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Chair

The Honourable Michael Chong

Standing Committee on Industry, Science and Technology

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● (1545)

[*Translation*]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): We shall now begin our meeting.

[*English*]

I want to thank Mr. Lake, Madam Coady, and Monsieur Bouchard for proposing amendments to this bill. Thank you very much. I know how involved it is to come up with these amendments and have them translated, so I want to thank each of the three of you for doing this.

We are going to go clause by clause today on Bill C-4, and we're going to do it sequentially so that we're clear which clause we're working on. You have been given two sets of amendments. One set of amendments has been proposed by Liberal and Bloc Québécois members. It's the thinner set of papers you've been given. The second set you've been given is amendments proposed by the government, and it's the thicker set. The first half of that set is the amendments in English; the second half of the set is the amendments in French.

So without further ado, we'll begin with clause-by-clause consideration. We have joining us today three public servants from Industry Canada. We have Mr. Roger Charland, who is the senior director of corporate and insolvency law policy at the internal trade directorate. We have Mr. Wayne Lennon, the senior project leader, corporate and insolvency law policy at the internal trade directorate. We also have Madam Coleen Kirby, who is the manager of the policy section, Corporations Canada. They're here to assist us and to answer any questions you may have.

Perhaps you could introduce yourself. We have the legislative clerk with us today.

Mr. Marc Toupin (Procedural Clerk): My name is Marc Toupin. I'm the legislative clerk from the legislative services branch, and I'll be here to assist members during the clause-by-clause review of the bill.

The Chair: Thank you very much.

Pursuant to Standing Order 75, subsection 1, consideration of clause 1 is postponed.

I call consideration of clause 2, and the first amendment we have proposed on this clause is the Conservative amendment. Mr. Lake, would you care to speak to your first amendment?

(On clause 2—*Definitions*)

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): I think in the interests of time, rather than my trying to explain each of the things, what I'll do is just defer each of these changes to Coleen, if she could kind of give a quick explanation. Most of the things we're moving here come out of the testimony, so a lot of them are just minor tweaks from the Canadian Bar Association's testimony.

Coleen, could you speak to that first amendment?

The Chair: So Mr. Lake has moved the amendment. Madam Kirby, would you care to comment on the government's amendment?

Ms. Coleen Kirby (Manager, Policy Section, Corporations Canada, Department of Industry): I'm assuming it's the amendment to the definition of public accountant.

Mr. Mike Lake: This is that clause 2 be amended by replacing lines 15 and 16 on page 3.

The Chair: Madam Kirby, we're following the amendments—

Ms. Coleen Kirby: Yes.

The Chair: —as proposed on the first page here. If you could follow along, that would be helpful.

Ms. Coleen Kirby: This has to do with the definition of public accountant. It is based on a comment from the Canadian Bar Association. The definition as it's currently drafted in the bill references the two main ways a public accountant is appointed, either when the corporation is first created or at each annual meeting.

The Canadian Bar Association pointed out there are three other ways a public accountant could be appointed. Two are associated with a vacancy in the position and the final is if it's a court-appointed public accountant. The amendment is simply expanding the definition so that all five references to where a public accountant could be appointed are referenced in the definition itself.

The Chair: Is there any further discussion on this amendment?

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

The Chair: The second amendment we're going to consider for clause 2 is actually two amendments. One is proposed by the Liberal Party on the first page of the smaller stack of amendments. The second amendment is proposed by the government, both amending line 21 in clause 2.

Pardon me, Madam Coady?

● (1550)

Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.): I was asking Mike whether he was trying to do (a), (b), and (c) at the same time; ours took (a) and (b) separately.

Mr. Mike Lake: Oh, is it separately?

Ms. Siobhan Coady: So we may just want to....

Mr. Mike Lake: Okay. Do you have a thought on what—

The Chair: Just one moment.

Let's begin with Madam Coady's amendment and have Madam Coady explain her first amendment to clause 2.

Ms. Siobhan Coady: Did you say the amendment to clause 2? Okay.

This is with respect to clarifying soliciting versus non-soliciting corporations, so that we can work towards a better go-forward definition of soliciting versus non-soliciting You'll recall that we had both the CBA and Imagine Canada and a number of different people talking about this definition as being a little confusing and needing some clarification.

The first one would be that the period covered would be immediately preceding the financial year in which the money was received; it's a change to paragraph (a) of the definition of "soliciting corporation" in clause 2.

We have both. I don't know how the chair would like to handle this matter, because we're making a recommendation and they're making a recommendation in the same area.

The Chair: Well, because your amendment was received prior to the government's amendment, we're going to consider yours first. But if you're amenable, you could withdraw both of your proposed amendments and the government could move its amendment instead, and the committee could choose to adopt the government amendment.

Mr. Mike Lake: Can I make a suggestion?

We can always discuss yours after this one. I think it makes sense, given that the longer one.... The departmental officials can probably comment on why we would make the change we propose to make in our proposal. If that doesn't satisfy what you're trying to accomplish, we can always talk about yours as well.

Ms. Siobhan Coady: Sure, and one might include them.

The Chair: Madam Kirby, could you comment on what the government's amendment proposes to do—the one that's found on the second page? Madam Coady might possibly be comfortable with what the government is proposing.

Ms. Coleen Kirby: The amendment motion is written with an (a) and a (b) part. This is only done because of the way we have drafted or amended the definition of "soliciting corporation". It has to be moved out of the actual definitions and listed separately. What I will comment on is the (b) part of the motion, which is the substance.

What the Canadian Bar Association and a few others commented on was some concern about determining exactly at what moment a corporation became or ceased to be a soliciting corporation, and over what period you're looking at income to determine whether in a particular fiscal year they are over the $10,000.

What we have tried to do, again keeping as much as possible of the detail in the regulation, is add two new things that will be prescribed. The way this definition will now work, you will do a calculation to determine whether you were over the threshold on the last day of the financial year-end. It will work such that you are looking at a period of 36 months, from the financial year-end backwards. We cannot just count back three financial year-ends, because under the Income Tax Act you can have a financial year that is less than 12 months long. We're making it clear that this may include four or five financial year-ends, if they have been triggered by the Income Tax Act.

Second, if you are becoming "soliciting" or ceasing to be "soliciting", that change will take place at an annual meeting. If your financial year-end is December 31 and you're holding your annual meeting May 1, you do the calculation of income based on December 31, but you would become "soliciting" at the annual meeting on May 1, since one of the criteria is the number of directors, and you make that change at the annual meeting.

It has to do with trying to keep track of how long you're "soliciting", which will be based on your annual meetings. The calculation to determine whether you have the required amount of public funds will be based on your financial year-ends, which is the same moment as that for which an accountant has to put together the financial statements. If there is a public account, the review is done.

This should make very clear when you become and when you cease to be a soliciting company and for exactly what time period you are doing the calculations. That's what we have proposed in this amendment.

● (1555)

The Chair: Thank you, Madam Kirby.

Go ahead, Madam Coady.

Ms. Siobhan Coady: Thank you.

I'm going to ask a couple of clarifying questions, because my recommendations are probably embedded in yours, and I'd like your clarity on it.

The period covered will be the immediately preceding financial year. You said the last day of the year end, correct?

Ms. Coleen Kirby: Correct.

Ms. Siobhan Coady: I think my clause is included in your clause.

For further clarity, the same period received income in excess. You're saying pretty much the same thing in yours, correct?

Ms. Coleen Kirby: Correct.

I have to admit that we got into drawing a lot of timelines on a blackboard trying to deal with the 36 months you're counting as a period different from the 36 months running off an annual meeting, for which you are soliciting. There is a gap between those two periods. One goes back in time and one goes forward in time. There is the duration versus the time you're counting; they are essentially two different three-year periods.

The Chair: Thank you, Madam Kirby.

Madam Coady, are you comfortable withdrawing your two amendments in lieu of the government amendment? Do you have a few more questions?

Ms. Siobhan Coady: I do.

If I may again ask for further clarification, we're looking at adding these changes or modifications after line 23 on page 5. Is that correct?

Ms. Coleen Kirby: The changes have all been made in what would be called the *chapeau* of (5.1). The rest of the definition is identical to what it was. It turns out there's a really technical reason that it actually can't be done as a definition because of one of those time periods in the regulations. I don't fully understand it, but this is what I've been told by the Department of Justice.

Ms. Siobhan Coady: You have included that it does say that it's up until the end of the next annual meeting of members, correct?

Ms. Coleen Kirby: Once you become soliciting, you're soliciting three out from this annual meeting, because we've always worked on the principle of three. The regulation will essentially be the third annual meeting following after the day you became....

Ms. Siobhan Coady: So a corporation that during a financial year becomes a soliciting corporation is deemed not to be a soliciting corporation until the end of the next annual meeting of members?

Ms. Coleen Kirby: Yes.

Ms. Siobhan Coady: I'm okay with it, then.

The Chair: Thank you, Madam Coady.

Would you like to move this second amendment, as proposed by Mr. Lake?

Ms. Siobhan Coady: No, our friends can do that.

The Chair: Thank you, though, Madam Coady, for your two amendments. It is appreciated.

Ms. Siobhan Coady: It actually takes in three.

The Chair: That's right. It's the first three amendments.

Ms. Siobhan Coady: See how easy it is to get along with me?

The Chair: Thank you very much, Madam Coady. I'd also like to thank you for sending this to us last week. We really do appreciate that.

Mr. Lake, would you care to move this amendment?

Mr. Mike Lake: I so move.

The Chair: Thank you.

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

(Clause 2 as amended agreed to)

(On clause 3)

The Chair: We are now going to the consideration of clause 3.

[*Translation*]

Mr. Bouchard, could you explain your amendment?

● (1600)

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): We are adding a subclause to clause 3, after subclause (4). This addition aims to ensure that Quebec's jurisdictions will not be encroached upon, nor the responsibilities of the federal government. It reads as follows:

(5) No corporation may be incorporated under this Act unless

(*a*) its objects are under the legislative authority of the Parliament of Canada; or

(*b*) it carries on business in more than one province or has a fixed place of business in more than one province.

We want to add a clarification by stating that its objects are under the authority of the Parliament of Canada. We are thinking, for instance, of a local organization which wishes to incorporate pursuant to Canadian government legislation, under Bill C-4. We want to prevent it from doing so unless it has offices or activities in several provinces.

The Chair: Thank you, Mr. Bouchard.

Are there any questions from members?

[*English*]

Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): Would the staff like to comment on the amendment?

The Chair: Madam Kirby, would you care to comment?

Ms. Coleen Kirby: You do the first part. I don't mind doing the second part.

The Chair: Mr. Charland. *Allons-y.*

[*Translation*]

Mr. Roger Charland (Senior Director, Corporate and Insolvency Law Policy and Internal Trade Directorate, Department of Industry): Yes, thank you.

Firstly, as indicated in a previous committee hearing, we believe that the bill as drafted already respects existing frameworks and does not encroach upon the various jurisdictions.

However, this amendment would have an impact on the whole issue of the continuity of corporations which already exist. Several of them were incorporated under the previous regime. Such a provision would make the transition of those companies to the new regime problematical. This could lead to orphan companies during the transition.

Although we believe that the bill as drafted respects areas of jurisdiction and does not encroach upon them, we feel that the amendment would create that problem.

[*English*]

The Chair: Merci, Monsieur Charland.

Is there any further debate? Madam Coady, go ahead.

Ms. Siobhan Coady: May I ask a question to determine if there is any harm by putting this in? Is it just a clarification?

Ms. Coleen Kirby: The fundamental problem right now would be that we have all kinds of corporations that are only operating in one province. Under this bill they would be ineligible to continue under the new act. They cannot continue under any provincial act because no provincial act allows continuance. They would be dissolved when the act came at the end of the transition period, and all their assets would vest in the crown.

The Chair: Thank you, Madam Kirby, for that answer.

Monsieur Vincent.

[*Translation*]

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

What we want to accomplish through this amendment is essentially to catalogue the organizations, and so those that fall under the federal legislation would continue to do so, and the provincial ones would also continue to fall under provincial jurisdiction.

We are not changing the essence of the act, we are not attempting to modify it; we are trying to clarify it so that those who are affected by this act will understand how it will operate. It says in the amendment that "its objects are under the legislative authority of the Parliament of Canada;" we agree on that. I think that is clear.

May we agree on the fact that the bill falls under the federal Parliament?

The Chair: Mr. Charland.

Mr. Roger Charland: Yes, I understand the intention.

For our part, we want to raise the issue of the transition and the fact that at this time, under the federal regime, there are a certain number of companies that are incorporated, pursuant to the Canada Corporations Act. Those companies will no longer have a framework. This act is being abolished, a new regime is being created and we must raise the whole issue of continuity and of the transition, which becomes a problem, as Ms. Kirby pointed out.

Moreover, we continue to believe that shared jurisdiction allows for the respect of areas of jurisdiction. Companies and corporate entities may still decide to incorporate under the provincial system if they wish to do so.

● (1605)

The Chair: Thank you, Mr. Charland.

Mr. Garneau, and then Mr. Bouchard...

Mr. Vincent.

Mr. Robert Vincent: Mr. Chairman, I was wondering about something.

In the amendment, they suggest adding to subclause (5): "No corporation may be incorporated under this act unless [...]". The issue of transition is not even raised. The bill before us introduces a new system, a new way of doing things, and no one is talking about transition on either side.

Concerning the corporations incorporated under the current act, it says that:

> (*a*) its objects are under the legislative authority of the Parliament of Canada; or
>
> (*b*) it carries on business in more than one province [...]

This is where it becomes interesting: if the organization is present in more than one province, it may have a new identity based on the fact that it only exists at the provincial level.

You mentioned earlier that an organization may be incorporated in a province, but we don't know what scope that corporation has to take on in order to come to fall under the federal jurisdiction. Had you understood it in that way or considered it from that angle?

Mr. Roger Charland: Yes, but you could ask Ms. Kirby for a clarification, because I am not...

In order to transfer from one system to the other, the corporations that are currently incorporated under federal law must be able to continue to exist under the new system. This type of provision, which states that an entity may not incorporate unless it meets certain conditions, will create this transition problem.

Among some 19,000 currently incorporated non-profit corporations, many could find themselves in a situation where they did not meet the requirements, or would have to prove that they meet them, and would thus become orphan entities to which no system would apply. They could not be transferred to a provincial system because the current act does not allow it. Nor would provincial legislation allow it.

Which brings us to the scenario suggested by Ms. Kirby. That is the practical concern that such a provision raises.

The Chair: Thank you, Mr. Charland.

Mr. Garneau.

And then we will hear from Mr. Bouchard.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): I was wondering whether it would settle the issue to say that these requirements will apply to companies created after the adoption of this legislation, while those that already exist and must go through the transition would be exempt.

The Chair: Thank you, Mr. Garneau.

[*English*]

Madam Kirby, do you have any comment on that?

I think that as chair, maybe I could clarify things a little bit.

There are many entities that are incorporated at the federal level that operate in only one jurisdiction or one province. As an example, I believe the National Hockey League Players' Association is a not-for-profit entity. I believe it's federally incorporated, although I'm not certain of that. If it is federally incorporated, this amendment would not allow it to exist, because as far as I can recollect, it only operates in the province of Ontario, in Toronto specifically. Is that a correct assumption?

Ms. Coleen Kirby: That would be the basic issue. A fair number of companies would operate in only one province. They may have a national element, but they may not actually be conducting business anywhere except in one province. They would be precluded from going under the federal legislation.

The Chair: Thank you, Madam Kirby.

Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard: Mr. Garneau's suggestion seems interesting to me.

Could we allow entities incorporated under the current rules to transition to the new legislation, even in those cases where provincial or local entities are concerned? All new companies, however, would have to meet requirements with regard to provincial and federal jurisdictions.

● (1610)

[*English*]

Ms. Coleen Kirby: For over 90 years not-for-profits have been given a choice of going either federal or provincial. We would now radically change the system that's been operating in this country. Even if we grandfathered in those that are currently under our act and allowed them to stay federal, it would prevent new not-for-profits, it would take away their choice on whether they want to go federal or provincial.

The way the law is currently set up with respect to modernizing not-for-profit law, Saskatchewan is the only province with a particularly modern statute. We are trying to do one. Quebec, Ontario, and B.C. are considering it. None of the other provinces has a modern statute. In fact, most of their statutes are as old as ours currently is. Most of this was done back in the early part of the 20th century.

You would be precluding them, small or large, from having a choice of whether they wanted the more modern regime through federal law and telling them that they have to use whatever the provincial regime is, even if it is very out of date and doesn't give them the flexibility they need to operate.

[*Translation*]

The Chair: Thank you, Madam Kirby.

Mr. Vincent, do you have a question?

Mr. Robert Vincent: In Quebec, the act is in the process of being amended. I think it would be simpler to include these points in the current act rather than waiting for the amendments to be made.

In section 298, corporations and restructuring are mentioned, but applications for continuance are also referred to. In this regard, it states that body corporates have three years to apply for a certificate of continuance. This means that companies have three years to ask for it. According to this wording, if a company wants to immediately go to the federal jurisdictional level, it submits its request, but if it is under provincial jurisdiction and wants to change that because things are developing in other provinces, it may use that argument alone rather than asking for a continuance under section 298.

It seems it would be simpler to proceed in that way rather than having to go through all sorts of detours to get to the same point.

[*English*]

Ms. Coleen Kirby: In all cases, when a corporation makes a decision on whether they are going to go federal or provincial, whether it's a share corporation or non-share corporation, there are a lot of different factors any corporation is going to consider. It's not just a matter of which has the simpler form to file. The fees are obviously different, and there are differences in how often you have to register and where you're conducting business. There are tax issues. There are issues on how you want to conduct business. It's a fairly complicated decision for any set of incorporators to make, and that's why it has never been obvious for not-for-profits whether they should choose to go provincial or federal. It's a decision we can't make for them. It has to be a decision you make when you consider all the aspects of how you want to conduct business.

[*Translation*]

Mr. Robert Vincent: Don't you think it would be clearer and simpler to proceed in that way rather than having to check the law to then determine whether section 298 authorizes that procedure? If we include that provision straightaway, it will not be necessary to go through the act from beginning to end. In fact, it would not change the spirit of the law. It would make it more focused.

Mr. Roger Charland: I would like to avoid all confusion. Section 298 talks about the three-year transition period for continuances under the new system.

I would like to add a comment to what Ms. Kirby said. On day one, when a company incorporates as a non-profit corporation, it has a plan. It does not engage in activities here and there; it begins with something very modest, with a national level development plan. This is the type of consideration that becomes problematical if one includes this additional requirement.

Mr. Robert Vincent: What problem do you foresee? I'd like to understand.

Let us suppose that someone creates a company tomorrow morning, in Quebec, and that three, four or five years later, people from other provinces express their interest in doing the same kind of thing in their province. Even if that situation was not foreseen from the outset, it would be simpler that things be done at the pan-Canadian level. Paragraph 3(5)(*b*) allows that to be done immediately.

● (1615)

Mr. Roger Charland: Under those conditions, it would be necessary to check the extent to which this legislation would allow a company incorporated under a provincial act from day one to move under the federal program. Some acts include regulations that I think would make that impossible as a procedure. You would have to close down a not-for-profit organization and start another one. If the intention from the outset is to operate at national level, the option is to incorporate federally, as in the bill presently under study. If the intention from day one is for the activities to be much more local, it is always possible to incorporate provincially.

Mr. Robert Vincent: I think of all those companies that started in a garage and one day find themselves operating at international level. You can make all kinds of assumptions, but to me, it seems simpler to include this provision.

The Chair: Thank you, Mr. Vincent.

Mr. Wallace.

[*English*]

Mr. Mike Wallace: I want you to call the question.

The Chair: Is there any other further discussion on this?

Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard: Mr. Charland, your explanations, to the effect that we should allow people freedom of choice, with no regard to existing provincial responsibilities, and that we should allow much more room for the federal government, seem to chip away at the responsibilities or powers of a province like Quebec, or any other.

That is why I would have preferred more openness in this bill. If the aim is to modernize, let us not take over the whole area. Let us not attract organizations by allowing them to incorporate under Bill C-4 and telling them that it is no problem for them to become Canada-wide organizations although they are simply based in a village or a town.

This really seems to me to allow Bill C-4 to siphon organizations away. To my mind, it even seems a bit of an affront to the powers that a province should have, like Quebec.

The Chair: Thank you, Mr. Bouchard.

Mr. Robert Bouchard: Nor do I see why there would not be a provision to address that. Organizations already established locally have had the privilege of being able to incorporate under a federal act while still keeping their local or provincial character. We should allow all the others to check the appropriate box, to go where their true responsibilities lie. That seems logical to me.

So my colleague and I are demanding exactly that consideration for the powers and responsibilities of Quebec and the provinces.

[*English*]

The Chair: Merci, Monsieur Bouchard.

(Amendment negatived)

(Clauses 3 to 6 inclusive agreed to)

(On clause 7—*Articles of incorporation*)

[*Translation*]

The Chair: We have another amendment, moved by the Bloc Québécois.

Mr. Bouchard, could you speak to the amendment?

[*English*]

This amendment is going to add the two words “its objects” to clause 7, right after paragraph 7(1)(a).

Monsieur Bouchard, would you like to comment on your proposed amendment to clause 7?

● (1620)

[*Translation*]

Mr. Robert Bouchard: In my view, it is related to what we said earlier. The key is the province where the headquarters is located...

The effect is the same, I feel. Provincial responsibilities, Quebec's responsibilities, must always be respected. We must not always be seeing the Canadian government pulling away or siphoning off powers that are reserved for the provinces. The words “its objects“ addresses that.

Given the argument you made earlier, I very much doubt if you are going to support them or make any comments agreeing that they make sense. So there you go!

The text is available.

The Chair: Thank you, Mr. Bouchard.

[*English*]

Would the Industry Canada officials care to comment as to whether or not they have any problem with including the objects of the corporation within the articles of incorporation?

Ms. Coleen Kirby: Since we haven't seen the motion, we are assuming it creates a new paragraph (a.1)—

The Chair: That's right.

Ms. Coleen Kirby: —that says “its objects”.

The Chair: That's right.

Ms. Coleen Kirby: Okay, 7.(1)(a.1).

The idea behind paragraph (f) and the statement of purpose is to allow the corporations to spell out what it is they're going to do.

Unfortunately, there are legal problems with the word “object”, which is why we did not make the statement of objects. There is a concept floating around in corporate law of ultra vires, which has been around for well over a hundred years. Using the word “object” has the intention of including that concept, which is present in the Canada Corporations Act. The reason we changed from the word “object” to a statement of purpose was to make sure we clearly got away from that legal concept of ultra vires. But the idea behind the statement of purpose is to spell out what it is the corporation is going to do, which I take as saying its objects or statement of purpose are pretty much the same thing.

The Chair: Thank you, Madam Kirby, for that comment.

Are there any other comments or questions from members of the committee concerning this amendment?

Mr. Bouchard.

[*Translation*]

Mr. Robert Bouchard: Madam, you say that the word “objects“ and the term you use in bill C-4 mean the same. At least, that is what I understood. So why would keeping the word “objects“ be a problem?

[*English*]

Ms. Coleen Kirby: As I said, the problem has to do with common law and the concept of ultra vires, which is if a corporation operates outside of its stated objects, the activity is considered illegal and the corporation can be dissolved.

One of the things that is done through the Canada Corporations Act is that there is a very strong list of powers. If they do anything that is not in that list, the corporation is ultra vires in its objects and its powers, and therefore the activity is considered illegal.

We have dealt with this differently, which is normal in corporate law. They've gotten rid of this concept, because usually the person who gets hurt is some third party dealing with the corporation that didn't realize that what the contractee has with the corporation is outside of its powers and therefore it's the third party that gets hurt, not the corporation. To make it very clear that we are not bringing in that concept, that we were getting outside of that concept, we have changed the word to "purpose", and that has been generally accepted for the most part by the legal community and the stakeholders we've consulted on the bill. They understand that both are supposed to be an explanation of what it is the corporation is doing, but one gives that information to the public without bringing in a legal problem.

● (1625)

The Chair: Thank you, Madam Kirby.

[*Translation*]

Do you have another question, Mr. Bouchard?

Mr. Robert Bouchard: Because of the unintended negative consequences and because of the word "objects", we will vote against when the time comes.

[*English*]

The Chair: I will ask the question.

(Amendment negatived)

The Chair: Mr. Lake, could you move the government amendment?

Mr. Mike Lake: I'll move it and again ask Ms. Kirby to give some background on that.

The Chair: Thank you, Mr. Lake.

Madam Kirby, could you comment on the government's proposed amendment to clause 7?

Ms. Coleen Kirby: The motion creates a new subclause (3.1). There are a number of requirements in the act that certain information has to be dealt with in the bylaws. For example, the manner of giving notice of member meetings must be dealt with in the bylaws.

However, we have recognized that some corporations are not always good at following the rules, so we've also written in a default: if the bylaws don't deal with this particular matter, then the provision is there. The problem we've discovered after reading some of the Canadian Bar Association material is that if they take that method of giving notice to members and put it in the articles and not in the bylaws, the way the statute is written the default would kick in. So all this motion says is that if something is required to be in the bylaws but has been put in the articles instead, it's okay. So we make sure the default provision we've written in won't apply. That's what this motion does.

The Chair: Thank you, Madam Kirby.

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

(Clause 7 as amended agreed to)

(Clauses 8 to 28 inclusive agreed to)

The Chair: Clause 29 is in front of us for consideration, and there is a proposal for this clause to be completely removed from the bill. The government is proposing to have this clause voted down.

Madam Kirby, could you comment on why the government would like to see this clause removed from the bill?

Ms. Coleen Kirby: This again goes back to the comments of the Canadian Bar Association. Under the Canada Business Corporations Act, which was the base document for drafting this bill, the way money is given in exchange for shares is regulated. In your financial statements, there is a requirement to keep track of a stated capital account, which is the money that's received for shares, and when you're doing your assets minus liabilities and you get your result, it's related to the stated capital account.

It only applies to shares, not to debt obligations. When we were drafting the bill, what we missed and what didn't come out until the Canadian Bar Association brought it out is that this is not an issue that needs to be dealt with in respect of debt obligations. The issue of how much money you get in exchange for a debt obligation is not a matter of statutory corporate governance, but a purely private commercial transaction, and therefore as requested by the Canadian Bar Association, we need to get rid of clause 29. It's not required.

● (1630)

The Chair: Thank you, Madam Kirby.

Shall clause 29 carry?

(Clause 29 negatived)

Ms. Siobhan Coady: You were just seeing whether we were awake.

The Chair: I was.

Shall clauses 30 through 145 inclusive....

Yes, Madam Coady.

Ms. Siobhan Coady: I've advised the clerk that we want to look at parts 6 and 7. We would like to do exactly what you've just done on the debt obligation. We'd like to do the same, so we advised the clerk of this. As you've recommended removal of clause 29, we'd like to remove part 6 and part 7.

I can speak to it, if you'd like.

The Chair: Could you clarify for the members of the committee what you're proposing to do?

Ms. Siobhan Coady: Okay. It's exactly what we just did with clause 29.

The Chair: You would do it to which clauses?

Ms. Siobhan Coady: It would be to the whole of parts 6 and 7.

Mr. Mike Wallace: So which clauses are those?

Ms. Siobhan Coady: It's all of part 6 and all of part 7. I'll have to look at the numbers in the book.

It's clauses 38 to 116.

Mr. Mike Lake: Clause 116 is on page 46.

Ms. Siobhan Coady: There you go; you're fast. That's right.

Do you want me to speak to this?

The Chair: Just wait one moment.

I am going to call the question on clauses 30 through 37 inclusive.

(Clauses 30 to 37 inclusive agreed to)

The Chair: I'll call clauses 38 through 116 inclusive.

Madam Coady.

Ms. Siobhan Coady: Certainly I would like to speak to this.

We've been talking about the removal of parts 6 and 7. Part 6 is an older U.S. model and is inconsistent with what the provinces currently have. Most provinces have adopted a uniform securities transfer act, the exceptions being P.E.I. and Nova Scotia, and Nova Scotia has announced that it's moving in that direction. That covers transfers.

Part 6 would really overlap with existing law. Even if a statute does not exist, it does exist in precedents or in common law. It's because of the complexity of part 6, because we're trying to streamline, and because it would be a very unusual circumstance for this to be used. In the meantime, it's inconsistent with what the provinces have.

You will recall that the CBA, as well as Imagine Canada, did recommend its removal, saying that it's covered in other jurisdictions.

That's part 6. Do you want me to go to part 7?

The Chair: Perhaps we could have the officials from the Department of Industry comment on the proposal in front of committee to remove part 6 from the bill.

Go ahead, Mr. Lennon.

Mr. Wayne Lennon (Senior Project Leader, Corporate and Insolvency Law Policy and Internal Trade Directorate, Department of Industry): Part 6 and part 7 can in many ways be treated as a piece. They are considered to be what we call "contingent provisions". It is recognized that very few corporations would use these even as they are currently written. There are provinces that now have adopted uniform transfer-of-securities acts. The federal government has, in its own right, been looking at a federal equivalent that would take into account not only this act but also the Canada Business Corporations Act, the Bank Act, and other financial institutions acts. That's one of the reasons we left this in as it is.

As I said, it would very seldom be used. They are grouped together as a piece, so it does not create an unnecessary and complex piece of work for corporations that would never use them, but you have to think of these as something like the user manuals for a DVD recorder or a Blu-ray player: you can plug them in and play them, and they will work fine, but if you want to use the bells and whistles, you would want to have the rules of the game. You would want to have the manuals in front of you.

If there are legal questions, then a not-for-profit corporation would have to call a lawyer, which is not free. These sections are here to assist those few corporations that may use them. In the event that a federal securities act comes into play, they will be adjusted or addressed at that time.

● (1635)

The Chair: Thank you, Mr. Lennon.

Go ahead, Madam Coady.

Ms. Siobhan Coady: Thank you.

As you pointed out, this is used in very rare circumstances. It adds complexity to this act, and we've all talked about the smaller not-for-profit organizations out there that do not have the benefit of those who can interpret this act. It is used in very rare circumstances. It's found in other provinces and statutes. Most specifically, part 6 is found in the Uniform Securities Transfer Act, which is by and large Canada-wide.

Part 7, as I understand it, is not currently in federal law. It's covered in both Ontario and British Columbia as it exists today, and most trust indentures would be national in scope, so they would be captured by those jurisdictions. This is a huge part of the act. For ease of purpose and because it has been recommended to us for the fact that these are used in rare occurrences and found in other jurisdictions, I would suggest that we could remove them from the bill.

The Chair: Thank you, Madam Coady.

Mr. Lennon, would you care to comment?

Mr. Wayne Lennon: If the committee were to decide to take these two sections out.... First of all, you are right in saying that they make up a large part of the act. However, they are self-contained, and small corporations that would be using this act would never use them. They'd just skip by them. For example, in the Canada Business Corporations Act, the same provisions exist. There are thousands and thousands of small businesses—*dépanneurs*, dry cleaners—that use the Canada Business Corporations Act, and these provisions don't create a problem for them as they use the act either.

From a technical point of view, if we were to remove parts 6 and 7 as a piece, we would also have to remove all the other references to debt obligations that are scattered throughout the act.

The Chair: Thank you, Mr. Lennon.

Mr. Wallace had something to say on this.

Mr. Mike Wallace: I think the staff have been clear on why this should be here. It's not something that's to be used that often. From the government's perspective, or from the perspective of all governments, I think we're better off....

I know the act is big. It was big before and it still stays big. But I think we're better off with the protections this provides than without having it there and causing issues for those one or two or three or four—whatever happens every year—who have to engage in legal process to resolve the issues that we have here incorporated in the act. I'm encouraging other members to keep parts 6 and 7 intact.

Thank you very much.

The Chair: Thank you, Mr. Wallace.

Mr. Lake.

Mr. Mike Lake: I'd reiterate what Mr. Wallace is saying. The point Mr. Lennon makes is that they are self-contained. There's nothing complex for anybody for whom these two parts don't apply anyway; those smaller organizations can simply skip those two parts, and I don't really believe they make the situation more complex for individuals. I'm certainly not comfortable wiping out as many...we're talking about almost 100 clauses of our bill here. There is a reason why they're in it.

One question I have is whether these two parts have been in previous incarnations of this bill.

Mr. Wayne Lennon: Yes.

Ms. Coleen Kirby: They are not new. In fact, I don't think they have changed since the original Bill C-21.

Mr. Mike Lake: That was in what year, again?

Ms. Coleen Kirby: November 2004 is when it was introduced.

Mr. Mike Lake: Okay, and at that time there was no move to pull those out.

I'm curious what members of the other two parties at the table would have to say about this. Is there an indication as to which direction you're leaning?

The Chair: Thank you, Mr. Lake.

Are there any further comments?

Mr. Thibeault.

Mr. Glenn Thibeault (Sudbury, NDP): I do have some comments. I have some trepidation, looking right off the bat at parts 6 and 7, at unilaterally removing them without having the opportunity to know what is actually in them.

I completely understand my peers down the table wanting to make it easier for not-for-profits, but I would really need some clarification of the impacts removing these parts would have. I'm hoping staff can restate this, once again.

● (1640)

The Chair: Mr. Lennon.

Mr. Wayne Lennon: The parts are intended to assist and provide guidance, procedures, and rules for the small number of corporations who may issue debt obligations to get financing. A number of the corporations under this act are quite large. They undertake capital projects. They can go out into the public marketplace to get capital funds. These procedures allow them to do that.

Ms. Coleen Kirby: To specify what is in part 6, it spells out what a debt obligation is, what sort of certificate is required to create one, what kind of record-keeping the corporation is required to do, how you transfer debt obligations from one person to another—because some of these are traded on the stock exchange.

These are fairly common. If they are transferred and there is some difficulty with the transfer concerning whether it is valid or not; or if the person who signed it is somebody who has since resigned or been fired from the company, is the certificate still good, although the signature has changed? They are very detailed, technical issues, but the general concept behind them is to allow a regime for these things to be traded and transferred.

Mr. Roger Charland: I would add that one other thing we try to do is create uniformity at the national level for all these corporations, because right now there isn't uniformity at the provincial level either. You are setting rules that apply across the country for these corporations. For those companies that will be in those situations, this will be simpler. Removing it raises a number of issues, not only in terms of other parts of the bill that make reference to some of the terms but also of the legal regime that applies then and the differences that currently still remain within provincial jurisdiction. The intent in federal corporate statutes is to create uniformity.

The Chair: Thank you, Mr. Charland.

Madam Coady.

Mr. Glenn Thibeault: Could I just follow up?

To clarify the points you brought forward, if we were to remove this information from this act, would they have opportunity to find it elsewhere, or does this, for lack of a better term, make for one-stop shopping whereby they're able to find everything in one location?

Ms. Coleen Kirby: At the moment, the current Uniform Securities Transfer Act project plans that eventually every province and territory will have the same set of rules. At the moment, the rules are consistent in eight of the provinces. Nova Scotia, we know, is drafting a law, but as of the last time I checked, had not yet tabled it. The Yukon has currently tabled one. The two territories and Prince Edward Island haven't yet, as far as we know, even started work on this.

We know this is where they are going, which is why federally we are already looking at the fact that all the financial institutions, the Canada Business Corporations Act, and the Canada Cooperatives Act, which all have these provisions, are at some point going to have to be dealt with. What we are doing is adding one more act, so that the federal regime is consistent. If you are a federal corporation or cooperative, you know what regime applies to you.

At some point, the government is going to have to deal with the fact that we will end up with one regime federally and a different regime in every province and territory. If we remove these now, there could be questions in the provinces and territories that don't yet have a securities transfer act about what rules apply in those provinces, although for the provinces that have put in a securities transfer act, we know what the rules would be and they would be consistent.

It's just the problem of having 13 jurisdictions and the time it takes to get consistency throughout them.

The Chair: Thank you, Madam Kirby.

Madam Coady.

Ms. Siobhan Coady: Thank you for the robust discussion concerning this. The concerns we raised were mostly because very few corporations or not-for-profits will be using these sections. It was an effort to streamline. But based on the concerns that were raised today, there's no objection here to continuing with them within the act.

The Chair: Thank you, Madam Coady.

(Clause 38 to 145 inclusive agreed to)

The Chair: Thank you, Madam Coady, for your help on that.

Clause 146 is under consideration.

(On clause 146—*Directors' liability*)

● (1645)

Mr. Mike Wallace: I would be happy to move the government amendments.

The Chair: Mr. Wallace will move the government amendments. Would Mr. Wallace care to comment on the government amendments?

Mr. Mike Wallace: Thank you. I'm going to ask the officials to comment on clause 146 and the amendments that are being proposed on pages 61 and 62.

The Chair: Madam Kirby, would you care to comment, or Mr. Lennon?

Ms. Coleen Kirby: The changes to clause 146 are consequential to having voted down clause 29. In the bill, currently subclauses 146 (1) and 146(6) make a reference to proposed section 29. Now that proposed section 29 is gone, we have to get rid of subclauses 146(1) and 146(6). All this amendment does is get rid of them.

The Chair: Thank you.

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

(Clause 146 as amended agreed to)

The Chair: Madam Coady, are you still moving an amendment to clause 150?

Ms. Siobhan Coady: No.

(Clauses 147 to 160 inclusive agreed to)

(On clause 161—*Calling annual meetings*)

The Chair: Clause 161 has an amendment that has been proposed by the government.

Mr. Mike Wallace: I'll move that amendment, Mr. Chair.

The Chair: Madam Kirby, could you comment on the amendment to clause 161?

Ms. Coleen Kirby: Stakeholders, particularly the Canadian Bar Association, have commented that the regime in clause 160 as drafted requires corporations to apply to court for an order, if they can't hold their annual meeting within the time period specified. They've asked that the director, as appointed under the act, do it instead. There are a number of provisions wherein the director is given the power to give an exemption to allow a corporation to do something slightly different from what is currently in the statute. All this does is take out the reference to the court and make it a reference to the director, with the required standard and authority for him to act.

The Chair: Thank you, Madam Kirby.

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

(Clause 161 as amended agreed to)

(Clauses 162 to 180 inclusive agreed to)

(On clause 181—*Qualification of public accountant*)

The Chair: We have two amendments for clause 181. I will begin with the amendment as proposed by the Bloc Québécois.

[*Translation*]

Mr. Bouchard and Mr. Vincent, do you have an amendment to clause 181?

Mr. Robert Bouchard: Yes.

The Chair: Could you speak to the Bloc Québécois amendment?

Mr. Robert Bouchard: Yes. We move that lines 5 to 38 be removed. We feel that the text in those lines is really redundant.

New subsection 181(1) would read as follows:

> In order to be a public accountant of a corporation, a person shall (a) be a member in good standing of an institute or association of accountants incorporated by or under an act of the legislature of a province; and (b), subject to subsection (6), comply with the standards of independence of that institute or association of accountants.

We do not think that it is necessary to be any more explicit. Members of an institute or association of accountants have rules that are almost always regulated by an act of the provincial legislature. For that reason, it is our contention that everything else is simply detail. Saying that a person is a member of an association of accountants means that everything else is included.

● (1650)

The Chair: Thank you, Mr. Bouchard.

[*English*]

Would any of the three public officials care to comment?

Go ahead, Mr. Charland.

[*Translation*]

Mr. Roger Charland: Mr. Chair, what would be the effect of the proposed amendment? I have lost track of the words that would be removed and what would replace them

How would subsection 181(1) read with the proposed amendment?

Mr. Robert Bouchard: It would read as follows:

> In order to be a public accountant of a corporation, a person shall (a) be a member in good standing of an institute or association of accountants Incorporated by or under an act of the legislature of a province; and (b), subject to subsection (6), comply with the standards of independence of that institute or association of accountants. Subject to subsection (6), after becoming aware of the disqualification...

The Chair: Mr. Bouchard, we do not have the same amendment.

Mr. Robert Bouchard: You do not have the amendment?

The Chair: It is not exactly the same amendment. You read a second paragraph.

Mr. Robert Bouchard: I read exactly what you have.

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

Mr. Charland, do you have any comments on the Bloc Québécois amendment?

[*English*]

Mr. Lennon, go ahead.

Mr. Wayne Lennon: The act as presently drafted recognizes that provinces have the authority to set standards for the accounting profession. The federal government does not do so. All the act does is say that you can be a member of a professional body, but you also, at the same time, must adhere to any other legislation that sets standards within a province, including the province of Quebec.

The independent standards are consistent with those in the CBCA. They're an objective set of standards that is understood within the profession and within the legal community. There is nothing that prevents accountants, or anybody doing an audit or review engagement, from additionally adhering to the independent standard set by the professional association.

That's what the act does.

The Chair: Thank you, Mr. Lennon.

[*Translation*]

First Mr. Vincent, then Mr. Thibeault.

Mr. Robert Vincent: In subsection 181(1), we would remove everything after the word “provinciale“, namely ”possède les qualifications requises, le cas échéant, en vertu d’une loi ou d’un règlement provincial pour exercer ses attributions aux termes des articles 189 à 192 [...]“ The word “provinciale” is on the fourth line of the subsection. Do you see it, Mr. Charland?

The subsection starts: “ L'expert-comptable d'une organisation est membre en règle d'un institut [...]“ and continues to the word “provinciale“.

If we take out the rest of the text, would there be any effect? They came to us to explain that public accountants are governed by the province. A person can be called a public accountant in one place and called something different somewhere else. So anything governed by a province should continue to be so governed.

[*English*]

Ms. Coleen Kirby: Under provincial law, there are two different regimes generally that affect an accountant. One is the recognition of their provincial association, whether it's the CICA, CMAs, or CGAs. The second regime regulates who can actually do audits or review engagements. That second regime varies in each province. Each province has some form of provincial association of the national guide, but the regime concerning who can conduct audits and review engagements changes.

For example, P.E.I. and Nova Scotia legislate who can conduct an audit; they do not legislate who can conduct a review engagement. The other provinces regulate both. Somebody who has the requisite university degree can become a member of the provincial association, but they may not have ever had the educational requirements needed to conduct the reviews, whether an audit or a review engagement.

That second provincial regime, which is what we're referring to in paragraph 181(1)(b), is that not only do you have to be a member of that provincial association; you must have had the education and passed the test required to actually conduct a review. There are often people in all three accounting organizations who are members of the organization but have never done the financial review aspects of the program.

For example, a CGA may be a fully qualified member of the association but not be qualified to do the review. What we've tried to do is say that you have to be recognized by your association, but you also must have whatever the qualifications are to actually conduct the financial review. If you have done the courses and passed and have become a member of an accounting board but you are qualified only to prepare financial statements, not review them, you can't do the second test, because you haven't passed the test of paragraph 181 (1)(b). That's what we're trying to get at with paragraph 181(1)(b).

Part of the issue is that because two of the provinces only regulate audits, not review engagements, it had to be drafted this way. It's also why we don't use the word “auditor”: because those provincial governments have determined that for their provinces there isn't a need, under their provincial power, to step in with respect to review engagements.

● (1655)

The Chair: Thank you, Madam Kirby.

Mr. Vincent.

[*Translation*]

Mr. Robert Vincent: Even if I understood your comment, I do not find it plausible. Public accountants are recognized by their provinces. You are meddling in provincial jurisdiction if you say that you are going to review the accounts.

Why would the federal government nor recognize public accountants, given that the provinces recognize them?

You are taking over the province's role by saying that you are not sure that they are public accountants and so you have to decide how things will be done.

We believe that, if professionals are recognized by a province, we should trust that province. We think things should stop there.

The Chair: Thank you, Mr. Vincent.

Mr. Charland.

Mr. Roger Charland: Thank you.

I just wanted to emphasize that the intention of the provision is the opposite. We are saying that the person must be a member of an institute incorporated under a provincial act and must meet the qualifications required by the provincial act.

Basically, this provision says that the provinces are going to make regulations specifying the qualifications required—whether they do it one way or another way. This provision requires people, such as the public accountants we are discussing, to comply with provincial legislation. So it is left up to the provinces.

Mr. Robert Vincent: That is exactly what we are saying in our proposed subsection 181(1):

> In order to be a public accountant of a corporation, a person shall be a member in good standing of an Institute or association of accountants [CGA, or whatever designation they like, it makes no difference] incorporated by or under an act of the legislature of a province...

That reflects what you have just said, but instead of giving quite a long explanation, we say more concisely that if he is a member of an institute and recognized as a public accountant by a provincial organization, we should recognize him too.

That is what you told me.

Mr. Roger Charland: Except that, in paragraph *b*, it also says that if the province decides to require qualifications, accreditation courses, the person must comply with provincial legislation.

Without that, we do not feel that the objective is achieved.

Mr. Robert Vincent: So, for public accountants of a corporation, who are members in good standing of an institute or association of accountants incorporated by or under an act of the legislature of a province, you are telling me that the province could require additional courses at some stage, or that accountants have to have different training.

● (1700)

Mr. Roger Charland: And paragraph *b* tries to accommodate that.

Mr. Robert Vincent: That is what the original form of the four first lines means.

Is that not clear enough for you?

Mr. Roger Charland: Our position is that paragraph *a* alone does not achieve that objective. We need paragraph *b*.

The Chair: Thank you.

Mr. Thibeault.

Mr. Bouchard will be next.

[*English*]

Mr. Glenn Thibeault: *Merci*.

I just need, first of all, a clarification. What we're asking for is removing everything underneath paragraph 181(1)(b), so where it says "that the person is required to perform under sections 189 and 192"—is that correct?

The Chair: That is correct.

Mr. Glenn Thibeault: I have some serious concerns with removing paragraph 181(1)(c), as an individual who ran not-for-profit corporations for ten years. Paragraph 181(1)(c) was indicative of what we had to do to ensure our audits were effective. By removing this, are we tying the hands of not-for-profits when they are trying to recruit an accountant?

Mr. Wayne Lennon: As I said, the objective standards here are clear, understood, and common in federal corporate law. They are like a baseline for the accounting profession.

If, as has been argued by the accounting profession, their individual independent standards are more strict than this, then there is nothing stopping them from utilizing those standards as well.

Ms. Coleen Kirby: If an accounting association decides to have a lower standard of independence, then that would be sufficient. There's nothing we could do if paragraph 181(1)(c) were gone.

Mr. Glenn Thibeault: This is the guidance for the agency. It's not guiding the accountants.

Ms. Coleen Kirby: Correct.

The Chair: Thank you, Mr. Thibeault and Madam Kirby.

Monsieur Bouchard.

[*Translation*]

Do you have a question?

Mr. Robert Bouchard: We took this position because the accountants' association came to meet with us and made the recommendation. We found that it made good sense. It just removes all the details from the section.

Did you meet with accountants' associations? What did you tell them? Did you tell them that you would not make any changes and that you would stick by your position?

I would like to know that.

[*English*]

Ms. Coleen Kirby: We have been meeting with the Canadian General Accountants and the Canadian Institute of Chartered Accountants on this issue with respect to the Canada Business Corporations Act, which has had a similar provision for well on ten years. The two groups have been fighting about this for probably longer than that. That's as far back as I've heard their presentation.

The Canadian General Accountants want to be able to do audits nationally; the Canadian Institute of Chartered Accountants don't want them to. Since it is a professional issue, it is generally fought out at the provincial level. The Canadian General Accountants are slowly getting each province.... Quebec recently went to court against the Canadian General Accountants over whether their provincial standards for who is licensed to do audits and review engagements is justified or not. This is not a simple discussion. We have certainly heard from them multiple times on this particular bill.

The federal approach in the corporate statutes has been that this is a provincial jurisdiction. All we want to do is recognize provincial jurisdiction.

The objective behind paragraph 181(1)(b) is that whatever the provincial standards are for who can conduct financial reviews we will respect. If there is no reference at all, you simply have to be a member of the association. Somebody who does not have the educational standards, who is not licensed in meeting the provincial requirement, would be authorized to do the financial review of a federal corporation. That is exactly what the Canadian General Accountants want. It would mean that for a federal corporation in a province where they are not recognized provincially as being qualified to do financial reviews, they would still be allowed to do them. It's essentially overriding whatever the provincial law is.

Our argument is we don't want to get into the middle of this fight. We will let the provinces settle because the provinces are the best place to settle this issue.

Mr. Wayne Lennon: The practical upshot would be that in provinces that do regulate the profession, by removing paragraph 181(1)(b), accountants who may not have the qualifications would be allowed to audit or do review engagements of federal corporations but they would not be allowed to do audits or review engagements of provincial corporations, thereby setting up a two-tier system.

The Chair: Thank you, Mr. Lennon.

Monsieur Bouchard.

● (1705)

[*Translation*]

Mr. Robert Bouchard: I am not going to talk about the amendment that we put forward, but I have a question for you.

In your view, if the text of clause 181 is passed in its entirety, as you have written it in the bill, without amendment, and, since we know that there are two accountants' groups in Canada, does one benefit from the way in which the text is written?

[*English*]

The Chair: Mr. Lennon or Ms. Kirby?

Ms. Coleen Kirby: We've been very careful. This wording is as objective as you can get. It is purely a provincial issue, so whatever the provincial requirements are for a financial review, that is the qualification. There's no reference to any particular association and there's no reference to any favouring of a particular association. If you break down all 13 provincial and territorial jurisdictions, which we have on occasion, and try to figure out the requirements, it's actually a fairly complicated thing to do.

As I said, by introducing the requirement for a review engagement, we actually ran into a problem when we started talking about P.E.I. and Nova Scotia because it is not legislated provincially, whereas review engagements are in the other provinces and territories.

But no, there is no favouritism here; this is purely an objective standard.

The Chair: Thank you, Madam Kirby.

[*Translation*]

Mr. Bouchard, do you have another question?

Mr. Robert Bouchard: No. It is fine.

[*English*]

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

The Chair: We have a second amendment.

Mr. Wallace, would you care to move it, please?

Mr. Mike Wallace: I'll move the amendment to clause 181, which adds a couple of words on page 84. Perhaps the staff could comment on it.

The Chair: My understanding is that this amendment reconciles the English and French versions of the bill. It does not change the meaning of the bill.

Mr. Mike Wallace: Or the clause....

The Chair: Is that correct, Madam Kirby?

Ms. Coleen Kirby: Correct.

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

(Clause 181 as amended agreed to)

(Clauses 182 to 209 inclusive agreed to)

(On clause 210—*Rights preserved*)

The Chair: There is a proposal to amend clause 210. Do I have a mover?

Mr. Wallace.

Mr. Mike Wallace: I will move that on behalf of the government and I will ask staff to comment on that change.

The Chair: Madam Kirby, would you care to comment on the amendment to clause 210?

Ms. Coleen Kirby: The amendment would add a new paragraph, (a.1), coming out of comments from the Canadian Bar Association.

The issue is that when you amalgamate a couple of corporations, you deal with the resulting amalgamated corporation as though it were new. The Canadian Bar Association pointed out what we didn't deal with—namely, if you have three corporations going into the amalgamation, and one of them is soliciting, what is the effect on the resulting amalgamated corporation? Is it also soliciting? Is it not soliciting? How does it work?

The new paragraph simply clarifies the situation and makes it clear that if you are soliciting going into the amalgamation, you are soliciting coming out the other side. You can't use an amalgamation to get out of the soliciting status and therefore be able to get at the money.

The Chair: Thank you, Madam Kirby.

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

(Clause 210 as amended agreed to)

(Clauses 211 to 258 inclusive agreed to)

(On clause 259—*Appeal from Director's decision*)

The Chair: We have an amendment to clause 259.

Mr. Wallace, would you care to move that amendment?

Mr. Mike Wallace: I will move that on behalf of the government and ask staff to comment on those minor changes.

The Chair: Madam Kirby.

Ms. Coleen Kirby: This is a housekeeping amendment that comes out of the change to clause 161.

Paragraph 259(i) lists every section where the director has the power to issue an exemption. The amendment to clause 161 created a new exemption, and we have to add it to the list.

● (1710)

The Chair: Thank you, Madam Kirby.

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

The Chair: Mr. Vincent, do you have a question?

[*Translation*]

Mr. Robert Vincent: Did you receive the government amendments before it made them today, or did you get them at the same time as we did, before today's meeting of the committee?

Have you been able to think about these amendments already, have you studied them already, or did you get them at the same time we did?

[*English*]

The Chair: I can answer that question.

In our last committee meeting before the break, members of the committee asked Industry Canada to respond to proposed changes to the bill made by the Canadian Bar Association and by other witnesses. Industry Canada did respond by Friday of last week. That document was distributed to all your offices. In Industry Canada's response, they indicated that they were favourable to certain amendments that the Canadian Bar Association had proposed. The amendments that you have in front of you are in that document that you received last week on Friday.

[*Translation*]

Mr. Robert Vincent: I understand that, Mr. Chair.

But Mr. Wallace asked the officials their opinion on the government amendment to clause 259, and the answer came immediately.

The process seems a little quick to me. There seems to be a lack of transparency, in my opinion.

[*English*]

The Chair: Okay. If there is no further discussion on this, I will call the question.

(Clause 259 as amended agreed to)

(Clauses 260 to 283 inclusive agreed to)

(On clause 284—*Records of Director*)

The Chair: We have a proposed amendment to clause 284.

Mr. Wallace, would you like to move that amendment?

Mr. Mike Wallace: I move the amendment.

Perhaps staff would like to comment on those changes. It's only paragraph 284(b) there.

The Chair: Madam Kirby.

Ms. Coleen Kirby: Clause 284 is the record-keeping requirement for the director appointed under the act. In particular, it says that documents have to be kept for six years, with a short list of exceptions. This amendment lengthens the list of exceptions of what has to be kept for more than six years. It's based on the Canadian Bar Association's comments. It includes all notices of the appointment or removal of directors, all bylaws and bylaw amendments, and the most recent notice for the location of the registered office if there hasn't been a notice in six years. That's simply so we have the documents to prove what we received, if necessary, and can produce them.

The Chair: Thank you, Madam Kirby.

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

(Clause 284 as amended agreed to)

(Clauses 285 to 293 inclusive agreed to)

(On clause 294—*Regulations*)

The Chair: We have a proposed amendment to clause 294. Do I have a mover?

Mr. Mike Wallace: It is so moved. It's a housekeeping item, I believe.

The Chair: Madam Kirby, would you care to comment?

Ms. Coleen Kirby: It's the same issue as the last housekeeping one. Paragraph 294(f) has a list of all the exemptions. We have to add the new exemption that was created in clause 161.

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

(Clause 294 as amended agreed to)

(Clauses 295 to 373 inclusive agreed to)

● (1715)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: Thank you very much.

[*Translation*]

Thanks very much to the three Industry Canada officials for their assistance.

[*English*]

I want to thank all members of the committee for their assistance. This bill will be reported back to the House. I think we did a tremendous amount of good work. I want to thank all members for their amendments and their work on this. Thank you very much.

This meeting is adjourned.

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