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Chair

Mr. James Rajotte

Standing Committee on Industry, Science and Technology

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● (0905)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I'd like to call the meeting to order.

We have before us a number of witnesses, so I'll try to get to things as quickly as possible.

We have two sessions today. The first session has a number of witnesses on Bill C-47, and then hopefully we can move to clause-by-clause consideration of Bill C-47 at 10 a.m.

Today is the 66th meeting of the Standing Committee on Industry, Science and Technology. Pursuant to order of reference of May 17, 2007, we are studying Bill C-47, an act respecting the protection of marks related to the Olympic Games and the Paralympic Games and protection against certain misleading business associations and making a related amendment to the Trade-marks Act.

We have a number of witnesses before us. I'll go in the order I have them here. First of all, from the Intellectual Property Institute of Canada, we have Ms. Cynthia Rowden, the past-president.

We have, appearing as an individual, an Olympian, Mr. Jeff Bean, from freestyle skiing, the Canadian Olympic Ski Team.

From the Canadian Paralympic Committee, we have Mr. Brian MacPherson, chief operating officer.

From Own the Podium 2020, we have Mr. Roger Jackson, CEO.

From Athletes Canada, I believe we have two individuals: Mr. Guy Tanguay, the CEO; and Ms. Jasmine Northcott, athlete forums director and operations manager.

Finally, we have Mr. Lou Ragagnin, chief operating officer, from the Canadian Olympic Committee. Is that correct?

Mr. Lou Ragagnin (Chief Operating Officer, Canadian Olympic Committee): Correct.

The Chair: Because we have so many witnesses and we have limited time, I'd ask witnesses if they could keep their comments to between three and five minutes. Then we will go to questions from members from all parties.

We might as well go in the order that I listed.

Could we start with Ms. Rowden, please?

Ms. Cynthia Rowden (Past-President, Intellectual Property Institute of Canada): Thank you, Mr. Chair.

The Chair: Members, if you have Blackberries or cell phones, put them away from the microphone or just turn them off.

Ms. Cynthia Rowden: IPIC supports strong intellectual property laws, but we believe these laws should be applied fairly, consistently, and generally to all Canadians. In our view, the proposed bill gives VANOC, the COC, and CPC more rights than may be necessary to deal with the proposed threats of ambush marketing and counterfeiting during the Vancouver Olympic Games.

We have four main points for consideration. The first is that we agree that paragraph 4(1)(a) of the bill is valid; that's the paragraph prohibiting activities that misleadingly suggest an affiliation with the COC, VANOC, or CPC. We agree with this provision and believe that it will give VANOC and the others an opportunity to advertise the point that activities that unfairly suggest an affiliation are illegal.

Beyond that, we believe that other sections in the bill are unnecessary. Specifically, we looked at subclause 3(1), the broad prohibition against the use of certain Olympic terms, and also at the provisions in subclause 4(2) that require the court to consider certain combinations of words in assessing whether the activities are contrary to the act.

First of all, with respect to subclause 3(1), the existing framework of the Trade-marks Act already gives special protection to Olympic associations, and has been widely used by other organizations, including VANOC already—which owns hundreds of official marks. The existing framework of the Trade-marks Act also deals with activities such as infringement and passing-off.

We're concerned that the directions in the legislation may prevent small businesses and large businesses who now support individual athletes or teams from advertising the fact that they do so. In addition, given the strict language of the prohibitions, we believe that past Olympians or past Olympic athletes may be prevented from using that connection in their reasonable activities.

Secondly, we are concerned with the provisions that delete the requirement to show irreparable harm when bringing an application for an interlocutory injunction. Interlocutory injunctions are extraordinary court remedies; a court is being asked to order that certain activities stop before they've actually had a hearing on the issue, and therefore these injunctions are generally awarded very sparingly. This is part of the checks and balances of litigation. Taking out the need to show irreparable harm for the Olympics, VANOC, CPC, and COC puts them on a different footing before the courts from any other party—and there are lots of other businesses, sporting events, and entertainment events that would like to be on that same footing.

What we think would work as an alternative is a provision whereby activities that do reasonably show a not unlawful affiliation with the Olympics would be deemed to be evidence of irreparable harm.

Thirdly, we think it's dangerous to give sponsors the right to sue independently—and under the legislation they do have that ability in certain circumstances. The legislation provides extraordinary remedies and very, very strong rights, and we believe these should be used primarily by the organizations benefiting from those rights, and should be controlled by those organizations.

Presumably, VANOC, the COC, and CPC will control the granting of sponsorships, and they should therefore control the activities of the sponsors. It should be up to them to control the access to the courts and the way in which the bill is interpreted. Letting sponsors have the ability to go into court has the risk that sponsors will exercise that activity and right unfairly, leading to inconsistent results and unpredictability in the application of the law.

Lastly, because of the very special rights they're being granted by this legislation, and the fact that the legislation is justified by the upcoming Vancouver Olympics, we believe that any legislation should be restricted to the Vancouver Olympics and should be sunsetted at the termination of the Olympic Games.

I have further comments with respect to issues of clarity and drafting, which are in our submissions, and I'd be happy to answer your questions afterwards.

Thank you very much.

● (0910)

The Chair: Thank you very much.

We will now go to Mr. Bean, please.

Mr. Jeff Bean (Olympian, Freestyle Skiing, Canadian Olympic Ski Team, As an Individual): Thank you very much, Mr. Chair and committee, for letting me speak here today in support of Bill C-47.

[*Translation*]

For the past 12 years, I have been a member of the Canadian free style national team. In that time, I have had the honour to represent Canada in competition at the past three Olympic Winter Games—Nagano 1998, Salt Lake City 2002 and most recently Turin 2006. However, I have made the important decision to retire at the end of this season. I would really like to be able to do that at 30. I'm going to retire from hurling myself in the air to do quadruple twisting triple back flips.

[*English*]

Looking back at my career, I will be forever grateful for my Olympic experiences, and I know that none of them would have been possible without significant contributions of official Olympic sponsors. That is why I am here today to support the passage of Bill C-47, which protects the Olympics investment of corporate sponsors, and in doing so, encourages ongoing support of Canadian sport and Canadian Olympic athletes like me.

At my first winter games in Nagano, I was taken aback at the sheer size and scale of the event. The venues were filled with tens of thousands of spectators and the village was a small city unto itself, with every modern amenity one could imagine. They ranged from dentists to haircuts. Basically anything you would see in a normal little village, that's what happens in an Olympic village. As I continued on to Salt Lake City and to Reno, the villages and the services and amenities offered in those villages just grew.

All that is to say I've had, first-hand, an enormous amount of knowledge of the resources required to host a successful winter games. I cannot believe for a minute that they could happen without the hundreds of millions of dollars contributed by Olympic sponsors.

Beyond simply investing in the Vancouver winter games, official Olympic sponsors here in Canada are supporting the success of Canadian athletes. For example, through support provided by Own the Podium 2010, the Canadian freestyle ski team has been able to hire three new coaches, install a leading-edge video playback system at our summer water out-training facility, and host a first-ever physical conditioning camp for the entire team for six weeks, which was held in Whistler this spring. I know similar improvements have been made across other Canadian winter sports and I know Canada's results at the 2010 winter games will reflect all of this crucial support.

On a personal note, I'm what is known as an RBC Olympian. RBC has developed this program, which not only supports athletes financially, but also offers an opportunity for athletes to gain real-world work experience while still training and competing. At this point in my life, the skills and experiences I am acquiring will be invaluable in my non-sporting career.

All this being said, when I first read Bill C-47 I did have some reservations regarding the ability of athletes to promote themselves as Olympians and Paralympians. I was contacted by AthletesCAN and we shared some of these same concerns. However, after posing these questions to VANOC, I've been adequately reassured that the spirit of this legislation does not impede the rights of the athletes. Furthermore, I'm encouraged in hearing that VANOC is willing to support any amendment agreed necessary by committee that will formalize the abilities of athletes to refer to themselves as Olympians and Paralympians.

With all the contributions official Olympic sponsors have made to the Vancouver winter games and to Canadian athletes, I feel that at the very least Canada owes them the sufficient protection for their investment provided in Bill C-47.

● (0915)

[*Translation*]

Thank you, Mr. Chairman. I would be happy to answer any questions you or the other members of the committee may have.

Thank you very much for your time.

[*English*]

The Chair: Thank you very much, Mr. Bean, for your presentation.

We'll now go to Mr. MacPherson, please.

Mr. Brian MacPherson (Chief Operating Officer, Canadian Paralympic Committee): Thank you, Mr. Chair.

Good morning, everyone, and thank you for this opportunity to speak to you this morning. I'll start with a brief statement and then be more than happy to answer any questions you may have.

The Canadian Paralympic Committee supports any initiative that benefits Paralympic athletes, and Bill C-47 benefits Paralympic athletes. Let me explain.

It's no secret that historically Paralympic athletes have not enjoyed the same level of support as Olympic athletes. In fact, up to the 2000 Paralympic Games, Paralympic athletes had to pay out of their own pockets to represent this country. The primary reason for this lack of Paralympic support was lack of corporate sponsorships.

Today, the Canada Paralympic Committee has eight major corporate sponsors. It fully supports and funds Canadians athletes to the Paralympic Games. In addition, the Canadian Paralympic Committee now delivers numerous athlete-support programs between the games.

The Canadian Paralympic Committee has corporate sponsors today because it has successfully cultivated, and grows, the Paralympic brand, a brand that corporate Canada now wants to be associated with and is willing to pay for that association. Integral to that association is the explicit understanding that the Canadian Paralympic Committee will take every measure possible to protect the brand. Bill C-47 has an opportunity to increase that level of brand protection, thereby increasing brand value and financial support from the corporate Canada sector to the Paralympic sports and to the Paralympic athletes.

Another example of how increased corporate Canada financial support is already helping Paralympic athletes is through the Own the Podium program. Through this program, our winter Paralympic athletes are enjoying unprecedented levels of support.

Let me read you an excerpt from an article that appeared in the *Edmonton Journal* on February 22. This article is an interview with Para-Nordic skier and multi-gold Paralympic medallist Shauna Maria Whyte. Shauna says:

> In the past, I had only a few people helping me get to the podium. Now there's like an army, and that's a big help. The support is an amazing feeling....
>
> When an athlete does get on the podium, yes I'm the one who's standing on the podium but it's a team effort getting us there...the team nutritionist, physiotherapist, psychologist, our head coach, my personal coach and all the Canadian taxpayers.
>
> That's an awesome feeling for me now, to realize that when I stand on the podium, it's for my country.

Looking forward, the more financially successful the 2010 games are, the more stories like Shauna's will be made possible. This is because the majority of any 2010 games operating-budget surplus will be placed into an amateur sport legacy fund, a fund solely dedicated to supporting athletes and coach development programs. Also, a successful 2010 games will make it easier for the Canadian Paralympic Committee to renew its sponsorships and recruit additional sponsors.

Benefits to Canada's Paralympic athletes—this is why the Canadian Paralympic Committee supports Bill C-47.

Thank you.

The Chair: Thank you very much, Mr. MacPherson.

We'll now go to Roger Jackson.

Mr. Roger Jackson (Chief Executive Officer, Own the Podium 2010): Thank you very much, Mr. Chair.

Good morning, everybody. It's a pleasure to appear before you this morning and to offer unequivocal support for Bill C-47, on behalf of Own the Podium 2010.

In my prior experience as president of the Canadian Olympic Committee and as a leader of the 1988 Olympic Winter Games, I understand the importance of official Olympic sponsors contributing to the games. I'm also very much aware of the need to ensure that the value of these sponsorships, namely the exclusivity of association with the Olympic brand, is adequately protected.

This understanding has only deepened in my current role as chief executive officer of Own the Podium 2010. Launched in January 2005, Own the Podium is a national collaborative initiative, supported by all 13 of the winter sports in Canada, both Olympic and Paralympic, the Canadian Olympic Committee, the Canadian Paralympic Committee, the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games, the Government of Canada, and several corporate sponsors.

There will be 80 countries participating in the Olympic Games in Vancouver and the Paralympic Games. Own the Podium 2010's goal is ambitious but obtainable: to win the greatest number of medals of any country in the world at the Olympic Winter Games, and to finish third at the Paralympic Winter Games.

Own the Podium 2010 partners believe that we can make this goal a reality. Together they have committed $110 million over five years to support the national sports organizations and their athletes. Of our total funding, half—or $55 million—comes from the Government of Canada, and $5 million comes from the Government of British Columbia. The remaining $50 million comes from the VANOC corporate sponsors, including corporations such as Bell Canada, General Motors, Hudson's Bay Company, McDonald's, Petro-Canada, RONA, and the RBC Financial Group.

Make no mistake, these organizations were not contractually obligated to support Own the Podium 2010, and thus Canada's Olympic and Paralympic athletes, as part of their agreements with VANOC. Instead, they did so voluntarily to help Canada's athletes succeed during our games.

With this in mind, I respectfully submit to the committee that Bill C-47 will serve Canadian sports extremely well. In protecting the investment made by Olympic and Paralympic sponsors, Bill C-47 will encourage ongoing support and new partnerships between Canadian sports and the private sector. Indeed, without the protection of Bill C-47, the interest of the corporate sponsors to generate funding for Canadian athletes is dramatically reduced, and our Canadian goals will certainly not be met.

For the 2010 winter games to be successful in the eyes of Canadians, our athletes must be adequately supported to rise to their full potential and be able to win at home. Through their generosity, our corporate sponsors have demonstrated their commitment to this end. In return, they deserve nothing short of the protection that Bill C-47 provides.

Thank you.

● (0920)

The Chair: Thank you very much, Mr. Jackson.

I believe Ms. Northcott will be making a presentation.

[*Translation*]

Mr. Guy Tanguay (Chief Executive Officer, AthletesCAN): Good morning, Mr. Chairman, members of the committee. On behalf of AthletesCAN, I would like to thank you for the invitation to meet with you this morning. I am going to hand over to my colleague, Jasmine Northcott, but I would like to retain the right to intervene during the question and answer session, should it be necessary.

[*English*]

Ms. Jasmine Northcott (Athlete Forums Director and Operations Manager, AthletesCAN): Good morning, Mr. Chairman, committee members. On behalf of Canada's national team athletes, the board of directors of AthletesCAN, our chief executive officer, and myself, thank you for this opportunity to sit with you this morning to share our collective concerns and feedback regarding Bill C-47.

AthletesCAN is the collective voice of national team athletes in Canada, and we represent over 2,500 active national team athletes, including Olympic, Paralympic, Commonwealth Games, Pan-American Games, and aboriginal athletes. We work diligently on their behalf to provide these athletes with programs of leadership, advocacy, and education to ensure a fair, responsive, and supportive sports system.

AthletesCAN has extensively reviewed the content of Bill C-47 and consulted with our athletes and partners, and as a result we are here today to support the government's efforts to better high-performance sport in Canada.

We recognize the need to support the sponsors and licensees who have contributed and will contribute significant resources to the 2010 Olympic and Paralympic Games. However, we bring to the committee's attention the need to entrench athlete rights within this bill.

The opportunity to create and foster an environment for sponsors and licensees that protects their right to associate themselves with the Olympic and Paralympic Games is a great step forward for the Canadian sports system. However, we need to address the direct legislative implications that this legislation will have on the individuals who are central to our country's sporting success: our athletes.

We believe it is possible to create an environment that protects both the rights of the sponsors and licensees and the rights of the athletes. It's our recommendation to the committee that the protection of athletes can be provided under Bill C-47 with the adoption of a simple amendment, which we have identified as the protection of identity for Olympians and Paralympians. Olympians and Paralympians are those athletes who have competed at Olympic and Paralympic Games. These athletes have earned the right to refer to themselves and their sponsors as Olympians and Paralympians.

However, there is concern among the athlete community that their ability to foster relationships with businesses and communities could be adversely affected by this legislation, as this type of support and endorsement could fall under the commercial parameters of this legislation.

Unlike companies that use the Olympic and Paralympic marks for ambush gains, athletes who are successful in garnering the support of businesses and communities do so to support the significant costs of training and competition at an international level. We've looked to the committee to provide provisions within Bill C-47 to protect the rights of athletes. In Australia, where similar legislation exists, provisions were made to protect the rights of athletes. Canadian athletes deserve this same right.

It is the recommendation of AthletesCAN that Bill C-47 include a provision by way of amendment to protect the rights of athletes to identify themselves as Olympians and Paralympians who have participated at past Olympic and Paralympic Games, to be able to speak to their accomplishments, and the right to reference as factual experience to either promote themselves or be promoted by their sponsors without penalty.

We would like to thank the industry committee for this opportunity to provide the collective concerns of Canada's national team athletes and offer a simple suggestion that could be easily implemented to protect the rights of athletes.

Thank you. I welcome the opportunity for questions from the committee.

● (0925)

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

Finally, Mr. Ragagnin, please.

Mr. Lou Ragagnin: Thank you, Mr. Chair.

I will touch briefly on what I think are two primary benefits from this bill. One is legacies, quite simply the legacies that are left behind for the COC and its member organizations, the 51 national sport federations that are members of the Canadian Olympic Committee and their athletes and coaches, and the legacies that result from games. We saw it in 1988 with Calgary; we'll see it again for 2010 in Vancouver and Whistler, and we hope to see it again in the future when Canada hosts winter or summer games. Those legacies are critical to support high-performance sport in this country, and we believe this bill helps to support those legacies.

We believe that sport is an important part of Canada's culture. To protect an important part of that culture, we need bills like Bill C-47 to assist in that protection. So we're very much in favour of that.

The second thing I wanted to mention as far as benefits of this bill is the fact that we've established public-private partnerships with the federal government, the Canadian Olympic Committee, VANOC, our member organizations, and the funding programs we've developed with the federal government that need to be sustained well beyond 2010. This bill helps to foster those partnerships leading up to 2010 and hopefully well beyond 2010.

I'll leave you with those thoughts. Thank you very much.

The Chair: Thank you very much, and thanks to all of you for keeping your presentations very brief so we can get to questions.

For your information, the members will have questions in either five- or six-minute slots, so they have limited time to ask their questions. There are a lot of panellists here. Usually they will direct their question to one of you, but if someone else would like to add something, just indicate to me and I will endeavour to allow you to answer as well.

We'll start with Mr. McTeague. You have six minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Mr. Chair, thank you.

Panellists, thank you for being here today. It's a very important piece of legislation, and I no doubt want to make sure that our questions reflect that we want to make a very serious study of the legislation.

Ms. Rowden, your suggestion is that somehow the bill before us here is perhaps, to a degree, unnecessary in that many of the protections already exist under the Trade-marks Act.

I'm wondering if you could tell us the definition of "irreparable harm". Are we really dealing here with a question of timing? It seems to me that the time it takes to get an injunction would probably be far too late to arrest a difficult situation or a problem that might exist in which someone may be infringing on the trademarks. Can you explain to this committee how it is possible that the bill itself may not address that concern?

Ms. Cynthia Rowden: I think our concern is that we're changing the rules for access to the courts for interlocutory injunctions. The necessity to show irreparable harm is one of the special requirements, because an interlocutory injunction is, as I mentioned, a special remedy.

Our proposal is a midpoint between what is in the act and the current state of the law. That would be that activity that, on reasonable evidence, is contrary to paragraph 4(1)(a), which is the section that prohibits unlawful affiliation, would be deemed to be evidence of irreparable harm. There would still be a necessity for any party seeking an application for interlocutory injunction to show that it has a stronger *prima facie* case, and similarly, they would still have to show that they meet the balance of convenience test, which is the second of the third requirements for getting an interlocutory injunction.

I think the timing issues are probably more importantly dealt with under the balance of convenience tests than they are under irreparable harm. In order to access the court for a request for an interlocutory injunction, the party seeking the injunction has to show that the balance of convenience rests with it rather than the other party. In a situation where there's a very tight timeframe, the balance of convenience would normally rest with that party. So we think, given that particular background, changing the rule with respect to irreparable harm will meet the interests of the Olympic organizations.

● (0930)

Hon. Dan McTeague: You made a number of recommendations here, amendments to some existing language, particularly I believe in clause 6, that the words "approved, authorized, or endorsed" be used as evidence of irreparable harm. If such an undertaking were to be considered by the committee, how do you believe this would address the immediacy of the impact of ambush marketing?

We're dealing with the question of a period of time for the Olympics and the Paralympics, over a very defined period. Would this be sufficient to deter or arrest the problem?

Ms. Cynthia Rowden: Llong before the Vancouver Olympics actually start, I think the parties will have identified the factual situations that will result in irreparable harm. Therefore, when a situation arises, they should be easily able to jump to it.

The current situation, where the Canadian Olympic Association owns hundreds of official marks, has not stopped it from jumping in very quickly. They have prepared their evidence, they know how to respond to these cases, and I'm fully confident that VANOC and the current organization will be similarly well prepared. Therefore, I don't think the timing issue is as important as changing the rules for irreparable harm. I think the timing issues will be met by a fairer consideration of the three requirements: a strong *prima facie* case, a balance of convenience, and the irreparable harm test as we're proposing.

Hon. Dan McTeague: Fair enough.

I'm wondering if you could also perhaps comment on your first section here, "Are all the provisions of Bill C-47 necessary?" You point out that many Olympic trademarks are already protected in Canada. We have a list, obviously, in the act that is far more extensive than that. You've called for sunsetting of the clause of the bill, that the bill would terminate immediately after, I take it you believe, the Olympics and the Paralympics as well. I think you said that.

Ms. Cynthia Rowden: What we're proposing is the sunsetting of the bill, yes.

I'm not sure what the members were given, but the Canadian Olympic Association and the Vancouver organizing committee have already used the Trade-marks Act to protect hundreds of marks. Virtually all of the marks that are in the bill are already protected as official marks, so this is a duplication.

Hon. Dan McTeague: Could the organizing committee, rather than going through the exercise of this bill, perhaps include the additional trademarks? Or does this seem like trademark ad infinitum? You could perhaps give several trademarks....

We were having this discussion yesterday with some of our colleagues as to what would constitute a proper trademark, but if I happen to walk in with my kids with "Team 2010" on.... I'm wondering if that would be considered overreach, in your view.

Ms. Cynthia Rowden: I think 2010 is one of the official marks that's been protected. Even the number "10" is been protected as an official mark right now.

I think we believe there is strong protection already. The point is that publicly stating that activities that are designed to suggest an affiliation, endorsement, or approval by the Olympics when that is not the case.... It is probably useful legislation to educate people of the possible risks of ambush marketing before the Vancouver games start.

Hon. Dan McTeague: Thank you.

Thank you, Chair.

The Chair: Thank you, Mr. McTeague.

We'll go to Monsieur Malo.

[*Translation*]

Mr. Luc Malo (Verchères—Les Patriotes, BQ): Thank you, Mr. Chairman.

My question is for AthletesCAN. To fully appreciate the ramifications of your proposed changes, it is important to understand that Bell Canada is the official sponsor for the games for telecommunications. Are you suggesting that Rogers, for example, which usually sponsors a given athlete, should be allowed to use the Olympic mark to publicize its association with the athlete in question?

● (0935)

[*English*]

Ms. Jasmine Northcott: Thank you for your question.

We're not going so far as to say that Rogers should be able to use that Olympic mark, because certainly that's not the case. But we are saying that if an athlete is supported by Rogers, they should have the ability to say that Rogers is really proud to support this Olympian and that the Olympian and their supporter should be able to reference their accomplishments and past experiences at Olympic and/or Paralympic Games.

[*Translation*]

Mr. Luc Malo: You want to limit the association to referencing the individual athlete; it would not be able to mention the games or Vancouver. Is that correct?

[*English*]

Ms. Jasmine Northcott: Yes, exactly. It's for the Olympian or Paralympian to be able to factually reference themselves and their experiences as Olympians and Paralympians at Olympic and/or Paralympic Games.

[*Translation*]

Mr. Guy Tanguay: Athletes need to train for about 10 years, or 10,000 hours, before they can compete at the international level. We are trying to protect the investments that their communities and sponsors will have made during all these years. If an athlete's success leads to the creation of an association, we want to be assured that there will be no legal intervention. People will not set up associations with the express aim of undermining the games. It is related to the individual and the work that has been done.

Mr. Luc Malo: How exactly would you like to see Bill C-47 amended? Could you provide us with any examples of what you would like to see amended?

[*English*]

Ms. Jasmine Northcott: Certainly, within the legislation as presented, the terms "Olympian" and "Paralympian" are protected expressions.

We're seeking a provision within the legislation similar to the freedoms that universities and media may have so that an athlete who is an Olympian or a Paralympian would be able to use those terms, because certainly only those athletes who have competed at Olympic or Paralympic Games can claim that title and refer to themselves individually. So it's certainly the ability for the individual athlete to factually reference themselves and their experiences at those games and be provided the freedom within the legislation to do so, given that those terms are currently protected.

Ms. Cynthia Rowden: Can I add to that? I think it will be difficult for U.S. athletes to obtain sponsorship from organizations that are not official sponsors if they too cannot freely indicate that they support athletes or teams; therefore, I think it's necessary to address not merely the use by athletes of these terms, but the use by companies that have decided over the course of particular athletes' lives to support them in their endeavours, whether they go to the Olympics or not. I think if you prohibit it, you'll restrict that type and level of financial support from athletes and teams.

[*Translation*]

Mr. Luc Malo: You said that after speaking to VANOC officials, you were sufficiently reassured that athletes would not be adversely affected by the passage of Bill C-47.

Could you please expand on this statement so that we can continue the discussion we started with Ms. Northcott and Ms. Rowden?

Mr. Jeff Bean: Before raising these issues with members of VANOC, I reflected upon what inputs I could offer as an athlete. They told me that Bill C-47 would not adversely affect athletes, and that really spurred me to come here and speak in favour of the bill.

I am confident that the regulations that will be adopted after the bill has been passed will take the needs of athletes into consideration. The aim of this legislation is to protect the large companies that have invested several million dollars in the Olympic Games, not undermine athletes. I have complete confidence that the regulations will take athletes into consideration.

Mr. Luc Malo: Have you communicated AthletesCAN's concern directly to VANOC officials?

Mr. Jeff Bean: That was the first question I raised with them—I gave them the example of an auto industry sponsor who wanted to advertise his support for a given Olympic athlete on a car. They replied that as they could not be sure of the words that would be used, they wanted to protect the terms "Olympic" and "Paralympic". But that is not really the objective of the bill. The true objective is to protect the millions of dollars that are given to athletes now and that will be given after Vancouver 2010 as well. To my mind, that is very important.

I was around before the existence of VANOC and all of the sponsors. It is an entirely different ball game now that we have all these funded athletes. It cost me a lot of money to get where I am today. Today's athletes have a huge advantage. There is a big difference between the amount of money provided by major sponsors and the amount provided through VANOC and Mr. Jackson's Own the Podium 2010 program.

● (0940)

The Chair: Thank you, Mr. Malo.

[*English*]

We'll go to Mr. Van Kesteren, please.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair.

Thank you, witnesses, for appearing.

I want to continue with what Mr. Bean was talking about. At first glance this legislation looks like protection for large corporations, and it is that, and also for the Olympic organization in Vancouver. It certainly is that too, but often we really miss the impact it has on athletes.

Mr. Bean, and maybe somebody else who's involved in that as well, would you care to expand on how the sponsorship program has changed the climate and the success of the program? There is first of all the Olympic success, because of course most of us here remember Canada's participation in, say, 1967, and we all want to see some medals; we want to see some successes there. Since we've taken on this type of sponsorship program, how has the success been in terms of medals? We'll just get really blunt about it.

I think you started to touch on the other thing I'm curious about: what about the athletes after they're finished? Has this program been successful for athletes in the workforce after you're finished? Could you expand a bit on that?

Mr. Jeff Bean: Yes, and I can give an example on your first question, as far as winning medals and what this money has done.

To take an example, when I started on the Canadian national team, my first year cost me about $35,000 out of my own pocket and, thankfully, my parents' pockets. I was extremely fortunate.

Right now, thanks to the Own the Podium program, there's a program recruiting top-level acrobats to become freestyle aerialists. They are being fully funded and recruited to win medals in Vancouver 2010. They're in Quebec City right now, training to become Olympians, with every single expense covered as part of that program. It will be great for our success.

Mr. Dave Van Kesteren: I don't want to cut you off, because you're on a roll here, but I want to ask about moving forward. If they start at the young age of 13, when they go to college, are these kids offered jobs while they're in this program?

Mr. Jeff Bean: They aren't offered jobs while they're in this program. The kids in the Jump 2010 program are actually making a little bit of money above and beyond what it costs to train and compete. They're making enough money to maybe go out for dinner once a week.

You mentioned college and education. It's always been a very large sticking point with me, and it's something I think the Canadian government does a very poor job on. The Canadian government provides free university education for every single carded athlete for every year they are carded. It's a fact that I don't think a lot of people know about. I think it's a great thing that the Canadian government itself does.

As far as post-career, it's where I think these sponsors are going to be huge, and it's why I referenced the RBC Olympians program. They're putting money into Own the Podium and into VANOC, but outside that, they've created a program to help support Olympians afterwards.

They're recruiting Olympians, and they have 35 right now. Between now and Vancouver, they're planning on doubling the field to 70 current and retired Olympians who are working in the bank and are flexible on training. People who are still competing can work a little and do a lot of community involvement. People who have retired spend a lot more time actually working in the bank.

I think if they feel confident they can invest that much money, they're going to keep investing outside the sponsorship and grow the Olympic brand.

● (0945)

Mr. Dave Van Kesteren: Is it encouraged? You're telling me the banks do it. Is it encouraged that all sponsors know part of this program isn't only to benefit from the advertisement, but it's to also make sure the athletes have something down the road after they're finished?

Mr. Jeff Bean: Those programs are ever-expanding, with all the sponsors. I think it is promoted to all the organizations involved that they do it, because being an athlete is a tough life. To be a professional athlete—or an amateur athlete, I should say—you have to train, and it's a full-time job. It has been my full-time job for basically 30 years. I worked in a ski shop when I was a kid, but that's it. I've been a full-time athlete. Then a month ago, I woke up and wondered what I was going to do now.

Thankfully, RBC was able to step in and give me a year that I can work. I can be a little flexible, and I can gain some experience and see what's out there. I don't even know what the real world looks like. It's kind of scary.

Mr. Lou Ragagnin: I can give you three other examples on some of our sponsor groups.

RONA is currently funding 100 athletes at $5,000 per year. They've made a five-year commitment. They not only fund the athletes for training and competition, but they allow them to do community work in their stores. It's a great program.

The Hudson's Bay Company is currently funding 200 athletes at $8,000 per year. You have probably seen the HBC Run for Canada and other fundraising events that they conduct strictly in support of athletes.

Petro-Canada has a legacy from the 1988 games. All of us probably still have the Petro-Canada glassware in our homes. We currently have a $10 million fund that Petro-Canada raised for 1988. They've made a commitment in the lead-up to 2010 to again support athletes. Those athletes are very much at a grassroots level.

The Chair: Thank you very much, Mr. Van Kesteren.

We'll go to Mr. Masse, please.

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

Thank you to all the panel members for appearing here today.

On some of the concerns you raised, Ms. Rowden, I've submitted some amendments based on some of those concerns.

On showing up today, I'm quite frankly surprised that the government showed me amendments yesterday, but they haven't been tabled here. Mine have been tabled, so I'm kind of surprised that we haven't seen them. I think it would help the debate here this morning.

One of the things you raised quite specifically, for example, is the difficulty when there is an injunction against someone. To go through the legal process takes a long time. One of the things we've suggested is the potential for a special judge to be appointed during this time who would have to make a decision within 48 hours.

Is it something that could be considered so that, once again, the court system is not relied upon and we might achieve some type of balance on the independent ability to make decisions outside VANOC, and so forth, which would help the situation?

Ms. Cynthia Rowden: I think that easy and fast access to the courts is something that anyone involved in the legal profession wants. The faster you can get into the courts, the better. In most business contexts now, if you have an urgent situation, you can get before the courts within a day.

I think that IPIC's membership hasn't considered this issue further, so this is really my response rather than IPIC's. Often the experience of parties who have specialized courts is very mixed. If you get a court and you find out afterwards that the judge has a specific bent, then you're stuck with that judge forever. I think that an equally sound response would be to make sure that there is adequate access, and that the Federal Court, for example, which is probably the court that would be responsible for hearing issues relating to the Olympics, should be strongly encouraged to have a body of judges readily available to hear issues on demand.

The Federal Court is now experienced with respect to intellectual property matters. One of our former members is actually on the Federal Court bench right now, and I think that request to the court would probably be met with a positive response. So rather than access to a special court, I think that full access to the full panoply of judges would be preferable.

Mr. Brian Masse: I'm not a lawyer by trade, so that probably wouldn't be part of this bill. I'm wondering how you would lodge that type of a request on delivery as part of the bill.

● (0950)

Ms. Cynthia Rowden: Well, it's clear from listening to the presentations around the table today that there are lots of discussions that are taking place with the parties about how the bill will be interpreted and how the bill will be enforced. I think this is just one of the discussions that could easily take place, and a request could be made to the courts to ensure that they have adequate response necessary in the event that a vast number of serious claims are made.

Mr. Brian Masse: I want to be clear. Are you saying that that can be done within this bill, as an actual clause?

Ms. Cynthia Rowden: I think it would be difficult to mandate that the court have judges ready, willing, and able to deal with it. I think it would be preferable to discuss it with the court. I think they would probably understand the importance of being available during this time and would make available the resources.

Mr. Brian Masse: That's the problem, though, when we pass the bill, that we've just got to hope the courts actually do that. Hopefully in light of this public discussion and concern, that would be made available, but we would have no guarantee of that. Hence, we're back to where we started.

You had another suggestion, as well?

Ms. Cynthia Rowden: No, it's not really a suggestion, it's a comment, and that is that in urgent situations, parties can get access to the court on very short notice. That happens now. I think that during the Olympics, it could easily happen, as well.

Mr. Brian Masse: Okay, that's helpful.

Now, for sunsetting then, with regard to the Olympic Games, schedule 2 has a sunset clause, but schedule 3 does not. I've proposed an amendment that would sunset schedule 3, just to ensure there would be consistency. Is that something you think would be favourable to a system: not having an unknown duration out there?

Ms. Cynthia Rowden: We support sunsetting of the bill to the extent that it deals specifically with activities relating to the Vancouver Olympics. We think that following the experience of the Vancouver Olympics, there may very well be other ways to deal with issues of ambush marketing, and at that time it would be a good time to review, again, the legislation and the way it worked, before being stuck with this legislation forever.

Mr. Brian Masse: Ms. Northcott, you had mentioned Australia and what they had done over there. Can you provide some more details so that we can understand what happened over there and why it was brought up, and the benefits that happened to athletes who had former relationships in competition through the Olympics?

Ms. Jasmine Northcott: Thank you.

The legislation that was passed in Australia in preparation for the 2000 Games was very similar to the legislation you have in front of you today. So there were no provisions for athletes; however; athletes were finding it extremely difficult to create sponsorship relationships to promote themselves and garner the funds needed for their training and competition costs.

So in 2001 the government made the amendment to provide athletes and sport organizations, etc., with a bit more freedom, for athletes in particular, to reference themselves and be referenced by their supporters as Olympians and Paralympians.

Mr. Brian Masse: Do you know if—

The Chair: Okay, you've got two seconds, Mr. Masse.

Mr. Brian Masse: We'll just enjoy the silence then.

Thank you, Mr. Chair.

The Chair: Just to clarify, Mr. Masse—and I'm sorry, I should have mentioned this at the beginning—all the amendments have been received. They've all been put into a package for members.

I thought, and the clerk thought, that we would distribute those at the beginning of clause-by-clause. If members do want them, they can have them. I just thought it was better to hear from the witnesses.

Mr. Brian Masse: They're not tabled here, Mr. Chair, in the summary we have. My amendments are but the government's aren't.

No, I would prefer to have them before the last minute.

The Chair: The agenda is slightly outdated. There should have been a new agenda.

If you'd like them....

Mr. Brian Masse: Yes, please.

The Chair: I would prefer that the entire committee have them at the beginning of clause-by-clause and that we hear from the witnesses while they're here before us. But if you insist on having them, you can have them.

Mr. Brian Masse: I would prefer to have them, to be prepared for clause-by-clause.

The Chair: Okay.

We'll go now to Mr. Byrne, please, for five minutes.

Hon. Gerry Byrne (Humber—St. Barbe—Baie Verte, Lib.): Thank you very much to our witnesses for presenting evidence to us on the merits of and concerns about the particular legislation before us.

I think all members of the committee are extremely supportive of Canada's and the Vancouver Olympic Committee's efforts to host the best-ever Olympic Games, but there is concern rising for some members of the committee. This issue is either opaque or translucent; you're either on board or you're offside.

What we're hearing here is that there are concerns about Bill C-47 that may extend the boundary beyond existing legislation, that may create a different standard of expectation beyond what is encompassed under the existing Trade-marks Act or Copyright Act.

In fact, to get right down to the point, Ms. Rowden, if a provincial government were to have a similar games event, a provincial games, and use "2010"—even "10"—could they, technically speaking, be in contravention of this proposed legislation, should it be passed?

● (0955)

Ms. Cynthia Rowden: The answer to that requires you to look at a combination of things within the act.

First of all, clause 3 prohibits the adoption or use in connection with a business. So perhaps a provincial games would not be classified as a business.

Hon. Gerry Byrne: Under the circumstances that a provincial games were to sponsor out, to seek corporate sponsors, and to use it, or to attempt to use it, as a licence arrangement, would that be the case? I'm thinking of a parallel provincial Olympics, so to speak.

Ms. Cynthia Rowden: I think what we'd find in that situation is that any sponsors involved in those provincial games would be under the prohibitions of the statute.

Subclause 3(1) prohibits the use of a number of specifically Olympic terms. So as long as the provincial games didn't use those Olympic terms, that would be okay.

Similarly, schedule 2 refers to a number of terms that are specific to the Vancouver Olympics.

The risk is that the words in schedule 3 and the way in which they would be interpreted leave some doubt amongst sponsors as to what activities would run afoul of the legislation. We think it would be preferable that the court be given more unlimited discretion in dealing with activities that are at the heart of what this legislation is. And what's at the heart of this legislation is preventing activities that improperly suggest an affiliation with the Olympics.

Hon. Gerry Byrne: Would just that number, "10", meet the test of a potential opposition challenge through the Trade-marks Act? If someone were to attempt to trademark "10", would that pass the test?

Ms. Cynthia Rowden: Well, "10" is already an official mark. Under the language of the Trade-marks Act, no person shall use in connection with a business, as a trademark or otherwise, any mark that's been protected or resembles a mark that's been protected.

Hon. Gerry Byrne: The organization you represent has approximately 1,700 members, legal practitioners and others involved in the business, so to speak. We've been told by the Vancouver Olympic committee that they'll abide by a larger sort of spirit of this issue. They'll play nice when it comes to potential infringements by small players but act on larger players. They said they would act to ensure that the rights of all sponsors were duly protected.

We're relying on a set of voluntary guidelines to be published after the fact, after the legislation is given royal assent. That's the statement that was given to us by the Vancouver Olympic committee.

Does that cause your organization any concern? Are we creating a subset of non-regulatory regulations, non-statutorily based regulations, in a voluntary set of guidelines, that should be encompassed within the act itself?

Ms. Cynthia Rowden: In interpreting any particular incident, a court generally looks at the language of the statute. The language of guidelines is not binding on a court. The guidelines may impact the way in which the organization itself deals with the legislation, but it's not binding on a court. Therefore, the concern is that if there are other issues that VANOC or any other organization that is going to be protected by this bill wants to have considered by the court, they should be in the bill and they shouldn't be part of voluntary guidelines.

Another concern we have is that from the way the bill has been drafted, it is clear that other words can be added to the statute by regulatory amendment. For example, other words can be added to the schedules, so there is a potential that far more than we now see could be prohibited by the statute once the regulations are complete, or in the years leading up to 2010.

The Chair: This is your last question, Mr. Byrne.

Hon. Gerry Byrne: Your brief mentions specifically the import of material into Canada and makes some specific suggestions. One of the concerns or points of view that I expressed at the committee yesterday was that a particular importer, a Canadian-based importer, may source a large volume of T-shirts and import them into Canada. That would be potentially in violation of the trademark and this particular prohibition.

● (1000)

The Chair: May we have your question, please, Mr. Byrne?

Hon. Gerry Byrne: Do you have any suggestions as to whether that's a valid point and whether there should be amendments?

Ms. Cynthia Rowden: I think your point would be addressed by the legislation. Your point would also be addressed by the Trade-marks Act and would also further be addressed by improving Canada's counterfeiting and anti-counterfeiting legislation, which is another wish that IPIC has. I think that within the existing framework there are certainly ways to deal with it.

The Chair: Thank you.

Thank you, Mr. Byrne.

We have two more. We'll have Mr. Carrie and then Madame Brunelle.

Go ahead, Mr. Carrie, please.

Mr. Colin Carrie (Oshawa, CPC): Thank you very much, Mr. Chair.

You mentioned in your last statement, Madam Rowden, that IPIC would like to see counterfeiting laws tightened up. I'm a little confused about your testimony today, because it seems to fly in the face of previous testimony. We just did a study on counterfeiting, and the preponderance of the evidence we heard was that Canada's laws aren't strong enough and we're not tough enough.

You also mentioned that VANOC would be treated differently in its ability to obtain interlocutory injunctions. I believe that's not the case. We also have other cases in which there's an exemption. VANOC's not the only entity to enjoy specialized access to interlocutory relief; the patented medicines regulations provide automatic 24-month stays to pharmaceutical patents seeking to prevent a suspected infringing generic competitor from entering the market.

I would like you to explain the difference in opinion. It seems that on the one hand IPIC wants us to tighten up on counterfeiting and give stronger laws, but here you're almost saying that we're going too far.

Could you explain the difference to the committee?

Ms. Cynthia Rowden: Sure. This legislation doesn't deal primarily with counterfeiting; it deals primarily with ambush marketing. That's the stated intent. The term isn't found in the legislation, but that's the impact.

IPIC does strongly support laws that improve Canada's international position, which is seen in the eyes of many as to be insufficient insofar as it deals with protection against counterfeiting, but this act deals with a lot of business activities that clearly have nothing to do with counterfeiting; they have to do with support for Olympic athletes or support for teens. It's with respect to those comments that we have been focusing.

With respect to irreparable harm, the situation for patented medicines is a very special regime that supports a very strong position of Canada to provide medicine at the lowest possible cost. It's fundamental to Canada's socialized medicine. I think the situation we're dealing with here with respect to business interests and the rights of athletes and small businesses has nothing to do with that.

The tests for irreparable harm that we're talking about here are the tests available to any other person who's coming into court asking for the type of relief that is available in this legislation. The type of relief in the patented medicines position is related to a completely different regime.

Mr. Colin Carrie: You also mentioned that if there is a problem, you can get access to the courts quite quickly. Again, the testimony we just heard in our counterfeiting study was that they don't get access to the courts quite quickly; it can be months and months.

With the Olympics being such a short-term event, I think we've had the benefit of seeing other best practices in the world. I can talk about Montreal, the U.K., Australia, New Zealand, and the U.S. All have done these things for ambush marketing. The duration of prohibition against ambush marketing in Montreal, for example, was to the end of 1976; in the U.K., it was to the end of 2012; Australia made it permanent; New Zealand made it permanent; the U.S. made it permanent. Don't you think that's a good idea—to do it at least until the end of the year?

Ms. Cynthia Rowden: I have three comments. First, the current regime of the Trade-marks Act already gives very special protection to Olympic organizations. They qualify for super trademarks that until now have been very effective in enforcing rights.

Second, on this irreparable harm—I want to make sure I answer your question—access to the courts in a counterfeiting situation is very difficult, because in many situations you don't have a clue who you're dealing with. You don't know who has made those T-shirts. You don't know where they live. You don't know who's behind it. You don't know who's funding them. This is not the kind of situation that is probably going to be dealt with by this bill.

If there are T-shirts that show up—just like I saw “Go Sens Go” T-shirts yesterday—the current laws deal with that. If they don't deal with it sufficiently I don't think this bill is going to improve that. By taking away the necessity to demonstrate irreparable harm, this bill is not going to improve the situation for counterfeiting when you cannot identify the source. I don't think that's really going to have any impact at all. If you want to do that you have to deal with improving the counterfeiting situation.

● (1005)

The Chair: Last question.

Mr. Colin Carrie: We had the pleasure yesterday of having a company here that deals with Olympic materials and marketing. She said how important this is to even act as a deterrent. We know that other countries have put similar laws forward and they have worked as deterrents. It's a great first step.

Would you agree with that?

Ms. Cynthia Rowden: We've already said that the broad provisions in paragraph 4(1)(a) are useful. They act as deterrents, in a way. They will permit VANOC, the Paralympic committee, and the Canadian Olympic Committee to advertise the importance of compliance with this act. Beyond that, a lot of the detail in the legislation is probably going to cause confusion and may actually hurt a lot of the people who, at the end of the day, will end up helping athletes and the games.

Mr. Colin Carrie: Do you have evidence that actually happened in other countries?

The Chair: I'm sorry, your time is up.

We'll now move on to Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle (Trois-Rivières, BQ): Good morning, ladies and gentlemen. Thank you for being here.

Ms. Rowden, you said that companies themselves could initiate court proceedings, which brought you to the subject of interlocutory injunctions. You feel that this is going too far. I thought that it was only VANOC that could initiate legal action.

Am I mistaken?

[*English*]

Ms. Cynthia Rowden: The legislation is drafted to permit sponsors to sue in the event that they first request VANOC, the COC, or CPC to take action and, for whatever reason, they don't. So sponsors will be able to carry litigation in this case.

That sets up an unfair situation where a sponsor may actually be very vigilant in preventing competitors from engaging in honest conduct. It will lead to inconsistent approaches with respect to the legislation. Some sponsors, for example, may be much more vigilant and aggressive than others. Some industry sponsors may be much more aggressive than sponsors in other industries. We think the organizations that benefit from this and are being granted the special rights should be the ones that go into court.

[*Translation*]

Ms. Paule Brunelle: That contradicts what the members of the organizing committee told me yesterday. You are telling us that the process begins with an organizing committee requesting an interlocutory injunction, but that if the result is not satisfactory the sponsor can also request an injunction. Is that correct?

[*English*]

Ms. Cynthia Rowden: On the way the bill is drafted, the first line is for the COC, CPC, or an organizing committee, but it is drafted to permit sponsors to go, not if they don't get satisfaction, but if the organizing committee decides not to go or does not respond. There could be very good reasons for an organizing committee to decide not to sue. We think they should ultimately be the ones to make that decision.

[*Translation*]

Ms. Paule Brunelle: You said that you felt the act was going to be in force for too long. You recommended that any rights granted by this legislation should terminate at the end of the Olympic Games. Why did you make that suggestion?

● (1010)

[*English*]

Ms. Cynthia Rowden: At the beginning I wanted to preface my comments by saying that I practised as a trademark lawyer for 27 years, and during that time there have been more than a few Olympic Games, and one or two in Canada as well. I think we have some experience already about how the protection of the Olympic marks has been done so far. With that background there is already a body of law, there is case law, there is precedent, that permits parties to know what's going on.

In addition, the official marks that have already been protected are published. They're on the trademarks office database, and they're easy for people to look at. This legislation creates whole new rules, and whenever you have new legislation, you have some unpredictability and uncertainty about how that legislation is going to be impacted. We think that if you want to bring in this legislation to deal with the threat of ambush marketing, let's do it. Let's let it work until 2010, and let's see what happens. At the end of 2010 we may find that it has done nothing to amplify the protection that already exists in the Trade-marks Act. We may find it is totally unsatisfactory. Therefore, we believe that we should stop and take a breath after the Olympics, review the situation, and see at that time what's the best way to protect everybody who's involved.

[*Translation*]

Ms. Paule Brunelle: Do I have another minute?

The Chair: Yes.

Ms. Paule Brunelle: I have a general question. I am sympathetic, Ms. Northcott, to what you said about athletes, but it raises a question.

Mr. Bean, has our athletes' financial situation improved? A lot has been said about the financial hardship athletes face. It seems clear to me that this bill will affect their financial situation. What is the current financial reality of our athletes?

Mr. Jeff Bean: I think that Roger might be the best person to answer that question. His project encourages athletes to continue with their sport—he pays for their coaches and improves their financial situation.

[*English*]

Mr. Roger Jackson: There's no question that there is considerable improvement in the opportunities for athletes to train and be financially supported. The Government of Canada provides a program called the carded athlete program, which supports about 2,000 athletes, and we, Own the Podium, preparing the athletes for 2010, have about another 300 or 400 of those same athletes who receive additional financial support. So because of this corporate sponsorship funding that we achieve, this $50 million that is provided by the corporate sponsors, we have the opportunity not only to provide living and other expenses, but as you have heard today, to also provide massage therapy, physiotherapy, physicians, more coaches, and better opportunities.

The Canadian team, three years ago, four years ago, was about ninth or tenth in the world at the Winter Olympic Games. It's number two in the world today as a result of about $40 million that has been spent over the last two years. So there's no question, out of the 80 countries that we're competing against, we've now gone by the United States, Russia, Norway, Austria, and some of the other superpowers in winter sport, and it's absolutely a result of the new financing that has been provided through this program. That funding was triggered by the Government of Canada and the corporate community agreeing to 50%-50% in providing the $110 million to prepare the teams for 2010.

The Chair: Okay, thank you.

Merci, Madame Brunelle.

Thank you all, ladies and gentlemen, for coming in and for your presentations here.

Members, we will be suspending for a few minutes and then we will be going into clause-by-clause of the bill itself.

You're certainly free to watch the proceedings.

We will suspend for a few minutes.

We want to thank you all for coming here before us. It's an honour to have an Olympian at our table. I know some members of this committee consider themselves athletes. There are two goalies on this committee, actually. I'm not sure they qualify as official athletes.

Mr. McTeague has what, 12 goals against average?

Hon. Dan McTeague: Ah, the shame.

The Chair: We appreciate it very much, and you are welcome to stay.

Members, we will suspend for about five minutes, please.

Thank you.

● (1010)

(Pause)

● (1030)

The Chair: I call this meeting to order.

Members, we are here to give clause-by-clause consideration to Bill C-47. We have the room until 2 p.m. I don't know if we'll need it that long, but I'm letting members know that we do have this room until that time. Members should have a group of amendments before them, and I will be proceeding in the order the legislative clerk has provided for me.

I want to re-introduce the three witnesses. We have Ms. Susan Bincoletto, Director General, Industry Canada. She's with us again. We have Ms. Julie D'Amours.

Are you with Industry Canada, or with Justice?

Ms. Julie D'Amours (Counsel, Legal Services, Department of Industry): Industry Canada, Legal Services.

The Chair: Industry Canada, Legal Services, okay.

And we have Ms. Darlene Carreau as well, also with Industry Canada, Legal Services.

Thank you all for being with us.

We will start with clause 1, the short title, which I am informed is postponed, pursuant to Standing Order 75(1).

(Clause 1 allowed to stand)

(Clause 2 agreed to)

(On Clause 3—*Prohibited marks*)

The Chair: On clause 3, I have four amendments. The first government amendment, G-1, page one in your package, is moved by Mr. Carrie.

Hon. Gerry Byrne: Where is that, Mr. Chair?

The Chair: Do you have the package, Mr. Byrne?

Hon. Gerry Byrne: There we go. Thank you.

The Chair: Discussion is on G-1. Mr. Carrie has moved it.

Hon. Dan McTeague: Chair, I've certainly read it, but I'd like the parliamentary secretary to give some definitions.

The Chair: Mr. Carrie, you can provide the rationale.

Mr. Colin Carrie: Basically, this was asked for by the athletes, to clarify that they can use the term and the title that they so rightfully earned. It's pretty much straightforward there.

Hon. Dan McTeague: Agreed.

The Chair: Is everybody agreed?

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

The Chair: Now we have NDP-1, which is page 3. Mr. Masse, perhaps we can get you to speak to that.

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

This is simply to add “electronic media”, to ensure that broadcast and publication in electronic are specifically identified. This was supported by VANOC during their testimony here, and I believe it will further clarify that the use of electronic media and the Internet for basis of discussion, not for commercial use, would be a benefit to add to the bill to provide further clarification.

The Chair: I want to read the comments that I'm provided with by the clerk.

NDP-1 has a line conflict with G-2, so if NDP-1 is adopted, we cannot proceed with G-2. But it is possible that G-2 could be moved as a subamendment to NDP-1—for people's information.

Now I have Mr. Carrie.

● (1035)

Mr. Colin Carrie: We're supportive of Mr. Masse's amendment, but of course for G-2, we'd have to take the clerk's recommendation there. I think that would be wise.

The Chair: Would you move that as a subamendment?

Mr. Colin Carrie: Yes, if that would be okay.

The Chair: Are you okay with that, Mr. Masse?

Mr. Brian Masse: Agreed. There was great parity in it.

The Chair: I sense agreement of the committee.

Do you want to address this, Ms. Bincoletto?

Ms. Susan Bincoletto (Director General, Marketplace Framework Policy Branch, Department of Industry): Thank you, Mr. Chair.

Before there's a decision made on this, I wanted to clarify in terms of the scope of your proposed amendment. I understand that what you want to do is to clarify that electronic media is part of publication. Is that correct?

Mr. Brian Masse: Yes, it also includes the Internet as well.

Ms. Susan Bincoletto: That's right.

We were thinking that perhaps a better way of expressing this could be something like Olympic Games or Paralympic Games.... Sorry, I just need a few minutes.

The provision starts:

> (5) For greater certainty, the use of an Olympic or Paralympic mark or a translation of it in any language in the publication or broadcasting of a news report relating to Olympic Games or Paralympic Games,

"including by means of electronic media." Is what you're trying to capture here that publication or broadcasting encompasses electronic media as well?

Mr. Brian Masse: That's part of it. Can you read that again?

Ms. Susan Bincoletto: This is how the bill reads. The provision starts with: "5) For greater certainty, the use of an Olympic or Paralympic mark or a translation of it in any language". Then we would substitute the rest with: "in the publication or broadcasting of a news report relating to Olympic Games or Paralympic Games, including by means of electronic media." Then it continues, "or for the purposes of criticism", and that's where the government amendment could come in and say, "purposes of criticism or parody", so we would mesh the two together, "relating to Olympic Games or Paralympic Games, is not a use in connection with a business."

This provision would clarify that electronic means are a subset of publication and the application of this provision would include criticism or parody, which was also something that we wanted to clarify.

Mr. Brian Masse: I want to ensure, though, in terms of publication as a subset, that this won't prevent any Internet news media site from discussion and so forth. I'm just a little bit concerned about the subset. Even those that are not publications or broadcast, that are just Internet, will still have the same privileges. Is that correct?

Ms. Susan Bincoletto: Yes, because we are saying "including", so it's not exclusive, "including by means of electronic media". In other words, we are clarifying that electronic media is clearly included in the scope of this provision and in the definition of "publication".

Mr. Brian Masse: Okay.

The Chair: What must happen procedurally here, because Ms. Bincoletto cannot move a subamendment or an amendment, is we'd need someone to move the subamendment, like Mr. Carrie.

Is it the will of the committee to adopt that subamendment?

Do members need that to be read out again?

Mr. Brian Masse: I'm okay with that.

The Chair: You are okay with this, Mr. Masse. Okay.

(Subamendment agreed to)

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

The Chair: It is adopted.

Now we are on to amendment G-3 on page 6. Mr. Carrie, I'll have you address the rationale.

● (1040)

Mr. Colin Carrie: Okay, thank you very much.

This is basically if an independent artist wants to do a painting or something along those lines, this will give greater certainty that he is not going to have any action taken against him.

Hon. Hedy Fry (Vancouver Centre, Lib.): The term "reproduced on a commercial scale" is grey and nebulous. What do you mean? How do you define "commercial scale"? That's the only thing I want to ask. What is your definition? We're pinpointing what you mean by "commercial scale".

Mr. Colin Carrie: If you're going to be making a print and sell 3,500 copies across the country, then you'd be saying that was a commercial scale, but if you've done your own piece of work and it's going to be in the newspaper or something, like a caricature or something along those lines.... The department would be able to clarify even further.

Hon. Hedy Fry: I agree with the intent. I just want to know exactly what it means. That could be a question that all kinds of people ask. If I did 35 prints instead of 12, does that mean comercial scale?

Mr. Colin Carrie: That's a very good question.

The Chair: Ms. D'Amours, can you clarify that for Ms. Fry?

Ms. Julie D'Amours: Sure. The term "commercial scale" can vary, depending on the goods we're talking about. Here we're talking about artistic works. If we're talking about copies that are reproduced in a fairly significant number for the purposes of being distributed and sold in the marketplace, that would be work reproduced on a commercial scale.

If someone takes a picture and then has it reproduced in thousands of copies to be sold at Vancouver Olympic venues as a postcard, that's definitely reproduction on a commercial scale, as opposed to an original painting by an artist in downtown Vancouver that would not be reproduced.

Hon. Hedy Fry: The big question, though, is that unless you clarify it, the artists themselves don't know exactly what you mean. They could be in violation of this clause by producing an original and then selling 100 prints or whatever. You know, artists sometimes do an original and then do 100 copies of it.

I think there needs to be some clarification so that people don't unwittingly infringe on this clause by doing something that isn't a large-scale printing and distribution of postcards, etc. I'm in agreement with the intent; I just think there needs to be some clarification so we don't have people unwittingly getting into trouble.

Ms. Julie D'Amours: In the government's view, what is reproduced on a commercial scale is better left for determination by the courts. The courts have all the facts to make the proper decision on this. It is difficult for the legislator to draw the line between what's reproduced on a commercial scale and what's not. There are so many different situations where artists make works. That's why we felt it would be much wiser to leave this issue to the courts.

That being said, the artists are not totally in the dark, either. I think "on a commercial scale" is a term that is at least being used in the intellectual property context, namely in discussions relating to anti-counterfeiting.

The judge will look to whether the purpose of the reproduction is to distribute widely for commercial purposes or not. That's why we feel it's inappropriate for the legislator to try to delineate this kind of concept.

● (1045)

Hon. Hedy Fry: I'm not belabouring this. What I'm trying to say is that if somebody isn't very clear about what this means and they have to go to court, I think it's not what any of us want to see. Nor do I think the Olympic Games wants to be marred with taking some poor little artist.... Artists are not always wealthy enough to be able to go to court to defend themselves for producing 100 prints of their work.

Is there something you could do in the regulations that would clarify it for people who do not have the money to go to court to deal with this after the fact? People won't do anything if they're afraid they're going to be breaking rules. They may just do nothing; you would stifle any kind of creativity.

I understand what you're saying. I agree with it. But I really think you don't want to hear later on that the Vancouver Olympic committee went after some poor struggling artist who made 100 prints and didn't believe that was going to cause him trouble, or who didn't want to do anything because they were afraid they'd be in violation.

I think that clarification is what most of us are trying to get at. It's not that we disagree with the legislation. We just want to make sure that at the end of the day it doesn't get a black eye by saying you beat up on some little guy. That's all.

Can it be in the regulations?

Ms. Susan Bincoletto: As my colleague mentioned, these are terms of art common to a number of intellectual property statutes, whether we talk about "commercial scale" or "distribution" in the Copyright Act. We never really quantify what "distribution", "sale", or "possession for future sale" mean. This is usually left to the court, because on a case-by-case basis, five may be commercial, if it's a valuable product, or ten thousand could be commercial.

So to put it in a regulation, be specific, and give guidance to the court might actually work against it.

The Chair: I have Mr. Masse, Mr. Malo, Mr. Van Kesteren, and then Mr. Carrie.

Mr. Masse.

Mr. Brian Masse: Those were essentially the concerns that I had.

In legal interpretation, for example, you have sketch artists who often produce quite similar renditions of things, even here in Ottawa. Would that get caught in something like this?

They have two or three of the same sketches laid out, and others already drawn. They are virtual identical pieces of work. Would they potentially get caught in something like this?

Ms. Julie D'Amours: In this particular case, because the volume is so low—we're talking about three sketches—even though they are meant to be sold to individuals for their own enjoyment.... I don't want to substitute my judgment for what a judge sees, for that matter, and not having the full facts, but it's possible that in this case a reproduction would not be considered to be on a commercial scale.

There is the question of the purpose of the artist. Why did the artist use a particular protected mark in his artistic work? Also, what does the artist want to do in terms of distribution? And of course there is the question of volume So all of these are factors that will be taken into consideration by a court to determine whether or not an artist has used the mark in connection with a business.

● (1050)

Mr. Brian Masse: I don't think that VANOC would go after one particular artist, but the problem that I foresee is potentially you could have, as here in Ottawa, three or four sketch artists producing virtually the same type of picture or material of a landmark. They have three or four copies there every day, trying to peddle them around. When multiple people do this is the concern that might be the problem.

Ms. Julie D'Amours: Yes.

The Chair: Okay, Mr. Masse?

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

The Chair: Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

I have a comment.

It's going to be impossible—which is the point that Susan put before the committee—to put a number on this. We have to leave this to the courts.

The amendment is there to protect artists, not to stifle creativity. We have to see the intent there, and the courts understand that too.

Yes, I would love to have perfect legislation that protects everyone, but there's always going to be room for people to wiggle in and out. We have to recognize that the intent of the government in this amendment is to protect artists, not stifle creativity.

I'm comfortable with the amendment.

The Chair: Thank you.

Mr. Carrie.

Mr. Colin Carrie: What we're really looking at is commercial intent, so somebody is looking to make a good buck from this, and there has to be some leeway for judges to make these decisions.

The Chair: Mr. Byrne.

Hon. Gerry Byrne: Thank you, Mr. Chair.

I want to take a bit of a step back for a second to talk about the legality or jurisdictional issues surrounding some of these amendments. We're getting into some fine-line areas.

My understanding is that under section 92, property rights are a provincial jurisdiction. Could you give the committee members a very brief primer to see that this is not subject to a constitutional challenge, that provincial jurisdiction is not being infringed upon?

Ms. Darlene Carreau (Counsel, Industry Canada, Legal Services): Copyright is specifically named in the Constitution, so any provision dealing with copyright is constitutionally within the jurisdiction of the federal government.

Hon. Gerry Byrne: Including trademarks? So this—

Ms. Darlene Carreau: Trademark is not specifically listed in the Constitution, but falls within the head of power under trade and commerce and power.

Hon. Gerry Byrne: Thank you.

The Chair: Thank you, that's a good clarification.

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

(Clause 3 as amended agreed to)

The Chair: We have a new clause 3.1, which is amendment NDP-2 on page 8. We'll have Mr. Masse speak to that.

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

This amendment I'm proposing is to add assurances to aboriginal community groups and not-for-profit community groups. It was good testimony by VANOC in terms of their presentation here, but this amendment is to make sure the Governor in Council is going to issue regulations and rules related to the use of licences and materials and that will be available through a transparent process.

I believe this will give some comfort to some of the symbols being used by the Olympics that go to traditional extents in Canada and beyond and will allow aboriginal and community groups and not-for-profit groups a level of comfort that they will have a clear, defined process on how to use licensing, and that will be brought out through clear regulations from the Governor in Council.

The Chair: Thank you.

I have Mr. Carrie.

Mr. Colin Carrie: Thank you very much, Mr. Chair.

I'd like to defer to our colleagues for comment.

Susan, would you...?

Ms. Susan Bincoletto: If I understand this motion correctly, it's a motion to enable the Governor in Council to make regulations determining the terms and conditions of a licence and who would qualify for such a licence and even the terms for suspension and revocation of a licence.

We've looked at it very quickly and we have some concerns after hearing the testimony, as well, of IPIC in relation to one of the earlier questions to them. The question here is it really does seem to interfere with the rights holder's ability to determine when to license, how to license, and with whom to license. One does not take that lightly in terms of giving the Governor in Council that ability to impose an obligation on the licensing terms and conditions.

It's not something the government has been doing lightly, especially recently, to intervene and impose these kinds of obligations. It may also interfere with provincial jurisdiction, because the conditions of licence is really an issue of provincial jurisdiction. So we have some concerns about this motion.

● (1055)

The Chair: Mr. Masse, do you want to address that?

Mr. Brian Masse: Yes, but just make sure it's for community and not-for-profit groups.

The Chair: Mr. Masse, I have a question, if I can. I'm not certain why this is necessary and perhaps if you could explain that again. I don't see what this is trying to protect that is covered by the legislation in and of itself right now.

Mr. Brian Masse: Right now, the way I understand and read the legislation is there is no mandate for VANOC to do this. This compels a process to have rules and regulations out there for aboriginal and community not-for-profit groups. That's why this would create a clear process the Governor in Council would have to do beforehand, specific to those groups, and they would come up with the regulations to do so.

So instead of having it left out, this would be an obligation, but I think that's the gentle balance in all this. I believe it wouldn't adversely affect the property rights holders for trademarks and their usage, seeing it's so specific to those organizations and because we're using symbols that are traditional in nature. We've had concerns raised by different community groups, and that concerns us.

The Chair: I have just one follow-up question, Mr. Masse.

You can address this as a panel. My understanding in reading this legislation is that if an aboriginal group uses it, or if a not-for-profit group uses one of the trademarks, and it's not for commercial purposes, it's not covered by the legislation. That's why I'm not sure why this is necessary. Because if a not-for-profit group uses it, it's not covered by this legislation.

Mr. Brian Masse: These are concerns that have been raised to us. I think I've played this out as basically an insurance policy that I'm looking to move forward. And that's the reason for it.

The Chair: Does anyone from the panel want to comment?

Ms. Susan Bincoletto: I would tend to agree with the chair. If it's for an abundance of caution, if it's already outside the scope of the legislation, then there's really no need to impose a further obligation. If there is such an imposition of an obligation, it does raise some concerns in terms of how we interfere with the terms and conditions of a private party—in this case, VANOC—to determine who to license with and under which conditions.

The Chair: Okay.

I have Monsieur Arthur.

[*Translation*]

Mr. André Arthur (Portneuf—Jacques-Cartier, Ind.): From I have been told, people who used these marks on a regular basis prior to March 2, 2007, have had their rights grandfathered. The aim seems to be to keep in the good books of aboriginal community groups by allowing them to continue their traditions; however, I hope that these traditions started prior to March 2, 2007.

Could somebody please tell me if I am mistaken?

Mr. Luc Malo: You are correct.

Ms. Paule Brunelle: It is an ancestral tradition.

Mr. André Arthur: I would imagine that the ancestral tradition started prior to March 2, 2007.

● (1100)

[*English*]

The Chair: Ms. Bincoletto, do you just want to clarify that?

[*Translation*]

Ms. Susan Bincoletto: You are absolutely right. The bill grandfathers usage rights that predate March 2, 2007, but does not allow for them to be extended.

Mr. André Arthur: Thank you, Ms. Bincoletto.

Thank you, Mr. Chairman.

[*English*]

The Chair: We'll go to Ms. Fry.

Hon. Hedy Fry: I have just one question of clarification for the panel.

Given that anything that occurred prior to March 2, 2007, is outside the scope of this bill, and given that the inukshuk is an actual symbol coming from the Inuit people themselves, they could continue to use the inukshuk as much as they like in commercial mass communications in whatever ways they need to without having to face consequences from this bill. That is my understanding. Am I right?

Ms. Julie D'Amours: Yes, that's correct.

I'd like, Mr. Chair, to invite members to look at the schedule and item 18. This is the protected mark that consists of an inukshuk. This is the mark that is protected there. My understanding would be that first nations all across the country would use inukshuk that look different from this one. This is a very stylized inukshuk. You'll see that there's a smile, a special shape, and so on. So this is the mark that is being protected. Any inukshuk that doesn't resemble this one, obviously, can be used by anyone.

Hon. Hedy Fry: Instead of making me feel better, that's now raised a question for me. If we are already saying in the bill that anything that looks like or is similar to one of these trademarks or any of the things in that section that you just held up.... I know you say that this is specific, but an inukshuk is an inukshuk is an inukshuk. And if an inukshuk looks like that—it doesn't have to be exactly like that—are you now telling me that it doesn't come under the understanding of the March 2, 2007 deadline?

Ms. Julie D'Amours: If any aboriginal business, for instance, were using this particular mark or any mark so nearly resembling it as to be mistaken for this one, and they were using it prior to March 2, they would be safe.

Hon. Hedy Fry: That's all. Thank you.

Ms. Darlene Carreau: It's worth noting that it's not simply the inukshuk that is being protected here, but that the elements of Vancouver 2010 and the Olympic rings are included. That is the mark. It's not the inukshuk alone.

Hon. Hedy Fry: Thank you. That's good clarification.

The Chair: Thank you.

I have Mr. Carrie, and then I have Mr. Masse.

Mr. Colin Carrie: I just wanted to take the opportunity to say that I feel it does interfere with the right holder's decision, in this case VANOC. So the government will be voting no to this particular clause.

Thank you.

The Chair: Okay.

Mr. Masse.

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

This still leaves the community not-for-profit groups out. So I'll stand with the motion.

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

(Clause 4 agreed to)

(On clause 5—*Remedies*)

The Chair: Monsieur Malo.

[*Translation*]

Mr. Luc Malo: We have received clarification as to who can file for an injunction, and Ms. Rowden has provided us with her interpretation of the situation. From what I gather, a business cannot file for an injunction itself, unless it has not received an answer from VANOC within the 10-day timeframe. If VANOC determines that there are no grounds for taking the matter to court, the business cannot then decide to do so of its own accord.

Is my interpretation correct?

● (1105)

Ms. Susan Bincoletto: Absolutely. The provision stipulates that only VANOC, the COC or the CPC will be able to initiate legal proceedings. With the written consent of VANOC, sponsors will also be able to request that legal proceedings be undertaken, and VANOC will have 10 days to answer.

We decided to give this option to the sponsors, even although VANOC, the COC and the CPC are the rights holders. As the sponsors have economic interests at stake, and as they are essentially partners, they will be able to provide information and input to VANOC that might influence the organization's decision. The final decision, however, remains in the hands of VANOC. It was important to us that it be so, as we have to protect the reputation of the Olympics.

Mr. Luc Malo: Thank you.

[*English*]

The Chair: Are there any others?

(Clause 5 agreed to)

(On clause 6—*Interim or interlocutory injunction*)

The Chair: There are some concerns about clause 6, and I do have one amendment. But I have a question for the panel, which some members have asked me to raise. I'd like to state it and have the members of the panel address it. It deals mainly with the testimony from IPIC.

IPIC asserts that the provisions of Bill C-47 are inconsistent with other laws. They have stated that the bill sets a different standard for interlocutory injunctions from that applied by the courts in Canada, and that it removes the need to show clear or unequivocal irreparable harm that cannot be compensated by monetary damages that might be awarded after trial.

So could you comment on IPIC's concerns with respect to interlocutory injunctions and its recommendation to delete clause 6 of the bill? In other words, why is clause 6 required? That's the first issue.

Secondly, failing deletion of this clause, IPIC recommends that it be amended to state that

> if a court finds reasonable grounds to conclude that the activities of a party will cause the public to believe that the activities are "approved, authorized or endorsed" then that shall be deemed to be evidence of irreparable harm.

Could you comment on this recommendation for us?

Ms. Susan Bincoletto: Yes, thank you, Mr. Chair.

I'll turn to my colleague Ms. Carreau to respond to this.

Ms. Darlene Carreau: The first point that was raised, Mr. Chair, is with respect to inconsistency with other laws. This is not inconsistent with other laws. There is a three-pronged test in the common law dealing with what is required to be granted an injunction.

The government's position is that a specific change is required in this circumstance to do away with the requirement of irreparable harm. So to that extent, we are changing the test as it stands with respect to injunctions, but it is not inconsistent.

It's required primarily because it is very difficult in these types of cases for a party moving to get an injunction in an intellectual property case to prove irreparable harm, largely because we're dealing with money. The court generally comes back and says, "Well, we can just satisfy the claimant and pay them later", so the conduct can continue, to the detriment of the applicant, and in this case it will be VANOC. So the infringing activity can continue and later on VANOC would be compensated for all the damages that had accrued over the course of the games.

The government's position is that this is not acceptable during the Olympic Games. The intent is to remedy the situation immediately and to stop that activity from happening and not deal with compensating in money later. The damage will have already been done and perhaps cannot be compensated in damages.

Do you want me to comment on their deeming provision?

● (1110)

The Chair: Yes, if you could, please.

Ms. Darlene Carreau: I fail to see any substantive difference actually between what IPIC is proposing and what the government has already done. What they're proposing is to deem a contravention of section 4 to be evidence of irreparable harm.

The court still has to look at the other two parts of the test. And most importantly, the court has to look at whether there is a serious issue here to be tried. And in looking at the serious issue, the court is going to be looking at the merits of the case, and in particular whether there is a prima facie case that there has been a breach of our section 3 or our section 4 of the act.

So the court is going to be looking at that evidence in any event. So there is really, in my view, no substantive difference between what IPIC has proposed and what the government has proposed.

In moving forward, VANOC is going to have to demonstrate that there is adequate evidence to support their cause of action under section 3 or section 4, and the court is going to have to be satisfied that there is a serious issue to be tried with respect to the contravention of section 3 or section 4 before moving forward.

I think it's also important to mention that there is a balance of convenience test and that it's not just a waiving of the irreparable harm. We're going to look at serious issue, and we're also going to look at the balance of convenience. Where does the convenience lie? Is it more convenient to give the injunction to VANOC, or is it more convenient to let the party who is alleged to have infringed to continue its activity pending trial?

Another point that's worth mentioning is that under the various rules of court, the party moving for an injunction—and in this case it would be VANOC—is in most cases required to provide an undertaking with respect to damages. So, assuming that VANOC gets an injunction and the court later finds at trial that it was an improper injunction, VANOC would be liable to pay damages to that party that they alleged had contravened this bill.

Lastly, this is not an unprecedented amendment. We have examples of this in the United States; in Australia's Sydney Games, the act of 2000; and even in our own 1976 act for the Montreal Games.

The Chair: Thank you very much for that. It was helpful—for me, at least.

I have Mr. Carrie on the list.

Mr. Colin Carrie: I just wanted to reiterate that this is a timing issue, the importance of the Olympics, our international reputation, and to remind everybody that this does end at the end of 2010. It's not permanent.

The Chair: Okay. Thank you, Mr. Carrie.

Mr. McTeague.

Hon. Dan McTeague: Mr. Chair, we had some concerns I want to address.

Mr. Carrie's comment is correct. I did raise the issue of timing. And I'm more than satisfied with the comments of Madame Carreau with respect to the safeguards that are there.

We had looked at the possibility of an amendment. Mr. Chair, we won't be making an amendment.

The Chair: Thank you, and thank you very much for that clarification.

We now, under clause 6, have amendment NDP-3, page 9. I'll get Mr. Masse to speak to that, and then I'll have Mr. Carrie.

Mr. Masse.

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

There are, I guess, two different ways we can go at this. What we're proposing is to create a system outside of the courts that would provide an opportunity for someone to appeal to an actual process that would give them the opportunity to be heard by a judge with legal experience in intellectual property to be able to make a decision about the injunction. We've put it for 48 hours because we know time is of the essence for both sides in some type of a dispute.

We think this would be beneficial to making sure that it would be seen as independent, so that VANOC isn't seen as the judge, jury, and sentencer of an issue, whereas it's now going to have an independent judge, someone who has some experience and will be able to get that person or persons before the actual Olympics and have a prescribed process for injurious effect and also how to appeal for an injunction beforehand.

It's as simple as that. The other way is to send it back to the courts. We've heard evidence today, and it's not a perfect system—I recognize that—but once again, I'm concerned about just throwing everything back in the courts and we have no guarantee that the proper process or facilities and timing will be made available for individuals. That burden will probably be greater than an independent process that could lighten that burden, especially for certain groups and organizations.

● (1115)

The Chair: Okay, thank you, Mr. Masse.

Next I have Mr. Carrie and Monsieur Arthur.

Mr. Carrie.

Mr. Colin Carrie: I was just going to ask our panel for comment on this one.

Ms. Susan Bincoletto: Yes, thank you.

I want to clarify that my reference to IPIC earlier was in respect to this motion and not the earlier motion about the not-for-profit. Ms. Rowden was responding to this, saying that—and I'm paraphrasing it—there are differences of views as to whether or not it's a good system. Therefore, you'll not be surprised that we also have concerns about this motion.

On the first part, really, the right of appeal exists in any case, in any event. So, to us, it appears a bit redundant to actually put it in the bill. The right of appeal does exist.

The second paragraph I'll let my colleague from the justice department respond to more adequately. It is difficult for an act to actually be imposing a time limitation on the courts to turn around a decision or hear a case. As IPIC mentioned earlier today, there are ways to expedite a process. Parties get together and a case can be heard very quickly.

Therefore, again, it's unprecedented in IP statutes, and then there are other mechanisms that seem to work properly now to actually speed up the process. So, for those two reasons, we think it is perhaps not necessary or a good idea to entertain this kind of amendment.

Ms. Darlene Carreau: Your concern seems to be related to having an independent judge hear the matter, and that is exactly what's going to happen, because these applications are going to be brought to the Federal Court or to the superior court of a province, and the judges are appointed to be independent decision-makers in that regard and have particular expertise, as determined by the courts. That is built into the mechanism, and that is why we have recourse to the courts already established to deal with that.

The provincial courts, for instance, have special expertise. This is considered an equitable remedy at law, and provincial courts have specialized expertise in dealing with equitable remedies. The federal court likewise has provisions dealing with interlocutory injunctions, interim injunctions. and appeals therefrom, so it would be practically impossible to do this from an administrative-type situation. But I think you can rest assured that cases do proceed on an expedited basis, especially when they involve injunctions. It's just the nature of the beast.

The Chair: Okay, thank you.

Monsieur Arthur.

Mr. André Arthur: I don't understand very well the intent to micromanage justice. I sure hope that if ever an appeal is lodged, it's going to be judged by somebody who has legal experience. To say that it has to be legal experience in such-and-such an area of justice seems to be a little preposterous, for a parliamentary entity or the Parliament of Canada to say to the head judge of whichever court is going to hear the appeal, “Make sure the guy you name will be competent.” This is kind of funny, as far as I'm concerned.

As much as we have to defer to the courts as far as their ability to judge is concerned, I would be a little bit terrified that any of those modifications could end up justifying somebody deciding that the injunction given will be suspended for the appeal.

How is that timing going about?

[*Translation*]

Will the right to appeal, which exists regardless of the amendment, allow for the harmful activity to be continued or will the injunction remain in force throughout the appeal?

[*English*]

Ms. Darlene Carreau: In terms of Federal Court proceedings, Federal Court Trial Division decisions, if the Federal Court is granting the injunction, it is an executory decision. It is a final order, so if a party appeals and wishes not to have that Federal Court Trial Division decision apply, they need to get a stay of that decision.

● (1120)

Mr. André Arthur: Thank you.

The Chair: I have Mr. Masse.

Mr. Brian Masse: Mr. Chair, obviously this is special legislation providing unprecedented powers; hence, I'm suggesting a system within that framework, as opposed to sending it to the existing judicial framework we have. That's the reasoning behind my suggestion. Even the 1976 Olympics bill actually had comprehensive legislation, as opposed to this being very specific to one issue in particular.

So I stand by the motion, and I'm open to amendments. If members have criticisms and suggestions, I'd be happy to receive them as subamendments, and I'll leave it at that.

The Chair: I don't see any further comments on amendment NDP-3.

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

Mr. Brian Masse: Can we get a recount?

Some hon. members: Oh, oh!

(Clauses 6 and 7 agreed to)

(On clause 8—*Detention and disposition of imported wares*)

The Chair: I have amendment G-4, on page 10.

Mr. Carrie.

Mr. Colin Carrie: The object here is to make sure that the English is as specific as the French version.

[*Translation*]

To make sure it is interpreted in the same way. That is very important.

[*English*]

Hon. Dan McTeague: Agreed.

The Chair: Is everybody okay with this amendment?

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

(Clause 8 as amended agreed to)

(Clauses 9 to 12 inclusive agreed to)

(On clause 13—*Schedule 2*)

The Chair: I have amendment NDP-4, on page 11.

Mr. Masse, I'll get you to speak to that.

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

This simply ensures that schedule 3 is sunsetted with schedule 2. Schedule 2 has an identifiable date, December 31, 2010. Schedule 3 has that part omitted, so this just ensures that it's at the same time and that there can be no misunderstanding of that.

The Chair: Ms. Fry.

Hon. Hedy Fry: I think the amendment's addition of schedule 3 is fine, but I just wanted to get a clarification from the panel and Ms. Carreau.

The concern here is that if all we're doing is deleting or repealing schedules 2 and 3, then does clause 6 stay in this, or does clause 6 go as well?

Ms. Darlene Carreau: Clause 6 stays, but the relevant provision for this is really clause 4 on ambush marketing. The provisions will stay and in fact the schedule will stay. All we're doing is emptying the schedule.

Hon. Hedy Fry: So you will now have new benchmarks for proving.... I mean, will “irreparable harm” remain, or is it going to sunset? This is what I meant by clause 6.

Ms. Susan Bincoletto: Clause 12 currently provides for Governor-in-Council authority to prescribe regulations; and clause 6, on the waiving of irreparable harm, which you're referring to, will expire, as prescribed by regulation. And currently it is the government's intent in clause 12 to issue regulations that will make it absolutely clear that the ambush-marketing provision in clause 4 and the waiving of the irreparable harm in clause 6 will cease to have effect as of December 31, 2010.

So there is no link with schedule 3, which is linked more as a factor to determine ambush marketing in clause 4, as my colleague mentioned. But with clause 6, its validity will only have effect as per the regulations.

● (1125)

Hon. Hedy Fry: Thank you. That's what I wanted to find out. That's all I needed to clarify.

The Chair: Thank you, Ms. Fry.

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

(Clause 13 as amended agreed to)

(Clauses 14 and 15 agreed to)

The Chair: Shall schedule 1 carry?

Some hon. members: Agreed.

The Chair: Shall schedule 2 carry?

Some hon. members: Agreed.

The Chair: You don't want to add Ajax—Pickering to this?

Hon. Dan McTeague: Chair, I'm Pickering—Scarborough East.

The Chair: Shall schedule 3 carry?

Some hon. members: Agreed.

The Chair: Shall clause 1 carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

The Chair: I want to thank members, especially for taking an extra day to come in on Tuesday outside of our scheduled time.

I'd like to thank very much our panellists for being with us from the Department of Industry. They were very helpful.

The meeting is adjourned.

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