



House of Commons  
CANADA

# Standing Committee on Industry, Science and Technology

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INDU • NUMBER 006 • 2nd SESSION • 40th PARLIAMENT

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EVIDENCE

**Thursday, March 5, 2009**

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**Chair**

**The Honourable Michael Chong**

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Thursday, March 5, 2009

• (1530)

[English]

**The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)):** I call the meeting to order.

I'd like to welcome the Honourable Diane Ablonczy and her departmental officials, who are here to talk to us today about Bill C-4, an act respecting not-for-profit corporations and certain other corporations.

My understanding is that the minister has a ten-minute opening statement. Then we'll open the floor to members for questions and comments.

Before we do that, I want to introduce the two analysts we have with us today. We have Alysia Davies, who is an analyst and a lawyer with the Library of Parliament, and we have Nathalie Pothier, who is an economist with the Library of Parliament. Welcome to our committee.

Without further ado, go ahead, Minister.

**Hon. Diane Ablonczy (Minister of State (Small Business and Tourism)):** Thank you, Mr. Chair and colleagues.

This is actually my very first time, as a junior minister, or any other kind of minister, appearing before a parliamentary committee. I'm very pleased that it's with you all. I'm also very pleased that it's about a bill we very much want to finally get into law. So thank you for this opportunity to address you on Bill C-4.

Bill C-4 has a gripping title. I know that you're going to be on the edge of your seats. It's an act respecting not-for-profit corporations and certain other corporations. We can say that this is a bill whose time has definitely come. It represents the eighth time, colleagues, the third time in the past year alone, that a Canadian government has attempted to reform a statute. This statute was first brought into law in 1917, and of course you can appreciate that it no longer serves the needs of its principal stakeholders.

As I said when the bill was introduced in the House, not-for-profit organizations are a crucial part of Canada's economic structure. There are more than 160,000 not-for-profits, of which some 19,000 are federally incorporated. They accounted for over \$136 billion in revenues in 2003 and employed some two million people.

So this is what the core of Bill C-4 is about. We have before us an opportunity to update and modernize an important marketplace framework statute that has not been substantially amended in over 90 years, which is older than any of us, fortunately. In that time, the world in which not-for-profit corporations operate has changed

dramatically. In 1917, when the concept of a not-for-profit corporation was added to the general corporations statute, most such corporations were very small, self-financing entities that provided much-needed local services and that operated in a non-electronic world. Such small local organizations still exist, of course, but they share the landscape with huge national, even international, organizations with annual budgets in the hundreds of millions of dollars.

The trick in modernizing legislation of this kind is to balance the needs of the small with the large, the local with the national, the member-financed mutual aid society with the organization that solicits public money. That is not easy. Business corporations typically have interests that are largely homogenous: consistent profits, good public relations, keeping shareholders and other stakeholders happy. Not-for-profit corporations and other corporations without share capital, by contrast, have the most divergent interests imaginable.

The proposed legislation would apply to churches and other religious organizations, industry associations, charities, foundations, special interest groups, political parties, and sporting organizations, to name a few. What the proposed act does, then, is establish broad rules for setting up a not-for-profit corporation, or one without share capital, to ensure that it operates in a fair and transparent manner before its members and the public and to allow for an orderly dissolution of the corporation if circumstances warrant.

The proposed act definitely does not address the granting of charitable status or taxation policy of any kind. That is the role of the Canada Revenue Agency. Nor does it deal with the question of funding for federal not-for-profit corporations. This is a bill that simply proposes broad ground rules for modern not-for-profit corporations. That is all it does and all it is intended to do.

One area I want to deal with right at the outset is the apparent size and complexity of the proposed legislation. I can easily imagine how anyone looking at a 170-page bill with some 373 sections could question how this could possibly make life easier for not-for-profit corporations. In fact, the bill does exactly that. Let me explain in detail.

What the new statute proposes is to clarify areas that are not now currently addressed in the federal not-for-profit law. It would do so without imposing any significant burden on small or medium-sized corporations while at the same time ensuring that they are covered by a modern corporate governance framework.

For most not-for-profit corporations, the regulatory burden will be minimal. At the initial incorporation stage, an applicant will have to fill out relatively simple forms, file their articles, and pay the incorporation fee. That's it.

Annually, most corporations will have to complete financial statements, which they would have to do anyway for tax purposes, and send that financial information to members. Soliciting corporations, those that receive money from governments or the public, will also have to file these with Corporations Canada.

Additionally, corporations will be required to convene an annual meeting and file an annual return. This is not new. Corporations are required to do this now. But the new act will allow almost unlimited flexibility in how corporations do this. They will be able to communicate, hold meetings, and file documents with Corporations Canada electronically if they so choose. This represents a significant reduction in the regulatory and paper burden. The new audit requirements represent a potential further reduction of the regulatory and paper burden on smaller corporations.

Under the current statute, all corporations are required to have their financial statements audited. As members well know, this can cost several thousand dollars, potentially representing a sizeable portion of the budget of small corporations. The new provisions provide a graduated audit requirement based on the source of a corporation's funding, whether it's from members or whether from the public or governments, and the amount of its gross annual revenue. Under the new rules, soliciting corporations, those that derive their revenue from donations or government grants, that have revenues of less than \$25,000 can dispense with audits entirely. This is also the case with non-soliciting corporations with revenues of less than \$1 million. Of course, this represents an immediate and very substantial cost saving, especially for small soliciting corporations operating on shoestring budgets.

Most of the rest of the proposed act establishes rules of good corporation governance or provisions that address contingent situations. The corporate governance rules include provisions dealing with areas such as directors' liabilities, members' rights, and responsibilities of directors, officers, and the auditor. These are all areas familiar to the legal and professional communities, and the principles in the bill are just good, modern corporate business practice. I know that the not-for-profit sector will welcome clear and understandable corporate governance standards. Charities and other soliciting corporations that compete for limited donor dollars will find them especially useful.

Finally, there are the provisions that deal with the contingent situations, which for most corporations will probably never arise. These include, for example, provisions for corporate reorganizations. Most corporations will never amalgamate with another corporation, but it is incumbent upon the government to provide clear, fair, and transparent rules for those corporations that choose to do so.

What these contingent rules do is establish procedures, in some cases by filling in holes that exist in the current law. For example, an amalgamation of two or more corporations under the current act can actually take years with untold legal and accounting costs. Under the proposed statute, a short-form amalgamation would take days at most, with minimal costs. While as I said, most corporations will

never amalgamate, this represents real streamlining for those that will.

The flexibility and clarity built into the act is why we decided that a classification scheme under the act was necessary; that is, we chose not to regulate different types of corporations differently. Rather, we chose to provide a framework that will allow corporations the maximum flexibility to organize themselves in a manner that works best for them.

• (1535)

A classification system establishing different rules for different categories of corporations would cause an admittedly complex piece of legislation to be even more complicated. By necessity, some rules, such as those related to directors' liability, would have to apply to all corporations, while other rules would apply to only one corporation. Added to this would be the difficulties in classifying some corporations. There are some organizations that would easily fit within several categories. For example, a corporation could be a mutual benefits society, such as a religion-based community club, but it could also collect funds for sending children to summer camp, operate a shelter for homeless individuals, and also engage in family counselling. So what classification is it? What rules would apply if there was a conflict in interpretation?

Instead, much like the Canada Business Corporations Act, this act provides for a system of self-regulation and self-enforcement. This is done by allowing corporations the maximum flexibility in writing their own articles and bylaws, and providing for civil remedies in the event of internal disputes. This would allow federal not-for-profit corporations to devote their time, energies, and money to fulfilling the purpose for which they organized in the first place.

Members of the committee, it is time that this bill be examined and passed as expeditiously as possible. Not-for-profit corporations have been waiting for a new governing statute for literally years, and they have been extremely disappointed every time it has died on the order paper.

Let me close by saying that I'm happy to have had the opportunity to be here with you today, and I also want to introduce the Industry Canada officials here today: Roger Charland is a senior director for the corporate and insolvency law policy and internal trade directorate—I think he gets paid by the words in his title. Also we have Wayne Lennon, who is a senior project leader on the not-for-profit file, and he's done all the heavy lifting on this bill. And Coleen Kirby is here; she's the manager of the policy section at Corporations Canada, and is especially knowledgeable about all the regulations.

We look forward to responding to any questions or concerns you may have about this bill.

Thank you very much, Mr. Chairman.

• (1540)

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

Mr. Garneau.

**Mr. Marc Garneau (Westmount—Ville-Marie, Lib.):** Thank you, Mr. Chair.

I thank the honourable member for her introductory remarks on Bill C-4. I certainly echo her comment that this bill is long overdue.

As the member knows, the bill actually traces its origin back a number of years to the Liberal Party and Bill C-21. As such, our party supports its intent, for sure.

I would have one question for the honourable member. Is she satisfied that this bill does not conflict with any provincial or territorial laws dealing with not-for-profit corporations?

**Hon. Diane Ablonczy:** Mr. Chair, member, I am satisfied. In fact, not-for-profit corporations can incorporate either federally or provincially; it's their choice. So the federal government's incorporation laws are a choice for not-for-profits. They can also choose whatever applicable provincial laws they might want to incorporate under, and as you know, many of them do. So there is no conflict. It of course draws on the best practices of a number of the not-for-profit laws in some of the other provinces. In particular, I think Saskatchewan was a bit of a template for this particular bill.

**Mr. Marc Garneau:** Thank you.

[*Translation*]

**The Chair:** Do you have any other questions?

Ms. Coady.

[*English*]

**Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.):** Thank you very much.

Thank you for taking the time to come here today and talk to us about this important bill.

I'm from Newfoundland and Labrador, so I'll use that to put it in context. There are roughly 500 not-for-profit corporations under the federal guidelines from Newfoundland and Labrador. About 210 are harbour authorities. This is to give some context of what kind of not-for-profit corporations are under this act federally.

My question goes to the mechanism for implementation. When I look at these harbour authorities, there's no paid staff, they're very small and in small communities, and there are very limited resources available to them. Luckily for harbour authorities, of which roughly 50% are from the federal registration, they can lean a little on DFO for support, but there are a lot of others that do not have that mechanism for assistance in implementation.

I have two questions on this particular issue.

First of all, this bill affects change in a system of all sizes and sophistications, and the minister has acknowledged that up front. Can you give us some assurances of how your department will go about the education process, the assistance process? I know, for example, in the implementation of some of their regulations CRA reached out to give some technical support and they had a mechanism and means for assisting some of the charitable organizations in compliance. Perhaps you could talk about that.

The second question goes to the costs and compliance burden. We all know that accountability is exceptionally important, both financially as well as from a governance perspective, and it is essential, but not-for-profit organizations can become overburdened.

Perhaps you can take those two questions as one.

• (1545)

**Hon. Diane Ablonczy:** I thank the member.

The member and I actually met in Halifax last year and we had a good conversation there. I'm very pleased that she's now a colleague.

As soon as the act is passed, a notice will be sent by the director of corporations to all active part II Canada Corporations Act corporations, and that's when the three-year transition period starts. Everyone will get a notice and everyone has three years to make the transition.

All a corporation will have to do to continue under the new act is simply file an application. There will be no fee for corporations to transfer to the new legislation and the notice will contain all the necessary information. In other words, you get information about how to make the transition at the time the notice is sent out that there's a new regime in place. The notice that will be sent out will give complete information to the corporations you mentioned on what they have to do to make the transition. They have three years and no cost to do it. So I think it will be relatively easy.

**Ms. Siobhan Coady:** I sense the streamlined process here, and for some of the larger ones this is quite a simple process, but my concern is for smaller organizations that do not have paid staff to even accept the information that you're giving them. It's a 170-page bill, and as you acknowledged, it's quite daunting when you receive it, especially when you're a not-for-profit organization with non-professional staff. I'm hoping there will be some mechanism.

Perhaps the minister can ask her team to go back and put a mechanism in place for assistance for small organizations that may not have the available opportunity. I know it may be a simple form, but there are some pretty stiff processes in there.

**Hon. Diane Ablonczy:** I'll make a note of that. Thank you.

**Ms. Siobhan Coady:** There are complexities in this bill. My question now is around assistance for that, and that's why I asked it.

It's been suggested that there be a minimum set of standards developed instead of the two-tier approach. A lot of the bill deals with this two-tier approach. I'm wondering if you could answer whether it would ease some of the complexities. Maybe we should have a minimum standard rather than this two-tier approach that's in the current legislation. Perhaps you could talk to that.

**Hon. Diane Ablonczy:** A two-tier approach to...?

**Ms. Siobhan Coady:** You have a number of levels within your legislation.

**Hon. Diane Ablonczy:** Right. It's because there are different types of not-for-profits, actually. Maybe I'll just let the officials clarify which of those, because I think there are four tiers, aren't there?

**Mr. Wayne Lennon (Senior Project Leader, Corporate and Insolvency Law Policy and Internal Trade Directorate, Department of Industry):** If you mean the difference between soliciting and non-soliciting, the bill actually does give only minimal standards. There are only five differences between soliciting and non-soliciting corporations.

Soliciting corporations have to have three directors instead of one; non-soliciting can have one. The audit requirements are a little more onerous for soliciting corporations simply because there's a public policy reason involved: they collect money from the government or the public, so there's a public interest in what they actually do with that money. They cannot have a unanimous members' agreement, soliciting corporations, which is not something that may happen very often, but it's forbidden for them. There's a difference in what they do with the funds upon dissolution, which again won't affect them on a day-to-day basis until they actually do dissolve. And the financial statements have to be filed with Corporations Canada. It's not really that much of a difference between the soliciting and the non-soliciting.

The various categories for audit requirements is maybe what you're referring to. But the requirements are minimal. Under \$25,000 there's no need for an audit at all, and they can decide not to do that. Between \$25,000 and \$50,000, is it...?

• (1550)

**Ms. Coleen Kirby (Manager, Policy Section, Corporations Canada, Department of Industry):** Under \$50,000.

The audit requirements, if you're a soliciting corporation, are that if you have less than \$50,000 in gross annual revenues you may choose to have no audit. Between \$50,000 and \$250,000 the default is to have an audit with an option of having a review engagement, which is a lower level of review based on members. Over \$250,000 you have to have an audit.

For non-soliciting corporations the dividing line is at the \$1 million mark. Right now, 100% have to have an audit. Under this regime, if you are smaller, if you are not using public money, you will be able to have a lower level of review.

**The Chair:** Thank you, Madame Kirby.

We're going to go now to Monsieur Bouchard.

[Translation]

**Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ):** Thank you, Mr. Chair.

Thank you, Minister, for being here this afternoon. Thanks also to your colleagues.

I read information concerning this bill and observed that steps were undertaken almost 10 years ago. One also observes a strong interest in modernization and great transparency when it comes to structuring an organizing not-for-profit organizations.

I have to tell you that my party is in favour of the principle of the bill. However, we believe that it needs to be improved, specifically when it comes to the oversight of federal government powers and areas of jurisdiction, as well as the classification of organizations. At

first glance, there are the two points with which we take issue; perhaps there are others.

I am coming to my first question about the oversight and federal government areas of jurisdiction set out in the bill, although my question deals more with the lack of a description.

Under section 92 of the Canadian Constitution, management of the social economy, volunteerism and community outreach are provincial jurisdictions. All matters of a purely local of private nature are the exclusive jurisdiction of the provinces and of Quebec. Currently, section 154 of the Canada Corporations Act stipulates that the federal government may confer upon a corporation the rights to incorporate if the corporation is pursuing objectives of national, patriotic, religious or philanthropic nature, per example.

Why does not the bill provide an oversight process in respect of the federal government's areas of jurisdiction?

**Mr. Roger Charland (Senior Director, Corporate and Insolvency Law Policy and Internal Trade Directorate, Department of Industry):** As the Minister indicated, the purpose of the bill is to modernize the act. In so far as possible, there has been attempt to maintain some level of consistency among federal corporate statutes.

In this respect, I have borrowed the approach contained in the Canada Corporations Act. Consequently, the aim is to simply give companies an opportunity to incorporate federally without necessarily displacing or moving in on provincial areas of jurisdiction. That does not prevent anyone from deciding to incorporate provincially, if they so desire. By modernizing the act the desire was to simply create a system which gave people a choice between the two options. And that is consistent with what you find in all other federal corporate acts, and in no way does it alter or encroach on jurisdiction.

• (1555)

**Mr. Robert Bouchard:** I have a question about the classification system.

According to the Charity and Not For Profit National Law Section, the Canadian Bar has found a major defect with the bill in terms of the non-classification of mutual organizations or public charity organizations. There are number of interesting distinctions to be highlighted, and particularly attention must be given to this.

In your opinion, don't you think it is important to develop an NPO classification system for mutual organizations, charities or public charitable organizations?

**Mr. Roger Charland:** As it has been pointed out, when time comes to establish this classification, in practice, it becomes extremely difficult to know in which classification you fit. Increasingly, not for profits are operating at various levels and conducting a different type of activities. The desire was to make it less complicated for individuals who are incorporating or operating within a not for profit to determine in which category he fits.

To simplify things, baselines, minimum criteria and some level of flexibility were instituted enabling individuals to put together a corporation and its regulations in a way that makes it possible for the corporation to carry out its operations and make its objectives. A distinction just had to be made between solicitation and the origin of funds as a result of the public interest component of funding which essentially means public money.

The goal was to essentially avoid a overall complex situation linked to the classification process which would only have led to debate over which category you actually fit into.

**Mr. Robert Bouchard:** I'd like to get back to the issue of provincial and federal government areas of jurisdiction.

You said that organizations could choose to call on either the federal government or the provincial government for their incorporation. I would like you to expand a little. Does this mean there is no oversight? People can proceed freely? If an organization is currently locally based but could eventually be Canada-wide, could people request a charter at the federal level? Is that correct?

I'd like you to comment on that a little further. Do you find that this clarifies somewhat the issue of authority and areas of jurisdiction?

**Mr. Roger Charland:** The bill aims to allow any individual to incorporate a non-profit organization at the federal level. Further to that, it would have to follow established rules. However, there would be no oversight as detailed as what you've referred to.

I would reiterate that this type of approach exists in other corporate laws like the Canada Business Corporations Act. It is simply an approach we've chosen.

**Mr. Robert Bouchard:** Did this definition not seem like an encroachment to you?

**Mr. Roger Charland:** No.

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

Mr. Warkentin.

[English]

**Mr. Chris Warkentin (Peace River, CPC):** Thank you, Mr. Chair.

Thank you, Minister, for coming today to testify before our committee on this important piece of legislation.

As you know, I've been actively pursuing the responsibility, along with my government colleagues, of reducing the required paper work across government, as you are with the paper burden on the small-business sector specifically. I know this fits into a portion of that response. We're going to continue to work with all businesses, including the not-for-profits, to reduce their compliance burden.

I'm wondering if you might explain to us how much this will reduce the paperwork burden for these groups, and how this plays into that initiative.

• (1600)

**Hon. Diane Ablonczy:** Thank you for the question.

As you know, the government committed to reducing the paper burden on business by 20% by November 2008. There were some

intervening events, shall we say, but we expect to be able to confirm shortly that the threshold has been reached. This act is part of that.

Businesses can now file electronically, which will certainly cut down on paper work. It also reduces the number of filings that various categories of not-for-profits have to make. As we were just discussing with your colleague, the audit levels have been reduced for some not-for-profits. So there are a number of filings and paper work that are going to be reduced by this act.

I'm just going to ask Wayne to give you a little bit more detail on that, because he probably has a list in his head, which I don't.

**Mr. Wayne Lennon:** As the minister said, the filings can be handled electronically. Communications between the corporation and its members can be handled electronically, if the corporation and the members so desire. There's nothing in the act that compels them to do that, but it does permit it. For instance, sending information on financial statements or notices of meeting can be handled pretty much any way the corporation wants. Indeed, members' meetings can be handled electronically in their entirety, if the technology so permits and the corporation and the members want to do it that way.

Simply by those measures alone, the amount of paper flow will be reduced and certainly the costs substantially reduced.

**Mr. Chris Warkentin:** I know that a reduction in red tape for these groups is included in this effort. But these groups are soliciting money, in many cases, from Canadians. So it is important that we ensure there's accountability of these groups, especially the ones that are soliciting funds. I guess this concern is always broached when we talk about reducing paperwork and red tape for these groups.

Can we be assured of accountability, and can we be assured that the people who are being solicited by these groups can be protected, or will be protected, even though there is a reduction in red tape and paperwork?

**Mr. Wayne Lennon:** Under the current law, soliciting corporations, and all corporations, are required to have their financial statements audited, but they're not required to give them to members; they only have to give them a summary or a statement of the financial situation of the corporation.

So what this act does is require that the financial statements go to members, so that members will be able to oversee the activities of their corporation.

Plus the financial statements of soliciting corporations—not non-soliciting corporations, but anyone who gets money from the government or the public—will have to be filed with Corporations Canada. So there's an oversight rule there.

And the act won't change any of the filing requirements or any of the legal or regulatory requirements of the Canada Revenue Agency. So whatever mechanisms or remedies they have in place will remain intact; it has no effect on them whatsoever.

**Mr. Chris Warkentin:** Minister, whenever the issue of not-for-profit groups comes up, there is a concern on the part of faith-based not-for-profit groups that the tenets of their faith won't be compromised by any changes in the legislation. Has this been addressed? Do you believe these issues have been addressed within this legislation, and do you believe that the tenets of the faith many groups subscribe to won't be compromised by this legislation?

**Hon. Diane Ablonczy:** Yes. As you can imagine, that was a fairly vigorous area of the consultations. But the stakeholders are satisfied with the resolution. For the most part, religious bodies will be treated in exactly the same manner as other corporations that are subject to the legislation.

The one exception is that there will be a protection in the form of a faith-based defence to ensure religious bodies are free to follow the tenets of their religion in pursuit of the corporation's objectives. The faith-based defence would allow the corporation to make decisions. If they're challenged and the defence is based on a tenet of faith, that would allow the decision to be made. That does protect religious bodies. I think in the consultations we've had good feedback from that resolution.

• (1605)

**Mr. Chris Warkentin:** Thank you.

We addressed the changes in technology that have come into existence, specifically with regard to computers and electronically passing information back and forth. I'm wondering if there is any consideration of future technologies and how they may be incorporated into this legislation, or if in fact any future changes within technological advances were contemplated. Were there any groups with suggestions or ideas in that vein?

**Mr. Wayne Lennon:** The act is pretty open-ended; it doesn't restrict any method of communication. It does allow the corporations itself to choose the method of communication with the government. As technology evolves, they can use whatever mechanisms are available to them. It's not restrictive in that way.

**The Chair:** Thank you, Mr. Lennon. Thank you, Mr. Warkentin.

Mr. Masse.

I believe Mr. Masse and I are the two members on this committee who were looking at this bill two Parliaments ago. It's a bit like *Groundhog Day* here.

**Some hon. members:** Oh, oh!

**Mr. Brian Masse (Windsor West, NDP):** Or whack-a-mole.

**Some hon. members:** Oh, oh!

**Mr. Brian Masse:** No, I'm just kidding.

Minister, do you have a copy of your comments? I missed the opening. I apologize for that; I was late. Do we have a copy?

**Hon. Diane Ablonczy:** No, I'm sorry. We didn't distribute them, but I'm certainly happy to provide you with a copy.

**Mr. Brian Masse:** Okay, or I can get the blues.

**Hon. Diane Ablonczy:** They're brilliantly executed, I have to tell you.

**Mr. Brian Masse:** I'm sure they are.

If I ask a question that you might have covered, I apologize for being here late. I want to make sure I indicated that.

Subclause 23(2) of the bill deals with the provision of lists. I'd like to hear from you with regard to the issues over privacy. The do-not-call list, for example, was a way to try to help Canadians, but in the end it breached their privacy in many respects. The concern I have with this legislation, and I'd like to hear the response, is that the membership lists could be breached easier than in the past, for example, with regard to the Red Cross, and other groups, because every member will be entitled to access and so forth.

Perhaps I can hear from you with regard to how we protect membership lists from becoming public. What member information would be disclosed and what wouldn't? Is there a way to prosecute those who might, for example, join a not-for-profit, or an organization, and then misappropriate those lists for other types of practices, other than the intended use for that organization?

**Hon. Diane Ablonczy:** Mr. Masse raises a very important point.

Actually, it's little known, colleagues, but under the current act anybody can obtain the list of the members of a not-for-profit corporation. This new act will provide more protection in that regard.

The new act circumscribes who can access a membership list, which is not the case now. Only members, and only in limited circumstances, and "debt obligation holders" as defined in the act, will have access to the membership lists. People who want to look at the list will have to execute a statutory declaration or an affidavit affirming that they meet the requirements of the act and that they will only use the information for purposes permitted in the act. But membership lists will no longer be available to the general public.

In addition, there are some very stiff penalties. I don't know if you remember, but the original penalty was only \$5,000. That has now been increased to \$25,000 and a maximum of six months in jail, because of concerns that perhaps you yourself have raised. That's a pretty strong incentive for people not to breach privacy.

• (1610)

**Mr. Brian Masse:** That's important, I think, given the lessons of what's happened with the do-not-call registry. That's why I was just a little bit concerned to make sure that those provisions will be in there.

Actually, back of this review process I used to work for the Association for Persons with Physical Disabilities, also the Multi-cultural Council of Windsor-Essex County and Community Living Mississauga, and as part of the not-for-profit sector we were part of the original discussions related to the genesis of this bill. But what we were talking about back then as a higher priority was more supports for long-term sustainable funding, recognition of volunteer hours, and elements like that. Why has the government chosen not to bring forth some of those elements, as opposed to, quite frankly, a new 170-page *Robert's Rules of Order*?

It does have some merits in it, and there are some complications too, but why is this done in isolation? I'd just like to know that, because the not-for-profit sector right now is really stretched. What I'm worried about as we enter this are the organizations like Lions Clubs and all the Royal Canadian Legions. How do they implement this, and what provisions has the government provided to do training for those organizations?

**Hon. Diane Ablonczy:** I alluded to this in my remarks, but basically there is a huge range of not-for-profits, and you mentioned some of them in your question.

The bill does not try to address every aspect of every not-for-profit. It sets up a broad framework in which all not-for-profits operate. It tries to be as general as it can, and lets the not-for-profit itself deal with some of the policy issues that may or may not benefit one more than it would another not-for-profit.

So the areas you mentioned—such as training, stable funding—are really separate policy areas from this incorporation regime. They would have to be addressed. I'm sure you'll help government address them in a vigorous way, in a separate way, because it's not the purpose of the act to address those issues where they impact specific not-for-profits.

**Mr. Brian Masse:** I can appreciate that, but here's where the trouble is in terms of where I see things going. Ironically, as we've lowered our tax rate, right now our charities and organizations have actually gotten less of a tax return for the people who donate. That's just tied to our legislation. So we've actually been reducing the lower income in terms of giving in Canada over the last number of years, because it's tied right to the Income Tax Act.

What's happened is that as we've lowered the lower bracket, we've actually disallowed charitable giving return to citizens and actually clamped down a little bit. It's a small amount of money, but it sends a signal to them that we haven't provided any type of benefit in terms of a stimulus. In terms of the effect, it's 8% of the Canadian economy when you look at the universities, the colleges, all of those that are actually a part of this. They're not receiving anything in the stimulus budget, specifically the not-for-profits themselves.

So what I worry about is what is your government or your department willing to do to help train those smaller and medium-sized organizations that are really...? Right now, a lot of them are either collapsing or they're having problems with donations. They're going to have to seek administrative support for this. Some of the work in here will probably require some technical things, changes in their actual administration processes. I believe they're going to need some legal assistance in this. Where are they going to get that type of support to be able to implement this new bill?

**Hon. Diane Ablonczy:** Well, Siobhan just raised the same issue, and the answer is the same. The transition actually is not going to cost the not-for-profits. The information that will be required in the transition will be sent out by the director of corporations to everyone so they know exactly what's required. It's not going to be an onerous process.

Is there anything you'd like to add to that, Wayne? It really is designed to be as simple and costless as possible.

•(1615)

**Mr. Wayne Lennon:** There will be model articles provided, model bylaws. The Corporations Canada website, which Coleen can better speak to than I, will be a useful tool for any corporations that are going to be transitioning into this bill.

**The Chair:** Thank you very much.

Madam Kirby, do you have any comments to add?

**Ms. Coleen Kirby:** The plan right now with respect to the transition is that brochures and pamphlets will be drafted aimed very much at the small guys. Model articles and model bylaws will be done. We've had discussions with Sports Canada, because of the number of sports organizations; with Fisheries and Oceans; with CRA. Our aim will be to try to feed through as many of those organizations as we can. And a number of the large national organizations, which are often umbrella groups, have agreed to work with us, trying to get to the small ones.

The large ones that already have in-house legal counsel aren't the issue. It is the small guys, trying to get the information to them. We know we're going to have to have staff who are going to have to talk these guys through some of this material. But again, a lot of the model bylaws, the model articles, will make it fairly easy for them to shift over. They need to make a few very specific decisions, such as how they want to give notice of meetings to their members, but the general provisions are already there.

**The Chair:** Thank you.

Thank you very much, Mr. Masse, for raising those concerns.

Thank you very much, Madam Kirby.

Mr. Rota.

**Mr. Anthony Rota (Nipissing—Timiskaming, Lib.):** Thank you, Chair.

Thank you, Minister, for coming to see us today.

Bill C-4 is obviously long overdue, and contains some changes that I think will be welcome, not only to government workers, but especially to the not-for-profit sector. Clause 282 of Bill C-4, however, concerns me, and it has to do with the appointment of a director. It states that the minister can appoint a director or one or more directors.

Can you clarify or comment on what criteria or what guidelines there are or how the minister decides who to pick and who to put in that position?

**Hon. Diane Ablonczy:** The thing is you're talking about a very specific instance, but I think I'll let the officials outline when that would occur.

**Ms. Coleen Kirby:** Currently, under both the Canada Cooperatives Act and the Canada Business Corporations Act, there are these positions of both director and deputy director. The people already exist. The heads of Corporations Canada are just that: they're government officials who have been put in place to administer the act. It is anticipated that under this act it will be folded into the other two acts. It will be one office that is administering it, and the director and deputy directors, because there are two at the moment, under this act will be the same as under the other two.

**Mr. Anthony Rota:** Just to clarify, would that be a senior bureaucrat or a member of the industry ministry?

**Ms. Coleen Kirby:** At the moment, the director, under the Canada Business Corporations Act, is a director general within the department. The two deputy directors are directors within the department. They are government officials who, as I said, are operating with essentially the same powers and the same administrative role under two other statutes already.

**Mr. Anthony Rota:** Very good. So there's no danger of the minister deciding that he would choose a director from outside the public service?

**Ms. Coleen Kirby:** Right now you have a director in place who already has the whole administrative role in place—the computer system, the files, everything else. It would be difficult for any other office to start it up. You'd be starting at square one and having to set up a whole new administrative office.

**Mr. Anthony Rota:** But it's not impossible to have someone—

**Ms. Coleen Kirby:** It would not be impossible if the minister was appointing somebody. As with any position within the government, it's up to the minister and the hiring process to determine who's going to get a particular position.

**Mr. Anthony Rota:** And that position reports directly to the minister, then? Or what is the process of getting the information to Parliament?

**Ms. Coleen Kirby:** The director has certain powers under the act, but he's also a director general in the department, and therefore feeds into an ADM, who feeds to the DM, who feeds to the minister. For the Industry Canada annual report, performance reports, reports on plans, it's the same thing. All the Corporations Canada material is in there and comes to Parliament through that way. We come in with respect to the main estimates the same way.

**Mr. Anthony Rota:** Very good.

I believe my colleague Ms. Coady has a few more questions. I'll let her take it from here.

**Ms. Siobhan Coady:** Thank you very much.

Just to your point, Mr. Masse, we did discuss the complexity of this bill and the transition. There is a concern. The CRA have done some changes to the way they're implementing some of their changes, and perhaps the minister will have the consideration of putting in robust assistance for that transition and training. So I think there's some work to be done there.

As we all know, it's taken a long time to get this act changed. Acts generally are in place for quite lengthy periods of time before they are changed. My question goes to the length of time it will take to make some revisions to this, and the fact that we would probably want to see some things in a regulatory environment rather than in the act itself.

I'm asking the minister a question on one thing, and that's the voting rights of members. Right now in the act it talks about a very broad and comprehensive “one member, one vote” kind of concept in this particular bill. And while that works as a general problem, in some organizations that may not be the right and proper method to do it. In your considerations of trying to streamline, and given the fact that this will probably not be reviewed for quite some time, did

you consider taking out some of these things and putting in regulation? What was your rationale for keeping as much as you have in the act?

• (1620)

**Hon. Diane Ablonczy:** Coleen, could you respond to that?

**Ms. Coleen Kirby:** The basic idea behind the act and the regulations was that any fundamental principle has to be in the act. Anything that would be considered a detail should be done in a regulation, and if it doesn't have to be spelled out as a law, it's done under the director's control with respect to a policy.

So with respect to voting rights, the requirement is that each corporation has to decide what voting rights will exist for their members. That is done between a combination of the articles and their bylaws. We've put in place a mechanism where they can change that, but the act itself does not specify how many votes, who votes, who doesn't vote. You could set up a membership structure where you have one class of members who vote and another class of members who don't. You could have everybody vote, you could have nobody vote, you could structure it yourself.

We know that national sports associations are going to take one approach, whereas a national charity is going to take quite a different approach. A local community association is going to give everybody one vote, one class, everybody's the same.

Again, this comes back to the flexibility. Let the corporations choose what works for them, provided they spell it out so that everybody knows in advance when they get involved what their rights are, what the responsibilities are.

**Ms. Siobhan Coady:** And it can change?

**Ms. Coleen Kirby:** They can change. If they want to change it manually, they can go ahead and do it.

**Ms. Siobhan Coady:** Perfect. Thank you.

**The Chair:** Thank you very much.

Mr. Lake.

**Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC):** Thank you very much for coming here before us today on this important issue.

I just want to start by talking about how before the end of the last break, we had the opportunity to go and do a tour in Edmonton of some of the homeless facilities, some of the facilities that deal with addiction issues and some of the other challenges there. And in one of the places I went to I talked with one of the employees there who just really expressed very passionately the ability of these faith-based organizations—but not just faith-based organizations, any NGOs—to deliver things in a different way than government, I guess in a sense. And this was at the Hope Mission that I was touring and they do some tremendous work.

As we think of the challenges faced by so many organizations, the issue of simplification comes up. People shouldn't have to be lawyers to serve on boards and contribute to the community, and I think oftentimes the feeling is that things are so complicated you almost have to be a lawyer just to be able to contribute.

So if you could speak to the simplification, how will life be simpler for organizations if we pass this act?

**Hon. Diane Ablonczy:** Yes. It has been an issue for not-for-profits because most of them have volunteer members. But right now those volunteer directors for not-for-profits basically have unlimited liability because they're not under the more modern regime where there are some defences to a liability action.

The new act will make a clear statement of directors' duties, and basically it says that directors must always act in the best interest of the corporation. That doesn't give them blanket immunity, but what it does is provide a due diligence defence, which of course modern statutes allow. But the old act, the one we're hoping to change, doesn't allow that yet. But the defence will say that as long as a director has acted with due diligence, they can escape liability. So they have that protection of if they acted reasonably with due diligence, they then would be protected from a liability action.

Right now they don't have that protection for not-for-profits to that extent, and some directors for not-for-profits are pretty worried about that. And that's one of the reasons why there has been so much pressure to finally get this act passed and the new regime put into place.

Does anybody want to add anything about that?

• (1625)

**Mr. Wayne Lennon:** I'll just say that the act is not intended to have a direct impact on the day-to-day operations of any given corporation. It's a framework law. It sets the broadest parameters for their organization, the relationships between the officers, the directors, their members; a number of other contingent issues; a few filing requirements. And then it leaves to the corporation the ability to choose how they best deliver their services to whoever their client base is.

The directors' liability provisions are probably the ones that would impact most on directors, especially of small corporations. And I know corporations are concerned. They're having trouble getting and retaining directors because of the fear of liability. This act gives them more than a basic level of protection and lets them do their jobs.

**Mr. Mike Lake:** That's good.

I think that a liability issue is something that I've heard people comment on. The reality is that people don't really understand how it all works. There's almost a fear there or a hesitation. I think the default for people who want to contribute in that way on a board or as a director in some cases is to not do it because they don't want to put themselves and their families in situations that would hurt them.

Further to the simplification, this question may be a bit out in left field, but I believe Chris was talking about technology a little. One of the initiatives you've put forward as the minister for small business is the work on this BusPAL system that has been just fantastic in terms of reducing paper burden. Is there such a system? Is there a system that is more of an online type of system that helps not-for-profit organizations do the things they do?

**Hon. Diane Ablonczy:** What Mike is talking about is the one-stop permit and licence window for businesses starting up or expanding. They can go to this portal and find out exactly what permits and

licences they'll need without having to run around and stand at the door at city hall.

There is the Canada Business Network.

Are not-for-profit organizations on the CBN? Does anybody know?

**Mr. Mike Lake:** It might be interesting to know.

**Hon. Diane Ablonczy:** The Canada Business Network is the portal into government and it would certainly direct people to the act, to the forms. I'll have to check to see how much about the not-for-profit organizations is actually on the CBN. That's where I would expect it to be. We're having a major upgrading of the Canada Business Network portal to make it more user friendly. That would be a place where these good sample forms that Siobhan and Pat want and that Coleen talked about could be put. A good, clear link to those would be very helpful.

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

Mr. Vincent.

[Translation]

**Mr. Robert Vincent (Shefford, BQ):** Thank you, Mr. Chairman.

Welcome to the witnesses.

I have a number of questions to ask, so I would like rather brief answers, otherwise I won't have enough time to ask all of them.

Madam Minister, earlier on, you referred to a \$25,000 amount which would be exempt from auditing, and then Ms. Kirby referred to \$50,000. Was that \$25,000 or \$50,000?

[English]

**Ms. Coleen Kirby:** It's \$50,000 for a soliciting corporation and \$1 million for a non-soliciting corporation.

[Translation]

**Mr. Robert Vincent:** So \$25,000 was correct, and not \$50,000.

**Ms. Coleen Kirby:** Yes.

**Mr. Robert Vincent:** Very well.

[English]

**Hon. Diane Ablonczy:** It's the other way around.

[Translation]

**Mr. Robert Vincent:** According to section 154 of the current act, an organization must have some set purpose. But clause 4 in the bill does not specify any set purpose. Let's assume I want a not-for-profit organization under the new constitution and the new act. I could incorporate a not-for-profit organization without a name, without a purpose nor anything else. Is that correct?

• (1630)

**Mr. Roger Charland:** No. The bill does provide some requirements. It calls for the filing of documents pursuant to certain clauses.

**Mr. Robert Vincent:** For instance, you have to specify who will be the director, etc.

Assuming I'm the director and I do not need financing. So, for an amount under \$25,000 there would be no auditing of my books. Is that correct?

[English]

**Ms. Coleen Kirby:** The way we've structured it is if you are a soliciting company with less than—

[Translation]

**Mr. Robert Vincent:** There is no fund raising, otherwise it would be one million dollars. Here, we're looking at \$25,000.

[English]

**Ms. Coleen Kirby:** You are required to have a review engagement. The members can choose to have no review. There's been some confusion, I think, on how the financial levels work.

[Translation]

**Mr. Robert Vincent:** Does it need to be a maximum or minimum number of members to create a not-for-profit organization?

**Mr. Roger Charland:** No.

**Mr. Robert Vincent:** So, if I decide to establish a not-for-profit organization and put down \$25,000 from an unknown source, there would be no audit.

**Mr. Roger Charland:** With respect to incorporation?

**Mr. Robert Vincent:** With respect to the money within the corporation.

**Mr. Roger Charland:** With respect to incorporation, in other words the establishing of the company, this bill does not specify any rules. However, there are other measures within the banking system. The system provides other checks and balances, but under the current legislation, to incorporate the company...

**Mr. Robert Vincent:** I am not referring to incorporation. Let's say I simply want to register with the Government of Canada as a not-for-profit organization. In response to other questions, you stated that it is sufficient, that I could register right away and that the not-for-profit organization would thus be established.

Let's assume I find \$25,000 some place, which I invest in this organization and no audit is ever done because it falls within the \$25,000 limit. If I decide to dissolve this not-for-profit organization, what do I do with the \$25,000? Should I withdraw the money, pocket it and walk away? No one is going to check.

[English]

**Hon. Diane Ablonczy:** Mr. Vincent, it would depend on the bylaws of your organization, because part of the bylaws would say what would happen if you dissolved your not-for-profit. It might be different for different not-for-profits.

[Translation]

**Mr. Robert Vincent:** I understand. However, if I am the only member and that I am at once the director and serve in every other capacity, nobody will tell me how to dissolve the organization. If I decide to do that tomorrow morning, I take the \$25,000 and pocket it. It is simply the end of the operations and the government does not carry out any investigations.

It may open the door to other organizations, not necessarily not-for-profit, who may want to inject money in not-for-profit organizations to laundry it. In fact, they have no obligations whatsoever pursuant to this bill. This is what I am trying to understand.

[English]

**Hon. Diane Ablonczy:** There's a law that financial institutions have to report cash transactions of over \$10,000. If you put money from your account into the not-for-profit, there would be some controls on that.

I think, Mr. Vincent, just for simplicity's sake, that if you're going to do what you mentioned and have the \$25,000, maybe we could just say that it would go back to the Government of Canada, and that would be simple.

**The Chair:** Thank you very much, Minister.

Merci, Monsieur Vincent.

Thank you very much to the minister for appearing. Mr. Lennon, Mr. Charland, and Madam Kirby, thank you very much for coming in front of our committee.

We're going to now suspend for two minutes to allow the witnesses to leave the room, and then we'll go in camera to discuss future committee business.

Thank you very much.

[Proceedings continue in camera]







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