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—
Chair

Mr. Brian Pallister

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• (1535)

[English]

The Vice-Chair (Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.)): Order. I'd like to start with a little bit of housekeeping.

A notice of motion was presented by Mr. McCallum. The clerk tells me that we are going to address the report on income trusts on Thursday, so I don't want to get into a debate. If we decide to get into debate, we'll call a special hearing, but I don't want to interrupt the witnesses.

We're here pursuant to the order of reference of Thursday, December 7, 2006, Bill C-37, an act to amend the law governing financial institutions and to provide for related and consequential matters.

[Translation]

I would like to thank the witnesses for coming.

We will give you up to five minutes for your presentation. If possible, try to stay within that time so that members can ask you questions.

We will begin with Mr. Zinatelli from the Canadian Life and Health Insurance Association Inc.

[English]

Mr. Frank Zinatelli (Vice-President and Associate General Counsel, Canadian Life and Health Insurance Association Inc.): Thank you, Mr. Chairman.

As you indicated, my name is Frank Zinatelli. I'm vice-president and associate general counsel of the Canadian Life and Health Insurance Association. I would like to thank the committee very much for this opportunity to contribute to your review of Bill C-37, an act to amend the law governing financial institutions and to provide for related and consequential matters.

We welcome this opportunity to appear before the committee as you seek to develop your report to Parliament on this important bill. The industry is extremely supportive of this bill and urges that it be passed in a timely manner.

With your permission, Chairman, I would like to make some very short introductory comments.

By way of background, the Canadian Life and Health Insurance Association represents life and health insurance companies accounting for 99% of the life and health insurance in force across Canada. The Canadian life and health insurance industry provides products

that include life insurance, disability insurance, supplementary health insurance, annuities, RRSPs, and pensions. The industry protects about 24 million Canadians and some 20 million people internationally. It makes benefit payments to Canadians of \$51 billion a year, has almost \$371 billion invested in Canada's economy, and provides employment to over 119,000 Canadians.

Among the various statutes amended by Bill C-37 is the Insurance Companies Act, which is the governing statute for the regulation of life and health insurers at the federal level. Of course, life and health insurers are also subject to the rules and regulations that are set out in provincial insurance acts.

Following up on the June 2006 government white paper on the 2006 financial institutions legislation review, Bill C-37 represents a welcome fine-tuning of the financial institutions legislation and makes changes in three important areas.

With respect to enhancing the interests of consumers, for example, the bill would amend the Insurance Companies Act to require that complaint handling procedures be made publicly available, for mailing and online, for all consumers to access at any time.

With respect to increasing legislative and regulatory efficiency and to streamline the approval regime, for example, the bill would amend the Insurance Companies Act to shift the approval for some transactions from the minister to the superintendent. As another example, it would allow for the granting of more than one approval in a single instrument.

The bill would also reset the sunset date for financial institutions, which is now April 24, 2007, to five years after the coming into force of the Bill C-37 amendments. In this regard, prompt passage of the bill will ensure the legislative stability and continuity that are so important in the financial services sector.

In conclusion, Mr. Chairman, the industry strongly supports the provisions of Bill C-37 that are relevant to the life and health insurance industry and is willing to assist in whatever way it can in ensuring the bill's timely passage.

The industry greatly appreciates this opportunity to participate in the committee's review of Bill C-37. I would be pleased to answer any questions you may have.

Thank you.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Zinatelli.

From the Public Interest Advocacy Centre, Mr. Lawford.

Mr. John Lawford (Counsel, Public Interest Advocacy Centre): Thank you.

The Canadian Consumer Initiative is a coalition of six major consumer organizations, including the Alberta Council on Aging, Automobile Protection Association, Consumers Council of Canada, Option consommateurs, Public Interest Advocacy Centre, which I represent, and the Union des consommateurs. CCI provides advice and assistance to the federal government to help safeguard consumer interests.

CCI has come before you today to ask this committee to consider embedding a framework for electronic payments into the Bank Act. Although this suggestion is not presently in the form of an amendment, we hope the committee will consider amendments at this late stage in order to benefit banking customers, which includes most Canadians.

Electronic payments include such systems as debit cards, both at ATMs and at point of sale; pre-authorized withdrawals and deposits into consumer bank or credit card accounts; credit card purchases, both at point of sale and without presenting the actual card, such as on the Internet; and new payment mechanisms through the Internet, in particular PayPal, electronic transfers of money through Interac or other online services such as online investing, e-mail money transfers, and soon mobile commerce through cellphones.

The Canadian banking system relies to a remarkable extent upon self-regulatory mechanisms for electronic payments. For example, the CPA has rules regarding pre-authorized debits. However, the code's provisions are not well known. For example, a financial institute can cancel a false debit pre-authorization through CPA regulation H-1. But because consumers are often unaware of the provision, they may believe they are responsible for the transaction and pay for the mistake.

In addition, consumers are only responsible for \$50 maximum liability in unauthorized credit card transactions. But this rule is usually a provincial requirement. It is supplemented by no liability policies of major credit card companies. This policy is not contractual, and it could be changed at any time.

Regarding debit cards, Canadians made nearly three-quarters of a billion ATM transactions last year, but all of them were under the CPA's Canadian code of practice for consumer debit card services, a voluntary code. Although consumers are theoretically exempt from liabilities associated with unauthorized debit transactions, they may become liable for debit fraud through an innocuous admission to their bank that their spouse at one time knew their PIN number.

The CCI studied electronic payments in early 2006. We produced a report, which has been provided to the committee. That report concluded that the present hodgepodge of regulation and voluntary codes is inadequate and that Parliament should instead consider legislating in a holistic manner. That is what we are urging the committee to try as it considers Bill C-37.

The Canadian Consumer Initiative believes the following principles would provide a more predictable and effective electronic payment system in Canada, one that's consumer friendly and economically efficient.

The first is universality; it should cover the broadest range of payment technologies. Second, neutrality: all technologies should be regulated by similar rules, if possible. Third, security: payment technologies should be secure. Fourth, accountability: the risk should be supported by the party who creates it. Fifth, transparency: rules, roles, and prices should be transparent to all parties. Sixth, liberty: payers should be allowed to choose the payment technology they prefer. And finally, enforceability: parties should be able to ensure that the framework is effectively enforced.

Changes to the Bank Act to embed this electronic payments framework could be considered at this time. CCI's analysis reveals that this might be achieved by regulation made pursuant to section 410—specifically paragraph 410(1)(c)—of the Bank Act, which gives banks, with ministerial approval, the power of collecting, manipulating, and transmitting information that is primarily financial or economic in nature, as well as designing and implementing information systems to do so.

Subsection 410(3) gives the Governor in Council the power to make regulations about financial information. Therefore, the Governor in Council may have power to regulate the mechanics of electronic payments under this section.

Any information disclosure or other necessary requirements of the framework could be authorized pursuant to either sections 459.4, which is consumer information regulation authority, or section 978, which is general regulation power under the Bank Act.

● (1540)

Although we have not had time to draft possible regulation wording for the committee, we highly recommend the U.S. Electronic Fund Transfer Act. It has since 1980 been in place in the United States, and with appropriate modifications could serve as a basis for drafting a coherent Canadian electronic payments regime inside the Bank Act.

Thank you. I'd be happy to take questions at the end.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Lawford.

I would like to ask a quick question. Does your organization, the Public Interest Advocacy Centre, represent individuals or the consumer?

Mr. John Lawford: The actual Public Interest Advocacy Centre acts as a law firm for often other consumer groups, such as the Consumers' Association of Canada and the National Anti-Poverty Organization. The other members of the coalition are member-supported. So the other five members are member-supported.

The Vice-Chair (Mr. Massimo Pacetti): Okay. And that's what you were referring to in your presentation when you said the Canadian Consumer Initiative represents six major consumer organizations, is that it?

Mr. John Lawford: It's a coalition of all of these other groups, which we've joined together in the last three years, yes.

The Vice-Chair (Mr. Massimo Pacetti): Thank you.

We're missing the people from Genworth, so we'll go to Mr. Phillips from the Credit Union Central of Canada.

• (1545)

Mr. David Phillips (President and Chief Executive Officer, Credit Union Central of Canada): Good morning, Mr. Chair and committee members. I want to thank you for this opportunity to come before the committee today to provide some comments on Bill C-37. My name is David Phillips and I'm president and the CEO of Credit Union Central of Canada.

Canadian Central is a federally regulated financial institution that operates as a national trade association for the provincial credit union centrals in Canada, and through them, for 500 affiliated credit unions across this country. Our credit unions employ more than 24,000 Canadians, serving our members who number over 4.9 million Canadians. At the end of the third quarter of 2006, our credit unions held more than \$92 billion in assets.

Credit unions are independent, community-based financial institutions that operate on cooperative and democratic principles. As such, the credit union system is decentralized and diverse in terms of the size and communities they serve. The credit union system does not operate like a bank, and credit unions are not branches subject to centralized direction. Rather, they are locally autonomous institutions that are accountable to their members.

This local focus enables credit unions to respond quickly and effectively to community needs. Credit unions are provincially regulated and from a constitutional standpoint fall under provincial jurisdiction. The federal government regulates two entities in the credit union system under the Cooperative Credit Associations Act, and amendments to that act are part of Bill C-37. The two federally regulated credit union entities are my organization, Canadian Central, as well as Concentra Financial Services Association, which was formerly Co-op Trust based in Saskatoon.

In addition, the federal government regulates several provincial credit union centrals that have chosen to be governed under part 16 of the Cooperative Credit Associations Act.

With this in mind, Canadian Central would like to clearly state its general support for Bill C-37, in particular the proposed amendments to the Cooperative Credit Associations Act contained in the bill. These amendments will make the corporation, under the act, more of an option for credit union organizations interested in pursuing the possibility of a federal corporate charter. There are nevertheless some elements of the act that could be improved and that are not addressed in the bill.

On these points, we look forward to working with the government on a going-forward basis.

I will offer some examples of positive changes to the Cooperative Credit Associations Act that we support in the bill.

The bill proposes to amend the act and make it easier to incorporate a retail association under the act by reducing the number

of required incorporators from the current number of ten credit unions to two credit unions, from more than one provincial jurisdiction. The number of ten in the existing act was a nearly impossible threshold for credit unions to meet, as evidenced by the fact that credit unions have not sought to establish organizations under the Cooperative Credit Associations Act.

Secondly, the bill contains provisions that make it possible for corporate entities to convert to a retail association under the act. For example, the bill contains an amendment to the Canada Business Corporations Act that permits a CBCA company to convert to a company under the Cooperative Credit Associations Act and to continue under that act.

Thirdly, the bill will permit a retail association to operate on a level playing field with wholesale banks, where the association limits its deposits to deposits in excess of \$150,000. In these circumstances the wholesale financial institutions need not be a member of CDIC. This option may be of interest to second-tier organizations in the credit union system, such as provincial centrals that might be considering a move to a federal corporate charter.

Mr. Chairman, I will confine my remarks at this time to these few points.

In closing, I would like to thank the committee for this opportunity to present our views on Bill C-37. I would be happy to answer any questions the committee may have.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Phillips. Very good, that was under five minutes.

From Genworth Financial Canada, Mr. Macdonell, you have five minutes. Go ahead, please.

[*Translation*]

Mr. Winsor Macdonell (Senior Vice-President and General Counsel, Genworth Financial Canada): Good afternoon. My name is Winsor Macdonell. I am the Senior Vice-President and General Counsel for Genworth Financial Canada.

[*English*]

Our president, Peter Vukanovich, could not be here today and sends his regrets.

I would like to thank the committee for allowing me to participate in the hearings on Bill C-37. I apologize for my late arrival.

Genworth is Canada's home ownership company. We are the largest private sector provider of mortgage default insurance in Canada. Since 1995 we have helped over 700,000 middle-income Canadians achieve the dream of home ownership.

As you are probably aware, mortgage default insurance protects lenders against losses caused by a homebuyer's default on a mortgage, particularly low down-payment mortgages. It should not be confused with creditor life insurance, which has been the topic of discussion recently.

The benefits of mortgage default insurance are clear. It is the fastest and least expensive way for Canadians to get a home and build wealth sooner. Broadly, mortgage insurance increases the efficiency of the entire mortgage industry and contributes to the safety and soundness of the financial sector. Because of these benefits, mortgages with low down payments account for about half of all mortgages originated in Canada, and are a major reason Canada has one of the highest home ownership rates in the world.

Genworth supports the proposal in Bill C-37 to raise from 75% to 80% the loan-to-value threshold above which mortgage insurance is required by law. The 80% threshold is consistent with the threshold used in other major lending countries, such as the United States and Australia.

I would like to take this opportunity to thank the government, and particularly the Department of Finance, for being responsive to the issues raised during the consultation exercise leading up to the legislation. For us, while raising the minimum to 80% is an important change, even more importantly, the review that was conducted highlighted the value our mandatory system brings to Canadian consumers and lenders.

Mandatory mortgage insurance works in Canada because it allows mortgage insurance companies to spread the risk of homebuyer default across a large pool of loans, including varying borrower profiles, different geographic regions, and various lenders. This pooling effect results in fairness and choice for consumers, who pay the same premium regardless of where they live. It is clear that a weakening of the mandatory requirement would result in consumers having to pay considerably more by way of higher interest rates for low down-payment loans.

Our system is working for Canadians. For the average family, real estate assets currently account for about 35% of their overall wealth, up from 29% just four years ago. At the same time, Canada's mortgage insurers collectively reduced premiums twice since 2003, effectively keeping \$700 million in the hands of homebuyers.

Mortgage insurance also helps Canadian homebuyers in another way. Genworth is particularly proud when it can help homebuyers stay in their homes when they experience periods of economic distress and default on their mortgages due to temporary job loss or illness.

Beyond individual consumers, mandatory mortgage insurance also benefits the entire mortgage industry. The current system enables vigorous competition between national and regional lenders, like credit unions, and encourages product innovation to help growing segments of the population—such as new Canadians, self-employed people, and renters—to purchase homes. It also helps maintain the availability of mortgage credit at affordable interest rates during good and bad economic cycles, because lenders transfer the risk to well-capitalized, specialized insurance companies.

In closing, we support the change in Bill C-37 to raise from 75% to 80% the loan-to-value threshold above which mortgage insurance is required.

Thank you for your time.

•(1550)

[*Translation*]

I will be pleased to answer your questions.

Thank you very much.

[*English*]

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Macdonell.

From the Canadian Community Reinvestment Coalition, we have Mr. Conacher.

Mr. Duff Conacher (Chairperson, Canadian Community Reinvestment Coalition): Thank you very much to the committee for this opportunity to present on Bill C-37.

The Canadian Community Reinvestment Coalition, which I chair, is a coalition of a hundred anti-poverty, community economic development, consumer, labour, and citizen groups that represent, in total membership, more than 3 million Canadians. As a coalition, it has been advocating increased bank accountability and consumer protection for ten years now.

The coalition is concerned about key gaps in Bill C-37 that have been continued in federal financial institution laws for many years. Citizen groups and consumer groups have been pointing to these gaps for more than a decade, but the gaps have still not been closed. It's a serious situation, because according to 90% of Canadians, access to basic banking service is an essential service—as essential as heat, hydro, or other home services that essentially allow people to live in society.

At the same time, the market share controlled by the big banks in Canada in most main service categories in most parts of the country is higher than in most industrialized countries. As one former head of the Federal Trade Commission in the U.S. believes, the record profits of the banks are proof enough of excess market share controlled by too few players in the market.

At the same time, the watchdog agencies watching financial institutions in terms of accountability and consumer protection lack either independence, resources, or a strong enforcement attitude and record. As a result, financial consumers are essentially on their own and up against very powerful, well-resourced financial institutions when shopping for, dealing with, or complaining about financial institution services.

While the past twenty years of response from the federal government have largely seen inaction, there was somewhat of a breakthrough with Bill C-8 in 2001. However, the measures in Bill C-8 all contain key loopholes that undermine the effectiveness of the measures. As a result, in 2007, the 20 million Canadian financial consumers, especially of banking services, lack key protections. Equally, Canadian banks lack key accountability requirements that have been in place in the U.S. and other countries for ten to twenty years.

The first area—of ten—about which the Canadian Community Reinvestment Coalition is concerned is that of the public accountability statements that now have to be produced by federally regulated financial institutions annually. These public accountability statements pale in comparison to the accountability statements that are required—now for over twenty years—to be produced by banks and other institutions in the U.S.

The big problem is that, unlike in the U.S., the statements do not require the banks to disclose detailed data on their service, lending, and investment records—in particular, demand for lending and investment and the response by each bank, broken down on a neighbourhood basis and by characteristics of borrowers. As a result, it's impossible to tell what the lending, service, and investment record is of any bank in Canada.

At the same time, we are allowing the banks to grow, take over lots of institutions, and possibly merge in the future. With each takeover, as the banks get larger, we're not able to measure whether their service gets better or worse as they get bigger.

In the U.S., the essential rule is that if you're a bank with a bad record, you're not allowed to get bigger. It's just common sense. Why would you want a bank that has a bad service, lending, or investment record to get bigger? Then they're just going to serve more people poorly or continue to increase the discrimination in lending or other unfair lending practices.

As part of the accountability statements being strengthened so that they become more detailed, we also propose that the government would regularly review these statements and grade them, as is done in the U.S., and that growing as a financial institution would be conditional on having a good service, lending, and investment record. This is what has been done in the U.S. for more than twenty years.

A second accountability measure that we propose to be put in place is that government should not contract to financial institutions that have poor service, lending, or investment records. A mandatory condition for bidding on all federal government contracts should be that the institution can show it has had a good record every year for the previous ten years.

• (1555)

Right now the federal government hands out tens of millions of dollars of business to federal financial institutions and requests nothing in return. This is a leverage point, an incentive that can be used very effectively, as it has been used in other areas, to ensure that the banks have a good record and serve every Canadian fairly and well.

I'll turn now to a specific provision in Bill C-37, which is a loophole that was left by Bill C-8, and that is the policies that were required by the banks in terms of holds on cheques. Bill C-8 required only that the banks have a policy. The policy that they've put in place is that you get access to the money you deposit by cheque ten days after you deposit it.

For people with low incomes, that means they'll never open a bank account because they can't wait for their money for ten days. Bill C-37 reduces this cheque-hold period to only four to seven days, but 98% of cheques clear overnight. Our proposal is that this measure be amended so that depositors will have a right to access funds from a deposited cheque the day after the cheque is deposited.

To go through some of the other measures quickly, the Financial Consumer Agency of Canada is not allowed to name an institution that violates the law unless the institution is prosecuted by the agency. The agency has prosecuted only two institutions in the past five years. All of the rest that have violated the law remain unnamed, and as a result, Canadians have no idea which institutions have a good record or not. The agency needs to be required to penalize and name violators in every case that they find a violation.

As well, the Financial Services Ombudsman needs to be made much more independent and have binding powers. The federal government should not have let the industry set up its own ombudsman, but should have, as Bill C-8 set out, set up the ombudsman itself as a government-run body that would ensure independence and fairness in the operations, and given the body the power to order financial institutions to remedy unfair treatment.

• (1600)

The Vice-Chair (Mr. Massimo Pacetti): Mr. Conacher, I have to cut you off there. You're way over time.

Mr. Duff Conacher: If I could, I'll just make one more point.

The Vice-Chair (Mr. Massimo Pacetti): Quickly.

Mr. Duff Conacher: Overall, in the long term, we have a completely unbalanced marketplace. The way to balance it, at no cost, is for the federal government to simply require institutions to enclose a one-page envelope—like this—when they mail out their bank statements or credit card bills or insurance policy statements.

This one-page envelope, with postage paid, would invite financial consumers across the country to join a watchdog agency that would watch over the banks. This could be created at no cost to the banks, insurance companies, or the government, and would give the 20 million consumers across the country a chance to band together very easily into a nationwide lobby that would counter the power of the financial institutions.

The Vice-Chair (Mr. Massimo Pacetti): Thank you.

You'll have an opportunity to answer questions. I just want to allow all the members to be able to ask questions.

We're going to start with the first round of seven minutes, and then we should have time for five-minute rounds.

[Translation]

We will begin with Mr. McKay.

[English]

Hon. John McKay (Scarborough—Guildwood, Lib.): *Merci, monsieur le président.*

Mr. Phillips, do credit unions sell insurance in their branches?

Mr. David Phillips: It really depends on the place that credit union is situated. In some provinces, and I'm thinking particularly of B.C., there are powers conferred by the provincial government under legislation to sell insurance.

Hon. John McKay: So it just depends on the legislative framework.

Mr. David Phillips: It does. Again, we find considerable variation in the regulation of credit unions across the country because of provincial regulation, so that each province tends to regulate a little bit differently. Of course, in Quebec—

Hon. John McKay: In British Columbia they sell insurance, and in Quebec they sell insurance. Are there other provinces where they sell insurance?

Mr. David Phillips: Those are the two that come to mind at this point.

Hon. John McKay: Okay.

Have insurance products actually increased or decreased in terms of sales since credit unions have been selling insurance?

Mr. David Phillips: I don't have statistics on that. What I understand is that this is seen as a good line of business for credit unions. Where they have the authority to get into it, they do so, and see this as a successful strategic direction for them.

Hon. John McKay: There are probably a couple of other financial institutions that see it the same way. Thank you.

Mr. Macdonell, what's your default rate for mortgages that are insured between 75% and 80% of appraised value?

Mr. Winsor Macdonell: Mr. McKay, I do not know the exact number. It has been quite low with the economy being strong for the past few years, so the default rate has not been high. That area, though, historically does represent a level of risk in Canada. When you go back over the past 30 years, there have probably been five declines in prices, significant declines probably in the 20% to 30% range. Part of the mortgage insurance coverage is covering that long-term macro risk that happens.

Hon. John McKay: It would make sense that this would be your lowest segment of risk, I would think, and your highest profitability area.

Mr. Winsor Macdonell: No, it's not, because the premium is much lower in that segment. The premium obviously goes up with the risk associated with the loan-to-value segment. As you put less money down, the premium goes up.

Hon. John McKay: Do you know how it compares between... when you go from, say, the segments 75% to 80% versus 80% to 85%? Do you know the differences in profile of risk and reward?

Mr. Winsor Macdonell: I don't know the specific numbers. To generally characterize it, the 75% to 80% is a much smaller area of business for us in terms of what we underwrite coming through the door. Most people who do low down-payment mortgages generally put 5% or 10% down.

Hon. John McKay: I'm assuming Genworth and others gave advice to the government at the time with respect to whether the threshold would be raised. I'm a little surprised by your answer that you don't know what the risk and reward profile is, either between 75% and 80% or 80% and 85%. You seem to be happy with 80%, but could you be equally happy with 85%?

For consumers, this is just money drained directly out of their pockets. The minister argues that it's a \$1,600 savings. Well, if it's a \$1,600 savings, why couldn't it be a \$2,000 savings, or a \$2,500 savings?

So I wonder whether there is any information, and if you could you share it with the committee.

• (1605)

Mr. Winsor Macdonell: One of the important things to think about in regard to the different brackets is that the mandatory nature of mortgage insurance is not just a cost put on consumers; it is actually a way of allowing low down-payment mortgages to obtain the lowest interest rate possible from the lender, because the default risk is transferred from the lender to the mortgage insurance company. As a result, in the 75% to 80% bracket, or 80% to 85%, a lender would have to make a risk evaluation of their risk associated with that mortgage to side with it.

Overall we think the current system works very well, cross-populating, and it brings Canada into the international realm in which 80% has been the threshold.

Hon. John McKay: The point is, though, that the 75% to 80% segment is low risk and high reward, while the 80% to 85% segment is slightly higher risk and possibly even higher reward, but we're without numbers to be able to compare.

The third question is to Mr. Lawford.

You encouraged the committee to adopt a U.S. electronic model with respect to the exchanges. I was surprised to hear that currently it's just a set of codes and voluntary agreements and things of that nature. When the minister was here, I raised a question with him about a completely electronic bank transaction in which money is removed from the account of the consumer but not applied to the account of the creditor simultaneously. It's almost the worst of all possible worlds: the consumer has lost the use of the money, but credit has not been added to the account they wanted it to go to. I take it that's the kind of thing you're driving at.

Mr. John Lawford: That is one of the things we're driving at. Actually a separate piece of U.S. legislation did address that very problem some years ago in the United States. I can get you the name of it; I just forget it offhand. It reduced the time, because it recognized that the payment system, now that it has been made electronic, works more quickly than in the horse-and-buggy days. The ten-day rule is much more that vintage.

Hon. John McKay: I suggested that in fact we're updating to the 20th century when we should be updating to the 21st century—

Mr. John Lawford: Absolutely.

Hon. John McKay: —and I think the point you made is quite a good substantive point.

My final question is to Mr. Zinatelli. We're going to hear this afternoon from the Mutual Life folks. Their argument is that they support the amendment to the Insurance Companies Act to recognize the audit work done by an actuary who is not the actuary of the company.

Do you take the same position as the Mutual folks?

Mr. Frank Zinatelli: There's an amendment in the legislation that allows the auditor to refer to audit work done by an actuary other than the actuary of the company. That's what I imagine they're alluding to. We of course indicated this amendment to our member companies, and they have not expressed a problem with that particular provision.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. McKay.

Next is Monsieur Paquette.

[*Translation*]

Mr. Pierre Paquette (Joliette, BQ): Thank you, Mr. Chairman.

Thank you for your presentations.

I would like to begin with Mr. Lawford. I read your brief with interest. Regarding the liability of consumers, we know that major credit cards have a limit of \$50.

When Mr. Dupont appeared, he raised this issue, and he told us that it was under provincial jurisdiction.

In terms of the consultation on the Bank Act, what can we do to ensure, as you are calling for, that consumer liability be limited to \$50 at most, or even \$0? I completely agree with your arguments.

Mr. John Lawford: I agree that this raises a jurisdictional problem.

We hope to have good arguments. Take the example of our approach to electronic commerce. This involves federal jurisdiction over commerce. Yes, I know it is difficult. The provinces have already been moving ahead on this. However, I have not looked into the issue closely.

•(1610)

Mr. Pierre Paquette: That is why I raise the issue. There will be consultations on electronic payments, and that question will have to be explored.

The departmental officials said that, given that this was under provincial jurisdiction, since provinces are responsible for consumer

issues, it is not possible to have a regulatory code. There can only be voluntary codes because those around the table have to follow regulations that come partly from the federal government and partly from the provincial level.

So this seems to me to be a valid argument. If you want more of a mandatory code, we need to find a solution.

Mr. John Lawford: Yes, I see.

All the banking processes are now electronic. There are other issues, such as when there are debit problems. This comes from the banking institution and not from the provincial jurisdiction.

Mr. Pierre Paquette: I simply want to point out that, despite all the good will of the world on my part, there really is a problem and a solution needs to be found.

Mr. John Lawford: All the payments involve the banking system.

Mr. Pierre Paquette: Provincial jurisdiction must be respected, as you know. That is an extremely important point for us.

With respect to the ombudsman, an earlier witness, Mr. Bouchard, told us that he felt that he was not well-served by the banking ombudsman. He is proposing that this function be jointly regulated.

Mr. Conacher, you agree with that idea. I would like you and Mr. Lawford to develop that line of thinking. What would the ideal system be? The people from the banking association are saying that they paid for the system, that there is only one representative from the banking industry and that the banking ombudsman's ruling is enforced. If the government wants to pay for it and take responsibility for it, they do not have any problem with that.

What ombudsman system do you feel would provide adequate protection for consumers?

Mr. John Lawford: According to studies of other ombudsmen in the areas of privacy and telecommunications, an ombudsman with adequate powers... There is a problem right now with firms that are the subject of ombudsman decisions but that have never made any changes to their processes. So the same problems are still there two years later.

If fines could be imposed by the ombudsman and if there were reports to Parliament, that would help.

Mr. Pierre Paquette: So basically the ombudsman deals with specific cases but not with practices.

Mr. John Lawford: An ombudsman sometimes makes recommendations to Parliament, known as translaws. That is done in Australia for Telecom. In my opinion, that could be useful here.

•(1615)

Mr. Pierre Paquette: If I had a little more time, perhaps you might like to speak to this.

Mr. Duff Conacher: In the meantime, I simply say that I agree.

Mr. Pierre Paquette: You know that the Bloc Québécois, in the person of Réal Ménard, introduced a bill on community reinvestment. I do not know whether you are familiar with that bill.

Is that the type of approach that you would like to see? Could that be included in changes to Bill C-37?

Mr. Duff Conacher: I hope so, but perhaps not, since—

Mr. Pierre Paquette: We have until tonight to introduce amendments, so—

Mr. Duff Conacher: Exactly, and the parties have already supported the bill at second reading. So you cannot change the principles of the bill at this point.

However, I think that changing the whole legislative regime for federal financial institutions should be a priority in the future.

[English]

The Vice-Chair (Mr. Massimo Pacetti): Merci, Monsieur Paquette.

Mr. Dykstra, and then we have Judy Wasylycia-Leis.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you, Mr. Chair.

I have a question for Mr. Macdonell.

One of the things you commented on in the report, or in your submission actually, was about the original concern you had with respect to the federal government proposal to eliminate the statutory requirement for residential mortgages exceeding 75%. You went on to comment about the impact in terms of bringing the concerns around that forward.

Could you provide a little bit more detail around that, in terms of what you did do to certainly assist in the change, and second to that, how responsive the ministry was to that request?

Mr. Winsor Macdonell: Certainly.

In terms of our submission, we actually engaged two academics to research this issue for papers. One was a known Canadian real estate economist by the name of Frank Clayton, and the other, Dr. Susan Wachter, was a specialist on real estate finance out of the Wharton School of Business.

Their research concluded that the mandatory mortgage insurance requirement itself benefited Canadians by creating a large pool of insured risk that lowered the premium for all Canadians, and thereby allowed Canadians, notwithstanding their credit history or geographical location, to enjoy the same access to credit across the country. That was a very strong point, and that was where we saw the mandatory mortgage insurance requirement playing an important role in the Canadian economy.

When it comes to the threshold, obviously when you reduce the size of the pool, you take away from that. You end up with more people on the outside—who may be in a geographic area that's not an urban centre, or have worse credit—finding higher costs as a result of being pulled out of the pool due to the mandatory mortgage requirement.

Mr. Rick Dykstra: Thank you.

Mr. Phillips, you mentioned, and your report certainly lays out, a number of things that you were impressed by in terms of broad support for the bill and for the amendments to the act; you're supportive of them. It did mention there were a couple of things that you would like to address. You mentioned that you may not say them during your speaking time, but you piqued my interest. I wondered if

there were one or two you could point out that you think we should be paying attention to from a Bank Act perspective.

Mr. David Phillips: I think one of the issues is the restriction on commercial lending powers in the Cooperative Credit Associations Act. These are quite restrictive in comparison to the Bank Act, and certainly something that we would like to see some loosening of. There is regulatory authority in OSFI to increase the lending limit to a certain extent, but we think this is an issue.

To the extent that provincial organizations have broader lending powers than what's available in the Cooperative Credit Associations Act, it makes it a comparatively less attractive option than just sticking with the provincial charter.

Mr. Rick Dykstra: Not to put you on the spot, but Mr. Conacher brought up some pretty important points with respect to the five big banks. I wonder if you could comment, more from a credit union perspective across the country, on how you may have been able to address some of the issues that he's brought forward, or if there are some concerns that you feel we should think about in the long term.

I think his concern was around the oversight of the five big banks and the difficulty we have of actually being able to address concerns within the system itself. I don't want to put words in his mouth, but it sounded like there wasn't that direct oversight of the big banks here in Canada that there might be, necessarily, in the United States. I didn't hear him include the credit unions in his opening remarks, so I thought you might want to comment from that perspective.

Mr. David Phillips: Our concern, really, is with the Cooperative Credit Associations Act. I hesitate to enter into the area of banking regulation. I think there are some important issues there. We obviously share some of those same issues, but...

I think I'll defer an answer to that direct question, if you don't mind.

• (1620)

Mr. Rick Dykstra: I guess you're allowed to do that. I did open up the opportunity for you to brag a little bit, but that's okay.

One of the things you mentioned, and one of the things that is in the bill, is the required incorporators, from ten down to two, from the credit union perspective.

Very briefly—I don't have a lot of time left, and I have one or two more questions—could you explain or expand a little bit on how that is a benefit in the country?

Mr. David Phillips: I'd be happy to.

The Cooperative Credit Associations Act is in many ways a work-in-progress. This act was enacted 55 years ago by the federal Parliament. For the first 52 or 53 years there were no institutions actually incorporated under that act. My organization was continued under it, and the other organization that exists under it right now, Concentra Financial, was also continued under the act. This act has been around for a long time, but really, only two organizations are regulated by it.

As we look at changes in the credit union system, we see that the federal charter, as an organizational option, is probably something the system will increasingly look upon with interest as a certain degree of consolidation takes place within the system. We're interested in creating that association under the act as an option that credit unions can look at in terms of their own strategic development. That doesn't mean they will go there, but it's an option for them to consider.

The difficulty we faced with the ten was that it was inconceivable that ten credit unions would ever get together and agree that they should go in this direction. Two credit unions, however, brings it within the realm of feasibility. Five years from now, I can't tell you if anyone will have taken advantage of that opportunity. I already mentioned the restrictions on commercial lending that may be a disincentive.

But I think what that change does is bring this within the realm of feasibility from something that was really quite impossible...the way it's drafted right now.

Mr. Rick Dykstra: Thank you.

Mr. Lawford, very quickly, you mentioned in your written statement that the position you've taken is that we should, from a legislative perspective, legislate changes, because voluntary changes, from your perspective, aren't happening.

I just wonder if you want to do that inside a piece of legislation that would address the Bank Act, or if you feel that it should happen outside the Bank Act itself.

Mr. John Lawford: Well, I guess we're taking a little opportunism here to say put it in the Bank Act, because now is the chance to put it in the Bank Act, but the banks touch so much of the electronic payments that we thought it would be an appropriate place to start.

Ideally, it would apply to all financial institutions, of any kind, and any transaction. But to be honest, you're going to cover 85% if you do it through the Bank Act. So, yes.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Dykstra.

We'll go to Ms. Wasylycia-Leis.

Ms. Judy Wasylycia-Leis (Winnipeg North, NDP): Thank you, Mr. Chairperson, and thanks to all of you for your presentations.

It seems to me that one of the most overriding concerns we're hearing from witnesses on this bill is what's not in the bill. It seems to me that we may have missed an opportunity to actually do some fundamental changes and improvements on the Bank Act.

First, given the fact that this only happens every five years, what happened in between the review process and this legislation? Was everyone consulted? Was it a wide-open consultation process? How does it work? How did we end up with such a narrow piece of legislation?

I know, Duff, that you said it's pretty hard now at the committee stage to amend it, but it was almost all we were left with once they brought in the limited legislation. I think we need to learn for the next time, five years from now, how we can really go at the Bank

Act, without giving up on amending where we can over the next couple of days.

Maybe I can just hear some comments on what went wrong. How did we end up with such a narrow scope in the whole thing?

Duff, do you want to start?

• (1625)

Mr. Duff Conacher: It's really an imbalance of resources and, as a result, power. I mean, there are 100 full-time bank lobbyists. I spend a quarter of my time on banking issues, and I'm sure John doesn't spend much more, and there are a couple of others. So it adds up to one person. When you're outmatched 100 to one, the government hears 100 times from the one side and one time from the other side.

Again, the way to balance that is to form a financial consumer organization through the pamphlet method, at no cost to government and at no cost to the institutions. Then there would be many more lobbyists on the citizens' side. It's a very simple method to put in place.

Yes, it was an open consultation. We had a chance to put in our two cents to the Department of Finance at meetings, going back to June 2005, actually, because of the election. But overall, it's just an imbalance of resources.

Where does the money for the financial institutions to do their lobbying come from? From consumers. Consumers pay for the financial institutions' lobby. We're saying, use this pamphlet method to give consumers a chance to put their dollars toward a citizen group that would lobby for their interests.

Ms. Judy Wasylycia-Leis: Do you think we could amend this act to at least include the pamphlet idea?

Mr. Duff Conacher: You'd have to get the advice from the parliamentary counsel. Certainly the cheque-holds are within the bill, so you could change that such that people have a right to their funds as soon as the cheque clears, which in 98% of the cases would be the next day, as opposed to after four to seven days, which is all this bill is doing.

I'm not sure about other measures, given that the bill has had second reading. That's why I'm laying out more what needs to be done and what has really been ignored in the past five years and wasn't dealt with thoroughly and effectively in Bill C-8—which was a bit of a breakthrough, but had as many loopholes as it had rules.

Ms. Judy Wasylycia-Leis: John, and then Frank.

Mr. John Lawford: I'm just going to repeat Duff's comments, that something needs to be done to help organize civil society, if I can put it that way, and consumer groups to bring that position forward. It is a resource problem, a chronic problem.

Always, always, as well, we all gird our loins for attacking bank mergers, and that takes a lot of time away from it. Then when people pull bank mergers off the table, there all the other issues we should have been working on that fell by the wayside. That's not an excuse, but it's what happens.

But we will be better organized next time. It's just.... It's difficult.

Ms. Judy Wasylycia-Leis: And for some of us, it's also the fear that if we take too long to dispose of this, we might get bank mergers back on the agenda, and then what would we do? It's partly that too, I guess.

Frank, on that point...?

Mr. Frank Zinatelli: I just want to recollect the process, as I recall it, leading up to the 2006 review. I recall that there was a consultation paper, I believe in the spring of 2005, which invited comments—

Ms. Judy Wasylycia-Leis: Yes, I'm aware of that.

Mr. Frank Zinatelli: —on a number of issues, plus anything else that people wanted to bring up. After that process, discussions led up to the white paper last June, and then to this.

Ms. Judy Wasylycia-Leis: Thank you. I'm aware of that whole formal process. I'm really concerned, though, that only certain voices get heard, and that a lot of the consumer issues are not either in the white paper or in the legislation. That's a constant frustration.

I guess we could have voted against the bill at second reading stage and then started again, but that was the only choice we had. I'm really anxious to try to turn this around and to find ways to deal with some of the issues around bank closures, around how we move on community reinvestment.

As you know, one of the issues we're trying to raise now is around all the fees consumers are facing. We focused on ATM fees, but there are so many others—the credit card charges, all of this. In fact, the head of our own Financial Consumer Agency of Canada, in a recent speech, identified the problem of consumers being faced with a dizzying array of complex choices and products, and yet we haven't found a way to provide ready information to consumers. I think that should be the fundamental objective of this Bank Act at this point.

Mr. Duff Conacher: I could suggest that overall you would have a much better answer than we would, because you are the ones who are lobbied. You could pose a question, for example, to your committee colleague Mr. McCallum, who expressed concern about credit card interest rates several years ago, when he was junior minister of finance, but then there was no action by the government subsequently.

To paraphrase Joseph Conrad, between the thought and the action lie lobbyists in the shadow. When I was saying 100 to one is how far we're outmatched as citizen lobbyists, that's just counting the bank lobbyists, not the insurance company and trust company lobbyists, and not counting what happens at the provincial level as well.

• (1630)

Ms. Judy Wasylycia-Leis: Yes.

Mr. Phillips, I know you're generally happy with this legislation, as far as it goes, and I'm sure you have other thoughts about other directions, but I wanted to ask you about ATM fees, since we've been focused on bank fees.

What are your thoughts on either government or other pressure being put on financial institutions to curb the amount of fees one has to pay to access one's own money? Have you ever thought about the

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Ms. Wasylycia-Leis, that's it.

Ms. Judy Wasylycia-Leis: Could I just get a quick answer?

The Vice-Chair (Mr. Massimo Pacetti): Yes.

Perhaps you could answer that quickly—quickly and briefly.

Mr. David Phillips: I'll just speak to it from the perspective of the credit union system. We have established within the credit union system a surcharge-free network between credit unions. I'm a member of Alterna Savings in Toronto. I have a debit card. I'm going to be in Saskatoon tomorrow. I can go to the FirstSask ATM and pull money out and I won't be surcharged.

Each credit union member has access to at least 1,500 or 1,600 ATMs without surcharge. So as a credit union system, we're trying to address that issue through this means.

Ms. Judy Wasylycia-Leis: Shouldn't the banks have such a network—

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Phillips, and thank you, Ms. Wasylycia-Leis.

Mr. McCallum, we're going to go to five-minute rounds. I have Mr. McCallum, Monsieur Gaudet, Mr. Del Mastro, Mr. McKay, and then Mr. Wallace.

Hon. John McCallum (Markham—Unionville, Lib.): Thank you.

My question will be somewhat beyond the scope of this act, perhaps.

When I listened to Mr. Conacher about competition and getting better prices or services from banks, I guess my general view is that for any industry, if you want better service or better prices, it's probably a better plan for the government to try to get more competition than it is to what you might call micro-regulate that industry.

My question for you would be, have you thought about how one could produce more competition in Canadian banking? And how would you go about that?

Mr. Duff Conacher: The government has tried pretty much everything so far, and the competitors don't step up. Why? Because the best locations are already taken, and the start-up costs are enormous. Foreign banks have testified to that now for 15 years.

When you have a market such as that, as we do with utilities and telephone and cable, what the government usually does is step in and regulate and ensure that prices are fair and that service is good. And that's what's missing in the equation.

Hon. John McCallum: So are you assuming there are no barriers at all to foreign banks for entry into retail banking in Canada?

Mr. Duff Conacher: No, there are enormous barriers.

Hon. John McCallum: I mean government-imposed barriers.

Mr. Duff Conacher: Not that much, actually, now, given what has been done under the WTO agreement, and also through Bill C-8.

But you just don't see them opening up branches. The only one that really has a branch network is HSBC, who bought their branch network.

Other than that entry point, which possibly could happen if there was a merger proposal—there are only, I think, one or two merger combinations that are even legal under the Competition Act—it would depend on selling off a bunch of branches. That might provide another entry point.

But otherwise, no. The barriers are down. They're not coming in because the market share control and the start-up costs are too great, and those are their own—

Hon. John McCallum: I'm not sure ING Bank is doing that badly, or that physical location in today's electronic age is necessarily the critical factor.

Mr. Duff Conacher: No, but when you—

Hon. John McCallum: To Mr. Phillips, what about credit unions as the instrument for providing more competition for banks? What changes could the government make at some future date to enhance competition through the credit unions?

Mr. David Phillips: We think we're already pretty good competitors of the banks. And certainly if you look across the country, you'll find the credit union system is growing in membership each year, growing in assets, growing in locations, and has a pretty good market share in some of the markets. Not universally across the country, but there are locations where we're competing very effectively. We're full-service financial institutions and very strong as competitors to banks.

Concerning the evolution of the system, I mentioned that in the case of the Cooperative Credit Associations Act, there are improvements there that may establish an association under that act as a more attractive organizational structure for credit unions.

As credit unions get larger and perhaps look to cross-border powers, a federal charter is something that may become more attractive. And at the federal level, those are changes that would be beneficial to the credit union system in the longer term. It's not an immediate issue for us, but we can see that is the direction in which our system is evolving.

•(1635)

Hon. John McCallum: Thank you.

In terms of effectiveness of credit unions, that reminds me of when I used to work for a bank, I remember there was huge angst in the bank at what were perceived to be extremely effective credit card commercials in the Vancouver area. So that was an instance where the competition was effective.

To Mr. Zinatelli....

Do I have time for one more question?

The Vice-Chair (Mr. Massimo Pacetti): You have 25 seconds.

Hon. John McCallum: Well, I wouldn't even have time to get out the question, so I'll leave it at that.

Thank you very much.

The Vice-Chair (Mr. Massimo Pacetti): Thank you.

Monsieur Gaudet, cinq minutes, s'il vous plaît.

[Translation]

Mr. Roger Gaudet (Montcalm, BQ): Thank you, Mr. Chairman.

I too have worked in the field of banking and caisses populaires.

Mr. Phillips, do you represent the caisses populaires in Quebec?

[English]

Mr. David Phillips: No, I don't. That's Caisses Desjardins. They have their own representation. They are not part of our system.

We are really the cooperative financial system outside of Quebec. But they are good friends of ours.

[Translation]

Mr. Roger Gaudet: I would like to ask Mr. Conacher a question. In your opinion, what would be an appropriate rate to encourage banks to invest in the community? We know that the people who are the least well off are generally the highest paying customers for institutions like banks, insurance companies and credit unions. What rate of reinvestment would you like to see going into the community?

Mr. Duff Conacher: The coalition is not proposing a particular percentage. We would like to see a system that requires the banks to release information on loan applications. The banks grant loans to consumers. The United States have a system and a method to determine whether the person asking for the loan is credit-worthy. The bank has to grant loans to everyone who is credit-worthy; otherwise, the government will ask the bank to take corrective action by developing special programs for people in the community, women entrepreneurs or other, similar lenders. It is not based on a quota or a percentage; it is just a system to verify what exactly the banks do with each application and what goes to each community.

Mr. Roger Gaudet: But since you represent the Canadian Community Reinvestment Coalition, what would you like to see in the way of a program? That is what I am interested in.

Mr. Duff Conacher: We do not want a percentage. We want exactly the same system as already exists in the United States.

Mr. Roger Gaudet: Explain to me how the American system works. Are they required to provide a certain percentage?

Mr. Duff Conacher: No, it doesn't work according to a percentage.

Mr. Roger Gaudet: So how does it work?

Mr. Duff Conacher: It is a service for people applying for loans for a small- or medium-sized business. Suppose that 500 of the 1,000 applicants are black. The banks need to grant an equivalent amount of loans to the black and white applicants. The blacks are just as credit-worthy as their white counterparts. However, the statistics in the United States show every year that the banks discriminate against blacks, Hispanics and visible minorities. That is one of the reasons that we need to have the same system in Canada, in order to be able to check whether there is discrimination.

•(1640)

Mr. Roger Gaudet: Personally, I would not compare us to the Americans, because I do not think that Quebecers and Canadians are racists in this respect.

Mr. Duff Conacher: We may think that, but there are no statistics to prove it. A survey made by the federal government in 2002 showed that there were problems, depending on the kind of person applying for a loan.

Mr. Roger Gaudet: Would this not be due to their insolvency rather than their skin colour?

Mr. Duff Conacher: No.

Mr. Roger Gaudet: Do you think that it is because of their skin colour?

Mr. Duff Conacher: Precisely. But this was only a small survey. In 1999, the government created a system called the Small and Medium-sized Enterprise Financing Data Initiative. Statistics Canada carries out the surveys in partnership with Industry Canada, but the sampling is too small to truly evaluate bank loan programs in every region of Canada, or to include everyone who wants a loan.

[English]

The Vice-Chair (Mr. Massimo Pacetti): Merci, Monsieur Coderre.

Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you, Mr. Chair.

I would like to start with Mr. Macdonell from Genworth.

You mentioned that the 80% threshold was consistent with other industrialized or, I assume, G-7 nations as a threshold for mortgage insurance. There was talk last week about why not 85%, or 90%, or 78%. This is in fact a number that would be consistent and therefore sensible to move toward, in your opinion?

Mr. Winsor Macdonell: It is consistent with the two other largest mortgage insurance markets in the world, which are the United States and Australia. It provides a consistent viewpoint that is there for countries.

I mentioned earlier that any change to this requirement needs to be done slowly and be carefully watched. It has become an integral part of the financing system, so to move slowly on this would be a very cautious step, and a wise one to take. With the review coming up in another five years, it can be looked at again at that point.

Mr. Dean Del Mastro: Thank you. Actually, that was my next question. If we did this without proper due diligence and went too far, we could bring instability to a market that's quite stable right now.

Mr. Winsor Macdonell: That is completely correct. The biggest concern in the research we had on this was that you could inadvertently disadvantage many consumers out there who had less than perfect credit, or perhaps lived in different regions of the country. That is really the kind of change that requires detailed study and consideration before any large changes are made.

Mr. Dean Del Mastro: Thank you.

Mr. Lawford, you made a couple of specific recommendations. You talked about a U.S.-style electronic transfer act and the need for a better framework for electronic payment.

I come from small business, and this is a big area of concern for small businesses. Money seems to disappear in cyberspace, some-

times for days, on the wiring of money, and then it reappears in bank accounts.

At a panel here last week I asked the Canadian Bankers Association whether they felt they were in a position where they could self-regulate this, because they're actually benefiting on both ends of this by dragging their feet. They're both charging interest on lines of credit and collecting interest—in many cases it may be a loan that they're forwarding the proceeds for.

In your opinion, do they have any interest in self-regulating this area?

Mr. John Lawford: Little. Certainly the limits and timeframes they would pick would be ones that would be the least they could get away with, or the.... What I'm trying to say is that they would stretch it out as long as they could. There's interest involved, so that's obvious.

We've found that with the voluntary codes as well, the front-line staff don't know there's even a rule. So it's difficult for someone to get action on that. The CPA payments code, for example, doesn't bind third parties, so that's another problem.

• (1645)

Mr. Dean Del Mastro: In your opinion, what is a reasonable amount of time to have an electronic transfer posted to an account once it has been transferred from another account?

Mr. John Lawford: If it's a cheque clearance item, I have to agree with Mr. Conacher that it's done overnight in most cases, so 24 hours would be appear to be reasonable. For other postings, I know that when you pay—this came up in the committee—a credit card bill from an account it seems to take longer. I would like to know from Visa why it takes longer. It seems to me it could be done within 24 hours, but there may be some reason why they can't do that.

In any case, we're looking at much shorter times. Banks are benefiting from the efficiencies of electronic commerce, so we would expect some of those to be passed on.

Mr. Dean Del Mastro: Thank you very much.

Mr. Zinatelli, you mentioned that the Canadian Life and Health Insurance Association is very supportive of the bill. You touched on three areas—enhancing the interests of consumers, increasing the legislative efficiency, and resetting the sunset date. Specifically on the last point, you touched on the need for prompt passage of the bill.

I believe it sunsets sometime in March.

Mr. Frank Zinatelli: It's April 24, I think.

Mr. Dean Del Mastro: Will we essentially be operating with no regulations if we don't get this done in time?

Mr. Frank Zinatelli: The companies would effectively not have the power to carry on business, so it would create a lot of uncertainty about the validity of their contracts and all kinds of issues.

Mr. Dean Del Mastro: In your business, uncertainty is never a good thing, is it?

Mr. Frank Zinatelli: It never is.

Mr. Dean Del Mastro: We'll do our very best to keep everybody moving here on the finance committee.

Thank you.

The Vice-Chair (Mr. Massimo Pacetti): We have Mr. McKay, and then we have Mr. Wallace.

Hon. John McKay: I feel so greatly relieved that Mr. Del Mastro is going to keep our feet to the fire.

Mr. Dean Del Mastro: I'm going to make you work, John.

Hon. John McKay: Yes, yes, if that were only true.

Mr. Conacher, I keep receiving a remarkable number of similar e-mails, all of which seem to make the same points that you're making. The one that seems to be four-square within the parameters of this bill is the ten days down to four days down to one day. I think we're going to get testimony from the payments folks who say that they're clearing five million paper cheques per day, \$185 billion per day, over 20 million items.

I'm trying to anticipate what the argument might be as to why they can't clear that number of items within a 24-hour period. Help me here. Is it a physical impossibility or is it a structural impossibility? What's the argument from their side?

Mr. Duff Conacher: You mean from the banks' side?

Hon. John McKay: Yes.

Mr. Duff Conacher: You're asking me to argue in favour—

Hon. John McKay: I mean, it's the payment clearing association. There's no sense floating these things unless they're realistic.

Mr. Duff Conacher: This is really putting me on the spot.

There is no argument: 98% of things clear overnight. It was left in Bill C-8 as the one barrier the banks could still have in place that would mean that nobody with a low income, no one on social assistance, would open a bank account. It was a loophole left, on purpose, to give the banks an excuse to say that doing so was legal. All the other means that the banks were using for turning people with low incomes away—you have to be employed, you have to have a minimum balance in your account at all times, you have to produce five, six, seven pieces of ID—were made illegal under Bill C-8.

This one was left so the banks could continue to facilitate, as the federal government has, the growth of a two-tier banking system, in which the banks don't want to deal with people unless they have money, something to invest. Everybody else can go to the cheque-cashing outlet and get gouged even worse than they would at the bank. This loophole was left open so the banks could still turn people away.

Hon. John McKay: You're speaking to an issue of motivation, and the issue here is whether this is practically possible.

• (1650)

Mr. Duff Conacher: It is possible. It clears overnight.

Hon. John McKay: You're saying 98% clear overnight. But when you're dealing with five million items, 2% is a lot of items. Presumably, that's 2% that didn't clear overnight.

Mr. Duff Conacher: That may come from a credit union from another province, for example.

Hon. John McKay: Okay, well, that's good.

Mr. Duff Conacher: But within the bank system, as far as we know, it's clearing.

Hon. John McKay: So that's not a function of the quality of the customer; that's a function of the quality of the system between credit unions and banks. Is that what you're saying?

Mr. Duff Conacher: Yes, that's true in some cases, or if the cheque is from out of the country. They could make slightly longer periods for other things. Mr. Lawford could speak to this as well, I'm sure. If you're talking about bank-to-bank cheques within Canada, the CPA will tell you that 98% are clearing overnight.

Hon. John McKay: Your argument applies just within the bank circle itself, rather than within the bank, credit union, and foreign institution circle. I want to understand which is the 98%. Is it the whole circle or is it just simply bank-to-bank?

Mr. Duff Conacher: Yes, 98% is everything, according to the CPA.

Hon. John McKay: So if it's bank-to-bank, is it 100% clearance in 24 hours?

Mr. Duff Conacher: CPA will be able to give you those figures in detail, of course.

It's a barrier, among many others, that has to be removed. It's almost too late. We have a two-tier banking system because the federal government has allowed it and facilitated it. It shouldn't be a two-tiered banking system, not when banking is an essential service.

Hon. John McKay: Mr. Phillips, if in fact you drop the requirements of ten institutions down to two institutions, you bring yourself within federal regulation. Do you lose your ability to sell insurance in the branches?

Mr. David Phillips: Yes, if that change is not made to the federal statute, and for those credit unions that have that authority, that would be another disincentive to move under the federal statute. Our concern is really to develop this entity, under the federal law, as an option for credit unions down the road. As I mentioned, the act, in some ways, is a work-in-progress.

We did, in our submission, support the principle that deposit-taking financial institutions should be able to distribute insurance in their branches. That is not an issue for us at the federal level, but we accept that, and we support that as a principle, and in jurisdictions where we do not have that power currently, it's a power that we seek when the opportunity arises.

So at the federal level, certainly it would be important, eventually, that this power also be in the federal entity if this is going to be a realistic option for those credit unions that already have that authority.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. McKay.

Mr. Wallace, for five minutes.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chairman, and thank you to everyone for coming this afternoon.

My questions are strictly for Mr. Lawford, whom I met in my office last November. We talked about a number of issues, and we settled on the one with the banking issue.

I appreciate the follow-up you gave me on my questions.

Just so I'm clear, I have a copy of the federal act here, at least one that's readable in English, not in legalese. There are a number of provisions in here that don't apply to the act.

Are you satisfied as an organization with what the EFTA actually covers in the United States? Do you want something very similar? You quoted a couple of sections actually in the Bank Act that could apply if we made changes. Does that cover those things off?

Mr. John Lawford: I suggested a couple of places where I thought there was enough jurisdiction to sneak this material in, to be honest, and the one on information seemed to be the best place to put it. In terms of what substantive rights we would like, the American law that we're referring to, the Electronic Fund Transfer Act, has provisions, for example, when there is a debit or a pre-authorized transaction problem. The burden of proof, if there's a problem of proof, lies on the financial institution and not on the consumer, for example. It has other provisions, where you have 60 days to find this and if you're diligent and you report it to the bank, then they have to look after it.

Those sorts of things make it a lot easier for consumers.

Mr. Mike Wallace: So there was a pre-consultation process on this Bank Act. Did you submit that to the Department of Finance in the pre-consultation, that this is what you'd like to see in terms of actual changes in the Bank Act?

• (1655)

Mr. John Lawford: I'm sorry, in terms of the actual place to put it?

Mr. Mike Wallace: Did you actually give them those suggestions or not?

Mr. John Lawford: I believe we did not. We gave the background paper saying these are the principles.

At that time, our thinking hadn't gotten that crystallized—to putting it right here—so that's our fault, I agree.

Mr. Mike Wallace: Okay. So the chances of us doing major changes to the Bank Act legislation—

A voice: It still is possible.

Mr. Mike Wallace: It's possible, but not likely. Let's say it's not likely.

Would you be satisfied that if the committee in their wisdom decided to have a separate report completely in terms of issues that need further study, that...? And it's possible; I checked with the clerk. Is that something you'd be interested in, further study on electronic fund transfer issues as they relate to all financial institutions, not just banking?

Mr. John Lawford: I think that would be one good way to go, because it's an issue that will only get larger. As you're saying, it may be difficult for you to put specific wording into this bill at this point, so we would be happy with that.

Mr. Mike Wallace: Okay, thank you very much.

Those are my questions, Mr. Chairman.

The Vice-Chair (Mr. Massimo Pacetti): Before we wrap it up, we have a good panel here, and I think you're all aware of the timelines we're working under. So if you do have amendments, I suggest you speak to one of the members. It would be the best way to amend the bill. It's never too late. The worst thing that can happen is it's ruled out of order. So if you do have amendments, the best thing to do is give them to a member, as I said.

In answer to your question, Mr. Wallace, we had the Finance officials here last Thursday and we also had the CBA. They're working on something for electronic fund transfers. We're going to have the Financial Consumer Agency of Canada on the next panel, and the payments people, so we can ask them some of the questions. At that point, we can decide as a committee what we want to do.

Again, thank you for your time, witnesses.

We'll suspend the meeting for about five minutes.

• (1655)

_____ (Pause) _____

• (1700)

[*Translation*]

The Vice-Chair (Mr. Massimo Pacetti): We have before us, pursuant to the Order of Reference of Thursday, December 17, 2006, Bill C-37, An Act to amend the law governing financial institutions and to provide for related consequential matters.

I think that most of you know how this works. I give you five minutes for preliminary statements. Let us begin with the witnesses on this list. First, let us hear the Canadian Association of Mutual Insurance Companies.

Mr. Lafrenière, welcome. You have five minutes, please.

[*English*]

Mr. Normand Lafrenière (President, Canadian Association of Mutual Insurance Companies): Thank you, Mr. Chairman.

CAMIC commends the government for tabling a review of the financial services legislation that maintains unchanged subsection 416(2) of the Bank Act that prohibits the retailing of insurance in the branches of a bank. In our view, this will maintain the level playing field in which the insurance industry currently operates.

With respect to the amendments brought to the Insurance Companies Act, CAMIC concurs with all the amendments that specifically target mutual insurance companies, i.e., the amendment to paragraph 449(2)(c), which clarifies the exemption from the Property and Casualty Insurance Compensation Corporation afforded to mutual insurance companies' members of the fire mutuals guarantee fund.

We also support the amendment brought to subsection 346(3) of the Insurance Companies Act to recognize the audit work done by an actuary who is not the actuary of the company. While this amendment is brought to reflect the new audit guidelines set by the Institute of Chartered Accountants, it also serves provincially licensed mutual insurance companies that often do not have an appointed actuary and will simply depend on the actuary of the audit team to ascertain a company's liabilities.

Our only disagreement is on not seeing any measure requiring property and casualty insurers to set up catastrophe reserves. Because of our lack of action on this front, many foreign companies are better prepared than Canadian companies to face major natural or man-made catastrophes.

Foreign-owned property and casualty insurance companies doing business in Canada often benefit from taxation provisions in other countries that allow them to set aside reserves, free from income tax, to meet their obligations in cases of labour catastrophes. For its part, the Canadian system considers as profit in any given year sums of money received but not reserved for the payment of a specific claim.

To establish a level playing field with their foreign competitors, many Canadian-based companies have resorted to establishing what are called offshore companies. Through these offshore companies, they can obtain tax advantages equivalent to those enjoyed by many foreign companies doing business in Canada. For their part, mutual insurers do not resort to the offshore companies' concept and find themselves at a tax disadvantage with many of their foreign-owned and Canadian-owned competitors.

The solution lies in allowing the establishment of a man-made and natural catastrophe reserve in Canada that is free from income tax, similar to the catastrophe reserve concept implemented in many European countries and in Japan and in tune with the commitment of the U.S. federal government to help should a major terrorist or man-made catastrophe occur in the U.S. Our catastrophe reserve proposal is self-financing, as the investment income generated by these reserves would be taxable.

• (1705)

[*Translation*]

We also regret the fact that nothing is being done to help create mutual insurance companies in Canada. Fifty years have gone by since the last mutual insurance company was created. We should reassess the minimum amount of capital needed for setting up a mutual insurance company, if we want to help the future growth of this kind of investment.

Moreover, the mutual insurance companies will be holding a conference on the modern state of the mutual principle all day tomorrow. There will be a reception at the end of the day, and we

would appreciate it very much if you, honourable members, could come to join us tomorrow at 4:00 p.m., at the Château Laurier.

This concludes my presentation. Thank you very much.

The Vice-Chair (Mr. Massimo Pacetti): You concluded your presentation on a positive note. Thank you.

[*English*]

From the Financial Consumer Agency of Canada, Mr. Callon.

[*Translation*]

Mr. Jim Callon (Acting Commissioner, Financial Consumer Agency of Canada): Good afternoon, Mr. Chairman. I thank you and the Finance Committee for inviting the Financial Consumer Agency of Canada, the FCAC. As we are short of time, and as the chairman requested, I will make my opening statement as brief as I can.

This afternoon, I will discuss the mandate and the role of the agency, in the context of Bill C-37. Afterward, I will be pleased to answer all of your questions.

[*English*]

FCAC's mandate is set out in the FCAC Act and can be summed up succinctly by saying that we protect and inform Canadians with respect to the financial sector. Parliament, in establishing the financial consumer protection framework, clearly separated the concept of individual consumer redress from the enforcement of the law. The ombud services were in part a response to Parliament's desire that all financial institutions belong to an independent third-party dispute resolution body that would provide redress for individual consumers, based on fairness.

Rather, FCAC focuses on law enforcement, addressing issues and making improvements in the public interest. As a market-conduct regulator, our ultimate objective is to encourage a fair and competitive marketplace. We make sure that financial institutions meet their obligations to consumers, as outlined in the federal statutes. In some cases, a compliance decision can affect hundreds of thousands of consumers. When we deal with individual consumers seeking redress, we provide them with the tools and information they need and we'll refer them to the complaint-handling processes provided by their financial institution.

Where regulatory action is required, the agency undertakes investigations and examinations. When addressing problems with compliance with the law, the legislation provides the commissioner with options in terms of how best to address the matter. The commissioner may enter into a binding compliance agreement that requires financial institutions to take actions to improve their level of compliance with the law. The commissioner may initiate a legal process for determining if an institution has committed a violation, and, where appropriate, impose an administrative penalty up to \$100,000. That decision is subject to court appeal. And if you note, Bill C-37 proposes to increase this to \$200,000. After finding a violation, the commissioner has the discretion to publicize the nature of the violation, the name of the person who committed it, and the amount of the penalty imposed.

With respect to our consumer education mandate, FCAC informs consumers about their rights and responsibilities when dealing with financial institutions. We provide objective and timely information to help Canadians understand and shop around for day-to-day financial services and products. Our publications and online interactive tools provide information on financial products and services such as credit cards, mortgages, and bank accounts. By addressing the information gaps that exist in the marketplace, FCAC provides Canadians with the tools they need to help them navigate the financial marketplace.

Demand for our services is growing. Every year, thousands of Canadians come to us to obtain information or to register a complaint about a financial institution. Since 2001 FCAC has received more than 123,000 phone calls, e-mails, and letters from Canadians. Last year, in 2005-06, we distributed more than 450,000 publications across the country. Our website has become one of Canada's best sources of objective, up-to-date information on financial products and services. Since 2002 the number of visits to our website has increased by 69% each year. This year our website has already reached 1.1 million visits for the first nine months of the year. Through our outreach program, FCAC is working closely with a growing number of partners to increase our reach and awareness of the agency among consumers. For example, this past year our partnership with Canada Revenue Agency helped us reach over six million consumers directly through inserts with Government of Canada cheques.

Finally, with respect to Bill C-37, FCAC will be responsible for enforcing all the key consumer-related changes that are being proposed to the current legislative framework. And in keeping with the agency's broad consumer-education mandate, the FCAC will continue to be proactive in informing consumers of the changes being made by this broader legislative review.

In closing, I would like to thank you for the opportunity to appear before the committee. I look forward to answering any of your questions.

• (1710)

The Vice-Chair (Mr. Massimo Pacetti): Thank you.

Next, à titre personnel, Monsieur Bouchard.

[Translation]

Mr. Richard Bouchard (As an Individual): Good afternoon, Mr. Chairman, ladies and gentlemen of the committee. Thank you for giving me this opportunity as a citizen to share my fears with

you, my fears about Bill C-37 and its repercussions on consumer protection.

First of all, I would like to explain how I myself went through the existing complaints processing system. To make a long story short, after an issue with the CIBC, I filed a complaint on October 4, 2005, in accordance with the steps described on the CIBC website. Their internal process took me as far as the CIBC ombudsman's office, who told me that he could do nothing for me.

In the meantime, I had notified both the President and Vice-President of the CIBC that I had identified failures to comply with the code of conduct and compliance, under the Sarbanes-Oxley Act. The initial idea was to notify the persons in question so that they could intervene. There was failure to comply with the code of conduct, but obviously that is my opinion.

Since nothing was happening, on December 2, I finally demanded that my file be transferred to the OBSI, the Ombudsman for Banking Services and Investments. The OBSI did not acknowledge receiving my file until December 21. On January 24, the OBSI notified me that he would investigate. Between December 21 and January 24, I was given no information at all. The OBSI conducted his investigation. On receiving the OBSI's draft recommendation, which included an investigation report, I contacted Mr. McCaughey, the President of the CIBC, once again to tell him that there was now evidence that my allegations were well-founded. I asked him what he planned to do. Mr. McCaughey answered, and I quote: "I regret to tell you that you have used all the available complaints management resources. This is the last answer you will receive on the issue."

At that point, I had no choice: either I had to accept the OBSI's recommendation, or declare personal bankruptcy and start again from scratch. The company was already bankrupt. At present, no regulations have come into play with the CIBC. During the entire affair, which has been going on since October 4, 2005, I have been keenly interested in the concept of self-regulation. Basically, voluntary codes are codes of self-regulation.

Allow me to summarize what I have discovered. In the *McGill Law Journal*, Marc Lacoursière, an attorney and professor at the Université Laval Faculty of Law, said, and I quote:

Financial institutions, which have become involved in the formulation of these principles...

These principles are the code of conduct.

...seem to shirk off their responsibilities rather easily. In view of the banking transactions that occur overseas, the theory of self-regulation is difficult to impose. Any foreign bank that provides banking services over the Internet, with no physical link to Canada can easily circumvent the Banking Act and its numerous limitations [...] since there is no way to enforce the legislation, foreign banks may well not be interested in complying with the organization's guidelines.

Mr. Lacoursière also refers to another European study carried out with a view to implementing ombudsman systems in the EU. The study was conducted by Lex Fori, an international law firm. It concludes:

Among instruments of "soft law..."

Since self-regulation is considered a form of soft law...

...some give better results than others. One of those is co-regulation, in the broader sense, which implies the involvement of public authorities in addition to the involvement of professionals and consumers. By contrast, self-regulation has shown itself, with a few notable exceptions, to be the most frequently disappointing instrument insofar as it is frequently no more than a list of good intentions.

That is the conclusion. Those studies are not new. And as a consumer, I can conclude that the conduct of banks has been reported to authorities for a long time now, but that the banks do not seem very interested in protecting consumers.

The Minister of Finance, during the second debate—

• (1715)

The Vice-Chair (Mr. Massimo Pacetti): Mr. Bouchard, could you please conclude your presentation? Your time is up.

Mr. Richard Bouchard: I'm sorry.

The FCAC pointed out that 28% of Canadians, that is 3 million people, have reported serious problems with their banks. The CFIB reported that 26% of businesses, that is 385,000, have suffered from a breach of the code of conduct. *Option consommateurs* reports that 1,000 pre-authorized payments a day cause problems for their clients.

Does the government feel that Canada is still well protected? Before allowing any more wolves into the sheepfold, would it not be wise to make sure that the sheep are well-protected?

I thank you and I'm very sorry for having gone over my allotted time.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Bouchard.

[English]

From the Office of the Superintendent of Financial Institutions, Ms. Dickson.

You have five minutes, please.

Mrs. Julie Dickson (Acting Superintendent, Financial Institutions, Office of the Superintendent of Financial Institutions Canada): Good afternoon, Mr. Chairman and members of the committee.

• (1720)

[Translation]

Thank you for inviting the Office of the Superintendent of Financial Institutions (OSFI) to appear before you today to discuss Bill C-37.

The Office of the Superintendent of Financial Institutions is the prudential regulator of federal financial institutions. Prudential means we are concerned with the safety and soundness of financial institutions, which contributes to the overall stability of the financial system. Our mandate does not extend to market conduct or consumer-related issues, which are the responsibility of other organizations both at the federal and provincial levels.

[English]

In short, OSFI supervises federal financial institutions to determine whether they are in sound financial condition and complying with legislation. We are required to advise promptly in situations where there are material deficiencies affecting safety and soundness, and to take, or require management and boards of directors to take, necessary corrective measures in an expeditious fashion.

We also promote the adoption of policies and procedures to control and manage risk with financial institutions, and monitor and evaluate systemwide or sectoral issues that may impact institutions negatively.

Regular legislative reviews provide an opportunity to ensure that Canadian legislation promotes an efficient, competitive, and safe financial services sector. In any legislative review, OSFI is interested in the following: first, whether proposed legislative changes increase risk to financial institutions, thus creating major prudential concerns; second, whether the legislation is clear, because we administer compliance with most provisions of the act; third, whether OSFI has the authority it needs to act when necessary, so whether the prudential tool kit needs to be enhanced; and lastly, whether the regulatory burden can be eliminated in cases where it is clear that legislative requirements, which may have been necessary at one point in time, are no longer necessary from a prudential perspective.

In our judgment, Bill C-37 does not increase risk to the financial institutions we regulate. Further, Canada already has a framework with prudential tools that are consistent with international norms for strong regulatory regimes, thanks to changes introduced in previous legislative reviews.

As a result, OSFI did not seek significant new prudential measures as part of this review. However, there are several elements in Bill C-37 that would help us to be more effective, because they would bring clarity to certain areas of the act that we administer, and would eliminate some legislative requirements that are no longer considered useful, thus cutting red tape and regulatory burden.

[Translation]

A strong and efficient regulatory framework, one in which Canadians and those outside Canada can have a high degree of confidence, is critical to Canada's economic performance. In the opinion of OSFI, passage of Bill C-37 would help contribute to that confidence.

[English]

I would be pleased to answer any questions that the committee members may have.

Thank you.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Ms. Dickson.

From the Canadian Payments Association, we have Monsieur Legault, for five minutes, please.

[Translation]

Mr. Guy Legault (President and Chief Executive Officer, Canadian Payments Association): Mr. Chairman, I would like to thank you as well as the other members of the committee for giving me the opportunity to meet with you today.

• (1725)

[English]

Before I start, I would like on behalf of the Canadian Payments Association to commend the Department of Finance for all its work done in respect of this bill, notably the draft amendments to the Bills of Exchange Act and the Canadian Payments Act.

The CPA is a member-based organization created by an act of Parliament in 1980. Today we have 120 members, including the Bank of Canada, chartered banks, trust and loan companies, credit union and caisses populaires central offices, and other deposit-taking institutions.

The CPA's mandate is to establish and operate Canada's national clearing and settlement system, a system vital to the Canadian economy. However, the CPA does not see or physically touch any individual payment in the clearing system; rather, it establishes the common framework of rules and procedures that govern the daily exchange of payments between financial institutions. At the end of each day, CPA systems determine the net positions between financial institutions, so that they are able to settle across their accounts at the Bank of Canada.

The Canadian Payments Act also establishes public policy objectives for the association, namely the promotion of a safe, sound, and efficient clearing and settlement system that takes into account the interests of its users. Indeed, the CPA has a stakeholder advisory council composed of 20 payment-system users and service providers, including consumer groups, industry associations, and government, to name a few.

The CPA is governed by a 16-person board of directors, including three directors appointed by the Minister of Finance; the chair; an appointee of the Bank of Canada; and the remainder appointed by members. The CPA is under the oversight of the Minister of Finance, who has disapproval powers over all of our rules. In addition, the Bank of Canada has oversight over our large-value transfer system, which has been designated as systemically important by the governor.

Despite the availability of new payment services and technologies, paper cheques remain a very convenient means of payment for Canadians and businesses, resulting in approximately five million cheques being physically transported and exchanged between financial institutions each business day.

The modernization of the current cheque-clearing process through the use of cheque-imaging technology will continue to support this vital payment instrument for Canadians.

[Translation]

Image-based clearing will allow for electronic cheque clearing, which will enhance the speed and efficiency of the cheque clearing system. It will also make the clearing system more robust by reducing its dependence on transportation networks and its

vulnerability to related delays. Moreover, this modernization of Canada's cheque clearing system will allow it to keep pace with an international shift towards electronic clearing processes for cheques, particularly those in the United States and in France.

Imaging and electronic clearing of cheques will also help in the fight against fraud. Image-based clearing will shorten the clearing cycle, reducing the window of time that cheque fraudsters generally exploit. It will help financial institutions and their customers detect fraud attempts faster and improve their chances of preventing loss. It will also enable enhancements to the automated systems and tools that already account for the majority of fraud detection today. Further, to ensure integrity and privacy of images throughout their life cycle, a framework for security and a sound audit trail has been developed.

[English]

To facilitate a smooth transition to the cheque-imaging environment, the CPA and its members have been consulting broadly with a wide range of stakeholders, including consumer groups, large and small business organizations, law enforcement agencies, auditing bodies, the legal community, and service providers.

Further, the response from credit union consumers and businesses that have been receiving image-based services for some time has been very positive. Among the benefits most frequently cited by customers are more convenient and efficient record-keeping, easier account reconciliation, and more timely access to information about cheques.

In conclusion, we are very pleased overall with the proposals put forward by the government in setting out the legislative framework to support the cheque imaging initiative and to improve the association's governance and operations through amendments to the Bills of Exchange Act and the Canadian Payments Act.

I understand there's been some discussion regarding electronic payments and bill payments at this committee recently. I recognize that these matters fall outside of the scope of Bill C-37's review. My colleagues and I, however, would be happy to come back at a future date to address any issues you many have.

[Translation]

I thank you and I am now ready to answer your questions.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Legault.

Thank you for clarifying that last point.

[English]

We're going to try a first round of seven minutes. Let's start with Mr. McKay and then Monsieur Paquette; then we're going to go to Mr. Norlock.

Hon. John McKay: Thank you, Chair, and thank you, witnesses.

Mr. Legault, you're very popular, so I thought I'd start with you.

Mr. Conacher and others argue that you don't need ten days, you don't need four days, and in fact maybe you only need 24 hours; that 98% of cheques clear; that really this is a discriminatory system against poor people, etc.

I don't know whether you heard Mr. Conacher's or Mr. Lawford's testimony, but I'd be interested in your comments on whether this is, (a), possible, or (b), practical.

Mr. Guy Legault: If you don't mind, I will clarify the current system and then the system under cheque imaging.

Under the current system, a cheque may have to go through ten transportation legs, one way, to the branch where it was drawn upon. You can imagine if it goes from Whitehorse to St. John's, it has to go by truck to the airport, it has to be flown to their processing centre in Vancouver, and so on. Then if there are no funds to pay the cheque, the pay/no pay decision is made at the branch, and it has to go the reverse way. So it's a great way to accumulate air miles, but it takes some time. It can take anywhere between seven and ten days in the current environment.

That's why with cheque imaging we're going to drastically reduce that time. We think that time is going to be reduced up to roughly four days. We still have to transport the cheque for the first leg by truck and by plane to the processing centre, but then after that it will be truncated and imaged, and everything else after that will happen electronically. However, it still then has to reach a branch, it still needs 24 hours to make the pay/no pay decision, and then potentially return as well. The return will also be done electronically; however, you need all the linkages between the various systems of the various financial institutions. As you may know, we also have a three-tier system, where we have direct clearers and indirect clearers.

All of that being said, we think it could easily take up to four days. If I can then link it back to the discussion on holds on cheques, you have to realize that the clearing is only one aspect of the financial institution's decision regarding holds, because it's also very much a credit decision.

Regarding the percentage that has been quoted, of 98% of cheques being cleared overnight, I don't know where that statistic comes from. This is really just my own take on it, but there may be a confusion with a study we did many years ago where we detected that only 2% of accounts had a hold on them on a daily basis. That's basically because financial institutions give provisional credit to their customers. Therefore I'm afraid that maybe some confusion has been occurring regarding the data, because we don't have anything to confirm that percentage.

● (1730)

Hon. John McKay: Thank you, that is helpful. Unfortunately we have a ridiculously small bit of time to talk about what is probably the central issue that has come up over the last number of days.

The other issue, as you know, has to do with electronic clearances. There is an issue that frankly the banks are taking the money out of people's accounts and then only posting them later, particularly with even large accounts like credit card accounts or utility accounts or taxes or things of that nature. So the consumer has the worst of both worlds, and yet the consumer is behaving in a responsible fashion, trying to pay their bills on time.

I'd be interested in your thoughts on that.

Mr. Guy Legault: Do you want a 30-second answer or a two-and-a-half-minute answer?

Hon. John McKay: Thirty seconds.

Mr. Guy Legault: That's what I figured.

In that instance, I would just mention that for bill payments, it's easily a process that has to go through four systems for financial institutions. The first one is where consumers interact with their financial institution to give the instructions. Then you have the financial institutions that do the clearing, that's part of our mandate. After that, the financial institution of the biller has to then again take the information and credit the account of that biller on an aggregate basis. Then the fourth system is really with the biller itself, who then has to take that information to do the reconciliation. Unfortunately it's not always done electronically. It still relies heavily either on paper or even on e-mail, and therefore it introduces transition into the whole process.

Hon. John McKay: But if it was done electronically, there's no reason it couldn't be instantaneous between a bank and one of your large companies. I mean, even bank-to-bank, is there any reason why that can't be electronic?

Mr. Guy Legault: Even today when it's done through EDI, the electronic data interchange, you still have to basically go through those four steps and systems. You still have to do the reconciliation, to take those aggregate amounts and make sure that you reconcile them and that you credit every individual's account. And all of that takes time.

Hon. John McKay: I'm sorry I can't follow up on that, because I think all of us would be enlightened by just following it step by step to see how practical these things are.

Mr. Lafrenière, on your argument about catastrophic reserves and that you're disadvantaged vis-à-vis your insurance competitors, essentially what you're proposing here is that effectively you've set up a catastrophic reserve fund as a tax-free entity inside Canada, as opposed to your competitors, who set up a tax-free entity for catastrophic reserves outside Canada. Is that the nub of it?

Mr. Normand Lafrenière: Exactly.

Hon. John McKay: Currently, do mutual fund companies do an end run on the system and set up outside?

● (1735)

Mr. Normand Lafrenière: No. None of the mutuals have any outside companies, offshore companies. Basically what we're saying is that in order right now to build a strong reserve to face catastrophes, we have to do it on a tax-paid basis. So on a tax-paid basis, you have to charge more in order to build a reserve big enough in order to face catastrophes.

If it were to be on a tax-free basis, as it is in other countries, you would build a much stronger reserve, if you will, or in this case a reserve as opposed to a surplus, and be in a better situation to face catastrophes.

Hon. John McKay: Presumably then there would be no need to have offshore companies for anybody.

Mr. Normand Lafrenière: There would be no need, exactly—but we don't resort to offshore companies.

[Translation]

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. McKay.

Mr. Paquette, you have seven minutes.

Mr. Pierre Paquette: I'm going to follow the same tack as Mr. McKay. You say that even with imaging, it would take four days because of certain constraints. How was the Canadian Bankers Association able to sign a private contract aimed at reducing the wait time from 10 to 7 days? What allowed for this reduction?

If I understand correctly, even if Bill C-37 is not passed, the banks are still committed to reducing the cheque-holding period from 10 to 7 days. And yet, you have stated that given the size of the country, there are limitations as far as the transportation of bank instruments is concerned.

Mr. Guy Legault: Unfortunately, you would have to ask the Canadian Bankers Association that question. I cannot speak for the Association as to the reasons for that decision.

All I can say is that compensation is among the factors motivating this kind of policy.

Mr. Pierre Paquette: I'm going to call them tonight.

Mr. Bouchard, you did not have the time to conclude. I saw your document which, unfortunately, we could not distribute because it was not available in both official languages.

Did you appeal to the Financial Consumer Agency of Canada or the FCAC?

Mr. Richard Bouchard: Yes. When I called the FCAC, I was told to file a complaint, which I did. However, this has been extremely frustrating.

On the first page, the FCAC describes its mandate as follows, "was established to protect consumers...". The *Grand dictionnaire terminologique de l'Office québécois de la langue française* defines consumer protection as follows:

Series of provisions intended to ensure and improve the respect of consumer rights. These provisions seek mainly to protect consumers in their contractual relationships with merchants, by offsetting inequality with respect to consumer rights and bargaining powers.

The FCAC is founded on that definition. After numerous appeals and arguments, I was told that I would need to file a request under the Access to Information Act in order to consult my file. So I did. Finally, the charming woman in charge of my file, Ms. Charette, told me that she was aware of my file and that the agency had not decided to investigate.

I then learned that the agency would only address this issue if it received so many thousands of complaints on that matter. However, I wanted the agency to confirm whether I was right or not. If I say that

a company has violated its code of conduct, I want confirmation of the violation. I did not ask for any other information. Finally, I was told this was none of my business. It is extremely frustrating.

Earlier, Mr. Callon explained his mandate. He is convinced that if the agency was called the financial institution monitoring agency, I wouldn't have asked any questions. But, it is called the Financial Consumer Agency of Canada. There is something wrong here.

• (1740)

Mr. Pierre Paquette: Obviously, in light of your experience, you believe that consumer banking protection is not sufficient.

Mr. Richard Bouchard: No. I have done a little research on the subject. Let's take the example of the Irish ombudsman. He falls under federal authority, he has coercive power and he is regulated by a board of directors, wherein consumers, public powers and industry are represented. Under the ombudsman's mandate, this board of directors can set various standards and regulations with respect to consumers. In Canada, codes of conduct have been developed by the Canadian Bankers Association. That's all very convenient.

Mr. Pierre Paquette: Perhaps we could ask Mr. Callon to react to what Mr. Bouchard has just said. I invited Mr. Bouchard because he submitted his case to me.

Is this case an exception, or do you believe that our consumer protection system is sufficiently developed?

Mr. Jim Callon: First it's difficult for me to comment on a complaint that has been filed with the agency. Under the establishing legislation, the commissioner must treat all information in the agency's possession as confidential. So, the information we have received from Mr. Bouchard and the bank are confidential.

In my opening comments, I explained that there were two parts to consumer protection. On one hand, there is the regulatory system, under the FCAC, and on the other, the consumer and small business complaint resolution mechanism. It is the policy of the agency to always explain its mandate and the mandate of the Ombudsman for Banking Services and Investments to consumers. So, it is up to consumers to choose the best process for them.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Paquette.

[English]

Mr. Norlock, seven minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much for coming this afternoon.

My first question—I don't know if it will be a quick question—will be to Mr. Lafrenière with regard to mutual insurance companies. Mr. McKay had some questioning along the same lines I'm going, as a matter of fact probably the same lines.

You say the advantage to insurance companies, their offshore holdings and the tax advantages to that...which are a disadvantage for Canadian-owned entities such as yours. Just so that we can help people who might want to read these proceedings and find out more about financial institutions in their home communities—I'm thinking of one particular mutual insurance company in my constituency—can you tell me, with regard to the regulations we're currently looking at, what changes you would like to see? And these would be changes that we can actually enact that would assist you in being more competitive in your market.

Mr. Normand Lafrenière: It would be that everybody would be treated the same way. We're not asking to be more competitive, we're asking to play on a level playing field.

The way to do so is to allow everybody to set up a reserve to better face catastrophes. It would be an amount, maybe 5% or 10% of profits, that they could put aside. That money would be put aside and taken out only when major catastrophes occur. It would be up to the government to decide what a major catastrophe is. Basically, that money is set aside to avoid situations where we have three years backwards and seven years forward of taking money out of profits in order to pay for catastrophes.

Right now, this is the situation. If you don't have a catastrophe or a loss in a given year, your profits are considered as profits. We know that over a ten- to twenty-year period, we're bound to have a catastrophe. We don't have the money set aside to pay for that catastrophe.

I'm not saying that financial institutions are weak. OSFI and our provincial governments are doing a very good job of making sure we are solid. But we don't have the kind of solidity, if you will, that foreign companies do, and even Canadian companies with offshore companies do.

• (1745)

Mr. Rick Norlock: Thank you.

Ms. Dickson, would you agree or disagree that advantaging mutual insurance companies to the extent that Mr. Lafrenière feels we should would have a destabilizing effect, or would it be a matter of a regulatory requirement on the part of the government?

Mrs. Julie Dickson: We do require that all property and casualty insurance companies have a reserve in place to guard against catastrophes or earthquake risk. We focus as well on the types of modelling they might do to try to predict this risk. We also look at whether there are other ways they could build up these reserves. They can buy reinsurance, for example.

I think one of the issues you are raising is a tax issue, whether the government would be prepared to provide a tax incentive to set up these reserves. That would be a question for the Department of Finance. Obviously they would want to look at the implications. It's not a new issue. I think that issue has been raised before.

Mr. Rick Norlock: Thank you.

To Dr. Callon, earlier today we had some testimony from another witness, Mr. Conacher, with regard to protecting consumers and enabling them to exert their influence on government. Obviously yours is a government agency. You mentioned that you like to inform

the customers—in this case Canadian citizens—as to the services you provide.

I've done a quick survey of my confreres here, and three members of Parliament have never heard of your agency before. Mr. Conacher mentioned that if Canadians were to receive a letter from his organization, they would be advantaged to the extent that people would then be able to access someone to advocate on their behalf. It seems to me that you're mandated to advocate on behalf of Canadians in their relationship with financial institutions. Wouldn't you say so?

Mr. Jim Callon: No. Our role is not to be an advocate for consumers; our role is that of an enforcer of the laws. Mr. Conacher is an advocate.

With respect to knowledge of the agency, the agency was only started four or five years ago. It is a fairly new agency. We've made major efforts to try to get awareness out there, but we are not on consumers' minds every day until they actually have a problem.

We have worked with the CRA in the past two years. We've sent out over 12 million or 13 million inserts in government cheques to advise people of our existence. We also have worked with the media. We are in the media three or four times on a weekly basis as a source of information and as a resource for the media in terms of issues they are trying to deal with through their own journalistic articles.

Mr. Rick Norlock: Thank you. To carry this a little bit further, would you say you have a very good relationship with the banks?

Mr. Jim Callon: We have a professional relationship.

Mr. Rick Norlock: A cooperative relationship?

Mr. Jim Callon: The industry is a responsible industry. That's not to say they don't make mistakes.

Mr. Rick Norlock: So you do have a good relationship, meaning that you converse back and forth.

I might as well come right out and mention this. Mr. Conacher had a good idea about communicating with all the people who utilize the services of financial institutions. My suggestion to you is that perhaps you could work with the banking associations, insurance companies, and others...that you enforce the regulations.

Perhaps they wouldn't mind inserting the same information you provide to the Government of Canada, through issuing of their cheques. I'm sure the banking association would be willing to cooperate with you to inform their customers that, should they have a dispute with them, here is someone who is independent from the government who can act on their behalf.

Do you think that would be a good idea?

• (1750)

Mr. Jim Callon: We have done that. We've asked the association to do that. If you were to refer to all the complaint-handling brochures the institutions have, you'd see the FCAC mentioned on the complaint-handling brochures that most of the major banks have.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Norlock.

Next is Ms. Judy Wasylycia-Leis.

Ms. Judy Wasylycia-Leis: Thank you very much.

I'm sorry I wasn't here for everyone's presentation before. I had to run off and deal with a panel on the next budget.

I did hear your presentation, Mr. Callon. I do want to focus a lot of my remarks around the Financial Consumer Agency of Canada, which, as you've mentioned, is a relatively new entity that came about as a result of the previous review of the Bank Act and that was put in place as a vehicle to deal with consumer issues and to uphold the act, in terms of clients of the banks and other financial institutions.

I think if there are any concerns today about this whole area, it's not so much with the work of the FCAC as with the legislation that guides you. I think that's why we're disappointed that the proposed legislation today doesn't have some more teeth in it. From my experience in dealing with bank closures, of which we've had many, there are really no teeth in the act to force banks to actually consult with the community, to hear the concerns of the community, to provide advanced information, to have a due process around this.

Mr. Norlock and I were talking about this earlier. I have the case of an inner city riding that lost, in the major part of that riding, all of its bank branches. The citizens fought back tooth and nail, but we couldn't stop a single bank closure. In the end, with the help of FCAC, we did force the last bank to leave, CIBC, to have a more meaningful meeting. That didn't stop the bank from closing, although they did, I must say, put some money in to study an alternative financial services centre, which is now a reality in Winnipeg.

That's the good news, that consumers and citizens out there are ready to stand up for some rights in this whole area, but this legislation isn't going to help them one bit.

Here is my question to you, Jim. We are going to try to move an amendment that would at least make the holding of public meetings around bank branch closures mandatory. Do you think that's possible within this bill? Secondly, will it help in terms of some of the issues you're dealing with on a day-to-day basis?

Mr. Jim Callon: We have found with branch closures that there has been a decline over the last three years. We had reached a peak about three years ago, in terms of the number of closures that were occurring, partly with respect to mergers that happened between TD and Canada Trust.

We found that the regulation brought forward dealt with making advance disclosure to communities, advising them that the closure is occurring, and therefore allowing them the ability to react with respect to that closure.

What we always find at the branch closure meetings we attend is the expectation of the community that they can reverse the decision. Generally, the bank's position in these meetings is that the decision has been made, so the consultation isn't necessarily about the closing; it's about how the closing will progress.

To go any further, we get into government policy, and I wouldn't venture into that area.

Ms. Judy Wasylycia-Leis: Right, and the difficulty is that the banks are under no obligation to disclose any information about the profitability of that bank branch. So it really comes full circle, every

time, on this issue—that is, legislative provisions that require transparency and accountability on the part of these financial institutions. That would make your agency a lot more effective, and it would give some assurances to consumers and to ordinary citizens that their interests are being protected. The right that Duff Conacher mentioned, which I totally support, the right to access financial services somewhere within one's community, must be upheld. This is not now the case.

So what we've got in Winnipeg North is that all the bank branches get closed, ATMs pop up, and then those ATMs of those banks are sold to private label companies. Then a person has to pay \$6 to take out \$20, or \$30, or \$40 of their own money. At private label, white label ATMs, it's as high as \$6. And there are no regulations. At any rate, we're going to try to deal with that as well.

Let me ask a question about when it is possible for FCAC to actually prosecute. I understand there was a survey done in 2003, a mystery shopper survey of 1,600 bank branches, and you actually found that there were more than 800 bank branches in violation of the Bank Act. The reasons ranged from violating the legal requirement to post interest rate information, to violating the requirement to have a clear publicly available on holds on cheques, violating the requirement to have their public accountability statements publicly available, violating the requirement to make publicly available information on interest rates and loans, violating the prohibition on tied selling, and so on.

But as I understand it, no prosecutions ever happened. Then, I understand, in fact your agency then tried to reduce the areas for which you were surveying so that in fact you didn't get the same numbers again.

I think we need to have some clarification on that, to know what you're able to do when there are violations, in any one of these areas; whether or not you continue to survey on all those issues; and what we need to do, if you can't do it, to beef up the legislation to make it possible to go after banks that actually condone and allow these violations of very clear measures under the Bank Act.

● (1755)

Mr. Jim Callon: With the creation of the agency we've developed a rather innovative compliance framework. One of the tools we use is mystery shopping. The first time we'll go out to a sizeable portion of branches across the country in various urban centres and in some rural areas, to see what the retail experience is for the consumer with respect to compliance with the legislation.

Our first mystery shop was carried out in 2003 and we focused on how the banks met their disclosure requirements in branch. The results were not positive in all the areas.

We then have in our act two processes. First of all, let me clarify the word "prosecution". Prosecution is a completely separate action that would be taken through the criminal act, and that's not a key tool for the agency. The agency can progress through what we refer to as a "notice of violation" and then a violation that receives an administrative monetary penalty.

So that's the difference between prosecution and our administrative monetary penalty. That's just a point of reference there.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Ms. Wasylcia-Leis.

Mr. McKay, and then I have Monsieur Godin and Mr. Wallace, for five minutes.

Hon. John McKay: Mr. Callon, you may surpass Mr. Legault in popularity.

According to your handout here, you've had 120 violations over a five-year period. Given the number of financial institutions in this country that would be covered by your legislation, this strikes me as a very low number of violations. And it appears that on the monetary side, your administrative monetary penalties totalled \$117,000 of which \$50,000 was on one loan company that didn't disclose a non-interest fee, and then another \$30,000 on somebody else.

I'm hard-pressed to know whether there's an issue here of unhappiness with Canadians' bank system.

Mr. Jim Callon: I can assure you that simply using a hammer doesn't get you very far. We have uncovered some significant issues that we've been able to address with the institutions, through sitting down across the table and negotiating an agreement and improving the level of compliance. For example, we audited the penalty clauses.

We as an agency have a call centre. We monitor the trends that happen at the call centre on a weekly basis, and where we notice there's a problem, we start inquiring further. In this particular case, the example I used is the mortgages and penalty clauses. We noticed that consumers were complaining, not just about the amount, but they just didn't understand what was happening. On our own, we decided we would ask all the large banks to file all their mortgage documents—English and French—with us.

You can imagine there were hundreds of documents we ended up going through.

Then, in reviewing those documents, we found a significant number of errors in terms of how the disclosure was made. You can tie yourself up as a small agency in the courts for years or you can sit down with the industry, with a firm hand, and demand that changes get made to the documents and within a certain timeframe. The industry did that.

Almost every mortgage document that we found has been revised over the last two years. We've done that in terms of cost-of-borrowing issues. We also did a mystery shop dealing with access to banking, where, although it was an improved performance from previous measures, it still wasn't good enough in terms of what we consider is the level of compliance that we expect.

They have sat down and they have committed to action plans in terms of improving training at the branch, in terms of providing better tools that branch personnel can refer to with respect to, for example, demanding ID of consumers. We'll take that approach where we can see discernable progress in improving the marketplace.

• (1800)

Hon. John McKay: Okay, thank you. I'm still not clear as to whether this is a....

I agree with your approach, but you know, you practice law for 22 years...and trying to read mortgage documents can drive you crazy. If you can do anything in that area to simplify it and make it understandable to everybody, I think everyone is ahead of the game. I recognize the approach, but I'm still grasping whether in fact it's half full or half empty here.

At any rate, let me shift questions here to Ms. Dickson.

One of the issues is that the audit work for the insurance companies is going to be a little downloaded here. The audit work is done by an actuary who is not necessarily the actuary of the company. I'm not sure what I think of that. I'd be interested in your comments as to whether you think this is appropriate.

Mrs. Julie Dickson: I have no particular issues with that. We do rely on actuaries' work, and the actuaries are in a self-regulatory profession. If we have any concerns whatsoever...because we do have actuaries on our staff. If they have concerns about any of the work they see, there is a mechanism where you can report the actuary to the Canadian Institute of Actuaries.

So at the end of the day, we're not concerned about it.

Hon. John McKay: A lot of people rely on these actuarial documents. If an actuary is retained for a particular purpose and has their work used by other people, presumably that's a liability on the part of the actuary. Are you not concerned about that?

Mrs. Julie Dickson: Sometimes when a company chooses an actuary to do some work for them, we do focus on independence and whether the actuary who they are getting to do the work is someone who is independent. So this is not an actuary who the company constantly turns to and who might have built up a personal relationship with the company. We do have a document out on that which talks about the independence principle, when you are going outside.

So again, I'm not concerned about that provision.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. McKay.

Monsieur Gaudet, cinq minutes, s'il vous plaît.

[Translation]

Mr. Roger Gaudet: Thank you, Mr. Chairman.

Ms. Dickson, I am looking at your mandate and I am wondering how you monitor banks. Do you have actuaries or accountants? You must not be the only ones monitoring the banks, which are making billions of dollars a year.

[English]

Mrs. Julie Dickson: We have about 450 people. A lot of them, 200 of them, are in Toronto. Many of them have come from the financial services industry. They are accountants, auditors, actuaries, or people who have just worked in the industry.

We send in teams to look at the internal controls within financial institutions—what kinds of controls they have in place before they make loans, for example. I will actually go in and look at the quality of the loan book. We'll send people in to look at many different aspects of the bank's business, whether it be outsourcing or IT practices. Credit quality is something we focus on a lot. So we would be sending in teams regularly to look at the credit quality.

What we do is consistent with what is done by other international agencies like ours.

• (1805)

[Translation]

Mr. Roger Gaudet: It's not my intention to say that you're doing a poor job. I simply would like you to give me a concrete example of the anomalies you have discovered in a bank. You have not named the bank in question.

[English]

Mrs. Julie Dickson: In the credit portfolio, what you might find is that management might decide to go for a riskier segment of the business, and they might not put the controls in place to monitor. You'd have to monitor the portfolio a lot more closely if you were going for a riskier segment of the business. You'd have to have discussion with your board of directors to ensure that they were onside with this change in strategy.

That would be an example of something that we have found in the past. Management has decided to go out to try to make more money. They would target another business that they hadn't yet targeted, and they wouldn't put the controls in place to monitor it. That's an issue for us, and we'd force them to change that.

[Translation]

Mr. Roger Gaudet: Thank you.

Mr. Lafrenière, you said that the contingency funds are taxed. Is it like winning the lottery, meaning that revenues are taxed, or is it your reserve fund that is taxed directly?

Mr. Normand Lafrenière: The contingency funds are not taxed. When we have a contingency fund, it is set. Therefore, this is money set aside to offset current or anticipated losses. We are talking here about incurred but not yet reported losses.

However, when we cannot prove that losses are being incurred, among other things, this money is considered a profit. Taxes have to be paid on profits. When we have money left over after paying taxes, we put it into our surplus fund. The surplus is the money we can keep once taxes have been paid.

Mr. Roger Gaudet: You can't do what the banks do and create a contingency fund for bad debts for example. Things are different for insurance companies.

Mr. Normand Lafrenière: True. What we have are contingency funds for accidents that have occurred, the cost of which we don't yet know, such as car accidents. Often, it can take several years before we learn how much an accident cost. So we put that money aside. It is allowed, given the risk exposure.

Mr. Roger Gaudet: I agree. Otherwise, you wouldn't be able to manage.

How is it that some foreign companies do not pay these taxes?

Mr. Normand Lafrenière: No, it's not that they are not paying these taxes. Foreign companies, in their own countries, often have contingency funds for disasters. The government tells them to put money aside in case there is a major disaster. We don't need to look far for an example. We need only think of Hurricane Katrina which affected the United States just over a year ago. It cost the U.S. a fortune. You need to have money set aside to deal with such an event.

The American government has told insurance companies that it would help them offset their losses if ever such an act of God occurred. European countries, as well as Australia and Japan, among others, are telling insurance companies to set money aside in case of major disasters. But no such system exists here.

Mr. Roger Gaudet: Thank you.

Mr. Legault, earlier you congratulated the Minister of Finance. I would like you to tell me why you did that; I'm curious.

Mr. Guy Legault: I said that we were congratulating the Department of Finance and the officials with whom we have had to work when we presented our goals and the changes that we would like to see made to the Bills of Exchange Act and Canadian Payments Act.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Gaudet.

Mr. Wallace.

[English]

Mr. Mike Wallace: Thank you, Mr. Chairman, and thank you, everyone, for coming this evening.

Just so we're clear, we're obviously dealing with the Bank Act today, but there is legislation dealing with Canadian payments. I think it's called the Canadian Payments Act. Is that an accurate statement?

I'm interested in the discussion we had earlier today about electronic fund transfer and a review of what could be happening there. I know there's U.S. legislation. That is something that could happen at another time, not related to this Bank Act, and could possibly be included in legislation other than this Bank Act.

Would you agree with that comment? Or what's happening in that area?

Mr. Guy Legault: I would agree with the comment, but I would also add that it doesn't necessarily have to be through regulations or legislation. It could also be done through what has been used more recently, in terms of voluntary codes.

We've been participating, as part of our mandate, on the debit code. One of the previous witnesses today referred to the CPA debit code. In fact, it's not a CPA debit code, it's a government code. We participated in the development of it, and we would welcome participation in the development of an electronic one as well.

You have to be very careful about making sure you recognize the different properties of the various payments so that you don't come with a sledgehammer and basically try to cover everything. If you do it through legislation on top of that, you lose a lot of flexibility. If you do it through regulation, you also lose flexibility. It's why voluntary codes have been favoured by the industry.

• (1810)

Mr. Mike Wallace: I appreciate that.

For clarification, Mr. Bouchard, did you contact the Office of the Superintendent of the Financial Institutions or did you contact the Financial Consumer Agency Canada?

It was the consumer? Because in your presentation, I couldn't tell which group it was. Thank you for that clarification—

Mr. Richard Bouchard: It was for the ombudsman service. He also contacted us, but it was also the translation; it wasn't—

Mr. Mike Wallace: It was not them.

Mr. Richard Bouchard: No, it was the ombudsman.

Mr. Mike Wallace: Very good.

If I have some more time, I'm going to share it with Mr. Del Mastro.

Dr. Callon, how many visits a year did you say you have?

Mr. Jim Callon: On visits to the website, right now it's 1.1 million.

Mr. Mike Wallace: How long has it been up and running?

Mr. Jim Callon: It's been up for five years.

Mr. Mike Wallace: You've seen a general increase in website visits. Is that correct?

Mr. Jim Callon: It's an increase by over 70% a year.

Mr. Mike Wallace: What is that telling you in terms of consumer satisfaction with the banking environment?

Mr. Jim Callon: I'd also note that we've noticed a decline in complaints over the last two years. One theory could be that as you put more information out into the marketplace, more information that's neutral and from a credible source, people can find out exactly what their rights are and what the responsibilities of the institutions are. You'll likely have less misunderstanding and fewer complaints.

I cannot make the correlation directly, but I would say that for the last two years, inquiries have gone up both in terms of the call centre and in terms of the website. On the other hand, complaints have gone down.

Mr. Mike Wallace: Thank you.

I'll share my time with Mr. Del Mastro, please.

Mr. Dean Del Mastro: I'll quickly ask this, Dr. Callon. My colleague from the NDP often points out that branch closures is a big problem. Your document in fact documents some 937 branch closures since 2001-02. I'll come back to this, if you don't have enough time.

Generally, I'd say that our banks are pretty good. We have a good banking system, and they're good corporate citizens. But could we make a case here that they may be skimming some of the markets

and not really providing good service for the market they've been given?

Think about it and we'll come back to you.

The Vice-Chair (Mr. Massimo Pacetti): We'll go to John McKay, and then Dean.

Hon. John McKay: Skimming, for goodness' sake.

For my part, we've had five branch closures in my riding and three openings. In all instances, the banks replacing the ones that were there are better, bigger, and more efficient, and a couple of them have drive-through facilities, which I like.

I want to go back to Mr. Legault and feed off Mr. Wallace's question. Were you saying that effectively, if you folks as a payment system and the banks as a particular group within that payment system agreed on a voluntary clearing arrangement, the posting and payment would be simultaneously recognized for this specific group of banks and this specific group of creditors or payees without legislation?

Mr. Guy Legault: Yes. In fact, we have one rule that provides for it under the bill payments. During your last hearings, I think it was referred to as our rule H6. However, that rule is basically being used by 20% of the billers. One of the things we're planning to do is launch a consultation paper. We're presenting it to our board in March to see if we can in fact better understand the marketplace, to basically see what has changed since we put the rule in place, and to see what we can do to address some of the issues that we're hearing about right now.

• (1815)

Hon. John McKay: I don't understand rule H6. I've never read rule H6 and don't really know what you're referencing there.

It's a little puzzling to have 75% of transactions handled by five banks. A lot of payees would fall into the category of municipalities, credit cards, or whatever—large respectable institutions. To not have those transactions clear instantaneously between post and payment, I'm hard-pressed to understand what the issue is here when we are a very wired country.

Mr. Guy Legault: There is no online, real-time, end-to-end processing that supports the payment of a bill. As I mentioned earlier, most consumer bill payments or the information respecting bill payments must flow to those foreign-related systems. So it doesn't matter the size of the organization, you still have to go through these various systems.

Hon. John McKay: If I go to my computer tonight, open up my account, open up the pay bills section, and pay CIBC \$100 out of my TD account or whatever it is—Mr. Del Mastro's account—you're telling me that doesn't happen. Even though I have electronic verification that the money has been removed from my account, it's not credited to my Visa account.

Mr. Guy Legault: You have to realize that there are cut-offs. In this instance you just talked about, you're doing it tonight, so you've missed the cut-off for today.

As I mentioned earlier, it's not online in real time. Basically it has to occur the next day, and it still has to go through those four steps.

Hon. John McKay: But it shows that the money has been removed from my account. That's real.

Mr. Guy Legault: I don't dispute that.

Hon. John McKay: So I'm real on one side, but I'm not real on the other.

Mr. Guy Legault: You have the goods.

Hon. John McKay: I have the goods but I don't have the payment, I don't have the credit. The money has come out of my account, but I don't have the money credited—

Mr. Guy Legault: I suggest you ask the credit card associations, which are not part of the CPA's mandate. That's another group you may want to talk to.

Hon. John McKay: Why are they not part of the CPA mandate?

Mr. Guy Legault: We don't cover credit card transactions, per se. The only thing we cover is the settlement they do at the end of the day through our large-value transfer system.

Paying a bill is part of our account, but a credit card payment is considered to be like any other bill payment.

The Vice-Chair (Mr. Massimo Pacetti): Mr. McKay is not talking about when you purchase something and you get the goods in return. He's talking about when he pays his credit card online. That's still part of your mandate.

Mr. Guy Legault: But again, we don't cover in-house transactions. If you're talking about the same institution, we don't cover that part. A credit card payment, for clearing purposes, is considered to be the same as any other bill payment. You still have to go through those four steps I explained earlier.

The Vice-Chair (Mr. Massimo Pacetti): Does that happen the same way with utility companies?

Mr. Guy Legault: Yes.

Hon. John McKay: It's like taxes and all the rest of the stuff. I think it's a very strange way of doing business.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. McKay.

Mr. Del Mastro.

Mr. Dean Del Mastro: Thank you.

I'll come back to Mr. Callon with my earlier question.

I'm concerned, but I want to preface my comments by saying I'm not attempting to beat up on the banks. I think we have a very good, stable banking system in Canada. But I think you could make the case that maybe what we're seeing is a little bit of market skimming; in places where there isn't as much money to be made, services aren't being offered.

I'd hate to think that was the case. Are we seeing some skimming in Canada?

Mr. Jim Callon: I won't respond to the question of skimming. I'll respond to the issue of branch closures, to follow up on a comment by one of your colleagues.

The statistics you have here don't include those branches that have been opened. There's no requirement for the banks to file information with us on those branches, so there isn't a net effect here. This is all the branches that have been closed, but there are also

branches that have been opened. You mentioned that they closed five branches but then opened three, and so there's a net effect that's occurring.

I think what you're seeing in the industry is not unlike what has happened in other industries, where you are looking at economies of scale. In terms of three small branches, you could have one large branch.

No doubt economics plays a part in banking, but for me to comment on that, I'm not....

• (1820)

Mr. Dean Del Mastro: If we were to lose, say, a number of branches in Winnipeg and gain a few branches in Scarborough, even to do a ledger on those and say that these branches have closed but you've had this many open, it could be quite misleading without some kind of geographical appendix to it. We could have giant geographical regions in the country that have no service.

Mr. Jim Callon: From an educational point of view, one of the things we wanted to do was to put, on a geographical map on our website, the ability to find out exactly where those branches are closing across the country. Those who have an interest in terms of where those closures are occurring would be able to use our website to find out.

Mr. Dean Del Mastro: It would actually be of interest to all members of the committee if we were able to track that over time geographically. That might also be of assistance so that we can see if there is a trend that may require some attention.

Mr. Jim Callon: That tool is available.

Mr. Dean Del Mastro: Thank you.

This is the other thing I wanted to ask you about. You mentioned that you also defend clients in cases of coercive tied selling. Tied selling, as we know, has been basically outlawed in virtually every industry I'm aware of.

I come from the car business. Manufacturers used to call us up and offer us a car that we knew we could sell if we took a number of cars we knew we would be stuck with. That obviously was outlawed. Do we see this in the banking industry?

Mr. Jim Callon: That was a provision that got strengthened in the last review in terms of the use of coercive tied selling. We have received complaints, but it's not a major issue. Where it has been, the banks have been very quick to provide redress.

Mr. Dean Del Mastro: So it may be on an individual basis, but it's not something the banks are doing.

Mr. Jim Callon: From a policy perspective within an institution, it is not. We may find the odd loan officer who is very aggressive, but once they are informed clearly on what the limits are, apologies are given.

Mr. Dean Del Mastro: I have experienced some individuals with more motivation than others, and they sometimes embark on what may be termed tied selling.

Mr. Legault, just to follow up on Mr. McKay's point, how do we speed this up? It is a major point of frustration to folks, especially when they see the money leave their accounts and not get credited sometimes for days. I actually don't see an incentive on the part of the banks to clear it up, particularly when money may be taken from an interest-bearing account to be paid on another interest-bearing account. Dragging their feet actually makes the banks an awful lot of money. By not clearing this very quickly, they're no longer paying interest on the savings account and they're still making interest on the credit card account. They're making it on both ends, and I don't see any encouragement for them to clear it up.

What's a reasonable period of time?

Mr. Guy Legault: I mentioned that our consultation is due to be started in March, subject to our board's approval. We usually go for a 60- to 90-day period for public comment, and we do the analysis after that. We then have to go back to our board of directors to see if we need something else.

Rule H6, which I mentioned before, does in fact create an obligation on the part of the biller to provide credit to the account of the customer on the date that the payment is made. As I mentioned, though, it's being used by only 20% of the billers.

Our consultation is due to start within the next month, and it sometimes depends on the number of comments that we receive and on the complexity of trying to address the comments and get an agreement with the industry.

Mr. Dean Del Mastro: Do I still have some time, Mr. Chair?

The Vice-Chair (Mr. Massimo Pacetti): No, but thank you, Mr. Del Mastro.

In answer to your question, not only can the Financial Consumer Agency reply, but perhaps the Canadian Bankers Association can too. They would probably have the statistics more readily available. Perhaps we can write a letter to them. They can probably provide us with the information. The only problem is that we won't have the statistics for the caisses or the credit unions.

Ms. Judy Wasylycia-Leis, do you have one question, quickly, in two minutes?

Ms. Judy Wasylycia-Leis: I have a couple of questions, but I'll be very quick.

On the issue that you've just mentioned about geography, it's probably not so much how many banks are closing and opening, but what areas have been left without any service. That's the case for many inner city, older neighbourhoods and rural communities. If it weren't for the credit unions, in some of those areas we might not have anything.

My question is for you, Mr. Callon, on violations by the banks. Could you tell us how many banks and bank branches have violated the Bank Act?

•(1825)

Mr. Jim Callon: I don't have the exact figure, but I can provide that figure to you very shortly.

Ms. Judy Wasylycia-Leis: That would be very helpful.

I would assume that if you just surveyed 1,600 in one year and found 800 bank branches in violation, the numbers are probably in the many thousands.

Mr. Jim Callon: Are you referring to the mystery shop results?

Ms. Judy Wasylycia-Leis: No, now I'm asking you generally. You must know how many bank branches and banks generally have violated the Bank Act at one time or another, in the time you've been there.

Mr. Jim Callon: In this summary, we have provided the number of violations at least to 2006. With respect to—

Ms. Judy Wasylycia-Leis: I'm asking about how many banks and how bank branches. This tells me there might be thirty violations of failure to give information on interest rates, but I'm asking how many bank branches and how many banks have been in violation of the Bank Act.

Mr. Jim Callon: It would be the banks that we'd focus on, not the branches.

Ms. Judy Wasylycia-Leis: Can you give us a breakdown with the branches? You're in charge of protecting the consumer, so you must be able to give us those numbers.

Mr. Jim Callon: I'll give you an example. If we have a problem with, for example, the co-borrower issue that is before you in terms of providing disclosure to all borrowers, we've found that in the case of joint borrowers, that was not the case. Unless it related to a particular branch, it was a general policy that existed within a bank. Therefore, you won't find specific violations that are named for a branch.

Ms. Judy Wasylycia-Leis: But that wouldn't necessarily be the case, right? It could be some individual bank branches that make their own decisions.

Mr. Jim Callon: We would go after the corporate entity.

Ms. Judy Wasylycia-Leis: So you could give us the full information in terms of the number of banks and the number of bank branches.

Mr. Jim Callon: Certainly.

Ms. Judy Wasylycia-Leis: That would be helpful.

This is my last question. I know you're hamstrung by the fact that the legislation now prohibits you from naming any financial institutions that have violated the law. Would it not help if we could somehow correct that, so that you could name the financial institutions in order that consumers could be aware? They could then make honest decisions based on accurate information. Wouldn't that be a fundamental first step that we should be taking?

Mr. Jim Callon: There is the policy balance. Certainly there's transparency on one hand, and then there's the other in terms of when you have an administrative process like ours, where the institutions, as well as the client, can provide information to the regulator with an element of confidence that the information doesn't get broadcast.

Whether or not we have the same level of cooperation from the institutions within the context of a completely transparent process would be a policy—

Ms. Judy Wasylycia-Leis: But how do consumers shop around then? How do they know?

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Ms. Wasylycia-Leis.

If I can end there, if we can get ratings on restaurants, wines, and all types of different consumer products, I'm sure we can do that with the banks. If you don't want to name them, at least rank them. We get it with the credit cards, so I think that would be something that should be considered.

If you are able to provide the information Ms. Wasylycia-Leis asked for, provide it through the clerk's office. I think all members would appreciate it.

Again, members, if we can get the amendments tomorrow, we'll see you tomorrow for clause-by-clause at 11 o'clock.

[Translation]

There will be food.

[English]

Witnesses, thank you very much for taking time out of your day. It was very interesting.

The meeting is adjourned.

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