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Chair

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, and good afternoon to our witnesses. Welcome to the 43rd meeting of the Standing Committee on Industry, Science and Technology, this 16th of November, 2009.

We're here pursuant to the order of reference of Wednesday, April 22, 2009, and section 136 of the Canada Business Corporations Act to conduct a statutory review of the act.

In front of us today we have Mr. Wayne Gray, who is a partner at McMillan LLP; Mr. Tim Draimin, who is the executive director of Social Innovation Generation; Madam Laura O'Neill, who is the director of law and policy at the Shareholder Association for Research and Education; and finally, Madam Judy Cotte, who is the general counsel and director of policy development at the Canadian Coalition for Good Governance.

Welcome to you all.

I understand there are briefs and speaking notes that have been distributed for Mr. Draimin and Mr. Gray. I believe all members of the committee should have them.

Without further ado, we'll begin with ten-minute opening statements from each of our witnesses, beginning with Mr. Gray.

Mr. Wayne Gray (Partner, McMillan LLP, As an Individual): Thank you very much.

I wanted to come here today to encourage the committee and Industry Canada to dig a little deeper with the CBCA and consider some further amendments. A lot of very good work was done in 2001 to bring the CBCA up to speed at that time with developments that had taken place provincially and territorially in the country, but some issues were left behind in 2001 for another time, and there was to be a five-year review.

Since that time there's been quite a bit of development at the provincial level in Canada, and I'll go through some of that and explain why it is important for the CBCA. What I'm really here to do is not to advocate for specific reforms, but more to advocate that these reforms be looked at and that there be a process developed that would include a consultation paper, some public consultation, submissions, and a serious look at keeping the CBCA competitive and cutting edge, as it should be.

Since 2001, as I mentioned, there have been some developments. They include, just earlier this year, in June, the Canada Not-for-Profit Corporations Act, which contains some differences between it and the CBCA, which are improvements over the CBCA, and highlight some of the deficiencies in the CBCA. So there's some need for harmonization with its own federal statute.

More recently, there has been the Quebec Business Corporations Act, which has received at least first reading on October 7 in the Quebec legislature, which is also built on the same statute but which contains further improvements, particularly for small business, and I think a number of innovations. I'll touch on just a couple of those.

In 2007 the Ontario Business Corporations Act was amended in some significant respects, and in particular to coordinate with the Securities Transfer Act that was brought into Ontario at that time. And a lot of other provinces have done the same.

Going back a little bit further, in 2005 Alberta, in their Business Corporations Act, brought in some amendments, some of which have been picked up in the Quebec legislation, which also should be looked at. And going back even further, in 2002 British Columbia brought in a new statute, which contained a lot of other innovations.

So since 2001 a lot of the leading provinces in the country—and I would also include Nova Scotia in that—have amended their corporate laws to not only catch up to the CBCA, but to surpass it in some respects. I'll go into some specifics, but the most compelling reason to take a look at it is the work that's been taking place in Quebec, where Quebec has, for the first time since 1981, amended their corporate law, or are proposing to amend their corporate law, and include a CBCA-like statute. This is a very positive development for the country, but I think, again, the statute contains some improvements.

Just to give you some flavour of what they've done in Quebec, if you have a one-person corporation and a unanimous shareholder declaration, you don't need to have bylaws. For annual meetings, you don't have to pay your lawyer to draft up the same forms every year. You don't have to have directors. So they've stripped away some of the formalities that are just hardwired into the CBCA, and other statutes that are built off the CBCA, and made things a little bit simpler for small business, which really don't need these formalities on an annual basis. Those are just some examples.

It's quite logical for a unanimous shareholder agreement that strips away all board powers. What's the purpose for having a board of directors of that particular corporation? So they've done some rather innovative things in Quebec that ought to be looked at, that's all I'm saying.

I divided the types of changes you could be looking at into policy issues, which I'll go into in some detail, and then some more technical issues, which I've listed on the second side of the handout. On the first page are the five policy issues. The first one has to do with the securities transfer laws and the advent of the securities transfer acts in the provinces; we talked about this in the spring of this year with respect to the not-for-profit corporate law.

● (1535)

In response to a request for a submission put out by Industry Canada and the Department of Finance in 2007, wanting input from the Canadian Bar Association and other stakeholders as to how federal security transfer laws should be updated and modernized, we responded in a 35-page brief. I believe that has been circulated or will be handed out.

At that time we noted that this would be a good thing for the feds to withdraw from, that it was really provincial law, modernized, comprehensive, and it was not fitting subject matter for corporate statutes any longer. That submission is out there. We never really got a response to that, but I think it's something that ought to be looked at, not only for the CBCA, but all the other cognate federal statutes—the financial services statutes in the Canada Cooperatives Act.

This would include some flexibility around the issuer's jurisdiction definition that corporate statutes can provide for—that's an option—and dematerialization, a corporation being able to issue its securities, its shares, without having a security certificate. Currently the CBCA doesn't afford that as an option. But Ontario does, B.C. does, and now Quebec will. So there is another instance when we don't have to go through the formalities of having share certificates if investors don't want them. So that's one area.

The second area is trust indentures. This is part 8 of the act. The development there is that the Uniform Law Conference of Canada is just about to embark on a project to study trust indentures. There is a significant amount of lack of uniformity in the country, so this is an area where uniform laws would be helpful.

The problem with the federal law—if I can just give you one example of why the federal law doesn't work the way it is—is that a federal issuer is regulated in the CBCA. But there is an exemption if the trust indenture is subject to the laws of a jurisdiction that provides comparable protection. That exists in Ontario and British Columbia, for example, which have similar laws, and it also exists in the United States.

So if the CBCA issuer is subject to the Securities and Exchange Commission, an exemption is available. But if they're issuing in England, where they don't have a similar law, then you have this anomaly where the CBCA standard is applicable to this trust indenture where it's subject to the laws of England, whereas England doesn't require any similar provisions. So Canadian law is protecting investors in a foreign jurisdiction. It doesn't seem very logical.

The third issue is board residency. This is something that was left behind in 2001. It was reduced from 51% down to 25% in 2001. But other jurisdictions.... British Columbia got rid of their requirement, and in Canada now, of the 12 jurisdictions, I believe seven of them do not have a residency requirement. So that includes all of the maritime provinces except Newfoundland, Quebec does not and has not, and British Columbia got rid of theirs. And none of the territories have this residency requirement. So we have quite a patchwork of residency requirements. I think it's time to ask ourselves why we have such a rule, what it's doing, and if it serves any purpose.

The fourth issue deals with insider trading and tipping. Currently the CBCA provides for insider trading and tipping liability, both for publicly traded corporations or distributing corporations, and non-distributing corporations, private companies. It's really not too relevant in the case of private companies, I would submit, but it is very important in the case of publicly traded corporations. The flaw that the CBCA has adopted is that they require a matching between the buyer and the seller. So if an insider instructs his or her broker to dispose of securities in the market, there is no civil liability unless there is a person opposite that transaction who can be found.

You may wonder why that's a problem. Well, the way the securities markets work today is that it's the indirect holding system, so people trade into the market. They don't know who their buyer is going to be. There is going to be a buyer out there somewhere but the broker will be transacting a lot of transactions in the day. Everybody wants to buy and they'll match it against everybody who is wanting to sell and it may not be possible to then match buyer and seller.

● (1540)

There are models to avoid this kind of unnecessary complication. I would analogize it to people throwing dirty water in the lake, and the person who takes the dirty water out of the lake needs to be able to identify who put that water in there. It's very difficult, as a matter of proof, and unnecessary.

The final issue is the modified proportionate liability regime. Again, this is an issue that's being studied, this time by the Law Commission of Ontario. Professor Poonam Puri at Osgoode Hall is doing a study of not only the federal provision but also the more recent provisions that have been adopted at provincial levels through the securities act dealing with the liability of secondary market disclosure. The model is not the CBCA model, so again we're seeing a patchwork of proportionate liability regimes. There has been no case law at all under the federal provision. Unfortunately, or fortunately, it seems the federal law has very few options in terms of regulating liability for auditors, because constitutionally it's primarily a matter of property and civil rights in the provinces and it's regulated through negligence acts. Federally, you're limited by the fact that you have to have a federal corporation, so it is only regulating the audited financial statements issued by CBCA corporations and Canada cooperatives. It is a very limited scope provision and I think it's time to look at that again.

As I said, there were a number of other technical issues that I would also identify. I don't propose to go through all of those.

Thank you for your time.

The Chair: Thank you, Mr. Gray.

Mr. Draimin.

Mr. Tim Draimin (Executive Director, Social Innovation Generation): Thank you very much, Mr. Chairman.

My name is Tim Draimin. I'm the executive director of Social Innovation Generation. We are a national partnership including the J. W. McConnell Family Foundation in Montreal, the PLAN Institute in Vancouver, the University of Waterloo, and MaRS in Toronto.

Our mission is to promote the use of social innovation to address intractable social challenges, with much of our work focused on the non-profit sector. As you may know, the non-profit sector, charities, and non-charitable non-profit organizations encompass over 161,000 organizations, with revenues well in excess of $100 billion, directly employing over 1.5 million people.

My objective in speaking with you today is to draw the committee's attention to a major gap in Canada's legislation governing corporate activity, specifically the lack of any hybrid corporate structure for business serving public benefit. By hybrid I mean a blend of an organization that would have the social purposes of a non-profit, like benefiting the community, with the business model of the for-profit sector.

Social Innovation Generation is proposing policy changes to assist Canada's non-profit sector in becoming more financially stable and less dependent on the decreasing revenue streams from government and philanthropy in order that more innovative ideas, services, and products meet the social needs of Canadians.

You may have noticed in today's paper that Statistics Canada is announcing a big drop in donations to registered charities. While the dominant paradigm for the sector in the past half-century has been income primarily from government and charitable donations, that is changing. Earned income is now over 35% of total income, and growing. In fact, a significant expanding thrust is building new business models that allow non-profits to meet their mission in financially self-sustainable ways.

We propose that the Government of Canada introduce a new optional legal structure under federal law that enables the creation of a hybrid public benefit corporation or community enterprise. A hybrid structure would encourage much broader access to capital for the social and community sector. A hybrid structure would allow for contribution of charitable dollars as well as non-charitable shareholder investments.

The model we are suggesting has been successfully incubated in both the United Kingdom and the United States in the form of community interest companies, CICs, and low-profit, limited liability corporations, or L3Cs.

We all know the importance of the non-profit and charitable sector in terms of the services it provides, but we may not be aware of the revenue model that supports this work. Overall, non-profit revenue received is about half from governments, over a third from fees and earned income, and about one-tenth only from philanthropy.

In a recent Wellesley Institute research report, it was found that the most significant charitable issue, selected by 63% of respondents, was the requirement that "all of a charity's activities must be charitable", a requirement that is at odds with funder expectations that charities be sustainable and entrepreneurial. It is also at odds with reality if you take into account the percentage of revenue from earned income.

The existing legislative and regulatory regime was designed in a different era.

Canada's community non-profit and social sector has challenges accessing capital and diversifying their sources of operating income because of restrictive tax regulations and capitalization options. These financial barriers are unnecessary obstacles for a new breed of social entrepreneur that is emerging and limits the potential impact of their innovations. The sector needs the flexibility to explore new forms of social finance.

Our SiG partner MaRS has advised hundreds of clients, including non-profit enterprises, on their marketing strategy, business plans, and funding options. Outlined here is just one example of a social enterprise that has encountered problems due to regulatory restrictions or lack of capital options.

As a social enterprise of Eva's Initiatives, the Eva's Phoenix Print Shop provides an award-winning print training program for homeless youth that works with businesses to offer them a socially and environmentally responsible commercial print service option. The print shop is located at Eva's Phoenix, an internationally recognized transitional housing and employment facility for homeless youth.

Eva's Phoenix Print Shop operates in a commercial environment and requires state-of-the-art printing equipment to remain competitive. While the print shop has sought to expand its services due to increased demand, it has faced significant funding challenges. In a traditional print shop model, a combination of revenues and working capital loans would be the obvious choice. However, this social enterprise must depend on grants and donations to expand.

In traditional non-profit structures, loans to the enterprise are considered risky and thus an option rarely considered by the boards of those organizations. Furthermore, they have no legal way to access any other form of financing, such as equity.

● (1545)

Expansion is an option that would rely solely on the generosity of donors and not on their increased revenue potential, which severely prevents them from being competitive in furthering their social mission. The proposal outlined in this document represents an opportunity for the Government of Canada to support the community non-profit sector in ways that build sustainability and resilience by enabling organizations to exploit opportunities for growth and independent financial well-being. Support for a new hybrid corporate structure will strengthen the country's community non-profit sector, and help it access much-needed capital. It will demonstrate that Canada wants to unleash the creative energies of previously unexploited financial resources and capacities in order to help advance social entrepreneurship sustainability and self-reliance in the community non-profit sector.

Thank you very much.

● (1550)

The Chair: Thank you, Mr. Draimin.

We'll now hear from Madam O'Neill.

Ms. Laura O'Neill (Director, Law and Policy, Shareholder Association for Research and Education): Good afternoon.

Institutional investors and their advocates—and SHARE is in the latter group—have recommendations for substantive amendments to the CBCA. The changes to the act that we seek indicate that it's been in force for eight or nine years now and over that time expectations and requirements of investors in our public companies, on which we're focused, have continued to evolve. The CBCA can and should keep pace with changes in our investment marketplace.

SHARE speaks primarily on behalf of socially responsible institutional investors. While these investors form no monolith, they have in common the view that the selection, retention, and realization of investments cannot be carried out in a fully informed manner without considering the environmental, social, and governance profiles—or ESG profiles—of those investments.

Socially responsible investors aren't alone in this anymore. Around the world and here at home so-called mainstream investors are learning that with respect to realities such as climate change they need to know if companies are paying attention and preparing their operations to minimize risk exposure. Investors need to be able to compare the ESG risks of various investments to determine which ones will best help them protect and grow the assets with which they've been entrusted.

What they need is relevant and detailed information, and they aren't getting enough right now under either Canadian securities or stock exchange disclosure requirements. This is a huge topic and we're going to deal with it at length. We are trying to find out what can be done within the CBCA to help with this. We will treat this matter in our written submission, which we'll provide in the coming days.

There are other aspects of the CBCA that we think warrant broad consultation. I want to start by saying that I've had the opportunity to speak with Judy Cotte about the CCGG's position on the issues. With respect to the issues she will raise with you, I'd like to say that SHARE is supportive of the CCGG's views.

I'll move on to the matter of how shareholder votes are conducted under the requirements of the CBCA and its provincial counterparts.

By virtue of section 141 of the CBCA, shareholder votes on proposals may be carried out by a show of hands rather than a ballot. You look out to the shareholders that have gathered. Everybody in favour, up with the hands. Those hands all represent different numbers of shares, sometimes very different numbers of shares. But it's just a look-around: if it looks like enough, great, it's passed. We want to see actual votes recorded on a ballot. It's a public company we're dealing with here.

A public company's report on the results of the votes on resolutions considered at its annual meeting often reads like this: “All of the resolutions we presented at the meeting were passed by a show of hands”. Then they list the resolutions. There's less information there than on the ballot in the first place. When a company holds votes by a show of hands, it makes the report spectacularly uninformative.

The most frustrating thing about show-of-hands voting is that the overwhelming majority of shareholders vote by proxy, so the numbers are readily available to the company. They've tabulated them. All they need to do is keep track of the shares held and votes cast by the much smaller percentage of shareholders who actually attend the meeting.

In the U.S. and the U.K., public corporations must provide numerical tallies of their vote results, and that information helps us as we analyze the vote outcomes in those jurisdictions. We can get a much clearer sense of shareholder sentiment. The CBCA should be amended to require that votes at a shareholder meeting be by ballot so we all know on each issue how many shares were voted for and how many against.

I want to address the issue of electronic or virtual shareholder meetings as permitted under subsection 132(5) of the CBCA. This option makes sense for private companies but not for public ones, in which the owners and the managers of the company are typically not the same people.

Recently Intel, which is a large U.S. corporation, announced that it was going to do a web-only annual meeting in 2010. In a letter to Intel, U.S. investment firm Walden Asset Management, which would fit firmly within the socially responsible investor category, noted that

> There is no substitute for the personal and sometimes subtle interactions that can take place at in-person meetings. These “look you in the eye” moments between shareholders, management, and directors at an official business meeting are available just one time a year.

I've attended quite a few shareholder meetings and I agree with that statement. It can be powerful and constructive to put management directly in touch with the owners of the company and the shareholders. Subsection 132(5) of the CBCA should be amended to exclude public companies from its application.

● (1555)

Finally, let's consider the shareholder proposal mechanism. There was much ado about this in 2000, the last time the CBCA consultation was held.

SHARE supports the right of shareholders to file proposals. Indeed, we assist our clients as they exercise this right in Canada, most recently to ask the shareholders of a number of large public companies if they want a say on executive pay. The CBCA framework on shareholder proposals clearly works pretty well, because all of the companies where our client, Meritas Mutual Funds, filed “say on pay” proposals in 2006 and 2009 will in fact be polling their shareholders on pay in 2010.

There is one amendment to section 137, however, that we think is worth considering. It actually echoes something that Wayne mentioned.

As you likely know, Quebec has recently completed its public consultations. Bill 63 is now before the National Assembly, as Wayne indicated. Clause 199 of that bill contains a very useful provision that isn't in the CBCA or any of its provincial counterparts:

> The presiding officer at a shareholders meeting must allow the person presenting a shareholder proposal to speak in respect of the proposal for a reasonable period of time.

I've attended annual meetings where the chair of the meeting treated shareholders as if that provision already existed, but I've certainly seen situations where it was sorely needed.

We have a few other recommendations involving the regulations to do with shareholder proposals. We still have some niggling concerns about subsection 137(5), which outlines the reasons why a company can reject a proposal, but they don't have to do with, and our solutions don't have to do with, the act itself, so I won't take up your time with them now.

Like Wayne, I was going to go through the effect of the CBCA over the years, and over the various years when the other provinces followed suit, but he's covered that, so I don't need to.

The CBCA is the corporate law bellwether for the Canadian marketplace, and it's certainly time for a broad consultation on how it can continue to fill that important role.

The Chair: Thank you very much, Madam O'Neill.

We'll now go to Madam Cotte.

Ms. Judy Cotte (General Counsel and Director, Policy Development, Canadian Coalition for Good Governance): Thank you.

The CCGG thanks the committee for the opportunity to appear before you and provide you with our perspective on what we think are important changes that should be made to the CBCA.

First, by way of introduction, the Canadian Coalition for Good Governance is a coalition of approximately 45 of Canada's leading institutional investors representing pension plans, investment managers, and mutual fund managers, and our members manage retirement assets of over $1.4 trillion, approximately half the retirement savings of all Canadians.

We promote good governance practices in Canadian public companies, and the improvement of the regulatory environment to align the interests of boards and management with those of their shareholders and to promote the efficiency and effectiveness of the Canadian capital markets.

The changes we're looking for are focused on shareholder democracy. Although we have managed to persuade some companies to adopt democratic reforms that aren't required by law, the CBCA should be updated to require all companies to adopt those reforms. We will be providing you with a written brief that will set out our submissions in more detail after today.

Prior to getting to the changes we would like to see, I'd like to take a minute to talk about why shareholder democracy matters. As the providers of capital and the ultimate owners of the company, shareholders delegate powers to the board of directors, including the power to set corporate strategy, to hire and fire executives who are supposed to implement that strategy, and to deal with risk management and crisis management. Directors really are the cornerstone of good governance for public companies. There's growing evidence that good governance leads to more efficient uses of capital and better returns.

We're looking to improve governance in CBCA companies in two basic ways: first, by requiring basic democratic norms, including a fair process to elect directors, and the ability of shareholders to remove directors, and a voting system that accurately records votes cast; and two, by having the CBCA enforce basic governance norms such as the separation of the chairman of the board and the CEO.

Turning first to basic democratic norms for investors, we'd like to see changes in four main areas.

First, the CBCA should give shareholders the right to vote for each director. Currently it's common practice for companies to propose a slate of directors and require shareholders to vote for all or none of them. This seems to happen simply because the act doesn't prohibit it. Approximately 25% of Canada's largest public companies still have this type of voting, which is referred to as slate voting, and I suspect that percentage would be even higher for smaller companies. The CBCA should be amended to prohibit slate voting.

Second, the CBCA should require directors to be elected by a majority vote. Currently, under the CBCA and securities legislation, shareholders do not have the power to vote for or against directors. Their only right is to vote for them, or to withhold their votes. As a result, a director can be elected if they receive only one vote; and if they are a shareholder, as they inevitably are, that vote can be their own. So as elected representatives, I'm sure you can see that while that system is advantageous for directors, it really doesn't benefit anyone else. What it really means is that a director can lose an election by any reasonable measure—getting less than 50% of the votes, or even getting one vote—and still not have to vacate their seat.

There was an article in the *Wall Street Journal* at the end of September that was making that exact point, and pointing out that as of the end of September in 2009, 93 board members in the U.S. in 50 different companies had all received less than 50% of shareholder votes, and not one had vacated his or her seat.

We have developed a majority voting policy that provides a framework for companies to get around the law as it stands, and to date our policy has been adopted by 98 of the 209 largest Canadian companies. But in our view, that isn't enough. The law should be changed to require majority voting in all CBCA companies.

Third, the CBCA should require that directors be elected annually. Currently, directors can be elected for up to three years and can be elected for terms of different lengths, referred to as staggered boards. Staggered boards impede the ability of shareholders to change the board because not all directors will come up for re-election at the same time. In our view, the CBCA should be amended to require annual director elections.

● (1600)

Fourth, the CBCA should require that voting results be reported, and Ms. O'Neill has touched on this already. The act provides that voting can be by way of show of hands, unless a shareholder present at the meeting demands a ballot. And if it's done by way of show of hands, companies are only required to publicly report the issue voted on and the result, not the actual numbers of votes cast for a director. We're particularly concerned about this with respect to director elections.

Again, as an analogy to our democratic system, imagine a federal election where the only result reported was the Liberals or the Conservatives won and the electorate was effectively asked to just trust that report.

As Ms. O'Neill also pointed out, the companies already have all the information about votes cast for or withheld in a scrutineer's report, so requiring them to publicly report those results would not impose any additional administrative burden.

We've been urging this as a matter of best practices, and some companies have already adopted it voluntarily, but 38% of Canada's largest public companies still do not report the details of the results of a director election.

We will deal with several other problems with the voting process in our written submissions. For example, shareholders who hold their shares through an intermediary, which almost all of us do, don't receive any confirmation that their votes have been received and tabulated, and that needs to be addressed.

With respect to basic governance norms that should be required, we would like to see two main changes. The CBCA should require the separation of CEO and chair of the board. The role of the board is to oversee management, particularly the CEO. If the chair of the board is also the CEO, it is impossible for the board to properly carry out that supervisory function. Good governance requires the chair to be independent of management.

We have been urging companies to separate the role of the CEO and the chair for some time. Of 157 of the largest issuers in Canada, only 72 currently have an independent chair of the board. The CBCA should be amended to require that the chair be independent of management.

Shareholders should also have the right to approve dilutive acquisitions. Under the CBCA currently, shareholders have a right to approve the sale, lease, or exchange of substantially all the assets of a corporation. Shareholders should similarly have the right to approve significant acquisitions paid for in shares that will dilute the holdings of existing shareholders in excess of 25%. The TSX recently changed its listing requirements to require shareholder approval in those circumstances; in our view, the CBCA should do the same.

The committee might find it interesting that of all three major pieces of legislation that have been introduced in the U.S. after the financial crisis, two of them will call for an end to staggered boards and all three will require a majority voting for director elections and the separation of the chair and the CEO. Internationally, there is an emerging consensus that these reforms are necessary to ensure that companies are well run and boards are accountable to their shareholders. Canada has an opportunity to become a governance leader by enshrining these reforms in the CBCA.

In closing, we would like to see improvement for shareholders in a few areas—for example, changes to minimize the cost to shareholders who seek a remedy under the act, but we will address those in our written brief.

Also, I would like to urge the committee to consider a broader consultation, as the other witnesses here today have. A number of groups would likely have useful input into ways to improve the CBCA, including academics, securities commissions, and other shareholder groups.

And finally, I would like to add that the coalition also supports the proposals put forward by Ms. O'Neill on behalf of SHARE.

Thank you.

● (1605)

The Chair: Thank you very much, Madam Cotte.

We'll now have about an hour and 20 minutes of questions and comments from members, and we'll begin with Mr. Garneau.

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

I wish we had been provided with some written briefs on some of the presentations. We got a couple of them today just before the meeting. Obviously it's a little bit hard to follow some of the points that have been brought up by some of the other witnesses, but I'll give it my best effort.

Ms. O'Neill, talking about votes and the practice of using just a show of hands, at an annual meeting or whenever there's a vote, when proxy votes are sent in and when people vote at the meeting itself, is it always done simply based on one person, one vote or one hand, one vote at the moment? Are there any examples where the ownership of the votes is taken into account?

Ms. Laura O'Neill: Yes, there are. It's about 35% or so of the composite index that report a simple show of hands.

The big banks, for example, and larger CBCA issuers will do a ballot at the meeting. If you want to attend the meeting, you approach the registrar. You'll exchange the proxy you received in the mail that states you have so many shares for a sheaf of paper, depending on the size of the agenda, on which they've already indicated the share amount. You take that into the meeting hall. As the resolutions are presented, you tick your votes. And they send people around to collect them. And then they play a nice video, usually, of happy employees doing volunteer work, or something, while they tabulate the ballots.

Mr. Marc Garneau: Thank you.

I have a second question. You said something has been brought in by the Quebec Business Corporations Act, following their review, and that is the notion of providing a reasonable time to speak, for somebody who wants to speak, which is not necessarily uniformly adopted. Again, the difficult question is what's a reasonable amount of time to speak. Having been at a meeting or two, I think sometimes people want to take over the meeting, if you like. Are you leaving it to the discretion of the chair of the meeting?

Ms. Laura O'Neill: Right. And I've actually seen more latitude given to certain shareholders who habitually attend and have contributions to make. And these are the companies that don't need this provision.

With others, it depends. Clearly, if people have something quite meaty they want to deal with, it would be nice to see them given some slack. And we think the provision could help make it clear to the company.

What I've seen in the worst case is sort of a Jumbotron at the front of the room, 20 feet high with 10-foot-high numerals. And the minute you start to speak, it starts clicking down from, say, three minutes. It's a very intimidating experience, and I think it's meant to be. For these sorts of companies, some indication that maybe this isn't the way to go about things would be very useful.

I don't think it makes sense to pin a particular time on it, because of the differences in what people might have to say. The meetings usually run about three hours with our largest companies. The video is twenty minutes. Surely we can allow a little more than three minutes to a shareholder who has a concern.

● (1610)

Mr. Marc Garneau: Thank you.

I have a question for Mr. Draimin. You talked about what appears to be—and I may not have understood it completely—a kind of a hybrid model here of something that's in one sense a not-for-profit corporation and in another sense a for-profit corporation, at least a small-profit corporation, if I understood it correctly. This is something you're suggesting we need to bring in because it fills a required void. Which act would it best go under? Or do we need to create a new act?

Mr. Tim Draimin: That's a great question, and I wish I had a detailed answer for you about that. I'm not exactly sure how that would best come about and if it would need its own act.

Obviously, we have separate legislation for co-ops. We have separate rules governing charities. In the U.K. they created a specialized corporation, but it's all handled under their current corporate companies house. But I'm not exactly sure what it would mean for Canada.

Mr. Marc Garneau: If I may, this question is for Ms. Cotte. I think I heard you mention the concept of eliminating staggered boards in the sense of having an annual vote for each of the directors. If I'm not mistaken, boards will argue that it's important to have that continuity from one year to the next and that if you do a wholesale change to the board, you will end up with no corporate memory, if you like, of what actions occurred in the year before. Do you have an answer to that argument?

Ms. Judy Cotte: That would presume the directors would change every year. And I think it's very unlikely, absent a concern, that shareholders would vote to change each and every director every year. That seems quite unlikely.

The evil it is trying to rectify, which is that of entrenchment, where there are directors who aren't doing a good job, is probably more of a concern. You would have to wait three years before their tenure comes up for renewal. I think that's a bigger concern.

But absent a real concern about performance of a director, it's very unlikely that shareholders would ever vote to replace every director, because shareholders, obviously, are concerned about continuity as well.

Mr. Marc Garneau: I understand the point you're making; I'm just wondering whether there might be a tendency.... Let's say a public company had really bad results that year. There might be a tendency on the part of people to forget that they need continuity and that even though they're not happy with any of the board members they should keep a few. There is that possibility that somebody may do a clean sweep simply because they're so mad at how their shares have done. Is that a possibility?

Ms. Judy Cotte: It would be a technical possibility. But I think particularly for Canada, where ownership is so concentrated.... I know that our members typically control between 15% and 45% of the largest Canadian public issuers, and our members are sophisticated institutional investors who have a longer-term view than one set of annual results. So for that to happen, you would have to have a convergence of views among the institutional investors and a myriad of smaller and retail investors. It seems quite unlikely.

Mr. Marc Garneau: Okay. I'm just concerned about the situation where somebody says they're going to vote this way and they're sure somebody else will take care of holding on to a few people, but everybody ends up voting separately and they clean out the place. That's the only concern I have. Shareholders don't necessarily consult each other on how they're going to vote.

● (1615)

Ms. Judy Cotte: No, not necessarily, but certainly the largest institutional investors, all of whom would be members of the coalition, would be communicating their concerns about particular companies or directors. They may not all vote the same way, but they would certainly be aware of one another's concerns.

The Chair: Thank you, Madam Cotte.

Thank you, Mr. Garneau.

Monsieur Vincent.

[*Translation*]

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

My question is for Mr. Draimin. I read your document with great care. I agree with you on some points, especially with regard to the difficulties non-profit organizations are experiencing in attempting to obtain funding. At this time it is very difficult for businesses to find funding.

Your document states that the best way of obtaining it would be for these organizations to become businesses. You refer to a business called Eva's Phoenix Print Shop which works in graphic composition and commercial printing. If I understand correctly, that company offers young homeless people a recognized training program in graphic design. That training is provided or was provided by a provincial or federal organization. The training program has provided employees to the organization that offers this printing service.

How are entrepreneurs reacting? In any region, if a non-profit organization hires people whose training is financed by a level of government, and if that organization generates profits, how would a profit-making business that could be offering the same services react?

[*English*]

Mr. Tim Draimin: Thank you very much for your question.

I could give you a specific answer with respect to Eva's, but I don't know whether it would answer your concern. Eva's print shop was set up by a charity whose mandate is to help homeless street youth. They created different programs, and as one of them they created the print shop to give all these young people direct experience in a print environment operated in a professional way. They created an advisory committee of people who run their own printing business. In a certain sense, Eva's provides a service to those print organizations, because they're training people who can then be absorbed into their businesses. They don't really see Eva's as a competitor; they see it as part of the farm league that's providing them with the talented people who are going to help their organizations grow.

So that example is not a good one to address the question—which is a general question, I know—whether people feel, if a business is set up by a charity or owned directly by a charity, that in some way the charity is inappropriately being subsidized or cross-subsidized to compete with a business. In the particular case of the model I'm proposing—to create a community interest company or a low-profit limited liability corporation—in actual fact the entities would be taxable, so the playing field would be level for them. But in most cases, if one of them were owned by a charity, it would be donating its profit back to the charity; it can donate up to 75% before it becomes liable for paying any taxes.

The question can also be looked at from another point of view. If we think that these organizations that have mandates to house the homeless or train marginalized people or take care of the vulnerable are doing a good job that nobody else is doing and that a gap is being created because the market isn't serving them, but they come up with an ingenious way to leverage market forces to help them do what they're doing, my sense is that society should be saying it's a really good thing for that innovation to happen. If it turns out that the innovation generated by that enterprising charity is such a good idea that it is picked up by the private sector, which copies and emulates it and carries it out successfully, that's even a better solution. That means that an idea that has been incubated in non-profits addressing community needs actually gets to go farther.

● (1620)

[*Translation*]

Mr. Robert Vincent: When cities purchase lands we often hear promoters telling people in the municipalities that they don't have to do the entrepreneur's work and that it is not up to the municipality to purchase lands.

If the government subsidizes human resources or their training in a non-profit organization and if that organization is in direct competition with another business that is not non-profit but a capitalized business, there is competition there that may not be healthy. It is difficult for a commercial business to compete with a non-profit organization subsidized by the government, an organization that does not pay labour costs because the funding is provided from a government envelope. What do you think about that? Could this lead to friction?

I understand that arrangements can be made and that human resources can be provided. However, costs are completely different for those who pay their employees and those who do not.

[*English*]

Mr. Tim Draimin: I think right now there must be a fair amount of this competition going on, if a fair amount of the income from non-profits already comes from earned income. But what I'm proposing is the creation of a corporate structure that would allow the earned income component of what public benefit organizations are doing to be structured in an entity that would become taxable.

In that sense, this seems to me to offer a more level playing field than the current situation.

[*Translation*]

Mr. Robert Vincent: Ms. Cotte, you said earlier that there should be annual votes to elect people and that this should be put into the law. Currently, the act states that elections must take place every three years.

Do you believe in continuity, with a chair elected for one year as opposed to one elected for three years? With a new chair every year, won't there be a waste of time when you consider the time it takes to get used to each file? If we really want to see things go forward, with a chair elected for a three-year period, files will move forward much more rapidly. For the continuity of activities within the organization, it is much better than starting over every year. Each year, we know how long it can take before files will be well managed. If, once we have a good grasp of the files, we have to launch an election, couldn't that create problems?

[*English*]

Ms. Judy Cotte: As I said earlier, that's presuming that shareholders would choose to change a director every year. I think that's very unlikely. Most sophisticated investors realize the need for continuity. After all, they are in this to make money and they know that this is important for any business. In fact, our members are all long-term shareholders, so they want to see the company prosper and grow over the long term.

It's really just an ability to remove a director, if there is a problem, that institutional shareholders want to have. It is very unlikely, absent a problem, that each and every director would change every year. I can't imagine it happening, absent a problem. If there is a problem, shareholders want the ability to remove that director in one year rather than having to wait three, because a lot of damage can be done to a business over three years, if the directors are not performing properly.

[*Translation*]

The Chair: Thank you, Mr. Vincent.

We will now hear from the member for the riding of Burlington, Mr. Mike Wallace.

[*English*]

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

I want to thank you all for coming today. I appreciate your input.

I'm going to come back to Tim, but I want to start with a couple of quick questions.

We're dealing with this review. To summarize what the other three individuals who have been here before to talk about this act seem to say, another consultation process is what you really are asking for. You have some specifics that you want to give to us, but a consultation process is what you want.

I have no issue with that. My question concerns what Mr. Gray brought up, that in the Quebec legislation they have removed the requirement of having a vote, if there is only one shareholder. You talked about having a separation between the head of the board and the president. Obviously, if it's a small family corporation, all the family members have shares. Do you have a size in mind at which corporations would take part in this? This can't work in every corporation.

● (1625)

Ms. Judy Cotte: No. We're dealing with public companies. There would always be more than one shareholder in a public company.

Mr. Mike Wallace: It's only for public companies. Okay, thanks.

Now let me come to SIG. It was my suggestion that SIG come here today; I had heard their presentation at the finance committee. I appreciate their coming.

Often as politicians we hear that government should operate more like business, so why should a not-for-profit not operate more like business? Here is an opportunity, in my view, Mr. Chair—and we're not breaking new ground here, for as you mentioned, they exist in the U.K. and in the U.S.—whereby charities might....

I'll give you an example. My local art centre has a store, but it's not separately incorporated, and no one can invest in it. The art centre relies on fundraising and government funds to operate, and then the revenue from the store comes in. My vision of what you're looking for here—and I don't know whether it is within the bill we have here or whether we'd have to do a separate bill.... I have no idea, to be perfectly honest with you, but I think it needs to be studied.

My question, first of all is this. I'm sitting at home and I hear a knock on my door and I have a chance to.... Why would I invest my own cash in an organization like the one you're proposing?

Mr. Tim Draimin: Thank you very much for that question. The answer is, obviously, because you want a financial return. In the model I'm suggesting, if it were like a community interest company in the U.K., the share pays a dividend. There's a thing called an asset lock, which means that somebody can't benefit for private purposes, so basically there's a control on the size of the dividend: the assets can't be stripped out of the organization, but there is an annual dividend. Basically, somebody would be purchasing these as an analogous form to some kind of low-performing investment that they had, which might in one sense be somewhat secure.

A week ago Monday in *The Globe and Mail* "Report on Business" there was a review of the social enterprise fund of the Edmonton Community Foundation. It has partnered with the City of Edmonton, and they have created an investment fund. They invest in social enterprises, and their return on their social enterprises last year was 6%, while their return on their portfolio was minus 14%. So it doesn't give a really high return, but it does give a return, and it would be part of an asset allocation for somebody who is making investments.

Secondly, if you have money that you're investing and decide you want to put it, let's say, into a mutual fund or something, and you live somewhere outside the major urban centres, you would recognize that the benefit of your investment, if you put it in a company, would probably not be in your community. But if there were these community interest companies, quite a lot of them would be regional or local. It would mean that people would be able to buy shares in something that was happening in their local community. They would know that they were investing in their own community.

Mr. Mike Wallace: To my second question, I have a certain amount of money that I donate a year. Why wouldn't I buy shares instead of donating if I'm going to get a return on it? How does that balance work?

Mr. Tim Draimin: That's a really great question.

The way I think of it is that right now the charity and non-profit sector system is broken. There's an increasing number of charities each year competing for pretty much the same pool of dollars. As a matter of fact, Statistics Canada says that the pool of charitable donation dollars is declining.

We can predict, based on the deficit that governments are taking on right now, that we're going to see cutbacks in government spending, and at the end of the line of all those cutbacks, even though it won't be intentional, will be non-profits. Canada has the highest proportion of government funding for non-profits probably in the OECD. So the system is hitting a wall and non-profits have to figure out new ways to capitalize the things they want to do.

What I'm suggesting is not that people cannibalize the existing charitable donations. What I'm proposing is that people would be making an investment on which they would be able to get a financial return. They would do this to complement their existing support to charities through charitable donations. I wouldn't want this in any way to be construed as a way of undermining the existing passion and interest of Canadians to be supporting their charities.

● (1630)

Mr. Mike Wallace: My next question is along the same lines: Is there not a risk that government money would then retreat if they're able to attract capital from other locations?

Mr. Tim Draimin: There's definitely a problem that charities have right now. To the enterprising charities that have created smart modes of operation, a lot of their funders will say, "You're doing really well, so I'm not going to give you any more."

It's kind of perverse. Successful organizations, if they were in a marketplace, would get more capital attracted to them because they were successful, as opposed to the non-profit sector where, if they're successful, they can have less capital. That's one of the anomalies of the current system.

Again, I wouldn't want government to say that because this is happening we should be cutting back on non-profits. Our non-profit sector is sorely underfunded. Most organizations have been cannibalizing their core assets. The maximum that non-profits spend on technology, for example, is something like 2.4%. The minimum that businesses spend is something like 2.5%, up to 8%.

The non-profit sector is not spending on itself right now. It needs the money. So I wouldn't be advocating that if they were able to succeed by doing this, government should cut back. What we'd be seeing is a more effective, more competitive, more innovative non-profit sector able to meet the needs of communities. That's what this model would help people move towards.

I did a study a decade ago on enterprising non-profits across Canada. Where you have a non-profit that is thinking about employing market means, it has a cultural impact on the way the non-profit operates. It lets people think more strategically about their organization. It builds in more sensitivity to the economics of how the organization works.

I've never really understood why non-profits operate on the basis that they create a budget, fundraise for it, spend it through the course of the year, and at the end of the year reach zero, and then start the whole thing all over again. Somebody has described this to me as the cha-cha-cha version of non-profit survival, as opposed to creating ideas whereby non-profits have the ability to build up assets, just like families, individuals, and companies do. They should be encouraged to take on these kinds of strategies to create a more resilient and diversified sector serving Canadians.

The Chair: Thank you, Mr. Wallace and Mr. Draimin.

Mr. Masse.

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

Thank you to the witnesses for being here.

Ms. O'Neill and Ms. Cotte, it was interesting when you were describing the atmosphere at some of these meetings. It reminded me of the Senate in terms of accountability.

There were some things you talked about that I might go back to, but there is one thing that wasn't brought up on which I would like to get some input—and Mr. Gray, from you as well, if you have something to contribute to this.

I would like to get some information on the stability and openness of CEO and board compensation. It's a dog's breakfast out there. It's very difficult to figure out what the actual salary is at the end of the day, depending upon bonuses, stock options, and pensions. Could I have your thoughts on that?

I believe there needs to be some serious reform on that, especially for publicly traded companies. There sometimes seems to be a murky understanding about what the compensation package truly is at the end of the day.

Ms. Laura O'Neill: I can start in on that. For public companies we do have new executive compensation disclosure rules. They came into force at the tail end of last year, so pretty much everybody but the banks—who have year-ends in October—who have year-ends on December 31 have now reported out for one year. There's a box for salaries, a box for bonuses. They've tried to make sure that in one table, the compensation summary table, everything's in there, and they have to total it. They have to give the grand total figure.

I can say from reading through the new disclosure by the composite issuers—and these are the companies that should do the best job—some of them are simply terrible. You get three or four pages of metrics, what purports to be performance criteria for the incentive pay, and then there seems to be some magic wand that's waved and you get this number. They don't tie together. It's a bit of a smokescreen.

Some companies, on the other hand, are doing a really good job with their compensation disclosure. So we're on our way with at least disclosure. That's why we at SHARE and our clients want to see an advisory vote on the pay. Once a company brings to us some information we can actually get through and make sense of, let's have a vote on that. I think we're getting somewhere with compensation, although it still remains a huge issue, and I know the CCGG has its concerns about director compensation, which the say on pay doesn't touch.

● (1635)

Ms. Judy Cotte: I'll add to that. I agree with everything Ms. O'Neill said. We have recently published our principles for executive compensation, which is a guideline to help companies make their compensation clearer. One thing that we stress when we meet with boards of directors is that it should be clear and understandable, and really it should say what your company is trying to achieve and how your compensation system sets out to achieve that.

I would agree with Laura that some companies are getting better, and some companies are terrible, with 18 defined terms at the start of their disclosure, and it's incomprehensible. I do think that improvements are being made, however.

We also support an advisory vote on compensation and recently issued, for public comment, a draft model board policy that companies can adopt to provide for a shareholder advisory vote on compensation. We also provided a draft form of resolution so that all companies in Canada will use the same form of resolution.

We'd like to avoid what we see in the U.S., where companies that have been required to adopt advisory votes are all using different language in the resolution put to shareholders, adding another layer of obfuscation for shareholders to get through. We've issued this model board policy and draft resolution. What's unique to Canada is that we actually worked with the 12 issuers who have agreed to have advisory votes on pay. They have all agreed to use that common form of resolution.

Our policy and the resolution is out for public comment. The end of the comment period is at the end of this month, and then we'll finalize it and have it available for companies to use. We think that should also help improve clarity of disclosures, because companies are concerned about these advisory say-on-pay votes. They're worried that they're going to receive a no vote, so we think it will encourage them to go further into plain English disclosure and make sure shareholders can understand what they're being asked to vote upon.

The Chair: Mr. Masse, I think Mr. Gray had something to add to that.

Mr. Wayne Gray: I wanted to make a slightly different point from what has been made up to this point on this issue.

With the CBCA's corporate framework legislation, what you are really talking about is a matter of securities disclosure law. There's actually been a trend in the other direction, so that in the last year or so the provisions of the CBCA regulations dealing with executive disclosure have been moved out of those provisions, to adopt by reference the national instrument put out by the Canadian securities administrators, which is national policy 51-102, which contains a comprehensive uniform disclosure policy, including executive pay. This was the right thing to do, for the CBCA to essentially adopt the uniform national standard rather than trying to legislate it incrementally through corporate legislation.

Mr. Brian Masse: That's interesting. It's a topic that has been on the uptake in the United States as well. From my perspective, it has been interesting to watch, in that often many of those companies are lobbying effectively for standardization of regulations and so forth from government. At the same time, we don't have the same practices for their processes, and I've always found that ironic here.

Ms. O'Neill, you mentioned specifically, I believe, that 98 of 209 companies have adopted the practices that you've been advocating for, or was that...?

Ms. Judy Cotte: I think that was my statistic, and it was that 98 of 209 of Canada's largest issuers have adopted our majority voting policy, which lets them have majority voting in spite of the fact that the CBCA doesn't require it.

● (1640)

Mr. Brian Masse: How long has that campaign been going? Is it at a point right now where you still have some partners out there that will move on this, or has it required another push, have you reached a threshold where other encouragements are necessary?

Ms. Judy Cotte: I think it probably does need a push. Initially, the largest issuers, the banks, were the first to adopt it, and then the larger, more sophisticated issuers were to follow suit. But there are certainly some issuers who have communicated to us that they have no intention of adopting it. So I think this is a good opportunity for the CBCA to become a leader in that regard and make it a requirement for all CBCA companies.

Mr. Brian Masse: It's very helpful to know that.

Mr. Draimin, I'll turn my questioning to you. I actually worked in the not-for-profit sector for over ten years, and I just want to clarify one thing. It's an interesting model; I'm going to give it some serious review.

I have a private member's bill, Bill C-274, that adjusts the charitable giving act to replicate that of political party and organization, that it return to the current structure past the $1,275 donation limit to individuals in politics or parties. What's happened over Canadian public policy in the last 10 or 15 years is that as we've reduced corporate and personal income taxes, it's had an adverse impact on charitable giving because it's tied to the lower income at income tax time, so charities are going to be able to bill back less at giving time. In fact, we're talking about 8% of the Canadian economy here that's had no effective policy over that period of time, because lowering corporate tax cuts for not-for-profit agencies doesn't do anything for them.

Just to be clear, one of the things is that many agencies can carry over only certain amounts of funds. That's when you saw, at the end of the year—and it happens here, even in the offices of Parliament—if you had a budget, you'd go out and buy your fax, your computers, at the last minute, and do unnecessary upgrades that probably wouldn't have been the most important things that you would decide to do. It happens all the time, because what ends up happening is you can't get the funding for other programs.

But if you move along a model like this, how do you ensure that the core value of the agencies is maintained? Because then we would have other types of interests at stake. Often not-for-profits are formed for social issues that aren't being administered by governments—for example, community action groups that get together to create the entity that isn't being provided out there. Would there be some shareholder thresholds or voting restrictions? How would it operate in terms of making sure it stayed within the mandate of so much investment of people over so many times?

Mr. Tim Draimin: Thank you very much for the question.

In terms of the model that I think is the most developed and most applicable to Canada, the community interest company in the U.K., they actually have a regulator just for community interest companies, and instead of having "limited company" after their name, they have "CIC" after their name. They're quite visible and they're almost like a brand, so that people understand this is a community type of corporation that operates for a community benefit.

When they apply there's a public benefit test, and if they don't pass that public benefit test, they're not approved. Then there are the guidelines on how they operate. Basically, they can't operate for individual personal benefit; they can operate for community benefit only, and there are a number of ways in which that happens. They have an annual reporting that goes on to make sure that every year that's the case. They've built in a whole set of rules around the transparency of all the information that's required by the regulator. So they've created a series of standards reviews to precisely try to do exactly what you're describing in terms of ensuring the public benefit of these organizations.

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

The Chair: Thank you.

Mr. Rota.

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

My first question is for Mr. Gray. You were talking about insider trading and describing how it would take place. It sounded like it was basically how it would happen on a provincial...or a security system that is already in place. How does the CBCA work in conjunction with provincial securities regulators? Are there any areas of duplication between federal and provincial that need to be addressed over and above that, just to avoid confusion more than anything else?

● (1645)

Mr. Wayne Gray: That's a very good question. This was the subject matter of a case called McCutcheon and the Ontario Securities Commission, in 1982, where the Supreme Court of Canada recognized that there was some overlap between the CBCA and provincial securities legislation.

The two coexist. I think there is really no other answer: they coexist. Obviously, securities law can cover any type of reporting issue, whereas the CBCA will only cover corporations that are formed under the CBCA. There are some differences, for example, between the criminal element in terms of the options trading. Insiders having options over shares and things like this are a little different under the CBCA from what they are provincially.

But what I'm really talking about, and where I think the most important aspect of this is, is with respect to civil actions against insiders. This is something that's not, in my view, very prevalent in Canadian law. There is not a lot of civil litigation against insiders, and I think there ought to be, because it's clear there is insider trading going on. You can tell that by the fact that there is often a spike in prices before there is favourable news, or the reverse. So somebody is trading. There could be class actions, for example. Treble damages could be awarded. There are ways the civil law could be used.

The CBCA is largely self-enforcing. The genius of this act is that largely the enforcement of the act has been privatized to give private parties the incentive to pursue their remedies. And this is one area where I think that's failed. There has been no case since 1994 that I could find on insider trading liability. There has never been a case under the CBCA with respect to criminal liability, and very few cases at all under the civil liability regime, and none since the 2001 amendments.

Mr. Anthony Rota: Is that because there are portions missing in this act? Or is it because we as Canadians just don't have that litigious background?

I think the question is this. Is there something in the CBCA that could be added to make it more—

Mr. Wayne Gray: What I'm saying is that I do think this is an area that could be studied. You could align the interests of litigants to try to recover illegal insider trading profits by insiders who are essentially getting more than their fair share at the expense of all other investors. It's not a neutral playing field.

I think you could create some incentives for people to go out and get those people and recover damages. I think corporations, because of the adverse publicity, would be much more careful about monitoring it internally. I'm not saying this is a law that ought to be adopted tomorrow; I'm just suggesting it should be considered.

The current problem with the CBCA is the requirement for privity.

Mr. Anthony Rota: On the term "incentives", what would be an example of an incentive?

Mr. Wayne Gray: An example of an incentive would be if you knew that an insider disposed of shares just before some negative information was released about the corporation and the share price therefore went down, there would be a way of calculating the difference. And it's right in the act already. It's a trading price—20 trading days after the trade—so you can benchmark the difference between what that insider traded for and what that market provides. You could provide for treble damages and you could provide for class action relief so that all of the proceeds or the profit, times three, goes to all of the class people who were traded opposite that insider. This is something they have in the U.S. It's mostly created by courts in the U.S., but it doesn't exist in Canada.

Mr. Anthony Rota: Thank you.

My next question is for Ms. O'Neill. You mentioned the necessity of having face-to-face meetings and how important they are. I come from northern Ontario, and I know what it's like to have foreign-owned companies come in and basically do what they have to do and then leave.

In 2001 the act reduced the residency requirements for the board of directors and eliminated the residency for the board. Have you seen anything detrimental or have you seen any major changes because of that?

● (1650)

Ms. Laura O'Neill: Residency is an interesting issue. It hasn't been a particularly hot topic for the investors we deal with. However, I would say this. At SHARE we certainly consider the impact of reduced residency, which definitely has its benefits. We sent a lot of companies—just before the CBCA amendments were done—up to the Yukon, where there were very low requirements, and suddenly there were all these Yukon-incorporating companies.

When the residency requirements are higher, it's certainly true that companies have to widen their pool of candidates and consider people they didn't go to school with, perhaps, and there is an impetus on people who are promising and who think they could do a good job of that. They know a bunch of Americans aren't going to come in and beat them out, so why not get educated and try to become someone who can serve in that capacity? So the upside of flexibility is matched by the downside of "we won't grow our own". It's really a tough call, and people's decisions tend to rely on the experience they've had with it.

Mr. Anthony Rota: Mr. Draimin, I would like a little clarification on the new hybrid model in the CICs. Usually when you're investing in something you're looking for a profit to come back. Where do they see that profit coming back, or do they in fact see a profit or gain of some sort? Is it strictly a donation that goes into these corporations?

Mr. Tim Draimin: In the case of a community interest company in the U.K., if its purpose is charitable as well as being public benefit, foundations can make contributions or donations to it because it's achieving its mission. The investor is putting money into an organization that definitely has a business model. It's selling services or products, or something, and through the sale of those products and services it's going to be able to service the dividend needs of the shares they've sold.

In fact to ensure there wouldn't be some kind of undue private benefit, in the U.K. the shares aren't allowed to appreciate. The shares are issued at a price, and they can never increase beyond that price. They can drop, but they can't go above their issuing price.

We're talking about a very specialized hybrid instrument that's trying to meet the needs of the social mission together with using the business model. There are about 3,200 such corporations in the U.K. Several hundred a month are being registered right now. There's been a bit of a flurry of them in the wake of the recession. One example might be a company that is partnering with co-ops. West Africa produces cocoa and they're creating fairly traded chocolate products. They create a community interest company as the corporate entity to house that activity inside of the U.K.

The Chair: Thank you very much, Mr. Draimin and Mr. Rota.

We'll now go to Mr. Lake.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Mr. Warkentin is next.

The Chair: Mr. Warkentin.

Mr. Chris Warkentin (Peace River, CPC): Thank you very much.

I appreciate your being here this afternoon to answer many of our questions.

Mr. Gray, I'll start with you. With all the talk of insider trading, how do you assess the problem in Canada? Do you have numbers or stats? How big is the concern of insider trading in Canada? Is the type of problem or how large it is even determinable at this point?

Mr. Wayne Gray: Mr. Warkentin, I can't answer your question. I'm a lawyer. I don't have the stats at hand, so I can't give you that.

Mr. Chris Warkentin: Maybe to all of you, because I think this is something our committee may want to pursue, are there people you would suggest we speak to in terms of how we might be able to quantify the problem and address the problem?

Ms. Judy Cotte: I will take a shot at that.

Insider trading is largely prosecuted through the securities commissions. I think the securities commissions would probably be best to speak to the quantum of the problem and the things being done to address it. We did urge consultation with securities commissions in any event, because there are areas where there is significant overlap between securities law and the CBCA regime. They would probably have some useful insight for you.

● (1655)

Mr. Chris Warkentin: That comes to the next question. Do you believe that securities regulators are addressing this appropriately? Is there additional support? What is the appropriate place to address this? Obvious securities regulators are taking up most of it at this point, but if we change this legislation, is this the better place to address it?

Perhaps all of you could comment on that.

Ms. Judy Cotte: I'll start. We think that securities regulators do a fairly good job in obtaining administrative penalities for insider trading. Where we think the Canadian system is woefully inadequate is in the criminal prosecution of insider trading.

As you well know, there's movement to create a national securities regulator in Canada. We made a submission to the expert panel looking at that issue, and we advocated that as part of a national securities regulator that a new agency be created that has an administrative branch and a criminal branch. The criminal side could develop the right people with the right expertise who are properly incentivized to pursue these kinds of cases. The problem right now is that prosecution of insider trading under the Criminal Code is left to provincial crowns, who have maybe ten murders ahead of an insider trading case. They have neither the time nor necessarily the expertise to pursue the cases.

Mr. Chris Warkentin: Are there any other...?

Mr. Wayne Gray: What I was really addressing was not the criminal side of the equation. Criminal enforcement doesn't really take place under the CBCA. It could be there, or it is there, but I don't know of any case ever being prosecuted under the CBCA provision.

We're really talking about the civil enforcement of a cause of action. These are the insiders, the opposite party of the insider trade, being able to go after the insiders or whomever is culpable, the tippers, the tippees, etc. This, I think, is also woefully inadequate, and nothing is being done about it. I don't think the securities commissions have done anything about it either.

Mr. Chris Warkentin: Mr. Draimin, I'll have you comment on the submission you brought forward today. I'm trying to get my head wrapped around the suggestions you're making.

Obviously here in Canada many of our non-profits have tried to innovate and create ways to sustain themselves. Mr. Wallace alluded to his local art gallery having set up a boutique store. Many organizations have done that, and they just flow the profits to their non-profit side. We also know of non-profits or organizations that have allowed some type of investment to be created out of their property; people can buy into their schools or their properties, and then they're paid out a dividend over time. People who believe in their causes can buy in, and they're able to finance capital that way. Maybe that's a little bit different from what you're suggesting.

Specifically, what do you assess the needs to be in the Canadian non-profit context? People or organizations, you suggest, are selling off their properties. There may be many reasons for doing that; I would look for more information and maybe some submissions to be left with us, as well, regarding this aspect, but your assessment is that people are selling off for financial reasons. Do you believe that creating this new type of CIC, or something like a CIC, gives any evidence that it would actually increase access to capital here in the Canadian context?

Mr. Tim Draimin: Thank you very much for your question.

First, I should just clarify that when I said non-profits were eating away at their core assets, I meant that instead of investing in themselves, they stopped doing things that mainstream companies do because they were so hard pressed by the lack of access to capital or donations.

In terms of the needs, right now we know the profile of non-profit income is that at least one-third is already earned in some way or another, but the ways in which that is happening are very complicated.

I'll give you an example. I can't talk about it because they don't want to be talked about publicly, but there's a major charity that has a really successful social enterprise inside the charity. It basically recycles things, generates income for them, and keeps stuff that would go to landfill from going to the landfill. However, in order to do that, they violate the CRA rule, which was created at some time by somebody for some reason, that 90% of the labour going into the social enterprise has to be volunteer labour. There's an arbitrary rule that is basically undermining an organization that has a great social enterprise that seems to be working okay within the existing charity. They would need something like a CIC to have an alternative. If you're located in Ontario, there's an arcane rule that states you can't hold more than 10% of the shares of a business for a long period of time, so you couldn't even set it up as a subsidiary.

We have a patchwork quilt of charity and non-profit rules that were created a long time ago and don't really serve the modern needs of charities, and those charities are finding new ways to meet their missions. As a matter of fact, our rules for charities are based on the idea that they don't deal with root causes of things but with the symptoms of things, so what we're trying to do is empower charities to be able to move toward working on the root causes of things, such as training people so they can get jobs or whatever it is.

The innovative capacity of the sector is growing really quickly. I don't have a statistical way of telling you how big the market is, just that it's growing a lot. This week in Toronto the third national congress of social enterprises takes place. The first one had 200 people. The second one had 550 people. Going back now, it's six years, so the movement is growing a lot. Between that fact and what we know about the general numbers—a third of the income is earned—there would be a huge opportunity here.

How do I know they could raise capital? Well, that's basically the test that we see in the U.K. They have been able to raise capital. We see a growth in these companies. It basically opens the door to them to escape that zero-sum universe of the existing restricted pool of donations or government funding and be able to go out to mainstream capital and gain that.

● (1700)

Mr. Chris Warkentin: Thank you.

The Chair: Thank you very much, Mr. Warkentin and Mr. Draimin.

Monsieur Bouchard.

[*Translation*]

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

Ladies and gentlemen, I thank you for being with us this afternoon to answer our questions.

I would like to put my first question to Mr. Gray. In your presentation, you asked why have a board of directors when one is not necessary. I would like to know if there is an incorporation model in the Canadian Business Corporations Act where there is no board of directors. This implies that a person would have to be the owner or the agent.

I would like to know whether this model, where there would not be a board of directors, exists anywhere.

[*English*]

Mr. Wayne Gray: I believe Quebec will be the first jurisdiction that I'm aware of that will do such a thing. That's why I say it was innovative. I don't know whether it's a good idea or not; I think we'll just have to see. But I think there's a logic to it.

Certainly I know that around 2004 there were some discussion papers on the previous round of CBCA amendments mooting the idea of a director-less corporation in certain circumstances. This is a very narrow situation where you would have unanimous shareholder agreement, where the shareholders would take on the liability of the directors, so you're really getting rid of something that's a pure formality at that stage.

I don't know of a jurisdiction that actually has this exact model yet.

[*Translation*]

Mr. Robert Bouchard: Thank you.

Mr. Gray, I'd like to put a second question to you. You said that seven provinces and territories no longer require directors or shareholders to provide their address or place of residence. I'd like to hear your comments on that. Do you mean it is no longer necessary that people know directors' addresses?

According to what I heard, you are in favour of the fact that company directors no longer be required to provide their residential address. Does this not lead to a lack of transparency and a lack of information? It would be useful for the public to know that address.

● (1705)

[*English*]

Mr. Wayne Gray: I'm sorry, but we're a little bit at cross purposes on this one, or maybe it's my use of terminology. When I refer to the residency issue of boards, it's to do with our Canadian residency. In other words, it's been a qualification requirement of certain corporate statutes, including in the CBCA. Really, the CBCA, from the beginning in 1975, required a majority of resident Canadian directors. That was lowered in 2001. That's really what I'm talking about. It's not so much their addresses.

Addresses have to be disclosed, at least to Industry Canada, for all directors; there's no distinction. But it's really a question of the directors' qualifications. I don't really agree that by giving the corporations the flexibility to choose directors based on merit, rather than citizenship and residency, you were actually.... I think you're expanding the pool, not contracting the pool.

[*Translation*]

Mr. Robert Bouchard: Fine, thank you.

My next question is for Mr. Draimin. You referred to non-profit organizations and I believe I understood that you would like these organizations to be able to benefit from government assistance programs just as private companies do.

Is that correct? Do you want non-profit organizations and private companies to be on an equal footing in order to be able to benefit from government assistance?

[*English*]

Mr. Tim Draimin: Thank you very much for the question.

The fundamental suggestion is that what is required is to fill this gap for there to be a hybrid corporate structure for the enterprising activities of non-profits. I wasn't referring to all of the non-profit activity, but just to that part of the activity that's within the kind of enterprising universe.

I didn't explicitly say they should get the same benefits, but I think it's an excellent suggestion that they do, because in fact if they are being social entrepreneurs, with a social business, and with a social mission, in a sense they would probably be a part of the SME community, the small and medium-sized enterprise community. If they are meeting a need and would be subject to taxes for profits they make, just like other businesses, I wouldn't see why they wouldn't also be eligible for the same types of programs that are available for SMEs.

[*Translation*]

Mr. Robert Bouchard: Thank you.

Ms. O'Neill, currently there is a vote by a show of hands during votes. Secret ballots may be authorized but the law does not require that. I believe I understood that you were in favour of secret ballots.

Do you think that there is a democratic deficit when it comes to companies? Why demand that votes be held in secret or that a provision in the law authorize them to be held that way?

[*English*]

Ms. Laura O'Neill: I certainly take the point, and here's our thinking around it. It would be okay with us if public companies—and that's the realm we're in—wanted to do it both ways. Everybody put their hands in the air and then everybody mark a ballot. What's crucial for us is to get the vote tallies. A lot of our senior investors indicate how they voted on their websites. Mutual funds have to do it and some of the large pension funds do it and even some foundations are getting into this, so there's a fair amount of transparency.

Just as transparency is something we want from corporations, transparency is something that's increasingly demanded of large institutional investors who are voting these shares, and that's an asset of their fund—a vote is worth something. They're voting the shares on behalf of their beneficiaries. We don't have a lot of difficulties getting both the companies and the investors themselves to come forth with the results on the votes and who voted which way. The retail investors are protected, and I'm okay with that. They can announce on their own blogs how they voted if they wish. So both can happen.

● (1710)

[*Translation*]

The Chair: Thank you, Mr. Bouchard.

Thank you, Ms. O'Neill.

Mr. Lake.

[*English*]

Mr. Mike Lake: Thank you, Mr. Chair, and thank you to the witnesses for coming today.

My first question I would first ask of Ms. Cotte. On the question of the staggered boards, you're saying that your organization is not in favour of that. Can you articulate some reasons why boards would choose a staggered board? What kinds of benefits are articulated among boards that do actually choose to have a staggered election versus a one-, two-, or three-year cycle?

Ms. Judy Cotte: The chief benefit for the directors is they can't lose their job for three years. That's really the sum of it. They aren't accountable except for every three years.

Mr. Mike Lake: Are there no other benefits, though, in terms of continuity on the boards or anything like that? It seems to me that I've seen situations where there are boards in not-for-profit organizations where there is some benefit to the continuity organization-wise, things like that.

Ms. Judy Cotte: There's no doubt that business continuity is important, and again I stress that all of our members are long-term shareholders, so long-term performance is really what they are getting at. It's not that shareholders would necessarily replace each and every member of a board annually, but the important point is that directors are accountable on a yearly basis, so if there is a problem, shareholders can take steps to direct it inside of three years. A lot of damage can be done to a business with an underperforming board or underperforming individual directors over a three-year period. And of course if the terms are staggered so that they're coming up at different times, it can take longer than three years to change an entire board because the three-year terms won't necessarily come up at the same time.

Mr. Mike Lake: But every one of the positions would come up within three years.

Ms. Judy Cotte: Yes, but if a shareholder were looking to replace more than one member of the board, it may take a considerable amount of time.

Mr. Mike Lake: It sounds, though, that the concern you raised is a problem of multiple concerns working together to actually create a much worse situation. Ultimately, if some of the other concerns that you raised were addressed, this wouldn't be as big an issue as it is. Is that accurate? Around the democratic issues?

Ms. Judy Cotte: There's no doubt that each one of our suggested improvements is important in and of itself, so any one of them would definitely improve the accountability of directors. But we do think that the ability to elect directors yearly is important.

Mr. Mike Lake: Right. Okay.

Mr. Gray, I just wanted to come to you for a second on a question of insider trading. I understand that you're talking about the idea that a person buying a stock these days, buying through a discount brokerage online or whatever the case is, really has no interaction whatsoever with the person selling the stock, and that it's difficult to identify in terms of insider trading. I'm wondering what ideas for a solution you might have.

It seems like a very difficult situation, and without changing the entire rules around online trading and the way people trade it might be very difficult to solve with legislation. Can you shed some light on some ideas?

Mr. Wayne Gray: It is a solvable problem, I think. You can certainly identify through trading records whether entitlement holders have disposed of shares in a certain timeframe. That can be a question of evidence and proof. You can pick up people in the indirect market—that is, the people selling through brokers. There will be instruction orders that will be placed with those brokers, and they can be determined. You can define a class by the timeframe around which the insider has traded, and the people in a timeframe on the opposite side of the transaction can be part of the class. So it would be kind of a class concept that would be matched. Rather than an individual trading match, it would be a class match, and the damages would then go to be shared among all the members of the class, rather than just one individual who may not even be traceable through the indirect system.

● (1715)

Mr. Mike Lake: So to understand this, let's say that you had a $50,000 transaction that was done, one seller selling 50,000 shares, but you had several buyers, obviously, around that same time. Would you be saying, then, that you could have buyers who might represent a million dollars of purchases who happened to buy in that same timeframe that the $50,000 would be distributed among? Is that how it would work?

Mr. Wayne Gray: Well, with those numbers, it wouldn't make any sense to prosecute a civil action, quite frankly. So it may not be possible to get access to enforce that in the civil system, but at a higher threshold, at some point it would make economic sense for somebody to pursue damages, particularly class action plaintiffs. I don't represent class action plaintiffs' bar, but there would be some interest at a certain appropriate level to go after insiders for sizeable trades, particularly if there's a treble damages component to it. In other words, the $50,000 would become $150,000, and that would be spread among the number of traders who were opposite that in that window.

You can come up with a model that might make some economic sense for somebody to pursue, but I don't think at $50,000 you would even be close.

Mr. Mike Lake: To clarify, though, on the buying side of that equation, you wouldn't be tying the amount sold, specifically the dollar value, to the cumulative amount of the purchases that would qualify. It's kind of a confusing argument, but—

Mr. Wayne Gray: Let me give you an example. If you had an insider who had made a $50,000 excess profit as a result of insider trading and you trebled damages, that's $150,000. If in that same timeframe there have been purchasers who traded a million dollars worth of securities opposite that—if it is a sale, they purchased a million dollars worth of securities in that time window—then each of them would be entitled to 15% of that loss. So it would be $150,000 that would go over to people with claims who traded a million dollars worth of stock in that period of time. So the proper amount of damages has been tripled and paid over to the plaintiffs in this hypothetical class action.

Now, as to whether that will make a significant difference, I think we'd have to look at the U.S. experience with this and perhaps the Australian experience with these types of models. It certainly is a model that's out there, but it just has never been pursued. The reason is that right now Canadian law requires a matching, both at the provincial and at the federal level. In other words, there has to be a matching of that, and that's very difficult to establish.

Mr. Mike Lake: Thank you.

The Chair: Thank you, Mr. Lake.

Mr. Masse.

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

Mr. Draimin, I want to use an example here to see if I can get really accurately how a hybrid model would work. I'm going to give the example of P3s. Some of the concerns I have over P3s really came to light in Windsor, in our area, where we've decided, in the provincial government, to outsource long-term health care facility beds. So they put out to tender a number of different options, and what ended up happening is that an agency called Versa Care picked up the contract.

Later on they abandoned the contract because it wasn't going to make enough money. It was going to make money, but not enough money. So what this meant is that another bidder came in and picked up extra beds and it delayed their actual facility—that's what they claimed—so we didn't get those beds built for seniors who are still in hospitals, and also in group homes, and so forth, without the proper care.

Now, what's happened, we just learned this week, is that developer owes the city $800,000 in back taxes, and that property has been basically just harvested for steel and so forth—it's an older facility. So once again the public is paying through the nose for this, because obviously with people in hospitals it costs a lot more to care for them there than it does for the daily system that you get.

Say, for example, in your system here, it was an organization like the Victorian Order of Nurses, or some other. Would they then issue out almost like a share? And then you say it's capped at a certain amount, so it's almost like people want to lend money to an organization so they can get some capital and might get their return later on. And if they actually then lost on it, say the value went down, would they be able to claim that at tax time as a loss? How would that work? It was really helpful to get your input with regard to the oversight model from the government that is in the U.K. But also, how would it work operationally?

So, really, is this about getting some capital lent, but maybe not the big gift that people would give right away?

● (1720)

Mr. Tim Draimin: Right.

If I understand your question, you're asking, for the Victorian Order of Nurses, how would that work in getting the capital?

Maybe something that links where I'm speaking from with what Laura is speaking about is that there is a change happening in the investor universe towards what people talk about, double or triple bottom-line investing, or some people now call it impact investing, or other people call it blended value investing. Investors are willing to make an investment, and they want to get a financial return, but they're also interested in understanding what's the social and/or environmental return that they're also getting. Right now, we have a reporting system that primarily gives us financial returns but doesn't do anything on the social or on the environmental side.

The metrics on that latter piece I think are starting to really grow, and there's going to be a lot more happening that will be useful to organizations like the Victorian Order of Nurses, or other non-profits who decide they want to create a social enterprise that would be like a CIC.

I think that basically it's almost like what you're saying: the Victorian Order of Nurses, or somebody, would create a particular entity to carry out a particular project, they would issue shares, there would be a set price for the share, and people would be buying the shares. In a certain sense they're called shares, and they operate like shares, but in one sense, as you allude to, it's almost like putting out a bond and breaking it up into little pieces and calling each of them a share. Presumably if when they sold it the value was less and they had a loss, it would be a capital loss, and people could include that on their tax return.

But, yes, that's how it would operate: they would be appealing to people who would want a financial return on the share, almost like buying a bond in a sense then, and who also were interested in a social return, and that would be another aspect of what the entity would be reporting on. So people would get a financial return sheet at the end of every year, but they would also get a social report of this is how many beds we were able to create, these are how many people we were able to serve, this is what we're able to do for the community.

Mr. Brian Masse: I want to go quickly to Ms. O'Neill and Ms. Cotte.

Is there any work being done, that you know of, to look at more harmonization, for example, with the U.S. and Canadian practices for the meetings, procedures, and so forth? I'm just curious about that. Or is it just looking at creating Canadian standards? Do you have sister organizations in the United States you're working with?

Ms. Laura O'Neill: In terms of the U.S. investors and advocates we work with, it's really a very loose association, nothing particularly formal. We keep each other abreast of what's going on in the two jurisdictions. We'll certainly pick good ideas out of each other's pockets, but there's no sense of trying to attempt to have a pan-North American corporate law or securities law framework.

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

The Chair: Thank you, Mr. Masse.

We'll finish with Monsieur Vincent.

[*Translation*]

Mr. Robert Vincent: Thank you, Mr. Chairman.

I'm trying to understand correctly and to sort things out. If a non-profit organization is funded by the provincial and federal governments, if that organization can issue tax receipts to people who donate to it, and if because of the economic crisis, it decides from one day to the next to create a business which benefits from financial assistance from both orders of government, how can an entrepreneur who's investing his or her own money compete with a non-profit organization that provides tax receipts and is subsidized? That is my first question.

My second question concerns the United States and the United Kingdom. Can you tell me whether in those countries, the various orders of government provide funding to such organizations if they provide income tax receipts to people who have given them donations?

[*English*]

Mr. Tim Draimin: Maybe I should clarify: the idea would be for enterprising non-profits and charities to create a separate corporate entity to carry out a promising business model. In the examples in the U.K. and the U.S., government money isn't a primary source of capital for those entities. It's coming from individual investors.

In the U.K., it is possible for charitable foundations to make grants to these entities if their purposes are charitable. The entities themselves cannot issue charitable receipts, but they can be the beneficiaries of capital that's already in the charity world.

In the U.S., the idea is that the charitable world capital would come in the form of program-related investments from foundations. There are peculiar rules in the U.S. about foundations making investments in these types of organizations. But I think I can allay your fears: these entities are not being subsidized by government. Government is unleashing the enterprising character of the non-profit community, so that they can create these types of businesses and operate autonomously with the capital they normally raise.

● (1725)

[*Translation*]

Mr. Robert Vincent: That's fine.

The Chair: Thank you to all of you.

[*English*]

Thanks to everyone for the testimony, questions, and comments.

[*Translation*]

Mr. Robert Vincent: Finally, I would like to put a question to you, Mr. Chair.

The Chair: Go ahead.

Mr. Robert Vincent: Previously, we made plans for the first, second, third and fourth hearings. The schedule you distributed concerned meetings where the service sector would be discussed. One meeting was to be devoted to the first sector. We are now on the second meeting on that sector. How is that? It seems that the chair decided that we would have a second meeting on that topic. If we decided together that there was to be one meeting for this sector we are studying currently, why are we now having a second meeting on that?

The Chair: It was the decision of the committee that there be two meetings—

Mr. Robert Vincent: No, at the outset, we had decided that there would be one meeting for the first sector, another meeting for the second, three meetings on the third and three meetings on the fourth. Someone must take notes, because that is what I recorded.

The Chair: Would you like to see further meetings on—

Mr. Robert Vincent: No, Mr. Chairman, the committee had decided that in one meeting, we would deal with that file, that in another meeting we would deal with the next...

Wait a minute...

The Chair: Mr. Vincent, I think that Mr. Lake or another member of the committee—I forget who it was—suggested that there be a second meeting on this matter.

Mr. Robert Vincent: Could you tell me when that was moved? I have attended all of the meetings and I never heard that.

The Chair: Very well. The clerk will provide you with a schedule.

Mr. Robert Vincent: We had settled on the schedule at the beginning, after concluding our study of Bill C-27.

The Chair: Sir—

Mr. Robert Vincent: Afterwards, we discussed the matter of our schedule in the lead-up to the holidays. And then, we divided up the meetings: a first meeting, a second meeting, three meetings for the small and medium business sector and three meetings on the tourism sector.

But if we keep stretching out the timetable again and again, we won't have time to discuss certain sectors between now and the holiday break.

The Chair: The clerk told me that Mr. Valeriote, Ms. Coady and perhaps also Mr. Lake would ask for two meetings on the Canada Business Corporations Act.

Mr. Robert Vincent: Mr. Chair, you are telling me that three members of the committee can decide for all of the members who voted and made a decision.

The Chair: We decided together as a committee.

Mr. Robert Vincent: Oh, really? Then where was I? Are you trying to tell me that I was not there?

The Chair: Two weeks ago I said that we would have three meetings on the service sector economy, three meetings on small and medium businesses, two meetings on the Canada Business Corporations Act, and that after the break in January, we would have one meeting on Mr. Rota's bill. So we all decided that together. That is why we have this schedule.

● (1730)

Mr. Robert Vincent: In any case, I noted the dates each time. Moreover, I am the one who spoke to you last and asked you if we were in agreement insofar as the hearings were concerned: one meeting on such a date, another on another date, three meetings here and three meetings there. Now I see that someone at some point asked for another meeting.

In my opinion, if decisions are made in committee, we have to keep to those decisions and not allow everyone to ask for additional hearings. If we want to change the order of meetings, it would have to be discussed here and decisions should be made in the same manner as they were made in the beginning at the time when we discussed the timetable for the hearings.

The Chair: I did not change the committee's decisions. The clerk took notes and she told me that the committee had decided together two weeks ago that we would have two meetings on the Canada Business Corporations Act. That is why we are having this second meeting on that topic. That is not a decision that I made with three members of the committee, outside of the committee.

Mr. Robert Vincent: Mr. Chairman, I don't doubt your word.

We agreed on a schedule, and now you are telling me that the clerk, Mr. Valeriote and Ms. Coady asked that there be an additional meeting. Consequently, that is not in keeping with the first decision that was taken. That has changed. I would like to be kept apprised of changes.

The Chair: Neither Mr. Valeriote, nor Mr. Lake nor Ms. Coady said that they did not want a second meeting—

Mr. Robert Vincent: Two of them are not here today.

The Chair: —and so we decided to hold a second one.

Mr. Robert Vincent: Mr. Chairman, I'm simply trying to say to you that two people should not be making a decision for the whole of the committee. The committee will decide on behalf of the group. That is what I am trying to say.

The Chair: I agree.

Mr. Robert Vincent: I would like this to not happen again in future. I'd like to be kept informed.

The Chair: We are going to stop here. Thank you very much.

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