House of Commons
CANADA

Standing Committee on Industry, Natural Resources, Science and Technology

INDU • NUMBER 041 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Monday, June 6, 2005

Chair

Mr. Brent St. Denis

Standing Committee on Industry, Natural Resources, Science and Technology

Monday, June 6, 2005

● (1535)

[*English*]

The Chair (Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.)): Order, please.

I'm pleased to call to order this June 6 meeting of the Standing Committee on Industry, Natural Resources, Science and Technology.

We are studying Bill C-37, commonly known as the do not call list legislation, which would amend the Telecommunications Act.

We are in our third meeting on clause-by-clause consideration. I thought we had a very good discussion last week, colleagues.

I distributed, with the assistance of the clerk and the researchers, a memo outlining what I propose to be an agenda for today. If we get done, great; if not, Wednesday would be a business meeting plus further clause-by-clause study on Bill C-37.

I will explain briefly how I've structured the meeting. If there are any suggestions to the contrary, we'll go from there.

You can see that this package of amendments has C-A in the upper corner. That, with brackets, is the same as the list on the memo I distributed. It's a two-page memo that explains how I've organized it. I'm going to explain it anyway, but it's this memo here. I guess the computer can't do brackets on there, but that list is in the same order as in the two-page e-mail I sent to you on Friday past.

Basically, I propose that we deal with James's orders amendment and then go to the annual report. I think there's consensus on that one. I believe there's a consensus on the three-year review.

Then we'll go to Brian's Patriot Act. I've got a letter from Brian on the Privacy Commissioner. What I might do, Brian, is have the discussion and get a sense of whether the room wants to move forward on it or not. If they do, then obviously if there's a consensus to have the commissioner, we'll try to do it on Wednesday, but I'm going to get a sense of the room on that issue first. Then we're going to go to the charities issues and the existing business relationship issues. I've tried to lay it out as straightforwardly as I can.

Without any further ado, and unless there are some burning questions or comments, I'm going to go right into the orders—amendment C-A—and invite James, if he wants, to tackle that one again.

James, in this proposal here we have made sure that the deeming is 30 sitting days, that it is both House and Senate, and that the orders are limited to material decisions by the CRTC relating to the exemption list only. I think you had thought that was okay with you. If you want to speak to it, we'll start.

(On clause 1)

Mr. James Rajotte (Edmonton—Leduc, CPC): Thank you, Mr. Chairman.

Well, I don't want to belabour the point. I know we discussed it at length in the last meeting. The amendment certainly seems to state specifically what I asked for, generally, so I would move this.

The Chair: Are there any questions or comments?

Mr. Binder, I don't see your hand up, but you had suggested that if it referred to the exemption list only.... I thought I remembered hearing you say you could live with that. Unless you have a comment, we're going to go—

Mr. Michael Binder (Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Department of Industry): We said it's better than not having it narrowed, but best is not to have it at all. The reason for that is there's an appeal process. Every decision of the CRTC goes through appeal.

What will happen when this is tabled in the House? I don't understand the relationship between the House process and the appeal provision to cabinet and into the court in fact. It's going to open up a whole can of worms. I think this process will not be clear.

The Chair: Yes, James.

Mr. James Rajotte: I'm sorry, Mr. Binder, did you say every decision is “appealed” or “appealable”?

Mr. Michael Binder: Every decision of the CRTC under this clause is appealable to cabinet or to the court. Now we would have the situation in which the CRTC makes a decision, it's tabled in the House—then what?

Mr. James Rajotte: So which clause in there makes every decision appealable?

The Chair: He means generally.

Mr. James Rajotte: You're saying generally.

Mr. Michael Binder: That's right, generally. Generally, a CRTC decision is appealable.

The Chair: Is it appealable in any area?

Mr. James Rajotte: It's a fairly dramatic step, and I think.... Let me ask you this then. What percentage of CRTC decisions is generally appealed to cabinet?

Mr. Michael Binder: Not very many. Nevertheless, it is the uncertainty of the process we are talking about, because if it's going to be contested, if the decision by the CRTC is not acceptable to a certain party, that party will not now know what to do with this. There is another process, which is the House process. There is a cabinet process and a court process. I just don't see the need for that.

Mr. James Rajotte: Mr. Chairman, I would disagree with that.

I think in fact this simplifies it. If the CRTC makes a change in terms of an exemption, which is a fairly substantive change to this piece of legislation, and it is passed through Parliament and is deemed adopted—whether Parliament makes a statement on it or not—I think then it's probably less likely to be appealed to cabinet. So it would be a simplification from the decision.

I would argue that in major decisions like the VoIP decision, which may be appealed to cabinet, there's more uncertainty in that situation than there would be in this because you would actually have a statement from the Parliament of Canada that it would either adopt or deem not adopted this specific change to the exemptions. That's my argument.

The Chair: We're going to go to Jerry and then Werner.

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

I just want to reiterate a couple of points in the discussion we had earlier.

One, do the committees of the House of Commons intend to micromanage all of the decisions made by bodies that are charged to carry out legislation and carry out the regulations in that legislation? If that's the case, I think a couple of things are going to happen. Our committees are going to get so bogged down with anything that comes forward that we're.... Right now, we're having one difficult time dealing with the legislation that's coming forward, let alone all of the business agenda we have. By micromanaging in committees, I think we do end up with other problems.

The second point I would make is that, as Mr. Binder has pointed out, there is an appeal process through the cabinet and an appeal process through the court, which is relatively important to realize. Anyone who has a concern may make an appeal to either body.

Three, we've talked about a timeline, which the NDP put forward, of a three-year review. When we initially talked about how long that really would be...we're in a process where if we have 18 to 20 months, as I understand it, to get the list together and get things in operation, we will be reviewing all of the matters within a year, or very close to a year—a year and a few months. So in fact we can look at what is happening with the process and look at what the people who have administered similar programs in the past are suggesting here, and if there's a problem, then we can deal with it at that time.

To me, it seems that there are mechanisms in place to make sure... the customers, the consumers, are looked after already. There is an appeal process on decisions, and there is a process that we are now putting in place to make sure we review all of it within a three-year period. I, at least, would hesitate to put this committee in a micromanaging position in terms of the things the CRTC or the regulator is going to be doing.

● (1540)

The Chair: Thank you, Jerry.

Werner, please.

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

My comments are on a slightly different point. It's on this clause, these amendments, but would you want to finish this one, or do you want to go to the next section?

The Chair: Is your point within the same amendment?

Mr. Werner Schmidt: Yes, it is.

The Chair: Put it on the record. Then we'll go to Paul.

Mr. Werner Schmidt: If I could, Mr. Chairman, I'd like to ask Michael Binder, in particular, to give us an example of a situation in which proposed subsection 41.01(8) would apply. This has to do with insubstantial or immaterial amendments or decisions that the CRTC might make. Could he give us an example of what an amendment like that would look like?

Mr. Michael Binder: Let's assume that there was a particular business arrangement that we hadn't thought about before and the CRTC decided it made good sense and decided to exempt that particular relationship. They may deem it to be substantive enough to require tabling. So you could say—

Mr. Werner Schmidt: This is one that they wouldn't table.

Mr. Michael Binder: No, but if they made a decision to exempt a sector or a subsector—an arrangement—I presume it would be a requirement to table it.

Mr. Werner Schmidt: Yes, indeed it would, but proposed subsection 41.01(8) says the CRTC does not have to table those things that are immaterial or insubstantial—but it would be a change, nevertheless.

Mr. Michael Binder: I'm talking about when you have to table—

Mr. Werner Schmidt: I understand that, and I'm asking a question on those that you don't have to, which is what proposed subsection 41.01(8) deals with.

Mr. Michael Binder: Yes, but it's still appealable. If I understand correctly, it's still appealable to cabinet and it's still appealable to courts, even if it's non-substantial.

Mr. Larry Shaw (Director General, Telecommunications Policy Branch, Department of Industry): Mr. Schmidt, if I understand your question, what that clause would exempt would be something, say, that was purely administrative. It wouldn't affect the substance of the exemption, but if they amended a form for listing exemptions or something like that, it would benefit from the *de minimis* requirement there, I believe.

Mr. Werner Schmidt: That does answer the question. Thank you.

The Chair: Mr. Crête is next, please.

[*Translation*]

Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ): I'm trying to grasp the possible ramifications of this amendment.

For example, if the Commission decided to make an order to exempt a group or association from being listed on a national do not call list, pursuant to this amendment, the decision would have to come before the two Houses. No doubt a debate would ensue over whether the Commission was justified in making such an order. Furthermore, a group could object to the Commission's order. It would not be solely a question of determining whether or not the Commission made a logical decision.

Take, for instance, non-profit organizations. One association not exempted from being listed may well feel that it should be. Moreover, if the Commission takes this upon itself, its workload could very well double.

Furthermore, some partisan politics may come into play. I don't mean that in a negative way, but just that each party will strive to make its position known. There is even talk of holding committee hearings.

Given this scenario, if I were a member of the CRTC, I would never again make an order. This allows for the possibility of one party in Parliament challenging a CRTC decision.

In my view, this flies in the face of the smart regulations that we want to bring in.

● (1545)

[*English*]

The Chair: Okay. Very good.

From Denise Walter I've received.... James, just for your consideration, and before I ask the will of the group on this, either by straw vote or by official vote, in proposed subsection 41.01(1), at the second to last line, where it now says “from being listed on a national do not call list”, would you be okay if that were “from being subject to a national do not call list”?

Denise, maybe you could explain why that's there for that purpose. Does everybody see where we are?

Ms. Denise Walter (Senior Counsel, Legal Services, Department of Industry): Well, even that wording wasn't what I had suggested.

The Chair: What had you suggested? Something was lost in translation. Sorry.

Ms. Denise Walter: If I can refer you to a later amendment, the exemption amendment—because we're talking about exemption orders here that would be subject to parliamentary review—I would take the wording that's in amendment CH-E. It's in this package you're presenting today. I would just change it a little bit, but I would use that wording.

The Chair: What line are we at?

Ms. Denise Walter: If you take proposed subsection 41.6(1)....

The Chair: What was that one again, Denise, please?

Ms. Denise Walter: It's not one line. I would redraft that paragraph to fit in and accomplish the purpose you want in proposed subsection 41.01(1).

The Chair: Please tell me where—

Ms. Denise Walter: Can I read it to you?

The Chair: Just tell me if you're on page 1 or page 2 of CH-E and what line you're—

Ms. Denise Walter: I'm on the very first line of proposed subsection 41.6(1). I would say “a draft order made by the Commission”, and remove “that imposes” and change it to “limiting the application of”.

The Chair: We're going to get all balled up here. Just tell me, if you can, before I go back to the members, what wording at proposed section 41.01 works in that first paragraph.

Ms. Denise Walter: Well, it doesn't.

The Chair: Okay, let's let her go.

James, are you prepared for us to do a straw vote on this, or do you want to do the vote?

Mr. James Rajotte: We can do a vote.

The Chair: Okay, if there's consensus, we're going to vote on this.

James, you've moved amendment C-A.

I'm counting five opposed and five in favour. In the circumstances, I will go against the motion. I think the status quo right now is that we don't have these orders going to the House and the Senate.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Now we'll go to amendment C-B. This provides for an annual report.

James, this is yours as well. You originally had proposed four months, and you've said six months is okay with you.

Mr. James Rajotte: Yes, Mr. Chair.

The Chair: I'm going to call the vote on amendment C-B, unless there's debate.

All in favour of a six-month report...? It's unanimous.

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

● (1550)

The Chair: We're going to go to amendment NDP-C, which calls for an annual review—is it three years after the law is passed, Mr. Binder, or after the first day the registry is in place? I wasn't clear on that.

Mr. Michael Binder: After the law is passed.

The Chair: Okay, that's three years after the law is passed.

We're at amendment NDP-C.

Mr. Michael Chong (Wellington—Halton Hills, CPC): I'm sorry, you have it mixed up. It's amendment NDP-D.

The Chair: Amendment NDP-D and amendment NDP-C have been transposed. So in your package we're dealing with amendment NDP-D, which is the three-year review.

Thank you for clarifying that, Michael.

You're moving that motion, Brian.

I think it's unanimous.

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

The Chair: Then we'll go to amendment NDP-C, which is called the Patriot Act amendment, from Brian. I think there's a little bit of contention on this, so we'll ask Brian to speak to it.

After the discussion, Brian, similarly, I'm going to try to get a sense of the room. If there's a sense that they agree with you, then we'll go on to whether we want the Privacy Commissioner in or not. If there's a sense that they're not in support of you on this, then we'll just deal with it.

Brian, and then Michael.

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

We asked last meeting to have a specific process that an individual would go through when he or she called in. Is that available? Maybe we could have that now so we're clear in terms of what happens when an individual calls in.

Mr. Larry Shaw: We checked with the FTC, with the same witness who appeared by video before your committee. She explained the process along the lines of what we explained previously, that if you phone in, there's a call back to your number, or if you register by e-mail, they basically return an e-mail to you, in both cases simply to confirm that in fact the person in control of that number has agreed to it.

There are some security safeguards built into the system, which I'm not at liberty to describe. I can tell you after, if you wish.

The person we talked to advised us that she was aware of one complaint from a consumer who was on the list and didn't want to be. I would remind you that there are now 92 million people on the list.

Mr. Brian Masse: Yes, actually that answers my question, Mr. Chair. Really what it says is that they are going to have active data. I would ask the committee to either support this motion outright or to at least have the Privacy Commissioner come in.

I know that in today's *Ottawa Citizen*, on the front page, she was once again expressing the concerns about this in an article called, “Protect us from snooping by U.S., students demand”. The Privacy Commissioner in her story...and this has been referenced in the past when the Privacy Commissioner, who actually hasn't appeared before our committee, which I think would be a wise thing.... In the years that I've been here we haven't had her yet. In another committee back on November 17, 2004, Ed Broadbent asked her, “Is there no way we can take steps in Canada to contain this information within our borders?”

Then the Privacy Commissioner responded:

> That's certainly something that can be looked at and can be debated, but I would simply take the opportunity to remind you that there is a massive exchange of information between Canada and other countries, notably the United States.
>
> The Parliament of Canada could pass laws that would prevent the exportation of our personal information outside of Canada—

That later on led to where a census contract had its exposure of personal information demonstrated, and it cost the government millions of dollars to fix because there was a breach in the U.S.A. Patriot Act's ability to get at our personal information.

In the article she had today it was interesting. There's a comment there:

> “It's rather remarkable that the Canadian government does not seem to have any outsourcing guidelines to set clear standards for the protection of personal information,” she said. “It is a remarkable omission.”

I think it's reasonable either to support this motion or to have the Privacy Commissioner come and appear before us. One of the things that I know is important not to skew or corrupt any type of a process is to have confidence that the information will be bought in. Since we've raised the issue over CIBC outsourcing, I know many people have had questions about their personal financial information, the effects of that and leaving them as a customer....

But more important, I think this is a government duty, that we actually secure our personal and private information.

Once again, Mr. Chair, this is quite simple. It's been done in other areas; the government has had to amend contracts for outsourcing, and they did. The Privacy Commissioner is calling it a serious problem.

Lastly, it's something we can't control right now, other than by the actions of Parliament. What we're saying is not that a U.S. company can't, or that some other company in Canada doing business can't, participate, facilitate, and win a contract for this. What we're saying is that your e-mail, your phone number, and all that other information that's going to be required, as we know.... In fact, it does, because if you have to send something back to people it's in a database system now that can be used at any point and particular time.

So what we're asking for is for that to be secured.

● (1555)

The Chair: I have Michael, Jerry, and then James.

Mr. Michael Chong: Thank you, Mr. Chair.

My question is, is it not possible that in the future we may want to actually exchange this data with our U.S. counterparts? If there are telemarketing firms—-

The Chair: Merge them you mean?

Mr. Michael Chong: No, exchange the data. In the sense that there may be firms operating out of the U.S. calling into Canada, and if we're not allowed to transmit this data outside of the country, then I'm not sure how effective this list is going to be.

I don't know if anybody can comment on this, because if that's the case then this amendment would in effect neutralize the list.

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

We'll go to Jerry and then James. Is that okay, Michael?

Hon. Jerry Pickard: As I said last week, hopefully do not call lists could eventually be shared throughout North America. But not going to that point at this time, if we stop to think about it, if a company wants to hire a U.S. corporation to phone into Canada, it is to our advantage that this company use the do not call list. Otherwise, it makes a very unfair business proposition: a company in the States can phone into Canadian homes and effectively do a business a Canadian firm can't do. We have to think about the ramifications of what this list is and how it's going to affect our consumers.

First, the list is a date and, second, a telephone number; that's it. Are there names attached? No. Is there other information or personal data attached? No. It is a phone number and a date. According to the information we have in front of us that Mr. Shaw presented, in the American lists of 92 million numbers, only one complaint was made that the number was there inappropriately. That kind of thing can happen, I guess. One in 92 million isn't a really bad record, though.

But let's consider. We're here to protect the Canadian consumer. It is the Canadian consumer bill, and if we allow American companies, or companies from India, or companies from elsewhere, to phone into Canada, should we not try, for every company in Canada, to make sure the rules are the same? I think we have to be sure of that; therefore, if it's a list of telephone numbers and a date put on a list, I don't know that we talk about personal information at that point in time.

The Chair: Thank you, Jerry.

James, then Denis.

Mr. James Rajotte: Thank you, Mr. Chair.

I have perhaps just a few questions at this point, following up on Mr. Pickard's comments. Could we get even a sheet of paper from the department officially stating how the list would actually work, in the sense of whether it's just a date and a telephone number, so that I would phone in and say "This is my phone number" and I would get a return call back? They obviously have my name. Is my name then scrubbed and shredded?

Are there security provisions for this? I understand Mr. Shaw said he can't name them in public, but it would be helpful I think for at least the committee members to hear what they are before we either adopt or don't adopt this amendment. Maybe we could go in camera to hear that, Mr. Chairman, at a future date.

Also, do Canadian call centres phoning into the U.S. access the U. S. list? If so, how, and how is that managed?

In terms of the Privacy Commissioner, I'm not opposed. If people feel it would be worthwhile to bring in the Privacy Commissioner, it might be.

There are a lot of questions there. Mr. Shaw, I respect that you may not be able to answer in an open hearing, but I think at least committee members should have an idea of the security provisions.

● (1600)

Mr. Larry Shaw: I can answer the first part, and I apologize if I misled anyone. They do not ever get your name, unless it's in the e-mail address they use to return to you. But that information does not go into the database; it's simply for confirmation purposes. It's not used; it's not recorded; it's done.

Mr. James Rajotte: How can we ensure, if I say "I'm Michael Chong, and this is my phone number", or if I give you Michael's phone number, how do you...?

Mr. Larry Shaw: They basically don't. You phone in; they call back to you at that number, and whoever answers that phone confirms that they don't want it. There's a similar system for e-mails, but it's done without ever recording the e-mail address. That's something I can't speak to—I'm sorry—but they never record the e-mail address.

Mr. James Rajotte: The Canadian call centres that are phoning into the United States—

Mr. Larry Shaw: They use the American list.

Mr. Michael Binder: It's important to understand that the law applies to the list, so anybody who uses that list, even from outside, is to adhere to it. It's always been our intention to actually connect with the Americans, because you do not want our telemarketers to move across to the U.S. and start calling inward if they are exempted from any of this data.

Just to remind the committee of the facts, Industry Canada also manages the PIPEDA law, the privacy law. We are very concerned about privacy issues. But I don't think this is the vehicle to deal with some of the issues you are concerned with. I think the President of the Treasury Board just last week mentioned something about the government coming up with a report on the Patriot Act and what we are going to do about it. It's going to be another vehicle to discuss this. I don't think it's intended to be discussed on the do not call list.

The Chair: Next we have Denis, then Brian, then Brad.

[*Translation*]

Hon. Denis Coderre (Bourassa, Lib.): Contrary to what Mr. Shaw and Mr. Binder seem to be saying, I think it's vitally important that we protect ourselves. Having been Immigration Minister and having handled information in the course of my relations with various countries, it's clear to me that at the very least, we need a management approach that safeguards our own information.

I see what Brian is getting at. For business reasons, we cannot prevent the transmission of information. However, it's normal to want to protect that information. Yesterday's fiction is today's reality. It's surprisingly easy to tap into just about any database and to use the telephone to link up with people and potentially with other databases.

I agree that this bill should not be seen as a way of achieving the aims of the proposed amendment. However, in my view, it's critically important to show, without violating the terms of existing agreements, that... Information agreements have already been signed and calls centres are not just located in Canada. They are found in India and everywhere else in the world. The FTC already has information on file. Agreements to safeguard this kind of information have already been negotiated with law enforcement officials in Edmonton.

It's critical that the bill protect citizens, without going too far. Consumers must be protected against aggressive telemarketers. Consumers must also be protected against having information about them used for some random purpose. In that regard, I agree with the spirit of the amendment, but I think Brian is taking matters much too far. That's why I cannot support him on this. We cannot prohibit the dissemination of all information beyond our borders. That makes no sense. I agree that we need to protect ourselves, but in a manner consistent with existing laws. All we need to add, in conclusion is "in accordance with the Privacy Act and our operating procedures", while taking care to ensure that persons cannot be contacted as a result of any information on file. As it is now worded, we cannot support this measure because it goes much too far.

● (1605)

[*English*]

The Chair: Thank you, Denis.

Next we have Brian, then Brad, and then Paul.

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

It's not the fault of my single amendment in a small bill, when the government has had over a year and a half to deal with this. You chose not to do anything with it. It has been raised by the Privacy Commissioner, myself, other people, and the public, and they haven't acted on it. That's the problem here. It's not the fault of my amendment in this bill. It's the fault of the government for not taking this issue seriously.

I know we're all concerned about exporting Canadian jobs here, but the reality is that section 215 of the Patriot Act is a very abusive civil libertarian issue. Part of the Patriot Act has even been struck down in the U.S. courts. They're waiting for that decision on section 215. It's still pending. The issue is that the American intelligence service agencies have unfettered access to a company's record of information without providing any type of accountability. They don't even have to tell the department it's been accessed. In fact, they can't, under the legislation. That's the whole point. If we actually pass amendments like this, maybe what we'll do is get the government to stand up and do something—get a treaty, for example, even on this. It might give some empowerment so we can share information under rules. There are no rules right now. That's why section 215 of the Patriot Act is highly controversial. That's why my amendment is here. I make no apology for the fact that the government has not listened to people about this issue. I think this amendment is important. It adds value. I certainly want to have a do not call list that's going to be effective, but it has to have rules about people's personal information, because once you talk about e-mails, computers, and data collection, you lose control. I don't think it's right.

The Chair: Next we have Brad, and then Paul.

Mr. Bradley Trost (Saskatoon—Humboldt, CPC): The comment or question I have for Brian is this. What new information will be contained in this database that isn't already accessible and available?

On the Internet, we've got online phone books that are equivalent. We've all done this in our campaigns, trying to track down donors and stuff. What is new in there? The Americans already have total access to every Canadian-listed phone, and probably a lot of the unlisted ones too. The only brand new thing is that essentially they don't want to get junk-mail calls. Unless you can convince me otherwise, Brian, what I see is they've already got, and have access to, the information you're trying to protect. In fact, I basically have access to it online when I go onto Canada 411. Other than the fact that they don't want to get a call, there doesn't seem to be anything here that's not being protected. Unless you can convince me there's some other information I'm not seeing here, this seems a little bit irrelevant. I appreciate your intentions, but what new information is really being protected here?

The Chair: Is that a question to...?

I'll finish up with you, Brian, if you like.

Mr. Bradley Trost: Yes, I was assuming that Brian would finish up here at the end, because it's his amendment. They're just my.... He can answer it later or now; it's just an on-the-record question, sort of.

The Chair: Thank you, Brad.

Next is Paul.

[*Translation*]

Mr. Paul Crête: Mr. Binder, the Canadian Marketing Association already has a list. At present, do American companies have access to that list for information purposes? RIght now, is this list being accessed with a view to transferring information to the United States or to some other country in the world? What difference would the proposed amendment make in terms of current operations?

Mr. Michael Binder: I'm not familiar with the details, but I believe the list can only be accessed by Association members. I can't say if members are willing to share the list with the United States.

Savez-vous si c'est le cas?

Mr. Larry Shaw: No. However, if a CMA member uses the list and deals with a U.S. telemarketer, I believe the latter must use the list, because it is linked to CMA members.

● (1610)

Mr. Michael Binder: Clearly, that's the case.

Mr. Larry Shaw: Yes.

Mr. Paul Crête: There is no legislation governing this type of activity. Right now, we have to rely on the good faith of the people who use the list.

Mr. Michael Binder: That's right.

Mr. Paul Crête: My next question has to do with the wording of the amendment, which is as follows:

> (2) Any information about Canadian residents that is contained in a database or information, administrative or operational system [...]

This provision could well pertain to something other than information that is required simply because it is not contained in the do not call list. The wording implies that any kind of information pertaining to this database could not be transmitted to the United States or elsewhere outside Canada.

Is there a connection between the do not call list and other information on persons with the corresponding telephone numbers?

Mr. Larry Shaw: There's no reason why there should be a link between information contained in the do not call list and other types of information or why the official in charge of the list should have other information. The role of that official is to delegate. He is responsible solely for administering the list.

Mr. Paul Crête: I see.

Take, for example, a consumer who arranges to have his name added to the do not call list. Companies looking to sell their products are interested in learning more about this particular consumer. They could contact him using other marketing or advertising ploys. For instance, they could run an advertisement that reads: "You're not interested in getting unsolicited telephone calls and you're right!"

If these companies succeeded in getting their hands on this list, would the telephone numbers provide them with access to other kinds of information? For example, during an election campaign, it was possible to obtain a voter's name by using the telephone number or a different type of telephone directory. A manual procedure of some kind was used. Nevertheless, I wonder if this is possible. If so, Brian's argument would carry a certain amount of weight.

Mr. Larry Shaw: If I understand your question correctly, the answer is yes. As you said, it's possible to obtain the name that corresponds to a certain telephone number by using a particular kind of software. However, that's not true of every single telephone number.

Mr. Michael Binder: I might also add that it's very important that each company not disclose the information kept on file about its clients. By using the list, it can cross-reference data, but information differs widely from one corporation to another. Moreover, we're not talking about public information. Each company must maintain this list in its database and comply with Canada's privacy legislation.

[*English*]

The Chair: Next is Brian, but first I have a question.

Is it clear that, say, a New Brunswick call centre calling into the U. S. has to obey the U.S. registry law?

Mr. Michael Binder: Yes.

Mr. Brian Masse: The problem here at the end of the day still lies in section 215. People's private information—their e-mail, their phone number—should all be protected by choice. It should be by choice. That's the problem with section 215; once the information leaves the country, we don't have any choice. You're not even entitled to know. You have no entitlement of representation; that's the problem with this section. That's why it's created a significant problem in the United States. During all the tenure since 9/11, they've had a significant portion of this bill struck down, the privacy rules, and section 215, which we're still awaiting a ruling for, is highly controversial.

All I'm asking is to protect our personal choice, and for the government to get out and negotiate the terms and conditions to do that. They've had a year and a half. It's not just me; it's the Privacy Commissioner and it's other Canadians. I think once you corrupt the system, you lose confidence in it. That's what I fear is going to happen on this.

● (1615)

The Chair: I'm going to try to get a sense. Basically, I see three choices here.

Do you have a question, Jerry?

Hon. Jerry Pickard: I have a couple of comments that I think are important, and then I'd like to ask Mr. Binder one question.

First, I think the comment has been made that the government is not doing anything. That's quite incorrect. I believe Mr. Shaw pointed out that Mr. Alcock, President of the Treasury Board, has been discussing that issue, and he has made the assessment that the problem consists of two areas. The first is comprehensive analysis of the department's major outsourcing activities, vulnerabilities, and mitigating strategies. The second is developing a model that would deal with the general practices.

That is being done by Treasury Board. I believe our people testified to it. That is itself being done.

For the second part, I would like to direct a question. If we expect this to work for consumers, when an American corporation—or it could be a European corporation, or it could be a corporation anywhere—decides they have the right to do free trade between Canada and the United States, because we have agreements in place, and a U.S. business hires a U.S. company to phone Canadians over a product, but we don't supply a do not call list, do we have any grounds at all to say we could prosecute? We don't supply a do not call list. Are we then not in a position in which U.S. corporations would have more rights than Canadian corporations? That would be my.... If you don't supply a list, how can they follow a list? Therefore you're opening it up; people move across the border and do the phoning to all houses or residents in Canada, without control.

Mr. Michael Binder: There are a couple of points. First of all, when somebody phones in and asks to be on a do not call list, it is what we call express consent. If you read our privacy law, it means that the consumer who gives the number is now basically saying to use that number so they don't get marketing calls.

Then the administrator, using the best of their ability.... It does not say to protect those numbers—not to give them to anybody, or to protect them in Canada. It says to do whatever you can to protect me from this, so it's quite different from putting your name in some database and having somebody use this database for purposes for which it wasn't originally collected.

To come back, we are very concerned about the use of the Patriot Act, if I may, to do this, but this is not the vehicle to deal with the Americans on the Patriot Act. We have other processes. They are now in place.

The Chair: Next is James.

Mr. James Rajotte: Mr. Chairman, there is perhaps a way to resolve this. I'll just suggest that if it is the will of the committee, let us almost not vote on this amendment today. I think Brian asked that the Privacy Commissioner at least give a statement related to this amendment. I think that's a fair request, but I'm also a little concerned. We're raising some questions, and I'm not certain we're all sure of this information.

Perhaps we could have the researchers, and maybe the department, do a list of questions and answers on such issues as how the list will operate, what the security provisions will be, and how Canadian companies can access the American list. If things like this are on paper, all the members can see them and be sure of them before they vote and make this piece of legislation a law we can be certain of.

I'm not certain of some of the answers. I thought Mr. Binder said you had to be a member to scrum against the American list. I don't know if I misheard that. The information I have is that you don't actually have to be a member to scrum against the list.

Rather than hearing an answer and being foggy as to what the exact details are, I think if we had official questions and answers, we could actually vote on this.

● (1620)

The Chair: Maybe we'll just take that cue and Brian's opening suggestion.

Is there agreement around the table, or consensus? I actually have Bill, who's standing in for Louise today, to see if the Privacy Commissioner will be available Wednesday. We have a business meeting scheduled Wednesday. What we should do is tidy up Bill C-37 on Wednesday and then do business. If she's available, we'll do it Wednesday. I mean, this is important. Could we have an operational outline by Wednesday? Could we have a walk-through of how a consumer calls in, and how that consumer is protected, in the context of the subject we're talking about here right now? Is that possible for Wednesday, Mr. Shaw?

Mr. Larry Shaw: Yes, it is, but we've told you 99% of how it works. There is not much additional information.

The Chair: It wouldn't be hard, then, to put that in a memo.

Mr. Michael Binder: We will.

The Chair: Okay, very good.

Are we all agreed that we will have the Privacy Commissioner in? That would be the responsible thing. If she's not available Wednesday, we're here next Monday, unless you guys know something I don't know.

Brian, you have a final thought on this.

Mr. Brian Masse: If the Privacy Commissioner renders that this is not a risk at all, then I'd be happy to withdraw my motion. We tabled this motion a long time ago, we have been asking questions about the process—

The Chair: If the commissioner says that in a memo—say, tomorrow...?

Mr. Brian Masse: No, I'd like to have her come here.

The Chair: Oh, to say it at the meeting.

An hon. member: It's just delaying.

Mr. Brian Masse: I'm not delaying. I mean, I've asked these questions.... If you go back to the transcripts about a due process... and my amendments have been here forever.

The Chair: Colleagues, colleagues, colleagues, in the interest of moving forward, there's a consensus that we're going to see....

You have a point of order, Denis? What's your point of order?

Hon. Denis Coderre: The point of order is that everybody wants to make it work. I would propose that instead of bringing the Privacy Commissioner regarding what Brian just mentioned, we have a memo. We can have it tomorrow, and if the memo is pretty clear that it's not touched by it, we can have an answer. Instead of having the person come here and having another series of questions, if we have a memo from the Privacy Commissioner telling us there's no problem...Brian said he can withdraw his amendment. Why do we need to bring the Privacy Commissioner?

The Chair: It would be very simple to settle. Let's just have a straw vote, a show of hands. Who would like the Privacy Commissioner to attend at a meeting? We hope it would be as early as Wednesday. Who wants that? Just show me your hand.

Mr. James Rajotte: On the point of order, I assume the response from Brian is that he wants to ask questions.

The Chair: Denis, I think the sense of the room is we have the commissioner in.

Hon. Denis Coderre: Let's have a vote.

The Chair: Okay. That's what I'm saying. I'm calling a straw vote so we can move forward. Who would like the Privacy Commissioner to attend here at the first opportunity, which we hope would be Wednesday? If you want that, tell me.

It's five to four in favour. We will try to have that for Wednesday.

We're going to move now to.... You'll recall that we've had some good discussion on two major subject areas. This is probably the core of the exemptions question. There's the question of the charities and the question of the existing business relationship. We're going to deal with the charities question first.

We've put out five versions of an explanation of the charities exemption or charities question. To summarize them, at one end of the spectrum is the original position on the CRTC, which is that ideally there would be no exemptions in the list whatsoever. If you call in and get registered, it covers everything. When Mr. Binder was here at that first meeting, he said that since the mood of the room, of the committee, was to have—I'm paraphrasing you—an exemption, here's what he proposed. Then you proposed the Income Tax Act version, correct? That's the second version.

So there would be an exemption for charities that qualify under.... I'm sorry. You proposed two lists. Pardon me; I jumped ahead.

The third option was that if we were going to have an exemption for charities, it should be limited to those qualified under section 248 of the Income Tax Act.

Then there was a further expansion of that—by Brian, on behalf of the NDP—that we broaden it to the Alberta provincial definition of charities. He's proposed a definition that is exactly the same as Alberta's. A little broader again was Paul's, on behalf of the Bloc, to include all non-profits.

Let's talk about them all. They're all on the table. I'll try to get a sense of where the.... Maybe we can eliminate some. Let's take half an hour on this, at a minimum, and then have half an hour on the other and see how far we get.

Does anybody want to start on the charities question?

Jerry.

● (1625)

Hon. Jerry Pickard: Coming back to the position, we discussed this relatively thoroughly, I thought, in the last meeting, so I'm not sure we're doing anything but refreshing memories here.

When we consider a do not call list, the basic premise is helping the consumer not get unwanted telephone calls. That really is the goal.

Diluting it too far can end up being a do call list and change the whole meaning of it. If we're really serious, we should look at that whole process of exemptions. I still believe we should continue with no exemptions on the main list. In order to deal with charities—and I think all of us have voiced concerns that charities should have special handling—let us go with the Income Tax Act, section 248, and set up a separate list of those organizations.

The reason section 248 of the Income Tax Act is critical to this process—and it's a process in the second list as well—is that whoever is doing the regulation of that process must have something on which to base their opinions. We all went through how many different names, how many different not-for-profit organizations, and how many different groups would be included. The more we expand it, the less we have control, and the less able the regulators would be to actually enforce the list that's in front of them.

I would come back and suggest that the strongest position to help the consumer is a separate list for charitable organizations under the Income Tax Act—have that as a separate list, as well as the not-for-profit list in general.

The Chair: So Jerry is opting for...let's call it version B. That's the two-list approach.

Are there further comments?

You know what we could do? Who likes the two-list option? In this option, you have to add to the list yourself.

Who likes the exemptions limited to the Income Tax Act, section 248? I think that was in your proposal, James.

We're tied at this point. It's going to come down to Brian and Paul and Serge.

What are your feelings, Paul, Serge, and Brian, on the charities question? We'll get the rubber on the road here this afternoon. I was going to say you like version D, the Alberta definition. Paul, you like the non-profits.

[*Translation*]

Mr. Paul Crête: I'd just like to remind you that in the course of the testimony presented, some witnesses told the committee that if the list was not sufficiently comprehensive, we ran the risk of creating two categories of exempted agencies and that could lead to some court challenges. We heard this from representatives of legal firms and they were very serious.

I'm concerned about the risk of creating two types of lists, that is one list of persons already entitled to tax credits under the Income Tax Act and another list of persons who do their level best to raise money, but will never be eligible for this exempt status.

If the latter find themselves unable to solicit donations over the phone, we'll have effectively pulled the rug out under from under them. Ultimately, it might be fairer — and I'm not saying that this is my preferred option — not to have any exemptions at all rather than one that entitles only some groups to issue tax receipts. Often, an agency spontaneously sets up shop and slowly evolves to the point where it becomes a registered charity and thus enjoys a special status. If we create two categories, then we run the risk of dealing a severe blow to volunteer organizations and groups in our society.

● (1630)

Hon. Denis Coderre: What purpose does it serve to have a list if...

Mr. Paul Crête: Charitable organizations are exempt. It mainly affects the private and commercial sectors.

The Chair: Denis.

Hon. Denis Coderre: I have a problem with this amendment. I understand very well what you're saying, but if we want an organized system and an list that can be effectively administered with relative ease, we could start with agencies registered as charities under 248 of the Income Tax Act. In any event, a review will be conducted.

I've seen too many organizations try and take advantage of the system. Maybe there are some grey areas, but I already suspect that some agencies are trying to organize events and to misappropriate funds. Therefore, we need to come up with a way to protect consumers without creating the situation to which you alluded.

I agree that we mustn't discourage volunteerism. However, where should we begin? If we want to create a national do not call list, if we want to protect consumers and get off on the right foot, we should go with what we know best, namely registered charities within the meaning of the Income Tax Act. There are 80,000 such agencies. Everyone knows everyone in our community and no one is going stop people from organizing a car wash in Saint-Pascal-de-Kamouraska and from making a few telephone calls. The issue here is to protect people from organizations that behave somewhat suspiciously. When an organization places a call on behalf of a foundation, changes only one word in the company's name and the person falls for it, ultimately consumers are not protected.

A consensus is possible if we get off on a solid footing, that is by recognizing the 80,000 agencies eligible under section 248 of the Income Tax Act. Let's have two lists. We can discuss existing business relationships later. I believe this is the approach we must take in the case of charities. In any event, micromanagement is not our objective here. Once a certain amount of time has passed, we can review the legislation and the program itself and take the appropriate action. Otherwise, there is no point in having a national do not call list.

[*English*]

The Chair: Before I go to Brian and Paul, I just want to remind you that the American FCC officials testified before us that their charities were exempted, not because of a proactive decision in their federal law, but because they have no jurisdiction over charities. Presumably, their charities' exemption is an automatic one; they had no control over it, so presumably the exemption includes all charities, including the soccer parents' association calling the community because there's a car wash or something like that.

Brian, then Paul.

Mr. Brian Masse: I look at an organization like the Lions Club and see that the legislation we're introducing in Bill C-21 is going to demand that they be at the level that we're giving an exemption for now for half the charitable organizations. I think we're setting ourselves up for a lawsuit. This is being reviewed again. If the public comes back clamouring that these charitable organizations must stop calling their homes, then we can change it at that point. Since this has started, I've received maybe one or two calls in my office about this bill.

I think it is important that we start to set up a foundation, but at the same time be fair and not set ourselves up for a lawsuit, which can happen, because this committee is actively pursuing Bill C-21 and telling the Lions Clubs in that bill that they have to perform like everybody else under that bill, but when it comes to this one, we're telling them they're different. We're taking away something they can do right now. I think that's wrong.

Once again, we have a window of opportunity for the public to come back to us and say, I don't want the Lions Club calling me any more. I don't hear that in my offices, though, so it's up to us to do this now and then to move forward from here on.

● (1635)

The Chair: Paul, and then I'm going to work from the bottom up and do a straw vote.

Paul.

[*Translation*]

Mr. Paul Crête: I'd like to get back to Denis' example and talk about a situation unique to small municipalities or regions.

An organization like the Fondation de l'hôpital Notre-Dame-de-Fatima de La Pocatière is authorized to issue tax receipts. Every year, the Lions Club organizes a lobster supper for 300 or 400 people. The club cross-references an existing list of names, but also makes a number of telephone calls. However, the Club would not be exempt from being listed on a do not call list.

In my opinion, two systems will develop. The danger of that happening is obvious. Mr. St. Denis, I didn't quite understand what you were saying earlier about the US model and how the list operates in that country. You did explain matters, but I'd appreciate it if you could go over this again, to help us see if there are any possible solutions to or ways around this problem.

[*English*]

The Chair: I'm not sure who is going to back me up on this, but when we had testimony via video conference on the question of why did you exempt charities and how did you do it, they said that it hadn't been a question for them or it hadn't been on their agenda, because their federal government has no jurisdiction over charities, so they ignored the charities. So automatically their charities were all exempted.

[*Translation*]

Mr. Paul Crête: What you're saying is that their law applies more to the commercial sector. Non-profit organizations are not covered by the legislation.

[*English*]

The Chair: It's Jerry and then Denis.

Hon. Jerry Pickard: I've consulted with my colleagues here, and I think we would accept the Conservative amendment to section 248 on charitable organizations. We would go along with that, if that's the fallback position of the committee. I think it would keep things moving in proper order.

The Chair: Denis, did you have a comment?

Hon. Denis Coderre: I wouldn't go as far as what Paul just mentioned, but I think we need to make a start, and if we have a do not call list and you want to be protective of consumers.... I have tons of examples of people who have tried to screw the system and get money. So if we have an organization that's registered—and I'm not talking about the Lions Clubs, etc. I have bought all of the fruitcakes and I'm fed up with fruitcakes now. But we all know that when there's an issue locally, we're all going to be there. So I don't think this is in the spirit of the law.

I gained weight because of them!

The Chair: Paul.

[*Translation*]

Mr. Paul Crête: Mr. Pickard has expressed support for the Conservatives' position, but both options refer to subsection 248(1) of the Income Tax Act. Which option does he in fact favour? CHR-3 or CHR-4?

The Chair: CHR-3.

Mr. Paul Crête: And this is the option favoured by the Conservatives?

The Chair: Yes.

Mr. Paul Crête: And CHR-4 is the option favoured by the government?

[*English*]

The Chair: That's the same wording, James, as was in your original motion.

The position of the Conservatives was for exemption under subsection 248(1) of the Income Tax Act.

If we could work from the bottom, just to be fair to everybody.... This is a straw vote. Who likes the broader definition regarding all the non-profits? I'm expecting to see at least two hands over here—two or three.

Then if we add the Alberta definition of charities, as Brian has proposed, by a straw vote, who likes that?

● (1640)

Mr. Brian Masse: It's all about Alberta.

The Chair: Then I think we're coming down to CHR-3, the section 248 act definition. On a straw vote, by a show of hands, are we in agreement to vote on that then—no, we'll do the business thing, and then we can plug those two things into the platform motion, the motion with the two holes in it, and vote on that all at once. So we have a sense that we're—

Mr. Werner Schmidt: You're so efficient.

Hon. Jerry Pickard: What are you doing?

The Chair: Just trust me. We almost have a consensus—not quite—to include section 248 of the Income Tax Act. Well done, colleagues.

Let's move to the business role.

Hon. Jerry Pickard: We're not going to have a vote on that?

The Chair: No, not now, later. We're still doing the same overall amendment. There are two parts to the same amendment.

Just work with me, Jerry.

We're going to the second exemption category, which is the business relationship. This goes back to my memo that was distributed Friday. There are three permutations, if you want. There's the one that was given to us in the opening meeting by Mr. Binder and the government, which was in the original G-1, to allow the CRTC to do the consultations and come up with a definition of a business relationship that was the result of further stakeholder discussions.

The second version is that the committee would define business relationship, and as was proposed in a couple of the amendments, that would include an 18-month window during which any charity or commercial enterprise could again contact a customer.

And finally there is what I call the Rajotte-Chong proposal. I'll let you speak to that, but I think that one, if I could summarize it...what did you do? Just remind me.

Mr. Werner Schmidt: We added contracts.

The Chair: You added the definition to include valid contracts, which was a condition of paragraph (c) in the third version.

Let's open up the discussion. We're going to start with Denis then. I know you had spoken to the CRTC, which was doing the stakeholder consultations.

Hon. Denis Coderre: We had a good discussion on that issue.

I don't think we should go along with the 18 months, for obvious reasons. When you sign a contract with an insurance company about your personal financial life, if you have a five-year policy, it's an ongoing issue. If you have that 18 months, it means that at 18 months you can be placed on the do not call list and you don't serve.... Not only do you not protect your consumer, you don't serve your consumer well. I'm totally against micromanagement. I would support anything besides that 18 months.

If I have signed a contract with Werner and we agree among ourselves that this is an existing relationship, at the end of the day I can pull out. I can say I'm against that. After the year, I say I'm going to go with another company and that's it. But to put a specific amount of time on our existing relationship, especially when we signed that contract together, I don't see why we should put that in the legislation. I think it's bad for the spirit of the law itself.

The Chair: Jerry.

Hon. Jerry Pickard: I have looked at this in a different light than the information I presented last time. I tried to look at, say, an insurance company that had a long-term agreement with a client. If you're an insurance company and you have a client—it could be life insurance—that really goes on for life. That's an existing client and there is no reason why anybody would say you can't contact your client. You have a contract with that client, a life insurance contract, whatever kind of insurance—it could be for a car, it could be for a house, it could be whatever.

If you stop and think about any other kinds of operations—dentists, optometrists—lots of times I don't see my family doctor for a three-year period, and luckily that's the way a lot of Canadians are. But still, that person is your family doctor and with your family doctor you're working with an organization that you do have a business contact with and a business agreement with.

So most cases where you would look at the 18-month period would be when someone has broken off an agreement with a group. For instance, if you cancelled your life insurance policy, then there would be a time period after which there would be no business agreement and they couldn't contact you again. But that's not the norm, and if we think about the consumer's protection in this particular case, 18 months does make a lot of sense, because for most contracts, for most business arrangements, the ones that are ongoing, they still have that right to contact them under the agreements they have.

To me, in looking at it, I think 18 months is a very good measure by which we can deal with it. We're going to review this thing a year and a half after it's in operation anyway, and if some changes need to be made, they can be done at that point in time.

● (1645)

The Chair: Michael, do you want to explain the—

Mr. James Rajotte: Could I just clarify? Jerry, you're in favour of BR-3?

Hon. Jerry Pickard: I would accept an 18-month....

Mr. James Rajotte: So not BR-2, but BR-3.

Mr. Werner Schmidt: BR-3 is what we're looking at.

The Chair: Explain the difference between BR-2 and BR-3. It's paragraph (c)?

Mr. James Rajotte: BR-2 just has the 18 months, but a lot of concerns were raised with us by people—whether it was from life insurance, optometrists, or whatever—saying it was not clear for a life insurance policy, say, of five years. If the 18 months went by within that five-year period, even though there had been no contact, would they still be able to contact those who are essentially their current customers?

BR-3 attempts to address that concern by saying that if it's within the period of the contract, it would be five years plus the 18 months. So I think that addresses the concerns of almost any group.

I think as well—we may want to get the witnesses to comment on this—if it's my optometrist or my physician, for instance, and I haven't seen him for a while and he phones me after a three-year period, I would then actually have to make the complaint and say, "My family physician called me, my name was on a do not call registry, and I'm making a complaint about him", the likelihood of which I think we all recognize is next to nil. I mean, if our family physician contacts us, or a bank we have a mortgage with, or life insurance, we're not going to complain and say that we're on a do not call registry.

But I think paragraph (c) does ensure that existing business relationships are defined in that broader manner, and I think it gets particularly at Denis' concerns from the last committee meeting.

The Chair: Just a second.

Hon. Jerry Pickard: James, if I may, if you have an existing contact in any way—it could be for life insurance; a life insurance policy is an existing contract. I assume your life insurance people, if there are changes to the program, changes to the policy, or advantages they can give their clients, and you're a client.... I don't see how that has any relevance to a do not call list, because you are an active client. Whether or not you've had a call in the last 18 months isn't the question.

I believe the question enters the scene only when you cancel your agreement. So if you cancel your life insurance policy, there is a different setting. But as long as you maintain that insurance policy or that business relationship, I believe businesses are open to work with their clients, and that's the point.

Mr. James Rajotte: I certainly agree with that, but I think BR-2, our earlier amendment, did not in fact cover those types of relationships, or at the very best it was unclear about them. Amendment BR-3 makes them clearer.

Hon. Jerry Pickard: But if we get too specific it may restrict some of our business.

The Chair: Jerry, I'm going to put you back on the list. Denis wants to be on it too.

I'm going to go to Brian, Paul, Denis, and then to Jerry.

Mr. Brian Masse: Just quickly, Mr. Chair, if there is no support for BR-2, why don't we just drop it out of the equation and have BR-3 and BR-1 and keep it at that?

The Chair: Okay.

Paul.

[*Translation*]

Mr. Paul Crête: I'm curious as to whether a list of "rules, orders or regulations made by the Commission under section 57" already exists, or whether one is going to be drawn up.

We could compare existing provisions with what the Conservatives are proposing. Perhaps you can answer my question. What is now covered under section 57 and has the Commission in fact made rules, orders or regulations of this nature?

● (1650)

Mr. Larry Shaw: No. I was mistaken last week. The CRTC does not have at this time regulations respecting the eighteen-month period. That provision is in place in the U.S. system. Under the current CRTC system, a client's permission is needed in order to be exempt.

[*English*]

The Chair: Paul.

[*Translation*]

Mr. Paul Crête: Given the three-year time frame for implementing the act, the Conservatives' position will, in my opinion, give us time to put three different options to the test. We'll have a clearer picture of the eighteen months, the additional six months and the contract provision. After the legislation has been in effect for 36 months, we will know if these provisions work well or not. As for the proposal to leave responsibility for defining "existing relationship" to the CRTC, since no regulations exists at this time, some will be have to be drafted, otherwise, people will soon be banging on the Commission's door and there will be no exemptions.

Paragraph 41.6(a) of amendment BR-1 reads as follows:

> (a) made to a person with whom the person making the telecommunication, or on whose behalf the telecommunication is made, has en existing relationship, as that expression is defined by rules, orders or regulations made by the Commission under section 57;

Mr. Shaw has just informed us that no such rules, orders or regulations exist at this time. If that's the case, it becomes the general rule, whereas we would like the act to specify, at the very least, a number of things.

If we were to go with the Conservatives' option for the next three years, it would allow us to test three approaches and determine if they are valid, or if an alternative approach should be considered. If we do nothing, in three years, we won't be any further ahead. The suggested approach seems to include the appropriate checks and balances, unlike the other model.

[*English*]

The Chair: I think it comes down to whether you want the first or the third. Either the CRTC does the stakeholder consultations and you amend its definition under section 57, or the committee explains it through the bill. So to me, it's going to be Mr. Binder's proposal or the Rajotte-Chong proposal.

Mr. Binder.

Mr. Michael Binder: Just for clarification, there are two things. The Americans just instructed the regulator to establish a business relationship, then they held public hearings and came up with a business relationship. Just so everybody understands, the moment you put this in legislation, if some industry needs 24 months, not 18 months, you can't do it. You would in fact be constraining what...the industry can actually come in front of a regulator to plead their case. I say that just so everybody understands what is on the table.

[*Translation*]

Mr. Paul Crête: Mr. Binder, what can you tell us about the other option? If we go with the other definition, what becomes of the rules, orders or regulations made under section 57? What will we look to in three years' time to evaluate how well things are going?

Mr. Michael Binder: The CRTC is required to hold public hearings at which time all industries will have an opportunity to present their arguments with a view to defining what constitutes a good business relationship

Mr. Paul Crête: Which means the three-year period could very well be over, or almost over, before a definition has been agreed upon.

Mr. Michael Binder: It could take a fairly long time, perhaps more than three years. It will depend on each industry.

● (1655)

Mr. Paul Crête: No. There is a clause that states the act shall be reviewed in three years. If we agree that the CRTC will draft a definition and ultimately, it takes a year and half to come up with one, we run the risk of seeing three years go by and of extending the act because no changes are recommended. However, you've identified the issue clearly. Do we want a more formal provision in the act, yes or no?

CRTC officials told us that they wanted something included in the act.

Mr. Michael Binder: They were referring to the exemption, something on which they all agree. However, I don't think they all agree on the details, for example, on the 18-month time frame.

Mr. Paul Crête: I see.

[*English*]

The Chair: Denis.

[*Translation*]

Hon. Denis Coderre: That's precisely the dilemma we're facing. The purpose of a bill is not to make regulations that could be made some other way. Regarding the 18-month period...When we compare paragraphs (a) and (c), we see that there is a grey area, because of the reference to "purchase of services". I completely understand James. The Conservatives have worked very hard and have been sensitive to the financial service issue, for instance.

In point of fact, this is not the purpose of a bill. That's micromanagement. I for one prefer to see regulations, and to have an institution be responsible for making them, rather than have a bill that ties our hands and where we have no idea of the problems that could arise. For that reason, I totally disagree with the 18-month and other similar provisions, even if there is an attempt here at some form of accommodation.

One other consideration that we must bear in mind is the current deregulation of the financial services sector. This situation means that when a corporation such as Mouvement Desjardins or some other banking or mutual fund institution sells a business contract, the insurance is not based on a five-year period , after which, it's " that's it, that's all". There are numerous issues to consider. People have diversified financial portfolios. What does that mean? It means, for example, that if I sell you an insurance product and subsequently want to sell you another product on the side, but the 18 months have already elapsed, if I go by what is stated in paragraph (a) or (c), I can't sell you that other product.

There are too many grey areas. An effort was made to accommodate people and this represents a good effort. However, there are too many uncertainties. I don't feel that this properly reflects the spirit of the act. I fundamentally disagree with legislation that leads to micromanagement and delays that could prove embarrassing. I'd rather talk about an existing relationship.

[*English*]

"Existing relationship"—if I have a contract with that individual, is there mutual consent? There's a deal there. If he doesn't want to deal with me any more, that's it or that's all. But to impose 18 months, especially if you're working for a major company where you might leave your job, are you signing a contract with the agent or are you signing a contract with the company? Why the hell don't you permit the company afterwards to provide you with great services anyway? So this is an issue in itself, and a philosophical issue about how we should write a law.

[*Translation*]

I'm totally opposed to including a reference to a time frame of this nature. I'm fine with "[...] any other written contract between the person to whom the telecommunication is made and the person [...]". Why tie the CRTC's hands with an 18-month time frame, when the Commission has work to do, and is in fact attending to it.

I have a problem with the idea of imposing any kind of time frame. I agree with Paul that the legislation should be reviewed after three years, at which time changes can be made, if necessary. When legislation is amended and time constraints resulting in micromanagement are imposed, I don't think the public interest is served in the process.

[*English*]

The Chair: Merci, Denis.

I have Paul, and then James.

[*Translation*]

Mr. Paul Crête: It boils down to the question of why we brought in legislation in the first place, because little, if anything, will remain of the original content. The only provision clarified will be the do not call list. As for everything else, if, over the course of the next two years, a challenge is launched before the CRTC makes any rules and regulations, what happens then? Fourteen months down the road, how will a legal challenge be handled if the CRTC has yet to come up with a definition? What definition will then be used?

● (1700)

[*English*]

The Chair: Just a second, Denis, as we're going to go to James. Do you want back on the list, Denis?

[*Translation*]

Hon. Denis Coderre: No, I want to answer in a timely fashion.

The aim of this bill was to protect consumers from abuse, that is from people claiming to represent a charitable organization of some kind. That's the first aim.

Secondly, the legislation is designed to protect consumers against cold calls and aggressive telemarketers. As a consumer, I have no desire to be disturbed at 6 p.m. However, it's quite another matter when it comes to calls from my insurance agent with whom I have a relationship and a contractual arrangement.

The bill is relevant because it protects consumers. However, the amendment adds that if two parties have entered into a contract...

[*English*]

If I sign a contract with Brad, it is an existing relationship. It's something else entirely; it's an exemption.

[*Translation*]

The bill is critically important because in this age of telecommunications, the public interest and consumers must be protected. However, I have a problem with any attempt to impose time frames.

Mr. Paul Crête: I think you're contradicting yourself just a little, Denis.

Hon. Denis Coderre: Not at all.

Mr. Paul Crête: If the notion of a contract is included in the definition, then it adds to the overall definition. However, if the only stipulation is that the CRTC must do this under section 57, then there is no definition. That means we will have produced a bill that does not afford consumers any additional protection.

Hon. Denis Coderre: I'm not interested in getting into a debate, but perhaps we can consider a subamendment to the Conservatives' amendment, one that does not include a reference to 18 months.

[*English*]

James is totally right that we have to define the existing relationship; this is a key issue in protecting the consumer.

But to say that it should be 18 months or to put a timeframe on it,

[*Translation*]

well, that really gets under my skin.

[*English*]

The Chair: We're going to go to James now.

Mr. James Rajotte: Mr. Chairman, Paul made a very important point, that if we don't define the existing business relationship, the CRTC will have to. We're going to force all of the groups who came before this committee and lobbied this committee to go through another process again.

There seems to be an argument here that Parliament should not be setting these parameters, that we should leave them to a regulatory agency, because this will amount to less micromanagement. I and I think hundreds of companies and industries across this country would argue that Parliament should be clearer in its own pieces of legislation and leave less management to certain regulatory agencies, because frankly, that's where a lot of the overregulation occurs, when Parliament does not set some clear direction and parameters. So I'm encouraging this committee to do exactly that.

And I would argue again, this is a pretty broad relationship of existing business relationships.

Further to that, I would make the same point again, that a lot of these groups who are very concerned, like life insurance groups.... What has to happen is if I get contacted by someone who sold me life insurance four or five years ago, I have to take the step of making the complaint, saying that even though those guys sold the insurance to me six years ago, I am concerned that they called me at home at 7 o'clock at night.

I think we should all be very practical and pragmatic and realistic and realize, whether it's an optometrist or a family doctor we went to in the past, who phones us to check up on us or to provide a service, that the likelihood of it, first of all, being outside this broad definition and then the likelihood of our complaining about it are almost nil. So let's not legislate here according to impossible statistics.

So I would encourage the committee to adopt amendment BR-3.

The Chair: Okay. I'm going to just do a quick straw vote here. Basically, it's the two versions where the CRTC would do the stakeholder consultations and come up with the business relationship, or the third, amendment BR-3, the Rajotte-Chong proposal. So I'll take a straw vote here of those who like amendment BR-1 and those who like amendment BR-3.

Amendment BR-3 has more supporters.

We're trying to get ahold of the Privacy Commissioner to figure out how we're going to do this. We may have a teleconference, a televideo conference, with her on Wednesday.

Do you have a point of order, Paul?

● (1705)

[*Translation*]

Mr. Paul Crête: Can we not settle the matter and vote on the question of non-profit organizations? We haven't yet done that. Two decisions remain: one involving the definition and the other, involving non-profit organizations. Moreover, we're waiting to hear from the Privacy Commissioner on the matter.

[*English*]

The Chair: Yes, that's correct.

[*Translation*]

Mr. Paul Crête: Can we discuss the two questions that we can vote on right away? If the Privacy Commissioner does decide to share her views with us, that would be the only issue left for us to settle.

[*English*]

The Chair: Here's what I've proposed to do, but I'm in your hands. We have the Patriot Act issue on Wednesday, which we'll try to do just before our business meeting, and the other thing is that we have this amendment with two spots, a spot for the charities and a spot for the business relationship. Well, we have a straw vote to say a certain definition of charities goes here, and we've agreed on amendment BR-3 for the business relationship.

The researchers are going to bring the revised amendment, with those slotted in on Wednesday for a vote then. Okay? We did a straw vote. There's no point in trying to slot these here and maybe make a mistake with the numbering right now.

I have a desperate—

Hon. Jerry Pickard: There's a small administrative change as well, Mr. Chair. I think we've handled most of the issues, but if you go back to proposed paragraph 41.6(1)(b) that's in amendment CH-E—

The Chair: That, by the way, is the amendment that would carry the charities and business relationship. That's where we're going to slot in these two pieces. Okay?

Hon. Jerry Pickard: Okay. I'm going beyond that now. I think there's agreement there.

We have wording in proposed paragraph 41.6(1)(b) at the very bottom of that page, “made by a representative of a political party”. It would be better to say “made by or on behalf of a political party”. Members of Parliament would be working on behalf of a political party when they're running or doing whatever, so they may be doing something. And that wording, “or on behalf of”, fits paragraphs 41.6 (1)(c) and 41.6(1)(d) also. We've got three parts that I think need to be broadened. Then the wording would be “made by a representative of a nomination contestant, leadership contestant or candidate, or on behalf of”. In each case I think we need to add that wording to be correct.

The Chair: Is there any disagreement with this? Okay. So in three places in amendment CH-E, proposed paragraphs 41.6(1)(b), (c), and (d), instead of “made by a representative of”, the wording would be “made by or on behalf of”.

What does that add or change, Jerry?

Hon. Jerry Pickard: Individuals who are working are working on behalf of...you can't say that you represent the Conservative Party of Canada; you are working on behalf of it. If I am running a campaign and the person who's working for me makes representation, he's doing it on my behalf. This covers organizations or people who are doing it on behalf of, and it could come into a representative for any of those organizations, groups, who are putting information forward.

The Chair: Paul, do you have a comment on this?

[*Translation*]

Mr. Paul Crête: Under Quebec law, written authorization is needed for solicitation purposes. The federal legislation is not quite as specific. We're now seeing a new phenomenon emerge where riding associations are now permitted to do fund raising. As I understand it, this activity would be covered by this particular piece of legislation.

[*English*]

The Chair: Denis, is it on the wording, this proposal?

Hon. Denis Coderre: No, it's another thing.

● (1710)

The Chair: Okay, let's just settle this. Is there concern that the present wording is dysfunctional?

Hon. Jerry Pickard: It omits certain presentations. This is more inclusive, as I understand the drafters to have put the amendment.

The Chair: It is of an administrative nature, but it's significant enough. Are you, colleagues, okay with the wording “made by” or “on behalf of” instead of “by a representative of”?

Yes, okay. So we'll change the wording for Wednesday.

Denis, you wanted to speak on something else.

[*Translation*]

Hon. Denis Coderre: I'm simply trying to get a good grasp of this issue, Mr. Chairman. Possibly I've overlooked something. In my view, we've had a important and interesting debate on charities. As I understand it, in order to proceed with the final vote, you're going to combine any final rulings on business relationships and charities.

I'm trying to understand why we cannot vote immediately on what we feel is the right option as far as charities are concerned.

[*English*]

The Chair: Denis, all we've done is this. We know we're meeting Wednesday anyway, if we can set this meeting up. We have one more session. This just makes it so that all members will have the final version of amendment CH-E with the two straw votes we had on the charities and the business relationship. Members will have this as a final package without having to worry about the numbering. That's all—unless you all change your minds between now and Wednesday, and maybe you will.

So on Wednesday then, maybe it will take an hour to deal with Brian's very interesting proposal and then an hour of future business. We want to agree on what we're going to do with our international strategy study over the summertime to prepare for the fall and for the days ahead, whether we want to have a few sessions on Bill C-21 or Bill C-19 and the like.

So seeing no other hands waving urgently, I'm going to adjourn the meeting for today.

Thank you very much, colleagues.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
http://www.parl.gc.ca
