HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Finance

FINA • NUMBER 035 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Wednesday, May 14, 2014

Chair

Mr. James Rajotte

Standing Committee on Finance

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● (1530)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call this meeting to order.

This is meeting number 35 of the Standing Committee on Finance. Our orders of the day, pursuant to the order of reference of Tuesday, April 8, 2014, are the study of Bill C-31, An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures.

Colleagues, we have two panels before us this afternoon.

In the first panel, we're very pleased to welcome Mr. John Richardson, and, from the Canadian Bankers Association, the acting vice-president, Mr. Darren Hannah. From the Canadian Council of Chief Executives, we have Mr. Brian Kingston, and from the Office of the Privacy Commissioner of Canada, we have Privacy Commissioner Madam Chantal Bernier.

Bienvenue. Each of you will have five minutes maximum for your opening statement.

We'll begin with Mr. Richardson, please.

Mr. John Richardson (As an Individual): Thanks very much for the chance to appear today.

I did take the time to watch yesterday's session, which was actually enormously helpful to me, as I'm sure it was to you. I have a couple of thoughts, though, that are my own but directly link to that. The signing of the FATCA IGA can be seen as either good news or bad news.

First, interestingly, is the good news. It's the point that Professor Cockfield made yesterday. In fact, what this does ensure is that Canada is absolutely 100% in compliance, no ifs, ands, or buts about it. That's what it means to have signed that agreement.

Interestingly, the agreement specifically states that nothing happens until Canada makes it clear that it has done all of the legwork needed to actually implement the agreement, which I would assume to be all of the enabling legislation that we find in Bill C-31. Given that's the case, as Professor Cockfield pointed out, there's absolutely no reason to rush this whatsoever, absolutely none. This should not be in the dark recesses of an omnibus bill. It should in fact be brought to see the light of day in a separate bill.

The second aspect of this that's very interesting in the IGA itself—and this question was asked yesterday—is who this applies to. It applies to U.S. persons and is defined in the agreement as “U.S. citizens or residents”. Now, what is extremely significant is that U.S. citizens are defined solely by the United States today, tomorrow, and forever. That means that someone who is a U.S. citizen today might not be a U.S. citizen tomorrow—and I'll have more on this as we continue the discussion—but given that the U.S. has the right to define who a citizen is, given that I presume Canada would cede that right to them, I think it's extremely important, absolutely essential, under any FATCA agreement that the definition of a U.S. citizen could never, never, never include any Canadian citizen who is a resident in Canada.

Third, we've got the whole problem of what FATCA actually means. Having watched a few of these committees, I see a lot of technical discussion of FATCA and a lot of discussion of regulations. In other words, there's a lot of talk about how to implement this agreement, but precious little on what it actually means in terms of the lives of Canadians, and precious little in terms of what it means in terms of the country itself.

The simple fact of the matter is that FATCA, once implemented, will allow the U.S. to put a permanent capital tax on Canada every day of every year for as long as this agreement is in effect, simply by virtue of using U.S. citizens in Canada to tax and siphon revenue out of the country. It is a myth, an absolute myth, and it is completely wrong that under U.S. tax laws, U.S. citizens will not owe tax to the IRS. This is for two reasons. The first is that the U.S. tax code is hostile to anything foreign, and that would include anything in Canada in general, but secondly, anything that involves tax deferral, and it is plainly obvious that all of the pillars of Canadian retirement planning do in fact involve tax deferral.

So it is a myth that U.S. citizens would not owe tax. It is a myth. Interestingly, as I read in something yesterday, the opposite of truth is not the lie: the opposite is in fact the myth. This agreement will have severe consequences for Canada and Canadians.

● (1535)

The Chair: Thank you very much for your presentation.

We'll now go to Mr. Hannah, please.

Mr. Darren Hannah (Acting Vice-President, Policy and Operations, Canadian Bankers Association): Good afternoon.

My name is Darren Hannah. I'm the acting vice-president of policy and operations with the Canadian Bankers Association.

I'm very pleased to be here today at the committee's invitation.

The CBA strongly supports the government's decision to enter into the intergovernmental tax information sharing arrangement with the U.S., because it relieves Canadians of the burden they would otherwise face due to the U.S. Foreign Account Tax Compliance Act.

As you know, FATCA, as legislation, was passed in the United States in 2010 and is intended to detect U.S. persons who are evading tax using financial accounts held outside the U.S. Under FATCA, non-U.S. financial institutions would be required to report relevant information to the U.S. tax authorities about financial accounts held by identified U.S. persons.

The CBA has been very clear on FATCA from the beginning. We understand that the U.S. government is attempting to address tax evasion; however, we have opposed how they're going about it with FATCA. Canada is not a tax haven, and Americans do not move here to evade taxation. We actively opposed FATCA publicly and appeared before and made submissions to U.S. government authorities.

Unfortunately, despite worldwide efforts by the CBA and others, U.S. officials have no intention of repealing FATCA, and simply ignoring FATCA is not an option. Non-compliance would mean that both financial institutions and every customer of that financial institution, both in Canada and around the world, would face a 30% withholding tax on U.S. source income and the sale of any U.S.-source investments, and potentially a withholding tax on Canadian source income due to so-called “foreign pass-through payment” provisions.

This means that any bank customer or retiree who has mutual funds, stocks, or bonds would face potentially billions of dollars of lost income to withholding tax even if they had no other ties to the U.S.

For financial institutions, non-compliance would effectively mean that they would no longer be able to do business in the U.S. capital markets or with any institutions that do business in U.S. capital markets, which is effectively every major financial institution in the world.

To ensure that Canadians did not face the substantial negative consequences that would have come with FATCA, the Canadian government announced on February 5, 2014, that it had entered into an intergovernmental agreement with the U.S. government under the existing Canada-U.S. tax convention. The requirements of the IGA are reflected in the proposed changes to the Income Tax Act in Canada under Bill C-31, and financial institutions in Canada will be required to comply with the changes under Canadian law.

We have agreed with the federal government that entering into an intergovernmental agreement is the best approach under the circumstances. We recognize and support the efforts that the Canadian government has made.

Under the intergovernmental agreement, financial institutions in Canada will report relevant information on accounts of U.S. persons to the Canada Revenue Agency rather than directly to the U.S. Internal Revenue Service. The CRA will then exchange the information with the IRS through the provisions of the existing Canada-U.S. tax convention. The 30% FATCA withholding tax will no longer apply to retail clients of Canadian financial institutions.

So what does this all mean for bank customers in Canada? Well, for the vast majority of Canadian bank customers who are not U.S. persons, the IGA has no impact at all. Under the intergovernmental agreement, banks would be required to review their customer information. If there is no information indicating that an individual may be a U.S. person, then they won't have to do anything. If a customer has an existing account and there is an indication that they may be a U.S. person, or if they're opening a new account, their financial institution may ask them to provide additional information or documentation to demonstrate that they're not a U.S. person.

Under the intergovernmental agreement and Canadian banking law, proof of citizenship is not required to open a banking account. The vast majority of Canadians can open an account with a financial institution in the way they always have; however, if there is some indication in a new or existing account that they might be a U.S. person, then the financial institution may ask them to self-certify that they are or are not a U.S. person for tax purposes.

In conclusion, as I've said, FATCA is here to stay, and ignoring it is not an option. We fully support the government's work in putting in place an intergovernmental agreement.

I look forward to your questions. Thank you.

The Chair: Thank you very much, Mr. Hannah.

We'll hear from Mr. Kingston now, please.

Mr. Brian Kingston (Senior Associate, Canadian Council of Chief Executives): Mr. Chairman and committee members, thank you for the invitation to appear before you concerning part 5 of Bill C-31.

The Canadian Council of Chief Executives represents 150 chief executives and leading entrepreneurs in all sectors and regions of the country. Our member companies collectively administer $4.5 trillion in assets, employ more than 1.4 million people, and are responsible for the majority of Canada's private sector exports, investment, and training.

The CCCE supports the government's decision to enter into an intergovernmental tax information sharing arrangement with the U. S. The agreement will ensure that Canadians are not exposed to punitive U.S. withholding taxes on income from their investments under the Foreign Account Tax Compliance Act, or FATCA. Fortunately for the overwhelming majority of Canadian account holders, the agreement will have no impact on how they deal with their financial institutions.

The CCCE is of the view that Canada should have been exempt from the FATCA. Canada is not a tax haven, and has a good reputation for sharing information that assists other governments in collecting their taxes. Unfortunately, an exemption from FATCA was not considered.

Without this exemption, obligations to comply with FATCA would have been unilaterally and automatically imposed on Canadian financial institutions and their clients. This would have required Canadian financial institutions to sign agreements with the Internal Revenue Service under which they would have to identify their U.S. account holders and report directly to the IRS. If a Canadian financial institution did not comply with reporting requirements, the financial institution and its clients would be exposed to punitive U.S. withholding taxes of 30% on income from their investments. This would also mean that non-compliant financial institutions could no longer do business in U.S. capital markets or with any institution that does business in U.S. capital markets.

Given the size and importance of the Canada-U.S. relationship, non-compliance was simply not an option. Canada cannot risk our partnership with the U.S., which has delivered enormous benefits to both countries over many decades.

Canada is not alone in negotiating an intergovernmental agreement with the U.S. The U.S. has engaged in negotiations with over 80 countries to reach intergovernmental agreements, and 32 other countries have signed such agreements.

The agreement is consistent with the government's support for recent G-8 and G-20 commitments intended to fight tax evasion globally. G-20 leaders have committed to the automatic exchange of tax information as the new global standard, and endorsed a proposal by the OECD to develop a global model for the automatic exchange of tax information. The OECD has also signaled an intention to begin exchanging information automatically on tax matters among G-20 members by the end of 2015.

Going forward, it is important that there is coordination among G-20 members. This exercise will not prove effective if not properly coordinated, with countries imposing unilateral measures.

This is part of a global trend toward tax transparency. In line with this trend, the CCCE recently released a report that shows the tax contributions made by our members to all levels of government. There is ever-increasing public interest in how much tax is paid by companies. This report shows that Canadian companies are significant taxpayers, with an average total tax rate of 33.4% of profits.

In conclusion, the CCCE strongly supports the intergovernmental agreement negotiated by the government and looks forward to its full implementation.

I'd be happy to answer any questions. Thank you.

● (1540)

The Chair: Thank you for your presentation.

[*Translation*]

I will now give the floor to Ms. Bernier.

Ms. Chantal Bernier (Interim Privacy Commissioner, Office of the Privacy Commissioner of Canada): Thank you, Mr. Chair.

Thank you, members of the committee, for inviting me to discuss the privacy implications of Bill C-31.

Like my colleagues, I will focus on the United States Foreign Account Tax Compliance Act, or FATCA, and I will conclude with some brief comments on two other parts of the bill that have privacy implications.

FATCA is a U.S. law which requires financial institutions in countries outside of the United States, including Canada, to report certain information on accounts of a U.S. person to the U.S. Internal Revenue Service, or IRS. Bill C-31 includes an agreement to implement this through the Canada Revenue Agency.

[*English*]

While there is a long-established practice of information sharing between nations for the purposes of taxation enforcement, all information sharing activities must be undertaken in a way that respects privacy obligations. These obligations include limiting the amount of personal information collected to only that which is necessary for the stated purposes and safeguarding it appropriately.

The risk to privacy here, then, is mainly related to over-collection, over-reporting, and information security. To avoid over-collection and over-reporting, education and outreach to institutions affected by this new reporting requirement will be crucial. To address information security considerations, appropriate technological measures, as well as controls, will be called for.

Beyond this, Bill C-31 introduces other legislative amendments that affect privacy.

First, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act—the PCMLTFA—will be modified in a way that broadens the amount of personal information collected and increases information sharing capabilities and requirements by the Financial Transactions and Reports Analysis Centre of Canada, FINTRAC.

I'm encouraged, however, by the provision of Bill C-31 that requires FINTRAC to destroy the personal information it receives that is not related to the suspicion of criminal or terrorist activity. This corresponds to our recommendations in our audits of FINTRAC.

● (1545)

[*Translation*]

Second, changes to the Income Tax Act will allow for broader disclosure of taxpayer information to law enforcement authorities. This means that if CRA officials have reasonable grounds to believe that taxpayer information provides evidence of certain crimes, they may disclose this information to law enforcement. It appears that this information would be shared between the CRA and law enforcement authorities without judicial oversight. We would urge the committee in its examination of this provision to seek demonstration that this provision is necessary, and if it is necessary that appropriate oversight mechanisms will apply.

In closing, thank you, Mr. Chair and members for the opportunity to discuss this issue. I welcome your questions.

The Chair: Thank you very much for your presentation.

[*English*]

We'll begin members' questions with Mr. Rankin, please, for five minutes.

Mr. Murray Rankin (Victoria, NDP): Thank you.

I only have five minutes, as the chair says, so I welcome all the panellists here, and I'll get right into it.

Mr. Richardson, in your remarks, you say there's no reason to rush this through, yet you've heard from Mr. Hannah that there would be problems with the 30% withholding tax and the access by banks to the foreign capital markets in the United States. What's your response to that?

Mr. John Richardson: He's completely wrong. The obligation is satisfied upon entering into the IGA. That has been done. The agreement states very specifically that it doesn't take effect until Canada gives notification.

Mr. Murray Rankin: Is it your view that this has had sufficient study, that FATCA, in all of its complexity, has had sufficient study? If not, do you agree with our position that it ought to be taken out of Bill C-31 and given further study?

Mr. John Richardson: Well, I think it has had absolutely no study. It's quite apparent that very few people even understand what it is, and clearly it needs to be taken out of the omnibus bill, not hidden, and given the light of day, precisely so people can understand it and then have a reasonable debate about it.

Mr. Murray Rankin: All right.

My next question is for Mr. Hannah of the Canadian Bankers Association.

Just now you said that when a person comes to a bank and opens an account there won't be many changes. You say that if there is some indication for a new or existing account that it might be for a U.S. person, then the financial institution may ask them to self-certify if they are or are not a U.S. person for tax purposes. What mechanisms will the bank have to apply to determine whether that person is indeed a U.S. person?

Mr. Darren Hannah: The intergovernmental agreement sets out what are considered to be indicators of a U.S. personage. I don't have the exact section number, but it's the usual things you would expect: U.S. address, U.S. phone number, U.S. place of birth, and standing instructions to forward funds to a U.S. account—

Mr. Murray Rankin: If those are there, then, and it's a situation like we've heard about, where people have lived in Canada for 30 years and have a child who was born here, but for U.S. law they are U.S. persons, or if they marry somebody who's a Canadian, that person is a U.S. person.... Do you think that if a person says "I'm not a U.S. person" that should be the end of it for the banks?

Mr. Darren Hannah: If there's nothing to suggest that they are a U.S. person, then there's nothing more to do.

Mr. Murray Rankin: Okay. That's excellent.

Now I have a question for Madam Bernier, from the Office of the Privacy Commissioner of Canada. We had testimony from Mr. Ernewein, of the Department of Finance, who said, "Our understanding is that in relation to Canadian law, the Privacy Act and its various provisions are subject to other laws of Parliament." We're led to believe that this agreement could supersede the Privacy Act. Is that your opinion as well?

● (1550)

Ms. Chantal Bernier: The Privacy Act has been declared to be quasi-constitutional by the courts. He was perhaps referring to section 8 of the Privacy Act; that section does mention "subject" to other laws. However, in general, the Privacy Act has quasi-constitutional status.

Mr. Murray Rankin: Therefore, what that means, in lay terms, is that if the intergovernmental agreement or the provisions of Bill C-31 are in conflict with the Privacy Act, the Privacy Act would prevail.

Ms. Chantal Bernier: That would be my view, certainly.

Mr. Murray Rankin: Okay.

I'd like to ask you about something else you said just now. I'm very pleased to see that you've also drawn this committee's attention to the provisions of the Income Tax Act that allow CRA officials to tell the police about things that concern them, without any warrant. You've said that this information would be shared between the CRA and law enforcement authorities without "judicial oversight". I take it that you think that would be an aberration. What word would you use to describe that situation?

Ms. Chantal Bernier: I would describe it as an exception, and that exception needs to be justified as necessary and proportionate, so I urge you to seek the demonstration that indeed it would be necessary to have this exception.

Mr. Murray Rankin: Necessary? Do you mean in terms of compliance with the Charter of Rights and Freedoms?

Ms. Chantal Bernier: Yes, absolutely. Obviously you have section 1 of the Charter of Rights and Freedoms, which speaks of necessity "prescribed by law" and "justified in a free and democratic society". That is the test to meet, and I think evidence should be gathered from this committee as to why this provision is felt to be necessary.

Mr. Murray Rankin: So it's of concern to the Privacy Commissioner?

Ms. Chantal Bernier: It is of concern to us, yes.

Mr. Murray Rankin: Thank you very much.

The Chair: Thank you.

Thank you, Mr. Rankin.

We'll go to Mr. Saxton, please.

Mr. Andrew Saxton (North Vancouver, CPC): Thank you, Chair.

Thanks to our witnesses for being here today.

My first question is for Brian Kingston.

Absent an intergovernmental agreement, I understand that obligations for Canadian financial institutions to comply with FATCA would be unilaterally and automatically imposed on them by the U.S. as of July 1, 2014.

Can you please explain what the consequences would be for Canadians and Canadian financial institutions had the IGA not been signed and also any special provisions that Canada was able to obtain in FATCA that other countries do not have?

Mr. Brian Kingston: Thank you for the question.

If an IGA had not been negotiated, the consequences for Canadian financial institutions would have been significant. Financial institutions would have to negotiate individually with the IRS to come into compliance with FATCA. If they did not do so, they could be subject to a 30% withholding tax. The IGA gets around this.

It also is beneficial, given privacy concerns; instead of financial institutions reporting directly to the IRS, they now report to CRA, which then reports to the IRS.

Mr. Andrew Saxton: Without an IGA, do you have an idea of what FATCA would have cost Canadian financial institutions and Canadians holding dual citizenship?

Mr. Brian Kingston: I don't have a number for that. There have been various numbers put forward, but we don't actually have a number.

All I do know is that the cost of not doing the intergovernmental agreement would have been significantly higher, because every financial institution would have had to negotiate their own agreement with the IRS. It's safe to say that the cost would have been significantly higher.

Mr. Andrew Saxton: Plus, there would have been more accounts that would have been subject to it; none of the registered accounts would have been exempted. As well, you would have had more credit unions subject to it because the smaller credit unions—under $175 million in assets—would not have been exempted. Is that correct?

Mr. Brian Kingston: Yes, exactly. Under the agreement that was negotiated, there are a number of accounts that Canada has negotiated to be exempted. That's also another benefit of the IGA.

Mr. Andrew Saxton: Thank you.

My next question is for Darren Hannah.

Mr. Hannah, the IGA negotiated by the late finance minister contains several notable concessions for Canada that were not necessarily granted by the U.S. to other countries. For financial institutions and their clients, the IGA will help by reducing the compliance burden, exempting certain types of accounts, and exempting certain types of financial institutions, such as those credit unions under $175 million in assets. It also satisfies Canadian privacy laws, since it will be subject to a previous agreement that has been in place for a number of years.

Would any of these special provisions contained in the IGA be extended to Canada if the IGA had not been passed prior to July 1?

Mr. Darren Hannah: Absolutely not. If you don't pass the IGA, you're then subject to FATCA itself. FATCA itself is enormously complex and enormously expensive, and the implications of non-compliance would be astronomical.

Let me throw a couple of numbers at you. Canadian foreign direct investment in the U.S. is right now, total stock, $318 billion, and U.S. source income flowing back to Canada from the U.S. is $42 billion every year. Imagine subjecting that to a 30% withholding tax.

Imagine subjecting the holdings to a 30% withholding tax on the gross proceeds of sales. I could sell something, lose money, and still get taxed on the proceeds of sale.

● (1555)

Mr. Andrew Saxton: So in your opinion, the IGA is a significant improvement over FATCA.

Mr. Darren Hannah: Absolutely.

Mr. Andrew Saxton: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Saxton.

Mr. Brison, please, for five minutes.

Hon. Scott Brison (Kings—Hants, Lib.): Mr. Hannah, you've just described FATCA as enormously complex. This IGA is effectively a treaty between two governments. Should something so enormously complex be part of an omnibus bill with a couple of hours of study allocated to it?

Mr. Darren Hannah: Well, it's interesting. I've heard.... People have raised questions about the timing in all of this, and the process. From my perspective, actually, I view this as a relatively transparent and long process. The U.S. legislation came into place in 2010. The initial set of U.S. guidance came into place in 2010. The subsequent U.S. guidance came into place in 2011. The original model agreement, the original framework upon which the intergovernmental agreement was created—

Hon. Scott Brison: Just to be clear, the ratification of this, in our Parliament—

Mr. Darren Hannah: Right.

Hon. Scott Brison: —is allocated a few hours of committee as part of an omnibus bill, for something you describe as enormously complex.

Mr. Kingston, you've said that the “overwhelming majority” of Canadians aren't affected by this.

Mr. Hannah, you've said that the “vast majority” of Canadians aren't affected by this.

How many Canadians do you estimate will be affected by this? Are you even aware of the number?

Mr. Darren Hannah: No, I'm not aware of the number. It's not going to be very many.

Hon. Scott Brison: Really? A million?

Mr. Darren Hannah: Well, be careful. First off, I don't know if there are a million U.S. persons in Canada, but bear in mind, what is being reported—

Hon. Scott Brison: Okay, but I would suggest.... Look, this IGA gets Canadian banks off the hook from reporting. It does not get Canadian citizens who happen to be considered American persons off the hook. That's very important. You used the term "vast majority".

Mr. Kingston, you used the term "overwhelming majority".

What about the million Canadians who are affected? That's the concern. None of us disagree with the idea of negotiating an IGA, but the reality is that you can negotiate a better IGA, given our relationship with the Americans.

Mr. Chrétien and Mr. Clinton had a remarkable relationship that enabled them to do deals that were not available to other countries. Mr. Reagan and Mr. Mulroney had an exceptional relationship. In fact, Mr. Reagan wasn't exactly a big environmentalist, but he agreed to an acid rain treaty with Mulroney at that time. Relationships do matter.

We don't quarrel with the idea of having an IGA, but we think there could have been a better IGA had we had stronger relationships in Washington.

Madam Bernier, in an earlier response to Mr. Rankin, you seemed to indicate there may be a concern regarding a potential charter challenge around the privacy issue. I want you to expand on that. Is there a potential charter challenge inherent in this?

Ms. Chantal Bernier: I would urge you, in your studying of this bill, to ask for a demonstration of the necessity of the provision whereby an official out of the Canada Revenue Agency could provide to law enforcement authorities without a warrant information about a taxpayer on the basis of reasons to believe that perhaps there was criminal activity. That is exceptional and therefore should be buttressed by an empirical demonstration of necessity, and I would encourage you to seek it.

The Chair: You have one minute.

Hon. Scott Brison: Okay.

There's an issue.... I'm just taking this from your testimony, Mr. Hannah.

For financial institutions, non-compliant would effectively mean that they would no longer be able to do business in "the U.S. capital markets or with any institutions that do business...". Those were your words. Are our banks not significantly important to U.S. capital markets? Do they not, particularly post-financial crisis, carry significant weight within the U.S. capital markets and the oversight of the U.S. capital markets? Do we not have significant influence as a result of that?

● (1600)

The Chair: A brief response, please.

Mr. Darren Hannah: Are we significant players? Yes. Are we significant enough players to get the U.S. to change its mind? No.

Hon. Scott Brison: If they did what you were saying they would do, it would effectively compromise and shut down large parts of their capital markets. Do you really think they would do that?

Mr. Darren Hannah: Well, let me answer it this way. There are 33 OECD countries and 30 of them have taken a look at the same math we've looked at and come to the conclusion that it is the best course of action to engage to get an intergovernmental agreement—

Hon. Scott Brison: One of them is the global use of banking in Canada—

The Chair: Okay, we'll have to follow that on another round.

We'll go now to Mr. Keddy, please.

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): Thank you, Mr. Chairman.

Welcome to our witnesses.

There have been a number of interesting points and facts raised here today, Mr. Chairman, but I have a couple of specific questions.

Mr. Hannah, you mentioned—and I think Mr. Kingston mentioned it as well—that Canada is not a tax haven, and that Americans, quite frankly, don't move here to avoid their taxes. I'd say that most people around this table agree with that statement.

There seems to be some discussion, though, about who actually is an American citizen, and there is some confusion on the opposition benches on who an American citizen is. I've never heard the term "American person" before. You're either an American citizen or you're not an American citizen, or you're a foreign entity working in the United States with a green card.

But quite frankly, the idea that somehow this is new is incorrect. American citizens have always had a tax liability due to their citizenship and, quite frankly, we can't change that. All we can do is put some parameters and some rules around it, and that is what FATCA has done.

Mr. Brison started to ask the question, and really didn't follow up on it, about whether Canada is better positioned under this agreement or not, so I'm going to ask you that question.

Mr. Darren Hannah: Absolutely. From our perspective, the IGA allows us to void the application of FATCA. It gives us greater control. It allows us to provide information to the Canada Revenue Agency and then exchange it on a state-to-state basis, as opposed to trying to enforce a relationship to send information from a financial institution in Canada to a tax regulator in the U.S. It frees us from the restrictions in the FATCA legislation that would have required account closure in some instances. It carves out a large number of registered products. It puts us in a much better position and gives us much more control than we otherwise would have had.

Mr. Gerald Keddy: However, I want to go back to my original point. What it does not change is the fact that American citizens have always had a tax liability to the IRS.

Mr. Darren Hannah: That's absolutely correct. It's about the exchange of tax information. It has nothing to do with the underlying tax liability. That comes from the Internal Revenue Service and the U.S. tax code and has been in place for the better part of 100 years, as far as I know.

Mr. Gerald Keddy: I guess the third part of that question is on Canadian citizenship. Canadian citizens have no obligation unless they own property or assets in the U.S. to report any information to the IRS, but they do have an obligation if they are dual citizens.

Mr. Darren Hannah: Yes, if you're a U.S. person, a U.S. citizen, who happens to be a Canadian citizen as well, you are then captured by the U.S. tax law. That is correct.

Mr. Gerald Keddy: Thank you.

Mr. Richardson, you made a statement that I need to follow up on a bit. It was about the fact that U.S. citizenship is decided by the U.S. and it could change tomorrow. Do you want to go through the process of someone actually abandoning their U.S. citizenship and how much time it takes?

Mr. John Richardson: Oh my God, to abandon U.S. citizenship voluntarily is called a "relinquishment" under U.S. law, specifically, section 349 of the Immigration and Nationality Act. The practical effect of it, since 2008, has been that a large number of people who are deemed U.S. citizens will actually be subject to an exit tax, whereby all of their world assets are, first, identified, and then second, there is a deemed sale of those assets and they have to pay a capital gain on money they've never received. That's only for the property. If it's a pension plan or something, the full thing is valued and deemed paid out.

That's not for everybody, but applies to people who are called "covered expatriates", those who have a net worth of over $2 million, which realistically is an awful lot of people in major urban areas who are in their fifties and sixties. Or, significantly, these are people who cannot demonstrate five years of U.S. tax compliance. Since a lot of these people didn't even know they were U.S. citizens, they're obviously not tax compliant, so they're hit with the absolutely horrendous cost of that five years of tax compliance, which may be more than taxes and penalties.

It is an unbelievably expensive undertaking. You do not leave U. S. citizenship for free—

● (1605)

Mr. Gerald Keddy: My point being—

The Chair: You're right out of time, unfortunately.

A voice: I'll make your point, though.

Voices: Oh, oh!

The Chair: All right. Thank you.

Thank you, Mr. Keddy.

[*Translation*]

Mr. Caron, you have the floor. Five minutes.

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): Thank you very much, Mr. Chair.

I'd like to begin with Mr. Hannah.

I want to be sure I understood what you said in response to a question from my colleague, Mr. Rankin. If someone the U.S. believes to be an American says that they are not, that is the end of it. Is that what you said? It's a process of self-identification. If the person says they're not American, the financial institutions do not move forward with the process. Is that correct?

[*English*]

Mr. Darren Hannah: Well, no, what I said was that if you have an account and there is no indication in your account file, based on the information already present, that you are a U.S. person, then there is no further obligation on the part of the institution to go through and look for additional indicators.

[*Translation*]

Mr. Guy Caron: Take someone who has lived in Canada for 40 years, for example, someone who has always paid taxes in Canada, who has a residence in Canada and who has no other indicators that they are American. If American public servants feel that there are certain aspects of the file that suggest that the individual is still American, they'll ask you to transfer the file to them. I don't see how a bank, under the agreement, could have the final say over whether the file should be transferred.

[*English*]

Mr. Darren Hannah: I'm not fully following the question, but the way it works is that the obligation of the institution, in the case of pre-existing accounts, is to look at the accounts and the information the institution has on file. If there is nothing to suggest that the account holder is a U.S. person, then there is nothing for the financial institution, at that point in time, to report to CRA, because there's no indicator to suggest that the person could be anything other than a Canadian.

Mr. Guy Caron: Mr. Richardson, do you have a comment on this?

Mr. John Richardson: The whole focus of this process has been the protection of the banks. Mr. Brison asked a question. He first asked if any of these people even know how many people might have been affected by this, and there was no satisfactory answer given. He's suggesting a million. That's a number that's consistent with a number of things that I've heard.

This is a life-altering, monumental event for people who.... Let's start off with people who are not U.S. citizens in any meaningful sense but just happen to have been born there, if you can imagine. You heard Lynne Swanson talk about this yesterday. What is happening is that there is an environment in which people wonder.... I get emails all the time asking, "Am I a U.S. citizen?" The most frightening question for these people today is, are you or have you ever been a U.S. citizen?

One of the reasons to delay this is to at least include in the discussion something other than the financial institutions and understand the incredible impact this whole thing is having on a large number of...I think it's ridiculous to call these people U.S. citizens. These are Canadian citizens—residents.

Mr. Guy Caron: Can I give you a specific example? The riding I represent actually borders New Brunswick and Maine. We know that prior to September 11, and before that—30 or 40 years ago—people were just moving from place to place, from Maine, to New Brunswick, to that part of Quebec. Now you have people in Quebec, for example, or New Brunswick, who were born in the U.S. but who switched when the change.... Borders were very porous at the time, and there was no real process. Many people in Quebec and in New Brunswick could actually be seen by the United States as U.S. persons, even though they haven't lived there for the last 45 or 50 years.

● (1610)

Mr. John Richardson: Absolutely they are seen that way, because the U.S. is starting with a definition of citizenship status meaning having been born in the country. But being born in the country has absolutely no meaningful relationship to citizenship as it is understood. Some of these people—I'm not kidding—don't even think they're U.S. citizens.

Mr. Guy Caron: Mr. Hannah, I'm worried, because if nothing in your records says that these people in Quebec and New Brunswick are U.S. people, the U.S. will actually have that information, and you'll have to give it to them. If you're worried about the money that could be withheld, the 30% that we're talking about, think of the threat: they could actually be telling you to provide this information.

The Chair: Okay.

Just a brief response, please.

Mr. Darren Hannah: Okay. There are two points.

One, under the intergovernmental agreement, we don't provide information to the IRS. We provide it to the Canada Revenue Agency. That's the first point. On the second point, bear in mind that, as I said earlier, this isn't about taxation. The tax liability was already there. The tax liability comes from the U.S. Internal Revenue code. This information is only about the sharing of tax information.

The Chair: Merci.

We'll go to Mr. Allen, please.

Mr. Mike Allen (Tobique—Mactaquac, CPC): Thank you very much, Mr. Chair.

I want to follow up a bit on Mr. Caron's line of questioning to Mr. Hannah, please.

I represent a New Brunswick riding that's on the border with Maine. I do know a number of people, some of them very close to me, whose families, because of...I won't call it an accident, but they actually had to go across because that's where the local hospital was. The child was born, they were there three days, and they came back to Canada. They had never been in the U.S. from the standpoint of having a U.S. tax identification number. They never had a U.S. passport, never anything.... There's quite a number of them who are in that situation.

Under that basis, and given the comments you made before, Mr. Hannah, what is the likelihood of any of them being picked up in the sweep by the bank?

Mr. Darren Hannah: Well, unless for some reason they provided U.S. identification at the time they opened their account—and I don't know why they would have done that, or what that would have been—from the financial institution's point of view at that point in time, there's nothing there to suggest that they are U.S. persons.

All of the information they probably provided on the account to open the account is likely Canadian in source. That's usually things like a driver's licence and that sort of thing. It would be highly unlikely, I suspect, that there would be anything there to suggest that they're U.S. persons, and therefore that would be the end of that.

Mr. Mike Allen: Yes, and most of them, like you say, would have Canadian driver's licences and would have always had Canadian addresses, so when they opened the account, I can't imagine—you're right—that they would have ever given that.... That leads me to my next question and the due diligence process.

When you talk about that, my understanding is that the IGA gives the financial institution an option to clear the U.S. indicator, but the implementing legislation, proposed subsection 265(5) of the Income Tax Act, makes it mandatory for the contact to allow them the attempt to clear the indicator. Is that your understanding as well?

Mr. Darren Hannah: Yes. From a financial institution's point of view, nobody wants to.... Everybody wants to make sure that you give.... If there's an indicator and it's unclear, certainly it's in everyone's interests to go back to the client and ask them, to say that there's an indicator on file and ask them if they are or are not a U.S. person, and if they're not, then to say, "Let's just clear this up right now". Look, it's in everybody's interests to do that, and certainly that will happen.

Mr. Mike Allen: So as part of your due diligence process, it clearly says that there has to be an evaluation of your low value accounts—

Mr. Darren Hannah: That's right.

Mr. Mike Allen: —so let's just deal with those ones first.

Once this scan has gone through—and I understand that this is going to be an electronic scan of the accounts looking for any of this U.S. indicia, and if it doesn't show up, it doesn't show up—is there any follow-up due diligence on the low value accounts as long as they are existing accounts? Is there any further follow-up on those in the years to come?

Mr. Darren Hannah: No, there shouldn't have to be any. That as well was in fact one of the big gains from the work that we had done, because if you went back to the FATCA legislation, in its regulations in the U.S., in its original incarnation, there would in fact have been a renewal process, whereby you would have had to go back to clients. There's none of that in the IGA. No, I don't have to go back to the client, unless the client comes in and presents something that would suggest they've become a U.S. person. That would be it.

● (1615)

Mr. Mike Allen: In your comments and in your speaking notes, you talked about how the vast majority of Canadian bank customers are not U.S. persons, and for them the IGA will have no impact. Then you talk about how the bank "may ask" and "may ask".... Is the bank likely to ask those kinds of questions to follow up with their existing customer base in searching for U.S. indicia, or is there just such a volume that once you do that scan, that's really technically what you can do?

Mr. Darren Hannah: Again, the only reason the bank may ask is that there's something in there that would suggest there's an indicator. If there's an indicator, as stipulated in the agreement, then we'll follow up. Other than that, there's no reason to follow up.

Mr. Mike Allen: I'm expecting that there's going to be quite a significant—and we've heard this from some of the banks before today—investment in the technology that's going to be required to actually manage and monitor this type of thing, which would have been in place either way, I'm assuming. So with that case, if you had to go under FATCA and had a one-to-one contract relationship with the IRS, if you will, then I'm assuming that it would have been a much more significant investment on your part than having to specify, along with the exclusions of the registered accounts.

Mr. Darren Hannah: Absolutely. In addition, you'd also then have to build a withholding system on top of that, which you don't have to do as a consequence of going through the intergovernmental agreement process. So yes, is it expensive? It's always expensive, but this is far better for everyone concerned than the alternative.

Mr. Mike Allen: Thank you very much, Mr. Chair.

The Chair: Thank you, Mr. Allen.

We'll go to Mr. Cullen, please.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you.

Mr. Hannah, if one of your members doesn't report somebody who turns out to be a U.S. citizen, what's the impact on you?

Mr. Darren Hannah: I'm sorry?

Mr. Nathan Cullen: If they fail to report somebody who the IRS or the American government deems a U.S. citizen...?

Mr. Darren Hannah: The obligations on the financial institution are clear, and they're laid out in the agreement. If somebody is a U.S. citizen, but there's no indicia in the indicators in their account suggesting they are—

Mr. Nathan Cullen: No, just take the question on its surface.

Mr. Darren Hannah: No, that's—

Mr. Nathan Cullen: Somebody slips through the screen, the electronic screen Mr. Allen was talking about, the assessment you do. Americans come back and say, "CIBC, Royal, we found 1,000 or 10,000 people, clients of yours, who we deem to be Americans, or American persons." Is the bank penalized? Is the bank put on a watch? Is there any consequence?

Mr. Darren Hannah: The bank will then do its due diligence to show it, to say, look, they've done their process, they've gone through and checked their indicia, and they've assessed whether or not somebody is a U.S. person, and if they are not a U.S. person, they're done.

Mr. Nathan Cullen: I don't know why this question is difficult.

What I'm asking is, you do your screen, you forward the names of people who you believe are U.S. persons to the CRA, then to IRS—

Mr. Darren Hannah: Okay.

Mr. Nathan Cullen: —but you're missing people. Is the bank financially on the hook? Are you placed on a list? Is there any consequence under the IGA, as you understand it, that comes back to your members?

Mr. Darren Hannah: The members' obligation, the institutional obligation, the legal obligation, is to the CRA, not to the IRS.

Mr. Nathan Cullen: I understand.

Mr. Darren Hannah: So in that instance, then, as with any tax compliance issue, we have to discuss it with CRA.

Mr. Nathan Cullen: Can you understand our concerns around the definition of citizenship? As Mr. Richardson says, this is not always citizenship as you and I would understand it, as the common person would understand it. We've been made aware of instances—many of them—of people who, under any common definition, wouldn't be deemed American persons. But as we've all agreed at this panel and others, that decision is not made by the Canadian government. It's made by the American government, correct? You can understand the concerns?

Mr. Darren Hannah: I appreciate the challenge, but that's a separate issue, from my perspective, from the intergovernmental agreement. That's a tax issue associated with the United States as opposed to the information sharing agreement.

Mr. Nathan Cullen: Sure. Will your members notify their clients that their information is being passed on to the CRA?

Mr. Darren Hannah: Bear in mind that in the process if indicators come up, I go back to you to give you an opportunity to clarify whether or not you are a U.S. person, so as a consequence, everything is passing along as part of the process.

Mr. Nathan Cullen: So is it required in the process that anybody whose information will be passed on to the CRA will be made aware?

Mr. Darren Hannah: What's required in the process is that I have to go back to you. I literally have to go back to you and say, "I've got information on an account that you are a U.S. person, and is this correct, yes or no?" There's an engagement requirement right in there.

Mr. Nathan Cullen: So the answer is yes, that everybody whose information will be passed on to the CRA by your member institutions, your banks, will be made aware that their information is being passed on.

Mr. Darren Hannah: The only time it might not happen would be if literally in the file you've already said, "Yes, I'm a U.S. person, and I've acknowledged that."

Mr. Nathan Cullen: Okay. I'm the politician here, so I get to dodge questions. What I want to know is, will people be made aware if their information is being passed on to the CRA and they've been deemed by your member institutions to be American persons?

Mr. Darren Hannah: Well, with due respect, I believe I've just answered that question.

Mr. Nathan Cullen: A yes or no would help.

Mr. Darren Hannah: I've explained it in total.

● (1620)

Mr. Nathan Cullen: Ms. Bernier, I have a question about where the Privacy Act fits in all of this, because we expect to see—and we've already seen—court challenges coming forward. Some have cited our charter and some have cited the Privacy Act.

Under section 7—we've talked about section 8 maybe being subsumed—it is stated, "Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution", with a couple of provisos.

On the surface of what we're talking about, once the information... once the CRA plays the role of middleman between the IRS and the institutions Mr. Hannah represents, is there an obligation under the Privacy Act that they must by law be made aware?

Ms. Chantal Bernier: Absolutely. So the obligation of consistent use remains, the obligation to only collect what is necessary remains, and, of course, the obligation to protect the information remains. The reason we are putting to your attention the risk of over-collection and over-reporting is our experience with FINTRAC. With the PCMLTFA, we find that there's a built-in incentive to over-report. We would want to make sure that this doesn't occur here.

Mr. Nathan Cullen: Understood.

We've heard a number of witnesses, even those who are in favour of this initiative, say that this is more of a data grab than it is a tax grab. Canada is not a tax haven. This is not about the U.S. trying to collect that money. This is much more about data.

My last question is to Mr. Richardson or anyone who wishes to answer.

What kind of information can be gleaned about a person—Mr. Hannah, maybe you can come in on this—by their tax information? If I could see your tax information, what could I learn about you?

The Chair: Just one person, very briefly, please.

Mr. John Richardson: If I may, I will answer that question. Currently, the Internal Revenue Service has a program called "Streamlined", to allow non-compliant U.S. citizens to come into compliance. What they are requiring as part of that is six years of foreign bank account reports, known as FBARs, sent directly to the IRS.

Now normally, these are sent to the U.S. Treasury, and the IRS wouldn't see them. The reason the IRS wants them is that they are absolutely the best indicator they have about a person's financial status and whether they meet the test of what the IRS would call "low compliance risk". There's absolutely no question that this information tells one far more about somebody's finances than anything else.

The Chair: Thank you.

Thank you, Mr. Cullen.

Mr. Van Kesteren, please.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Chair.

Thanks to all of you for being here.

Mr. Richardson, you're a dual citizen?

Mr. John Richardson: I am.

Mr. Dave Van Kesteren: How long have you been a Canadian citizen?

Mr. John Richardson: How long have I been a Canadian citizen? I became a Canadian citizen in I think 1990 or 1991.

Mr. Dave Van Kesteren: Okay.

Please don't misinterpret me. I'm not trying to be aggressive in this. I just want to understand something.

Do you value your American citizenship?

Mr. John Richardson: Do I value my American citizenship?

Mr. Dave Van Kesteren: Let me rephrase that. Would you like to be one of these that would just like to revoke it or do you want to...?

Mr. John Richardson: I haven't made that decision yet. Certainly the longer one lives outside of the United States.... I've lived outside the United States since I was 12, so I consider myself 98% Canadian, with maybe 1% or 2% to go over the next few years.

Voices: Oh, oh!

Mr. John Richardson:I can tell you that I don't think the question is so much does one value a U.S. citizenship...I think the question is, does one value it in a way that could possibly be worth the cost of it and the problems that are now arising?

Mr. Dave Van Kesteren: I guess what I'm trying to mine down to, and it's perfectly understandable... I checked your site, too, The Isaac Brock Society—

Mr. John Richardson: That's not my site. I'm at citizenshipsolutions.ca.

Mr. Dave Van Kesteren: Okay.

What, are you like a kind of modern-day Loyalists that break away from the States or...? This organization, would you classify it as one that's helping American citizens break away from the—

Mr. John Richardson: Sorry, which organization are you talking about?

Mr. Dave Van Kesteren: The Isaac Brock: you're not part of that?

Mr. John Richardson: I am at citizenshipsolutions.ca.

Mr. Dave Van Kesteren: Okay.

Mr. John Richardson: I am a lawyer who helps American citizens deal with citizenship.

Mr. Dave Van Kesteren: Okay.

How many of those Americans would you say, percentage-wise, would like to revoke their citizenship? Or how many are just concerned about the tax implications?

Mr. John Richardson: Obviously, the ones I talk to, because they call me in a professional capacity, clearly are unhappy with the problems of U.S. citizenship—and the word would be "relinquish"—and want to relinquish it. Certainly, I think it's more a question of education. When people learn about this, they become concerned. The more they learn, the worse it gets.

The conclusion is that, because of the incompatibility, not so much in the taxes.... This isn't so much a tax situation. The U.S., under the guise of what they call citizenship-based taxation, actually has this set up more as a form of life control. There is no way to be both U.S. tax compliant and do any kind of reasonable financial retirement planning in Canada.

● (1625)

Mr. Dave Van Kesteren: Okay. Would you agree that it's more financial than...? There was a time—

Mr. John Richardson: No, I would not agree at all. I think that's completely wrong.

The way Americans in Canada now experience American citizenship is an endless succession of threats, of penalties, from the U.S. government. Let me put it to you this way. There's another country that uses citizenship-based taxation. It's a country called Eritrea. Now let's do a comparison. Theirs is benign. They want a 2% tax. My guess is that most Americans abroad would pay a 2% tax—

Mr. Dave Van Kesteren: Sorry to break in, but I don't think too many people would want to become citizens of Eritrea as opposed to being American citizens. I live close to the border too. I remember times when—

Mr. John Richardson: I don't think we're talking about becoming a citizen. I think we're talking about being a citizen.

Mr. Dave Van Kesteren: I would agree with that.

I guess here's what I'm trying to understand. Because there were some suggestions made, as my colleague pointed out, that those who really had no ties to the United States would be swept into this, as opposed to those that maybe have set up residency here in Canada. We welcome them. I think Americans are great people. As well, I have relatives in America too.

But there's a difference between that being the case and somebody who was born and raised in the States and, for whatever reasons, chose Canada for its dual citizenship, but still has an affiliation with the United States, and one that's rather fond, as opposed to maybe a draft dodger or something.

Mr. John Richardson: Absolutely. This is the whole problem: when we talk about Americans abroad, we tend to be talking about those who the U.S. defines as Americans abroad.

Mr. Dave Van Kesteren: You'd agree that it is a privilege....

Mr. John Richardson: I beg your pardon?

Mr. Dave Van Kesteren: Would you agree, that for most people, it is a privilege to be an American citizen and have the opportunity to have—

The Chair: Okay. Please give a brief response.

Mr. John Richardson: I would take no position on that. You'd have to ask them that question.

Mr. Dave Van Kesteren: Thank you.

The Chair: Thank you, Mr. Van Kesteren.

Mr. Adler, please. You have time for a brief round.

Mr. Mark Adler (York Centre, CPC): Thank you very much, Chair.

Thank you, witnesses, for being here today.

I do want to clarify one thing before I begin my questioning. I just want to clarify Mr. Brison's selective recollection of history. He made a number of points about our prime ministers' relationships with U.S. presidents. Let me highlight two from the Chrétien years. One was when the director of communications in the Prime Minister's Office referred to President Bush as a moron. The other one was post-9/11, when Prime Minister Chrétien said that U.S. foreign policy might be part of the causes of terrorism. Those are two highlights, in fact, of the Canada-U.S. relationship that existed under Prime Minister Chrétien. I just wanted to clarify that for the record.

Let me ask Mr. Hannah the following. Given the onerous regulations of FATCA, we've seen that a number of foreign financial institutions, such as HSBC, Deutsche Bank, and Credit Suisse, have been closing brokerage accounts for U.S. citizens. To your knowledge, was that ever contemplated by Canadian banks as an option?

Mr. Darren Hannah: It was not, to my knowledge. In fact, when you read the intergovernmental agreement, the preamble of it states that one of the objectives of the agreement is to make sure that all Canadians have access and are able to sustain access to financial services. That's in fact one of the objectives of entering into the intergovernmental agreement: to guard against what you've just talked about.

Mr. Mark Adler: Very good.

Opponents of FATCA—and I'll ask this of Mr. Richardson—have just hired Jim Bopp, who is renowned for his defeat of the Supreme Court in McCain-Feingold. Can you comment on how perhaps the U.S. constitutionality of FATCA is in question?

Mr. John Richardson: Okay, but there are really two parts to your question. The first would be the FATCA legislation itself. I think what's going on in the United States is not so much on the constitutionality of the enabling FATCA legislation, but the way U.S. Treasury is trying to implement it with a number of intergovernmental agreements. I think Professor Christians was talking about these yesterday; she didn't understand what they were, but they are clearly in no way authorized by the enabling legislation.

Furthermore, I might add that it's amazing to me that Canada or any other country would sign an IGA obligating them to do anything when in fact the clear terms of the agreement obligate the United States to do nothing. As I understand it, the primary constitutionality has to do with the use of the sort of pseudo treaty provision, or whatever it is, to essentially enable law that isn't authorized by the governing FATCA legislation.

● (1630)

Mr. Mark Adler: Do I have more time?

The Chair: You have about one minute.

Mr. Mark Adler: In your assessment of the U.S. constitutionality of FATCA, would it survive—and I know you can't say one way or another—a U.S. constitutional challenge? What are the implications of that afterwards if it doesn't?

Mr. John Richardson: What are the implications for who?

Mr. Mark Adler: I mean for the United States—

Mr. John Richardson: Oh, well...

Mr. Mark Adler: —and then for those U.S. citizens here in Canada.

Mr. John Richardson: It's very significant for U.S. citizens in Canada, because there are two parts of FATCA. The first is the part that deals with the banks, and the second part, which nobody ever talks about, has enhanced and very stringent penalty-laden reporting requirements for U.S. citizens abroad requiring them to disclose an unbelievable amount about their lives and their financial assets. Certainly that part of it would fall as well.

The Chair: Unfortunately, we're going to have to leave it there. I apologize, Mr. Adler.

I want to thank all of our witnesses for being here.

[*Translation*]

Thank you very much for your presentations and for answering our questions.

[*English*]

If you have anything further, please do submit it to the clerk. We'll ensure that all members get it.

Colleagues, we will suspend for about two minutes and bring our next panel forward.

Thank you.

● (Pause)

●

● (1635)

The Chair: I call this meeting back to order.

We are resuming discussion, pursuant to the order of reference of Tuesday, April 8, 2014, on a consideration of Bill C-31, an Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014.

I want to thank our second panel of guests for being with us here and by video conference.

First of all we have, as an individual, retired captain Mr. Sean Bruyea.

From the Canadian Bar Association, we have Cindee Todgham Cherniak.

Welcome to the committee.

From the Canadian Consumer Specialty Products Association, we have Ms. Shannon Coombs, president.

Welcome.

From the Chemistry Industry Association of Canada, we have vice-president Mr. Gordon Lloyd.

As an individual, we want to welcome, from Vancouver, Professor Dominique Gross from Simon Fraser University's School of Public Policy.

Thanks to all of you for being with us.

You each have five minutes maximum for an opening statement, and we will then go to members' questions.

We'll begin with Captain Bruyea, please.

Mr. Sean Bruyea (Retired Captain, Columnist, Media Personality and Academic Researcher, As an Individual): Thank you, Mr. Chair and honourable members of the committee, for the invitation. You have much on your plate, so I will skip further formalities.

On May 29, 2012, coincidental with the announcement not to appeal the class action lawsuit involving the Canadian Forces insurance plan known as SISIP, the Government of Canada committed to cease offsetting the Pension Act pain and suffering monthly payments from four other plans: the earnings loss benefit, the Canadian Forces income support, the war veterans allowance, and civilian war-related benefits. I will speak specifically about the earnings loss benefit, or ELB.

The ELB is an income loss program and a key pillar of the controversial legislation commonly known as the new Veterans Charter. Bill C-31 provides retroactivity in returning to the veterans the Pension Act pain and suffering deduction offsets of ELB from May 29 to September 2012.

During the launch of the new Veterans Charter, including the earnings loss benefit, on April 6, 2006, Prime Minister Stephen Harper promised that:

> Our troops' commitment and service to Canada entitle them to the very best treatment possible. This Charter is but a first step towards according Canadian veterans the respect and support they deserve.

If the government decided that the policy of offsetting monthly Pension Act payments for ELB is not what our troops deserved on May 29, 2012, did our troops deserve the unfair deductions on May 28, 2012? For that matter, did our troops deserve the unfair deductions for any day back to April 6, 2006, when the earnings loss benefit program was created?

ELB is clearly an income loss program. The Pension Act is indisputably a program for pain and suffering. Our courts have long stipulated that income loss is to be maintained completely separate from general damages, otherwise known as pain and suffering payments. No other provincial civilian workplace insurance program in Canada deducts pain and suffering payments from income loss programs. Why have our disabled veterans and their families been subjected to an unjustifiable lesser standard from April 2006 to May 2012?

Even if we ignore the strong legal precedent of not deducting pain and suffering payments from income loss programs, this arbitrary retroactive date of May 29, 2012, comes across as petty. The indefensible retroactive date creates an additional class of veterans once again. Those in the SISIP class action lawsuit had their problem rectified back to when SISIP began offsetting Pension Act payments. Why are ELB recipients not accorded the same dignity?

Justice, or the appearance of justice being done, is plainly not being offered in Bill C-31. Should you pass the legislation as is, you will force the most disabled veterans under the flagship Conservative veterans benefit program known as the new Veterans Charter to enter the paralytic morass of years of unnecessary and bitter legal battles. These battles will sap the health, the family stability, and the dignity of military veterans and their families.

We say that we honour our injured veterans as a nation and as a government, but Parliament's actions often speak otherwise. Before we hesitate because of cost, please remember that these disabled veterans never hesitated when Parliament ordered them into harm's way, knowing full well that many would die or become disabled for life.

Major Todd, the architect of the Pension Act philosophy of pain and suffering payment, stated in 1919 that

> Those who give public service do so not for themselves alone but for the society of which they are a part. Therefore, each citizen should share equally in the suffering which war brings to his nation.

This is just one tangible and clear example of the debt we keep promising to pay to our veterans, but we do not

What is also troubling about Bill C-31 is what is absent: the further debts we must pay. The earnings loss benefit is not being increased to 100% of military release salary while providing lost potential career earnings, yet civilian workplace compensation schemes recognize this loss potential. Boosting ELB to 100% has been emphatically pushed by the major veterans groups and the two VAC advisory groups established to study the matter, as well as the House committee on veterans affairs.

● (1640)

There are also no provisions for providing child care and spousal income assistance to the most disabled veterans. The most disabled are not supported for education upgrades or to pursue any employment opportunity to better themselves or improve their esteem. The monthly supplement provided under Bill C-55 in 2011 is denied those seriously disabled veterans collecting the exceptional incapacity allowance under the Pension Act.

My first of now eight parliamentary committee appearances was in front of the Senate version of this committee, the national finance committee, on May 11, 2005. I raised then and continue to raise serious concerns about the charter. My concerns were generally ignored by government, but not by veterans and the public. Had substantive action been taken then, we would not be in year eight of the tragic mess regarding how our veterans are mistreated and often pushed aside by the new Veterans Charter and Veterans Affairs Canada.

I also warned Parliament of the harassment of those who oppose the new Veterans Charter. This was also ignored, only to explode on the national media agenda five years later, with what some call the largest privacy breach in Canadian history—my privacy. As such, provisions such as those in Bill C-31 that would allow CRA to voluntarily hand over confidential taxpayer data to the police without approval of a judge send shivers down my spine, as they should for every Canadian. Surely the magnitude of Bill C-31 is disconcerting. The consequence of ignoring Canadians' and veterans' input is indeed a perilous road.

Undoubtedly, parliamentarians and the public service work hard for democracy. However, none can claim to have sacrificed what our military has sacrificed to preserve our democratic way of life. The omnibus budget bill does not meet Canada's democratic standard. It allows many changes to Canada's laws to enter the back door of government policy without full participatory and democratic due process. Ramming through legislation without proper scrutiny is an insult to the dignity of all that the military has sacrificed in Canada's name and at Parliament's order.

The omnibus budget bill is a perversion of democracy, in my mind, a democracy for which almost 120,000 Canadians have lost their lives and for which hundreds of thousands more have lived and continue to live with lifelong disabilities as a result of serving our nation.

Surely Parliament can do better.

Thank you.

The Chair: Thank you very much for your presentation.

We will now hear from the Canadian Bar Association.

Ms. Cyndee Todgham Cherniak (Chair, Commodity Tax, Customs and Trade Section, Canadian Bar Association): Thank you, Mr. Chair and honourable members.

I am Cyndee Todgham Cherniak, and I am chair of the Canadian Bar Association's commodity tax, customs and trade law section. The CBA is pleased to appear before you to provide views with respect to part 6, division 29, of Bill C-31.

The Canadian Bar Association is a national association representing over 37,500 members of the legal profession. Our primary objectives include improvement in the law and the administration of justice. It is through that lens that we have examined the portion of the bill.

We have carefully reviewed the Administrative Tribunals Support Service of Canada Act, which intends to restructure the administration support services of 11 federal administrative tribunals. The CBA's position is that division 29 of part 6 should be withdrawn from Bill C-31 for further consultation with the affected tribunals, the users, and the stakeholders. Should this portion of the bill proceed, the CBA recommends, at a minimum, the removal of the Canadian International Trade Tribunal, the Public Servants Disclosure Protection Tribunal, and the Canada Industrial Relations Board from the legislation.

We must consider the potential risks of the proposed merger. My comments will focus on: one, the risk that the merged entity will be inconsistent with Canada's international obligations; two, the risk that the separation of the staff from the individual tribunals will cause delays in the litigation process; three, the risk that putting the tribunal staff in a merged entity will diminish expertise; and four, the risk that the effectiveness of the tribunals will be diminished if their impartiality and independence is brought into question.

Impartiality and independence may be affected by the reporting structure of the merged entity, which may lead to actual bias, an apprehension of bias, and/or conflicts of interest. It is proposed that the merged entity will report to the Minister of Justice. The Minister of Justice is also the minister responsible for the Department of Justice.

For my part, as an international trade lawyer, I will focus on the impact the merger may have on the Canadian International Trade Tribunal. Canada's international trading partners may perceive the administrative staff of the CITT as protectionist and biased in favour of the Canadian government and Canadian businesses. Under the merged entity, the staff will report to the same minister as the lawyers who bring anti-dumping and customs enforcement actions against exporters and who defend the government procurement challenges filed by foreign bidders. Canada's trading partners may therefore question the independence, impartiality, and objectivity of the decisions of the Canadian International Trade Tribunal.

Turning to the risk of inconsistency with Canada's international obligations, our trading partners may question whether the merged entity is contrary to Canada's obligations under various WTO agreements and free trade agreements. I can assure you that it will not take long before a lawyer raises apprehension of bias, conflict of interest, and failure to abide by treaty obligations as reasons for challenging a CITT decision in a Canadian court, before the WTO dispute settlement body, or under an FTA dispute settlement mechanism.

Canada cannot control the outcome of a decision rendered pursuant to the WTO dispute settlement understanding or a free trade agreement. Negative decisions in the international arena are a real risk. If an international trade dispute is raised against the institutional procedures of the merged entity or the Canadian International Trade Tribunal itself, Canada may find itself having to compensate a foreign party or face retaliation under an international treaty.

If the remedy ordered by an international dispute settlement panel is a monetary amount—like NAFTA chapter 11—the cost may exceed any potential cost savings of the merger or, if retaliation is in the form of increased duties on Canadian goods by a foreign trading partner, Canadian manufacturers may be negatively affected in the international marketplace. The Department of Justice lawyers will have to defend challenges, and this will by itself result in a cost to the government.

There are also risks associated with possible delays in the litigation process. The risks of litigation increase if the timeliness of tribunals are affected by the structure of the merged entity. I can tell you that, based on personal experience, the legislative timeframes of cases before the Canadian International Trade Tribunal do not allow for delays.

● (1645)

The preliminary injury decision in an anti-dumping or countervailing duty case is 60 days from the date of initiation. A final injury decision must be released within 120 days of the preliminary determination of dumping. Cases before the CITT are not like litigation before the courts, which can drag on for years.

Lastly, there's a risk that the expertise of the tribunals may be diluted by the merger of the administrative support services. I can tell you from my own personal experience that the staff at the Canadian International Trade Tribunal have specialized expertise in trade matters that is unlike the expertise of the other 10 tribunals' staff.

Staff at the other tribunals cannot quickly step into the role of a CITT researcher who prepares anti-dumping injury questionnaires or compiles data for the pre-hearing staff report. Staff at the other tribunals do not have the same economic and trade analysis skills that the staff at the CITT have developed over the years. Legal support services staff would not have the same in-depth knowledge of Canada's international obligations.

Finally, the CITT staff receive confidential information from the parties who appear before the tribunal, and this confidential information is fundamental to finding the facts, applying the law, and coming up with the correct decision. The Canadian International Trade Tribunal staff are sensitive to the issues of confidentiality within the CITT act and the tribunal rules.

The credibility of the tribunal is at stake. We would like you to consider these important concerns in your deliberations.

Thank you.

● (1650)

The Chair: Thank you very much.

We'll go to Ms. Coombs.

Very quickly, please.

Ms. Shannon Coombs (President, Canadian Consumer Specialty Products Association): Good afternoon, Mr. Chair and honourable members of the committee. It's a pleasure to be here today to provide support and a suggested amendment for Bill C-31.

My name is Shannon Coombs, and I'm the president of the Canadian Consumer Specialty Products Association. I have proudly represented this industry for 15 years in our many accomplishments as a proactive and responsible industry.

The CCSPA is a national trade association that represents 37 member companies across Canada in what is collectively a $20-billion industry employing 12,000 people in more than 100 facilities. Our companies manufacture, process, package, and distribute consumer, industrial, and institutional specialty products such as soaps and detergents, domestic pest control products, disinfectants, deodorizers, and automotive chemicals, or as I call it, everything under your kitchen sink.

I have provided to the clerk copies of our one-pager, which has a picture of our products. I'm sure many of you have used them today. Also, you would have received our goody bag a few weeks ago,that is, assuming your staff chose to share it with you.

Voices: Oh, oh!

An hon. member: I understand. Mike?

Ms. Shannon Coombs: You can ask for another one for later.

An hon. member: Well, the chair obviously got his goody bag.

Ms. Shannon Coombs: So why are we here today?

The Chair: Order.

Ms. Shannon Coombs: The CCSPA supports the amendments to the Hazardous Products Act in Bill C-31. These amendments will put in place a regulatory framework that will be harmonized with that of our major trading partner, the United States.

Included in Prime Minister Harper's and President Obama's 2011 joint action plan under the Regulatory Cooperation Council, the globally harmonized system, or GHS, for classification and labelling is a key initiative.

We are supportive of all the efforts to bring these new regulations to fruition, but the benefits of implementing the GHS can only be realized with a high level of alignment between the U.S. Occupational Safety and Health Administration and Health Canada. Canada cannot meaningfully implement the GHS by creating unique Canadian requirements that will result in different or costly labels that impact trade.

Our sister associations, the Consumer Specialty Products Association and the American Cleaning Institute, have also publicly supported these amendments, and the United States has already begun its implementation of GHS for workplace chemicals. Adopting GHS in Canada will allow our members to use one safety data sheet and one label for products used in the North American workplace.

At this time we are proposing one amendment to Bill C-31. In proposed paragraph 14(b), under Hazardous Products Act, we're looking for an additional provision that would clearly allow for product that is imported into Canada for the purposes of relabelling to be compliant with the act. As it currently stands, product imported must be labelled prior to entry. Depending on your country of origin, this is not always practical. Allowing Canadian suppliers to import product for relabelling will allow industry to have more quality control and flexibility with respect to ensuring compliant labels in the workplace.

Mr. Chair, we appreciate this opportunity to comment on this important piece of legislation. We support this amendment and we look forward to working with the government on the subsequent regulations and guidance that are developed and harmonized with the U.S. OSHA.

Thank you.

The Chair: Thank you very much for your presentation.

We'll now go to Mr. Lloyd, please.

Mr. Gordon Lloyd (Vice-President, Technical Affairs, Chemistry Industry Association of Canada): Thank you, Mr. Chair and committee members, for allowing us to present before you.

This discussion about the Hazardous Products Act is quite important to the Chemistry Industry Association. We're the voice of Canada's chemistry industry. Our members produce industrial chemicals across the country and we're major exporters.

I think a number of you know of our Responsible Care program. It's our industry's commitment to sustainability. It started in Canada, and it has spread to over 60 countries. It's something that I think all Canadians can be quite proud of. We won the prestigious GLOBE Award for Sustainable Leadership this year because of the Responsible Care program.

The Hazardous Products Act amendments that we are talking about here today are the first step in modernizing Canada's workplace hazardous materials information system, WHMIS, to achieve closer alignment with its counterpart in the U.S. The second step will be the regulatory changes that will take place after you've passed these amendments and the Hazardous Products Act has been modified. Shannon has already described what WHMIS is about—both of us addressed that in our briefs—with labels and material safety data sheets and training. It's been quite a unique and successful initiative.

Over the last several years, Health Canada has conducted extensive consultations with industry and others to better align the system with the system in the U.S. under the international agreement of a globally harmonized system, but Canada and the U.S. have rightly decided to focus on aligning their systems with each other.

The U.S. regulations were out in 2012. They're ahead of us. They're in a transition phase right now. They're going to have to be in full compliance by June 1, 2015. Our agreement with the Americans is that we will collaborate with them in changing our regulations, which will be in force by the same date of June 1, 2015. There's been a number of important steps taken, which are outlined in our brief, to further that objective.

The changes to WHMIS that we're looking for through these legislative and regulatory changes will further the government's agenda of regulatory cooperation with the U.S. They should help make Canada more competitive, improve the efficiency of our regulatory regime, and maintain worker protection. To maximize the benefits that we can achieve from that, we need to implement the changes in the same timeframe as the Americans. We're a bit behind the ball on that.

To catch up, the transition period for the GHS regulatory changes to WHMIS in Canada needs to start this year. In the second half of this year, the Americans are going to start using their new labels and safety data sheets. Our member companies want the flexibility to do the same. They want to be able to transition to the GHS-based labels and safety data sheets in both countries at the same time. American companies want to do this as well. That's illustrated by the letter from the American Chemistry Council, our sister association, which is attached to our submission.

For this to happen, several important things need to occur. First of all, the amendments to the Hazardous Products Act that are part of this bill need to pass. That needs to be done very soon, and then the regulations can be implemented. Most importantly, the amendments have to pass in a way such that the government can introduce the regulatory changes this June. If that is not done, we fear there will be significant delays.

The June deadline for the regulations is necessary and possible, for a number of reasons. The normal gazetting process will occur. There will be the *Gazette*, part I, regulations and draft, and then they will go to final regulations in the *Gazette*, part II. But because there's already been very effective and extensive consultations by Health Canada with stakeholders on these regulations, they can be issued pretty much right after the legislation to the Hazardous Products Act is changed.

We are also looking for—

● (1655)

The Chair: You have one minute.

Mr. Gordon Lloyd: —a very short period for comment before the *Gazette*, part II, goes forward. We hope that would occur some time this summer. That should be enough time to allow us to get what we're asking for, which is that we will be able to implement the changes in Canada starting this fall, in the same timeframe as the Americans will be doing.

Now, if that doesn't happen, if they aren't introduced in June, the delay will probably be longer than just a few weeks. The way we understand the government regulatory process works, the regulations will have to go through Treasury Board. It doesn't normally sit in the summer, and it could be as late as the fall until the regulations would be introduced. That will be too late for the Canadian companies to take full advantage of the opportunities that are here and to implement these changes in the same timeframe as the U.S.

In conclusion, getting the regulatory alignment that the Prime Minister and the President committed to will be important for trade and competitiveness and is readily achievable. But the potential benefits will only be fully realized if Canada passes the required legislation in the kind of timetable that I've talked about.

Other associations that have also written to you, such as the Canadian Paint and Coatings Association and the Canadian Chamber of Commerce, have made similar points in their briefs.

Thank you.

The Chair: Thank you very much for your presentation.

We will now go to Professor Gross, please, for her five-minute opening remarks.

Dr. Dominique Gross (Professor, School of Public Policy, Simon Fraser University, As an Individual): Thank you, Mr. Chair and committee members.

My presentation is about establishing monetary penalties for the temporary foreign worker program by amending the clause in the Immigration and Refugee Protection Act.

[*Translation*]

The regulations must be followed, and it is expected that penalties will be imposed if that is not the case. Introducing penalties for employers who do not meet the conditions for hiring temporary foreign workers is a positive thing.

Having to pay large fines could incite certain employers who are inclined to abuse the system to change their behaviour. However, that kind of amendment would not likely give Canadians systematic priority access to available jobs.

● (1700)

[*English*]

The goal of the temporary foreign worker program is to help businesses keep operating without interruptions when there are shortages of labour domestically, that is, when employers cannot find suitable workers for their vacancies. Moreover, such a program must allow filling jobs with foreign workers until the labour gaps are eliminated thanks to wage adjustments and training.

This implies two conditions: first, there must be certainty there are no available domestic workers for vacancies; and second, the use of temporary foreign workers is only for the short term. Then the government must penalize employers who abuse the system.

In Canada, all occupations can be filled by temporary foreign workers, and for many jobs employers must confirm through the labour market opinion there are no available domestic workers. In such a context, and especially for low-skilled occupations, businesses may be inclined to overuse the program as long as there is no complaint about abuses.

Through the temporary foreign worker program, employers have access to the world supply of low-skilled workers. They can easily find candidates who perfectly match their vacancy requirements. In addition, it is very likely that these workers will be fully reliable.

Foreign low-skilled workers usually see themselves as privileged to have a job in Canada. It is a guaranteed improvement for their family life in their home country, thanks to having a steady job with a high wage for themselves. So businesses have access to very reliable and productive workers for several years, but at a relatively low legal wage compared to what would have to be paid to Canadian workers. As time passes, this makes employers increasingly dependent on such workers.

Two highly undesirable consequences arise from such a situation. Employers lose incentives to raise the wage to attract domestic workers from other regions, and they lose incentives to train local unemployed workers. These are additional costs that do not have to be incurred with access to temporary foreign workers. Thus, the labour shortage, if it exists, is not solved over time. If there is no shortage of labour, unemployment rises.

Detailed information about labour shortages for occupations in local areas is a necessary condition for a temporary foreign worker program to fill its goal effectively. Relying on employers to confirm a labour shortage with no possibility to check on whether their statement at the time of the LMO application is correct is not adequate. The government should be able to control employers' LMO statements and ensure priority is given to domestic workers at the time of hiring. With detailed information on labour shortages, application conditions in LMOs can be easily and quickly verified. Then employers will definitely be less inclined to use the program extensively.

In addition, detailed information about labour shortages would allow the creation of an accurate list of eligible occupations with deep shortages of labour and allow employers to have easier access to foreign workers. The list could also be revised regularly. Such a policy choice would not only reduce abuses, but when shortages are not deep, it would induce businesses to train unemployed workers if necessary, or to raise wages and make occupations more attractive to domestic workers.

In conclusion, an effective temporary foreign worker program should stimulate incentives to hire and train domestic workers and should not be used to fill long-term jobs. This is particularly important when there is high unemployment for various groups of people like low-skilled workers, youth, or aboriginals. Policy changes that prevent negative impacts on domestic workers at the time of hiring ensure the effectiveness of the program. Adding penalties for abuses is useful, but it is unlikely to correct the present negative consequences of the temporary foreign worker program.

The Chair: Thank you very much for your presentation.

We'll begin members' questions with Mr. Cullen.

You have five minutes.

Mr. Nathan Cullen: Thank you, Chair.

Madam Gross, thank you very much. I listened to your presentation and read your paper. I see how the basic supply and demand system that we have all accepted and welcomed in the Canadian labour market has been contorted and distorted by a temporary foreign worker program, in which, as you say, training workers or raising their wages in regard to short supply is in fact discouraged behaviour for employers.

I offer apologies both to you and to the other panellists, but I need to ask Sean some questions that I think are incredibly important.

First things first, I hope that all our witnesses and those watching aren't under any illusion that what we're doing here is a proper study of this omnibus legislation. In two short meetings, we're going to be dealing with almost 300 pages in part 6 alone, affecting all the things we have talked about today and many more. That's the process that's happening. They say that you don't want to watch bills and sausages being made, but this is taking it to another level.

Specifically on veterans and specifically on this arbitrary decision, we asked Veterans Affairs officials at our briefing what the policy basis was for not extending compensation when this payment was first clawed back. We were told that it was a political decision, that there had been no assessment and no analysis of costs.

The Conservative government used $35 million of taxpayers' money to fight veterans in the courts for six years. They spent $28 million celebrating the War of 1812.

Is there an estimate of costs for properly compensating veterans who have been injured while serving their country and for taking this payment back to 2006 rather than to this arbitrary, politically chosen date of 2012?

● (1705)

Mr. Sean Bruyea: No. In fact, repeated questions to the department have come up empty. But we could probably extrapolate some number. We're talking about $9.2 million for the earnings loss benefit over a five-month period. If we extrapolate for the years prior to that—there were declining numbers of applicants going back to the beginning of the new Veterans Charter, which we could probably extrapolate—we are talking probably about less than $70 million to compensate totally.

But I take your point. The arbitrary date does not give the dignity or the full due process to understand why that date was chosen and for people to voice their opinion.

Mr. Nathan Cullen: The government, in its decision to compensate back at least to 2012, has admitted that this was an illegal clawback, but in this omnibus bill has chosen this arbitrary date.

First of all—or second, now—I want to thank you for your service to this country and also thank you for your service to veterans.

Mr. Sean Bruyea: Thank you.

Mr. Nathan Cullen: We meet with many veterans who have a difficult time raising these issues, either because of health issues they're suffering or just out of a simple sense of dignity: they don't want to be out fighting for something and feeling that they are somehow disrespecting the country they served. I thank you for what you're doing.

We always say that actions speak louder than words. Do you believe that we can and should amend this bill in order to properly compensate veterans back to the date when the clawback first started, in 2006? Would that be some modest sign of respect to the men and women whom we just honoured a few days ago, some of whom served in Afghanistan? Is this something that this committee could recommend and do as a sign of respect to veterans of Canada?

Mr. Sean Bruyea: In my mind, it's a no-brainer. This could easily be amended to go back...and before we start complaining about costs, let's look at what these soldiers have given up for us. We are talking for the most part, about the most disabled veterans being affected by this. This will force them into, as I said, a bitter legal morass over years, which not only will inconvenience them but will likely destroy their health and their families.

Mr. Nathan Cullen: Talk to me about some of the soldiers we're talking about here, the veterans who have fallen into this clawback trap from the government.

What kinds of injuries are we talking about? Why is going to court...? The government can say "let them go to court again"; we'll spend taxpayer money, and they can go through this process. But who are we talking about explicitly?

Mr. Sean Bruyea: We're talking about the whole gamut. Some of the veterans may have just been released from the forces and, during the transition period of, let's say, up to 24 months, or sometimes longer, were retraining. Maybe they're suffering a knee, ankle, or shoulder injury. These people probably will have moved on with their lives and are no longer collecting the benefit.

I think the biggest focus has to be on the most seriously disabled veterans. These are the ones who cannot work for the rest of their lives. They are the ones who will be collecting this earnings loss benefit to help compensate them in some limited form for the lost potential that they had.

So yes, it's very important that this strong signal be sent out by amending this back to 2006, because this new Veterans Charter is supposed to be a new start in recognizing what our Canadian Forces have given up for Canada. It's extremely important that we amend this from the beginning, or else the new Veterans Charter will continue to fall into disrepute.

Mr. Nathan Cullen: Finally, New Democrats will be writing such an amendment and seeking support from all our colleagues around this table.

Thank you again for your service and testimony.

The Chair: Thank you, Mr. Cullen.

I'll go to Mr. Saxton, please, for five minutes.

Mr. Andrew Saxton: Thank you, Chair.

Thanks to our witnesses for being here today.

My first question is for Cyndee Cherniak.

Ms. Cherniak, you say that staffing will be affected due to expertise being lost. However, under this change, it's been clear that all staff currently with the tribunals, as well as related departmental resources, will transfer to the ATSSC. Expert staff will continue to be dedicated to their respective tribunals.

How can you say this, then, when it's so clear that the change values the expert analysis and those working with tribunal chairs and members?

● (1710)

Ms. Cyndee Todgham Cherniak: It's not clear to us that the staff are going to all stay and be allocated 100% to the tribunals that they were working with. I can tell you from my experience at the Canadian International Trade Tribunal over the last three years that they have reduced staff and they have created efficiencies. There's not much room left.

If a couple of those staff members are assigned to different files and a different tribunal, there will be a problem for me, as a lawyer who appears before the Canadian International Trade Tribunal, to get the filings done and the research done. There are questionnaires that are completed in connection with anti-dumping cases that compile a significant amount of information. Then the staff compile that information so that the tribunal can have economic and trade analysis to render their decisions on injury analysis. If that research can't be done, we will have a problem at the Canadian International Trade Tribunal with the decisions, which can then lead to problems in the international arena.

Mr. Andrew Saxton: Okay, but I think it's been stated clearly that all staff currently with the tribunals will be transferred to the ATSSC.

My next question is for Gordon Lloyd. Mr. Lloyd, the globally harmonized system of classification and labelling of chemicals, known as GHS, is a standardized, internationally consistent approach to classifying chemicals according to their physical, health, and environmental hazards. Implementation of the GHS worldwide would facilitate international trade and enhance workplace safety by providing workers with standardized and consistent information on chemical hazards.

Do you concur with that assessment?

Mr. Gordon Lloyd: That's generally true. The issue is that GHS, at a broad spectrum, is a correct label, but each jurisdiction has implemented little bits and pieces of it somewhat differently. So yes, but with some exceptions, and the exceptions are different in different places.

Canada and the U.S. have decided to focus on getting it right between our two countries because we have major trading with each other. It will achieve those objectives for sure between Canada and the U.S. We just want to make sure that it achieves them in time so that we get the maximum benefits. Some of our member companies have talked about the delay. We're fearful of costing them, for certain product lines, millions of dollars.

Mr. Andrew Saxton: I know that your sector contributes nearly 100,000 jobs to the Canadian economy and indirectly another 500,000 jobs. How will these Canadians benefit from these new standardized or harmonized safety standards?

Mr. Gordon Lloyd: I think there are benefits in several areas. One, the general competitiveness of companies will be improved by this because it is an improvement in efficiency of our regulatory regime. It will cut down costs in trading. Again, there's efficiency there. I think it will also make for a better hazard communication system, because there will be more commonality between Canada and the U.S. People get transferred in jobs; they'll have a clearer understanding without having to learn new systems. I think there will be direct benefits along the line of what you talked about.

Mr. Andrew Saxton: Will adopting the GHS help reduce red tape for businesses involved in the chemical industry in Canada?

Mr. Gordon Lloyd: Absolutely. We just want it to be done sooner rather than later.

Mr. Andrew Saxton: Okay. Thank you.

Thank you, Chair.

The Chair: Thank you, Mr. Saxton.

Mr. Brison, please.

Hon. Scott Brison: Thank you, Chair.

Thanks to each of you for joining us today and for your testimony.

The fact that in an hour at the House of Commons finance committee we are discussing issues around veterans benefits, international trade law, consumer products labelling, and temporary foreign workers speaks to the absurdity of the exercise. It's extraordinarily frustrating as a parliamentarian to witness and to actually be a participant in a charade in terms of not having the capacity to adequately scrutinize legislation, which is our job.

I want to thank you for your service, for what you've done on behalf of Canada, Captain Bruyea, in the past, but also for what you're doing today.

On the arbitrary date of May 28, 2012, has the government explained why that date? Why not go back further? What is the defence?

● (1715)

Mr. Sean Bruyea: No, they haven't approached the veteran community to explain that date. The only briefings that have been given have been to parliamentarians without the knowledge of the veteran community. It sounds as if that's the date because they don't want to pay back to 2006. I think we have to compare that to the veterans' service when they're in the military. Imagine the military saying that they didn't want to go to Afghanistan or Libya, or that they didn't want to deploy to eastern Europe.

Hon. Scott Brison: Does it seem like a war of attrition, with the resources of the federal government against veterans? At some point, the government has the resources and the legal capacity to wear down the other side. Isn't that it?

Mr. Sean Bruyea: That's right. It's not just the financial resources. If we look back at the SISIP class action lawsuit, veterans were paying out of funds that were rightfully theirs the equivalent of a million dollars a month in legal fees to fight that battle. I am most concerned about the emotional costs. This will take a huge toll on families and will take years off these veterans' lives.

The Chair: Thank you.

Colleagues, as you know we have votes in half an hour. Can I take it we have unanimous consent to finish this round in three more...? Is that okay?

Thank you.

Mr. Brison, please continue.

Hon. Scott Brison: Thank you.

Ms. Coombs, you have proposed an amendment that one of us, as a member of this committee, could move. Can you take a guess as to how many amendments have been accepted to budget implementation acts over the last five years?

Ms. Shannon Coombs: I could not, sir. I take it none—

Hon. Scott Brison: None.

Ms. Shannon Coombs: —from the way you're asking the question.

Voices: Oh, oh!

Hon. Scott Brison: I'm the eternal optimist, and you and your organization and the companies you represent and the workers for those companies have earnestly and intelligently provided us with insight as to what we could do to change this. I just want to make the point that by ramming this through as part of a budget implementation act.... Hope springs eternal, and as a Nova Scotian from Hants County, I'm a very optimistic person, but I want to make that point. Not only is this probably not the right committee to be studying this, but it's not the most receptive environment for it. While we may agree on your constructive proposed amendment, I want to manage expectations here in terms of the political environment within which we operate.

Would you rather see this amendment considered perhaps under the health committee, or the committee responsible for product labelling or industry? Would it be better under another committee?

Ms. Shannon Coombs: Thank you for the question, Mr. Chair.

I think we proposed the amendment to bring some clarity to the bill so that there may not be any future misinterpretation. While I appreciate your concern about the quick study of this piece of legislation, we're doing a really progressive thing for industry and for worker protection, and I think that's what the GHS brings to all the sectors. We're able to marry worker protection with facilitating trade.

I appreciate your party's concern on that, but we would really like to move this forward. We see it as very progressive. It has been discussed for the past 20 years, so I would appreciate your review of this.

Hon. Scott Brison: We'll try with your amendment—

Ms. Shannon Coombs: Thank you, sir.

The Chair: We're right at five minutes here, Mr. Brison. I apologize for that.

Mr. Nathan Cullen: It was all that Nova Scotia talk.

Voices: Oh, oh!

The Chair: Yes. Thank you. Order.

We'll be moving on to Mr. Keddy.

Mr. Gerald Keddy: I'm still thinking about Mr. Brison being an optimist and living on the shore of the Bay of Fundy with 30-foot tides. That's quite optimistic.

Hon. Scott Brison: That's right.

Mr. Gerald Keddy: I'd have to agree.

Hon. Scott Brison: [*Inaudible—Editor*]...with you guys on climate change.

Mr. Gerald Keddy: Ms. Coombs, maybe to expand on the line of questioning and allow you to finish your thought, I have two questions. One, you suggested an amendment to the process, and would you be satisfied if that amendment could be handled in the regulations?

Ms. Shannon Coombs: It's an option, for sure, that it could be handled in regulations. We are afforded the same provision under the consumer chemicals and containers regulations. Our proposal, because it's here before us now, is to make it very clear and precise in the legislation.

● (1720)

Mr. Gerald Keddy: Thank you.

On a point of clarification, you talked about relabelling for quality control. How does that system work now?

Ms. Shannon Coombs: What we're asking is that if you're bringing in chemicals—not from the U.S., for example—and you want to be able to bring them into Canada, we want to be able to relabel them here. It provides us the opportunity to bring in chemicals, and we can relabel. We have that provision under CCCR for the consumer chemicals, and we're looking for the same for the workplace.

Mr. Gerald Keddy: I would assume that in order to do that you need some assurance that the chemicals are exactly what they're supposed to be.

Ms. Shannon Coombs: Right, and they'll come in with their safety data sheets, for sure, but this is about making sure that we can relabel here.

Mr. Gerald Keddy: But do you actually have a process to test that?

Ms. Shannon Coombs: Yes, we would, internally in the companies, absolutely.

Mr. Gerald Keddy: Thank you.

To Dominique Gross, we have spent a fair amount of time at this committee talking about training, youth employment, and temporary foreign workers. One of the things we discussed, and one of the things you actually mentioned, is the process of determining whether you need temporary foreign workers. Can you explain how that works in European countries? If you have occupational shortages and it's a structural problem, then you would think you would respond to that with training initiatives. We're starting to do that in Canada.

What we've learned in our study is that most of the European nations, quite frankly, are faster. I don't want to say that they're better —they may be—but they're certainly faster than we are. Do you want to just explain that a little?

Dr. Dominique Gross: Thank you for your question.

If we think about the European countries that have a long history with the temporary foreign worker program—Germany and Switzerland—they both have a characteristic: that is, they have local federal labour agencies that handle the matching between vacancies and the unemployed or people who are looking for jobs.

Those local agencies have perfect information about the state of the labour market, which is the first point. The companies that need temporary foreign workers need to apply to those labour agencies. They first offer the work to the available unemployed people and then, if nobody is really suitable, they give the authorization. That is one point.

Another point that those countries have is the surveys of businesses. They ask questions about their ability to fill their vacancies and their success in terms of skills and in terms of type of occupations within the past semester, for example, or, in Switzerland, the past three months. There is a continuous set of questions that businesses answer about what their need is and how easy it is for them to fill those jobs.

That's information that's useful for training, for young people who learn where there are jobs and where they are likely to have very good jobs, and also for the temporary foreign worker program.

Mr. Gerald Keddy: Perhaps just quickly—

The Chair: Very briefly, please.

Mr. Gerald Keddy: Where we seem to run into a problem is with the labour market opinions and how those labour market opinions are derived. I don't think anyone is arguing that employers who abuse the system should not be penalized; I think we're all in agreement on that here. But I think the challenge is to find a way to streamline the immigration system so that you can actually get immigrants who want to come here, be Canadian citizens, and work at specific trades and skills, versus the temporary foreign workers for non-skilled jobs. That's a balance that everyone struggles with.

Dr. Dominique Gross: Yes, that's because the difference is basically that Canada is traditionally a settlement country, so it's people who desire to come and live in Canada and bring in their skills.... The temporary foreign worker program is a program that exists through the demand for labour, so it's a totally different starting point.

Of course, there are possibilities to improve the settlement immigration process to better match the needs of the businesses in Canada, but again, this requires information.

● (1725)

The Chair: Merci.

Thank you, Mr. Keddy.

[*Translation*]

Mr. Caron has the floor.

Mr. Guy Caron: Thank you, Mr. Chair.

I would like to thank all of the witnesses who appeared before us this afternoon. Unfortunately, my time is limited, so most of my questions are for Ms. Gross.

According to your presentation and your report for the C. D. Howe Institute, it is clear that adequate information about the labour market is absolutely vital to the success of the temporary foreign worker program. But that is not what we have right now.

This is 2014. Canada is one of the richest countries on the planet. We have all of the advanced technology we need to collect information about this, compile it, analyze it and synthesize it. Even so, we still do not have adequate information on the subject.

Why is that so? What can the federal government do to resolve this issue as quickly as possible?

Dr. Dominique Gross: One of the short-term options is to increase Statistics Canada's budget so that it can carry out more in-depth surveys of labour market needs and other surveys as well. Such surveys would include questions about the ability of businesses to find people to fill vacancies.

Mr. Guy Caron: In your report, there is a section about how program policies changed between 2002 and 2013. I will read what it says about that in English:

[*English*]

> Furthermore, these policy changes occurred even though there was little empirical evidence of shortages in many occupations. As a result, controlling for different responses to shocks across provinces and other contemporaneous changes, I find that these modifications to the TFWP actually accelerated the rise in unemployment rates in Alberta and British Columbia.

[*Translation*]

In short, the way the policy was applied over at least the past 11 years had a direct impact on the labour market and on employment.

Can you comment further on that?

Dr. Dominique Gross: My analysis covered the implementation of the pilot program in Alberta and British Columbia. The program reduced the processing time for approvals from five months to five days. For businesses, that drastically reduced the waiting time for access to foreign workers and the cost. There was a list of specific jobs for which employers could get authorization in five days instead of five months.

In my analysis of those jobs, I found that local workers were affected and unemployment rose. The unemployment rate for those jobs was around 6% or 7%. There was another group of jobs for which the unemployment rate was 11%. That is a little strange because the fact that there was 11% unemployment in a group of jobs clearly indicates that there were Canadian workers available. Nevertheless, a list of those jobs was drawn up, and employers had speedy access to foreign workers. The impact on unemployed workers was quite drastic.

Mr. Guy Caron: You have just laid out part of the crux of the problem with the temporary foreign worker program. I would like to quote another of your conclusions:

[*English*]

> Labour shortages can result from workers being discouraged from looking for jobs or not considering some jobs because of low pay....

[*Translation*]

Clearly, this program encourages companies to compare what they would have to pay a Canadian employee with what they can pay a temporary foreign worker.

We have a labour market situation where employers cannot find Canadian workers at the rates they're offering. Instead of offering to pay more, these employers waste no time saying that they have fulfilled all of the conditions and that they absolutely need foreign workers even though they have not done all of the searching they are supposed to or taken all of the steps to fill those vacancies, many of them permanent, with skilled Canadian workers.

Is that an accurate summary of the situation?

Dr. Dominique Gross: Yes, that's exactly right. It's because there are no incentives to raise wages to attract local workers.

That is also why, in my C. D. Howe Institute report, I just mentioned one option. Another would be to impose very high hiring fees for temporary foreign workers, which is what most countries do. If it becomes costly from an administrative point of view to hire foreign workers, employers will have a greater incentive to raise wages to attract Canadian workers.

● (1730)

Mr. Guy Caron: In the end, because Canadian workers were unable to apply for the jobs that were filled by temporary foreign workers, the unemployment rate didn't change. The same people remained unemployed because they were unable to apply for those jobs.

Dr. Dominique Gross: Yes. Maybe those people need some more training to fill those vacancies. They won't invest in training only to earn a low wage.

Mr. Guy Caron: Thank you.

The Chair: Thank you, Mr. Caron.

[*English*]

Colleagues, we will be showing up in about 15 minutes for the vote, so I'm going to recommend that we end the committee meeting now and head over to the House.

I want to thank all of our witnesses very much for being here today and for contributing to our study. If you have anything further for the committee to consider, please do submit it to the clerk. We will ensure that all members get it.

[*Translation*]

Thanks to everyone.

[*English*]

The meeting is adjourned.