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The Honourable Michael Chong

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● (1530)

[*English*]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Good afternoon, members of the committee.

Good afternoon to our two groups of witnesses.

Today we're studying Bill C-4, An Act respecting not-for-profit corporations and certain other corporations. We're pleased to have witnesses from two organizations in front of us.

We have Madam Carole Presseault, vice-president of government and regulatory affairs, Certified General Accountants Association of Canada. We have Madam Tamra Thomson, director of legislation and law reform at the Canadian Bar Association. We have Mr. Wayne Gray, a member of the national business law section of the CBA. Finally, we have Mr. David Stevens, who's a member of the national charities and not-for-profit law section of the Canadian Bar Association.

Welcome to all of you.

We'll have about 10 minutes of introductory statements from each organization, and we'll begin with the Certified General Accountants Association of Canada.

Ms. Presseault.

Ms. Carole Presseault (Vice-President, Government and Regulatory Affairs, Certified General Accountants Association of Canada): Thank you, Mr. Chairman and honourable members.

[*Translation*]

Mr. Chairman and Honourable Members.

[*English*]

Thank you for your welcome this afternoon and for the opportunity to appear before this committee to talk about Bill C-4, An Act respecting not-for-profit corporations and certain other corporations. The Certified General Accountants Association of Canada, together with its 71,000 members and students, represents really the future of the accounting profession. Our designation is built on a strong foundation of ethics, education, examination, and experience.

CGA Canada strongly supports the objective of providing a modern, transparent, and accountable framework for the governance of the not-for-profit sector in Canada. CGA Canada recognizes the important role of the not-for-profit sector, a role that it plays in communities across our country. Many of our members work with and within the sector as chief financial officers and chief executive officers of not-for-profit organizations. Others provide public accounting expertise and services to these organizations in communities across Canada.

Our interest in this legislation is quite narrow, Mr. Chair. It resides really in the provisions concerning financial disclosure, so I'll have some very brief remarks about our recommendation in this area. But I want to start by saying that as the not-for-profit sector benefits from the benevolence of Canadians and a favourable tax regime, a rigorous financial disclosure regime ensures appropriate transparency and accountability.

The financial reporting regime must adhere to exemplary governance practices. Professional accountants must meet the highest standards of professional competence, conduct, and ethics, no matter which sector they provide services to.

We would therefore like to suggest improvements to what we think is to simplify and strengthen the financial reporting requirements. Our focus is on clause 181 of the bill, specifying the qualifications to meet the three requirements to qualify to be a public accountant under Bill C-4. The first requirement is that the public accountant be a member in good standing of an institute or an association of accountants. The second requirement regards meeting any qualification under an enactment of a province. And the third one is with regard to independence criteria.

[*Translation*]

The first requirement recognizes that it is the responsibility of the professional association to ensure its members are competent and qualified to provide professional accounting services.

The professional bodies set professional standards of competence and ethics and only those professional bodies have the duty to ensure their members meet those standards by adhering to a conduct and disciplinary regime. In turn, these provincial institutes or associations of accountants have been delegated by their provincial and territorial governments to govern their respective members in the public interest.

The second provision requires public accountants to meet any qualifications under an enactment of a province. This is vague and redundant because a professional accountant who provides public accounting services must comply with the requirements of his institute or association whether these requirements are matters of law or practice. The requisite level of oversight is appropriately captured in the first requirement.

● (1535)

[*English*]

We also think that this provision in subclause 181(2) could impede the mobility of accounting professionals. Chapter 7 of the Agreement on Internal Trade, which was recently amended by Canada's trade ministers, stipulates that any worker certified for an occupation by a regulatory authority of one province or territory will be recognized as qualified to practise that occupation by all other provinces or territories. We believe this provision could be interpreted as adding another test of competency that is unnecessary.

The third provision requires the independence of the public accountant and proposes that professional accountants meet a number of tests of independence. We totally agree that the public accountant needs to be independent of the corporation. In fact, in the aftermath of major corporate failures in North America and Europe, the accounting profession, internationally and in Canada, proceeded to develop independent standards to ensure that the audit process is free of interference, conflict, or undue bias. These standards are more rigorous than what is required in Bill C-4. They are current, and they will remain current through a constant renewal process. They satisfy not only national requirements but international requirements, and they mainly require the identification of all threats to independence and the application of necessary safeguards. These standards are recognized for other types of corporations including report issuers.

We propose that Bill C-4 require that professional accountants comply with the standards of independence established by the professional regulatory body—whether it be CGA-Canada, the CICA, or CMA Canada—that has jurisdiction over them.

[*Translation*]

CGA-Canada's proposals to strengthen the legislation by clarifying the provisions respecting the qualification of auditors and also by significantly strengthening the independence requirements will ensure a high degree of harmonization across jurisdictions while maintaining high standards of competency and ethics.

Copies of our proposed amendments have been provided to the clerk.

Thank you and I would be pleased to answer your questions.

[*English*]

The Chair: *Merci, madame Presseault.*

I now invite the Canadian Bar Association to make an opening statement.

Ms. Tamra Thomson (Director, Legislation and Law Reform, Canadian Bar Association): Thank you, Mr. Chair and honourable members.

The Canadian Bar Association welcomes the opportunity to appear before you today on the Canada Not-for-profit Corporations Act. We consider this to be very important legacy legislation that you are considering today.

The Canadian Bar Association is a national association representing over 37,000 jurists from across Canada. The analysis of Bill C-4 was done with members from our national charities and not-for-profit law section and from our national business law section. These are the eminent practitioners in these areas of law, and indeed there are elements of both areas of law in this important bill.

In looking at this bill—it was an extensive process—the CBA members were keeping in mind our primary objectives, which are improvement in the law and improvement in the administration of justice. It's under those considerations that we have made our recommendations to this committee.

I'll just make a note about the paper you have in front of you. You have an executive summary that highlights the priority issues from the bill, from the CBA's perspective, and a list of our recommendations. A far more extensive brief was prepared and sent to the minister last month, so a complete analysis of all of those recommendations is in that larger brief. We would be willing to expand on any of the recommendations you have in front of you.

Mr. Gray and Mr. Stevens will comment on the substance of the recommendations. I might note that not only have they participated in the CBA's analysis of this bill but they have also co-chaired a committee of the Bar Association that reviewed similar Ontario legislation that is under consideration. So they bring a vast amount of knowledge and expertise to this bill.

I will ask Mr. Gray and then Mr. Stevens to make those comments.

● (1540)

Mr. Wayne Gray (Member, National Business Law Section, Canadian Bar Association): *Merci.*

Honourable Chair, members of the committee, we come to praise Bill C-4, not to bury it.

Voices: Oh, oh!

Mr. Wayne Gray: The good that legislators such as yourselves do lives long after you. That is the case with the bill before you. It is a bill that will have a long legacy and will exert a tremendous influence over the provinces and territories, much as did the CBCA before it. So it is important to pass it, but it is important to get it right.

First, you'll hear a lot of negativity about the bill from some of the submissions that have been received, and you may be confused as to the merits of the bill. I want to first of all say a few words about why the CBA strongly endorses the bill: it benefits all relevant stakeholders.

It benefits founders because it's going to be easier to incorporate. It will be very flexible in setting up your organization in terms of the content of the constituting documents, the articles and bylaws.

It will benefit members because they can elect and remove directors very easily.

There are extensive remedies in the new bill. Members carry the ultimate decision-making authority clearly under the bill. They have information rights—the right to receive financial statements before the annual meeting.

It benefits directors and officers. There are going to be clear duties and clear conflict of interest codes, such as we've seen under the CBCA. There are liability protections found under the CBCA that will be extended to not-for-profit directors.

My colleague Mr. Stevens will elaborate on two particular shortcomings that we see in the area of directors' liabilities, but they have the power to manage or supervise management and they're accountable to the members.

It will benefit lenders, who will have the same rules as they now have under the CBCA, when they lend money or take security against a not-for-profit corporation. And there's a codification of the indoor management role.

It will benefit the corporations themselves. They'll have tremendous flexibility with respect to the enormous diversity within the not-for-profit sector. It will be easy to amend the articles, and much easier to amend the bylaws too.

There's tremendous flexibility and ease in dealing with meetings of members and meetings of directors using modern technologies, including conference calls and consent resolutions.

It will benefit the public. Why? All of the above reasons will all benefit the public. In addition to that, there is greater transparency. For example, there's a requirement that soliciting corporations—those that raise money from the public, essentially—will have to annually file their financial statements publicly, whereby they'll be available for public inspection. So there's transparency in that respect.

Finally, not least, it will benefit the lawyers. Why? Because of all the additional complexity in this act; and that's what we also want to address.

This is why the CBA recognizes the bill as a vast improvement over the existing law, and one that deserves speedy passage and proclamation into law.

I was actually only kidding about the lawyers benefiting from the bill. We don't intend to actually benefit too much.

What we want to address in the next part of this presentation is all the ways in which we think you have an option to make an excellent bill better yet.

The core message we have is that there's nothing fundamentally wrong with the bill. There are some minor drafting issues that we've given to the department, which we won't bore you with. There are some other provisions in the bill that we think make sense to delete, in order to simplify the bill and make it easier for the sector that is going to be using this bill in the future to work with it in a much more efficient and understandable way. That's the theme of most of our suggestions.

From part II of our executive summary, I will be discussing items 1 to 4, and item 7. My colleague Mr. Stevens will be discussing the remaining five items.

If you turn to the executive summary, the first item....

Oh. We don't have much time.

Well, we'll look at the securities transfer, which is part 6. Currently, this is a law that falls under provincial-territorial securities transfer laws in force in the various provinces, except for a couple of the Maritime provinces. So it's currently governed under provincial law; this is going to be an intrusion for the first time into this territory. Recognize that only 12% of not-for-profit corporations are incorporated federally. It's also going to be inconsistent with the provincial laws, and modelled on an older U.S. statute.

● (1545)

Part 7, which deals with trust indentures, is also dealing with a matter that's regulated at the provincial level, securities law. In that respect, you're looking at the wrong end of the telescope by regulating issuers, federal not-for-profit corporations.

Part 5 in our submission deals with debt obligations. We believe the act is replete with provisions dealing with debt obligations, but there's no demonstrable need for these provisions. Very few not-for-profit corporations issue debt obligations beyond simple real estate mortgages or general security agreements to institutional lenders. Lenders are quite capable of protecting themselves through contracts and through provincial security regimes, and they don't need to rely on a helping hand from legislative provisions. I don't think they're asking for it.

We think a lot of these matters can be stripped out of the act and that it can be shortened and simplified.

This act is not about lenders. It's about members, the corporations, the public at large, and the directors and officers of those corporations. We think there is overuse of the regulations.

I can only really demonstrate this by showing you the act and then the regulations. If you read the act, you'll see the word “prescribed”. That's a clue that will tell you that you've got to look at the regulations, but there's no map. The regulations are not put out in the same provision.

This is not a criticism. I'm just saying that it could be made simpler by reintegrating the relevant provisions in areas in which they're not likely ever to be changed, haven't been changed in 34 years under the CBCA, and don't need to be separated in this way.

Finally, we think it could be simplified with respect to audited financial statements. We have a handout in French and English that you should have received. The top table demonstrates the audit exemption regime under the current bill, split into soliciting corporations and non-soliciting corporations, with different financial thresholds. There are unanimous resolutions, special resolutions, ordinary resolutions, and then a director's overriding consent in the case of soliciting corporations. It's a fairly complex regime, as you can see from this handout.

At the bottom of the table is the CBA recommendation, which was based on early consultations that Mr. Stevens and I, and the rest of our members, did a year and a half ago with the Institute of Chartered Accountants of Ontario. We devised a scheme that would be much simpler and would be uniform for all types of corporations.

Thank you very much.

Mr. David Stevens (Member, National Charities and Not-for-Profit Law Section, Canadian Bar Association): Mr. Chair, and honourable members, I'll take the remaining time to go through items 5, 6, 8, 9, and 10 in our executive summary.

Just picking up on my friend's submission, both the charity side and the business side of the Canadian Bar Association think this is an excellent piece of legislation that is long overdue.

Most of our submissions today are about making it simpler and easier to use.

The first item that I want to take you through is number 5 in the executive summary, dealing with the concept of "soliciting corporation". This is a regulatory concept in the statute. "Soliciting corporation" is brand new to the statute; we don't have any experience with it in other statutes in Canadian or U.S. law in the non-profit sector. We looked at it very carefully, and we agree that it's actually a good concept for dealing with an interesting and necessary topic. The issue is to what extent should corporations who receive funding from the public, either as donations or government funding, or from other corporations who receive funds from the public, be regulated?

The concept of soliciting corporation is used in the statute to regulate soliciting corporations. Our only complaint is about the definition. We would like the definition to be improved. The way it is currently worded, a corporation could fall into that classification inadvertently during the course of the year, and because of that, it would then pick up all of the consequences of being a soliciting corporation—possibly not even knowing it had fallen into that classification. So we're suggesting that the definition be applied once a year when the corporation issues its financial statements and is in a position to know that it has fallen into that regulatory category and, therefore, when it is in a position to bring itself into regulatory compliance.

Item 6 in our executive summary deals with protecting directors and officers from unfair liability. Several jurisdictions in the U.S., and two jurisdictions in Canada, have legislation to protect non-share capital corporations' directors from liability for misfeasance, or negligence, from violations of the business judgment rule. We think that is a good idea and that this legislation should adopt the same kind of protection. There is statutory language currently available in the Saskatchewan Non-profit Corporations Act that could be incorporated into this statute. What it essentially does is to say that if you're a director of a non-share capital corporation, yes, you should be responsible for things that are caused by your own dishonesty or fraud; but, no, you should not be exposed to liability for mistakes in judgment.

Currently that type of error is covered in this legislation, and in commercial corporation legislation, by indemnity provisions and insurance provisions. What happens now is that the commercial corporation will promise the director that it will indemnify the director against the consequences of this kind of liability—and probably, or typically, also obtain insurance for that director against that kind of liability. Those two solutions, we think, aren't sufficient for the non-share capital sector. We want to go a step further and say, let's make those directors immune from that kind of liability, and let's save the non-share capital corporation the expense of insurance. Let's save that director the aggravation of defending against the claim for a period of time. Let's just give them immunity—but not from fraud or dishonesty, just from failures of business judgment.

Item 8 deals with amending bylaws. The point is a simple one. The constitution of the non-share capital corporation is stated either in the articles—which are basically entrenched—or the bylaws. Section 7 of the legislation says you must have items 1, 2, 3, 4, 5, 6 in your articles; however, all the other constitutional provisions you can put in your articles or your bylaws. The incorporators know that going into the regime, and they know how articles are changed, that is, by a two-thirds vote by special resolution; and they know how bylaws are changed, that is, the directors propose a change, there is interim validity, and then the members confirm it. So it is an easier regime for bylaws than for articles.

Our suggestion is that this basic regime—that is, having one regime for articles and one regime for bylaws—be used in this proposed statute. Without getting into the details, there is a provision in the statute with a hybrid constitutional change regime. We think it is an interesting idea, but in the end, it just confuses things. So this is another suggestion for simplification.

Item 9 in our executive summary refers to a provision in the current Canada Corporations Act that's been carried forward into this bill, requiring non-share capital corporations to file their articles or bylaws with the minister. Lots of people in the sector have never thought that it served a useful purpose. There are 19,000 of these non-share capital corporations in Canada. We don't know if the minister has enough room in his office to take all of these bylaws. What is the minister going to do with all these bylaws that are coming in? And to what extent are people going to comply?

● (1550)

Probably the utility of that kind of rule is that the sector is a bit informal in the way it operates, so let's make them send their bylaws to Ottawa, and 10 years from now when they can't find them, they can go to Ottawa to find them. The question is, though, is that actually going to work?

Secondly, if they don't send it in, what happens to that bylaw? Is it invalid because it hasn't been sent in? Under the current Canada Corporations Act, it's invalid. We suggest that there not be a requirement to send it in.

In our final submission, submission 10, I won't go into the details because our time has expired. Our submission is simply that the remedies available under the statute be rationalized a little bit more. Again, that's a simplification.

Our message is that this is an excellent piece of legislation. It's a huge improvement for the sector. We recommend that it be passed, but we also think it can be improved.

The Chair: Thank you very much to our witnesses for their opening statements. They've been helpful.

The larger brief that the Canadian Bar Association has provided to our committee is going to be translated. Until it's in both official languages, we're not going to distribute it. Once we have it translated, we'll have it distributed to members of the committee.

We now have just over an hour for questions and comments on the part of members.

Madam Coady.

● (1555)

Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.): Thank you very much for a very comprehensive and detailed report.

I appreciate both organizations coming to see the committee today and also the work they have done in this regard.

As you said, it's a very important bill. It's an important step forward. Thank you very much for the detail with which you've commented.

I have a couple of questions. I'm going to go back and forth between the organizations, but I just want, for the purposes of clarity, to ask about the soliciting versus non-soliciting.

Both of you could comment on this, but really, the Bar Association talked a little bit about this and streamlining, which I think is a good effect. Some of what you have talked about is about the soliciting versus non-soliciting, and it's been suggested that perhaps we don't need to define or have a different level or tier between the non-soliciting and the soliciting.

Do you think it should be defined as soliciting and non-soliciting? Or do you think minimum standards should apply for both? That's my first question.

Ms. Carole Presseault: I'd say the Bar Association has done a little more work than we have on this area, but we looked at it from a very holistic point of view. Our conclusion was that a one-size-fits-all approach didn't fit the sector. We number 19,000 organizations. I sit on three of those 19,000, and they are three very different organizations that solicit funds from very different areas.

My very facile answer is that one size doesn't fit all, and I think this soliciting and non-soliciting, with various thresholds, is worth looking at and trying.

Mr. Wayne Gray: I think it's absolutely a fundamentally important distinction. Really, I think it's inarguable.

Let me explain a couple of things. There are only seven rules that differentiate. It's a badge that fits different types of corporations. If you're a soliciting corporation, all it really means is that there are seven rules that are a little bit different for you than they would be for a non-soliciting corporation.

Three of those, I think, can't be argued. First, on liquidation, where do the moneys go? If you've been receiving money from the public, it should not go back to the members. That's clear under the act. To me, this is a fundamental distinction that you need.

Unanimous members' agreements have no application for soliciting corporations, so they shouldn't be applicable to those. Also, there is the filing of financial statements. That kind of transparency really only applies where the public is involved.

There are other rules you can debate, such as the number of directors and so forth, but you fundamentally need that distinction.

Ms. Siobhan Coady: Thank you.

Very quickly, I have two other questions.

Are you satisfied? You've talked about how we should move forward with this bill and about how the suggestions you make will improve this bill. But you do say that we should move forward. Overall, have you been satisfied with the level of consultation you've had over the last number of years and the amount of time you've had to prepare to be before this committee or others? Are you satisfied that we've thoroughly consulted?

Mr. David Stevens: This has been in process for nine years. There was an extensive consultation process in the early 2000s, which we thought was excellent. That was on principles. This draft of the legislation has been in this form, more or less, since 2005. It's been available for lawyers and the public to read and comment on. We made a previous submission in 2005 as well. So, largely speaking, yes.

Ms. Siobhan Coady: My third question is on remedies. It's sprinkled throughout the entire bill. We have had suggestions that perhaps we should have a section on remedies. We've also heard the suggestion that perhaps we're being a little too litigious in our goal of remedies.

Would either or both groups care to comment on the remedies that are found throughout the bill? Do you think they should be in a separate section? Do you think they're adequate? Do you think they need clarification?

Mr. Wayne Gray: I think there's a little bit of improvement in there. As Mr. Stevens said, you could consolidate the liquidation remedy and the oppression remedy. That would trim the act a little bit.

You could move a few other provisions, which we call “mini” compliance remedies, into the general compliance remedy. You don't need those if you have a general compliance remedy.

So there's a little bit of improvement, but it's not earth-shattering. All of that detail is in our larger submission.

I have one other point on that, though. The speaker from the Canadian Red Cross on Tuesday suggested arbitration. I do think that's worth considering.

Ms. Siobhan Coady: Okay, thank you.

The Chair: Thank you, Madam Coady.

Do you have any more questions?

● (1600)

Ms. Siobhan Coady: No, it's okay. They would have to be so short....

[*Translation*]

The Chair: Mr. Bouchard.

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

Thank you all for appearing this afternoon. My first question is for Ms. Carole Presseault of CGA-Canada.

You said that professional accountants comply with the standards of independence established by the professional regulatory body having jurisdiction over them. Could you describe how your body establishes the independence of its members?

Ms. Carole Presseault: Thank you for your question, Mr. Bouchard.

As I mentioned in my opening remarks, in the aftermath of the corporate failures, there was a complete review of the standards that apply to professional accountants. This did not take place in isolation. I can't tell you where the process began, but it is the one in which all accounting bodies, be they Canadian, American or European—they have many international affiliations—developed their independence standards.

You asked me how we arrived at this standard. It was an exhaustive consultation process and it was an internal process to develop a standard. There were also external pressures at the time. We worked together with our international body and the Canadian accounting bodies to develop and implement our standard. Today each provincial accounting body is responsible for applying this standard and making sure it is observed by our members.

Mr. Robert Bouchard: You mentioned the provinces, so I would like to come back to the question of mobility. You said that part of this bill is incompatible with other legislation, and that the bill could limit the mobility of professional accountants.

Could you tell us how this bill may limit the mobility of professional accountants?

Ms. Carole Presseault: Thank you for your question.

As I mentioned, there are actually three requirements to be met by public accountants in order for them to practise or give their opinion on the financial statements of an organization under this Act. The first one is to be a member in good standing of an institute or association of accountants. The second one is somewhat problematic since it has a second provision whereby a public accountant must also comply with provincial enactments.

Recently, the provincial premiers all came to an agreement and thus struck a major blow for the improvement of Chapter 7, respecting the mobility of workers in Canada. It was concluded once again that it is really the principle of mutual recognition that should determine the mobility of workers in Canada. This principle provides that, if a professional's qualifications are recognized in one province, they must also be recognized in another province, full stop. According to our interpretation, the section in question brings another factor into play. Even if they are qualified, public accountants must meet another criterion that has not been specified in the Act. It is a little too vague.

Really, under subsection 181(1), public accountants must be members in good standing of an institute or association of accountants, and that's that. That's enough. It is the body that must ensure that they are qualified and able to do the job. If they're not, it's up to the body to take the disciplinary action required.

Mr. Robert Bouchard: Thank you.

My next question is for the Canadian Bar representatives. I don't know which one of you can answer me.

The Act respecting not-for-profit corporations does not define what a not-for-profit corporation is. Do you have any comments to make concerning the definition that should be drafted of a not-for-profit corporation?

[*English*]

Mr. David Stevens: It's a very good question. When we debate it as lawyers, that's what we wonder: what is the essence of a non-share capital corporation? That's been the problem in drafting the legislation since the beginning of the century, both in Canada and the U.S.

The approach that's taken in this legislation we think is a good one. It has two components. It doesn't appear in the definitions section, but it's part of the basic architecture of the law. It's two rules. One, the corporation itself cannot make any distributions of any of its assets to its members while it exists. Second, at the end of the corporation's existence, when it's liquidated, it can't make a distribution to its members if it's charitable. If it's not charitable, it can make a distribution to its members.

It's those two parts—distribution of property during the existence of the corporation and distribution of the corporation's property at the end—and really just one rule: no distributions during the existence of the corporation. That prohibition means that the corporation has to be pursuing something other than the benefit of its members, therefore the non-profit goal.

The other approach is to identify—this is what the Canada Corporations Act does—a list of purposes that could be pursued through a non-share capital corporation. The trouble with that approach is that you're never going to get them all. You would have to capture them under a general expression—i.e., non-share capital purposes, or non-profit purposes, such as religion, charity, etc.

We think it's a good approach not to have a definition in the statute, but the definition is there. It's part of the architecture of the statute all the way through. Then the idea is that individuals will choose this legislation versus the share capital legislation, depending on how they want to answer that question: should there be distributions during the existence of the corporation? No, because we are pursuing together a non-share capital or non-profit purpose.

So they'll choose this statute if that's their mentality. If they want to operate a business and make distributions of dividends during the course of the business, they'll choose the Canada Business Corporations Act federally.

● (1605)

The Chair: Mr. Gray, did you have something to add?

Mr. Wayne Gray: I have just one supplemental point on that.

We must remember that Saskatchewan has had the same type of act in force since 1997—about 12 years of experience—and they've not had any definition. No problems have been reported.

The Chair: Thank you, Mr. Gray.

[*Translation*]

Thank you, Mr. Bouchard.

[*English*]

Mr. Lake, would you like to ask some questions?

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thanks, Mr. Chair.

Thank you all for coming to see us today.

I was looking at the 14-page executive summary and thinking it was kind of ironic; you were talking about simplification. But there's good stuff in there. Obviously it's a very long act, so there's a reason why there has to be so many points in there.

That said, it is pretty long. There are a lot of different points in this. You went to the recommendations and just quickly skimmed through this, but there are quite a few individual recommendations made under your part III.

The first question is in terms of the overall bill. If the choice were to pass it or not pass it as it is, in its current form, would it still be an improvement over what we have right now?

Mr. Wayne Gray: Absolutely. I would pass this in a heartbeat.

Mr. Mike Lake: Okay.

What about from the CGA group's standpoint?

Ms. Carole Presseault: Same thing.

Mr. Mike Lake: All right.

Now, you've suggested a lot of changes, and it's kind of difficult to wade through them. I won't attach a number to this, but if you were to highlight a small number of the most crucial changes, what would they be?

Mr. Wayne Gray: The ones we discussed—our "top ten" list.

Voices: Oh, oh!

Mr. Mike Lake: Can you narrow it down? You have a summary of recommendations that is—

Mr. Wayne Gray: Well, we listed them in order of priority. If you want it to stop at recommendation 5, you can stop at 5.

Mr. Mike Lake: Or if you want to stop at 71, you can stop at 71.

Voices: Oh, oh!

Mr. Mike Lake: I mean, you say in here, "The CBA Sections recommend that the provisions set out in Schedule B to its detailed submission be reintegrated", and so on. My previous life was with the Oilers, and I have to say, I think the guys I was working with would listen to this and wonder what in the world I was thinking when I changed careers.

Mr. Wayne Gray: I think there's a misunderstanding. When I referred to the top ten list, I was referring to the executive summary.

Mr. Mike Lake: Right. But I'm looking at the recommendations in the executive summary, and there are 71 recommendations in part III of the executive summary.

In your opening statement, you didn't really touch on the 71 recommendations. You kind of ran out of time, so I do understand; I just wanted to give you the opportunity to highlight—

Mr. Wayne Gray: Those 71 recommendations refer to the larger original submission that we had, the more comprehensive submission. A lot of those are drafting issues. They didn't make it to the top ten.

Mr. Mike Lake: So they're sort of on top of the big ten.

● (1610)

Ms. Tamra Thomson: Essentially, it's part II of the executive summary.

Mr. Mike Lake: Okay, perfect.

Mr. David Stevens: I can give you the top three items.

Item 1 in the executive summary is just taking out a chunk of sections, just removing them. Item 2 is taking out part 7, trust indentures; it's just taking a bunch of sections and removing them. Item 5 is soliciting corporations; it's just tightening up the definition of that very important regulatory concept.

Mr. Mike Lake: Okay.

Mr. David Stevens: Those are pretty simple.

Mr. Mike Lake: Now, the organization has been before committee when it was being studied here before, is that fair to say?

Ms. Tamra Thomson: Not for this bill, but for predecessors of this bill.

Mr. Mike Lake: For one of the previous incarnations of this bill, for pretty much the same as this one...?

Ms. Tamra Thomson: No.

Mr. Mike Lake: You haven't?

Mr. David Stevens: There was a submission in 2005.

Mr. Mike Lake: There was; it was before committee in 2005.

Ms. Tamra Thomson: In 2005, but I'm not....

Mr. David Stevens: I think it died on the order paper before there were committee hearings.

Ms. Tamra Thomson: Yes.

Mr. Mike Lake: There have been committee hearings, I think, in a previous incarnation, have there not?

The Chair: Yes. In the 38th Parliament, we held committee hearings on one of the previous bills on this issue.

Mr. Mike Lake: Okay.

Well, I was going to follow up with a question about any differences in your recommendations, but I guess not.

To the CGA, looking at this package—I don't know if it was submitted to all members or to the minister's office—I see that you recommend that the term "public accountant" be replaced with the term "auditor".

What is the problem with the term "public accountant"? Maybe you can highlight that.

Ms. Carole Presseault: Thank you, Mr. Lake, for your question.

Actually, yes; in the spirit of time, or to ensure that we didn't run out of time, we really did focus on the top two of our three recommendations, and our top two concern, that second requirement, the independence required. But we have had discussions with the department and with the minister's office and others about the use of the term "public accountant".

The term "public accountant" is not used at all in federal legislation. We've just actually completed our legal research, and it's a quagmire. I don't know if that's the right English word to explain it. It's just used so many different ways. The terminology "public accounting" means very different things when you go from jurisdiction to jurisdiction.

Mr. Mike Lake: But it is used in other jurisdictions.

Ms. Carole Presseault: It is used in other jurisdictions, but it means different things according to which jurisdiction you're in. It's not used in federal legislation, like the Bank Act, the Elections Act, the CMHC Act. It's not used. The word "auditor" is used in that legislation.

It becomes even more complex when you switch to the French, because in French they use the expression "*expert comptable*" when I think they want it to mean "public accountant". And "*expert comptable*" means a professional accountant. Here's where it just gets a little bit trickier: not every professional accountant is a public accountant or provides public accounting services. There's an additional requirement.

I talked a lot about experience, examination, ethical requirements. There are additional requirements of those professional accountants, those *experts comptables*, who perform public accounting services. Not everyone can hang up their shingles. Professional associations require that extra.

That's is why we feel it's quite important to recognize in legislation that not everyone can provide these services; only those who have met the requirements of the regulatory bodies to provide public accounting services.

The Chair: Thank you very much.

Ms. Carole Presseault: I'm sorry; you must be so confused.

Mr. Mike Lake: No, no, that's fine.

The Chair: If I could, I'll just add a clarification. At one point the big issue, broadly speaking, with the previous legislation was between chartered accountants and certified general accountants. There was a concern that we were narrowing or being too specific as to which type of professional designation could be considered under the act.

Ms. Carole Presseault: We've had the benefit of a few years of study of this bill. I've seen different incarnations of the bill. We had the benefit, of course, on the independence standard, to see the development and evolution of the standard, which is why we've now come back seeking an amendment in that aspect.

The issue really is the ability of the federal legislation to establish who is competent to be providing these services. There's a lot of competition in the accounting marketplace. We know that and we live that. I don't think this is so much about competition as it is about having some equivalency or simplicity within federal legislation so that it compares well with the Elections Act, the Bank Act, the CMHC Act, or other legislation.

● (1615)

The Chair: Thank you, Madam Presseault.

Mr. Maloway.

Mr. Jim Maloway (Elmwood—Transcona, NDP): Thank you, Mr. Chairman.

On Tuesday, I think it was, I listened to the presenters from Imagine Canada. It was hard to believe that we've gone through nine years of dealing with this bill. The presenter was telling us that there are 160,000 charities in Canada, or some huge amount anyway, and a lot of them don't even know that this legislation exists at this point. It would seem to me that at some point somebody should have been put in the position of notifying them by mail, or in some way, that legislation like this was going to come.

A lot of the non-profits, as you probably know, are really small. There's a statement here by Imagine Canada to the effect that probably half of them have no employees at all, so what we're doing here, more than likely, is choking them with compliance costs. We've seen that with election financing laws across the country. We all know that. We're dealing with a totally different reality than we were when I started in this business 23 years ago. It's totally different. We're passing on what we've done to ourselves to the charities and the non-profits, from what I can see.

Another issue, in addition to the compliance costs, is the whole area of the directors' and officers' liability. As you know with the insurance market, some years you can get insurance at a reasonable cost, and some years you can't. It can jump from $5,000 to $20,000 in one year. There are big deductibles of $5,000. Financial statements are the worst part of it. They require these little guys to produce financial statements. At the end of the day, a lot of them just walk away in frustration. They're not covered. A lot of these non-profits, I believe, can't find directors, because anybody who understands the law knows there's an exposure here.

With that in mind, I asked them whether there was a possibility that we could bring in some sort of limitation of liability to reduce the exposure and reduce their insurance costs overall. At that point, they said, well, tune in on Thursday, because the legal team will be here. And here you are.

I'm very pleased to hear that you're looking at Saskatchewan's system. I'd like you to explain to us how that is going to help the non-profits reduce their overall costs and whether we could go even further. In my mind, I don't like to see non-profits tied up in any kind of legal environment.

I don't know which one of you wants to answer the question, but it's an open forum.

Mr. David Stevens: I'm just looking for the excerpt that the Saskatchewan legislation itself is in.

A voice: We don't excerpt it.

Mr. Wayne Gray: In the longer brief, we excerpt the statutory language.

A voice: It's in the recommendations.

Mr. David Stevens: On page 9 of the executive summary in the English version, recommendation 25, the statutory language is set out. It's a long description of a very simple idea and it's the idea I presented, which is that there's no liability and absolute immunity for any harm caused by a fault that doesn't have any bad faith in it. We think a rule like that, an immunity, will cause a lot of very good people to step up and volunteer to be directors, because that's the exposure they're typically worried about; that exposure can lead to long litigation with no positive result with a lot of cost.

These directors, as I think you're saying in your question, are not typically compensated in the non-profit sector. They're acting as volunteers, yet if we leave this in place they're taking on huge personal exposure. They're not like the directors of a public corporation who receive compensation, options, shares, etc. They're non-compensated. So we think that'll cause very good people to step forward and act on a more regular basis as volunteer directors of non-share capital corporations.

I think the other point is if the corporate legislation can make things easier and cheaper to reduce the compliance burden on non-share capital corporations, if the organizing statute, this statute, is easy enough for your average layperson to look at and read, if they want to know about directors they go to the section of the statute that lists all the rules about directors. If the statute is well expressed, well structured, and the rules are accessible, then they're going to have a much easier time complying, and they're going to see some very straightforward rules that correspond to what they expect the rules to be.

They don't have that facility now with the current law. The current law is almost impossible to read. As a lawyer, every time I have to go to that statute, I have to look at an index, which is from 1996. Then I have to make sure I haven't missed something in the old statute.

So just putting this new legislation in place facilitates the sector by giving them a legal infrastructure that'll allow them to operate on a daily basis in a much simpler fashion.

Under the old statute, if they're missing something legal, and if, for three or four years they haven't done something they're supposed to do, that could lead to intractable legal problems. One day when it surfaces—they need insurance, or they have to submit something to somebody—a lawyer could tell them they have all kinds of legal problems that have to be fixed, which would impose costs on them. But if you have a nice, simple statute that they can use, that will reduce the costs.

● (1620)

Mr. Jim Maloway: When you researched this, did you discover why Saskatchewan took this approach? Was there a problem?

Mr. David Stevens: I've done a bit of reading on it. There's Nova Scotia as well. It's for the reasons that I think we said.

Mr. Wayne Gray: The Saskatchewan Law Reform Commission came out with a study recommending that there be an immunity for directors. That's where it started. They looked at U.S. models. Nova Scotia has also done it with the Volunteer Protection Act. Nova Scotia has a different model. We're not recommending that one. Saskatchewan has a very good model.

Mr. Jim Maloway: But is there a model proposed anywhere where it would be absolute, where you could have a no-fault system?

Mr. Wayne Gray: But would you want that? For example—

Mr. Jim Maloway: I would.

Mr. Wayne Gray: Take such things as withholding taxes, and employment insurance, and Canada Pension Plan—for all those remittances, there should be no immunity for that. No one would seriously propose that there should be immunity for those types of things. Financing a not-for-profit corporation with that money is not on.

For things like fraud or breach of fiduciary duty or self-dealing involving taking money out of the corporation, no one would suggest that the perpetrators be immune from liability. So we're only talking about misfeasance.

The Chair: Thank you very much, Mr. Maloway and Mr. Gray.

Mr. Garneau.

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

First, I'd like to commend both groups for spending so much time going over this complicated legislation and for coming up with something that certainly appeals to me personally, which is to simplify it wherever possible.

I only have one question, and it deals with what in your executive summary—in your parts I and II—where you're essentially saying that parts 6 and 7 could be deleted in favour of using provincial and territorial acts to cover those.

Are we saying here that with regard to the issues that parts 6 and 7 deal with, it is possible to use one or the other, and it's not necessary to do both? Or do you always have to, in any case, deal with the provincial or the territorial side of things?

Mr. Wayne Gray: The answer is that you don't have to do both, and you shouldn't do both. There are already securities transfer laws passed recently in the various provinces, starting in 1990, and in 2007 in Ontario and Alberta. All the other provinces have now come on board, except for a couple of maritime provinces and the territories.

Securities transfers are dealt with as property. They're instruments or property transferred in the system. As with personal property security laws, that's provincial law.

This bill proposes to take a part of that, a slice of the not-for-profit corporations, and treat that as federal law. Transferable membership interests remain in provincial law, but these transferable debt obligations of federal instruments—you wouldn't even be able to know that it is a federal issuer of this debt obligation, since it has the same name as a provincial one—are going to be treated both under this federal law and under the more modernized provincial law, which makes no sense.

Mr. Marc Garneau: I have one follow-up question. If we go ahead with this, how does one decide, if one is dealing with a national not-for-profit corporation, which province's act applies? Or is it evident in each case which province you refer to?

● (1625)

Mr. Wayne Gray: That's an excellent question. The answer is that the laws in the provinces that have passed personal property securities legislation state that, for a federal corporation, the applicable provincial or territorial law relates to the province in which it has its registered office. It's a default rule that is provided there.

It also says that you can change it to any other jurisdiction you want. Even if your registered office is in one jurisdiction, you could put it another jurisdiction.

One of our more detailed recommendations is to put a provision in the act that gives the maximum flexibility to the corporations to choose the law of the jurisdiction of their choice to govern their securities transfers.

The Chair: Thank you, Mr. Garneau.

Madam Coady, did you have any follow-up questions?

Ms. Siobhan Coady: No. All my questions have been answered. Thank you.

[*Translation*]

The Chair: Mr. Bouchard or Mr. Vincent, do you have any questions?

Mr. Robert Vincent (Shefford, BQ): I'd like to take my turn.

My question is one I have asked everyone who has appeared before us recently. The new bill does not contain anything defining what a not-for-profit corporation is. People can say whatever they like, they don't even have to say anything, because they don't need a definition in section 4.

The minister told us that it had become easy to create non-profit corporations, there are far fewer hurdles to overcome to form such an organization. If someone applies to create a not-for-profit corporation, he can get authorization to set it up without having to define its precise purpose.

Witnesses have since told us that, if a body has an operating budget of less than $25,000, no investigation is made and no one will audit the books. Awhile ago, I understood that, if a not-for-profit corporation ceases to exist, the assets can be redistributed to the members or to the corporation without share capital. The money can be taken back.

If someone wants to launder some money, he can take the $25,000 and do what he wants with it, since there won't be an audit. If he dissolves the corporation, he can distribute the money to the members, if there are any. If he is the only one occupying all the positions, he takes the money back and that's that, no one will audit his books.

Could this sort of situation arise?

[*English*]

Mr. Wayne Gray: It could happen theoretically, but they would never choose this statute in order to do that. Why not use a business corporation statute where there's an unlimited amount? There's no audit requirement for a business corporation statute and there's no monetary threshold. A private business corporation could be used, and you can go under any province federally.

The reason you'd never want to use this statute is that the promoters of the corporation, as Mr. Stevens explained, can receive no benefit until it liquidates. You're not going to set up this type of corporation in order to receive a benefit, because the statute prohibits you from receiving a benefit until it liquidates.

If that's a problem—I don't really think it is, frankly—it's not with this statute. It's really an irrelevant point.

[*Translation*]

Mr. Robert Vincent: Mr. Stevens, I'd like to hear your opinion concerning this same principle. According to your explanations of awhile back, if the corporation is closed, the money is distributed. If it is less than $25,000, no one audits the books. Who knows where this money comes from, if there is no audit for amounts less than $25,000?

I'd also like to have your opinion on this, Ms. Presseault.

[*English*]

Mr. David Stevens: It could happen.

My first answer is that answer, is Mr. Gray's answer. But another approach is that if they want tax treatment as a non-share capital corporation, a non-profit corporation, they're going to have to file tax returns. They're going to be on the tax system's radar screen. If it's in Quebec, they'll be filing with the Ministère du revenu, and also federally, because they want the tax-exempt status of a non-share capital corporation. They'll be on that radar screen. They'll be caught up—not caught, but caught up—in the regulatory regime that applies to money laundering, and maybe they can work their way around it. That's a possibility.

However, you're right; it could happen. At that level of income or contribution, if there's no audit, it could be used for that purpose.

● (1630)

[*Translation*]

Mr. Robert Bouchard: Likewise, if I receive $25,000 and I don't spend a penny of it during the year, I won't have to declare any income because I won't have done anything with this money. If I dissolve the corporation and redistribute the money there is no record anywhere.

Ms. Carole Presseault: Mr. Vincent, I don't have much to add. It's true that such a situation might arise. We assume that people are smarter than that, obviously.

Mr. Robert Bouchard: There are people a lot smarter than that too for money-laundering.

Ms. Carole Presseault: As I said, the system provides lots of other measures, for instance, the Income Tax Act, money-laundering measures, monitoring of bank deposits, accounting professionals' requirement to declare money received, and so on. Everything's possible.

Mr. Robert Bouchard: Under the Act, for amounts less than $25,000, there is no audit. No one audits the accounts. No one has to do anything.

Ms. Carole Presseault: The Act provides measures. I'm far from being an expert in suspicious operations, but I believe that various bank deposits or any other such operation would trigger an alarm, thus preventing corporations from acting in such a way. They might do it once, but I'm not sure it would work in the long term. I don't think it's a very good tactic.

The Chair: Thank you, Ms. Presseault.

[*English*]

I think Mr. Gray wanted to add something before we go to Mr. Wallace.

Mr. Wayne Gray: The threshold for audit exemption for a soliciting corporation is actually $50,000. That's the threshold for not having a public accountant or an audit. To have an audit, it is $250,000. That's just a small thing.

More fundamentally, even if an audit is done for the corporation, it doesn't mean that the money hasn't been taken out or hasn't been laundered. The auditor may pick it up sometime later, but it's not necessarily a device that.... Audits are not to prevent a fraud; they might report a fraud later on.

The Chair: Thank you, Mr. Gray.

Please go ahead, Mr. Wallace. I'm sorry for overlooking you before.

Mr. Mike Wallace (Burlington, CPC): Your apology is accepted, Mr. Chairman.

I want to keep my eye on Mr. Vincent, because all his questions are about money laundering and not-for-share profit. I'm keeping my eye on him.

Voices: Oh, oh!

Mr. Mike Wallace: More seriously, Carole, I'm going to be perfectly blunt: if “public accountant” stays in there, which is the way the wording is now, does it prevent your members from being defined as doing the audit aspects in this bill?

Ms. Carole Presseault: No, it doesn't. It really has nothing to do with our members. It has to do with simplification and consistency in federal legislation.

Mr. Mike Wallace: You're saying consistency because it's listed in other acts as “auditor”, not “public accountant”. Is that correct?

Ms. Carole Presseault: Yes, that's correct.

Mr. Mike Wallace: Are there other government acts that have “public accountant” in them?

Ms. Carole Presseault: “Public accountant” and “public accounting” are defined in very many ways in provincial legislation, but the terms are not generally used in federal legislation that we've looked at.

Mr. Mike Wallace: You're here really with what I would call a couple of simple changes; they may not be simple to you, but they're not huge changes that you're looking for. It's wording.

Your replacement for...to comply with the independent standards of the association or institute of accountants that has jurisdiction over them. So you're saying that if you're a CGA, your own CGA association has its own standards, code of ethics, code of practices, or whatever you want to call it, and that should be good enough to cover you off.

But you could still operate under this other wording. What's the downside of the other wording?

● (1635)

Ms. Carole Presseault: It's not the role of federal legislation to set professional ethical standards. That's a role that's been assigned by provincial statute to provincial and territorial regulatory bodies and professional associations.

It's a good attempt to do it, and it's important to recognize that auditors have to be independent of the corporation, but you're putting criteria in there that are captured in a larger independence standard. The downside is that over time, those criteria may change. It will become more rigorous, and the legislation will be out of date. But if you refer it to the professional bodies, a professional body's responsibility is to ensure that it is current, and they're the people who are mandated to be doing that.

Mr. Mike Wallace: That's a good argument. Thank you very much.

To our lawyer friends, did you say 37,000?

Ms. Tamra Thomson: Yes.

Mr. Mike Wallace: Oh my; that's a big organization.

I appreciate your presentation today.

I have a couple of questions. One, I appreciate the summary of recommendations. That's part of the minutiae that you've sent to the bureaucracy to see if they're interested. Those 71 recommendations, I'm assuming, implement your broader pieces that are in the front. Is that correct?

Mr. Wayne Gray: Yes.

Mr. Mike Wallace: I appreciate your saying that it simplifies things, but I'm assuming that I could give you any piece of legislation and the CBA could find 71 items they'd like to see change in any piece of legislation that exists.

Let's take the first section here. I don't see what the downside is of just leaving it in there. It won't really affect the vast majority of not-for-profit organizations, non-share capital groups. For the few that it does affect, why not have it in there? I don't understand.

I actually have started a charity for performing arts, for example, in the city of Burlington. It's an organization called PAB, and you can go to the website and check it out. We had a lawyer on our initial board, so he helped us out a little bit with that, but it's not like the director sat around and read the act on forming a new charity. We just did it. Isn't that really what's going to happen for the vast majority of charities in this country?

Then, (a), I don't understand why leaving some of this stuff in there for those it affects when it becomes an issue is.... I'll give you a chance to answer, and then I'm done asking questions. And (b), you showed us the act and you showed us the regulations. I'm of the view, sort of opposite to yours, that the act should maybe be simpler. Let's put things in regulations where the rubber hits the road on those things, because legislation is for the lawyers and regulations are for people who are actually operating the thing. Moving it from one piece of paper to another doesn't mean much to me. I would like to see less regulation in here, and put it out of legislation, sort of the opposite of what you proposed earlier.

I'll let you respond to both those issues.

Mr. Wayne Gray: On the securities transfer question—part 6—the question, if I can put it this way, is what's wrong with just leaving it there? Really, not a whole lot is wrong with just leaving it there. You could leave it there.

Functionally, it overlaps the provincial. Let me give you a couple of examples. One, functionally this is provincial terrain. I'm not saying constitutionally, but functionally, property transfers and security interests in property transfers are all dealt with at the provincial level. There is no federal personal property security act, for example. But this act, like the CBCA, provides for a mortgage or pledge of a security interest.

So it is overlapping and inconsistent. It's just not a good law to have such a system.

Will it affect a lot of non-for-profit corporations? No, it won't. It's just that, functionally, it's not the right thing to do. We're not saying you can't live without it.

On the other question, about the balance between the act and the regulations, the act for the most part has been modelled after the Canada Business Corporations Act. The Canada Business Corporations Act has a different balance. We're suggesting that the balance between the two acts be more consistent.

The things that are hard-wired into the CBCA should be hard-wired into the act for the not-for-profits. That way, when you get to amendments, the amendments can be made in the same way at the same time.

This way, there's a tendency for continental drift. There are changes made to the regulations of the not-for-profit act that won't be made to the CBCA. There will be inconsistencies between these two statutes where there shouldn't be.

So I think I could accept.... As long as both models are the same, that's fine.

● (1640)

The Chair: Thank you, Mr. Gray.

Mr. Sweet and then Mr. Maloway.

Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC): Thank you very much, Mr. Chairman.

You commended the government on the drafting of this bill. I guess I should also commend you, because you obviously did a lot of very rigorous work. That large document of yours did not come about without a lot of blood, sweat, toil, and tears, I would imagine.

I want to go down the road, just briefly, of Mr. Maloway's questioning, but a little differently. I understand what it's like to be in a director's position and have liability on your shoulders. It's not comfortable, and I can understand why people may make a decision not to serve on a not-for-profit organization because of it.

However, I also know what it feels like when you're the person who has been wronged or damaged by a decision that has been made in an organization. Although there are compliance costs and liabilities in a not-for-profit organization, by virtue of its being not-for-profit—it doesn't serve its members but actually serves the public—there's also a huge public trust denoted in their actions. I have a concern about any liability for misfeasance being removed from directors.

I understand that your case is that for malfeasance it would still be there, but I think we already have in this act a due diligence framework, in proposed subsection 263(5). I'm wondering why you would want to put forward that they be held harmless, particularly because, if I were in the position of a director and there was something questionable, I would want to make sure that my defence was that it was a misfeasance and not a malfeasance.

Mr. David Stevens: It's a very good question. It's definitely a policy choice for a statute of this kind to make—whether the exculpation or immunity of directors should go as far as we're suggesting. Lots of people disagree on it, and there are two views.

The opposite view to this is that if you take the position of a director, then you should take on the responsibility, which means that if the outcomes aren't good, you should take on those outcomes.

The answer on the other side has to be that on balance we're dealing with a very diverse sector. We're dealing with religions organized in various different fashions, with member-oriented golf courses, with advocacy associations. If we look across the sector, there's a huge variety of purposes that are pursued under this statute. We're asking in general whether the liability regime should be immunity-oriented or simply indemnification and insurance. That's the policy question.

And that's the reality; I think your choice is between the two views.

On balance, six or seven of us who worked on this argued this question back and forth. That sentiment was expressed, and this view prevailed in the end, based on our experience with clients. In general, the client group we're dealing with wants a regime that is simpler to use, and is concerned about attracting directors to give volunteer time.

The Chair: Mr. Gray, did you have something to add?

Mr. Wayne Gray: Directors don't generally join organizations to commit misfeasance. They join in good faith, trying to do their best, as we all know. Really, the question at a macro level is about how you get the best directors, the best governance, of the not-for-profit sector, and that is to develop the biggest pool of potential directors and officers. You do that by removing some of their fears and some of their concerns—legitimate concerns—about unlimited personal liability for doing a volunteer role.

This immunity from liability was recommended by the Panel on Accountability and Governance in the Voluntary Sector, under the Honourable Ed Broadbent, in 1999. That was based on extensive consultations across Canada on the feeling about and what people really thought in regard to that delicate balance, which, as you quite rightly say, is an open question. But people who have looked at this question have also felt that, on balance, this would be a positive thing.

● (1645)

The Chair: Thank you, Mr. Gray.

Thank you, Mr. Sweet.

Mr. Maloway.

Mr. Jim Maloway: Thank you, Mr. Chair.

I'd like to follow up on that question, too, by asking the member if he's done any research as to how much of a drop in liability insurance premiums non-profits would have to pay for by taking this approach. If the risk is cut in half, then the premiums should be cut in half, and $20,000 should become $10,000. Would that be a fair assessment?

Mr. David Stevens: I don't have any—

Mr. Jim Maloway: Well, there is a reason for Saskatchewan bringing it about in the first place. Presumably it was that costs for court cases and liability insurance rates were going through the roof. It was that kind of an environment, right? Presumably, if doing this calmed down the insurance markets, then it would have.... There's an element of cost that you can attribute to doing this.

Mr. Wayne Gray: There has to be a correlation between the risk and the cost and the premiums. Obviously, there is that correlation. Also, a lot of the insurance companies base it on U.S. experience, which is actually quite different from the Canadian experience in terms of directors' and officers' liability. We actually may be overpaying for insurance costs. Again, I think it's another reason to remove this as a liability.

Mr. Jim Maloway: I have a question that follows up on Mr. Wallace's and Mr. Lake's questions about accountants. I personally would like to see the broadest definition of accountant in the act and not define it so that only a very select group of accountants who are governed by a certain set of rules can be accountants. I think that was their concern, too, in that they just want to open it up as broadly as possible to the accountant community. As long as you have some sort of recognized designation, you should be able to perform these functions.

To deal with the Bloc's issue about the money-laundering issue, compliance issues are covered under FINTRAC. I know that the real estate industry was brought under the umbrella—last July 1, I believe it was—and I think even the lawyers are now almost under it.

Are you under it now or are you getting under it?

Ms. Tamra Thomson: No. We're exempt.

Mr. Jim Maloway: You're exempt? You see, I knew you were going to fight it—

Voices: Oh, oh!

Mr. Jim Maloway: —and I guess you were successful.

Ms. Tamra Thomson: However, the law societies, our governing bodies, have brought in the special regulations in terms of dealing with only small amounts of cash from clients and with special rules to identify your clients that are more stringent than the reporting requirements, in order to avoid the money laundering through lawyers' offices.

Mr. Jim Maloway: So how and when did this happen? Because last July, when the real estate industry was brought under, the lawyers were supposed to come under in September or whatever and then something happened to....

Mr. Wayne Gray: It was January 1 in Ontario and B.C.

Mr. Jim Maloway: With lawyers?

Ms. Tamra Thomson: Yes. Those were the client identification rules.

Mr. Jim Maloway: Oh, okay.

Now, dealing with the non-profits, though, is there any contemplation that they would be covered under FINTRAC's rules? Because that's what the questions say, I believe, of the members....

Mr. Wayne Gray: That's a question for the FINTRAC legislation, not for this legislation.

Mr. Jim Maloway: Absolutely; I just wondered whether you were aware of any kinds of rules that were contemplated by them. They're obviously not in exposure there if they're not contemplating rules.

The Chair: Mr. Maloway, I think the witnesses came prepared to talk about Bill C-4. I don't think FINTRAC relates to this particular piece of legislation in front of us.

Did you have another question?

Mr. Jim Maloway: I would simply like to say, as has been observed by other people, that I think we should do this legislation right the first time.

It's probably time to get legislation in place, but if we're going to strangle these organizations with compliance costs and liability insurance costs, and if it's true that very few of them even know that such legislation is coming in, I think it's time for us to go back one more time, do a proper consultation from the ground up, and then proceed with the legislation.

Could I ask you to comment on that?

The Chair: I think Madam Presseault wants to respond.

Ms. Carole Presseault: Mr. Maloway, I just want to clear something up. Our recommendations would unlikely provide rights to our members that they do not have currently. It's about ensuring that members, those who are providing public accounting services, are qualified and are indeed professional accountants.

One thing that is interesting in terms of the issue around compliance cost and the cost of reporting is that in fact many of our members would provide these services without a fee, pro bono. If you provide public accounting services under the fee, there is no legislative requirement to do so, but because they are indeed members and professional accountants, they will have to comply with the requirements of the professional association.

● (1650)

The Chair: Thank you, Madam Presseault.

Madam Coady.

Ms. Siobhan Coady: Thank you very much.

I have one very quick question. What's the downside risk if we delete parts 6 and 7, as you suggest? Is there any?

Mr. Wayne Gray: There's none at all.

Ms. Siobhan Coady: Thank you.

The Chair: Thank you, Mr. Gray.

[*Translation*]

Mr. Bouchard, do you have a question?

Mr. Robert Bouchard: Yes, Mr. Chair.

We know that the Canadian Constitution gives powers to the provinces, including Quebec, respecting the incorporation of not-for-profits. Bill C-4 is designed as a framework for legislation on corporations to be created throughout Canada.

I'd like to know whether there is a harmonization of powers for creating not-for-profit organizations at the provincial and federal levels. Is there any overlapping or infringement? I'd like to know your opinion on this subject.

[*English*]

Mr. Wayne Gray: A series of House of Lords decisions at the turn of the 20th century established that there was both concurrent jurisdiction federally and provincially, generally, in the area of corporations. So it is possible to choose either incorporation under federal or provincial law, essentially—except for banks, of course, which are federal. In most other areas it's concurrent jurisdiction.

Once you are under one particular statute, you know what the rules are, and in most statutes, such as the CBCA, you can move into the statute or move away from the statute. One exception is Quebec. Quebec does not allow you to export the corporation out of Quebec.

This new act, I believe, will have a substantial harmonizing effect on the provinces. As we saw in the case of the CBCA, nine out of the 13 jurisdictions subsequently adopted versions of the CBCA as their provincial business corporations act. Saskatchewan has already adopted a not-for-profit corporations act that's based roughly on the CBCA.

So this is going to be extremely influential for those reasons and also because, in my view, the provinces can't really deviate that much from the federal model.

[*Translation*]

Mr. Robert Bouchard: I didn't understand the term you used. I heard "homogenization." Do you mean by that that Bill C-4 will not encroach and that there is harmonization between the powers of Quebec and the other provinces and the powers that will be granted to the federal government when not-for-profit corporations are created? You don't see any infringement?

[*English*]

Mr. Wayne Gray: I don't see any specific infringement other than what I've specified. For example, I think part 6 does infringe on provincial jurisdiction over securities transfers. That already exists at the provincial level. So it's not necessarily taking the power away from the province; it's an overlap with the province that's already regulated at the provincial level.

Securities regulation is generally a provincial matter. Until there is a federal regulator, it is provincial jurisdiction.

For example, in regard to the publicly issued debt obligations of a federal not-for-profit corporation, it's a little bit hard to imagine this happening, but if there was a federal not-for-profit corporation issuing debt under a trust indenture, it would be covered by part V of the Ontario Business Corporations Act, because it covers any type of issuer that issues its securities in Ontario. So this is an overlap to some extent. British Columbia has it. Other provinces don't regulate trust indentures at all.

In the United States, it's based on where the issuer is issuing its securities. In other words, the jurisdiction is based on whether you are raising money in that jurisdiction, not on the jurisdiction of your incorporation.

So yes, I think there are some places where there is a little bit of an encroachment on provincial jurisdiction. Those are the two that I would highlight.

I would also mention directors' liability for unpaid employee wages. Generally most not-for-profit corporations are not federal undertakings, and their labour laws are governed by provincial law, not federal law, not the Canada Labour Code. Protection of employee wages is a matter of provincial law. This is an overlap. This law, by imposing liability on directors, overlaps with the provinces where the employees have provincial employment standards legislation covering them.

● (1655)

[*Translation*]

Mr. Robert Bouchard: I haven't read all your recommendations. Has the Canadian Bar issued a recommendation with a view to eliminating this infringement, to improving this aspect or making a clarification?

[*English*]

Mr. Wayne Gray: Yes, we've made recommendations on all of those points.

The Chair: Thank you very much.

Thank you to the witnesses for your testimony and for your comments today. I think they've been quite helpful.

[*Proceedings continue in camera*]

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