House of Commons
CANADA

Standing Committee on Finance

FINA • NUMBER 014 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, April 29, 2010

Chair

Mr. James Rajotte

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● (1530)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call the 14th meeting of the Standing Committee on Finance to order. We're continuing our study of Bill C-9, an act to implement certain provisions of the budget tabled in Parliament on March 4, 2010, and other measures.

Colleagues, as you know, we are going through Bill C-9 part by part, and we were still on part 6 at our last meeting. In the interest of time, perhaps we can try to be as brief as possible in our questions. I'm going to recommend that we do rounds of five minutes maximum. If people still have questions beyond that, I'll perhaps put them at the bottom of the list.

We will try to get through this section and as many parts as we can today. We have two hours, until 5:30. Mr. McGirr is back with us again.

Thank you for coming back, Mr. McGirr.

Mr. Tom McGirr (Chief, Equalization and Policy Development, Department of Finance): Thank you.

The Chair: Are there any further questions on part 6?

Mr. McGirr.

Mr. Tom McGirr: One question was left over from the last session. I was asked the number of crown corporations that were involved in hydro generation.

The Chair: Sorry, is there a problem?

Mr. Thomas Mulcair (Outremont, NDP): Are we going to part 7?

The Chair: I called for questions on part 6. I didn't hear anyone ask....

Mr. Thomas Mulcair: That's because we didn't hear you call for questions on part 6. None of us could hear you.

The Chair: Okay.

Mr. McGirr, you wanted to clarify something on part 6.

Mr. Tom McGirr: I just want to respond to a question that I wasn't able to respond to at the last session. Someone asked me the number of crown corporations that were involved in the generation of hydroelectricity.

There are eight: Newfoundland and Labrador Hydro, New Brunswick Power, Hydro-Québec, Ontario Power Generation, Manitoba Hydro, SaskPower, B.C. Hydro, and Columbia Power.

The Chair: Thank you for that information.

We have two colleagues with questions.

Monsieur Mulcair.

[*Translation*]

Mr. Thomas Mulcair: Thank you very much, Mr. Chairman.

Thank you for coming back, Mr. McGirr. Thank you for providing the complete list of Crown corporations involved in the generation of hydroelectricity throughout Canada.

We had the pleasure of having a discussion earlier this week. I would like to return to your statement regarding the wish to set up corporate entities, in other words distinct corporations — this not an attempt at a play on words about distinct society. I would like you to clarify your thinking on this. There exists within Hydro-Québec such an impervious separation between its different businesses, whether it be the production of...

[*English*]

The Chair: Mr. Menzies.

Mr. Ted Menzies (Macleod, CPC): On a point of order, Mr. Chair, we are not talking about Hydro-Québec or Ontario Hydro. We're here talking about Bill C-9. If the honourable member can point out those two items for me somewhere in this piece of legislation I will tolerate this, but he had an entire meeting to talk about what wasn't even in Bill C-9. I request that we move on.

The Chair: Okay, on the same point of order, Mr. Mulcair.

[*Translation*]

Mr. Thomas Mulcair: I recognize the customary and bothersome tactic used by my friend and colleague Mr. Menzies. But I will take the liberty of telling him that he comes too late since he just shot a hole under the water line of the ship of his own reasoning. Since the Chair just ruled quite correctly to allow this important discussion on equalization, which is indeed the subject of Chapter 6 which we are considering, we have opened a discussion that is entirely in order.

Whether Mr. Menzies likes it or not, members of Parliament, even those from Quebec, are entitled to ask questions in this committee and I will let no one on the government side dictate what questions I can ask.

[*English*]

The Chair: Mr. Mulcair, how do your questions relate to Bill C-9? Please explain that to the chair.

[*Translation*]

Mr. Thomas Mulcair: Absolutely. As you allowed the day before yesterday, Mr. Chairman, you know as well as I do that Bill C-9 implements a number of provisions, including measures related to equalization. These clauses deal directly, as we have seen earlier, with the social transfer and with equalization payments in general.

And we had a question for the officials responsible for calculating equalization payments about a difference in the way the federal government treats provinces. In the case of Quebec, they say that they are not allowed to take into account the wall that exists between the different functions within Hydro-Québec. They say that Hydro-Québec should be considered as a whole, and he said that several times, because they find it too difficult. Mr. McGirr told us...

● (1535)

[*English*]

Mr. Ted Menzies: What—

[*Translation*]

Mr. Thomas Mulcair: Mr. Menzies, how can you have the gall to interrupt me while I am answering the Chair?

[*English*]

The Chair: Order.

[*Translation*]

Mr. Thomas Mulcair: Stop interrupting colleagues. Show some courtesy. At least try.

[*English*]

The Chair: Order.

[*Translation*]

Mr. Thomas Mulcair: Mr. Chairman, here is what I was trying to say to you. Mr. McGirr gave us clear answers earlier this week. I am focussing on one of his specific explanations where he said that it is too cumbersome for them to examine each Crown corporation that is also engaged in the generation of hydroelectricity. Let us remember that he said that hydroelectric generation is treated just like any other form of energy production and that it could not be taken into account for the purpose of determining the revenue of a province.

But in our view, Hydro-Québec, because of this separation of functions, should be considered a special case, especially since Mr. McGirr told us that it could be done if separate corporate entities were set up. Last time, we were left dangling with the following question: why does he not accept as valid the figures provided by Hydro-Québec? He answered that it was because they are coming from Quebec. I find this explanation somewhat lacking and I want to return today to this matter.

Since we discussed this for several hours earlier this week, I will not tolerate being told today that what was relevant two days ago is no longer relevant today.

[*English*]

The Chair: I have Monsieur Carrier on the same point of order.

I gave a lot of leeway last time about questions on this section. As the chair, I understand there is some concern about that issue. I understand what your concern is, Mr. Mulcair, but I don't understand how that concern relates to Bill C-9.

We have clauses 1646, 1647, and 1648. I understand this was with respect to clause 1647. But as far as the different treatment of crown corporations, I don't see how that relates to clause 1647.

Maybe Monsieur Carrier can clarify this, but how does that concern—which may be a very valid concern, and I'm not saying it isn't—relate to clause 1647 or another clause within Bill C-9?

[*Translation*]

Mr. Robert Carrier (Alfred-Pellan, BQ): Mr. Chairman, I would like you to take into account the opinion of the members of this committee before making a ruling.

I want you to take note of the fact that in part 6, the part we are considering, section 3.12 talks about “an additional fiscal equalization payment that can be made to provinces“ — “provinces“ in the plural in the French version. Certain amounts are set out. So this is the ideal place to raise the question: why is there no amount set out for Quebec in view of the discussion regarding the dispute that has been ongoing for at least a year between Quebec and the federal government? This is the ideal opportunity to obtain reasoned answers from the officials, as I mentioned the other day, answers that are not political in nature but logical explanations as to why Quebec is excluded from an equalization payment because Hydro-Québec is being treated differently from Hydro-Ontario.

[*English*]

The Chair: So your argument is that Quebec should receive additional funds under the additional fiscal equalization payment.

[*Translation*]

Mr. Robert Carrier: Yes.

[*English*]

The Chair: Okay. It is a clause in the bill, so as long as it's linked to an explanation of how Quebec would be entitled to additional moneys under clause 1646, or related to the other two clauses.... But we should keep our questions related to the clauses of the actual piece of legislation. If there's discussion on a policy that's been determined by the government but not by the public service, those questions are obviously for ministers; they are not necessarily questions we can ask of department officials.

Mr. Mulcair is next, as long as you can link your questions to the clause of the bill and additional funding for Quebec.

[*Translation*]

Mr. Thomas Mulcair: Thank you, Mr. Chairman.

Mr. McGirr, let us get back to part 6 which deals with the Federal-Provincial Fiscal Arrangements Act if I may.

When we had the pleasure of discussing this earlier this week, you made a statement regarding the way equalization is being calculated and which is referred to in Clause 1647 that amends paragraph 24.702(b) of the Federal-Provincial Fiscal Arrangements Act. This is what determines the entitlement to a substantial increase in the payments to Nova Scotia, New Brunswick, Manitoba and Prince Edward Island.

And how come we are also talking about Saskatchewan and Newfoundland-and-Labrador? There has also been a request, which is political in nature and not within your purview, regarding the determination of the value of what is produced by Hydro-Québec and its impact on the calculation referred to in part 6.

So the question I want to ask you is this. I am looking at what you said earlier this week, when you explained two different things. You said, first of all, that it is difficult to know what is generation and what is a different business. You only consider total profit. You raised the possibility of setting up separate corporate entities. These are the words you used. I demonstrated to you that Hydro-Québec has set up corporate entities that are so distinct and separate that they do not even share their figures and report separately at year-end. You just swept this aside saying that these are figures provided by Quebec.

So I would like to know, given your analysis about setting up separate corporate entities, why you refuse to accept the figures provided by Hydro-Québec?

● (1540)

[*English*]

Mr. Tom McGirr: Let me clarify what payments are being set out in part 6 of the bill. They are simply payments that make sure the total major transfers to provinces are at least as high as they were in 2009-10 and 2010-11. In other words, we compared the equalization amounts of the Canada health transfers and the Canada social transfers that were calculated for each province for 2010-11, with the amounts in 2009-10. If there was any decline in that total global amount, the province was provided with a protection payment as set out in part 6 of the bill.

The other parts of your question deal with the actual calculation of equalization for Quebec. As I responded at the previous session, the policy is that we take the remitted profits in their entirety of a crown corporation engaged in the generation of hydroelectricity. As I said at the beginning of this session, there are eight of them. Of those eight, six are engaged in some form of transmission and distribution, just as much as Hydro-Quebec is.

For example, SaskPower is engaged in both transmission and distribution. Any of the remitted profits of SaskPower, no matter what the source, would be considered part of the natural resource base, just as it is for the province of Quebec in the case of Hydro-Quebec.

The Chair: You have 30 seconds, Mr. Mulcair. Then we'll go to Monsieur Carrier.

Mr. Thomas Mulcair: I'm going to wait. Thank you.

The Chair: Okay.

Monsieur Carrier.

[*Translation*]

Mr. Robert Carrier: Thank you, Mr. Chairman. I would like to at least ask one question on the subject before we move to other parts of the bill.

Last Tuesday, Mr. McGirr said that if all the other corporations producing and distributing power were considered, the amount of $250 million referred to by Quebec would surely not be adequate. But this amount is not an estimation coming from the Parti québécois. It is set out in the budget document of the government of Quebec that was recently tabled. In the annex, in section E, it says that the inequity represents an amount of $250 million that is expected from the government of Canada, with whom the province is presently negotiating.

So this amount was not taken out of thin air and was surely established using the same method that was used to determine which part of the profits are business revenues rather than natural resource revenues. So I do not understand why you say that since there are several industries, several corporations that distribute electricity, this amount should be lower. The policy is the same. If you apply it to one province, it should be applied the same way to each electricity-distributing corporation from each province in order to be fair. This is why the government of Quebec expects to receive an amount of $250 million.

Do you want to reduce the amount provided to other provinces under the available budget? It would not be fair. The same policy should be applied to all provinces, to Hydro-Québec and to all other electricity-distributing businesses. Do you agree?

● (1545)

[*English*]

Mr. Tom McGirr: Let me first reiterate what I said about the $250 million. I said the $250 million was the estimate that was put forward by the Province of Quebec. I'm familiar with the $250 million that was put forward into the budget document. That $250 million has been calculated only on the basis of removing the transmission and distribution profits that have been reported by Hydro-Québec and redoing the equalization calculation. Quebec calculates that would give the province another $250 million.

As you have just indicated, the policy should be extended to all crown corporations. If you are in fact going to remove transmission and distribution profits, it should be done for all crown corporations. And on Tuesday I didn't give a figure. I only said the $250 million figure may not be $250 million. I certainly didn't say in which direction it would be. I simply said that $250 million may not be $250 million.

Interestingly enough, I should point out there is a crown corporation also that's involved only in transmission and distribution, called BC Transmission, and like Ontario's Hydro One, it is counted as part of the business income tax base and not part of the natural resource base.

[*Translation*]

Mr. Robert Carrier: Okay.

[*English*]

The Chair: Okay.

Mr. Menzies.

Mr. Ted Menzies: Thank you, Chair. And thank you to our witness, once again.

Please correct me if I'm wrong in these numbers that I'm quoting, but it's my understanding that equalization to Quebec has been increased by some 44% from 2006 to 2010; this year alone, $19.3 billion in federal support to Quebec; equalization alone $8.5 billion to the province of Quebec, which is nearly 80% higher than it was in 2005, slightly above the growth of inflation, I would think. And health transfers for all provinces continue to increase at around 6%. Social transfers increased at around 3% for all provinces, to try to be fair. Please correct me if I'm wrong on those figures.

My question is, these transfers that are in the budget, my guess is that each province that has already tabled a budget has actually put these numbers into their budgeting process and are counting on that. Am I correct in that assumption?

Mr. Tom McGirr: I can't confirm that with any certainty, but I would imagine they have, because they were provided with these amounts back at the meeting of finance ministers in Whitehorse, so any provincial budget that has happened since that time would have taken these payments into account.

Mr. Ted Menzies: That was in December—

Mr. Tom McGirr: Yes.

Mr. Ted Menzies: And my figures quoted previously, are they pretty accurate?

Mr. Tom McGirr: They're accurate.

Mr. Ted Menzies: Thank you.

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

Monsieur Mulcair.

[*Translation*]

Mr. Thomas Mulcair: Thank you, Mr. Chairman.

I would like to follow up on EC One which was just mentioned. It belongs to which province?

[*English*]

Mr. Tom McGirr: No. I said BC Transmission.

[*Translation*]

Mr. Thomas Mulcair: I just want to ensure I understood correctly.

Hydro-Québec has three corporate entities that are totally distinct, separate and independent from each other. The first is engaged in generation, the second in transmission and the third in distribution. The argument made by Hydro-Québec is that only the generation business should be part of the natural resources base. The other two should be in the income tax base. Do we agree so far?

[*English*]

Mr. Tom McGirr: Quebec's demand is that the transmission and distribution profits of Hydro-Québec should be moved to the business income tax base in the same way that the profits from Ontario's Hydro One are treated.

[*Translation*]

Mr. Thomas Mulcair: We agree.

[*English*]

Mr. Tom McGirr: I have just said that the policy is that we take the remitted profits of the full corporation, and Hydro-Québec is one corporation.

[*Translation*]

Mr. Thomas Mulcair: Okay.

[*English*]

Mr. Tom McGirr: I do know they report their figures separately. I am aware of that. Other crown corporations that are engaged in both hydroelectric generation and in transmission and distribution do not have the same degree of detail as Hydro-Québec.

● (1550)

[*Translation*]

M. Thomas Mulcair: Again, I want to make sure I understood correctly, Mr. Chairman, because we are getting there.

You are telling us here and now that a company such as Hydro One in Ontario — I misheard you earlier, I heard EC One — operates strictly in the area of distribution and transmission, that it is a separate corporate entity and that all its profits are part of the business income base. Correct?

[*English*]

Mr. Tom McGirr: Any of the remitted profits from Hydro One will be part of the business income tax base.

[*Translation*]

Mr. Thomas Mulcair: Right. Fine so far.

You are telling us that since Hydro-Québec is one corporate entity only, it cannot, according to you, get the same differentiated treatment that is afforded to the profits remitted by the entities of other provinces. Is that a correct interpretation of what you said?

[*English*]

Mr. Tom McGirr: The policy is, the entire amount of remitted profits of a crown corporation engaged in hydroelectricity generation is taken into account on the natural resource basis, and Hydro-Québec is a corporation engaged in hydroelectricity generation.

[*Translation*]

Mr. Thomas Mulcair: Let me return to our discussion earlier this week. You raised the assumption that if distinct Crown corporations were set up, each engaged in one of the three businesses, the generation would remain in one base and distribution and transmission would be treated as business income. And under our equalization formula — this is your policy, as you say — these corporations would be treated exactly the same as BC Transmission Corporation and Hydro One. Is that right?

[*English*]

Mr. Tom McGirr: I said at the last meeting that if Hydro-Québec were split into separate companies, the policy says that the remitted profits, in their entirety, of a crown corporation, if it's engaged in hydroelectricity generation, is part of the natural resource basis. So if Hydro-Québec split itself in such a way that a new, separate company was engaged just in transmission and distribution, clearly, we'd have to revisit the equalization treatment.

[*Translation*]

Mr. Thomas Mulcair: Wonderful. Because they are indeed separate corporate entities. We will have an opportunity to discuss it again.

Thank you very much for your contribution, Mr. McGirr.

[*English*]

The Chair: Merci.

No further questions on part 6?

We'll move to part 7, then.

Thank you very much, Mr. McGirr. We appreciate that.

Now, part 7 amends the Expenditure Restraint Act to impose a freeze on the allowances and salaries to be paid to members of the Senate and the House of Commons for 2010-11, 2011-12, and 2012-13.

Any questions? Mr. McKay, please.

Hon. John McKay (Scarborough—Guildwood, Lib.): Maybe Mr. Wall could tell us how much, in dollars, this is actually going to account for.

Mr. Ron Wall (Director, Parliamentary Affairs, Privy Council Office): Thank you, Mr. Chair.

As members will know much better than I, there are about 413 members of the House and Senate, and the average salary is about $160,000 a year for those two groups, roughly. So each member will be having a freeze, a loss of 1.5% this year. That will be about a loss of $2,200 times 413. So it's about $1 million this year.

Hon. John McKay: That's it, $1 million? Certainly I would support that for Conservative members of Parliament and senators.

And does the freeze apply to federally appointed judges?

Mr. Ron Wall: No. Judges are captured by the Judges Act provisions, which apply separately, so these changes simply reflect provisions for members of the House and the Senate and the Prime Minister and ministers.

Hon. John McKay: At one point our salaries were tied to judges' and now no longer. Has there been any calculation, if this freeze were applied to those judges, as to what that would constitute in terms of "getting back the balance", as it's so quaintly phrased?

Mr. Ron Wall: Perhaps, Mr. Chair, I could answer it in a slightly different way. In 2005 Parliament adopted a change to parliamentary compensation whereby, instead of having MPs' and senators' salaries linked to judges' salaries, they were tied to a formula of private sector wage increases. So members of the House and Senate would receive an increase every April 1, based on the previous year's wage increase for the private sector.

The legislative approach for judges is stipulated in the Judges Act and has a separate process.

● (1555)

Hon. John McKay: You didn't do any calculation with respect to how much that would be if they were tied to the same process as we are.

Mr. Ron Wall: No, I haven't done that for the judges. I'm sorry.

Hon. John McKay: Thank you.

The Chair: Are there any further questions?

Okay, thank you very much for being with us here today.

We'll move to part 8 and the amendments relating to certain governmental bodies. Are there any questions on this part?

Mr. McKay.

Hon. John McKay: This apparently eliminates 245 positions. Were these positions filled and were salaries being drawn?

Ms. Claudette Lévesque (Director, Appointments and Selection Processes, Senior Personnel, Privy Council Office): The 245 are part-time positions, so there are no salaries as such. There are per diems or honorariums on board members.

Hon. John McKay: But are these positions filled right now?

Ms. Claudette Lévesque: Ninety percent are vacant. Approximately 90%.

Hon. John McKay: So it's an illusion of saving money rather than a reality of saving money—

Ms. Claudette Lévesque: It's a cost avoidance. If they were to be filled, they would cost money.

Hon. John McKay: On the Canada Pension Plan, you're changing it from 400 GIC appointments to 360 GIC appointments. Presumably this is where Canadians go before a tribunal and say they're not being fairly treated or they're being disqualified from receiving their pension, and things of that nature.

In my experience as a practising member of Parliament, this is a pretty messed up system. It takes a long time to get there, people are frustrated and don't know what's going on. So you already are down on the complement by.... Well, I'm assuming that the 40 positions you're apparently eliminating are already not filled, so you're really not eliminating anything.

Are you actually then loading on to the 360 who still have their appointments the difficulties that many of us actually experience as members of Parliament?

Ms. Claudette Lévesque: But we're not actually eliminating positions or people as such. We're reducing the cap. The cap had been fixed at 400. Currently there are approximately 300 people in positions. The analysis that was done—

Hon. John McKay: There are 300 people and not 360?

Ms. Claudette Lévesque: No. At the moment there are about 300 people—positions.

Hon. John McKay: There are 300 people in 360 positions.

Ms. Claudette Lévesque: No. There were 400, the cap was 400 and that's a maximum. Currently there are 300 positions that are filled. We are reducing the cap to bring it down to 360 to leave a *marge de manoeuvre* to make sure that if requirements are needed we'll have additional positions filled.

The analysis that had been done is that there is no backlog on requests and that the complement of 360 would be sufficient to meet the demands.

Hon. John McKay: So at the present time 300 people fill what was available, 400 positions. You're actually moving that down to 360 and leaving 60 vacant.

Ms. Claudette Lévesque: Yes. We're leaving it open in case there's a need to have additional members to meet the demand.

Hon. John McKay: I would be somewhat curious to see that study that says these things are being dealt with in a timely sort of way. That is not consistent with my experience, but I can't speak for other members at the table.

I'll let it go for the time being.

● (1600)

The Chair: Thank you.

Mr. Wallace, please.

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

Thank you for coming.

Just for my clarification, then, these positions exist on the books and thus from a budgetary point of view the government has to budget for these positions whether people are in them or not. Would be that correct?

Ms. Claudette Lévesque: The organizations have to kind of keep it in mind as a possibility. As long as they exist on the books, there is a possibility that the Governor in Council might fill the positions.

Mr. Mike Wallace: So if the government of the day decided they wanted to fill all 400 positions overnight—

Ms. Claudette Lévesque: Are you talking about the 400? I thought—

Mr. Mike Wallace: Well, I'm using this as an example. The organization has to have the money to pay these people for the meetings they would attend. Is that correct?

Ms. Claudette Lévesque: Absolutely.

Mr. Mike Wallace: Thank you very much.

The Chair: Thank you.

Monsieur Carrier.

[*Translation*]

Mr. Robert Carrier: Welcome.

You mentioned earlier that out of the positions being eliminated, 90% are vacant. So what is your estimate of the real savings resulting from this cut?

Ms. Claudette Lévesque: Excuse me, I did not hear what you said.

Mr. Robert Carrier: At how much do you estimate the real savings from the elimination of these positions?

Ms. Claudette Lévesque: We did not evaluate that... It was not just a computing exercise, it was an exercise to try to evaluate the efficiency of the various boards and to ensure the best governance. If all 245 positions had been filled, we estimate that the costs — this is a very rough estimate that we did with Treasury Board — including the per diems, the honorariums, travel costs and everything associated with these boards, would be $1,000,000 to $1,250,000 for the 245 positions.

Mr. Robert Carrier: That is assuming these positions would be filled. Is that a realistic assumption? Could these positions, even though 90% of them are presently vacant, be potentially filled or are these rather useless positions that you want to eliminate in the interest of efficiency?

Ms. Claudette Lévesque: I am unable to comment. Obviously, these positions are filled by Governor in Council appointments. So this would be on the advice of the minister in charge of that portfolio. I could not say regarding any given position whether it could have been filled, but as a result of the assessment it was decided that they were no longer necessary.

Mr. Robert Carrier: I read somewhere that you had assessed a number of these positions before deciding on these cuts. How many positions did you assess initially?

Ms. Claudette Lévesque: We reviewed approximately 2,700 positions in roughly 200 organizations.

Mr. Robert Carrier: Do these 2,700 positions represent the totality of Governor in Council appointments?

Ms. Claudette Lévesque: No. Some positions we did not assess. We assessed agencies, commissions, governmental bodies, international organizations; we did not review judges, officers of Parliament, lieutenant-governors or deputy ministers. It is really in public agencies, administrative tribunals and so on that these 2,700 positions were cut.

Mr. Robert Carrier: Since we are in a period of budgetary restraint, did you also have a mandate to review executive positions throughout the public service?

Ms. Claudette Lévesque: It was not our mandate to review the public service.

Mr. Robert Carrier: You did not have that mandate?

Ms. Claudette Lévesque: No. We were only looking at Governor in Council appointments. Public servants are not appointed by the Governor in Council, except for deputy ministers and assistant deputy ministers.

Mr. Robert Carrier: I am asking because the measure under consideration provides very minimal results; it is just a streamlining of governmental organizations. These are not real savings, they are fictitious. The real savings, in fact, will be a small percentage of the $1,000,000 that you mentioned earlier, am I right?

Ms. Claudette Lévesque: I mentioned the savings aspect but the real benefit is that we will have organizations that might become more effective thanks to somewhat smaller governing boards.

Mr. Robert Carrier: Fine. Thank you.

● (1605)

The Chair: Thank you.

[*English*]

No further questions? Thank you very much.

We'll now go to part 9, amendments to the Pension Benefits Standards Act. We'll ask the officials to come forward.

Welcome.

We'll start with Mr. McKay, please.

Hon. John McKay: Thank you, witnesses.

The first paragraph in the briefing book I don't really have much dispute with. It's the second paragraph with respect to "a solvency deficit at termination must be fully funded, and permit employers to use letters of credit".

Now we're in the middle of our discussions about and study of pensions, and letters of credit have been a matter of some subject of discussion here. It appears the government wishes to pre-judge the findings of the committee.

I'm skeptical with respect to letters of credit, because if a plan is close to bankruptcy or insolvency, it would seem to me counter-intuitive to think that it or its employers, the funding element of the plan, could go out and get a letter of credit, which would effectively satisfy 15% of the outstanding obligations in the way this is set up.

I'm assuming you may well have had some extensive discussions with various plans and plan holders and things of that nature. What evidence do you have that letters of credit would be available to plans that are on the edge?

Ms. Leah Anderson (Director, Financial Sector Division, Financial Sector Policy Branch, Department of Finance): I think the principle of availability is to increase cashflow for sponsors. In terms of providing security to the plan itself, they will be fully backed. They're fully guaranteed. So in terms of keeping the plan whole, it's just as good as cash because it's a fully secured line of credit.

Hon. John McKay: But if I'm a bank and I'm being asked to supply a letter of credit, which as you rightly say is just as good as cash, how am I going to be able to get a letter of credit when my plan is on the edge of insolvency?

Mr. Jean-Claude Primeau (Director, Acturial, Policy and Approvals, Office of the Superintendent of Financial Institutions): The letters of credit have been used already in two temporary regulations that were adopted by the government in 2006 and 2009. These were for temporary relief and they were used by a certain number of corporations. You could say it's based on the creditworthiness of the corporation—

Hon. John McKay: Were they used at the point where plans were on the edge of insolvency or were not adequately funding their ratios?

Mr. Jean-Claude Primeau: The purpose of the letters of credit in those regulations was to provide security to the plan instead of cash contributions that would otherwise have been required. It's not necessarily that the companies that avail themselves of this measure are on the verge of bankruptcy. It's really for corporations that would rather keep their cash resources for other purposes, to invest in the company and use the letter of credit as a security for the pension plan, so the pension plan is in effect in a neutral position, whether cash or the letter of credit is serving as security.

Hon. John McKay: Presumably there's almost an inducement for it to use letters of credit rather than cash. If I'm an employer, a corporation, I'm always going to want to use credit over cash to fund any obligations I might have.

● (1610)

Ms. Leah Anderson: There is a limit of 15%.

Hon. John McKay: I understand that, but if it's 15% of $1 million credit or $1 million cash, I know the choice I would make as an employer.

Ms. Leah Anderson: You asked if you can get it when you're on the brink of insolvency. I think the issue is this is one tool that can help with funding flexibility to avoid that situation. So a company in a cash crunch has another alternative if it's short of cash; the letter of credit can help them avoid going into a deeper trench.

Hon. John McKay: If I am on the brink of insolvency, how is the government going to monitor the getting of a letter of credit to solve the insolvency ratios? Because it seems to me that instead of putting in cash, I'm putting in a letter of credit. That's a tip-off that my plan has a problem. How are you going to know? Who's going to decide?

Mr. Jean-Claude Primeau: It wouldn't necessarily be the case that the companies making use of the letters of credit would be in that position. It would be a case of how they would want to use their cash resources at a particular point in time. It would also be that whatever credit they use for the pension plan is not available for other purposes that the company might consider. So I'm not sure that it would necessarily always be the choice of the company to use a letter of credit. It would depend on the company's investment plans and things that are outside of the pension plan.

The Chair: Thank you.

We'll go to Mr. Menzies now.

Mr. Ted Menzies: Thank you, Mr. Chair. I thank our witnesses for appearing here today.

I might explain to John and some of the other members and remind them—I'm sure I've reminded you a couple of times—that this is about the 7% of private pension plans that we actually regulate federally. Some of them were in very serious trouble over the last year, and that's why we put these changes in. They're not out of the woods yet. And I guess that would be my question. I've tried to implore this committee to move this along quickly because we have a June 30 deadline on the solvency of many of these funds that are not out of the woods. We seem to be stalling this bill because some people say there are too many fringe things in it. We've got some very important legislation. Is this not probably one of the most time-sensitive issues in this bill?

Ms. Leah Anderson: I would think yes. This certainly does put in place relief or enhanced benefit security for pension members. It's very important. Certain rules needs to be in place in advance of the solvency valuations, which my colleague can speak to. Certainly the bill needs to be passed in order for some of the regulations to come into effect. The broad sweeping changes that the government announced last October are dependent on provisions in this bill being in force. Until the bill is in force, some other regulations cannot be brought into force.

Do you have something on the valuation question?

Mr. Jean-Claude Primeau: Yes. Actuarial valuations for federally regulated pension plans are required to be filed within six months of the year-end for which the valuation is done. For most plans, that's December 31, so their due date is June 30. At this point, many plan sponsors are waiting for the passage of these measures so they can anticipate how much funding they will need to make in their pension plans for this year and in future.

Mr. Ted Menzies: And we're talking billions and billions of dollars here. It's a pretty serious change for some of these funds.

Thank you. I wanted to get that point on the record.

The Chair: Thank you.

Mr. Carrier.

[*Translation*]

Mr. Robert Carrier: Welcome. The part under consideration, part 9, does not deal with companies that are presently failing. This is a huge concern to us because this is happening in several of our ridings. I was wondering if your department did not come up with a solution that would see the pension plan of a number of companies placed under trusteeship? Could you talk about this? Did you look into this matter? What would be the consequences of such a policy?

● (1615)

[*English*]

Ms. Leah Anderson: Certainly that's a major issue, which we've heard a lot about from everybody throughout the media and letters we've received in the department and across the government. I would say that with respect to pension plans, there are safeguards in place in the event of insolvency. In the first instance, the money that people pay in to pension plans is held in trust and it is there for pensioners when they retire. With respect to unfunded but due pension deficiencies or pension payments, the government made changes to give them a super priority in the event of insolvency.

More broadly speaking, though, any liabilities in terms of keeping the plan whole in the event of insolvency is an issue that hasn't received much discussion. The bankruptcy and insolvency legislation is a matter for the Minister of Industry. I know that ministry is looking into that issue, as committed to in the throne speech—that they would examine issues with respect to pension plans in the event of insolvency.

[*Translation*]

Mr. Robert Carrier: Fine, thank you.

[*English*]

The Chair: Mr. McKay, please.

Hon. John McKay: Just to speak to Mr. Menzies' point, this is a matter that has been hanging around for quite a while. There's no reason this couldn't have been introduced as a separate piece of legislation. It could have been introduced months ago if in fact there was a timeline that it was of concern.

I don't know whether I'm in favour of it or against it, because I haven't heard from witnesses, but the witnesses are going to be jammed into a short period of time, and then it's kind of an all-or-nothing deal. So I reject the premise of Mr. Menzies' point.

With respect to the issue for the workout scheme, you say, "Will the workout scheme result in the employer being able to force the plan members into an agreement that is not in their best interests?" The answer is no. And then further on you say, "The workout scheme will permit sponsors, plan members and retirees of a distressed pension plan to negotiate funding arrangements."

That strikes me as saying the gun is at your head and there isn't enough money, so too bad for you, retirees, go visit your friends in Nortel. That's what it strikes me as.

I haven't absorbed the material entirely, to be fair, but it strikes me that the retirees will be in some sort of negotiation, it will be stalemated, they'll come to the minister and the minister will make a decision, and, boom, the retirees will have no recourse.

Ms. Leah Anderson: I think the key element there is that it requires all-party consent at the end of the process. So it's an alternative for everybody involved in the issues facing that company to be able to take some stock and see if funding rules can be changed in order to restructure the pension plan.

Everybody will have a say in it; everybody who has a stake in it will have a say in it. I can't pre-judge what that outcome will be, but presumably people will vote in their interests in the—

Hon. John McKay: But are you actually enhancing control for the retirees? Some of these plans are in trouble because of stupid investment decisions, which were made by people who thought they could make lots of money and that they were way brighter than the rest of us.

When a plan is in trouble, you're giving some greater authority for a workout, but are you actually allocating greater authority to the retirees to control the investment decisions that get these plans in trouble in the first place?

Ms. Leah Anderson: I think there are a few provisions there. A key one is greater disclosure that will be provided to plan members so that they can look at the situation of their plans on an ongoing basis and be better informed about its status. So it's taking quite a leap in terms of the elements of disclosure that are required.

● (1620)

Hon. John McKay: But in some respects, disclosure doesn't cut it. If in fact I'm running a plan and you are a retiree, a potential retiree in the plan, and I disclose that I just bought a whole whack of derivative stuff through Goldman Sachs—

Ms. Leah Anderson: There are investment rules associated with the plan funding, as well.

Hon. John McKay: Well, there may be, but you disclose it—

Ms. Leah Anderson: The prudent person—

Hon. John McKay: —thank you very much, and it's still a big problem.

The Chair: Mr. McKay, you've asked a good question. Ms. Anderson had one point, but I believe she had something further to add in terms of the disclosure.

Hon. John McKay: Sorry.

Ms. Leah Anderson: There's a wide range of disclosure elements that will enhance transparency about the status of the plan to members.

On the investment side, there are investment rules associated with the framework, and they are consistent with the prudent person rule. The scenario you just described would not be consistent with that.

Hon. John McKay: But as far as your amendments are concerned, there is nothing on that side of the equation—that is, on the prudent person rule. Is that a fair assumption?

Ms. Leah Anderson: That's right.

I think a lot of the issues that were faced by pension plans are as a result of the situation in the stock market, which nobody predicted, and a lot of the difficulties or challenges they were facing were a result of spikes. So another key element of the reforms being proposed is to smooth some of that for plan sponsors to be able to make it easier to make payments, going over an average of three years versus one year. It's reducing their procyclicality.

Hon. John McKay: Yes, but is there anything in here that enhances the ability of the retirees, the beneficiaries, to participate in investment decisions?

Ms. Leah Anderson: Not that I'm aware of directly in the bill.

Mr. Jean-Claude Primeau: No. The plan administrator is responsible for making the investment decisions and must follow the prudent person rules and other fiduciary duties that are already part of the act and regulations.

Hon. John McKay: I take your blandishments, but we've been talking a little bit too much to the Nortel folks. There are a lot of really strange investment decisions that were made, which apparently complied with the prudent rule decision and resulted in real difficulties for these folks. The proposals by the government seem to work on the one side of the equation but don't necessarily work on the other side of the equation.

The Chair: They've answered that it's not in the legislation, which you may find insufficient.

Hon. John McKay: No, but the point is, Chair, that maybe the government has come up with the perfect half solution.

Mr. Ted Menzies: Maybe we actually did something you never did.

Hon. John McKay: I suppose you did a half fix.

The Chair: I suspect that's a matter of political debate.

Thank you.

Mr. Pacetti, please.

Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.): Thank you, Mr. Chairman.

Thank you to the witnesses.

You're increasing the threshold for the surplus to 25%. Are you also changing the refundability? Will the company be able to take some of that money out? That was one of the points that's been addressed during the retirement pension hearings.

Mr. Jean-Claude Primeau: I think you're referring to the income tax change to 25%, is that correct?

Mr. Massimo Pacetti: Yes.

Mr. Jean-Claude Primeau: That's not part of the Pension Benefits Standards Act; that would be the Income Tax Act. It's a rule about how much surplus can stay in the plan before an employer can resume contributions to the plan. So because that threshold is being increased, there will be more situations where an employer is allowed to contribute to the plan even though they are in a surplus position.

Mr. Massimo Pacetti: Correct, but will employers also have the opportunity to take out some of that surplus?

Mr. Jean-Claude Primeau: There are rules currently in the act that govern how surplus refunds can be made under a pension plan. It can be done either after the plan terminates or while the plan is ongoing. They can go two different ways. One way is to show that they have a clear entitlement to the surplus under the terms of the plan and based on the historical versions of the plan, and the other way is to go through a process where they have a proposal that two-thirds of members and two-thirds of retirees and other beneficiaries agree to the proposal. Also, as part of the legislation, before any surplus can be withdrawn from the plan, there is a mandatory cushion that needs to remain in the pension plan.

● (1625)

Mr. Massimo Pacetti: So none of those rules have been eased.

Mr. Jean-Claude Primeau: Those rules are not being changed in this act.

Mr. Massimo Pacetti: They're not being changed.

Okay. Thank you.

The Chair: Thank you, Mr. Pacetti.

Thank you. I don't see any further questions on part 9, so we'll move to part 10, the agreement on social security between Canada and the Republic of Poland. Are there any questions on this part?

Do you have a question, Mr. McKay?

Hon. John McKay: What's the significance? Just explain to me why it's retroactive to October 1, 2009.

Mr. Rakesh Patry (Director, International Policy and Agreements, Department of Human Resources and Skills Development): Essentially there had been a procedural error into the coming into force of this agreement. The agreement, by law, needs to be tabled in both houses of Parliament. Due to a departmental procedural error it was tabled only in the House and not in the Senate.

This is an effort to ensure that both houses of Parliament have an opportunity to review the agreement and to ensure that people who would be entitled to benefits, as of when the agreement was supposed to have come into force, will be entitled to their full benefits.

Hon. John McKay: So does that mean both houses of Parliament are still going to have to review the agreement itself, and all you're doing is amending the date?

Mr. Rakesh Patry: Essentially, by including this within the Budget Implementation Act we are offering the houses an opportunity to review the agreement. If it is passed within the budget, then the agreement will be deemed to have come into force retroactive to the original coming into force date.

Mr. Mike Wallace: It's simple.

Hon. John McKay: It's simple, is it?

Mr. Mike Wallace: Yes, it's strictly administrative.

The Chair: Okay. Anything further, Mr. McKay?

Thank you.

Monsieur Carrier.

[*Translation*]

Mr. Robert Carrier: I just have a point of clarification. Does this type of document, bill or agreement have necessarily to be part of the budget implementation bill? Is this due to the fact that there are some budgetary obligations? Are you taking advantage of this bill to include that?

[*English*]

Mr. Rakesh Patry: Essentially this is an effort to rectify a procedural error that had occurred. Generally speaking, social security agreements would not be tabled along with the budget. They would be tabled within both houses of Parliament independently.

As we are not in a position to meet our treaty obligations with Poland currently, due to the error that has been made, we were seeking the fastest solution to ensure that people who are entitled to receive benefits will receive their full benefits as soon as possible. So this is an effort to ensure that pensioners would be entitled to benefits from Canada and Poland, as per the terms of the agreement and in as quickly a timeframe as possible.

[*Translation*]

Mr. Robert Carrier: Very well. Thank you.

[*English*]

The Chair: Merci.

Thank you very much for being with us here today.

We will move to part 11, amendments to the Export Development Act, granting EDC the authority to open offices abroad...portfolio management on the Canada account.

Are there any questions from members?

Mr. McKay.

Hon. John McKay: In terms of the management of portfolio risk, what does it mean that EDC will be able to do now that it hasn't been able to do thus far?

Mr. Philippe Hall (Chief, Export Finance Section, International Trade and Finance, Department of Finance): Thank you.

EDC is actually looking for a clarification of the current wording in its act. So we're basically amending the act to enable the corporation to enter into any type of transaction that has as a main objective to manage its portfolio risks that are necessary or desirable for the financial management of the corporation.

EDC lawyers were of the view that the current wording in the act was not clear enough, and they had requested such change.

This was also a recommendation made in the context of the 2008 legislative review of the Export Development Act, and this recommendation was also accepted and supported by the government's response to that legislative review.

● (1630)

Hon. John McKay: So why is it in a budget bill?

Mr. Philippe Hall: Given the activity that EDC is currently under—and they are of the view that these transactions will enable them to deal with the various risks they are under right now—they were looking to have the clarity to be able to—

Hon. John McKay: I understand that, but why is it in a budget bill?

Mr. Philippe Hall: [*Inaudible—Editor*]

Hon. John McKay: Okay. Well, I'm being unfair to you, because really it's a political decision to throw everything into a bill, which is—

Mr. Ted Menzies: What about 2005?

The Chair: Mr. McKay.

Hon. John McKay: The substantive question here is does this give you the power to purchase other insurance products to manage your portfolio?

Mr. Philippe Hall: When you say "you", you are referring to the—

Hon. John McKay: EDC. Well, maybe you as well; I don't know.

Mr. Philippe Hall: No, I work for the Department of Finance.

It would enable EDC to enter into transactions, be it swaps or hedges, in an effort to diminish its risk.

Does that answer your question?

Hon. John McKay: Yes. The problem is that swaps and hedges these days are getting a bad name. So what are we doing here? We're legislating EDC to enter into transactions that are of a higher category of risk?

Mr. Philippe Hall: No, I would say it's actually on the contrary. We're enabling the corporation to deal with its amount of risk. Although some financial instruments have got a bad reputation over the last few months, one would not want to throw out the baby with the bathwater.

These powers are also powers that are given to other crowns already. The BDC and the FCC already have similar powers. And EDC and the legislative review both thought it was in the best interests, in the interests of the corporation, and hence the bottom line of the corporation and the bottom line of the Government of Canada, that they be allowed to enter into these transactions to deal with the risks they are involved in.

Hon. John McKay: Do FCC and BDC use these powers?

Mr. Philippe Hall: It is my understanding that they do, yes.

Hon. John McKay: Again, Chair, I don't know how to react to this stuff. This is right out of left field, and it probably should be appropriately studied by another committee other than this one. Well, maybe it should studied by this one, but it's like, well, "Here it is, trust us". That's what it's becoming.

On the Canada account, the Canada account is essentially a fund that the staff recommends against, but the minister can do an override and make an investment for reasons best known to the minister. Will the increased ability to buy hedges and swaps affect this Canada account?

Mr. Philippe Hall: Actually, the powers that are being given in clause 1831 refer to EDC's corporate account. With regard to clause 1833, as you do mention, this is related to the Canada account, which is section 23 of the Export Development Act. Now, these transactions are ones that, based on prudent risk management, EDC decides not to support but then turns towards the government. If they are deemed to be of national interest, EDC will enter into these transactions but the risk will be borne on the government books and not on EDC's own books. So there is kind of a—

● (1635)

Hon. John McKay: So it's a separate recognition in the books of EDC, both for the investments in the Canada account and the writeoffs in the Canada account?

Mr. Philippe Hall: Excuse me?

Hon. John McKay: Is it a separate recognition in the books of EDC that the Canada account's assets be recognized there, but also its writeoffs be recognized there?

Mr. Philippe Hall: They are separate. Clause 1831 refers to what types of transactions EDC management can enter into to decrease the risk on their own account, whereas 1833 has to do with transactions they can enter into to diminish the risk on our behalf—so on our books, on the government's account.

An example of this, for instance, can be when airlines have difficulty paying back loans that were distributed for the purchase of aircraft. When the airline goes to a bankruptcy court, EDC can easily, on its corporate account, restructure its loans. Here again, what is being sought is clarification of the current wording in the act to enable EDC to basically do the same type of restructuring on our own, on Canada account exposure, that it can do on its corporate account exposure.

Hon. John McKay: If the Canada account has lent money on an airline and the money is not paid back, or only part is paid back, what I don't understand is how is that treated differently than the way you do your corporate accounts?

Mr. Philippe Hall: For instance, if the bankruptcy court, or if there's a negotiation for the restructuring of a loan, if the negotiation with the airline has any writeoff of any amount of interest or capital on the loan, EDC doesn't have to go and get extra authority to accept what it deems to be the best deal possible for its bottom line. If it writes off one single penny of it, it can still accept that restructuring deal, whereas there were lawyers in EDC who were working for us on Canada account who wanted more clarity to make sure that they could accept what they deemed to be the best negotiation for the transaction that was made under the Canada account, and they want it to be—

Hon. John McKay: What does Mr. Clement do now?

Mr. Philippe Hall: Excuse me?

Hon. John McKay: What does Mr. Clement do now when the lawyers are negotiating a resolution of a debt on the Canada account? How is it handled, and how are you proposing that it be handled differently?

Mr. Philippe Hall: My understanding is that Export Development Canada is a crown corporation that is arm's length from the government, so I don't see what Minister Clement has to do with this.

Hon. John McKay: Okay, maybe I'm missing something here. You're asking for an authority to enter into a transaction, including "the forgiveness in whole or part of any debt or obligation that is necessary for the management of assets and liabilities". Generally that means we have a lousy piece of paper here, we need to get rid of it and we need to write it off.

What I find puzzling—and correct me if my understanding is incorrect—is that the lawyers for the corporate account, EDC account, make their deal, end of story, but on the Canada account... they want to make their deal, but what happens that they can't make their deal?

Mr. Philippe Hall: They wanted to make sure they could accept the same deal on the Canada account. They wanted to make sure they could accept this deal even if it incurred a loss of either interest or principal on the loan.

● (1640)

Hon. John McKay: So without this, what is it that they do then?

Mr. Philippe Hall: Actually, the reason this legislation has to be clarified is specifically related to an example such as the one we are talking about.

EDC officials were present in a bankruptcy proceeding case in the U.S. They accepted the deal under corporate account and they were wondering if we could actually accept the same deal on Canada account. It took a lot of negotiating, weeks of deliberations between lawyers between various departments. It was deemed at that time that we could do it, but at any opportunity one would want to clarify this and make sure the act does permit this to be done.

Hon. John McKay: Are there any specific historical examples where this was in question? I understand Mr. Wallace doesn't want to answer any questions directly, but are there any specific historical examples of this?

Mr. Philippe Hall: I would have to check. As you may imagine with Export Development Canada, there are commercial sensitivities in talking about bankruptcy. I'd have to actually check with them on whether I could share those examples.

Hon. John McKay: Well, the Canada account tends to be a bit politically sensitive. You seem to be asking for shall we say more extensive authority for the resolution of problem loans.

The Chair: Mr. McKay, your concern is about the amendment to section 23?

Hon. John McKay: Well, the Canada account.... Yes, proposed subsection 23(6). Absent of context, you're left to deal with theoretical constructs. What I don't understand is what additional powers the department is asking for to deal with the Canada account.

The Chair: It states there are no additional new powers granted.

Is that correct, Mr. Hall?

Mr. Philippe Hall: That is correct.

Hon. John McKay: It says:

> to make an investment or enter into any transaction including the forgiveness in whole or in part of any debt or obligation that is necessary for the management of assets....

If it wasn't necessary, why is it there?

Mr. Philippe Hall: As I previously mentioned, the clause is meant to clarify the current understanding of the powers that are already granted to Export Development Canada under the ED Act.

Hon. John McKay: This format and this process is not very good, in my view, but I'll let it go.

The Chair: Mr. Hall is not responsible for the format.

Hon. John McKay: No, I agree. My criticism is to the government. This is a crazy way to do business.

The Chair: Okay, thank you.

Thank you, Mr. Hall.

We'll move to part 12 then, the Payment Card Networks Act.

We have Monsieur Carrier and then Monsieur Mulcair.

[*Translation*]

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

If my understanding is correct, part 12 creates a new Payment Card Networks Act which grants many powers to the Governor in Council. Section 6 sets out all the regulations the Governor in Council will be able to make in relation to network operators and card issuers.

I understand the enforcement of these regulations will take place under another piece of legislation, the Financial Consumer Agency of Canada Act. The responsibility being transferred to another act is to monitor payment card network operators in order to ensure that they comply with the provisions of the Payment Card Networks Act. This means giving incentives to network operators to comply with the provisions of the Payment Card Networks Act. It is a transfer of responsibilities.

Am I understanding this correctly? I wonder if you considered the implications of this decision on a practical level. Credit card operators are everywhere. How will this monitoring function that is handed to the Financial Consumer Agency of Canada be carried out? Will new inspectors be trained and assigned to this task? I would like to know your assessment of how this legislation will be enforced.

● (1645)

[*English*]

Ms. Leah Anderson: You are correct in the sense that the Financial Consumer Agency of Canada Act would administer the legislation and any regulations that come under the legislation if in force.

At this time we have released a code of conduct for the debit and credit card industry. Stakeholders have until May 17 to let the government know whether they will adopt that code. The minister has been quite clear that if the stakeholders do not adopt the code, he will proceed to regulate.

At that time, once the regulations are in force, the FCAC would monitor regulations. In the meantime, though, the new legislative provisions also give the Commissioner of the Financial Consumer Agency the authority to monitor compliance with the code of conduct. The commissioner currently does this for a number of other codes of conduct in the marketplace. My colleague Pascale is familiar with many others that the commissioner monitors.

In developing the code of conduct, we've worked quite closely with the commissioner to speak with the agency officials to discuss compliance issues and how they go about monitoring the code. They are quite comfortable that—consistent with other codes of practice—they have the resources in place to carry out that work. As part of the code, they will have the ability to levy assessments on the industry—if required to monitor compliance with the code—to cover any additional costs.

So I think in setting up the code and in preparing the regulations, the Financial Consumer Agency feels equipped to properly do its functions.

[*Translation*]

Mr. Robert Carrier: So we create this new act. Does it mean that the government or the minister have no powers at the present time to regulate these payment card networks? Did it really take a new law in order to be able to act?

[*English*]

Ms. Leah Anderson: Well, there are two parts to that. In the first instance, as I mentioned, we're putting in place a code of conduct. So we just released that on April 16. The government is taking action in that regard. It's not legislation; it's a code of conduct. But what this legislation does is it gives the ability to the minister—should stakeholders not adopt the code—to proceed with regulations to make it enforceable.

[*Translation*]

Mr. Robert Carrier: I do not believe that the code of conduct says anything presently about abusive fees imposed by credit card issuers to powerless retailers. Eventually your discussions will require a consensus in order to give consideration to both the acquirers and the issuers of credit cards.

[*English*]

Ms. Leah Anderson: On the cost question, the very purpose of the code is to bring fairness to merchants to be able to control their costs and increase competition in the marketplace. It requires networks and all those involved in providing services to merchants to clearly disclose the costs of those services. It allows merchants to cancel contracts—if they sign up, and then suddenly three months later the rates go way up. It allows them to discount to encourage consumers to use lower-cost payment methods. There is a whole range of elements in that code that really seek to empower merchants in their relationships vis-à-vis some of these networks. So it's a great first step in dealing with some of these issues we've heard a lot about from merchants.

● (1650)

[*Translation*]

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Carrier, you will be able to get back to this.

I would like to give an opportunity to other committee members to ask their questions.

Mr. Mulcair.

Mr. Thomas Mulcair: Welcome. Thank you for being here.

I would like to ensure I understood all the nuances in your comments where you said that a code of conduct might be put in place, but if not there would be another way to enforce the act. Your explanatory notes mention a voluntary code of conduct. Right?

Your head nodding is not going to be in the transcript. So could you respond?

[*English*]

Ms. Leah Anderson: Sorry, I just wanted to listen to your full....

Yes, it is a voluntary code of conduct in the first instance, but the minister has made it clear that should members not adopt the code, he will make it involuntary.

Mr. Thomas Mulcair: Even though the legislation is sparse, it provides for interpretation and application. Where are the provisions for interpretation and application in enforcement and in inspection of a voluntary code?

Ms. Leah Anderson: I guess the framework that surrounds the monitoring of voluntary codes is established by the Financial Consumer Agency of Canada Act, and that empowers the commissioner to get information from certain institutions to monitor, and so on.

[*Translation*]

Mr. Thomas Mulcair: In what section of the act is it?

[*English*]

The Vice-Chair (Mr. Massimo Pacetti): Anybody who's in the front could answer. You all have name tags. You're all identified

[*Translation*]

Mr. Thomas Mulcair: Go ahead, Madam, if you already know the answer.

Ms. Pascale Dugré-Sasseville (Chief, Consumer Issues, Department of Finance): This information is in part 12 of the bill, in the clause that amends the Financial Consumer Agency of Canada Act.

Mr. Thomas Mulcair: Right.

Ms. Pascale Dugré-Sasseville: There are aspects of it in various places, including the clause that amends section 18 of the FCAC Act, which is Clause 1842 of the bill.

The Vice-Chair (Mr. Massimo Pacetti): On what page?

Ms. Pascale Dugré-Sasseville: It is on pages 548 and 549 of the bill.

The Vice-Chair (Mr. Massimo Pacetti): Thank you.

Go ahead, Mr. Mulcair.

Mr. Thomas Mulcair: Could you help me find a reference to a voluntary code in the bill?

[*English*]

Mr. Kevin Thomas (Senior Economist, Payments, Department of Finance): Proposed paragraph 3(2)(c), found in clause 1836 of the bill, allows the FCAC to "monitor any public commitments", but it also allows them to "monitor the implementation of voluntary codes of conduct that have been adopted by payment card network operators".

[*Translation*]

Mr. Thomas Mulcair: So let us look at the bill, under proposed subsection 5(2). Should we read it together?

Mr. Kevin Thomas: Yes.

Mr. Thomas Mulcair: I read:

> 5.(2) The commissioner of the Financial Consumer Agency of Canada, appointed under section 4 of the Financial Consumer Agency of Canada Act, must, from time to time but at least once in each year, make or cause to be made any examination and inquiry that the commissioner considers necessary to determine whether the provisions of this act and the regulations are being complied with and, after the conclusion of each examination and inquiry, must report on it to the minister.

Further down, a list of investigative powers is spelled out. Do the same investigative powers apply in relation to the voluntary code of conduct?

● (1655)

[*English*]

Mr. Kevin Thomas: Yes.

[*Translation*]

Mr. Thomas Mulcair: In subsection 5(6), it says towards the end: "[...] information regarding the business affairs of a payment card network operator [...] is confidential and must be treated accordingly."

Is there any penalty in case of infringement of this section? The security of information obtained by credit card companies is very important to the public. Are there any penalties for non-compliance?

[*English*]

Mr. Kevin Thomas: In the case of a voluntary code, we can't assess fines. If regulations are in place, then yes, we can.

[*Translation*]

Mr. Thomas Mulcair: This is a general answer to a very specific question. Thank you very much, this is useful information, but my question was more specific. Let us forget about the voluntary code of conduct for now. If this act takes effect, under subsection 5(6) this information has to be kept confidential.

What is the sanction, the penalty for non-compliance? Is there a penalty set out for non-compliance? I do not see anything in the bill.

[*English*]

Ms. Leah Anderson: Are you speaking of the information held by the commissioner, or the information—

[*Translation*]

Mr. Thomas Mulcair: Any legislation has to be interpreted in its context, so let us look at the context of subsection 5(6). I am trying to establish the possible implementation framework. This will not necessarily be passed, but if it is, a huge amount of information presently held only by the network operators will be placed under their protection and could easily be captured by others. This says that the information is confidential and must be treated as such.

So I am asking you a very specific question. What is the penalty if somebody does not comply with this requirement? If confidential information is not treated as such, what is the penalty? This information is very important: it can provide enormous economic advantage and its price can be negotiated. This type of information is as valuable as gold. I want to know if penalties are set out somewhere as I cannot find anything.

[*English*]

Ms. Leah Anderson: This provision is targeted at the commissioner. It's to protect the confidentiality of information, because, clearly, the commission receives a lot of sensitive business information. You see this in other legislation, with the Superintendent of Financial Institutions, for example. To the extent they receive confidential information from an institution, it is the obligation of the commissioner, and anybody acting in respect of the commissioner, to treat that information confidentially.

[*Translation*]

Mr. Thomas Mulcair: This I understand. I will try to give you an example. Somebody with a USB key works there and captures information. It is worth a fortune if he decides to sell it. This clause says that it must be treated confidentially, which is fine, it is a nice expression of a good intention, but if it is totally unenforceable because there is no penalty, it is an intention without value.

[*English*]

Ms. Leah Anderson: Sanctions on whom? Are you talking about sanctions on the commissioner? This is targeted at information received by the regulator.

[*Translation*]

Mr. Thomas Mulcair: Let us say, as in my example, that an employee of the commissioner walks around with a USB key and captures this highly valuable information and decides to sell it. The act of capturing it, transmitting it, selling it, all of that is contrary to subsection 5(6). I simply want to know what is the sanction, what is the penalty, if any, if there is a fine, if there is jail time. You cannot create an offence without setting out a penalty, it would be declared null for lack of clarity.

So I just want to know what the basis is. I see no guarantee that this information will be kept confidential, other than an expression of intent. I see no means of enforcement to make this intent real.

● (1700)

[*English*]

Ms. Leah Anderson: As we've said, this is really to protect information received by the commissioner. To the extent that any person contravenes their responsibilities outlined in the law, that's a clear contravention of the law. But I'm not an expert on the judicial system and how it would proceed.

[*Translation*]

Mr. Thomas Mulcair: Where is the offence? That is what I keep asking you. It is an offence against what? What is the penalty? Where is the offence? This clause does not create an offence.

Ms. Pascale Dugré-Sasseville: If I may try to answer your question, in your example you seem to talk about professional misconduct on the part of an employee of the agency.

Mr. Thomas Mulcair: Yes.

Ms. Pascale Dugré-Sasseville: This would be captured not under the Financial Consumer Agency of Canada Act, but under the Public Service Act.

As public servants, we have duties and obligations to fulfil. If there is a breach of duty, the consequences are spelled out in another legislation, not this one.

Mr. Thomas Mulcair: But you are referring here to a disciplinary power, which is *sui generis*. The same misconduct by a professional can entail penalties at different levels.

Let us leave the sphere of the federal public service and let us take for example a nurse who steals morphine destined to a patient. This could be a violation of the Narcotic Control Act or of the Criminal Code. It could lead to a sanction by an institution, for example the hospital where she works. The College of Nurses might also impose a disciplinary measure on that person: this is what you raise by referring to the Public Service Employment Act. For an offence of that nature, it is as if the only penalty were that imposed by the College of Nurses and there was nothing in criminal law. But there would at least be a penalty in this case under another law.

Here, there seems to be no sanction, neither in your answer nor in that of Ms. Anderson.

Ms. Pascale Dugré-Sasseville: Let me take a concrete example in order to illustrate the intent of this provision. We have the Security of Information Act. Somebody might come along and say he knows that a given person provided such and such information and seek to obtain it from the agency. This establishes clearly that this information is to be protected.

Mr. Thomas Mulcair: This protection is entirely fictitious if there is no penalty. You mention the Security of Information Act. It has a full range of penalties and sanctions. There are criminal penalties spelled out in this act. Here, there is really only an expression of intent.

In our view, this is a major deficiency in what is proposed. I do not believe in good intentions. I am here as a member of Parliament to legislate, in other words to enact laws that will have the effect of laws and that will be enforceable. This is not enforceable, it is merely an intent. This is nothing personal against you. I am simply saying that this is what I have before me and as a member of Parliament I find it lacking.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Mulcair.

Mr. Ménard.

Let us try to limit ourselves to five minutes.

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I might be able to reassure my colleague.

My specialty is public security and justice. This is the first time I am involved in that type of thing, but I can still describe the issue for consumers.

For Mr. Mulcair's problem, I believe that once we have in the Criminal Code an offence of information theft, we will at the same time have a penalty that would be a deterrent in such a case. Like the nurse who steals medication such as morphine, this would be a criminal offence. What he describes is clearly a theft of information.

At any rate, I remain intrigued by this. We still hear complaints from the general public about the rates charged by credit card companies, which I find usurious. Is there anything in this bill that tries to solve that problem?

[*English*]

Ms. Leah Anderson: Not in this bill.

[*Translation*]

Mr. Serge Ménard: So why do we have this bill? This is a law on payment card networks. Am I right to believe that payment card networks are what we call credit card companies in ordinary language?

● (1705)

[*English*]

Ms. Leah Anderson: This legislation providing the regulatory authority really targets the business practices between networks and merchants and acquirers. We have other consumer protection legislation that deals with a broader set of issues, but this is quite targeted at that relationship.

[*Translation*]

Mr. Serge Ménard: Let me talk about a mishap I had. It happened to me only once. I always try to pay my credit card bills on time. Unfortunately, it seems that I am doing quite a disservice to the merchants by doing that. I have two credit cards: one that I use daily, and one from my bank that I keep as a reserve.

I have travelled for the government. My first trips were to Australia and London. I paid everything with my credit card, for a total of $20,000. I made a mistake when I paid my bills on the Internet. I paid $20,000 on the one that had an outstanding balance of $150, and I paid $150 on the other one. Three weeks later, I received a letter saying that the amount of $19,500 would be credited to my first card. How useful was that! Of course, my payment for the other balance was late. I immediately used the credit of $19,500 to pay. For the first time in my life I went over the 21-day limit and my payment was late. The interest charge was about $2,500, for a 21-day delay. It seems to me that the provisions on usurious rates in the Criminal Code are much lower than that. Finally, after one and a half hours of discussion, I said that I would end 21 years of good cooperation and then I received proposals from other credit card companies. I am going to switch companies.

I still cannot believe that such high amounts can be charged for such a short delay, because of a simple mistake.

Furthermore, merchants in shopping centres in my riding told me that more and more they are compelled to accept credit card payments whereas before people paid cash.

The Vice-Chair (Mr. Massimo Pacetti): Mr. Ménard, your time is almost up.

Mr. Serge Ménard: They tell me that on top of being required to accept credit card payments, fees are increasing. The credit card company regularly increases its fees and there is nothing they can do about it, they have to accept. Furthermore, they tell me that the fees vary depending on whether or not the buyer is a good customer of the credit card company. Good customers like me, who pay their bill on time, do not make them money, since they do not pay interest. So the merchant is being charged more than for a delinquent customer who pays interest to the credit card company. Will you be able to take action against commercial practices such as these with the regulations that are proposed?

[*English*]

Ms. Leah Anderson: A lot of those instances are within the scope of the code, which allows merchants to choose which debit and credit services they accept, and to be able to opt out of contracts and into contracts. So it's very much targeted at dealing with those very real concerns that merchants face.

The Vice-Chair (Mr. Massimo Pacetti): Okay. Merci.

Ms. Block.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chair.

I'm going to keep this direct and somewhat simple, I hope. We have established here today that the Minister of Finance has introduced a voluntary code of conduct for the credit and debit card industry. Correct?

Ms. Leah Anderson: Yes.

Mrs. Kelly Block: We've also established that there is a deadline of May 17 for that industry to adopt the code?

Ms. Leah Anderson: That's right.

Mrs. Kelly Block: And if they don't, he will then regulate the industry. That's what this piece of legislation would do. Correct?

● (1710)

Ms. Leah Anderson: That's right. It would give the regulation-making authority.

Mrs. Kelly Block: So would the Jobs and Economic Growth Act have to pass before that occurred?

Ms. Leah Anderson: Yes.

Mrs. Kelly Block: Thank you.

The Vice-Chair (Mr. Massimo Pacetti): Thank you.

Mr. McKay.

Hon. John McKay: Not so long ago, CIBC had a huge amount of credit card information turn up in Arkansas or some ridiculous place.

I'd better correct myself. Arkansas is not a ridiculous place. Somebody will write to me from Arkansas.

Mr. Mike Wallace: Nobody from Arkansas is watching.

Hon. John McKay: Do you think not?

The Vice-Chair (Mr. Massimo Pacetti): Come on, guys. Let's go.

Hon. John McKay: The question therefore is would that kind of situation be captured by this kind of legislation?

Ms. Leah Anderson: That's not within the scope of this.

Hon. John McKay: Where is the code?

Ms. Leah Anderson: Where is it?

Hon. John McKay: Yes.

Ms. Leah Anderson: It can be found on the finance website.

Hon. John McKay: I see. I just wonder why it's not included in our briefing materials here. It's not here. It's not in this part. It's not a statute.

Ms. Leah Anderson: It's not part of the bill per se.

Hon. John McKay: I understand that. Will the code—because that's where the real guts of this matter are—deal with this negative option billing problem that the merchants identified? We enhance the credit card and pass the costs along to the merchant, and the merchant essentially has no choice about accepting that.

Ms. Leah Anderson: There is an element that deals with that. It requires explicit consumer consent for them to get a new card that could potentially have higher fees for the merchant.

Hon. John McKay: Okay.

Related to Mr. Ménard's issue, one of the issues that was raised had to do with the fact that you could pay your bill electronically on time, but by the time the clearances went through, between this, that, and the other thing, you were late. Does the code address that issue?

Ms. Leah Anderson: Largely, this is much more focused on the business practices of networks and merchants per se, so it doesn't touch on that issue.

Mr. Serge Ménard: That's 15 days ahead.

Hon. John McKay: Exactly.

You end up paying three or four days ahead.

The Vice-Chair (Mr. Massimo Pacetti): Okay, Mr. McKay. Focus.

Hon. John McKay: Thank you, Mr. Chair. You're very helpful that way. I actually preferred the previous chair.

The Vice-Chair (Mr. Massimo Pacetti): I'm sure you did.

Members, on parts 13, 14, 15, and all the way to 17, are we okay?

Mr. Mike Wallace: Which part are we on now?

The Vice-Chair (Mr. Massimo Pacetti): We're on part 13.

[*Translation*]

Mr. Carrier.

Mr. Robert Carrier: Part 13 strengthens the mandate of the Financial Consumer Agency of Canada for greater protection of consumers. In Quebec, we have a government agency called the Office de la protection du consommateur that has been in existence since 1971 and whose mandate is to educate the public on all aspects of consumer protection and to receive and investigate complaints.

I wonder if in your part 13 the jurisdictional aspect has been properly analyzed. Are we not overstepping on provincial jurisdiction by adding consumer protection to the mandate of the Financial Consumer Agency of Canada? Has this been looked at from the perspective of power sharing? Could this cause disputes between levels of government?

Ms. Pascale Dugré-Sasseville: The Financial Consumer Agency of Canada has been in existence since 2001. It has always been responsible for ensuring compliance with the consumer protection provisions of the federal laws governing financial institutions and for promoting financial education and literacy.

The proposed amendments do not change anything in that regard and do not change the scope of the agency's mandate. Essentially, these amendments allow the agency to collect and pass on information to government to enable it to develop policies and eventually laws and regulations to better protect consumers of financial services.

The proposed amendments allow the agency to collect somewhat more proactively a range of data in order to better inform the whole public policy development process and possibly, if required, facilitate laws and regulations. It does not change anything in the discussion that has been ongoing since 2001 regarding the relationship between FCAC and the Office de la protection du consommateur du Québec.

● (1715)

Mr. Robert Carrier: So you are saying that the bottom line is that the Financial Consumer Agency of Canada deals with federal legislation. This is where the line is drawn between the two levels of government, right?

Ms. Pascale Dugré-Sasseville: Absolutely. FCAC will very specifically monitor compliance with consumer protection provisions of the Bank Act, the Trust and Loan Companies Act, the Insurance Company Act and the Cooperative Credit Associations Act.

Mr. Robert Carrier: Very well, thank you.

Le vice-président (M. Massimo Pacetti): Are there any questions or comments on part 14? On part 15?

[*English*]

We have 15 minutes.

Yes, Mr. McKay? What part are you dealing with?

Hon. John McKay: I'm assuming that you've rushed on in your haste to part 14. Is that where we are now?

The Vice-Chair (Mr. Massimo Pacetti): We've only been here for an hour and three-quarters.

Hon. John McKay: Well, you may have to stay a little longer.

The Vice-Chair (Mr. Massimo Pacetti): It's not haste; it's called moving it along.

Hon. John McKay: So we are on “Proceeds of Crime”?

The Vice-Chair (Mr. Massimo Pacetti): We are.

Hon. John McKay: We are.

Thank you, Chair, for that helpful comment.

The Vice-Chair (Mr. Massimo Pacetti): It's part 14.

Hon. John McKay: With respect to the change in Quebec legal counsel, what's the issue there?

Ms. Rachel Grasham (Chief, Financial Crimes - Domestic, Financial Sector Division, Financial Sector Policy Branch, Department of Finance): It's actually just a housekeeping measure. The Department of Justice had done a review and noticed that there were some inconsistencies with the existing measures in the legislation. This was an opportunity to make those housekeeping changes. It doesn't change anything in the legislation or the intent.

Hon. John McKay: So for the purposes of the reporting and the purposes of disclosure, what's the difference between a member of the Law Society of Upper Canada and a member of the Quebec Bar?

Ms. Rachel Grasham: There is no difference in terms of what the legislation says. As I said, there was a definitional difference between the English and the French. Currently, although the legal profession is included in the act, those provisions are not enforced because of an injunction dating back a number of years.

So there is no effect.... As I said, it's very much a definitional issue.

Hon. John McKay: So legal counsel in Ontario and legal counsel in Quebec are treated exactly the same for the purposes of this legislation?

Ms. Rachel Grasham: Yes, that's correct.

Hon. John McKay: Concerning the changes to the legislation, the notes say:

> Canada has a comprehensive regime to combat money laundering.... Currently, we are not able to take legally enforceable measures to protect the financial system from threats emanating outside of Canada.

Could you give me a description? What does this actually mean? Give me an example of it.

Ms. Rachel Grasham: Right now, for example, when the Financial Action Task Force on Money Laundering, which is the international standards-setting body, draws attention or issues a concern regarding a particular jurisdiction, it will call on its members to take graduated proportionate measures against that jurisdiction.

There is nothing in the act right now that allows Canada to take legally enforceable measures. That is a gap in our system that these amendments would rectify.

● (1720)

Hon. John McKay: For example...?

Ms. Rachel Grasham: For example, the FATF might call on members to conduct enhanced customer identification on transactions between its members and a particular jurisdiction.

Right now the legislation includes all those sorts of customer verification issues as a matter of course, but there is no way for the minister or for the government to say, we want you to enhance them vis-à-vis that particular jurisdiction. It might be, for example, that if somebody who wants to conduct a transaction sends however much money to that jurisdiction, we might want to say "produce your ID again", just to verify, or there might be a provision for having a bank manager verify the transaction to make sure it's clear that it's a legitimate transaction.

Hon. John McKay: To pull out a random example, would this apply to money either coming from or being sent to Pakistan or Afghanistan? Would that attract an enhanced attention from the financial institution?

Ms. Rachel Grasham: Right now there is a risk-based approach, so that if a bank, for example, thinks there is an enhanced risk in dealing with a particular customer, the legislation calls for enhanced measures.

But it's left up to the discretion of the bank. What these amendments would do would allow the Minister of Finance to say, now I'm telling you that there is an enhanced risk with this jurisdiction.

Hon. John McKay: So you're taking away the discretion of the bank manager or the institution.

Ms. Rachel Grasham: Yes. This enables the minister to safeguard the Canadian financial system by identifying where there is a particular enhanced risk.

Hon. John McKay: And can the minister do this based upon any code? Is it entirely at the discretion of the minister, in other words?

Ms. Rachel Grasham: The legislation has two triggers in it. One is when there is a call by an international body, such as the Financial Action Task Force or perhaps the United Nations. It would be a situation in which a particular jurisdiction has been deemed to be high-risk because it lacks effective or sufficient anti-money-laundering or anti-terrorist financing measures: it hasn't criminalized money laundering, it hasn't criminalized terrorist financing, it doesn't have a financial intelligence unit, it doesn't require mandatory suspicious transaction reporting—all of those things that make up the comprehensive set of standards that most jurisdictions have agreed to implement.

That's the first trigger. We would take from the Financial Action Task Force, for example, a sense of the gaps in that regime. For example, the FATF does comprehensive evaluations of jurisdictions, and we would see that.

The other trigger is a domestic trigger: maybe the FATF hasn't come out with a call, but there is a jurisdiction of concern, and Canada, maybe with a number of other like-minded jurisdictions, has decided that given the need to safeguard our financial sector, we should take action independently.

Hon. John McKay: So absent this legislation, the individual institution or the manager can simply ignore the minister.

Ms. Rachel Grasham: That's correct.

Hon. John McKay: Okay, thank you.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. McKay.

Mr. Mulcair.

[*Translation*]

Mr. Thomas Mulcair: Thank you, Mr. Chairman.

I would like to follow up with Mr. McKay's line of questioning. We have several bills before us right now. Government is trying to draw up all sorts of lists. The question has to be asked: is it appropriate? A bill on the status of refugees has been introduced that would establish a list. A bill on terrorism was tabled last week. It is a third draft because the original bill died because of last winter's prorogations. This too allows lists to be drawn up under regulatory powers.

You are saying that this one is a little bit more volatile. Where can this list be consulted? Is it kept secret? Can the minister decide that country x, y or z belongs to this category and tell the banks? Does the public have access to it?

● (1725)

[*English*]

Ms. Rachel Grasham: Yes, in every case the directive will be public. It would appear in the *Canada Gazette*.

[*Translation*]

Mr. Thomas Mulcair: We are talking about a statutory instrument.

[*English*]

Ms. Rachel Grasham: There are two measures in here, two authorities. There's a directive-making authority, which is not a statutory instrument for the purpose of the Statutory Instruments Act, but the legislative amendments here are saying that it will nonetheless be gazetted exactly for that purpose. The second instrument is regulation, which would go through the full regulatory process, including pre-publication and final publication.

[*Translation*]

Mr. Thomas Mulcair: I do not want to take you outside your area of expertise. There might be other opportunities in the next few days to get that information, but I would still like to ask you this question.

In some ridings, including mine, we see more and more businesses with a storefront that offer to send money to another country for a fixed fee plus a commission. For example, people working here will use this service if they do not have access to a bank. Generally speaking, it seems to work. However, if things go wrong, they really go wrong. Recently, there have been several cases of large scale fraud where the money was never transferred. The RCMP has been called in in some cases and tried to shut down these businesses. Sometimes there were suspicious transfers.

Here we are talking about our banking institutions. There is nothing more structured and formal in our society than a bank. But how will the proposed regulatory framework be able to capture these storefront businesses?

[*English*]

Ms. Rachel Grasham: Money services businesses are really covered under the legislation, and they're required to register with FINTRAC, the Financial Transactions and Reports Analysis Centre of Canada. They are subject to the full legislation, so all the customer identification requirements. They're required to report certain transactions to FINTRAC, to keep records, to have an internal compliance function, and they are subject to compliance and audit examinations by FINTRAC. So that is the way the legislation treats that.

[*Translation*]

Mr. Thomas Mulcair: It is for money laundering.

[*English*]

Ms. Rachel Grasham: It is for both money laundering and terrorist financing.

[*Translation*]

Mr. Thomas Mulcair: It is for money laundering and the funding of terrorism.

Who is responsible for the other aspect, fraud?

[*English*]

Ms. Rachel Grasham: That would be a law enforcement issue. If there isn't a question of money laundering or terrorist financing per se, this act doesn't apply.

[*Translation*]

Mr. Thomas Mulcair: This act cannot do anything about it, nor does any other — and many have been passed — nor can any government agency responsible for monitoring the probity of financial institutions. These businesses are regulated in some way. They can claim to follow the rules, but they are also able to accumulate large sums of money. Recently, we saw a classical case where people sending money overseas found out after some time that the crooks had kept it all and disappeared, in contrast to a bank which cannot disappear, at least we hope. There is a gap in the regulations.

[*English*]

Ms. Rachel Grasham: I can't really answer beyond the scope of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

[*Translation*]

Mr. Thomas Mulcair: I will see if other witnesses are better able to answer.

Thank you for your answers.

The Vice-Chair (Mr. Massimo Pacetti): Thank you, Mr. Mulcair.

We are done with part 14. I suggest that we not start on part 15. There will surely be many questions on parts 15 and 16. What do you say?

I want to thank the witnesses for being here.

[*English*]

So I guess we're back on Tuesday at our regular scheduled time.

Merci. Thank you.

The meeting is adjourned.

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