the last six years you've held the job, that you can do it.

I want to tie in particularly to your involvement with smart regulations and your input there. I refer back to the fact that the Standards Council of Canada is in fact a voluntary organization, and that standards are put together by a voluntary group of people working together.

Because standards create all kinds of disparate parties who have various interests prior to getting agreement, which are many and varied and in some cases rather severe, I was wondering whether you could help us in this committee in particular, because you've been able to work successfully.

One of the things we're studying is smart regulations and how we could actually make smart regulations work best in this government. Through you, Mr. Chairman, I would like to ask whether you would be able to help us or give us some guidance as to how in fact we could make the regulations of this government smart.

**Mr. Peter Clark:** I'm not one of those who believe the move to regulate it... On the other hand, I think you have to understand that a lot of work has already been done by effective stakeholders out there in the voluntary system that the government and its regulators could take advantage of. It becomes an issue, for the regulator, of trust. They have to try this methodology to see how it can work and get comfortable with it so that we can supplement the regulation with the work that's already out there. Don't duplicate the work being done in the voluntary sector. That's why sometimes there's considerable valuable time and money saved when governments choose to regulate through reference to an existing standard.

In the case of provincial electrical requirements, they require the use of an SCC-accredited organization. Since the release of the EACSR report—and I love that alphabet soup—

• (1630)

**Mr. Werner Schmidt:** What's AECSR?

**Mr. Peter Clark:** It's the experts' committee on smart regulation. That report's been issued. In fact, I got the copy of it officially this week, but the draft copies have been out for a while. We had quite a bit of input into that and have seen the results appear in the report. Now we're working with them on the implementation. I believe that from a policy point of view, it behooves the government to maximize the use of the voluntary system in developing regulation so that the actual cost to government is not so high. That's the issue around smart regs.

We have been meeting with PCO and we are achieving, I'd say, some support from PCO for the use of this system. It also means, of course, that if we tell them that the system can deliver something for them, then we're bound to do that.

**Mr. Werner Schmidt:** What puzzles me.... I thought I heard you say AECSR.

**Mr. Peter Clark:** EACSR.

**Mr. Werner Schmidt:** Okay. Sorry, I had the reverse order, and I send my apologies.

**Mr. Peter Clark:** External Advisory Committee on Smart Regulations.

**Mr. Werner Schmidt:** I know exactly who you're dealing with now. I just had the order reversed and I couldn't make....

I'd like to ask you this. Using the work that's already been done in the voluntary sector, do you have a catalogue of those issues that are out there? You're quite right when you say we should not duplicate the work. But do you have a catalogue or an index of those so that, in fact, the implementation group can discard that part and simply carry on from there?

**Mr. Peter Clark:** I would think they would have to incorporate it, but yes, we do have a catalogue, electronically. In the last four or five years we've moved to having 100% of it electronically available, and yes, it is listed. And that's listed in the International Standards Organization, which is a large blue.... It also lists other countries' standards—

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

**Mr. Peter Clark:** —so that there's a lot of stuff available online and that can be utilized and accessed by the regulator.

**Mr. Werner Schmidt:** I guess I'm not asking the question right. I know they can. The issue is how can you help us make sure they do?

**Mr. Peter Clark:** Well, I do know that in the U.S. they've suggested through their regulatory agency that they must consult the standards system before issuing new regulations.

**Mr. Werner Schmidt:** Is that your advice to us?

**Mr. Peter Clark:** Well, I think it's useful.

**Mr. Werner Schmidt:** Okay. I see now why you're so successful.

Thank you, Mr. Chair.

**The Chair:** Okay, Werner, thank you.

Paul, do you have some questions?

[Translation]

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

Good afternoon, Mr. Clark. I'd like to hear more from you on the integration of standards, at the interprovincial as well as at the international level.

Let me give you an example. Businesses in my riding want to break into the European market. One obstacle they often encounter, or one reason preventing them from getting a toehold in that market, is free trade and non-conformity of standards. I've even been told that if ever a free trade agreement was negotiated with Europe, it might be preferable to simply negotiate an accord on standards, even if that meant bringing forward right away a broader trade component.

I'd like to hear your views on the subject.

**Mr. Peter Clark:** I'll try to respond to your question.

We have to understand that it is important for Europe to apply European standards. That poses some problems for our neighbour to the South and for us as well. However, on matters where Canadian expertise allows us to exercise some leadership, it's a different story. For example, in the case of hydrogen produced in Quebec, expertise rests with a provincial organization that supplies the resources to the international committee. The latter operates on a voluntary, not mandatory basis. Regarding provincial regulations, if there are enough experts, it's possible for Quebec to have its standards, for example, for tourism, apply to the international community. Quebec moved to develop tourism standards before any other country in the world.

• (1635)

**Mr. Paul Crête:** Standards for tourism?

**Mr. Peter Clark:** That's right. On a national level, some matters come under provincial jurisdiction. To my mind, that always creates some problems in terms of provincial autonomy. The country as a whole doesn't always benefit from this situation.

[English]

We do have an Agreement on Internal Trade, but there are a lot of places where it doesn't function very well because of turf. It doesn't prevent us from selling internationally. It doesn't prevent individual provinces that have a desire to have standards within their boundaries to promote the use of those standards worldwide. The Bureau des normes du Québec has, I think, some *douzaine au présent* that are in the works.

[Translation]

**Mr. Paul Crête:** Is there a particular service within the Canadian Standards Council that is responsible for international questions and for coordination of standards from one country to the next? Is there such a component?

**Mr. Peter Clark:** Yes.

We're members of an international committee of the ISO, or International Organization for Standardization, and we're responsible for representing Canada and Canadian interests. If the Quebec office gives us its opinion, we can make that position known in the course of the proceedings of the international committee. I'm now a member of the Board of Governors of the International Electrotechnical Commission and a member of the ISO Technical Committee.

**Mr. Paul Crête:** Do you have a table or document showing your priorities for the future in terms of your quest for standardization, either here in Canada or abroad? Have you produced this type of document, or done this kind of analysis?

**Mr. Peter Clark:** Not really. Our system still operates on a voluntary basis.

•(1640)

**Mr. Paul Crête:** As an organization, have you not set any goals?

**Mr. Peter Clark:** Yes. Our goal is to develop a Canadian strategy. I'll give a copy to each one of you.

**Mr. Paul Crête:** Fine.

**Mr. Peter Clark:** If there are any more questions, we'll try to answer them.

**Mr. Paul Crête:** I have one last question. If you had to identify sectors in which the need to adopt uniform standards, whether at the international or interprovincial level, is more pressing, which ones would you name?

**Mr. Peter Clark:** Every year, a few problems arise at the international level. Currently, we're contending with health and social security issues. However, things move slowly at the international level. Each country has a committee and meetings are organized. However, it doesn't always work quite like this. It's difficult to arrange a location for these meetings.

**Mr. Paul Crête:** Thank you.

Thank you, Mr. Chairman.

[English]

**The Chair:** Merci, Paul.

Jerry, please, then Brian.

**Hon. Jerry Pickard (Chatham-Kent—Essex, Lib.):** Thank you very much, Mr. Chairman.

Thank you very much, Mr. Clark, for dedicating your time and energy to make sure all of us have safer standards and safer operations.

From what I see in reports of your colleagues, you have done an outstanding job. They very much support what you have done on the commission, so I think that is very positive in itself.

I was wondering, from your experience of six years, a couple of things. One, do you have the resources in order to fulfill the mandate as you see it should be fulfilled? There's always a struggle with public moneys and groups, so I think it's relatively important for us to know what you perceive. It doesn't mean you're going to get more funds; it means we want to know what your technical challenges are there.

Secondly, what do you see as a primary role in the future, if not just adhering to the policies that you've put forward? What are the biggest challenges you see are needed in the standards group?

**Mr. Peter Clark:** I sit on a steering committee for a thing called Canada Health Infoway. I also can tell you that I have a personal interest in health care, so that's a challenge that I'd like to input more to. I'd certainly like to solve the problem of the "don't call" thing, but Mike's got that in hand. He's an old neighbour of mine, so I couldn't

resist a little bit of an opportunity. We do have to participate in the international standards system and we do have to be willing to take positions that may not necessarily agree with the Europeans, or agree with the Americans for that matter. We basically come out there and talk about things as openly and honestly as we can. Canada's reputation in the standards world is pretty good. We are also driving a lot of the development of standards infrastructure in the third world. Yes, we could use more resources, but having more resources and applying them well is not something easily done.

A few years back, after two or three years on the job, we went to the government and said, this is what we want to do, and they bumped the appropriation back up to something like \$6.9 million, I think it was, from \$5.2 million. The reason for that was to fulfill the policy side of the role. The one thing I think we probably don't have enough money to do, and whether we'll ever have enough money to do it...is the communications side. It's the old horse to water thing. You can communicate until you're blue in the face, and if people are watching *Desperate Wives*, you're not going to get to them.

So spending a lot of money on that kind of thing is not something I'm going to advocate. I think we do need to spend more money on a few things. On the other hand, for most of what we're doing now for which we need more money, we're telling people, if it's of value to you, we want you to pony up something, and they've been doing that.

•(1645)

**Hon. Jerry Pickard:** So even though you don't have all the money you might like to splurge on various things, when you consider how you use the resources you have, you feel quite content.

**Mr. Peter Clark:** I don't like the word "content".

**Hon. Jerry Pickard:** What do you need to do in the future to improve the standards of safety and Canada's reputation as a country in which these standards are upheld?

**Mr. Peter Clark:** They may not want to fund the Standards Council of Canada, but if you want helmets on snowboarders, it'd be useful for government to provide some money, so that the CSA, for example, could run a committee that would help to build a Canadian standard. These are relatively minor contributions by government, as opposed to the umbrella system I'm looking at.

We would advocate for a CSA or for a Bureau de normalisation du Québec to get support from the Department of Natural Resources, or whatever department has the interest. To some extent we've been successful. But there's a lot more work to be done on how we get them to use this system more.

**Hon. Jerry Pickard:** I realize you're in the umbrella organizations. Are you suggesting that our Canadian standards need more financing in order to develop and move forward? All of us here probably have the idea that there are a fair number of dollars spent on safety helmets, equipment, and things like that. But we don't have the expertise to know whether that's moving at the level it should be or not.

**Mr. Peter Clark:** I think the level it should be depends on whether the shoe starts pinching. We tend to react to the pain if there is a pinching shoe.

I received some questions a few months back from someone who wanted to talk about helmets for snowboarders. That was why it was top of mind. Generally speaking, the CSA is willing to undertake it. They have a little bit of money from Health Canada, and if they get a little from Industry Canada, they'll build a standard.

Is there enough money to do everything we could possibly want to do? There's never going to be enough money to do that.

Am I comfortable? I think we have a pretty good system.

Could we do more? Sure, but the government has a lot of priorities.

**Hon. Jerry Pickard:** How much are you driven by media and hot issues, and how much are you driven by long-term goals you've set for yourself? I'm not sure how you function.

**Mr. Peter Clark:** We are not driven by the media at all. There's the occasional media burst on one issue or another, but that doesn't drive the agenda. The agenda is to make the standards system work so that regulators, industry, and the general public all benefit. We've developed several decks on the value proposition. We've developed a Canadian standards strategy. If we're going to present the value proposition, we need to develop some accords with appropriate organizations and with industry. If we don't prove to them that it's valuable, they're not going to support it.

**The Chair:** Brian, please.

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

I noticed in your documents a lot of national work. How much of your work in standards promotion is in North America, and how much in Europe?

**Mr. Peter Clark:** When I'm working in the International Standards Organization in Geneva, which is several meetings a year, that's really North America. We present Canada's position, which is pretty much consistent with North American positions.

The allocation of our time is probably 30% international, 10% to 15% dealing with our counterparts in the United States and the western hemisphere. We find that the Europeans, in joining arms with 29 countries and harmonizing standards there, want to force those standards on the international market. We have a long way to go. It's not so much the individual countries and standards organizations that are doing that; it's the European Commission.

• (1650)

**Mr. Brian Masse:** In your work in the United States and Canada, do you do much in the transportation sector?

**Mr. Peter Clark:** We do very little. There was a standard built for vehicle safety—you know, those locking things—and the international standard was a lot less than the Canadian standard. Transport Canada was going to buy into it, and we had to take that one on. That's the only recent one on vehicle standards. But there was a question in the previous committee minutes.... I got the blues so I could get a sense of where you guys were coming from, in self-defence—

**Mr. Brian Masse:** We don't know where we're coming from.

**Mr. Peter Clark:** I wouldn't say that. You could say it.

Right now the CGSB has five different technical standards in the area of liquid fuels. I don't think the answer was there for you in the last meeting. There's automotive low-sulphur diesel fuel, regular sulphur diesel fuel, automotive low-diesel fuel containing low levels of biodiesel esters.... We've just approved that one as the national standard of Canada. There's a lot of work yet to come.

**Mr. Brian Masse:** One of the areas I think I'd be interested to see you pursue is the trucking industry—shipping and receiving goods in the United States. In the border community of mine, about 30%—

**Mr. Peter Clark:** I'm from Windsor, Brian.

**Mr. Brian Masse:** Okay, I was going to say I know you attended university there.

**Mr. Peter Clark:** I was born there.

**Mr. Brian Masse:** Excellent. Then you know the situation quite well. A lot of shipping and receiving is being delayed unnecessarily because proper paperwork and procedures...aren't being filled out.

Is there a role your organization can play to work with those exporters and importers to expedite the process and make sure some of the errors that are delaying traffic and people who have the proper paperwork completed can be resolved? Part of our problem is that so many small operators, and some larger ones, are not following the standards.

**Mr. Peter Clark:** When I was a young fellow I was in charge of the materials for a Chrysler car plant. We used to bring those across the border regularly. It was a fairly defined system. Since 9/11 the system has gotten a little out of hand. I know our government and the United States are trying to build a smart border, but I don't think the standards are going to do it. It's high-level politics.

**Mr. Brian Masse:** But still, is there not a role for your organization to get out to those smaller organizations that need help with following procedure?

**Mr. Peter Clark:** I don't think so. Basically those would be U.S. and Canadian customs regulatory matters, not voluntary at all. Don't forget, it's a voluntary system.

**Mr. Brian Masse:** I know it's a voluntary system, but if we can't get our goods and services across there because we're not following proper standards that have been put in place by both levels of government, I'm surprised that your organization wouldn't be somewhat interested in pursuing that. You can have the same standards for a product, but if you can't get it across because the processing isn't...what good is it?

**Mr. Peter Clark:** For example, CSA certified certain television components. When they got to the States to be included in the assembly, the U.S. standards developer wouldn't accept the Canadian-certified components. We took on that battle, but that's a standards battle. What you're talking about is border operation. I agree with you, but it's not something I have a mandate to tackle. Sorry. I have some thoughts on the matter, but the chairman is trying to get me out of here.

**Mr. Brian Masse:** I noticed that, yes.

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

Are there any other questions for Mr. Clark?

Seeing none, I will ask our vice-chair to propose something.

• (1655)

**Mr. Werner Schmidt:** I'd like to move, Mr. Chairman, that you report to the House that this committee has examined the qualifications and competence of Peter D. Clark as executive director of the Standards Council of Canada and finds him competent to perform the duties of the position to which he has been nominated.

(Motion agreed to)

**The Chair:** The motion is carried.

Mr. Clark, thank you for being here. I hope you don't feel we gave you short shrift. You're probably more pleased to be out of here quickly than—

**Mr. Peter Clark:** I'm not so worried about that. I also know that your time is valuable. You can always look up my phone number, and I will respond personally if you have questions.

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

I invite Mr. Binder, Mr. Shaw, Ms. Walter, and Mr. Williamson to the table on Bill C-37.

Mr. Binder, thank you for being here with your colleagues. We invite you to make a presentation of the usual five to seven minutes, and we'll go from there.

[*Translation*]

**Mr. Michael Binder (Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Department of Industry):** Thank you, Mr. Chairman.

My presentation is available in both languages and I have distributed copies to the committee. However, with your permission, I'd like to make my remarks in English.

[*English*]

I circulated this deck, and I would like to race through it just to put in context what we are talking about.

With slide 2, I want to remind everybody that the Telecommunications Act provides the CRTC, under section 41, with the responsibility for telecommunication. It in fact has been regulating telecommunication since 1994. It applies those regulations to all unsolicited sales services online and not to people who do market surveys or solicit ideas, opinions, and votes.

On slide 3—just again to explain what exists right now—there are rules about when somebody may phone, about the time of day they can phone, for example. They have to identify themselves, and they're not allowed to phone emergency lines or health care facilities. Under the current rules, each caller has to have a private list, and customers can actually ask to be delisted and not receive calls. The CRTC also has the power to do some enforcement and has a complaint monitoring mechanism.

Slide 4 offers some answers to the question, so what's wrong with the current system? Well, the problem has been the total confusion of the consumers because every telemarketing company had to keep its own list. And as you can imagine, there are quite a few in this particular business, and with everybody keeping lists there was total

confusion. Consumers didn't understand the rules. Even the industry itself, the telemarketing industry, was not satisfied with the system. There was inadequate enforcement.

The conclusion, bottom line, is that everybody agreed a change was required, including the CRTC. It held a hearing and recognized that changes are required. Just recently, in the Telecom Decision CRTC 2004-35, it expressed support for a national do-not-call list but needed some additional powers to implement it. The CRTC needs effective fining powers, the ability to set fees, and the ability to delegate this responsibility to an administrator.

Slide 6, just very quickly, gives information on the situation in America. The Americans have put a do-not-call list in place, and it's been very successful. Sixty-two million customers registered within the first year, and 92% report that they're getting fewer marketing calls, and 52% say they don't get any calls anymore. So what we're designing here and what we're proposing is based on the American model.

If you flip to slide 7, some of the exemptions the Americans have decided on are listed here. We can discuss this a bit later on.

Slide 8 shows what we are proposing. We are proposing to provide the CRTC with three additional powers to be able to establish a national do-not-call list and to actually administer such a list. To do this, it needs administrative monetary penalties, the ability to actually penalize somebody who is breaking the rules, it needs some delegation authority to allow it to subcontract to an administrator, and it needs to be able to set fees for cost recovery of the administrative costs associated with actually managing such a list.

Slide 9 tries to answer why the CRTC should be the one to do this, because we heard some people were suggesting that maybe somebody else should do this. The CRTC has long-standing experience in this business. It has been, as I said before, managing telemarketing since 1994. It has the ability to conduct public hearings. It is a quasi-judicial regulator with some judicial powers that are very helpful in enforcement. It has proven experience in delegating to an administrator.

• (1700)

Some of you may know that the CRTC is now managing the numbering system. When you want to get a telephone number, there is a particular administrator who actually divvies up the telephone numbers amongst all the competitors. You don't hear about this because it's working really well. They're also managing something called universal service fund. Again, it's an industry, and the CRTC agreed on how to do it. It's working very well. It's been working well for many years.

My last slide is basically telling you what Canadians think about telemarketing. Environics did a survey in 2003, and 81% of the respondents said that they received telemarketing, unsolicited calls. They say that they're getting 44% from charities, 24% from companies with which they have ongoing business relationships, and 27% cold calls from companies they have never heard about before.

I know there are a lot of people looking for exemption from being on a do-not-call list. I'd just like to plead with you to think about how the more you exempt for a do-not-call list, the less effective the list becomes. So, for example, if you wanted to exempt charities and companies that had some ongoing relationships, according to the poll you are exempting 68% of all calls. You have to think hard that if you want to do exemptions, what is it that one might want to do? We believe that CRTC is well positioned to actually hold public hearings and decide who should be exempt, who should not be exempt.

My last remark is that I can tell you we've been getting all kinds of phone calls from Canadians who would like to register on this do-not-call list.

**The Chair:** Unsolicited calls?

**Mr. Michael Binder:** Solicited calls, sorry.

They really cannot understand and they're saying, get on with it. So there's a little bit of an urgency to actually implement this. I hope you'll take this into consideration.

Thank you.

•(1705)

**The Chair:** Okay. Thank you.

Werner, are you going to start us off?

**Mr. Werner Schmidt:** Yes, I will. Thank you, Mr. Chairman.

Thank you very much for the information. Mr. Binder, you and I have met on many occasions in the past. I haven't met the rest of your experts at the table there with you. As usual, you're very concise, very quick, and very to the point. I appreciate that very much.

I'd like to start with the exemptions that you ended your presentation with. In particular, the last line on page 10, could you explain: "Among those who would likely sign up for a national Do Not Call list, 66% would not want to receive call from charities".

If about 66%—I think you used the number—of unsolicited calls come from charities, we would be eliminating roughly 66% of charity unsolicited calls, and 66% of the people don't want to receive calls from charities. We have a bit of a conundrum here. I've had I don't know how many—I suppose, Mr. Chairman, you've had a number as well—letters exactly from charities suggesting that if they aren't exempted, then in fact a major part of their fundraising activity and resource is in fact eliminated.

The most recent one that I recall specifically was the Kidney Foundation, which made a strong case that if they were part of the do-not-call list and they were not allowed to call people, then they would not be able to access 80% of their funding, which comes from cold calling in effect.

**Mr. Michael Binder:** I'm surprised by those numbers, because our numbers are that a very small percentage of charities' income comes from cold, unsolicited calls. Somebody can help me on this, on the particular numbers. For most of them, when there is a consent—an existing relationship between the charity and the donor—I think that will be exempted, because you have a consent between a donor who has been historically giving to this particular charity. If that kind of arrangement exists, there's no reason why that could not continue. It's the very cold call.

**Mr. Werner Schmidt:** No, that's exactly what I'm talking about too, exactly that. If there is a pre-existing relationship, the act is quite clear. Then those people are not on the list and they should be allowed to continue that.

No, this is specifically to those who make the cold calls. My numbers may be awry. Those are the ones I've heard from, the ones who don't want this. There seems to be a variance of opinion here, clearly, between your numbers and at least this one in particular. I remember because it was the last one I received. I did receive a number of other ones as well.

So you're not in favour of exempting charities from the do-not-call list.

**Mr. Michael Binder:** No, I'm in favour of having the CRTC hold public hearings and deciding who should be in and who should be out. And there are different models. They will be able to hear all the arguments for or against exemptions and take a decision.

**Mr. Werner Schmidt:** In principle, the suggestion I think is that charities not be exempted.

**Mr. Michael Binder:** Not in our bill. Our bill is silent on this.

The only thing I'm setting out in slide 10 is that Canadians are telling us that 44% of all their unsolicited calls come from charities. If you exempt them, it means you'd be defeating the purpose and the effectiveness of this do-not-call list.

**Mr. Werner Schmidt:** I heard you loud and clear. That's what you said earlier.

I think that is one of the concerns they have. The act does not specify that, and as a consequence they believe this is not something they would like. I'm speaking now from the charities' perspective. I don't speak for any of the other persons. There is that resistance out there.

The other one I would like to ask you about—and I think you do suggest that surveys and polls are not subject to the do-not-call list—is political parties. Are they exempt as well?

•(1710)

**Mr. Michael Binder:** They're exempt right now under the CRTC's existing rules.

**Mr. Werner Schmidt:** The third question has to do, Mr. Chairman, with the delegation of this to a third party. I understand that the CRTC is a quasi-judicial body and that it does have some experience with delegating to a third party. The question I have is, what is the financial control on delegation of this to a third party by the CRTC, which is really funded by the Government of Canada?

**Mr. Michael Binder:** The way we would envisage it, if it's running very similarly to the numbering scheme, is that whatever is charged to the administration would be very modest. It would be recovered by the telemarketing organizations themselves. The consumers would be able to list their numbers free of charge. This is the American model. We have seen what it costs to do in the United States, and it's a very small amount of money. I think in all the United States—and somebody correct me—operationally it's about \$3 million a year. We're talking about very marginal expenditures here.

**Mr. Larry Shaw (Director General, Telecommunications Policy Branch, Department of Industry):** May I add to that?

I know you'll be hearing from the CRTC at some time, but perhaps you should be aware, on the numbering administration, the way it operates is that the users of telephone numbers, that is, the carriers—Bell telephone, Telus, etc.—have assembled a consortium, and it was actually the consortium that went out and hired the administrator. It's in the interest of the people who are paying the bill, namely the users of telephone numbers, to make sure the administrator is as efficient as possible. It's according to an overall set of rules established by the CRTC, but the carriers actually pay the bill and they have the incentive to make sure it's run efficiently.

**Mr. Werner Schmidt:** I have no trouble, Mr. Chairman, understanding that the carriers would have that interest in the assignment of numbers, because there's a vested interest that the system work efficiently.

This is a very different kind of thing altogether, because the people who want to use the telephone to solicit funds have a very different vested interest. They're trying to get as much business as possible generated from the calls they make, and they make them on a cold basis rather than on an existing relationship basis, so their interest is quite different from the interest of the people who want their numbers distributed on an efficient basis.

**Mr. Larry Shaw:** Mr. Werner, the principle would be the same. The telemarketers in this case would actually pay for the operation of the do-not-call list, and they'd have the same incentive to make sure that it was run as efficiently as possible.

**Mr. Michael Binder:** If I may add, Mr. Schmidt, the disincentive you're talking about is on the enforcement side. You're asking Bell to stop a telemarketer for some reason, and there's a disincentive there because the telemarketer is using a Bell system. We're talking about something else here, and that is setting up an administrator that administers strictly a database, and Bell will have to pay for this—or all the people who are engaged in this. And as Larry said, their incentive is to keep the cost as low as possible, because they're paying for it.

So you're quite right, one of the reasons the current enforcement is not working is because if somebody is not abiding by the rules, you're asking the telephone companies to go after those particular

individuals. This way it'll be administered by an independent administrator according to the rules of the CRTC. Payment for the administrator is going to be distributed within the industry.

**Mr. Werner Schmidt:** Let me clarify. Who will pay the administrator for the services they're rendering?

**Mr. Michael Binder:** The people who are actually doing the calls will, the telemarketers.

**Mr. Werner Schmidt:** That's my question. I'll deal with it later.

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

Paul Crête, please.

[*Translation*]

**Mr. Paul Crête:** Thank you.

You stated in your paper that you refer frequently to the U.S. model. Do you have any comparable information on how things are done in Europe or in certain other countries?

**Mr. Michael Binder:** Virtually the same approach is taken in Great Britain. The system is managed as it is in the United States.

**Mr. Paul Crête:** And what about other European nations, such as France? Does this kind of legislation not exist in Europe, or haven't you looked into this?

• (1715)

**Ms. Denise Walter (Senior Counsel, Legal Services, Department of Industry):** As far as European laws are concerned, I can't say for certain. I haven't seen the figures for Europe either.

**Mr. Paul Crête:** So, in fact you haven't looked into this and you don't have this information.

**Ms. Denise Walter:** No.

**Mr. Larry Shaw:** We based ourselves on three models, namely the Australian, American and British models. Other models may exist, but we haven't done any research on them.

**Mr. Paul Crête:** When a telethon is held, whether to benefit cerebral palsy research or some other cause, members of the public are solicited for donations. Often, they may already have donated to this cause. Under the current legislation, could such an appeal for funds be exempt? Does the legislation draw a distinction between an appeal made by a foundation that has already received a donation, and the first request from a foundation for a donation, when a person's name does not already appear on the donor list?

**Mr. Michael Binder:** It depends on whether someone is trying to sell you something.

**Mr. Paul Crête:** Take, for example, the Association de paralysie cérébrale du Québec, a charitable organization. Last year, I donated \$50 to this Association and I'm now on their donor list. When they hold a 18-hour or 24-hour telethon, they call me back and solicit a donation. They appear to receive spontaneous donations from the public, but that's not really the case if people are being solicited. Is there a difference between solicited and unsolicited requests? Since we're already on their list, could this be interpreted as a new appeal for a donation?

**Mr. Michael Binder:** If a relationship has already been established, then the association can make another appeal.

**Mr. Paul Crête:** So then, if the association has solicited you in the past, then this doesn't mean that it can't solicit a further donation by telephone, or that your phone number will be exempted?

**Mr. Larry Shaw:** That's not yet clear in the bill. However, if a relationship exists, then we're dealing with a different situation.

**Mr. Paul Crête:** CRTC regulations will make provisions for this kind of situation.

**Mr. Larry Shaw:** That's correct.

**Mr. Paul Crête:** But there's nothing specific about this in the bill as such.

**Mr. Larry Shaw:** There are two possibilities here. While the bill does not provide specifically for this right now, it could be spelled out in the act.

**Mr. Paul Crête:** So then, we could decide to examine the regulations, to include them in the legislation as such or, if there is no recommendation made to that effect, the provisions of the act...

**Ms. Denise Walter:** The rules have to be set by the commission.

**Mr. Paul Crête:** Which commission is that?

**Ms. Denise Walter:** The CRTC.

**Mr. Paul Crête:** We have two options. You prefer to proceed via the CRTC?

**Ms. Denise Walter:** For now, yes.

**Mr. Paul Crête:** And why is that? Because it would be simpler?

**Ms. Denise Walter:** Because it's easier to change the rules as the need arises. CRTC officials have considerable experience and they can also hold public consultations before setting the rules. It's primarily for these reasons. We want the public to have an opportunity to express its views on the matter before any rules are put in place.

**Mr. Paul Crête:** Could you explain to me further what exactly is meant by delegation of administration to a third party?

**Mr. Michael Binder:** The meaning of delegation?

**Mr. Paul Crête:** With respect to the second broad category of changes to the Act, what is the meaning of "delegation of administration to a third party"?

**Mr. Michael Binder:** Yes.

**Mr. Paul Crête:** Three additional powers are noted on page 8: Administrative Monetary Penalties, delegation of administration to third party and setting and levying fees. What exactly is meant by delegation of administration to a third party?

**Mr. Michael Binder:** These administrators would handle matters on behalf of the CRTC.

• (1720)

**Mr. Paul Crête:** I see.

**Mr. Michael Binder:** We're talking about an independent administrator who would handle matters based on consensus within the industry and the CRTC.

**Mr. Paul Crête:** You mentioned something about contracting responsibility for operating and managing databases to outside firms

in the United States and Great Britain. Is that because a similar model is in place in these countries?

**Mr. Michael Binder:** That's correct. In the United States, for instance, AT&T manages the databases.

**Mr. Paul Crête:** What assurances do we have that the independent administrator will comply with the act?

**Mr. Michael Binder:** The administrator will be compensated in accordance with the rules set by the CRTC and the industry paying the tab will be a member of the board. The process will be strictly controlled because the purpose of hiring this administrator is to cut costs.

**Mr. Paul Crête:** Most likely you also received a list of organizations that wish to be exempt from the application of the act. Have you reviewed these requests since the minister tabled the bill? In your opinion, do any of them justify an amendment to the act?

**Mr. Michael Binder:** Every organization would prefer to be...

**Mr. Paul Crête:** ...exempted?

**Mr. Michael Binder:** Yes. However, I think we need to let the CRTC decide on the regulations that will determine who is exempted, or who is not.

**Mr. Paul Crête:** Therefore, the current legislative regime already allows for some exemptions. Does that mean organizations will not be exempted under the new act?

**Mr. Michael Binder:** There is a current provision that exempts companies wishing to sell a product or engage in some form of solicitation, in the absence of an existing relationship.

**Mr. Paul Crête:** I see.

**Mr. Michael Binder:** However, charitable organizations and telemarketing firms, for example, will likely seek an exemption.

**Mr. Paul Crête:** If the bill were adopted in its present form, would these requests be filed with the CRTC?

**Mr. Michael Binder:** Yes. There would be a public debate, following which the Commission would make a ruling which could then be reviewed by the government.

**Mr. Paul Crête:** Therefore, we could adopt the bill and tell people to make their representations to the CRTC in due time, rather than go ahead and list specific exemptions in the act.

Would you prefer that approach?

**Mr. Michael Binder:** Yes, I would.

**Mr. Paul Crête:** Because it's easier to amend regulations if, over time...

**Mr. Michael Binder:** The CRTC has eleven years of experience with managing the telemarketing industry. Finally, it's being granted the authority to address this problem.

**Mr. Paul Crête:** Provision is made in the act for fining a company \$15,000. Is that the equivalent of US\$11,000? You mention fines of \$US 11,000...

**Mr. Michael Binder:** I see what you're saying, but I think the Justice Department felt that this was an appropriate amount.

**Mr. Paul Crête:** It's a large enough amount.

**Ms. Denise Walter:** Yes, but not so large as to constitute a criminal fine.

**Mr. Paul Crête:** If my understanding is correct, an automobile salesman who harassed persons who are listed as not wanting to receive any calls...

**Ms. Denise Walter:** That person would be fined \$15,000 for each call made.

**Mr. Paul Crête:** For each call?

**Ms. Denise Walter:** Yes, for each call.

**Mr. Paul Crête:** For each offence, every single day.

**Ms. Denise Walter:** Yes. The call per se is the offence. The fines can add up very quickly.

**Mr. Michael Binder:** It's harsh, but not too harsh.

**Mr. Paul Crête:** Then a person would do well not to violate the provisions of the act.

Thank you.

[English]

**The Chair:** Merci, Paul.

Jerry, then Brian.

**Hon. Jerry Pickard:** Thank you, Mr. Chairman.

You've covered, I think, why the CRTC would be the appropriate body to go forward and that there would be a third-party administrator. How would the costs be handled for that third party and do you have any idea what the costs might be to administer the list itself?

**Mr. Michael Binder:** Our information is that for the first day of operation for AT&T, which actually is the independent administrator in the United States, it cost \$3.5 million to run the 62 million numbers on their list. So it's not an onerous amount. And in the United States, again, as we're proposing, it's free to the consumer.

So it's the telemarketing companies that will pay the freight here. And \$3.5 million, if you spread it out over all the people engaged in telemarketing, we don't believe is an onerous amount.

• (1725)

**Hon. Jerry Pickard:** Obviously you do affect business to a degree with the do-not-call list. Do you have any idea whether there has been a major adverse effect on business in the United States or in the U.K. and do you anticipate any major effect on business here in Canada if you implement that do-not-call list?

**Mr. Michael Binder:** I'll let my colleague answer this, but my observation, and what I've read about it, is that there's been a perverse kind of reaction. In fact, the telemarketing people who are actually in legitimate businesses prefer that system because now they know who not to call. You waste a lot of time annoying potential customers by phoning them. So here we are, we have a list of those who have told us, "Don't phone me, please". So now the calls to those who are not on that list have a high probability of success. That's why the telemarketing association actually supports this particular approach—one list.

**Hon. Jerry Pickard:** One nice thing about not being out front with legislation that hasn't been tried in other countries is that you can look at the weaknesses that may exist in the United States or in

the U.K. and put in changes that may upgrade your plan in comparison with what is in existence.

Have you found some weaknesses that you've looked at in the United States or in the U.K. and tried to implement some better opportunities, or did you find that those systems are working extremely well and you didn't feel upgrades had to happen to the kinds of systems that are there?

**Mr. Michael Binder:** You can't argue with the success in the U.S. I look at the 62 million people actually phoning in and registering. That's a huge kind of acceptance. Nevertheless, you can see that they had to adjust and they actually had to amend the legislation a few times. That's why we actually propose, also, that a lot of the rules should be established in regulation, because after all, Canada is different from the United States. We can borrow some concepts, but we shouldn't get carried away. Canadians are different from Americans and they are different in many ways. We should be careful not to mimic it completely. It's just the actual framework, the administrative arrangement, that we like. And we believe we can do that.

**Hon. Jerry Pickard:** You mentioned that the CRTC would have public hearings on some of the issues. Do you anticipate a timeline? If the bill were passed in Parliament, how long would it take the CRTC to go forward with those hearings and the implementation of the do-not-call list?

**Mr. Michael Binder:** We are told it took the Americans about 18 months once they actually issued the rules to establish this. I think that our friends at the CRTC can speed it up because they can learn from what the Americans have done and have not done. Based on their experience in running two such administrative ports, I think they can move reasonably quickly on this. So I would venture that it would be less than 18 months, hopefully.

**Hon. Jerry Pickard:** Thank you very much, Mr. Chairman, and thank you, Mr. Binder.

**The Chair:** Okay, Brian and then Michael.

**Mr. Brian Masse:** Thank you, Mr. Chairman. On the U.S. legislation, have there been any amendments to the legislation they enacted since it's been operational?

**Mr. Michael Binder:** Yes, there were—

**Mr. Larry Shaw:** Excuse me, there were no changes to the legislation, but there were changes to the regulations.

**Mr. Brian Masse:** To the regulations.

Would it be wise for the committee to have, for example, either the administrator from the United States or somebody else there testify before our committee in terms of implementation and what the ups and downs are? We do have a list. Is there a contact you had that would be of particular...?

**Mr. Michael Binder:** It was set up by the FTC, and we can investigate to see whether they would be willing to come here to testify.

**Mr. Brian Masse:** That would be interesting to me. I know there are different elements between our nations, but we are basing a framework, and it would be interesting to see the structure or models and things they would have done differently, or things they might be running or considering changing in the future to address any problems they have.

Maybe you can walk me through a situation like, for example, the Easter Seals Telethon. I help with that or participate in it every year. You show up on a live show and they give you a phone book and you have your list of friends, family, and other people, and what they do to raise funds is to get you to call for donations. If there's no sophisticated process to determine who's on the do-not-call list among those numbers, would something like that be hampered through this legislation, or are there ways the U.S. has dealt with it to exempt operational elements that are very specific?

• (1730)

**Mr. Michael Binder:** My understanding of the U.S., for example, is that every charity has to set up a phone list of people who do not want to be bothered, which allows you to continue to have a relationship with a charity or not, depending on whether you sign a particular list or not.

What we are arguing here is that all of those rules have not been established yet in Canada, and we are proposing that CRTC actually take that on and establish those rules.

**Mr. Brian Masse:** That would be one of my concerns regarding these very specific drives. Second and very much related to that would be people contacting other people, as opposed to just an extra level of sophistication that's required, which might be very difficult for them to deal with. I'd be interested to find out if our research could determine how U.S. telethons and drives have adapted to that, because I'd hate to see this type of legislation affect—

**Mr. Larry Shaw:** Quite frankly, I'm not familiar with the example of an out call like that. Most of the telethons I've been exposed to rely on in calls, or people calling in to donate—and, of course, there's no consequence whatsoever for that, as inward calling is not at all affected by a do-not-call list.

The model you're talking about, where you're calling your friends, is an interesting model, because you have a pre-existing relationship with those people, and so I think—subject to a legal opinion—you're allowed to call them.

**Mr. Brian Masse:** Crime Stoppers does that as well. Those are just the kinds of examples that I'd like to know are exempt or not.

**Mr. Michael Binder:** But you know, those examples illustrate the different situations you can have, and if you enshrine them in legislation you're stuck, whereas if you allow for a regulatory scheme where you can change it and adjust it as you go along for all the unforeseen events you are going to come across—

**Mr. Brian Masse:** Absolutely.

Did they run into the situation in the States where, for example, I would sign up on a do-not-call list and go to an event—say, for example, cancer research or something like that—and sign my name at that event, resulting in their calling me later on because I had changed my status with them individually? How do those situations work operationally in the United States' model for that? I would hate

to see one being able to inadvertently open up the charity by offending the do-not-call list. How do they reconcile fines or communication between the charity and/or the individual who originally got on the list? If I sign up for the list and then go and purchase a ticket at an event and give my contact information, thereby inadvertently or advertently accepting further contact later on, they might call and somebody else in the household might say that I was on the do-not-call list. What type of operational and administrative things happen at that time?

**Mr. Michael Binder:** Let me try and then I'll pass it on to you.

My understanding of why it works is that if you ever sign a piece of paper saying that you give consent, an ongoing relationship gets overridden. Did I get it right?

**Mr. Steven Williamson (Senior Advisor, Regulatory Affairs, Department of Industry):** Yes, in the States, that's basically the system if you sign up on their national do-not-call list. But you can still give individual organizations or companies express consent to call you, and that would basically override the.... And they also have an existing business relationship exemption.

**Mr. Brian Masse:** So the administrator, then, would contact the charity if there was a complaint, and they would have to prove that this person actually might be on the list, but in October had attended this event and consented to further contact.

**Mr. Michael Binder:** I forgot to mention one important thing. The list gets scrubbed every 30 days. So you may be off for 30 days, but if you sign a piece...etc., you can go in there and get your name removed or added, depending on what you have done.

• (1735)

**Mr. Brian Masse:** Okay.

And lastly with regards to the CRTC, I do have some reservations about sending all of the rules to them. Do you have any suggestions on how there could be some greater parliamentary oversight to re-review? I know we could review the legislation and the regulations through the CRTC, maybe in three years or something like that. What's been done in the U.S., or have they completely given up? What's their model based on in terms of their legislators? Do they have a third party or are they directly reviewing legislation at periods of time?

**Mr. Michael Binder:** Correct me so I get it legally right, but the Americans actually put business relations in legislation. That was the big driver. If you have an existing relationship, you're exempt and you can continue. Most of the rules and regulations were to define what the existing business relations are, from a bank account to entering into and signing some kind of a purchase order somewhere. So they spent a lot of time trying to define this, and that's what most of the amendment of the regulation is actually going toward.

**Mr. Brian Masse:** Do they have an automatic time after which it goes back to be reviewed? Do they have—

**The Chair:** Go ahead, Steve.

**Mr. Steven Williamson:** In the U.S. they're sort of split. There is overlapping jurisdiction. There's the Trade Commission, and there's the Federal Communications Commission. They both have certain duties for regulating telemarketing. Part of their implementation legislation was a legislative requirement that those two agencies get the rules consistent. So they have to file annual reports to outline what they're doing in that year.

**Mr. Brian Masse:** Okay.

Thank you, Mr. Chair.

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

Michael, go ahead, please.

**Mr. Michael Chong (Wellington—Halton Hills, CPC):** Just to clarify, I see in your presentation here that you're going to consult before you develop the final regulations for a do-not-call list. Is that...?

**Mr. Michael Binder:** It's not us. We are proposing that CRTC do this.

**Mr. Michael Chong:** Sorry, you are proposing that the CRTC do that.

Is it fairly certain or is it likely that, as in other jurisdictions, organizations that would be exempt from this do-not-call list would be charities, political parties, companies that conduct surveys? You've mentioned existing customers already, so I understand that part of it, but do you think it's very likely that those other three types of organizations would be exempt?

**Mr. Michael Binder:** Let me go backwards. Right now under CRTC's existing rule on telemarketing, surveys and calls related to political parties would be exempt. They have not ruled on existing relationships and on charities. Right now the way it works is that every one of the callers has to set up their own list.

**Mr. Michael Chong:** But we're talking about the proposed legislation here. This is in front of committee now, and if this legislation gets passed, and the CRTC goes out and does its tour for input, and then decides that they're not going to allow charities to call potential donors, and they're not going to allow political parties or associations to call potential or lapsed members, and they're not going to allow surveys and polls, I think I'd have some serious concerns about that. I'm just trying to get a feeling from you as to what the industry department's thoughts were when they put this bill together, and how you saw the world unfolding once the CRTC did complete its consultations, what kind of regulatory framework, specifically regarding these types of organizations, you saw unfolding.

**Mr. Michael Binder:** It's a good question. Is there a leap of faith here? Yes. But let me answer that in two ways.

First of all, I'd be stunned if the CRTC did not follow through on the existing rules and improve on them, learning from the U.S. and the U.K. and from whatever else is internationally available.

Second, if they really get offside, the government always has the prerogative of changing their—

• (1740)

**Mr. Michael Chong:** The GIC.

**Mr. Michael Binder:** That's right. The government can overrule them on this particular thing.

So I believe they will do the right thing. They have been toiling over this file, trying to fix it, for 11 years now, since 1994. They don't like the file, but they have to fix it. To be blunt, it's been a royal pain. So they would like to find a solution to this.

I think the American experience and the U.K. experience bring ready-made models that work and are accepted by the large population. Why wouldn't you follow them?

**Mr. Michael Chong:** What was the logic behind not having a specific minister who could override the CRTC's proposals with the regulations?

**Mr. Michael Binder:** There is a specific minister. In this particular case, this is viewed as a telecommunications decision.

**Mr. Michael Chong:** Maybe I've overlooked it here, but I didn't see a minister mentioned.

**Mr. Larry Shaw:** It's an amendment to the Telecommunications Act. All the existing powers in the Telecommunications Act are at play.

**Mr. Michael Chong:** So when you refer to the Governor in Council, you're referring back to the 1993 act, with the minister.

**Mr. Larry Shaw:** Correct.

**Mr. Michael Chong:** My other question is with regard to the potential fines associated with contravention. My reading of it is that if you give notice and there's no response to notice, after 30 days the party notified is automatically liable or assumed guilty. What happens if the party doesn't get notice, or isn't aware that a charge or a notice has been put against them?

**Ms. Denise Walter:** When notice is provided, it is done by personal service. It's not just sticking a notice in the mail or that kind of thing, and then 30 days later automatically saying—

**Mr. Michael Chong:** Somebody has to be served with papers.

**Ms. Denise Walter:** Personally served, yes.

**Mr. Michael Chong:** Okay.

I see that part of the legislation doesn't fall under the fiscal administration act, and that you're not going to treat the fees collected as part of general revenues. What assurances do we have that the fees collected will be proportional to the actual costs incurred?

**Mr. Michael Binder:** Again, because the industry is paying for it, the industry will be very interested in how much it costs. As you can well imagine, and we already know, they...

By the way, this is not theoretical. The Canadian Marketing Association right now has a do-not-call list, and they charge members—

**Mr. Michael Chong:** It's voluntary, though. You don't have to be part of the CMA.

**Mr. Michael Binder:** Yes, but again, you can imagine, their own members...? Administratively, they have the incentive to make sure it's—

**Mr. Michael Chong:** But if I was a really mad member, I'd just leave the association.

**Mr. Michael Binder:** That's right. But when it's a national scheme, you can't just exempt yourself from it.

The point here is that all the telemarketers will have to be levied a sum of money to support this, and they will all want to see this be as minimum as possible.

**Mr. Michael Chong:** As well, you mentioned in your presentation that you'd see this as likely being outsourced. In the legislation, I see there are also provisions for outsourcing the databases and what not.

I take it that outsourcing is the optimal way to go.

**Mr. Michael Binder:** There are different ways of doing it, but comparatively, we think it'll be... Remember, we're setting up something that's almost monopolistic, that somebody will manage and get guaranteed cost recovery from. We believe somebody from the industry or from the association or wherever will actually be interested in this business. That's how AT&T actually won their business in the U.S.

**Mr. Michael Chong:** I don't know how much time I have left, but I have a final question.

In preparing this legislation and in the discussions around it, did you ever consider the other mediums, so to speak, such as e-mail? You mentioned in your presentation, and in the notes I see from the department, that we're moving into voice-over IP, and into a converged universe, so to speak. When we get there eventually, in maybe 10 to 15 years, it may be very difficult to differentiate between a conventional phone number and an IP address, or an e-mail address, or what have you.

• (1745)

**Mr. Michael Binder:** You are raising a good question, and that's why again we hope that the legislation will be broad enough and some of the regulations will allow us to deal with technology as it migrates.

You mentioned e-mail. This is voice telemarketing. The equivalent in e-mail is spam, which is kind of a problem, and we're working on that too.

**Mr. Michael Chong:** Put another way, you could see the regulations under this proposed legislation evolving to include things other than telephone numbers.

**Mr. Michael Binder:** No, but I think voice-over IP, which is a telephone number but in a different kind of technology, may cause some challenges in administration and actually figuring out who is the telemarketer here. You want to make sure that the regulator has enough flexibility to deal with this voice movement.

**Mr. Michael Chong:** Let me ask you a very specific question, then. In five years we have voice-over IP and it's widespread, and I have a phone number that's associated with an IP address. What is the CRTC going to do if somebody says, "I didn't call the phone number. The phone number is on the do-not-call list. I called the IP address". What do you see happening there?

**Mr. Michael Binder:** We'll have to cross that bridge when we get to it, and if it doesn't work, we'll have to come back to you and say we need new legislation or new amendment legislation. I cannot, right now—

**Mr. Michael Chong:** So the legislation would not cover IP addresses—

**Mr. Michael Binder:** Not right now, not the way—

**Mr. Michael Chong:** —and the regulations couldn't possibly evolve to cover that.

My concern is that we have a catch-all piece of legislation here, and suddenly, five years from now, we have the CRTC regulating IP addresses and this kind of stuff.

**Mr. Michael Binder:** Right now, we're focusing on voice numbers. How they morph into something else, we'll have to cross that bridge to it. Some of our people believe, as long as you stick with a voice number—

**Mr. Michael Chong:** Let me ask you a very specific question. Maybe you don't have the answer, and that's fine. If you could maybe give it to us later, that would be great.

I'm not saying the CRTC is necessarily going to go down this path, but would the legislation allow for a do-not-call list to include IP addresses?

**Mr. Michael Binder:** Do you want to take it?

**Mr. Larry Shaw:** Yes.

The legislation is not restricted to telephone numbers. It's to administer databases.

In practical terms right now, what you'd be regulating is telephone numbers. In the future, it's possible that you could, only for the purposes of unsolicited telecommunications. So it's maybe a bit of a reach to say that e-mail, for instance, would be captured. Probably it would, but theoretically it could evolve to cover other things in the future.

**Mr. Michael Chong:** Good. Thank you.

**The Chair:** Werner has a quick follow-up question, and I see Brian has one also.

They are excellent questions, by the way.

**Mr. Werner Schmidt:** Yes, I do have a question.

I think I heard you say that charities would not be exempted.

**Mr. Michael Binder:** No. I said right now—

**Mr. Werner Schmidt:** Not right now. Under the legislation, charities are not exempted.

**Mr. Michael Binder:** The legislation now is completely silent about how you manage charities.

**Mr. Werner Schmidt:** Right. So that would strictly be a regulatory function of the CRTC.

**Mr. Michael Binder:** Right.

**Mr. Werner Schmidt:** The other question I have.... Well, we should follow that up a bit further. Should it be part of the legislation or should it be regulatory?

**Mr. Michael Binder:** I'm coming back to the numbers. Our proposal here is to let the CRTC decide that.

**Mr. Werner Schmidt:** You said that once. You don't have to repeat. I'm asking you whether you think it should be in the legislation.

• (1750)

**Mr. Michael Binder:** What I think?

**Mr. Werner Schmidt:** Yes.

**Mr. Michael Binder:** Since the numbers are that those are 44% of all the calls, my answer is that they should not be exempted.

**Mr. Werner Schmidt:** Okay.

The other question I have has to do with definition. What is an existing relationship, and is the existing relationship different between business, profession, and charities?

**Mr. Michael Binder:** The answer is yes. That's where again, relying on the American experience, there's a whole set of regulations. They tried to define the existing businesses, and it has evolved across the whole economy.

**Mr. Werner Schmidt:** And those are all regulatory functions.

**Mr. Michael Binder:** Right.

**Mr. Werner Schmidt:** Would the regulatory function also include the length of time between the initial interaction, or an action between a person and a business, and the next time it's called? Should it be two years, six months, a week? What is the time period for an existing relationship to in fact exist?

**Mr. Michael Binder:** Again, it's specified by regulation.

**Mr. Werner Schmidt:** It would all be regulatory.

**Mr. Michael Binder:** Yes, sir.

**Mr. Werner Schmidt:** These are very specific kinds of questions.

By the way, I should make it clear, Mr. Chairman, that the principle behind the do-not-call list I have no trouble with, but it's in the details that I think we're getting into some real problem areas and I think that's where the difficulty lies.

I want to follow up on Michael's—

**The Chair:** Perhaps you could wind up with that, because at six o'clock we lose our translation.

**Mr. Werner Schmidt:** I'm sorry. The convergence issue will confuse the issue on telephone orders. There's no question in my mind about that. It will happen, and I think Mike is quite accurate when he moved into that area.

**Mr. Michael Binder:** There are two things I would like to say here. First of all, on the details I agree with you. We're getting into a lot of details, and the details should be left to the regulator who is mired in those regulations.

Secondly, on the Internet our experience has been that the Internet has changed everything and continues to change everything. Who worried about spam five or six years ago? Now it's a major issue. How do we deal with this? It's the equivalent of telemarketing when you get spammed or solicited to buy something online. It has to have a different solution.

**Mr. Werner Schmidt:** That's right, but this raises a very interesting question. What should run the way we govern—

legislation or regulation? The way this is moving, we're moving in the direction of regulation running things, rather than legislation. That's a basic principle and philosophical orientation. It has to be made very clear.

**The Chair:** We'll definitely pursue that.

Maybe two or three minutes, Brian.

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

One of the things that really, quite frankly, pisses me off is when they have the computers call your house and then hang up and then the solicitation comes after that. I forget the technical term for that, but it's garbage in my opinion. Can this legislation ban that or let people choose to receive charitable or other types of calls and end that nonsense, which is more irritating than anything else?

**Mr. Michael Binder:** I share your view—I've received them—and my understanding is yes. This is one of the most annoying things, and we'll try to fix it.

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

**The Chair:** I want to say thank you to our witnesses.

If there's agreement on Brian's idea about the U.S. administrator—I think that's a good idea—if there's interest around the table, maybe Louise could see if we could do a video conference or something with the administrator.

Brian.

**Mr. Brian Masse:** Mr. Chair, if we have open business, I suggest we consider moving into some of the witnesses for this right away. I think there's probably a good deal of interest in getting at this. We have timeframe issues if there is a potential change in Parliament or going to an election—a fact that we have to deal with. I would definitely be supportive if we looked at some of our open dates and prioritizing our schedule, because this is something I know people are interested in doing.

**The Chair:** On that very subject, I don't think we're going to have Bill S-18 by this week. Next Wednesday was Bill S-18. If there's agreement, we could do next Wednesday on Bill C-37 and then we'll look at the schedule and see where else we can pick it up if there's agreement to give some time to this.

Thank you.

On the U.S. administrator, if Louise can—

[Translation]

**Mr. Paul Crête:** And perhaps Bill C-19 on May 4 next.

**The Chair:** For an amendment?

**Mr. Paul Crête:** Yes, but that's still a long way off.

[English]

**The Chair:** *D'accord. Merci.* Thank you very much to our witnesses.

We're adjourned.







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