HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Finance

FINA • NUMBER 039 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, May 29, 2014

Chair

Mr. James Rajotte

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● (1535)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call this meeting to order. This is meeting 39 of the Standing Committee on Finance. We are televised, colleagues. Pursuant to the order of reference of Tuesday, April 8, 2014, we are continuing our clause-by-clause consideration of Bill C-31, an act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures.

We are dealing with part 5. As you know, we dealt with parts 1 to 4 at Tuesday's meeting. Part 5 deals with the Canada-U.S.A. enhanced tax information exchange agreement implementation act.

We have with us two officials from the Department of Finance, Mr. Ted Cook and Mr. Brian Ernewein, whom colleagues on the committee know very well. Thank you for being with us.

(On clause 99—*Enactment*)

The Chair: We will start with clause 99. I'll just indicate, as your agenda shows, that we have an awful lot of amendments pertaining to this clause, so I suspect there'll be quite a debate on this.

We are going to start with amendment NDP-6, and I will just identify that if NDP-6 is moved, LIB-2 cannot be proceeded with, as they are identical. Obviously that deals with LIB-2.

If LIB-3 is adopted, Green Party amendment PV-1 cannot be moved, line conflict, nor NDP-7, as it's consequential. Also, if Green Party PV-1 is adopted, NDP-7 cannot be proceeded with.

We have all of these amendments. We'll start with the NDP. It's up to members, but sometimes they wish to group their amendments, or sometimes they wish to speak individually to each amendment. I'll leave that up to the respective members and parties themselves.

I will start with NDP-6, and I'll go to Mr. Rankin, please.

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

I'd like to set the context before I move the first of several amendments to part 5 of the budget implementation act pertaining to the implementation of the U.S. Foreign Account Tax Compliance Act, or FATCA, as it's more popularly known.

I'd like the members across to carefully consider the serious issues that have been raised at this committee concerning the implementation of this deeply flawed agreement. I hope they'll carefully consider and support our NDP amendments that address some of the serious problems that have arisen.

It has become increasingly clear through departmental and witness appearances at this committee that the Conservative government simply has failed to adequately study the implications of FATCA and the implementation agreement with respect to privacy, constitutionality, and cost.

Rushing it through in an omnibus bill without proper study is not only reckless, but it's also entirely unnecessary. The U.S. has recently delayed the application of FATCA sanctions until January 2015. Canada is already deemed in compliance with the U.S. law, and legal experts have testified to this committee that there's ample time, therefore, to properly study and amend this agreement.

More than one million Canadians could be negatively affected by this deeply flawed agreement. So, we're simply asking, yet again, that the Conservatives slow it down and remove FATCA from this budget bill, so it can be properly scrutinized and amended, and so we can ensure that Canadians' privacy and constitutional rights are protected. Surely that's of concern to every member of this committee. It's more important, we say, to fix this and protect those many Canadians who are going to be affected than it is to ram this through in an omnibus budget bill, in which this agreement has no place being in the first place.

The first amendment, Mr. Chair, is NDP-6, which simply would say, in clause 99, that it be amended by adding after line 11 on page 73, the following:

> "(2) Despite any other provision of this Act or the Agreement, for all purposes related to the implementation of this Act and the Agreement, "U.S. Person" and "Specified U.S. Person" does not include any person who is
>
> (a) a Canadian citizen within the meaning of the Citizenship Act or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act; and
>
> (b) ordinarily resident in Canada."

This amendment is intended to address one of the most central issues pertaining to FATCA and perhaps its greatest flaw, that this will impact Canadian citizens who are deemed to be U.S. persons and targeted by this agreement, but who are in every other way our fellow Canadian citizens and permanent residents of this country.

I'd like to thank Lynne Swanson, who appeared before this committee, Dr. Stephen Kish, and so many others for their dedicated work to advocate for those who will be undeservedly caught in the FATCA net. Many experts have analyzed the agreement, and it was really negotiated with the protection of banks in mind, they have told us, not the people who will be affected.

I ask the members opposite to carefully consider and support this amendment which, if passed, would protect our fellow Canadian citizens who, for all practical purposes, should not be affected by this agreement, and who should have the same rights as every other citizen. We should not create a second class of Canadians with a second set of rights just because American law deems them to be U. S. persons. Even those born in Canada can be caught in the FATCA net.

Finally, this would help the government avoid an inevitable charter challenge, which I hope they would be interested in avoiding.

That is the purpose and intent of NDP-6, Mr. Chair.

● (1540)

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

We'll go now to Mr. Keddy and then we'll go to Mr. Cullen.

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): Mr. Chairman, of course, what the honourable member's really asking us to do is change how the Americans apply their own laws, which they have a right to do. We don't have to agree with it, but they tax based on citizenship and that's simply how it is. Worse yet, his amendment would really not just change the way the Canada and the United States enhanced tax information exchange agreement works, but it would actually override the terms of the intergovernmental agreement negotiated with the U.S. providing that the terms “U.S. Person” or “Specified U.S. Person” do not include a person ordinarily resident in Canada who is a Canadian citizen or a permanent resident. Of course, what they leave out of that is that person would also have to be a U.S. citizen or a dual citizen.

The amendment would mean that the financial accounts of U.S. citizens who have such connections to Canada would not be reported. It is clear, Mr. Chairman, that the scope of persons in respect of which the U.S. seeks information under the IGA consistent with the U.S. tax legislation includes all U.S. citizens, including those who are dual citizens or residents of another country. This is based on the requirements of the U.S. tax system, as I mentioned earlier, which places tax filing obligations on all U.S. citizens, even those who are also citizens of another country. At the end of the day, this would result in Canadian financial institutions and their clients being exposed to the U.S. FATCA withholding tax.

Finally, I want to say there's really some misleading information being put out here. U.S. citizens have always been applicable to paying taxes in the U.S. if they were following the tax regime of the U.S. Most of us have some U.S. relatives or U.S. family members or U.S. connection, especially if you live in Atlantic Canada. The reality is the difference here is no different from U.S. tax law. The difference is they're enforcing the rules that have always been in place. If you're a U.S. citizen, you have to comply with U.S. tax rules and you have to file income tax. It doesn't mean that you're going to pay income tax, but you've always been responsible to file. That comes with the duty of citizenship. We can like it or not, but it's not up to us to make that judgment.

The Chair: Thank you, Mr. Keddy.

Mr. Cullen.

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

I wonder if I can put some questions through you to Mr. Ernewein as we approach this amendment .

Just with the scope of previous treaties.... I deem this a tax treaty. Am I incorrect in calling it such, this intergovernmental agreement? Is it a tax treaty by any other name?

● (1545)

Mr. Brian Ernewein (General Director, Tax Policy Branch, Department of Finance): I would describe it as a tax treaty. It's an agreement in relation to an exchange of information, but I think that falls under the heading of treaty, yes.

Mr. Nathan Cullen: Thank you. I don't want to misappropriate or misuse terms.

Typically, when Canada has signed other tax treaties, do we do some sort of assessment within Finance Canada as to the impact of the treaty in terms of incurred costs or who the tax treaty is meant to affect, the number of people affected? Or is that not something that a department estimate would try to achieve when seeking or signing a tax treaty with another country?

Mr. Brian Ernewein: I would say generally not in terms of a numerical assessment of number of taxpayers affected. When there's a change in the treaty policy, for example, a change in withholding tax rates, that Canada might be willing to offer in most or all of its negotiations, that's something that would be costed. Sometimes it's actually been a budget pronouncement announcing that change in policy and providing an estimate of costs, but not on a treaty-by-treaty basis for the most part.

Mr. Nathan Cullen: So a treaty of this scope—and forgive me, Chair, but I wanted to clarify some things before I got into the recommendation of this amendment—in terms of the potential number of people impacted, may I describe it as large? Am I being...? I don't want to paint the picture unfairly, but typically, if we were signing a tax treaty with France or even the entire EU, the number of people who might be implicated by this wouldn't be as large as with something we do with the United States just by the sheer number of people across the border, the sheer number of families that are interconnected.

Is that a fair assessment to make?

Mr. Brian Ernewein: I think it would depend on what the relative change was as to how many people were affected.

Mr. Nathan Cullen: To my specific question then, does the department have an estimate of the number of people in Canada who may be impacted by this tax treaty?

Mr. Brian Ernewein: No, we do not have a specific estimate. That will depend on the number of citizens who have the type of accounts that fall within the reporting regime and who are not exempted because of the nature of the accounts themselves.

Mr. Nathan Cullen: To be clear, would somebody who is a dual citizen of this country and of the United States, by your understanding of the treaty that Canada has signed, be considered to be in that group?

Mr. Brian Ernewein: What matters for reporting is U.S. citizenship, which triggers a report, or U.S. tax resident, which means either being a resident of the U.S. according to our general definition of the term or being a U.S. taxpayer by virtue of another heading, which would be citizenship. Whether dual or non-dual, if they are a U.S. citizen, they're potentially subject to reporting.

Mr. Nathan Cullen: I didn't hear the specific answer to the question, but a dual Canadian-U.S. citizen, by your.... I know this is dealing with American law, which is difficult because we have to interpret, but is it that a dual Canadian-U.S. citizen would be somebody implicated by this tax treaty?

Mr. Brian Ernewein: Yes, and that is by virtue of their U.S. citizenship; that is what matters.

Mr. Nathan Cullen: That's right. That's all. There's no trap in this line of questioning; I'm simply not that skilled.

One question that has been raised through this process, and I think this is what Mr. Rankin is trying to address here, concerns the deemed U.S. persons. The process that we've understood to this point is that the assessment is initially made by the bank itself as to whether a client of theirs may fall into this category—either having some relations that trigger within, I suppose, their computer systems.... I can't imagine the banks are going to go through all 15 million or 17 million accounts that they have one by one. There will be some sort of computer program that will sift through their accounts to try to find these triggers, either this dual-citizenship trigger, or the trigger of somebody having accounts or holdings within the U.S.

Is that your understanding of how this is going to be applied?

Mr. Brian Ernewein: It will depend on whether we're talking about existing accounts or new accounts. With respect to existing accounts, it's much along the lines, at the general level, that you describe. An electronic search is generally the procedure. If the electronic search shows up a U.S. indicator, then that could be the prompt for further inquiry. That's all that's required. There's no other sort of investigation involved, except with high-value accounts.

For new accounts, it will be open to the banks to see, on the basis of the documentation they receive, whether there are U.S. indicators. It may also be the case that a bank would wish to put the question to new account holders, to ask the question explicitly.

Mr. Nathan Cullen: One more time, can you remind us again why we have the insertion of the CRA into this equation? Why, once the banks do that screening on either new or pre-existing accounts, do we then have the information first go to the CRA rather than directly to the IRS? That is where it's eventually going to end up.

● (1550)

Mr. Brian Ernewein: Well, the intergovernmental agreement achieves a number of different benefits, but on this particular point, the ability to collect information under our own law and provide it to the Canada Revenue Agency and then to transmit it under our own law and the Canada-U.S. tax treaty seems to avoid potential concerns on privacy issues, as well as with—sorry, regulatory issues—whether or not access to basic banking would be a concern. That is on the account closing. That's a FATCA test.

Mr. Nathan Cullen: I'm sorry. Can you...?

Mr. Brian Ernewein: Forgive me; I'm melding two things. There's the consequence of FATCA versus an IGA, and FATCA itself, in the event of information not being furnished as required under FATCA, could involve account closing. It is not specific to your point about why information is provided to the CRA and over to the U.S. versus directly to the U.S. That is about privacy concerns.

Mr. Nathan Cullen: I'll get to this, Chair.

You mentioned something about its limiting some of the privacy concerns raised if it were to go directly from the bank—the institution, whatever it is—to the IRS. Is that right?

What I'm trying to understand, and what Mr. Rankin is trying to do in terms of improving this agreement is to understand whether there is some sort of extra security test or something, some enhancement of privacy, that happens simply by going through this middleman, the CRA, rather than directly to the IRS.

Mr. Brian Ernewein: Yes, I would say so. First of all, the scope of the information to be provided is narrower under the intergovernmental agreement than under FATCA. Second, the transmission of that information is, under the Canada-U.S. treaty, subject to the safeguards of the treaty and our own laws, which require that it only be used for the purposes of U.S. taxation and not for other purposes, and only if it is relevant to U.S. taxation and not to other purposes.

Mr. Nathan Cullen: This is where I'll end.

In terms of the use of that data, one of the concerns that's been raised, and this has happened, by the way, when health records have been subcontracted to an American company. The American company then is exposed.... Some of the committee members will have constituents that this has happened to. Health records get exposed under the Patriot Act. A Canadian crosses the border; there's a trigger that comes up because the person, under their health information, had—I don't know—accessed mental health services, or some issue, and then they get stopped.

It's a disturbing thing, as you can well imagine, that information like that would suddenly end up in the hands of a U.S. border guard when it has nothing to do with....

Our concern is, what real protections can we have that the IRS, under the Patriot Act or other provisions under U.S. law, completely outside of our control, doesn't allow that financial information, which one might argue is as sensitive as health information? You can learn a lot about a person through their financial records—a lot; more than maybe you should.

Considering the nature of data breaches that have happened both at the CRA and the IRS in the last number of years, how do we control the U.S.? Once that information enters the U.S., it is subject to U.S. law, and we can't control what the U.S. does with that information once it crosses the border.

Mr. Brian Ernewein: The tax treaty we have with the U.S. stipulates that the only purpose for which this information can be used is for U.S. taxation, and none other.

Mr. Nathan Cullen: My final question, and again, in support of this amendment, what repercussions does Canada have if that is not adhered to under this agreement? If the Americans don't live up to their side of the bargain, we have no reciprocal IGA with the U.S. over tax on this. This is a one-way deal, predominantly. Is that fair?

Mr. Brian Ernewein: At the moment, there's more information that we're required to collect immediately and provide to the U.S. than they are required to collect immediately.

Mr. Nathan Cullen: That's right.

Without the reciprocity, the question is, if the Americans don't abide by this, for whatever reason, whatever thing that we can't foretell, what recourse would a Canadian citizen have if the IRS then distributes this personal financial information more widely than they say under this agreement?

Mr. Brian Ernewein: I'll make two points.

First of all, there is reciprocity in terms of the protection of information. The Canada Revenue Agency and the Government of Canada are subject to the same constraints with respect to the use of tax information that it obtains from the U.S. as the U.S. is in relation to information it obtains from Canada.

To your point, if the U.S. does not comply with the agreement, it would be a breach of the agreement. If it were a material breach, it would give the right to terminate. That would be the rights as between governments.

Mr. Nathan Cullen: Have you finished that answer?

Mr. Brian Ernewein: Sorry. That would be the right between governments to determine that the other party was in breach of the agreement. Certainly, I think it would cause information to stop flowing, but it could also be cause for termination of the agreement.

● (1555)

Mr. Nathan Cullen: That was my last question, but my question was very specific. This is the same question repeated. What rights does the citizen have?

This is not about tax evasion, because we have said on the record many times that this is not an agreement to suggest that Canada is a tax haven. Let me use the one example of a dual-citizen Canadian, or a Canadian, who has forgone their U.S. citizenship for decades, and didn't think they were an American. We all have cases in our offices of people coming in saying, “I just found out I'm still American, even though I left when I was five, and I've been Canadian, and I've voted.” I have mayors in my riding.... You can't run for office in another country, and lo and behold, they're still American.

If their information is then distributed more widely, what repercussions do these Canadians—not the government—have under this agreement?

Mr. Brian Ernewein: I'm sorry; I did mean to answer your question in a sense that the power for us as government is to say that the agreement's not being upheld.

As to your question directly, I don't know the answer, whether or not there's some right of damages or recourse. I think the only action we could take as governments would be to stop providing information.

Mr. Nathan Cullen: In this agreement, we don't have that laid out as far as you can tell.

Mr. Brian Ernewein: Not for the taxpayer or persons themselves.

Mr. Nathan Cullen: Thank you.

The Chair: Thank you, Mr. Cullen.

I have Mr. Rankin, Mr. Allen, and then Mr. Hsu.

Mr. Murray Rankin: I just wanted to respond to Mr. Keddy's comments with respect to my proposed amendment. He said, and I agree with him entirely, that this is really a function of a U.S. tax law and a citizenship-based taxation. I totally accept that. But Canada is a sovereign country. Canada has rights at international law. Canada has chosen through this agreement and this budget implementation act to treat some of our fellow Canadians, even those who are born here of U.S. persons, as second-class citizens.

That, of course, is going to be the thrust of a charter challenge which is being prepared right now. I just want to put that on the record.

Mr. Keddy, it's not just dual-citizens. It's people who are married. That is through you, Mr. Chair, but in response to his comments.

Dual citizenship is a smaller category than what we're subject to in this intergovernmental agreement and BIA. We're talking about people who are married to U.S. persons; we're talking about people born here of U.S. persons, and they are now different from other fellow Canadians.

The purpose of the amendment is just to say that we are all the same in Canada and that our government ought not to have sacrificed our sovereignty just because of a U.S. citizen-based taxation regime.

I think Mr. Keddy also said, and I agree, that the purpose of this bill appears to be to protect our banks from a withholding tax in the United States. I'm here, in this amendment, Mr. Chairman, to protect our fellow citizens from this law.

The Chair: Thank you.

I'll go now to Mr. Allen, please.

Mr. Mike Allen (Tobique—Mactaquac, CPC): Mr. Chair, through you, I just have a couple of comments and clarification questions for our witnesses.

Mr. Ernewein, you did indicate that there is a narrower level of information that is being contemplated under the IGA than what would have been contemplated under FATCA, or what would be in place under FATCA if we did not have an IGA.

I think this is one of the questions we seem to be arguing: the IGA or not an IGA. We have an IGA, but we could be in a situation where we don't have an IGA, but FATCA is going to apply to Canadians and to banks even if we don't have an IGA. It's going to happen anyway.

There were two factors that you talked about. One was a narrower level of information. I also understand that the due diligence procedures that you just commented about with respect to the electronic checking of low-value accounts, those actually less than $1 million, require basically a much higher level of information and less scrutiny than most other countries have received.

I think it's important because there are a number of these amendments that we're going to be looking at. I think a lot of them are going to try to accomplish the same thing, but I think the answer to most of them is the same. Under this case and this amendment that's being proposed, and which Mr. Rankin talked about, if not dangerously, we would be in non-compliance with the IGA if we started restricting their U.S. citizens, and they talk about permanent residents as well.

The question is, if we invalidate the IGA, what situation will we be in? The U.S. may say, “Fine. No problem. You're too restrictive, and that's not what we're going to have any more. We're going to come back with FATCA, and we're going to negotiate one-on-one deals with your banks”, which is what they would have done.

There would not only be a 30% withholding on the banks, but also on transfers of dollars to individuals in Canada as well. I could imagine the sputtering that would be going on in our offices if 30% withholding was based on transfers coming to individuals.

In that context we have to be very cautious about looking at any amendments to this. I look at this amendment as being one that would potentially invalidate the IGA in the mind of the U.S.

Can you give that context for us right here?

● (1600)

Mr. Brian Ernewein: Yes, I'll try to be succinct.

To the point first of all as to whether or not U.S. citizens are intended to be captured in the agreement, I think without hesitation the answer has to be yes. The agreement describes a U.S. person as including a U.S. citizen or resident individual.

If we were to say that U.S. citizens or a class of U.S. citizens resident here were not captured or were exempt in whole from the reporting obligation, I know that the U.S. would consider that inconsistent with the obligations that we were thought to have accepted under the agreement itself.

To your point about the scope of the agreement, yes, there is a narrower scope or field of accounts that have to be reported or are subject to reporting under the intergovernmental agreement as compared to FATCA itself. I won't list them all, but we've talked before about all the registered accounts that are kept out of this reporting obligation as a result of this. There are also exemptions for small financial institutions and the like. All of those slice reporting off of what has to be done as compared to FATCA.

Finally to your point, if we didn't do this and if instead we went to FATCA, then yes, we would be back in that sort of hard world where either banks would be trying to find a way to cope with U.S. compliance by sending information to the U.S. directly in relation to a much wider range of accounts than the IGA would contemplate, or facing withholding tax on their behalf and on behalf of their clients, which I think would probably shut them out of the U.S.

Mr. Mike Allen: I have just one last point on some of the procedures as well.

Under the U.S. FATCA, if we didn't have an IGA, would that also contemplate account closings for U.S. citizens, for example, and banks may potentially have to close accounts?

Mr. Brian Ernewein: Yes, it would. Under FATCA, the financial institution is charged with the obligation. It is required to agree to collecting this information. If it doesn't collect it, then one of the penalties that can be imposed—or the incentives, if you can put it that way—on the client to make them compliant with the financial institution's request is account closure, in addition to or in opposition to, as an alternative to withholding.

The IGA takes that away. It's all about account reporting. If the client comes up with only so much information and no more, then the financial institution provides to the CRA what it has, and that's what goes to the U.S. The U.S. can make further inquiries through the CRA under our exchange of information procedures in that event.

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

The Chair: Thank you, Mr. Allen.

Mr. Hsu , we'll have your remarks, please.

Mr. Ted Hsu (Kingston and the Islands, Lib.): Thank you, Mr. Chair.

As you mentioned, Liberal amendment LIB-2 is the same as NDP amendment NDP-6. Because this amendment is being moved by the NDP, I won't be moving Liberal amendment LIB-2, but I will be making some remarks.

I want to thank you, Mr. Chair, for allowing me to group all my remarks for the next three clauses. I will put all my remarks on the record now, and I will not be making extensive remarks for the next three clauses.

This legislation regarding the Conservative government's FATCA deal with the United States should not be part of an omnibus budget bill that is being rushed through Parliament in the last few weeks of our sitting in June. This deal will affect a lot of people, approximately a million or so deemed Americans living in Canada. Many of them are Canadian citizens. There are examples of people who are accidentally Americans; for example, Canadians from Canadian border towns who were born in a U.S. hospital because that was the closest hospital. I know a priest from New Brunswick who is in exactly that situation. He lived right on the border in New Brunswick. Then there are parents who mistakenly thought they lost their U.S. citizenship upon becoming a Canadian citizen. Their child, who was born in Canada, has never been to the United States, but finds out they have U.S. citizenship and are subject to the obligations under the legislation that we're debating today.

There hasn't been an information campaign from the government to let Canadians know how the Conservatives' FATCA deal with the United States will affect them. Perhaps that should have been done even before this legislation was considered so that we parliamentarians, as their representatives, could hear from them after they had been properly informed. That's the way accountability of the government to Parliament, to the Canadian people through Parliament, should work. I think informing Canadians first is very important.

What limited information is out there has sometimes been misleading. For example, the government has boasted that registered accounts such as RESPs and RDSPs are not reportable. In other words, the CRA will not be reporting them to the United States. But even though Canadian banks won't report those accounts, Canadians who have U.S. citizenship will still have to fill out forms to report those accounts to the IRS in the United States if the total aggregate value of all accounts exceeds $10,000. It's unfortunate that wasn't dealt with in the negotiations leading to the IGA. If these Canadians don't report their accounts to the IRS, they face U.S. penalties of up to $100,000, or 50% of the balance of the account, whichever is greater, per violation.

Under this deal, Mr. Chair, the CRA will share personal tax information on Canadians with the IRS, but our officials, our government, have been unable to tell us and the Canadian people on a granular level exactly what information will be shared. We know that under this deal the CRA will punish Canadians who don't provide the Canadian government with their U.S. tax identification number. In most cases, it will be the social security number in the U. S. When Canadians do provide this information to the CRA, the CRA will then hand it over to the IRS.

The CRA already collects information on Canadians' income, of course—it's part of filing taxes—and all our information about all our registered accounts, but we don't know in detail how much of this information the CRA will then pass on to the IRS.

● (1605)

The Conservative government claims that the government will not use this information to help the IRS go after U.S. taxes on Canadian assets and Canadian income earned by Canadians. However, the government is introducing a $100 penalty for Canadians who don't provide their U.S. tax identification number to the CRA, but the CRA has no use for a U.S. tax identification number, except to pass that number over to the U.S. government under the IGA.

It's clear, unfortunately, that our Conservative government has signed a deal with the United States that has the Canadian government doing work for the U.S. government, namely, collecting information for the IRS. Our officials have been unable to give Canadians granular details on how this deal will financially impact Canadian citizens, so they've been unable to give a full response to their representatives here in Parliament.

There's another example. We know that RESPs, the registered education savings plans, and the RDSPs, will be subject to U.S. taxes under this deal, but we don't know how much Canadians will have to pay in U.S. taxes on these accounts. One example where that's a problem is that if these accounts are being used by Canadians to help pay for a child's education or help disabled Canadians avoid poverty. These accounts were not created to help the U.S. Treasury pay down its debts across the border.

We know that Canadian spouses of so-called U.S. persons in Canada will also be affected if they have joint accounts and that these joint accounts will be subject to U.S. taxation, but Canadian officials haven't been able to tell us if the entire account would be subject to U.S. taxation or just a portion of it.

There's a lot about this deal that will be put into practice that we don't know.

Parliament's study of the Conservatives' FATCA deal has been rushed. We haven't been afforded the time or the resources to write proper oversight, listen to constituents who are informed, and fulfill our responsibility to them. If this section of the bill passes, we will have passed an agreement into law without properly understanding how it will work and how it will affect Canadians. That is why the Liberal Party opposes part 5 of this bill.

I will wait until we get to the point of the agenda where we reach the other Liberal amendments, and at that time I'll simply move those amendments.

● (1610)

The Chair: Thank you for your comments.

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

Mr. Gerald Keddy: Mr. Chairman, I'm going to try to correct the record here a tiny bit, and I'm sure it'll need correcting again.

To be clear, RESPs and RRSPs are not subject to American taxes under this, and we have experts here if you want to follow up with them.

A voice: Not under this agreement....

The Chair: Through the chair. Order.

Mr. Gerald Keddy: Let's be clear that anyone who's solely a Canadian citizen is not caught up in this. Yes, if they're married to an American and they have a joint account, there's some possibility, but the reality is anyone who is solely a Canadian citizen is not caught up in this. If you're a Canadian citizen married to an American and you don't have a joint account, you're not caught up in this.

This, again, is a tax for U.S. citizens. If you're the son or the daughter of an American and you've been born in Canada outside the jurisdiction of the United States, you're not automatically a U.S. citizen. What I'm hearing from the opposition is somehow you are. You are absolutely not. You have to apply for U.S. citizenship on or before your 18th birthday and it's not a guarantee. It's an application form.

Let's be clear that without this agreement, this law is in place anyway in the U.S. These people are subject to the tax. We don't have to like it. We don't have to agree with it. That is not the point. We have to find a way to make this at least acceptable that if these individuals want to travel to the U.S., they don't get flagged and picked up at the U.S. border, that they're not subject when that happens to a 30% withholding tax in their personal bank account, and that the financial institution that holds that bank account is not subject to a 30% holding tax.

There's nothing nefarious there. This is a very complicated process that we're trying to find a reasonable way, through the FATCA agreement and through the IGA, to work through. To be fair, I think the officials have done a very good job at doing that.

In closing, Mr. Chair, I want to make it clear once again. There's a lot of talk from the other side, and I'm sure it just happens to be language, a slip of the tongue. Canadians know that only if you're a dual citizen will you be caught in this. And only in the rare possibilities of those individuals who may have a joint account are you caught in this. But as for the children of American parents, as was mentioned by Mr. Rankin, or an American mother or an American father born in Canada, they're not automatically American.

The Chair: Thank you, Mr. Keddy.

Mr. Rankin, please.

Mr. Murray Rankin: Thank you, Chair.

I've certainly spoken with a woman in Calgary who was a U.S. person although a Canadian for many years, whose son was born in Canada. She is concerned that her son does not have the mental ability, because he has a mental disability, to renounce his U.S. citizenship. He didn't apply in the United States before his 19th birthday. He's deemed to be a U.S. person under a foreign law. He's a fellow Canadian, and he's caught up in the FATCA web.

I don't understand why we as a sovereign country have to simply go along with this law, presumably to protect the banks. I realize the importance of the economy and the like, but this is a human rights issue, Mr. Chairman.

We've heard testimony as well from Professor Cockfield who was here at our committee who pointed out:

> ...by entering into the IGA we are in compliance. That has bought us time. The July 1 withholding tax, as I understand it, as a matter of technical law, will not kick in because we've complied. We're a democracy, a sovereign country. We're investigating certain concerns surrounding the IGA, and it will be implemented at a later date.

Mr. Chairman, there's plenty of time for us to get this right. To have it rammed through in an omnibus budget bill without proper time to scrutinize such a complicated piece of legislation with such impact on our fellow Canadians is simply wrong.

● (1615)

The Chair: Thank you.

I will take the vote then on NDP-6.

You want a recorded vote on NDP-6.

(Amendment negatived: nays 5; yeas 4)

The Chair: As I mentioned, we cannot proceed with LIB-2 as it was identical to NDP-6. Therefore we will go to LIB-3.

Mr. Hsu, will introduce it.

Mr. Ted Hsu: Liberal amendment LIB-3 ensures simply that Canadian law will take precedence over this agreement with the United States regarding FATCA and not the other way around.

The Chair: Thank you.

We'll have a vote on LIB-3.

Mr. Ted Hsu: I would like a recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: Colleagues, we will now go to PV-1. As per our agreement, we'll allow Ms. May one minute to introduce her amendment.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Sorry, Mr. Chair, whenever it's put that you're doing me a favour by insisting I come here due to a committee amendment that deprives me of my rights to report stage, it makes me feel I have to put on the record once again that I'm here because of a motion passed that was scripted in PMO that was put simultaneously through 20 committees and deprives me of my rights at report stage.

So, yes, I'm happy to be here.

The Chair: Just for clarification, Ms. May, I never said "do a favour"; I simply said as per the agreement we have with the committee. As the chair, I follow the agreement by the committee so that is what I'm doing.

Ms. Elizabeth May: And I'm following the agreement by the committee, and that's why I'm here instead of submitting my amendments at report stage when I would have more adequate time to speak than the one minute per amendment I have here. But thank you, Mr. Chair. I don't want to cause any trouble. I'm very grateful for all the lovely people around this particular table. I have a problem with the process, not the people.

This particular amendment, Mr. Chair, seeks to do the same thing by different means. We have under proposed section 4 at page 73 a provision that is overly broad and could be interpreted to mean that any inconsistency between this agreement and the provisions of any other law, that the FATCA agreement would supersede any other law. That could include the Privacy Act of Canada. It could include the Charter of Rights and Freedoms. We don't know what other laws can be superseded by FATCA.

In an effort to ensure we are sufficiently narrow, I think to meet the intent of the section, my amendment removes "or any other law" in clause 99. To just omit the words "or any other law" narrows it to inconsistencies that relate to the articles of the convention and the Canada-United States Tax Convention Act from provisions of this act.

It's a clarifying amendment. I think it should be very helpful since, as we know, the current administration says the purpose of this act is not to overturn Canadian law.

● (1620)

The Chair: Is there further discussion?

Mr. Cullen.

Mr. Nathan Cullen: I want to speak to the point in this amendment, but it's so much of a procedural option I was feeling somewhat for our interpreters because as Ms. May has 60 seconds to get all that out, the speed with which it comes is challenging. I feel somewhat unclear. I seek from the committee another minute to allow her to explain it more fully, if that's possible. I know we are guided by this agreement that we have within all the parties, but committees can also dictate with unanimous consent virtually anything. This is not an interruption of the chair's prerogative.

The Chair: It's not my prerogative. How much time are you proposing for each?

Mr. Nathan Cullen: Another minute or two. I was just looking through the other amendments that have been put forward by the Green Party, and this seems to be one of the central ones. If that's the case, just looking through our broader list, there are some 12 or 13 in total, but this seems to be a pivotal one.

The Chair: For clause 101, I was going to allow Ms. May to speak for an extended period of time to all of her amendments, or she can speak individually to each one.

Mr. Nathan Cullen: I see.

The Chair: I am guided by the committee on this, and there was nothing in the motion with respect to—

Mr. Nathan Cullen: It's just to explain, because this is a clarifying amendment, and I want to feel clear about what it is I'm voting for or against, if that's all right.

The Chair: Is there unanimous consent to have another minute or two?

Mr. Gerald Keddy: No.

The Chair: If I don't have unanimous consent, I don't have unanimous consent. I'm guided by that.

Speak to the amendment itself, then, Mr. Cullen.

Mr. Nathan Cullen: Again, it's somewhat challenging for me to speak with clarity to it. Maybe Mr. Rankin could help us out. I don't see why a minute was so difficult over a several hour process.

The Chair: Is there further discussion on the amendment?

Mr. Rankin.

Mr. Murray Rankin: I would speak in favour of the proposed amendment. To me it's a point of clarification. All the Green Party amendment would do is provide for greater certainty on certain things. I believe that if it's the case we want our existing laws, like the Privacy Act, to take precedence, and if there's any ambiguity in the clause about that, why don't we put it on record and clarify it? It's only an attempt to clarify what appears to be the intent already, so I think it's, in a sense, a friendly amendment and worthwhile.

The Chair: Thank you.

If there is no further discussion on the amendment, we'll vote on PV-1.

An hon. member: A recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: I will go to NDP-7.

Mr. Rankin, please, on NDP-7.

Mr. Murray Rankin: Thanks, Chair.

In a sense, this has a similar intention as that of the Green Party amendment, so it may not be acceptable, but I put it out as an amendment, again, to provide greater certainty to phrase other law in the proposed subsection to which she spoke. It does not include any other act. It expresses fundamental values such as the Canadian Charter of Rights and Freedoms, the Canadian Bill of Rights, the Canadian Human Rights Act, the Privacy Act, the Official Languages Act, and the Access to Information Act.

Chair, in the courts, all of these statutes have been considered quasi-constitutional in nature, except in the case of the charter, of course, which is called a constitutional law. They are part of our fundamental framework of laws in Canada. There seems to be some ambiguity in proposed section 4 about inconsistency between this act, the budget implementation act, and the provisions of any other law. It does say that the agreement prevails to the extent of the inconsistency. Does it prevail over the Privacy Act? That can't be the case. It can't be the case, so this would simply clarify that and give Canadians some comfort that we're not selling the farm and our fundamental rights by passing a law of this sort.

The Chair: Do you have further comment, Mr. Keddy?

Mr. Gerald Keddy: Yes. Mr. Chairman.

The provision is unnecessary. The charter applies where it applies. The Privacy Commissioner has given no indication that part 5 is inconsistent with the Privacy Act. The motion is absolutely unduly vague, and it's not clear what "fundamental values" mean, or what "fundamental values" are intended to mean. Similarly, the IGA and the implementing legislation do not result in any kind of general override of official languages or the Access to Information Act, so the charter applies where it applies, and the Privacy Commissioner has looked at this and given us the green light. So where is this information coming from?

● (1625)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: You might want to check back with our Privacy Commissioner about having given this agreement a green light. I think serious concerns were raised by that same Privacy Commissioner, so green light might be an exaggeration of the testimony we heard.

My question, through you, Chair, is for the officials.

We had some conversation earlier about seeking advice from the Department of Justice, a normal, required practice under our laws. Concerning the ambiguity that Mr. Rankin seeks to clarify through this amendment as to which supersedes which if there's a conflict, I don't think it's fantasy to imagine a potential conflict between an intergovernmental agreement on the sharing of financial information and someone's raising a concern around privacy. I think it's a natural potential legal consequence.

Did the department seek any clarification from Justice with respect to these specific acts, particularly the Privacy Act or the Access to Information Act?

Mr. Brian Ernewein: I'm sorry; the question started off by referring to—

Mr. Nathan Cullen: Which has supremacy?

Mr. Brian Ernewein: Do you mean on the constitutional question, or other matters?

Mr. Nathan Cullen: If there's a conflict between the two, an agreement or tax treaty that we've signed under this provision and the Privacy Act or the Access to Information Act, did the department seek any legal advice as to which supersedes which, when the one is in direct conflict with the other?

Mr. Brian Ernewein: I'll try to answer your question as well as I'm able to.

With respect to constitutional matters, I think we said earlier that the Minister of Justice is charged with reviewing legislation and advising Parliament if there is concern that the legislation is not constitutional.

With respect to the Privacy Act, you've heard, I believe, from the interim Privacy Commissioner on that question and have obtained her views.

With respect to other matters, such as access to information, I'm not aware of that question having been specifically asked.

Mr. Nathan Cullen: I am aware of her views.

You said that, at least as far as you know, whether that legal opinion was sought through the Department of Justice concerning the Access to Information Act....

It's a simple question, but perhaps it's a complicated question in the sense that when laws are in conflict, we can't foresee what the courts will rule. All I'm asking is whether an opinion was sought from Justice whereby Justice said that clearly with such an intergovernmental agreement, the Privacy Act is dominant and will, in cases, be interpreted as superseding a tax treaty agreement with a foreign nation.

Was that advice sought?

Mr. Brian Ernewein: With respect to the Privacy Act, it is, as I've already said, that we kept the Privacy Commissioner informed. I think the way I expressed it before is that I'm not aware that the Privacy Commissioner or the privacy office will bless legislation per se, but they offer comments.

You've had the interim Privacy Commissioner here, and my understanding is that she did not raise an issue, or at least I understood there not to be a conflict.

Mr. Nathan Cullen: The question I asked was whether a legal opinion was sought, from your department through the Justice department, as to which holds supremacy under Canadian law with respect to the privacy of Canadians: this intergovernmental agreement or the Privacy Act.

I just want to know whether an opinion was sought. You can say, "I don't know", or you can say, "One was sought, and I won't tell you", but I want to know whether you went to Justice and asked.

Mr. Brian Ernewein: I'm not aware of an opinion from Justice having been sought on the Privacy Act question. That was dealt with through the Privacy Commissioner.

Mr. Nathan Cullen: Just to be clear for the record, when we asked both you and the Privacy Commissioner, we heard that there were conversations between your offices, but there wasn't any acknowledgement of seeking what Mr. Keddy talked about, a green light; there was never a moment when Finance sat down with the Privacy Commissioner and said, "We want your endorsement of this," or "We want to know that this is in line with the Privacy Act stipulations." There's one thing in terms of consultation. Consultation can mean what it simply means by definition: that you kept her informed as to whether there was condoning of the provisions in this act and whether we're going to see conflict.

Our concern is this, specifically—and I think what amendment NDP-7 seeks to do is to put it into plain legal text so that there is no doubt and so that it doesn't necessarily need an expensive legal process to clarify it later, which is, I think, what's going to happen under the bill as it's written—that when in conflict, the Charter of Rights, the Bill of Rights, the Human Rights Act, the Privacy Act, the Official Languages Act and Access to Information Act all will supersede this intergovernmental agreement.

If that's what the amendment says, if that is what this amendment today proposes, does it threaten any of the fundamental DNA of the intergovernmental agreement we have with the United States, in your view?

● (1630)

Mr. Brian Ernewein: I haven't considered all those points, and in fact they are not for me to consider. The Department of Justice has the standing responsibility for constitutional matters. The privacy question was obviously of interest to us because of the issues that FATCA itself raised, and so those were discussed with the privacy office. We thought we had overcome them.

Concerning the other issues, I'm not aware.

Mr. Nathan Cullen: Thank you.

The Chair: Thank you, Mr. Cullen.

We'll go to Mr. Rankin.

Mr. Murray Rankin: Thank you, Chair.

Just for clarification, Mr. Ernewein, sir, you said to my colleague that you did not seek a legal opinion from the Department of Justice on the Privacy Act implications of this agreement or this law. Have I got that correct? You didn't ask the Department of Justice for a legal opinion. Did you ask any outside counsel for a legal opinion in that regard?

Mr. Brian Ernewein: No, we did not ask any outside counsel for advice.

Mr. Murray Rankin: You conferred with the Privacy Commissioner, but you testified that they don't give advance tax rulings, and they don't give advance privacy rulings, so you don't have anything to go on from her either.

Mr. Brian Ernewein: Well, we have her testimony before you, I think, in an exchange with you about the view that it has a higher standing than ordinary law, if you will.

Mr. Murray Rankin: But we had a discussion, you may recall, sir. When you were here, we talked about this. I was left unclear about which law would prevail in the event of a conflict. The government has defended the use of the CRA as opposed to simply, as with other IGAs in other countries, allowing the information to flow from our banks to the IRS. We proposed the CRA precisely because the Privacy Act would give us some protections, but now it may be the case that the Privacy Act will not prevail, and that's why we're seeking clarification to that extent. That would appear to be a very reasonable amendment. It would seem to do what the government has said is one of the reasons we put the CRA in the middle in the first place.

Mr. Brian Ernewein: To that I think what I had said earlier and sort of amplified or perhaps more authoritatively spoken to by the Privacy Commissioner is that there doesn't appear to be a conflict to overcome.

Mr. Murray Rankin: One of the things that's in our proposed amendments, Chair, is the Canadian Charter of Rights and Freedoms. I'd like to read to you something from Mr. Peter Hogg, who the government, you'll recall, consulted on the Nadon appointment recently, and obviously they think of him as an important constitutional scholar. He writes as follows:

> In my opinion, the procedures mandated by the Model IGA are discriminatory in a way that would not withstand Charter scrutiny. These procedures effectively treat individuals differently, and adversely, based on an immutable personal characteristic, specifically citizenship.... If Parliament were to enact legislation authorizing and permitting this type of differential and adverse treatment, the legislation would contravene the equality protections in section 15 of the Charter.

That is why we seek clarity that their charter rights would prevail. That is one of the acts that we've asked be addressed in our proposed amendment. That's the reason for the amendment.

The Chair: Thank you.

I just want to clarify, Mr. Ernewein, how many of these tax treaties have you worked on over the years?

Mr. Brian Ernewein: Myself, personally?

The Chair: Yes.

Mr. Brian Ernewein: I couldn't say. There are 90 treaties in place and 20 TIAs. We have our own chief of tax treaty negotiations. I'm not that person, but I've been involved in some manner in a lot of those.

The Chair: I guess my point is that you and Mr. Cook have appeared many times with respect to budget legislation, with respect to treaties of this type. As I understand it, the normal process with a treaty or legislation is it's the Department of Justice that has the responsibility for ensuring that it is constitutionally valid legislation, which you were telling this committee was done in this case. Is that correct?

Mr. Brian Ernewein: Yes, the same assessment is made of this legislation as all other, I think, yes.

The Chair: It's standard practice, I think as you said, the Privacy Commissioner does not bless legislation ahead of time. The Privacy Commissioner is free to comment at any time on legislation or any other issue, but it is the Department of Justice that you go to as a Department of Finance official, whether it's with respect to a tax treaty or with respect to legislation. It is the Department of Justice that has all the constitutional questions that they must address.

● (1635)

Mr. Brian Ernewein: With respect to constitutional questions and other questions as well, though in the privacy world, we are certainly interested in sharing at least for their benefit and possible feedback with the Privacy Commissioner those issues.

The Chair: Okay, I appreciate that clarification.

Mr. Allen on that same point.

Mr. Mike Allen: I have a question on that. To follow on your comments, Mr. Ernewein, when you talked about the 93 treaties and the number you have dealt with, I do have concerns with the wording used, like "fundamental values". What does that mean? There are a lot of definitional aspects in there.

Are there any other tax treaties that we have which would include language like that, and start to specify acts like the Charter of Rights and Freedoms? Are there any other tax treaties that actually have that kind of language in them?

Mr. Brian Ernewein: I was going to say all, but I should be careful not to do that. I think it's certainly the case that at least most of our tax treaties and their implementation legislation provide that their terms are to apply or to prevail over any other inconsistent legislation. It's not my understanding—and I'm offering an amateur opinion here—that it extends to override constitutional law or the like. What it does is intend to override other domestic tax rules that would be inconsistent with the tax treaty.

Mr. Mike Allen: Okay, thank you.

The Chair: Thank you, Mr. Allen.

Mr. Cullen, please.

Mr. Nathan Cullen: It's good news then, in following up on Mr. Allen's question. If what this amendment does is reaffirm or confirm what it is that we do in our tax treaties, then I think we might have unanimous support, because it's confirming what we already do and what is already law, and that's not for you Mr. Ernewein.

I have a follow-up question to one by the chair. In terms of that constitutional check that we do through justice, there are different ways to have a constitutional test. One of them is with a very high bar. These are all done by probabilities. You and I discussed this earlier. Government used to seek an 85% constitutional probability test.

Do we know what test percentage or probability was applied to the question put to the Justice department, what likelihood of a charter challenge this act would receive?

Mr. Brian Ernewein: I know you said specifically that your earlier comment wasn't applicable to me, but may I just say that what we do in our tax treaties is what's been done in the proposed legislation, not the motion that's been proposed.

In answer to your question, I don't know that. I can only refer to what the Minister of Justice responsibilities are and it's my understanding that they've been discharged.

Mr. Nathan Cullen: When your department goes to Justice and asks if this would survive a charter challenge, for example, Finance or any other department doesn't ask what the probability of that survival is. It doesn't say, "Do we have a 5% chance or a 95% chance?" You're agnostic to that question?

Mr. Brian Ernewein: Oh, I think they may, in fact, tell us what the assessment is, but it's not something I think I'm in a position to share.

Mr. Nathan Cullen: Mr. Cook, does anyone know what the likelihood was of a charter challenge?

Mr. Ted Cook (Senior Legislative Chief, Tax Legislation Division, Tax Policy Branch, Department of Finance): I think the response to the question is the one that I gave when we met on Tuesday, that we're prohibited from discussing any legal opinions or advice that we may or may not have received.

Mr. Nathan Cullen: I understand, but you're not prohibited from discussing what test was applied. If Justice has changed what the test is, you're not prohibited from discussing what that test is. If Canadian government practice up until this point was to say that we expect an 85% challenge test and we then lowered it to 50% or 15%, there's nothing in the statutes that prevents you from discussing that, does it?

Mr. Brian Ernewein: I think that is discussed no matter the content of the opinion.

Mr. Nathan Cullen: Okay, so it's all well and good to say, "We went to Justice and we asked them whether this will survive a charter challenge" and not discuss what the survival rate was actually like. It's like saying you got the car tested and it tested out fine, but you only looked at 5% of the car. Yes, you got your car tested, but you got it tested badly.

Our question around this is.... What's unfortunate about this, this process that we're in, is the Government of Canada is so likely to end up in court under this part of the tax treaty that they're signing with the U.S. and it's going to cost the Canadian taxpayer so many millions of dollars and untold number of Canadians the financial grief of going through this. It's like this predictable problem that the government's creating for itself.

Sorry, Chair, but it's ultimately frustrating that all of these things hang in confidence. If it had a good test of its charter-proofness, certainly the government would be proud of it and it's hiding behind the confidentiality screen.

All this does, Chair, is it enshrines into the act itself what Mr. Allen asked Mr. Ernewein with respect to what happens in other practices and other tax treaties.

Why the government wouldn't vote to clarify that the Charter of Rights, the Bill of Rights, the Human Rights Act, the Privacy Act, the Official Languages Act, and the Access to Information Act will supersede anything we sign in this tax treaty is beyond me. If it's redundant, then so be it. Let's have a redundant aspect of a legislative bill. I'm stunned that something so obvious can't be accepted into law.

● (1640)

The Chair: Thank you.

We will go to the vote on NDP-7. Will it be a recorded vote?

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): Please.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We will go to LIB-4 please.

Mr. Ted Hsu: Mr. Chair, LIB-4 simply ensures that the regulations under this agreement won't come into force for at least a year. That gives government time to inform Canadians about any rule changes so they aren't caught off guard. I think a lot of Canadians said, "Oh, I just found out that I'm a U.S. person." It just gives them time to adjust to this new regime.

The Chair: We'll go to the vote on LIB-4.

Mr. Ted Hsu: A recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We'll go to LIB-5.

Mr. Ted Hsu: Very quickly, Mr. Chair, LIB-5 requires the Minister of Finance to table any amendments to the agreement in the House in Commons before they can come into force. It's pretty simple: show Canadians any agreements their government enters into.

The Chair: Okay, thank you.

An hon. member: It's pretty radical.

Mr. Ted Hsu: I can't believe they would vote against that now.

Could we have a recorded vote?

The Chair: Yes, but we'll just continue the discussion.

Mr. Keddy.

Mr. Gerald Keddy: Very quickly, we already have a policy on tabling treaties in Parliament that would apply in the case of an amendment to the IGA.

The IGA itself was signed in February 2014. It was not tabled in Parliament, given the need to provide legislative authority for financial institutions to begin new due diligence and reporting procedures as of July 1, 2014. However, we moved quickly to introduce some implementing legislation in Parliament, which we are in the process of debating. We've finished debating. Therefore, the intent of the policy has been met. The case of an amendment to the IGA, under the policy of the government, would provide a waiting period of at least 21 sitting days after tabling, before it takes steps to bring the amendment into force—I mean, the policies into place.

The Chair: Thank you, Mr. Keddy.

We'll have a recorded vote LIB-5.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We'll go to NDP-8.

Mr. Rankin.

Mr. Murray Rankin: Well, thanks, Mr. Chair.

This is relatively straightforward, although the drafting would make it look complicated. It's simply an amendment I'm putting forward to ensure that if the FATCA is repealed in the United States—and after all, it is a U.S. law in origin, facing its own constitutional challenges down there—the amendment would seek to clarify what would occur in the event that it is struck down in the United States, and ensure that the changes made to implement the intergovernmental agreement would be repealed in such a case.

What would happen as well, incidentally, if the amendment were accepted, is it would restore the pre-existing information exchange, because it deletes references to FATCA measures that are inserted in that paragraph of the IGA.

Once again, it simply addresses the eventuality of a successful constitutional challenge in the United States, of which many are proceeding, and just takes us back to the status quo with our law, if that were to occur in the United States.

● (1645)

The Chair: Thank you, Mr. Rankin.

Mr. Keddy.

Mr. Gerald Keddy: Yes, I think on this one I actually understand what Mr. Rankin is trying to bring in. I think when you look at the agreement, Mr. Chairman, if and when the agreement were terminated, the related obligations would also largely be terminated at that time. However, it would not be possible to immediately repeal part XVIII as it imposes obligations that must survive the termination of the IGA. For example, financial institutions would need to retain records for at least six years after the period of the termination.

That's why we can't support it.

The Chair: Thank you, Mr. Keddy.

We'll go to Mr. Cullen, please.

Mr. Nathan Cullen: Mr. Ernewein, can you come in on this one, just on this part XVIII? If this is under a circumstance in which the U.S. eliminates their portion of the agreement, this amendment would obligate Canada to do the same. Mr. Keddy is suggesting that would happen anyway, except for this one piece around six-year record-holding. Can you clarify that for us?

Mr. Brian Ernewein: I'm sorry, but I'm not certain that I understand the question, but perhaps I could just make an observation and an attempt to guess at it.

It would be termination of the agreement, I believe the motion that is involved.... So would it be a situation where Canada treats the agreement as having been terminated? In those circumstances then the language about the agreement having been amended from time to time would come in and the force of the legislation in terms of future exchanges of information would cease.

Mr. Nathan Cullen: Sorry, I'm not following you.

Mr. Brian Ernewein: Then perhaps I'm not understanding the question, sir.

Mr. Nathan Cullen: I'm bringing this up somewhat in assistance to Mr. Keddy as he was talking about if the U.S. side of FATCA is terminated, there is a consequence obviously on this side. Why would we uphold an agreement that we were forced into somewhat unwillingly and maintain it except for this one section of XVIII where six years of reporting is held by the banks? Can you clarify what aspect of the agreement that is?

Mr. Brian Ernewein: I apologize for being thick, but I think my colleague can respond to the question.

Mr. Ted Cook: Part XVIII is part of the Income Tax Act and as such it would be subject to administration by the CRA.

Under section 267, part of XVIII, financial institutions required to report under part XVIII are required to retain records so that the CRA can perform in its administration and of course its duties.

Mr. Nathan Cullen: Is this completely exclusive of FATCA? This is just statutes under Canadian law and the tax act.

Mr. Ted Cook: This is just under Canadian law as a general matter for income tax purposes Canadians need to maintain books and records that the CRA uses to ensure compliance with the Income Tax Act.

Part XVIII does contain specific record-keeping requirements and record retention requirements with respect to financial institutions that are required to report to the CRA. As a result, even on the termination of the agreement, part XVIII, if it stays in place, would require that the records be kept for a period, six years in the case of part XVIII, so that the CRA can undertake its enforcement and administrative duties.

Mr. Nathan Cullen: Is this trying to prevent the law of unintended consequences? I'm just trying to clarify Mr. Keddy's concern. I'm sure some of this originated in your department.

If this is a redundant amendment, an amendment that suggests that the Americans renege on FATCA and we obviously do the same, so be it and we move on with our relationship. Then again, it's a potentially supportable amendment, and Mr. Keddy raised some concern about a section under part XVIII under our own tax law which I can't imagine this amendment affecting.

Mr. Ted Cook: I'll try to explain again.

Even if the agreement is terminated, taxpayers or their financial institutions are required to retain records. Even if the agreement is terminated, there would be an ongoing requirement for the records that were created during the period of the agreement being enforced to be retained by those financial institutions so that the CRA could undertake its duties with respect to administering and enforcing the Income Tax Act.

Mr. Nathan Cullen: I'm not sure if Mr. Rankin has a follow-up.

● (1650)

The Chair: Does that clarify it?

Mr. Nathan Cullen: Tax law is always clear to me, Chair. It's prose most of the time. It's readable stuff.

Mr. Murray Rankin: I confess to being confused as well. Can I ask a question?

The Chair: You can, but I don't know if Mr. Cook can state the same answer. I'm not sure it's going to help.

Mr. Murray Rankin: The purpose of this is to provide greater clarity as to what would occur in the event it is repealed by the United States. As to the six years of holding financial records that's in the Income Tax Act and would be a continuing obligation under that act anyway. If I'm understanding your evidence, Mr. Cook, it seems like—

Mr. Ted Cook: That's my point, sir. The motion would repeal part XVIII of the Income Tax Act. That's where the requirement to retain records resides.

Mr. Murray Rankin: I see.

Mr. Ted Cook: By repealing that part, you repeal the requirement to retain records.

Mr. Murray Rankin: I see.

Mr. Ted Cook: Thus CRA will not be able to undertake its administration and enforcement duties.

Mr. Murray Rankin: We'll withdraw the proposed amendment as a consequence of that testimony.

The Chair: Okay.

You are withdrawing NDP-8 then. Thank you.

I will now call the vote on clause 99. Will it be a recorded vote?

Mr. Guy Caron: Yes, please.

(Clause 99 agreed to: yeas 5; nays 4)

The Chair: We shall go to clause 100.

I don't have any amendments on clause 100. Shall we go to a vote on clause 100, then?

Mr. Nathan Cullen: I would like a recorded vote.

(Clause 100 agreed to: yeas 5; nays 4)

(On clause 101)

The Chair: We'll now move to clause 101.

Colleagues, as you can see, we have a substantial number of amendments here.

For Green Party amendments, Ms. May, do you prefer to speak to them all together or separately?

Ms. Elizabeth May: Actually, I think it would be helpful to speak to them all together, Mr. Chair. That's because, as Mr. Cullen said, when you rush through one in 60 seconds, it is very hard to make the argument clear, and they somewhat hang together.

The Chair: Okay, and if you want to—

Ms. Elizabeth May: I believe they are going to hang together.

Some hon. members: Oh, oh!

The Chair: Order, order. We have a long night ahead of us.

Ms. Elizabeth May: Yes, we have.

The Chair: You can move amendment PV-2 and then you can speak to all of them.

Ms. Elizabeth May: I'm not allowed to move anything, Mr. Chair, but I don't want to remind anyone here of the rules that I operate under. I understand they have all been deemed to be moved by the mysterious powers of PMO.

I'm at your disposal. If they're deemed moved, I'll speak to them.

The Chair: Okay.

Ms. Elizabeth May: I'm grateful, Mr. Chair, for your generous nature and the aspects of your personality that make you a delight to work with, and that is known widely throughout the House of Commons.

Some hon. members: Oh, oh!

Ms. Elizabeth May: No, it's true.

The reality of what we're dealing with here is that taking them one at a time makes it particularly challenging, because this is a very complicated bill.

I want to go back and remind everyone—and this is relevant particularly to amendment PV-2, which I'll speak to briefly—what the committee heard from one of Canada's leading tax law experts, Allison Christians, who holds the Stikeman chair in tax law at McGill University. One thing she said about this is that one of the main reasons, therefore, that time is needed to study the IGA, the intergovernmental agreement, carefully and to think about what the implementation act should do in terms of the interpretative work, is that the IGA has inadvertently highlighted an existing unresolved ambiguity about whether the exchange of information is or is not "assistance in collection" as a matter of law.

There are many ambiguities, many questions here that make it particularly inappropriate, as my friend Murray Rankin has already said, to deal with FATCA in the body of an omnibus budget bill that is being moved rather rapidly through this House. Let me go to just one of the concerns.

I appreciate what my friend Mr. Keddy has said, that this is all normal and that it is obvious that U.S. citizens are always identified as U.S. citizens, but as numerous experts have said, including Peter Hogg—whose letter I obtained under access to information and who is Canada's leading constitutional law expert—and including Ms. Christians and others, it's not at all clear that FATCA only applies to U.S. citizens who would obviously be U.S. citizens. As Professor Hogg also pointed out, there's nothing in this that will provide any notice to Canadian citizens, who might also be U.S. citizens under the understanding of "U.S. persons", that their information has been handed off to the IRS.

There are some very fundamental constitutional law questions here as well as tax law questions.

Let me try to go through my amendments fairly quickly.

What amendment PV-2 attempts to do is basically insert two paragraphs, so that where, on page 76, it says that "'U.S. reportable account" means a financial account that, under the agreement, is to be treated as a U.S. reportable account" my amendment clarifies things, and I think in a way that actually meets what we're hearing from the government's arguments in defence of this agreement, by adding:

> other than
>
> (a) if the account holder is an individual, a financial account that, at any time during the reporting period, was held by an individual that is
>
> (i) a Canadian citizen within the meaning of the Citizenship Act or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and

—"and", not "or"—is also:

> (ii) ordinarily resident in Canada; and
>
> (b) if the account holder is an entity that is a company, estate or trust, a financial account that, at any time during the reporting period, was held by an entity that derived its status from the laws in force in Canada.

In other words, this is to provide protection against turning over information that, on a common sense understanding of what being a Canadian citizen is versus being a U.S. citizen, will not expose non-U.S. citizens to the implications of their personal information being turned over to the IRS.

The second of these amendments, amendment PV-3—and again, this is to narrow the understanding of "U.S. person" and is based directly on the evidence that has been already presented to committee—does the same thing through a slightly different approach.

In amendment PV-3, what we've done is clarify, by adding another line on the next page so that we create a new subsection 263 (2.1) to ensure that "U.S. person" is narrowed in its understanding. It would be:

> (1) a U.S. citizen or resident individual who is not a resident of Canada.

This is again a clarification based on the best legal advice that has come before this committee.

Amendment PV-4 is very straightforward. It's a change to proposed section 264, which in the current draft of the bill says that a reporting Canadian financial institution "may" designate a financial account to be not a U.S. reportable account, if the following circumstances prevail.

My amendment PV-4, and if my colleagues are keeping up with me, it's at line 39 on page 77, is a straightforward change from the discretionary "may" to the mandatory "shall". This is a further effort to ensure that, as Murray so eloquently describes it, the FATCA web doesn't ensnare any more people who are completely inappropriately engaged by it.

● (1655)

In the last amendment to clause 101, or I think it's my last amendment to clause 101, but it might not be my last one. No, there are a few more. Amendments PV-4, PV-5 and PV-6 are all on clause 101.

Again, they're to the same effect, to repeat that due diligence has been used by the reporting Canadian financial institution to make sure that the form is authorized by it or the minister is the only one that can be used. That's in PV-6.

PV-5 again, was very much like PV-4 "...by an individual who is a resident of Canada for purpose of this Act."

Turning to PV-6 which amends clause 101 on page 78, this one is the one I just referenced, about making sure that due diligence is used. It's an inserted clause that would occur at line 22. The previous line is:

> 265. (1) Every reporting Canadian financial institution shall establish, maintain and document the due diligence procedures set out...

This amendment would add:

> The due diligence procedures established—

—which are already in the act—

> —by the reporting Canadian financial institution shall provide that only a form authorized by it or the Minister may be used.

PV-6 is, as you may recall, based on the evidence that we've heard in committee, based on a recommendation that was also made by Allison Christians, the Stikeman chair in law at McGill University. That concludes my amendments to this section.

Mr. Chair, in a brief closing, this is really fundamental. We know that this bill, if passed as it is, going to go before the Supreme Court. We know this from the best constitutional legal brain in this country, Professor Peter Hogg, who by the way was given an A in constitutional law by the late Jim Flaherty. We have that last anecdote from Jim: he agrees that Peter Hogg is the constitutional expert in Canada. Professor Hogg says very clearly that this act contravenes section 15 of the charter. I don't know why we're pushing it through in an omnibus budget bill when it will clearly fail at the Supreme Court.

● (1700)

The Chair: Thank you for your comments.

We'll go to Mr. Allen on debate, please.

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

Thank you, Ms. May, for your comments.

I have a couple of things, one of which I would like to point out in a second to get a clarification from our officials.

First, a number of those amendments that are being proposed again bring us back to the comment about restrictions within the IGA that would ultimately make the IGA non-implementable, which would ultimately lead to the U.S. imposing FATCA on Canada itself in the absence of an IGA. I can't support that and just to confirm that with the official....

Also, if you wouldn't mind, perhaps you could take us through a new subsection 265(5) which also relates to if the Canadian financial institution discovers U.S. indicia in the electronic search. Would you take us through that? There is a process that they need to go through to seek to review the information on whether it is in fact correct.

Mr. Brian Ernewein: Maybe I'll start.

To the first question that was asked, yes, and I'm sorry I don't mean to bore anybody or to take too much time of the committee, but there's a clear reference in the intergovernmental agreement itself to the scope of the agreement and it's to apply to U.S. persons, which includes U.S. citizens or resident individuals, as well as a listing of entities.

As to the effect of the proposed amendments, I believe a couple of them would be to try to narrow it so that U.S. citizens who have other characteristics, perhaps Canadian citizenship or Canadian residence, would not be covered by the obligations. The financial institution would not be subject to seeking information in respect of those U.S. citizens who have these other characteristics. I don't believe that the agreement is intended to...and as a negotiator to it that we thought we were negotiating it to do that and have that narrow an effect.

I'll turn it over to my colleague on the second question.

Mr. Ted Cook: Your second question relates to, I believe, subsection 265(5) of part XVIII. An amendment would effectively insert sort of a read as rule into the operation of the IGA to require that where an electronic search of the lower value accounts in particular where U.S. indicia are found there is a mandatory requirement for the banks, for the financial institution, to seek to cure those U.S. indicia. That's essentially going back to the account holder and asking them to provide certain additional information which may clarify that they are not in fact an individual who is a U. S. person for purposes of the agreement.

Mr. Mike Allen: Essentially by definition there's an information point there?

Mr. Ted Cook: We've inserted what's selective under the agreement with respect to these accounts. It's made mandatory that they seek to cure the indicia.

Mr. Mike Allen: Okay, thank you very much.

Thank you, Chair.

The Chair: Thank you, Mr. Allen.

We're go to Mr. Cullen, please.

Mr. Nathan Cullen: I just want to get the department officials' comments particularly on PV-4, the changing of "may" to "shall". I wondered if Mr. Ernewein had any thoughts, or if he's looked at this particular amendment that's been put before the committee. What could the consequences be?

The Chair: Mr. Ernewein, please.

Mr. Brian Ernewein: Certainly.

I think the proposed amendment, which currently as proposed allows the financial institution to designate certain low-value accounts, would change the nature of it to require a financial institution to make that designation, to effectively exclude all accounts below $50,000.

The reason for the proposal, the way it's framed, is to allow that flexibility for financial institutions and their clients, in terms of trying to come up with the most efficient way of collecting information. To explain that a little bit further, it may be the case that some financial institutions will choose not to collect any information in respect of accounts having a value of less than $50,000, and if and when those accounts exceed $50,000, to try to get that information at that time. What we understand is that some financial institutions believe that it's in their and their customers' interests to try to seek that information as to their account-holder status when the account is opened, so it's not necessary to try to get that information at a later point in time. That's the reason for the legislation as it's currently framed.

● (1705)

Mr. Nathan Cullen: Are you suggesting that PV-4 would restrict the flexibility of banks and would require them to report more than they would otherwise? I'm trying to follow you on this one, on these low-value accounts that's referenced in this section.

Mr. Brian Ernewein: It would reduce it to a single option; that is, they would not be able to collect that information on account opening if the account was less than $50,000. That might entail higher costs for them and for their customers if they only are able to do it later on.

Mr. Nathan Cullen: Why the higher costs, if it suggests on these, because we're talking about low-value accounts, that the “may” moves to a “shall”, it requires the drop, and banks don't report?

Mr. Brian Ernewein: Well, if a particular financial institution seeks to have a certification of some sort from their customer when they open the account, that, in some circumstances, I would surmise, would be at a fairly low cost. There may be more costs in trying to find them later and have this exchange of paper when the account goes above $50,000.

Mr. Nathan Cullen: I see your argument. I feel like the argument could be made, as is often the case, the other way as well, just in terms of costs and clarity.

A second point to this, and this is for our officials. What I assume Madam May is trying to clarify here is to narrow the description of what a U.S. person is. Now, we know under U.S. law they are going to leave that interpretation up to themselves, but certainly on the Canadian side of things, we would seek an agreement that would make obvious Canadians, if I could put it that way, and not accidental Americans, clarified in the law.

We've talked a lot about misinformation. I know on tax treaties it's the potential on both sides to oversimplify and ramp-up rhetoric. We heard a number of times from the minister and from others in the government suggesting that no Canadian will be impacted by this. I keep struggling with that comment simply because it's to suggest that somebody who is a dual citizen is not a Canadian. That would be quite offensive to anybody who has citizenship in this country, or anybody who was born in the U.S. and becomes a Canadian. They're not a Canadian, yet they will get swept up into this law. That's a fact.

Mr. Saxton can argue against that, but under the U.S. definition as it exists right now in the incorporation of this law that Canada is willing to sign off on, those would be U.S. persons. We can bemoan the fact that the Americans define it that way, but they do. I think these amendments are attempting to narrow that scope, to remove those people so they don't end up in that accidental American trap. My worry is that these folks are going to end up with their information passed on without any notification.

This is my question, Mr. Ernewein. We have an amendment coming up around a requirement of notification from the banking institution to the client. For the life of me, I don't understand why this is a problem or would be a concern to any right-thinking person. If the banking institution is maybe seeking additional information, and deems by their test, by a computer test, in some cases...and is about to pass their information on to the CRA knowing it's going to end up in the hands of the IRS, why not tell the client? Why not require the bank to tell the client?

My question is simply this, Mr. Ernewein. Is it possible, under the powers of the Canadian government, to make that requirement of the banks? If they're about to pass forward that information from their clients, do we have that power that they explicitly inform that client that this is where their information is going and why? Does the Canadian government have that power over the chartered banks?

Mr. Brian Ernewein: I don't know the answer to that; I'm sorry. It may be the case, but I can't answer it immediately.

Mr. Nathan Cullen: To reverse that, we're not aware of any limitations on our power as the federal government to require banks when passing on personal and private financial information to pass that on to the client to inform them?

Mr. Brian Ernewein: I understand your point. As a practical matter, if Parliament passes a law saying that information of American residents receiving income from Canada is going to be required to be provided to the Canada Revenue Agency, as is already the case—

● (1710)

Mr. Nathan Cullen: I understand.

Mr. Brian Ernewein: —and that that's going to be provided to U.S. tax authorities and if the same thing is done with respect to U.S. citizens resident in Canada, then I suppose people have constructive notice, at least, of that. Whether or not that could actually be made explicit and have the banks be required to provide that information back, it may be possible, but I don't know. I'm sorry.

Mr. Nathan Cullen: I'll end on this, Chair.

There may be a market reality to this that the banks are going to hear complaints. Because the person who believes themselves and acts and operates like a Canadian citizen, the first letter they get from the IRS saying they owe back taxes under this new intergovernmental agreement that they have with Canada, that Canadian is going to talk to their bank and say how did they possibly get my banking information in the first place? The bank will say that they passed it on to them under this intergovernmental agreement.

There may be that call-in response within the market, but if it's within our power to do this to notify under these provisions...because you raise—and I think this is fair to raise, and Mr. Keddy has done the same—those clearcut cases: an American citizen living and working in Canada with revenue coming in from some holdings in the States; everybody gets it.

The cases we're concerned with are those people who in all good faith don't file taxes in the States, because they're Canadians and haven't lived there since they were three, but the U.S. government is going to deem them American persons and they will be swept up in this and they will have their information passed on with no notification at all. Those are the folks we should be concerned about, those people who are not dual citizens, who are Canadians.

Again, on these amendments by Madam May, we'll be supportive, because if it's clarity that's being offered and clarification of the case, why not support it?

The Chair: Okay, thank you.

Mr. Keddy, do you want to speak to this?

Mr. Gerald Keddy: Again, I appreciate what Mr. Cullen is saying, and to be clear, no one said anyone who's a dual citizen is not a Canadian citizen. No one at this table or any of our witnesses have ever said that. The reality is if you're a dual citizen, you are a Canadian citizen and you are also a citizen of another country. If that country happens to be the United States, then you fall under the rules of FATCA and that's not anyone's making but the American tax law.

Unfortunately, there will be some people who are caught up in this who may be caught in a larger net who don't realize they're American citizens, but even without FATCA, they still have an obligation to file. They may not be liable to pay American tax, because they may not have any taxes due, but they have always had an obligation to file an American tax return, and that's unfortunate, but that's just simply the law.

The Chair: Okay, thank you.

Mr. Murray Rankin: A recorded vote, please.

The Chair: We'll go to a recorded vote on amendment PV-2.

(Amendment negatived: nays 5; yeas 4)

The Chair: We'll now move to LIB-6.

Mr. Hsu.

Mr. Ted Hsu: Thank you, Mr. Chair.

LIB-6 exempts accounts held by Canadian residents and accounts held by Canadian companies, estates or trusts.

The Chair: Okay, that's it. Thank you.

I'll just clarify the point. I'm being flexible in terms of time. It's obviously five minutes per clause per party, but because parties have been very respectful in terms of certain areas they don't have a lot to say on, I'm allowing more time. I'm also allowing grouping of times, because that's what parties have requested and I think that's a reasonable request.

I am going to go amendment by amendment, so PV-2, LIB-6, PV-3, PV-4, and PV-5.

On LIB-6 do you want a recorded vote?

Mr. Ted Hsu: A recorded vote.

(Amendment negatived: nays 5; years 4 [See *Minutes of Proceedings*])

The Chair: We'll go to PV-3.

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

The Chair: The next one is PV-4.

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

The Chair: The next one is PV-5.

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

The Chair: The next one is PV-6.

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

The Chair: We'll go to LIB-7.

Mr. Hsu.

● (1715)

Mr. Ted Hsu: Mr. Chair, LIB-7 enables the Minister of Finance to establish a Canadian form for people to fill out instead of requiring the use of IRS form W8. The agreement between the two governments makes it mandatory for Canadian financial institutions to approach Canadian account holders who might be U.S. persons and puts the burden of proof on them to fill out this form and declare they are not U.S. citizens and are not subject to U.S. tax.

The problem with this W-8BEN form, if you look at the instructions on the form, is the IRS provides an estimate of how long it takes to fill out the form and that time seems to be quite excessive. It is seven hours and 10 minutes: two hours and 52 minutes for record keeping; two hours and five minutes for learning about the law or the form; two hours and 13 minutes for preparing the form.

What we would like to simply do is to allow the Canadian government, allow the Minister of Finance, to have the option of establishing a similar but less onerous process so that Canadians can declare that they are not subject to U.S. tax.

The Chair: Is there further discussion?

Mr. Keddy, please.

Mr. Gerald Keddy: Again, I appreciate what the honourable member has brought forth here. There's a fairly lengthy explanation. The reality is the motion would contribute to increasing the cost rather than decreasing the cost of compliance. If you look at the IGA, in various instances it stipulates that an account is not reportable if the financial institution has obtained a self-certification from the account holder indicating, in the case of the entity account, the person controlling the entity is not a U.S. citizen, not a U.S. resident for tax purposes, nor a specified U.S. person using an IRS form W8, W9 or similar agreed form.

The motion would require that such self-certifications may only be provided on a form similar to the IRS form W8, which has been established by the Minister of Finance. The motion would remove the flexibility of financial institutions to use the existing IRS forms already filed with them by their clients or a new form containing similar information that financial institutions might develop as a part of their account-opening procedures. It really makes it more complicated instead of less complicated.

The Chair: Is there any further discussion?

Mr. Allen, on this point.

Mr. Mike Allen: Generally, Mr. Chair, what we've tried to do in working away...and we had this with the CRA folks yesterday when they were in to talk about their estimates, a lot of it was with respect to compliance and a lot was with respect to reducing the red tape. CRA has been pretty good at doing that. As part of this, when you look at the forms to be filled out, it makes perfect sense that we'll actually be using an existing form and as Mr. Keddy pointed out, there are certain cases where those would already be on file and they've already been filed with the bank.

It is important for us to make sure that we don't increase the bureaucracy in this, and that's what the whole IGA is intended to do.

Unfortunately, we have to oppose this amendment on the basis that it does add another level of red tape.

The Chair: Thank you, Mr. Allen.

We'll go back to Mr. Hsu.

Mr. Ted Hsu: Just to clarify, we're not saying that banks cannot use the W-8 form if it's already filled out. However, for the many people that they will now have to check whether they are subject to U.S. tax or not, I think it would be nice to have that option of another simpler form which the banks could use to try to avoid this potentially seven hours of time it would take to fill out the W-8.

● (1720)

The Chair: Thank you.

We go to a vote on LIB-7.

Mr. Ted Hsu: A recorded vote please.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We'll go to NDP-9.

Mr. Rankin, briefly.

Mr. Murray Rankin: Thank you, Chair.

I could tell you this is a really simple, straightforward amendment. It simply would add in clause 101 the following to create section 265.1:

> Every reporting Canadian financial institution shall send a written notice to the holder of the U.S. reportable account at least 60 days before sending the information concerning the account under the agreement.

It's very straightforward. It would require our banks or financial institutions to provide 60 days' notice to those people who were caught in the FATCA web. There can be no doubt as to the constitutionality of this. Banks are federally regulated. This is a requirement of those institutions to provide notice.

That would, I think, alleviate some of the concern of so many of our fellow citizens who are going to be caught in this law. They are going to be notified that their very sensitive personal information is being sent by our government, the CRA, down to the United States. I think this would be very straightforward. Sixty days' notice is not inconsistent with a lot of other notice requirements in federal law.

The Chair: Thank you, Mr. Rankin.

Do you have more comments, Mr. Cullen?

Mr. Nathan Cullen: Mr. Ernewein and I had a small discussion about this earlier, just in terms of what the impact of this would be.

We have heard testimony from him and from some others, that maybe in the process of a bank inquiring after a client's information, that may not tip them off, but give them the indication that they may be in this FATCA net. That seems a passive way to go about this. If privacy laws are of any interest, and sovereignty is of any interest to my friends across the way, then this simple notification measure here requiring the banks to notify somebody, it's not....

Maybe I can ask this specific question of Mr. Ernewein. Is there any concern that the notification process that we're passing your information on to the CRA, which will go to the IRS, would have some negative...?

We seem dispassionate about the passing of this information. We say the Americans are deeming these people as American persons. We are the conduit. We are agnostic about the amount of taxes that may or may not be collected by the IRS. Is that fair to this point, in terms of the way this agreement is structured?

Mr. Brian Ernewein: I think it doesn't matter for the sake of the agreement whether we're agnostic or not.

Mr. Nathan Cullen: Yes, fair enough.

This is a bad thing happening to us and we're trying to figure the best way out of it. No one seems all that pleased, Chair, with having to be in this process. If we could have wished it another way, as Mr. Flaherty used to say, we would have wished for something much better, but the Americans are all in a lather on this thing, so here we are.

My specific question is, if Canadian account holders were notified —here's the notice as is instructed in this amendment—would it be prohibitive of what the U.S. is trying to get done? Would it be cumbersome to the Canadian government in any kind of way?

I'm just trying to figure out what the problem is in notifying a Canadian client.

The Chair: Let's get a response on that, please.

Mr. Brian Ernewein: Just putting aside the question of whether it's legally possible, we talked about that before and I didn't have an answer for you. I guess the question is sort of on the practical feasibility.

I would make note that there already exists, and has for some time existed, reporting requirements in respect of income paid from Canadian entities to non-residents. That information is required to be provided on a form to the Canada Revenue Agency, and we have exchange of information already with many countries, including the United States. That information goes.

As a point of principle, if you're looking to require express notification in this case, I'm not certain why that wouldn't apply more broadly, and that I think could give rise to at least administrative and compliance costs.

● (1725)

Mr. Nathan Cullen: Administrative and compliance costs? These are costs borne by the banks, which is what you're—

Mr. Brian Ernewein: I'm just offering it as a consideration, that there is a lot of reporting already done and that the expressed notification is not provided today.

Mr. Nathan Cullen: I hear that potential offer in terms of perhaps costing the bank that e-mail, because that's what we're imagining this would be, an e-mail sent to a client.

I guess the argument is that if they're already looking at a person's account—there is the administrative cost that the banks have talked about that they're going to bear in trying to sift through this information and find people—the simple notification that their account has been flagged or targeted or whatever you want to say....

Again, for consumer rights and for consumer protection, this seems like a no-brainer to me. If information is being passed on to the bank about a Canadian, or someone who is suspected of being an American one way or another, we simply require the bank to notify that client, period. That's what this does.

Mr. Brian Ernewein: As my colleague said, the curing procedures already require contact with a client to find out whether information that indicates a U.S. connection is actually supportive of a U.S. connection. There is that interaction already in many cases.

Mr. Nathan Cullen: Again, this is active versus passive. The active approach says that we asked you that question two months ago because of this, as opposed to asking if you have any holdings south of the border, or any innocuous question that may be in the sweep.

Again, for my friends across the way, this seems to be an eminently reasonable, supportable motion to simply have the banks notify their clients if the information is being passed on to a group like the IRS.

There is our case. Let common sense rule the day.

The Chair: Thank you.

We'll go to Mr. Allen, please.

Mr. Mike Allen: Chair, as a quick point, I would suggest that based on what we heard before, proposed subsection 265(5) is not passive; it is an active contact with the client, so we won't be supporting it.

The Chair: Thank you.

We'll go to a recorded vote on NDP-9, I assume.

Mr. Nathan Cullen: Yes, please.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We should go to LIB-8, please.

Mr. Ted Hsu: Mr. Chair, LIB-8 prohibits Canadian financial institutions from filing information returns under the agreement about accounts held by Canadian residents or Canadian companies, estates, or trusts.

The Chair: Thank you very much.

We'll go to the vote.

Is it a recorded vote?

Mr. Ted Hsu: A recorded vote, please.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We will go to LIB-9.

Mr. Hsu, again.

Mr. Ted Hsu: Mr. Chair, LIB-9 delays the coming into force provision for the enhanced international information reporting section by one year.

The Chair: We'll go to a recorded vote on LIB-9.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We shall go to the vote on clause 101 and I'm assuming it's a recorded vote, then.

Mr. Nathan Cullen: Yes, please.

(Clause 101 agreed to: yeas 5; nays 4)

The Chair: Colleagues, that deals with part 5.

I'm recommending we take a break now. Is there a guide to the chair how long we want to break for? Let's do a 15-minute break.

I want to thank Mr. Cook and Mr. Ernewein for their appearance. Thank you so much for being here.

We will suspended.

● (1730)

(Pause)

● (1750)

The Chair: I call this meeting back to order. It is meeting number 37 of the Standing Committee on Finance, dealing with clause-by-clause discussions 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 are starting with part 6. We will proceed division by division. The first division, division 1, is payments for Veterans Affairs, which deals with clauses 102 to 107.

We have Mr. Butler here for any questions from members. I again want to welcome Mr. Butler back to the committee.

(On clause 102—*Earnings Loss Benefit*)

Under clause 102, we have amendments NDP-10 and LIB-10, and I will just highlight to the member that the chair will have a ruling on NDP-10 that will apply to both.

I would ask Mr. Cullen to move NDP-10.

Mr. Nathan Cullen: I will. I'll attempt to be brief.

Just as a small parenthetical note, I don't think we've said this properly to all of our departmental officials gathered with us here tonight. I would offer our condolences or apologies for the process that you're engaged in. It's somewhat ridiculous to have all of you here for so long. Maybe I can move a friendly amendment to order in pizza, Chair, because I know there isn't enough food to go around, but maybe that's a budgetary matter.

This specific clause—when asking departmental officials, I'm not sure if it was you, Mr. Butler, before, but I don't think it was, at the departmental briefing—is about the clawback that the government instituted and was taken to court successfully. That started in 2006. What our provision does is it simply brings the clawback right back to 2006 when it began.

I've asked the department officials very clearly what the reasoning was for stopping before 2006, for not doing the full clawback, and I was told that it was a policy decision, which doesn't say much. It doesn't say much for our veterans. We move this motion to bring some fairness to our veterans and allow them the proper compensation, especially those who are injured, which is whom this applies to. We would see that the government hopefully would find some support in this, but that is our amendment, Chair.

The Chair: Thank you, Mr. Cullen.

I have a ruling on amendment NDP-10 that applies to LIB-10 as well.

Bill C-31 establishes retroactively a period for which earnings loss benefit applicants and recipients will receive a compensation. The amendment seeks to expand this period. As *House of Commons Procedure and Practice*, Second Edition, states on pages 767 and 768:

> Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, therefore, the amendment, by modifying the period of admissibility, infringes on the conditions and qualifications specified in the royal recommendation. The amendment is therefore ruled inadmissible.

That applies to amendments NDP-10 and LIB-10.

We will move to discussion on clause 102.

I will take speakers for clause 102. I'll start with Mr. Cullen.

Mr. Nathan Cullen: Very specifically—and I appreciate the ruling, Chair—this is the machination of what we have here, which is an omnibus bill. Within the omnibus bill is an attempted correction of an injustice, as I think all of us around the House agree, whereby a clawback through the ELB was inflicted upon veterans who are suffering from various injuries, such as PTSD or other physical injuries, and only through a very expensive court case was the government forced to acknowledge this at all.

I'm going to quote Sean Bruyea, who appeared before this committee and testified on this very thing. Allow me, Chair—and I'll stop at this—to quote Sean Bruyea, retired captain:

> 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.

The fact that we have full awareness of what it is we're doing, which is inciting yet another round of litigation that is incredibly expensive and incredibly tiresome to the veterans who have already suffered once.... To re-victimize those veterans for the sake of what was offered only as a policy decision and to not allow this clawback to go back to the first moment when it started, which was 2006, is simply beyond me as a Canadian. I don't understand how we can talk about a Veterans Charter and respecting our troops.... If the government seeks to take a bow for this one because it was in their kindness that they offered to return this clawback, I fail to see many veterans celebrating it across the board.

Thank you, Chair.

● (1755)

The Chair: Thank you, Mr. Cullen.

I have Mr. Simms next.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): Chair, at the risk of repeating what was already said, I certainly think that going back to the period beginning April 2006 is the obvious choice as to when this whole thing should begin, notwithstanding, of course, the royal recommendation.

I agree with that, but I question why they chose that arbitrary date in the beginning and did not go back to when the charter really took place.

The Chair: Thank you, Mr. Simms. We'll then go to a vote on clause 102.

Mr. Nathan Cullen: A recorded vote on clause 102.

(Clause 102 agreed to: yeas 7; nays 2 [See *Minutes of Proceedings*])

(On clause 103—*Canadian Forces income support benefit*)

The Chair: I'll move to clause 103. I have two amendments, NDP-11 and LIB-11, and a hint here. I have a ruling. If I could get someone to briefly move of the NDP-11, then we'll have a discussion on clause 103 generally.

Mr. Nathan Cullen: Very briefly, Chair, I suspect the ruling that's coming. What we're attempting to do here is to take a bad system and implore the government to listen to those veterans that are affected by this and do that justice, as Mr. Simms talked about. It's similar to the one we moved before, and we would seek just a little bit of common sense. If this is when the clawback started in 2006, well then let's retroactively bring it back. Let's do the veterans right by us. They deserve at least that.

Thank you, Chair.

The Chair: Thank you, Mr. Cullen.

My ruling is that Bill C-31 establishes retroactively a period for which Canadian Forces income support applicants and recipients will receive compensation. These amendments seek to expand this period.

House of Commons Procedure and Practice, Second Edition, states on pages 767 and 768:

> Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, this amendment, by modifying the period of admissibility infringes on the conditions and qualifications specified in the royal recommendation. Therefore, I rule the amendment inadmissible. That applies to NDP-11 and LIB-11.

Therefore, I'll move to discussion on clause 103.

Do you have a question, Mr. Cullen?

Mr. Nathan Cullen: We haven't brought Mr. Butler into this conversation yet.

Mr. Simms raised, I think, a valid question. We asked officials before why this date was picked, so let me start with that.

Why pick the date chosen by the government to end the clawback and compensate veterans back to, I believe it's 2012?

Mr. Bernard Butler (Director General, Policy Division, Policy, Communications and Commemoration Branch, Department of Veterans Affairs): That is correct.

The date of May 29, 2012, was the date that the Government of Canada made the announcement that they would cease the offsetting of the disability pension from these three programs. Moving from that date, the common—as you know, it took six months to implement the cessation of the offsetting for the first two programs, earnings loss and the Canadian Forces income support program, and then it took another six months to, because legislative change was required, to end the offsetting for the war veterans allowance program.

If you look at both those programs, you're right, Mr. Cullen. The earnings loss program and the Canadian Forces income support program did come into effect in April 2006 as a function of the introduction of the new Veterans Charter. The War Veterans Allowance and Civilian War-related Benefits Act, those pieces of legislation go back further in time. The WVA actually goes back to the 1930s.

The concern was to find a common date, or that was one of the issues: find a common date for calculating this benefit. The other issue really was, again and for clarity, with the SISIP ruling as it relates to the service income security insurance plan. That was the subject of the Federal Court ruling in Manuge.

As we discussed previously the last time we were here, the Government of Canada was not in fact mandated to cease the offsetting of the disability pension benefit under Veterans Affairs Canada programming. These are two separate and distinct constructs. Under the service income security insurance plan, that was a policy, an insurance policy administered by the Department of National Defence.

Our programming is legislative in nature, and the Government of Canada was not in fact mandated to cease the offsetting of the disability pension benefit pursuant to that decision. In other words, the Government of Canada simply chose, on its own motion, in light of the decision, to make the determination that it would in fact stop the offsetting. That was on May 29, 2012.

Those were the reasons, Mr. Chair, for that May 29, 2012, date.

● (1800)

Mr. Nathan Cullen: Thank you.

Further to that, what is the cost of going back to 2012? What is the estimated cost from the department to...?

I just want to make sure our terms are not competing. You used the term “offsetting”. Is that term replacing “clawback”, the term that I've been using?

Mr. Bernard Butler: Certainly for your purposes, I think “clawback” would be the equivalent of our term, which would be “offsetting”.

Mr. Nathan Cullen: Okay.

Again, for going back to 2012, as was the government's decision, do we know what the cost was of that offsetting, or the stopping of the offsetting?

Mr. Bernard Butler: The stopping, yes; in terms of the bill that's before you right now, this will amount to roughly $19.9 million in benefits paid out to veterans who are impacted by this decision.

If you recall, the decision to actually stop the offsetting on a go-forward basis, which was made in previous legislation, was about a $279-million cash cost over five years.

Mr. Nathan Cullen: So it was $279 million over five years. I'm going to be backcasting, because that's the provision we're dealing with here just in terms of what's coming forward to veterans, and that's the question I have. Did the department do an estimate of what the cost would have been to in fact go back to 2006 rather than 2012?

Mr. Bernard Butler: The department, in the context of preparing for advice to cabinet, to ministers.... Different costing models were done, yes.

Mr. Nathan Cullen: I know that advice to cabinet is.... I'm not asking what the number was; I'm asking whether a number was offered in terms of the compensation, with several options in front of the minister: here is one that takes us back to May 2012, here is an option that will take us back to 2006, and here are the costs. Was that proferred up?

Mr. Bernard Butler: I think it's fair to say that in preparing memorandums to cabinet, various options are offered.

Mr. Nathan Cullen: Well, as a somewhat logical person, I'll logically conclude that various options were offered.

So the point of the government on this—I'll stop here, Chair—was that, while not directed by the courts, by Manuge, there was not an explicit direction by the judge, then why do the compensation? Was it a...I don't want to use the loaded term “moral obligation”, but why seek out and then spend nearly $20 million anyway if the courts ruled that the government was in the right for this so-called offsetting, this clawback?

● (1805)

Mr. Bernard Butler: Again, Mr. Chair, that was a decision of the government to make that announcement back on May 29, 2012. The Manuge decision in fact was very explicit in saying that the legislative structure for the offsetting of the disability pension benefit against these particular programs that are before you today was entirely appropriate, given the legislative framework.

The government, in its announcement, said that simply in light of the Manuge decision, and that determination on the SISIP file, they thought it would be appropriate to stop the offsetting on a go-forward basis.

Mr. Nathan Cullen: I'm sorry, Chair; I always say that's the last one, but then the witness says something.

I just want to be clear. The very last thing you said was “in light of the Manuge decision”. I guess that's what I'm trying to determine here: what guides government policy when deciding when an offset or a clawback is inappropriate and when it's not. It wasn't a legal obligation, as you've said, but the decision guided the department.

What I'm trying to understand is also what other programs in the future or in the past we'll be looking at to get some clue, for the veterans we speak to, as to what will be available and not offset or not clawed back anymore.

The Chair: I think Mr. Butler will probably say this, but as to the political decision that was made, obviously, I don't know—

Mr. Nathan Cullen: Yes. I'm not seeking the political decision, because we've heard that it was a political decision.

The Chair: Mr. Butler, do you want to respond briefly?

Mr. Bernard Butler: I can simply say again that at the time of the announcement, the government noted the fact that there were similarities to our programming with the SISIP programming, in the sense that the new Veterans Charter rehabilitation program and income support benefits that flowed from that were modelled in part on the SISIP program. Albeit the government is not compelled to do it, there were some similarities, and the government made the announcement at the time that simply to try to ensure that there was some alignment on a go-forward basis, the offsetting would be terminated for these particular programs.

The Chair: Thank you.

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

Mr. Scott Simms: Very quickly, then you did offer up the date of April 2006 as an option, a costing option, we'll say. Is that correct?

Mr. Bernard Butler: I think what I said was that various options are put forward to ministers when an issue of this sort comes forward.

Mr. Scott Simms: I was under the assumption that April 1, 2006, was put up as an option and costed out for the government if they chose to use that date.

Mr. Bernard Butler: While I think that may be your assumption, I think my answer to Mr. Cullen was that various options are put forward for consideration in any initiative.

Mr. Scott Simms: I'm new.

Voices: Oh, oh!

Mr. Scott Simms: All right. Carry on.

The Chair: Thank you.

We will go, I assume, to a recorded vote on clause 103. Are you all in favour?

An hon. member: No.

The Chair: Do you want a recorded vote?

Mr. Nathan Cullen: Yes, please.

The Chair: We'll have a recorded vote on clause 103.

(Clause 103 agreed to: yeas 6; nays 3)

(On clause 104—*War veterans allowance*)

The Chair: We have two amendments to deal with: NDP-12 and LIB-12.

As a forewarning, I have a ruling.

Mr. Nathan Cullen: Surprise, surprise. Are you going to spruce up the language on this one a little?

The Chair: Very briefly, Mr. Cullen, on NDP-12.

Mr. Nathan Cullen: Very briefly—I can speak to it when we get to the main motion—the attempt is similar. I'm sure Mr. Butler understands it as well.

The only thing is that we've made light of some of the exchanges going on here. I just want to add one small thing, Chair, which is that for the veterans who we on this side have spoken to and who have come forward about this issue, it's incredibly serious. It's not only a dollar terms question; it's what they've had to go through in order to have the programs that were designed by government to support wounded vets actually work for wounded vets.

I know we've made light...we're into some later hours. But the importance of this...the stories we've heard, on this side at least, have been incredibly moving, and we should try to take these consequential votes more seriously.

The Chair: Thank you.

I will do my ruling.

Bill C-31 establishes retroactively a period for which war veterans allowance applicants and recipients will receive a compensation. This amendment seeks to expand this period.

House of Commons Procedure and Practice, Second Edition, states on pages 767 and 768:

> Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, the amendment, by modifying the period of admissibility, infringes on the conditions and qualifications specified in the royal recommendation. Therefore, the amendment is inadmissible, and this applies to NDP-12 and LIB-12.

Therefore, I will go to discussion on clause 104. I will start with Mr. Cullen.

Mr. Nathan Cullen: Sure, since it's available to me, I'm not going to go over ground we've already covered, but one of the challenges —I know it's not in this particular budget implementation act—we have with the format we're in right now is giving these types of conversations their proper due. I know that Mr. Butler takes it seriously, as I imagine many of our colleagues do, but it's about the scrutiny that we've been unable to apply to this conversation, because it is somewhat complicated, as Mr. Butler has said. There's an insurance program that's somewhat differentiated from these other compensation programs. My concern always is whether committee members are aware of what it is they're voting on and what it is we're trying to amend.

One of the challenges that veterans have come to us about is not just the package as offered back to 2012. Having to go to court and prove certain cases with the government, after there being so much fanfare about standing up for troops and treating our veterans properly, has been incongruous, if not offensive. When the government is seeking to rectify mistakes that have been made or to enhance programs that have been offered, these should be stand-alone pieces of legislation. That's one way to show respect, actually. It's to allow bills to be properly understood, fixed, voted on, and passed through the House of Commons. Burying this in the middle of a 360-page omnibus bill is not the way to show that seriousness or respect. On process and on substance, the opposition, the NDP, has problems with this.

Of course, we'll be rejecting this amendment, not simply.... There is something being done, but that something is not enough, and we should always seek to do more than just a little.

● (1810)

The Chair: Is there further discussion on this clause?

I assume we will have a recorded vote on clause 104.

Mr. Nathan Cullen: A voice vote is fine.

The Chair: A voice vote is fine?

(Clause 104 agreed to)

The Chair: I will move to clause 105.

(On clause 105—*Civilian war-related benefits*)

The Chair: I have amendments NDP-13 and LIB-13.

Mr. Nathan Cullen: You haven't said whether you have a ruling.

The Chair: I have a ruling.

Mr. Nathan Cullen: I was about to try to slip in—

The Chair: As Yogi Berra said, “It's like “déjà vu all over again”.

Mr. Cullen, do you want to move NDP-13?

Mr. Nathan Cullen: No, please just go ahead with the ruling, Chair.

The Chair: Okay.

The ruling is that Bill C-31 establishes retroactively a period for which civilian war veterans allowance applicants and recipients will receive a compensation. The amendment seeks to expand this period.

House of Commons Procedure and Practice, Second Edition, states, on pages 767 and 768:

> Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on a public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, the amendment, by modifying the period of admissibility, infringes on the conditions and qualifications specified in the royal recommendation. Therefore, the amendment is inadmissible. This applies to NDP-13 and to LIB-13.

I will then move to discussion on clause 105.

Mr. Cullen.

[*Translation*]

Mr. Nathan Cullen: I have a question for Mr. Butler.

Is there a risk of setting a precedent? Regarding this court ruling, the government says it will change the compensation back to 2012. Could a group or a veteran potentially wish to bring the matter before the court again because the government is showing that the system can be changed? They may want to change the system not only back to 2012, but also back to 2006. Is this a risk the government must take into account regarding compensation for veterans?

[*English*]

Mr. Bernard Butler: Given the nature of the question, it's difficult for me to comment on any concerns around precedent setting of a decision of this sort. Obviously, every circumstance is unique in its own case.

This bill before the House today is very unique in this context, so it's very difficult for me to comment on hypothetical implications for other programming.

● (1815)

[*Translation*]

Mr. Nathan Cullen: Thank you, I understand that.

Perhaps the government recognizes its mistake. It simply said it would make a change that would cost nearly $20 million. That is something the government may lose in the future. The error does not only go back to 2012, but also to 2006.

Does this rule stem from that decision? I understand this is not explicitly stated in the bill, but is there another measure, a rule or a new mandate for your department indicating that, in the future, you will resolve problems related to a given program in a specific way?

[*English*]

To be clear, because my French isn't so hot, what I'm interested in is whether, because the government.... Having watched what went on in Manuge, can you remind the committee what was spent by the federal government just going through the process in Manuge? Do we have a court figure?

Mr. Bernard Butler: The Manuge case fell under the mandate of the Minister of National Defence. It was a Department of National Defence issue. It was not a Veterans Affair Canada issue, at all. We were implicated only to the extent that it was the disability pension paid under Veterans Affairs Canada programming that was being offset through the SISIP program.

It's really quite different. To go back to a comment you made earlier, and with respect, it's really not a question in this context of an issue of error. Again, I think it's very important for the committee to consider that the decision to use the May 29, 2012 date, again, simply reflected a decision of government, as a matter of goodwill, to say that because of similar issues, similarities between the two, but in the absence of any legal requirement to do so, the offsetting would cease as of that date.

It was not a question of recognition of any error in how the programs were being administered, or indeed in terms of how the set-off was structured legislatively under those respective programs.

Mr. Nathan Cullen: I understand what you're suggesting. It's just so rare for us to see governments pay out if they haven't made a mistake. Usually one leads to the other, so you can understand why someone might come to that conclusion. The government recognizes this and went back....

I'll leave off there, Chair.

I think we've made our case clear and known, and we'll allow the votes to stand where they stand.

The Chair: Thank you.

We'll go to Mr. Simms, please.

Mr. Scott Simms: Yes, speaking of which, I won't belabour the point too much other than to say it's too bad; I think the thrust of this should be to the year 2006, obviously in keeping with the spirit of the charter. I'm supporting this because I truly believe, and we believe, some compensation obviously is better than no compensation whatsoever.

Thank you.

The Chair: Thank you.

Shall we do a show of hands on this, or do people want a recorded vote?

(Clause 105 agreed to)

(Clauses 106 and 107 agreed to)

The Chair: Mr. Butler, thank you so much for being with us tonight. We appreciate that.

We shall move now to division 2, colleagues, with respect to the Canada Deposit Insurance Corporation.

We have only two clauses under this division, clauses 108 and 109. As I'm very generous with time, I'm hoping we can perhaps group these clauses together.

(Clauses 108 and 109 agreed to)

The Chair: Those clauses both carry unanimously.

We shall move to division 3, the Regulatory Cooperation Council Initiative on Workplace Chemicals. This deals with clauses 110 to 162. We do have a number of amendments in this division.

If I could, I would like to group certain clauses together. I will only proceed as quickly as the committee allows me. I do not have an amendment for clauses 110 to 113. Can I group those clauses together?

● (1820)

Mr. Nathan Cullen: If you wouldn't mind, Chair, I wouldn't mind speaking to clause 110.

The Chair: Can I group them all together and have the debate all at once?

Mr. Nathan Cullen: You wanted clauses 110 to 113?

The Chair: Yes.

Mr. Nathan Cullen: That's fine, Chair.

(On clauses 110 to 113 inclusive)

The Chair: We're dealing with clauses 110 to 113, and we'll have debate.

We'll go to Mr. Cullen, please.

Mr. Nathan Cullen: We have our officials here, and I thank them for coming and for waiting so patiently.

This question is in regard to the changes to Canada's Hazardous Products Act. Our concern is about whether the standards are being lowered or raised.

Through you, Chair, to our witnesses, has Canada signed on to the Globally Harmonized System of Classification and Labelling of Chemicals? Are we a signatory to this?

The Chair: Welcome to our officials from Health Canada. Thank you very much for being with us tonight.

Ms. McDonald, do you wish to respond?

Ms. Suzy McDonald (Director General, Workplace Hazardous Materials Directorate, Healthy Environments and Consumer Safety Branch, Department of Health): Thank you.

The GHS is not a system that Canada would sign on to. It's a system that Canada did help to develop at the United Nations. We were one of the key countries involved, along with many other countries. It's a system whereby each country can choose to adopt the GHS or any portions of the GHS. So it's not something that we've signed on to, but we are choosing to implement it here in Canada.

Does that respond to your question?

Mr. Nathan Cullen: It does. Thank you.

Can you tell me what kinds of things are excluded, under Canada's provisions, from the GHS?

Ms. Suzy McDonald: The current exclusions?

Mr. Nathan Cullen: That's right.

Ms. Suzy McDonald: Currently under the HPA there are 12 sectors excluded, including food, cosmetics, wood and wood products, drugs, tobacco, hazardous products, medical devices, and....

Mr. Nathan Cullen: Pesticides?

Ms. Suzy McDonald: Let me just check my list to make sure I have them all.

Mr. Nathan Cullen: I have consumer, chemicals, pesticides potentially as well.

Ms. Suzy McDonald: Here we go: consumer products, cosmetics, drugs, food, medical devices, pesticides, explosives, wood and wood products, tobacco, manufactured articles, hazardous waste, and nuclear substances.

Mr. Nathan Cullen: Those are excluded out of the conversation we're having right now, just in terms of the amendments under this provision. Is that right?

Ms. Suzy McDonald: Those are currently excluded. The idea through this act is to move each of those into a schedule to the act.

Mr. Nathan Cullen: For those watching at home, can you please help us on the process? Once moved into a schedule to the act, are they fully deemed part of the act now?

Ms. Suzy McDonald: No. There is no immediate impact. When they're moved to a schedule to the act, these sectors that were previously excluded under the HPA remain excluded as they're moved to the schedule. What it does allow is that in the future, these sectors could be brought under the Hazardous Products Act, but to do this a full regulatory process would be required, including a cost-benefit analysis, consultations, and prepublication in the *Canada Gazette*.

Mr. Nathan Cullen: With these changes incorporated under those products and other hazardous products, how would you compare the disclosure regime here in Canada to those of the EU and the U.S.?

Ms. Suzy McDonald: Currently in the United States and the European Union, those eight sectors that were moving to the schedule are included in their equivalent systems to Canada's workplace hazardous materials information system, WHMIS.

Those are included. How they are disclosed is different, based on the product and differences between the U.S. and the European Union. In some instances, only a safety data sheet would be required, and no labelling requirements. In other instances, there would be a requirement for both a label and a safety data sheet.

Mr. Nathan Cullen: Again, I know this is a broad comparison, but for these products that the government, through this implementation act, is trying to move in and onto the list, is Canada seeking a higher rate of disclosure for Canadian citizens with respect to these hazardous materials or lower than that of either the U.S. or the EU?

Ms. Suzy McDonald: The idea is that over time Canada would be able to bring these into the Hazardous Products Act and essentially align with what's currently required in the United States.

Mr. Nathan Cullen: Right. I've heard from some in the industry, not at this committee but through other hearings, that this would bring us up to the American and European standards in terms of disclosure. But the process you've described is that it makes them available to be eventually disclosed to the same level as what they do in Europe or the United States. Is that right?

Ms. Suzy McDonald: That's correct.

Mr. Nathan Cullen: Okay. Is this just a process question? Why not move up to full disclosure like our European and American trading partners have?

● (1825)

Ms. Suzy McDonald: There's a variety of reasons for that, including the fact that WHMIS is built on a tripartite system, whereby we work very collaboratively with industry, employers, and our provincial and territorial counterparts. The idea is that we would need to consult more broadly before bringing in these sectors.

Furthermore, as I've just described, there are legislative and regulatory requirements that we need to be conscious of in moving these forward. We need to make sure that we're bringing them forward in such a way that we're not causing harm to other pieces of legislation or other disclosure requirements. We do need to do more research before we bring them in.

Mr. Nathan Cullen: For my last question, does the department do an impact assessment in terms of what the disclosure would cost the industry, the estimated costs?

Ms. Suzy McDonald: The regulatory impact assessment statement, the RIAS, would need to be done for each sector before bringing them in. That's part of the regulatory process.

Mr. Nathan Cullen: That hasn't been done yet.

Ms. Suzy McDonald: It has not been done.

Mr. Nathan Cullen: Thank you.

The Chair: Thank you, Mr. Cullen.

Ms. Suzy McDonald: Could I just clarify...?

The Chair: Sure, Ms. McDonald.

Ms. Suzy McDonald: It has been done for pest control products.

Mr. Nathan Cullen: So for pesticides—

Ms. Suzy McDonald: Correct.

Mr. Nathan Cullen: —there has been an.... Can you remind me of the acronym again? It's the regulatory impact—

Ms. Suzy McDonald: It's a RIAS, a regulatory impact assessment statement.

Mr. Nathan Cullen: Do we know what that figure is?

Ms. Suzy McDonald: I don't have it with me.

Mr. Nathan Cullen: Okay. Maybe perhaps later...?

I apologize, Chair, and through you to the witnesses. Part of the reason we're asking some of the more fundamental questions about this and other aspects of the bill is that we haven't had time to study it. We've been under time allocation on this, which means that whole broad sections have just not been studied, and we've not heard from witnesses, and that's unfortunate.

Thank you.

The Chair: Thank you.

I see no speakers. Shall clauses 110 to 113 carry?

Mr. Nathan Cullen: No.

The Chair: On division?

Mr. Nathan Cullen: On division.

(Clauses 110 to 113 agreed to on division)

(On clause 114)

The Chair: We'll move to clause 114. We have two amendments.

First of all, we have amendment LIB-14. We'll welcome Mr. McKay to the committee and ask him to speak to LIB-14.

Hon. John McKay (Scarborough—Guildwood, Lib.): Thank you, Chair. It's like old times.

The Chair: Welcome back.

Hon. John McKay: I'm at a bit of a disadvantage here because I'm not a regular member of this committee, but I've had copious notes prepared for me by my colleague, Mr. Brison.

His point is that we generally support this division; however, it does have one serious problem, which I'd be interested in your thoughts about. As the Canadian Consumer Specialty Products Association said in their brief:

> As currently proposed, [Bill C-31] would require suppliers to ensure product was labelled in compliance with the Hazardous Products Act and its regulations prior to its importation. This requirement creates an unnecessary burden on suppliers.... Allowing suppliers to import product for relabelling would be consistent with the provisions of other modernized regulations....It is not always practical or possible to label product in another country prior to importing it into Canada.

The recommended amendment, which is being put forward as amendment LIB-14, is that the amendment creates an exception for Canadian employers to import product for relabelling, which is consistent with the intent of the bill. It removes an unnecessarily onerous restriction that will place Canadian jobs at risk by making it difficult for some employers to do business in Canada. We hope that you'll agree with this proposal.

What are your thoughts?

The Chair: Do you want a response from the officials?

Hon. John McKay: I'd be interested in their thoughts first, I suppose. But it's up to you. I'm in your hands, Chair.

The Chair: Ms. McDonald, do you want to respond?

Ms. Suzy McDonald: Yes, thank you for that.

I think it has been discussed at some of the committees, but essentially the amendments to the Hazardous Products Act provide the Governor in Council with the authority to make regulations to create the exceptions to the act. Any exemption to the Hazardous Products Act would be provided for in the proposed regulations. At a previous committee meeting, the Canadian Consumer Specialty Products Association did agree that it could be done through regulation and that would meet the requirement.

Hon. John McKay: Just so I understand it, the issue seems to be the compliance prior to its importation. How would that happen in the regime you are proposing?

Ms. Suzy McDonald: The way it's set out right now, it would need to be labelled prior to entering the country. What we understand to be the desire of some industry groups is that they would be able to import it and then label it after it's in the country.

Again, we see that done under other legislative and regulatory frameworks, so it is something that is done. It is something that we could do through regulation, and that would be the appropriate mechanism to do so.

● (1830)

Hon. John McKay: I understand that you want to go to regulation as opposed to legislation, but why wouldn't you deal with it now in the form of legislation when it's in front of us and it is a "flaw" that's been spotted by these folks?

Ms. Suzy McDonald: The way the legislative and regulatory framework is set up is that all of the exemptions or excluded areas are done through regulation, so we exempt things through regulation, not through the legislation.

Hon. John McKay: I have a final question, Chair.

The issue is that we walk out of here [*Technical difficulty—Editor*]

Hon. John McKay: [*Technical difficulty—Editor*]...reason why it can't be done in legislation, as opposed to regulation.

Ms. Suzy McDonald: I'll let my colleague Jason respond to that.

Mr. Jason Wood (Director, Policy and Program Development, Workplace Hazardous Materials Directorate, Healthy Environments and Consumer Safety Branch, Department of Health): My colleague Mr. Morales has additional information to add, but essentially, the amendment being proposed is redundant to the existing sections of the bill as proposed.

Currently, proposed section 14 says that if you're going to import a product, it needs to be compliant with the regulations. The amendment being proposed is adding some text indicating, “unless exempted by the regulations”. The effect of that amendment is essentially nothing. There's no additional impact of that amendment. Essentially, it would still cause us to have to create, in the regulations, the exemption we're talking about now. So the exemption raised by the Canadian Consumer Specialty Products Association with respect to labelling a product after it's been imported would still have to be created in the regulations.

Hon. John McKay: In other words, you're not actually disputing their concern. You want to put it in the regulations, not in the legislation.

Mr. Jason Wood: In the exact same way that all other exemptions are currently dealt with, and will be dealt with in the proposed regulations.

Hon. John McKay: All right. I don't want to keep on going around the circle on this.

The Chair: Thank you.

Mr. Cullen, did you want to address this issue?

Mr. Nathan Cullen: Briefly; I think Mr. Wood touched on it right at the end. If this is the standard practice, then it offers some assurance. But the question about this is the sequencing as to when the label goes on. Is that my understanding of what Liberal-14 is trying to accomplish?

Mr. Jason Wood: That's our understanding.

Based on our conversations with industry, that's their concern. Currently, there's an existing provision in regulations that allows someone to bring a product in that's not properly labelled, on the condition that it be properly labelled once it arrives in the country.

Mr. Nathan Cullen: Any risks to that current system? Has the department found any flaws in which the labelling in-country as opposed to at its source has caused any mislabelling, or Canadians to be exposed to hazardous materials?

Mr. Jason Wood: Essentially, there are conditions in place that currently require a company that's importing a product to identify an inspector in the jurisdiction in which it's being imported to ensure that the product is actually controlled safely until it's been relabelled.

Now I understand that the current amendment that's being proposed by the Canadian Consumer Specialty Products Association is suggesting a slightly different approach to that. Again—as Ms. McDonald mentioned—there is a significant consultation process that would occur, so not only listening to industry but also our provincial and territorial colleagues about their concerns with respect to safety.

Mr. Nathan Cullen: Okay. Thank you.

The Chair: Thank you.

Would you like a recorded vote on this, Mr. McKay?

Hon. John McKay: That's fine.

The Chair: All in favour of Liberal-14?

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

The Chair: We'll go to PV-7.

Ms. May, a brief comment, please....

Ms. Elizabeth May: A brief comment...? You mean an impassioned pitch—

The Chair: That's right.

Ms. Elizabeth May: —in 60 seconds, starting now!

This is a chance to make sure we've banned asbestos across Canada.

I propose we delete proposed section 14.1, subsections (1) and (2), so that each one of those sentences reads, “Despite section 13, no supplier shall sell a hazardous product that contains asbestos and is intended for use, handling or storage in a work place in Canada”, period.

No “unless”. I can't see any reason that we want to provide exemptions to allow the use of asbestos in Canada, because as far I understood, the use of asbestos in Canada was illegal.

● (1835)

The Chair: Okay, thank you, Ms. May.

Mr. Cullen.

Mr. Nathan Cullen: Through you to the officials.

I mentioned this to Ms. May privately before, but I'll say it publicly now. If the intention is around this one known carcinogen—something certainly the New Democrats have been spending quite a number of years fighting its development and exportation from Canada—can officials...?

Here's my concern. I'll just lay it on the table. Is there any cross-effect on other products that we don't see currently? Could there be the rule of unintended consequences here? Whereas PV-7 is attempting to ban asbestos, does it have any other impact on any other materials or products that we use in this country?

Ms. Suzy McDonald: I think you're asking if we were to adopt the amendment—

Mr. Nathan Cullen: Correct.

Ms. Suzy McDonald: —would there be unintended consequences?

Mr. Nathan Cullen: That is the big question.

Ms. Suzy McDonald: Big question. I think we need more time to go back and take a look at that.

Mr. Nathan Cullen: Okay. This is one of those challenging moments, Chair.

I hear the impassioned and succinct pitch of Ms. May. We have raised some concerns that we're just unable to qualify, frankly, and quantify here, and if the officials aren't either.... We've moved a number of motions through the House to ban asbestos—though I think we still have it in these walls here, Chair, not to give anybody any concerns—yet still have it as Canadian trade policy to export and promote it.

It's the cross-concerns, and I say this to Ms. May. I wonder if she might be able to clarify for me if the officials can't, and I know we're under these restrictions, Chair.

The Chair: Well, okay, but again, I'm guided by the committee and members know that. So members have indicated to me how much time should be allocated to Ms. May. So it's not—

Ms. Elizabeth May: Just my full minute—

The Chair: Order.

I don't want to keep dealing with this, so does the committee want to allocate more time to Ms. May?

Mr. Nathan Cullen: Let me offer this—

The Chair: That's what I want. I want clarification from the committee. Do we have unanimous consent to grant more time to Ms. May?

Some hon. members: No.

Some hon. members: Yes.

The Chair: Okay, so it's a no from the committee.

Okay, I'm going to go to Mr. Keddy.

Mr. Gerald Keddy: Thank you, Mr. Chairman.

I'll ask the officials, just to try to drill down into this a little deeper, if we could. If you look at the workplace hazardous materials information system, WHMIS, it really doesn't restrict access to products. What it actually does is provide information through the Hazardous Products Act, so workers can use these products safely and without danger to their own health.

If we look at the amendment, we see it really runs contrary to the very nature of WHMIS and how that dovetails, if you will, with the Hazardous Products Act.

Is that correct?

Ms. Suzy McDonald: That is correct.

Mr. Gerald Keddy: Thank you.

The Chair: All those in favour of amendment PV-7?

(Amendment negatived)

(Clause 114 agreed to)

(On clause 115)

The Chair: We have two amendments on clause 115, PV-8 and PV-9.

Ms. May, you can speak to them separately or you can group them together, as you wish.

Ms. Elizabeth May: I think I'll speak to each separately, Mr. Chair, because they do speak to different issues, unlike the last ones that dealt with FATCA more or less at once.

This is what I'm proposing to do here, Mr. Chair. At clause 115 on page 97, there's an opportunity to do something that's a lacuna in Canadian regulatory practice. It's been identified by the Commissioner of the Environment and Sustainable Development that we are not regulating the hazardous products used in what's colloquially called fracking, hydraulic fracturing operations for the extraction of oil and gas.

What is proposed by the Green Party, for subparagraph (l.1) in subclause 115(3), is to add to the list of other kinds of hazardous materials that are used in Canada and regulated:

> (l.1) requiring any supplier who sells or imports a product, mixture, material or substance injected into the ground in hydraulic fracturing operations for the extraction of oil and gas to make its complete chemical composition and toxicity publicly available;

It's a transparency clause. Unlike my attempt to ban asbestos, this measure is not an attempt at anything more than regulatory transparency. As some of you may recall, the Commissioner of the Environment and Sustainable Development reported that he was surprised to find that Environment Canada didn't know the chemical composition of these substances.

Thank you, Mr. Chair.

● (1840)

The Chair: We'll go to further discussion.

Go ahead, Mr. Cullen.

Mr. Nathan Cullen: Let me ask the department officials this. Are we aware of what's in fracking fluids right now? Does the department keep a registry, or are companies obligated to report the composition of those fluids?

Ms. Suzy McDonald: As we stated earlier, the WHMIS program really sets out the requirements for the safe use of hazardous products in the workplace and how those are provided to workers. So information around what's included in fracking fluids, etc., falls outside of the scope of the WHMIS program.

Mr. Nathan Cullen: So....

Ms. Suzy McDonald: A registry of what that information is does not fall within the scope of my program within the department—

Mr. Nathan Cullen: It's not within the what? Sorry, I wasn't able to hear you.

Ms. Suzy McDonald: It's not within the scope of my program for, as Ms. May was speaking about earlier, a registry of information or the composition of those products. If those products are being supplied to workers, there's a requirement to have a safety data sheet and a label. But there's no registry of information specific to fracking fluids.

Mr. Nathan Cullen: Okay. The reason this came up is that this comes from another committee's study of this operation and this drilling technique. At the time, the government was resistant to having these disclosed; up until a certain point they weren't disclosed at all. We brought companies forward that are in the business and asked them if they would disclose their chemicals. The government argued there were privacy issues and corporate secrecy and all sorts of competitiveness issues. The companies themselves had no problem. This is going back two to three years, and more and more are disclosing what's in there, but not fully.

The idea is that the role of government would be to have a full disclosure and registry of these, especially as we can all admit this is a controversial issue and it involves water and that's always controversial, the water table. So we'll be supporting this.

I essentially get from your testimony that you're saying this isn't a role for WHMIS. This is not caught up in the program that Health Canada runs. Is that right?

Ms. Suzy McDonald: Our system is about hazards and identifying hazards so that workers understand how to safely use those products. That's essentially the scope of what we deal with.

Mr. Nathan Cullen: We would deem these to be hazards. Many of these chemicals are quite hazardous and they would have WHMIS labelling.

Ms. Suzy McDonald: They would have WHMIS labelling.

As to your earlier point about confidential information, if somebody is using a product that has a confidential business information component, they can apply for an exemption through the WHMIS program. Then, we have a biologist do a review to determine whether or not the information is being adequately disclosed to workers, so that they know how to handle the products appropriately. There is a mechanism for confidential business information and the worker's right to know to coexist within the WHMIS system.

Jason, did you want to add something to that?

Mr. Jason Wood: In relation to Ms. McDonald's comments about having a hazard-based system, we're talking about the intrinsic properties of these chemicals and their disclosure.

When we're talking about chemicals that are designed for a specific use, it sounds like the types of risks that you are looking at addressing are based on that use, or how the product would be used.

Mr. Nathan Cullen: That's right.

● (1845)

Mr. Jason Wood: WHMIS doesn't address that aspect. In many cases, these are large quantity industrial chemicals that may have a wide variety of uses. We are looking at the intrinsic hazards of those chemicals, but not the hazards in relation to the specific uses.

Mr. Nathan Cullen: I'm trying to pull those two things apart. We identify them as hazardous materials, regardless of their use. Your interaction with them occurs when workers are exposed. There are other factors, such as how the environment or water tables are exposed to these same hazardous materials. That's not your game; that's for Environment Canada and other departments.

What we're seeking to do, under PV-7, is to have some sort of full disclosure. I'll offer this up to my colleagues across the way. Companies are consistently coming forward and saying that they have no problem doing this. You're suggesting that WHMIS isn't the way to register the full composite of fracking fluid components. Is that the idea?

Mr. Jason Wood: Disclosure does exist as part of the system. All of the hazardous components of these products are disclosed on safety data sheets. Those are already provided.

The end use of the chemical isn't taken into consideration in relation to the hazards. We are talking about the intrinsic properties of the chemicals themselves.

Mr. Nathan Cullen: Thank you, Chair.

The Chair: Thank you, Mr. Cullen.

Mr. McKay, and then Mr. Allen....

Hon. John McKay: I'm trying to absorb the reasoning for the government's opposition to this disclosure. Your argument is that this disclosure occurs only with respect to the safety and health of the workers themselves. Is that correct?

Ms. Suzy McDonald: That is the scope of our program.

Hon. John McKay: That is the scope of the program.

Ms. Suzy McDonald: And of the Hazardous Products Act itself.

Hon. John McKay: As to whether it has any other impact, be it environmental, or water table, or whatever, you are not interested in that.

Ms. Suzy McDonald: That's perhaps a mischaracterization. What I am saying is that it's not within the scope of the Hazardous Products Act and the scope of the program that we are responsible for.

Hon. John McKay: Even if you narrowcast your argument, what is the great harm of the amendment?

Ms. Suzy McDonald: I think the point that we're making is that Parliament enacted the Hazardous Products Act for a specific reason, which included protecting the health of workers, specifically with regard to disclosure of the intrinsic properties of the hazardous chemicals. This falls well outside the scope of what the Hazardous Products Act was intended to do.

I think the suggestion really falls outside of the parliamentary enactment of the Hazardous Products Act.

Hon. John McKay: How is the disclosure of the complete chemical composition and toxicity outside of the scope of the Hazardous Products Act?

Ms. Suzy McDonald: We deal with the intrinsic hazards of products. We look at whether or not something causes cancer. If it does, then you need to label it appropriately. You need to indicate that on the safety data sheet and on the label.

Hon. John McKay: If it causes cancer.... Well, let's go with cancer. What is wrong with disclosing the complete composition and toxicity for the purposes of cancer, or heart, or lungs, or whatever, on the workers?

Mr. Jason Wood: The safety data sheet that's required under the Hazardous Products Act does disclose the list of chemicals that are hazardous. Any of the hazardous classes that are covered by WHMIS, and any chemical that falls within those hazard classes, is already disclosed. That's part of the system. The system is about disclosure.

Hon. John McKay: Chair, I'm not going to belabour this, but it does speak to the whole issue of having this legislative dump. This should be pursued either at the health committee, or the environment committee, or whatever. Anyway, it is what it is.

The Chair: Okay, thank you.

We'll go to Mr. Allen, please.

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

I think I appreciate Ms. McDonald's comments because it's true, the fracking fluids are made up of a number of different things including sand, water, and other chemicals, for sure. In this case, if a chemical was being brought in on a stand-alone basis for the purpose of that, it would fall under this type of thing.

Ms. Suzy McDonald: Correct.

Mr. Mike Allen: But when it's combined into the fracking fluid that would be put in the ground, then it wouldn't fall into this legislation. But certainly there would be a review of those fracking chemicals both at the provincial level, which would set the regulations for what the composition of the fracking fluids are, and there would be an environmental impact assessment in the frack well.

This fracking fluid is way outside the WHMIS piece. It was part of another complete legislative proposal. I think it's important for provincial regulations to delve into that kind of thing, but that's not part of this legislation today.

The Chair: Any comments? Back to Mr. Cullen then.

Mr. Nathan Cullen: I want to follow on Mr. Allen's comment.

At first I thought you were suggesting that this might be redundant, that hazardous, carcinogenic chemicals are going to get their label, that adding this together and saying.... The chemicals are already coming on site where workers are exposed, so let's just narrowcast in on that, regardless of the effects on the environment, watershed, and whatnot, but just on the workers, they're already getting labelled. Was that your point?

● (1850)

Ms. Suzy McDonald: That is correct.

Mr. Nathan Cullen: That's right. Then you didn't necessarily respond to Mr. Allen's point that somehow, when they're combined, they then become part of this fracking fluid mix. That doesn't change any perspective from your department's handling or labelling of those chemicals. Just putting them together doesn't mean that suddenly a label is taken off.

Ms. Suzy McDonald: So we don't know what the intended purpose necessarily is for the product that's coming in, but again, if it has a hazard, an intrinsic hazard, it would be labelled appropriately before it makes its way to the workplace.

Mr. Nathan Cullen: So then that brings me back to my first point which is: is this redundant? Is this already being done? If I go to a site where fracking is going on and there are fluids that are being brought in and they're sitting in a container, are all the labels sticking on that container saying this is everything that's in here, and these are all the different risks that are available to you with this composite fluid that we're handling and putting into the ground? Is that what the situation is right now?

Mr. Jason Wood: The three components of the system apply to that chemical. So it's chemicals sold to a workplace for use in what happens to be a fracking operation. The product is labelled, there's a safety data sheet that's provided in relation to that product with detailed information on it, and workers are trained based on the information provided on the label in the safety data sheet.

Mr. Nathan Cullen: So then this is redundant.

Mr. Jason Wood: What isn't included in the current system is making the information part of a registry or broadly making that information public.

Mr. Nathan Cullen: I see. So if you were to make an argument against this amendment, you're suggesting that....

Sorry Chair, I just want, again, to ask forgiveness from those watching, but we just didn't get into this during the study of this bill. These are parts of the bill that you just don't have time to do when it's all time allocated.

Your suggestion is that the broader dissemination of that information beyond just that question of worker safety and having that in some sort of registry, right now doesn't exist, which is your challenge with what's being proposed in PV-7.

Ms. Suzy McDonald: Correct. I would also add that the amendment duplicates proposed subsection 20(1) of the Hazardous Products Act, under which the minister already has the ability to request information relating to formula composition, chemical ingredients, hazardous properties of a product mixture, etc.

Mr. Nathan Cullen: The ability to but not required to, correct?

Ms. Suzy McDonald: The minister has the ability to request that information.

Mr. Nathan Cullen: That's why we'll be voting for it, because we would like it to be required. That's an interesting differentiation.

Thank you, Chair.

The Chair: Mr. Keddy, please.

Mr. Gerald Keddy: I have a very quick point of clarification, Mr. Chairman.

Mr. Cullen asked our officials if they were making a point for or against the amendment, and quite frankly, they're not here to make a point for or against. They're just simply here to answer questions based on the act.

Mr. Nathan Cullen: I didn't suggest that the officials were to come out.... It was a question of redundancy. If the officials viewed this thing as already existing, and whether that was....

The Chair: Okay, thank you.

We'll go to a recorded vote then on PV-8.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We will now go to PV-9. Ms. May on PV-9 please.

Ms. Elizabeth May: Mr. Chair, this is intended as a new subclause. At page 97, this is adding subsection (2.1) to guide the determination of when products are hazardous for “use, handling or storage in a work place in Canada”. This is the application of something that Canada has been committed to, at least historically, since 1992, called the precautionary principle.

The designation of “hazardous product” would take into account that in cases of scientific uncertainty, where there is substantial evidence of harm, that the latest science would be considered. When you have substantial evidence of harm—I need to make that clear—for the precautionary principle, it's not just anything but a substantial evidence of harm. Even if there's some level of scientific uncertainty, you exercise the precautionary principle in order to designate that substance as hazardous.

Again, I appreciate that Mr. Cullen made the point that this wasn't studied in committee. It may be that the WHMIS program feels that it's already fully engaged in the precautionary principle, but I didn't find it in the act.

Thank you.

● (1855)

The Chair: Thank you, Ms. May.

[*Translation*]

Mr. Côté, go ahead.

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you very much, Mr. Chair.

What I will say also concerns amendment PV-10.

When I read the two amendments, one detail jumped out at me. I am wondering about the legislation's potential application. Is there an issue with the French version? I wanted to point out that, in the English version, the following is said:

[*English*]

“precautionary principle”.

[*Translation*]

That was translated as “principe de la prudence”. However, in French, I have always heard the term “principe de précaution” used. I did a quick web search and concluded that, both in France and in Quebec, the term “principe de précaution” is used instead of “principe de la prudence”. It seems to me that the French version is problematic.

The Chair: Okay. Thank you.

[*English*]

Mr. Keddy and then Mr. Cullen....

Mr. Gerald Keddy: This is not to Mr. Côté's comment but to the amendment.

The Chair: To the amendment....

Mr. Gerald Keddy: Yes.

I think the difficulty with Ms. May's amendment is her injection of the words “safety of a product”—I suspect it's a language issue—and then the fact that if you weren't sure of what a product was it automatically becomes a hazardous product. That actually goes against the Hazardous Products Act and the purpose of that act, which regulates hazardous products intended for use in the workplace. It does not regulate the safety of that hazardous product, but actually regulates—I think I'm correct here—the information on how to use it safely. That's not a play on words. That's just simply what it does.

For that reason, we wouldn't be supporting the amendment.

The Chair: Thank you, Mr. Keddy.

Did you want to comment, Ms. McDonald?

Ms. Suzy McDonald: If I might just add to that, it might alleviate the concern.

Where there's scientific evidence, using equally valid methods, that the product both meets and does not meet the criteria, the product must be classified.

The Chair: Okay, thank you.

I'll go to Mr. Cullen, please.

Mr. Nathan Cullen: A little further to that, Ms. McDonald, can you translate that one for me—English to English?

Give me the scenario again.

Ms. Suzy McDonald: Sure.

If you have two studies that are deemed to be equally valid, where one study says this product does not cause cancer—because we used “cancer” before—and another one that say this product does cause cancer, then we always go with “it does” and it needs to be classified appropriately.

Mr. Nathan Cullen: Under the department's version, is that action the precautionary principle? Is that how you would see it enacted in life, or is that an expression fraught with all sorts of—

Ms. Suzy McDonald: Not to get too scientific—and I don't deal with precautionary principle—but it's a very similar kind of standard whereby we would always be as conservative as possible.

Mr. Nathan Cullen: That's an unfortunate particular term. A small c is what I imagine was being applied there.

The Chair: Some people see that word in a virtuous sense.

Mr. Nathan Cullen: Really.

Voices: Oh, oh!

Mr. Nathan Cullen: Some even apply it liberally once in while.

The Chair: We're going to go to vote on amendment PV-9.

Is it recorded, or just a show of hands?

Mr. Nathan Cullen: Hands are fine.

The Chair: All right.

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

The Chair: We'll go to clause 115.

(Clause 115 agreed to)

The Chair: Colleagues, I don't have any amendments for clauses 116 to 118. Can I group them together?

Some hon. members: Agreed.

(Clauses 116 to 118 inclusive agreed to)

(On clause 119)

The Chair: On clause 119, we have one amendment, PV-10. We'll go to Ms. May again, please.

Ms. Elizabeth May: Thanks, Mr. Chair.

This is similar but is dealing with the point in clause 119 when, under the act, the Governor in Council is amending to delete a reference to a hazardous material. In the decision that the Governor in Council might take to remove a hazardous product from the schedule, this amendment would require transparency and relevant information and also would ensure that the decision being taken was taken pursuant to the precautionary principle.

Thank you.

● (1900)

The Chair: Thank you, Ms. May.

On PV-10, Mr. Cullen....

Mr. Nathan Cullen: Again, in the process we're using, because Ms. May's time is so restrictive, I would like to use my time to ask the department officials for any opinions or for what they imagine the impact might be of this particular amendment, PV-10.

Ms. Suzy McDonald: While the Governor in Council making publicly available all relevant information, taking into account the amending of schedule 1 or 2, would be contrary to maintaining cabinet confidence, certain relevant information would be disclosed and shared through a significant consultation process with stakeholders and interested parties. That includes the public consultation as part of the full regulatory process.

Furthermore, you'll note that under section 19 of the Hazardous Products Act there is a requirement to consult with all WHMIS stakeholders—again, that tripartite system I spoke of before—prior to making any changes, and finally, of course, review by parliamentarians through the Standing Joint Committee on Scrutiny of Regulations. There is significant consultation related to both of those schedules.

Mr. Nathan Cullen: Thank you.

The Chair: We'll go to the vote on PV-10. All in favour?

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

(Clause 119 agreed to)

The Chair: Colleagues, I don't have any amendments for clauses 120 to 162. Can I group those?

Mr. Nathan Cullen: Go, Habs, go!

Voices: Oh, oh!

Mr. Nathan Cullen: Sorry, Chair, I didn't mean to impugn your motives.

The Chair: That's okay.

Shall clauses 120 to 162 carry?

(Clauses 120 to 162 inclusive agreed to on division)

The Chair: We want to thank our officials from Health Canada for their time here this evening. We appreciate your participation.

(On clause 163)

The Chair: We will bring Mr. McCauley from the CRA forward again, and we'll deal with division 4, which has one clause on the Importation of Intoxicating Liquors Act.

We have one clause and one amendment, PV-11.

I will ask Ms. May to speak to that, please.

Ms. Elizabeth May: Thank you, Mr. Chair.

I was very supportive of the private member's bill that was brought forward by Dan Albas that got the ball rolling on Free My Grapes.

I wanted to expand this slightly, which certainly would assist some of the producers in my own riding of Saanich—Gulf Islands. I wanted to expand it to allow the importation across provincial borders to include “by an individual or a small-scale, Canadian-owned producer”. That expands this not just to the individual who can get it across the provincial border but to small-scale Canadian-owned producers of wine, beer, or spirits.

I'm aware, Mr. Chair, as I think you are, that it has been considered that this effort may be found outside the principles of the bill, so I turn to you. I appreciate the chance to present it because I think it's in the spirit of the bill, but I have a feeling that I'm alone in that.

The Chair: Well, it's in a grey area, so I'm going to allow the amendment to go forward.

Ms. Elizabeth May: Thank you.

The Chair: We'll have discussion on the amendment.

Mr. Cullen, please.

Mr. Nathan Cullen: Thank you, Chair. I'll turn to Mr. McCauley.

These are so much happier circumstances in which to meet you, Mr. McCauley, rather than in discussing the estimates of the CRA.

Voices: Oh, oh!

Mr. Nathan Cullen: Now we're talking about a subject that is probably closer to all of our hearts.

One of our questions around this is: do the current provisions, as imagined in this budget implementation act, allow for this already? Is there any distinction between these small producers and larger producers? Is there any harm or hazard that could come to some of the smaller operators in the country with this cross-border provision?

Mr. Brian McCauley (Assistant Commissioner, Canada Revenue Agency): There isn't anything in the current bill that would speak to this, no.

● (1905)

Mr. Nathan Cullen: So redundancy is not a concern that you have? I don't want to put words in your mouth. You're not arguing against it.

The question then is what you view as the impacts of amendment PV-11 on the bill.

Mr. Brian McCauley: Again, not arguing the merit of the intention of the change—

Mr. Nathan Cullen: Yes, thank you, just look for impacts.

Mr. Brian McCauley: For sure.

I think the challenge we have is that the discussion at the ag committee and the earlier change about wine, all that dealt with personal importations. This starts to get into the world of commercial importation.

The discussions there provided an opportunity for the provinces and others to come forward with some observations. We haven't, frankly, had that opportunity. That's not a complaint; it's just an observation.

Some of the areas, if there had been more time, would be the definition of a Canadian producer, I think also the small producer, what is promotion, and those kinds of things. We would have probably ordinarily defined those a bit more. There would have been a bit of clarity if we were bringing something like this forward. Those are the kinds of things we would have scrubbed a little bit if we had considered something like this.

Mr. Nathan Cullen: Sure.

Then here's a question to you just in terms of process. Can those definitions be further scrubbed, as you put it, or further well defined through regulation? Does it have to be an enactment of law?

My question is to imagine this amendment going forward, being accepted, and put into law. Does the CRA—if it's the CRA making these designations—have the power through regulations to then better define who this would apply to and who it doesn't?

Mr. Brian McCauley: I guess, at the end of the day, we do our best with whatever legislation the House passes.

Mr. Nathan Cullen: And God love you for it. Thank you.

Mr. Brian McCauley: There isn't a set of regulations for this bill, I don't think. I'm not sure it's necessarily provided for, because it's a different kind of bill. But I'm not saying that's an absolute barrier either. It's just, again, there's been a shortage of time to assess what might or might not happen coming out of this.

Mr. Nathan Cullen: Welcome to our life.

The estimation, then, from us, from the New Democrat side, is that if this allows what we would traditionally call “small producers” to move their product across borders.... We are generous people in British Columbia where I come from, and we wouldn't want to keep all that fabulous fantastic wine to ourselves. It's not just because I'm from B.C., but we'll be voting in favour of this motion.

The Chair: Thank you.

Now, I'm not sure which Conservative I have—

Mr. Gerald Keddy: I'm going to take some time.

The Chair: You are? Okay.

Mr. Keddy, please.

Mr. Gerald Keddy: Thank you, Mr. Chairman.

I'll try to be fairly succinct here, which is going to be a bit difficult because—

Mr. Nathan Cullen: It's not in your nature.

Mr. Gerald Keddy: Yes, it's not in my nature, and I do have some sympathy for this amendment. I think all of us do. But it really doesn't belong here. That's the difficulty with it.

I know my honourable colleagues across the way have been complaining vociferously about the fact that this is an omnibus bill and there's a lot of information in it, and this would actually put more information in it, quite frankly.

Some hon. members: Oh, oh!

Mr. Gerald Keddy: But here's the difficulty. We have Bill C-31 that allowed for individuals' importation of intoxicating liquors across provincial borders. That was for the individual. It wasn't for a business entity. I think, really, this needs to be rethought, not brought in as an amendment but brought in as a private member's bill or an idea that committee could study at some other point, but not here.

The Chair: Okay, thank you.

I have Mr. McKay, then, next, please.

Hon. John McKay: Just watching the back and forth here, given that you still would have a regulatory hammer, shall we say, is the passage of this amendment any great harm?

Mr. Brian McCauley: In fairness, given that I think we just learned about it on Friday, I don't know that we've really been able to fully assess it. I'm not being evasive, but because it gets us into the world of commercial, which was not a world that was considered over the last year when we were dealing purely with personal, we just really haven't been able to make that assessment.

The Chair: Mr. Keddy, please.

Mr. Gerald Keddy: To Mr. McKay's statement, what we'd end up doing is putting in legislation. We've not had a chance to speak to the provinces, to producers, to the provincial liquor authorities. They've not had an opportunity to look at any ramifications of this change. I mean it's just.... We can't do it.

● (1910)

The Chair: Thank you.

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

(Clause 163 agreed to)

The Chair: I thank Mr. McCauley for his appearance here.

Colleagues, we have division 5, two clauses, 164 and 165.

I welcome our official, Patrick Xavier. Welcome to the committee.

Can we deal with these two clauses together then? Is there any discussion?

Mr. Cullen.

Mr. Nathan Cullen: May I make a suggestion to group 164 through 174?

The Chair: Okay.

(Clauses 164 to 174 inclusive agreed to)

The Chair: Thank you, Patrick. You should stay and help us pass the rest of it.

So we are up to division 9, Atlantic Canada Opportunities Agency. We have clauses 175 to 178. We have an amendment for clause 177.

Do members wish to speak to the two previous clauses 175 and 176?

Mr. Nathan Cullen: I'd like to speak to 175 please, Chair.

(On clause 175)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: I know this is dealing with ACOA and some of the significant challenges that have been going on there. One of our concerns is that the thing that needs to be done with ACOA is to increase the accountability. I know it was maybe the practice of previous governments to treat some of these regional economic development agencies as patronage dumping grounds. Unfortunately the government learned that lesson too well and too closely. Our concern is that there's even less accountability now being offered in these provisions. There is the eliminating of the president of ACOA to table a report to Parliament every five years. There have obviously been negative impacts on some very controversial decisions. Through ECBC this is the attempt to wash it all clean and bury the bodies.

Putting ECBC into ACOA is the attempt to do that but it's not going to fix the problem. There are other ways. The budget of ACOA itself has been cut by nearly one-third since 2006 under the government. So it's dealing with less money and less accountability. I'm not exactly sure how this is going to work out for people in maritime provinces, particularly Cape Breton. So I'm very much opposed to the changes. It has just been a mess and a continual mess. We see the firings, and the dismissals and then hiring friends of the justice minister is not a way to run anything, certainly not something so important as the ECBC or ACOA itself.

Here was an opportunity for the government to do something, even if it's in an omnibus bill, and they chose to run in the other direction. The accountability act seems like so long ago and so far away when you start to look at what the government's been doing since that time. So we'll be opposing, Chair.

The Chair: Thank you.

Mr. Nathan Cullen: Recorded vote...?

(Clause 175 agreed to yeas 5; nays 4)

(Clause 176 agreed to on division)

(On clause 177)

The Chair: We have NDP-14 and just a hint, I do have a ruling on this one. We will ask Mr. Cullen to speak to it briefly and then we can address clause 177.

Mr. Nathan Cullen: I'm sorry I expressed surprise there, Chair.

All this clause seeks to do is this. ACOA is meant to report every five years on how they've impacted regional disparity, that's the point of the organization. So we're moving an amendment to have it up to four years so that it falls typically within election cycles. If that's the mandate and the nature of the organization, I would have assumed that more reporting would be beneficial. Perhaps we've crafted this amendment in such a way as to not fall within the order, but that's all that we're seeking to do here. ACOA is an agency that needs more transparency and this is a way to offer that transparency up.

● (1915)

The Chair: Thank you.

My ruling is as follows. Bill C-31 seeks to amend the Atlantic Canada Opportunities Agency Act by removing the requirement that a comprehensive report be submitted by the agency president to the responsible minister. The amendment aims to re-establish the requirement for a report, and that it be submitted to the minister every four years.

House of Commons Procedure and Practice, second edition, states on page 766, "An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and principle of the bill." In the opinion of the chair, the amendment seeks to maintain the report requirement, which is contrary to the principle of the bill. Therefore, I rule the amendment inadmissible.

That deals with NDP-14.

Is there any discussion on clause 177?

Mr. Cullen.

Mr. Nathan Cullen: I appreciate the ruling, Chair. This is obviously not a criticism of that but a criticism of the government's move to eliminate the reporting requirement.

To the official in front of us—thank you for being here and for waiting so long—I'm trying to find out if this reporting was onerous, or expensive, or difficult. I don't understand why we're getting rid of this. Is there some other mechanism that's being offered up to show the accountability of the organization?

Can you perhaps illuminate me on why this is being done?

The Chair: Welcome to the committee, Ms. Frenette, and please proceed.

Ms. Denise Frenette (Vice-President, Finance and Corporate Services, Atlantic Canada Opportunities Agency): Thank you.

I'll start by going back to the origin of why the requirement was put in place. When ACOA was first created, it was time-limited for five years. At that time there was a need to report on activities and results to Canadians every five years, and report to Parliament.

Two key things have changed since then. The government has confirmed ongoing funding for ACOA, and there are also new, more rigorous, effective means of reporting and making sure there's transparency, accountability, and oversight of federal government operations. The legislative requirement of the five-year report predates the new reporting mechanisms that are now being required of all government departments, such as the departmental performance reports to Parliament. We do that on an annual basis, as every other government department does, and we publish reports on our website in terms of quarterly financial statements. We do evaluations of all of our programs.

Under the evaluation policy and also the requirements of the FAA, there is a requirement to cover all of our programs on a four-year cycle and do program evaluations of all of our programs. Those results of the evaluations are also posted on the agency's website.

Mr. Nathan Cullen: Thank you for that.

On the first point you made, because of "ongoing funding", I'm not sure how that.... I understand the second part of what you said. You're suggesting the reporting is done in more enhanced ways since ACOA was first created or first stipulated to do this. Why would the ongoing funding matter one way or the other?

Ms. Denise Frenette: It's just that when we were created, we were created for five years, basically. So it's really important for the government to have mechanisms for us to come back and report on our activity on a five-year cycle to justify our ongoing existence.

Mr. Nathan Cullen: One of the questions in that was this. In any of those reports that you mentioned are now being done annually, or the quarterly reports, are the impacts on regional disparity part of that assessment of how ACOA is doing? I know that it's one of its mandates to see what's going on at a regional level rather than project by project. Is that part of the reporting, that you're aware of?

Ms. Denise Frenette: Yes. On an annual basis, through our departmental performance report, we do report on our performance on a macro level. As I said, on a four-year cycle we evaluate all of our G and C programs to see the impact we're having with those programs.

● (1920)

Mr. Nathan Cullen: Is the report on that four-year cycle made public?

Ms. Denise Frenette: Each individual evaluation report is made public and is posted on our agency website.

Mr. Nathan Cullen: Okay.

Thank you, Chair.

The Chair: Thank you, Mr. Cullen.

Mr. Allen, please.

Mr. Mike Allen: Thank you, Chair.

Thank you to Ms. Frenette for being here today.

I thank her for covering that, because she's right. When ACOA was set up, it was a five-year cycle, funded five, then requested for five. That's the way it was set up. Now that it's a permanent structure, it has that.

Basically what this does is align it with the other regional development agencies, which are also on a yearly reporting cycle, if you look at those, and the financial reports and your yearly performance report. This just makes sense.

So to the whole idea of the amendment being ruled out of order, Mr. Cullen should not despair because the reporting is actually much more robust than it was before.

Thank you.

The Chair: I hope he appreciates the comfort.

Mr. Nathan Cullen: I was feeling a little sad for a moment, but I feel better now.

The Chair: All right.

(Clause 177 agreed to)

(Clause 178 agreed to)

The Chair: Colleagues, we have the same witness and we'll move now to division 10, which deals with clauses 179 to 192. We don't have an amendment until clause 182. Can I group clauses 179 to 181 together?

Some hon. members: Agreed.

(Clauses 179 to 181 inclusive agreed to)

(On clause 182—*Appointment to Agency*)

The Chair: We have LIB-14.1, and we'll go to Mr. McKay.

Hon. John McKay: Thank you, Chair.

I'll probably want to do both together. It's probably useful, if that speeds things up.

The Chair: LIB-14.1 and LIB-14.2?

Hon. John McKay: Yes.

The Chair: Okay.

Hon. John McKay: Because they are related to each other. I'm under some disadvantage in that this is normally Mr. Brison's file. These are two amendments that we are basing upon the findings of the Public Sector Integrity Commissioner for the wrongdoing of ECBC CEO John Lynn.

I'm just quoting from the report which says:

> The investigation found that:
>
> Mr. Lynn committed a serious breach of ECBC's Employment Conduct and Discipline Policy, which was ECBC's own code of conduct at the time. This finding is as a result of the appointment of four individuals with ties to the Conservative Party of Canada or the Progressive Conservative Party of Nova Scotia into executive positions at ECBC with little or no documented justifications and without demonstrating that the appointments were merit-based.

The report also says:

> There was an element of deliberateness to Mr. Lynn's actions....
>
> Mr. Lynn's actions were incompatible with the trust that the Government of Canada and the public has placed in him as Chief Executive Officer.

There are two problems with Bill C-31 in light of the commissioner's wrongdoings. The two amendments seek to address these problems. Under clause 182, the individuals were improperly hired by Mr. Lynn. They are still at ECBC and have become permanent employees of the public service. Under clause 183, it singles out CEO Mr. Lynn as the only member of the board eligible for compensation or termination.

In quick summary, Mr. Chair, what we have is a serious breach of the ethical and hiring practices, yet there's a reward at the end, by turning these folks into permanent employees of the public service and giving Mr. Lynn a good payout.

The first amendment will ensure that an employee who was hired after June 1, which is when Mr. Lynn became a CEO, through a process that the Public Sector Integrity Commissioner considers to have been a wrongdoing, under paragraph 8(e) of the Public Servants Disclosure Protection Act, would be excluded from the ECBC employees who have automatically become employees of the public service. It would prohibit them from becoming members of the public service.

The second amendment removes the exception of allowing the CEO, and only the CEO, to receive compensation on termination. It's not clear why the service decided to give the CEO the special treatment in the bill. Removing this is the only appropriate...given the report of the Public Sector Integrity Commissioner's finding of wrongdoing.

● (1925)

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

I have Mr. Keddy and then Mr. Cullen, please.

Mr. Gerald Keddy: I really do have to question how, on a budget bill, this becomes part of the discussion. It really is quite frankly, Mr. Chairman, inappropriate to use a legislative instrument to deal with an investigative report—or at least this legislative instrument.

The reality is—and let's just put all the ducks in line and get the facts straight instead of innuendo and trying to smear good people's reputations and talking about who may or may not be in the service because the previous government fast-tracked a lot of individuals to the civil service who I am sure are continuing to do good service to the country today.

The question is of John Lynn, and that's really where this should stay. His appointment as chief executive officer of Enterprise Cape Breton Corporation was terminated on May 27, 2014. His appointment was terminated with cause. The decision was taken as a result of findings from an independent investigation undertaken by the board of directors of the corporation that determined that Mr. Lynn's actions were incompatible with his position as CEO of ECBC.

You know, as a standard practice, the government doesn't pay compensation in this situation. You have to go back and also look at the Public Sector Integrity Commissioner, who found no fault on the part of the minister. The facts are out there. If you want to use this hearing to drag over what couldn't be achieved in question period and take another kick at the can.... But it's been dealt with.

The Chair: Thank you, Mr. Keddy.

Mr. Cullen.

Mr. Nathan Cullen: It's interesting. I'm just looking through some of our political history here in trying to see what the Liberal motion is here. Maybe it's because of experience that the amendment is so targeted in what it's attempting to do. I know in question period today, Chair, a scurrilous shot was sent by the New Democrats to the Conservatives calling them Liberals at one point, and the whole room reacted. It was awful.

Hon. John McKay: We're still in recovery.

Mr. Nathan Cullen: They're still in recovery.

We don't want to reward bad behaviour. I think Mr. Keddy's point here to this amendment was whether it was connected back to the minister and whatnot, and that's all for that investigation. But on this amendment, if it has been identified that there was an inappropriate appointment and then that appointment then hired other inappropriate appointments, the last thing we want to suggest is that's good behaviour.

I can remember the Prime Minister's words when he was in Atlantic Canada at one point and said there's a culture of defeatism here. I just saw this one quote that I thought I would bring up here because it's absolutely germane, the people in Atlantic Canada shouldn't “sit around waiting for favours”.

I suppose the idea is that it's who you know in the PMO. What this amendment, which we'll support, is trying to suggest is that, if what's been found out has been found out in terms of the way this appointment process happened and that people were rewarded for political connection, and certainly if that's what the public commission has found, then we would not want to just simply roll that into some kind of a permanent status.

So if that's what the amendment attempts to do, then we should all be supportive of it because what we don't want is to reward any sense of patronage or cronyism that goes on within the public service using the taxpayer dollars to reward people—who may be nice people and may be lovely and whatnot—who got their positions because of who they were connected to, which is what this case has been talking about through the integrity commissioner.

We disagree with the Conservatives' view on this, obviously, and will be supporting this amendment.

The Chair: Thank you.

I have Mr. McKay.

Hon. John McKay: I'll deal with Mr. Keddy's arguments in order. If he thinks this is out of order, well, if you haven't ruled it out of order, then it's in order and within the scope of the legislation that's been put forward by the government. It's a terrible thing that they are hoisted on their own petard. I feel badly for you.

As to the smearing of Mr. Lynn's reputation, well, there's nothing here that I'm smearing his reputation with. I'm just simply quoting from the report. I suppose if you think that the integrity commissioner is smearing Mr. Lynn's reputation, you should take it up with the integrity commissioner.

The core issue, Mr. Chair, is that in light of the findings of the commissioner, are we going to reward bad behaviour? Let's face it, if this amendment doesn't go through, the four individuals involved will automatically become members of the civil service with all the security that means, which is very fortunate for them, but not quite so fortunate for those who might have aspired to those positions.

My second point would be that Mr. Lynn has had some considerable benefit out of his appointment, and I don't know why, when he is being so rudely treated by the Public Sector Integrity Commissioner, he should get a reward for his bad behaviour.

● (1930)

The Chair: Thank you.

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

Mr. Gerald Keddy: That's quite an interjection, Mr. McKay. I'll go back and check the record, but I certainly at no time said anything about smearing the reputation of Mr. Lynn. I think I quite correctly and appropriately explained the sequence of events, including Mr. Lynn's termination for cause and the fact that there's no remuneration paid.

So you can try to draw something out of that, or attempt to put words in my mouth, but you're not going to be very successful doing that. What I did say is that it's a very open and blatant attempt by both the NDP and the Liberals to smear the reputations of ACOA employees, and there are very good ACOA employees who do great work for the Government of Canada and the civil service on a daily basis.

The Chair: Okay, thank you.

Do you want a recorded vote on LIB-14.1?

Hon. John McKay: Yes. I'll be interested in Mr. Keddy's vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

(Clause 182 agreed to)

The Chair: We'll go to clause 183. We'll do LIB-14.2.

Do you want another recorded vote, Mr. McKay?

Hon. John McKay: Yes, please.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

(Clause 183 agreed to)

The Chair: I want to thank Ms. Frenette for being here this evening. Thank you for your contributions.

Oops, sorry, I should not do that.

Can I group clauses 184 to 192 together, colleagues?

Some hon. members: Agreed.

(Clauses 184 to 192 inclusive agreed to on division)

The Chair: Thank you, Ms. Frenette.

Colleagues, we have division 11, the Museums Act, clauses 193 to 205. I don't have any amendments. Do you want to group these together?

● (1935)

Mr. Nathan Cullen: Say that again, Chair—

The Chair: It's the Museums Act, clauses 193 to 205. It's division 11.

Mr. Nathan Cullen: Yes.

The Chair: Can we group them together?

Mr. Nathan Cullen: Yes, please.

Hon. John McKay: My voting instruction sheets are a mix of yes and no. We are at—

The Chair: We're at 193.

Hon. John McKay: —193. I can group 194 and 195, but I can't include the rest.

The Chair: (Clause 193 agreed to)

The Chair: So can I group the next two together?

Hon. John McKay: That's fine.

(Clauses 194 and 195 agreed to)

The Chair: How many can I group together?

Hon. John McKay: We can group 196 to 199.

(Clauses 196 to 199 inclusive agreed to)

The Chair: Can I group 200 to 205?

Hon. John McKay: We can only consider clause 200. Sorry.

(Clause 200 agreed to)

The Chair: All in favour of clauses 201 to 205?

Hon. John McKay: Could we do clauses 201 to 204?

The Chair: Okay.

(Clauses 201 to 204 inclusive agreed to)

(Clause 205 agreed to)

The Chair: Colleagues, we have division 12, did you want to do a health break? I'll suspend for about five or 10 minutes. Thank you.

● (1935)

(Pause)

● (1945)

The Chair: I call this meeting back to order.

This is meeting number 37 of the Standing Committee on Finance, continuing our consideration of Bill C-31, an act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures.

We are dealing with clause-by-clause consideration. Colleagues, we are at division 12, Nordion and Theratronics Divestiture Authorization Act. This deals with clauses 206 to 209. We have an amendment with respect to clause 207.

Is there any discussion on clause 206?

(Clause 206 agreed to)

(On clause 207)

The Chair: On clause 207 we have amendment NDP-15.

Mr. Cullen.

Mr. Nathan Cullen: Thank you, Chair, and thank you to our official for staying with us.

I have a question that I'll put through you, but first let me posit what this amendment would do. Through NDP-15 we're seeking to ask the government to publish any undertakings, written undertakings in particular, with respect to the sale of Nordion, any obligations that were picked up by the purchaser with respect to jobs that were to be maintained or positions held through management. Is there any requirement right now under the Investment Canada Act that would make such a requirement of the minister?

● (1950)

Mr. Soren Halverson (Senior Chief, Corporate Finance and Asset Management, Department of Finance): No, in fact it is the contrary of that. Under the Investment Canada Act undertakings that are made are not made public.

Mr. Nathan Cullen: Can you explain why that is?

Mr. Soren Halverson: What I can say is that the act contains strong protections with respect to information both to protect the Canadian businesses as well as foreign investors. It is a matter of commercial confidence essentially.

Mr. Nathan Cullen: We've had foreign takeovers—this is of an asset—of Canadian companies that were contingent upon regulatory approval by the government in which they made any of the requirements of the purchase public. I'm thinking of some of the steel in Hamilton and some of the other conditional aspects of the sale. These, again, were not assets owned by the Canadian government but the Canadian government was involved. There was no concern of breach of confidentiality or privacy of the purchaser or the seller. Was that just foregone voluntarily by the government in order to make that public?

Mr. Soren Halverson: I'm not familiar with the particular cases that you are referring to.

Mr. Nathan Cullen: For the layperson not familiar with the Investment Canada Act, when selling off an asset, if part of the condition of that sale is to maintain a certain number of jobs in Canada, what possible harm could come to the purchaser if that requirement the government is making of the purchaser were to be made public?

Mr. Soren Halverson: I'm just not in a position to debate the merits of those parts of the act either way.

Mr. Nathan Cullen: I don't want to put you in an unfair position at all. What we're trying to understand is that the Canadian government wants to sell something and they have a purchaser in mind, so they are making the sale and enabling the sale through this budget implementation act. So to Mr. Keddy's point before the break in terms of inappropriate uses of budget implementation acts, one may argue that selling off assets and making all the stipulations possible through an omnibus bill would be incongruous with accountability.

What we're trying to offer here is simple transparency, Chair, through you to the other committee members, to say if there are any conditions of this sale on jobs, on any investment, things that have been agreed to between the Canadian government and the purchaser, that those conditions be made public, period. That's all it does. Certainly if there are conditions that the purchaser is willing to adhere to in confidence they would be ones they would be willing to have exposed in public.

The angling of the question I had for you, Mr. Halverson, was to understand if there is any sort of.... I understand the legal requirements as it's written, but there's nothing preventing the government from agreeing with this and making it a condition of the sale that any conditions and requirements would be made public. I don't know why the government wouldn't, in the spirit of transparency and accountability, make all that information and those conditions public because the public owns the asset.

Mr. Soren Halverson: If I could just make one point of clarification, it is that this is not a government sale. The federal government privatized Nordion in 1991, so—

Mr. Nathan Cullen: Excuse me.

Yes, thank you for the clarification, yet in the foreign investment act and the enabling of this sale through the legislation, on the commitments that have been made by the purchaser to the government, allowing for those commitments to be made public is what we seek to do. I get the sense from you in terms of what you're able to testify to and not...but perhaps someone from the government is going to be able to argue against this particular amendment, because for a government that seeks to pride itself on accountability and transparency, this is exactly what this amendment seeks to do.

Thank you, Chair.

The Chair: Thank you, Mr. Cullen.

Okay? We'll go to the vote, then, on NDP-15.

Did you want a recorded vote?

Mr. Nathan Cullen: I'm sorry. I thought there would be counter-arguments. None? Okay.

Yes, a recorded vote, please.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: The amendment is defeated. All in favour of clause 207?

Mr. Nathan Cullen: A recorded vote, Mr. Chair....

● (1955)

The Chair: We will have a recorded vote for clause 207.

(Clause 207 agreed to: yeas 5; nays 4)

(Clauses 208 and 209 agreed to)

(On clause 210)

The Chair: I want to thank Mr. Halverson for being with us this evening.

Colleagues, we now have division 13 on the Bank Act. We have one clause, clause 210. We have amendment PV-12, which you have in your documents, so it is deemed moved.

All in favour of PV-12?

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

The Chair: PV-12 is defeated. All in favour of—

An hon. member: On the main motion....

The Chair: Okay.

I think we have officials from Finance here.

We welcome Mr. Foster to the committee. We are on clause 210. [*Translation*]

We will have a debate on that.

Mr. Caron, the floor is yours.

Mr. Guy Caron: Thank you, Mr. Chair. Good afternoon, Mr. Foster.

I have a question for you.

I don't think this was asked during the information session or when you appeared before us. The summary we were given said something along the following lines:

> Under the guidance of the Heads of Agency Committee, federal regulators and provincial securities regulators agreed that the Office of the Superintendent of Financial Institutions (OSFI) is best placed to monitor the effectiveness and governance of risk controls for submission processes for the rates of the banks that submit them.

Can you tell us whether this was the opinion of the Autorité des marchés financiers du Québec, among others?

[*English*]

Mr. Wayne Foster (Director, Securities Policies, Department of Finance): Indeed it was. You're referring to the provision to empower the Governor in Council to promulgate regulations as regards bank submissions to financial benchmarks. The key benchmark in Canada this would relate to would be what's called the “Canadian dealer offered rate”, which is kind of the Canadian version of LIBOR. You've heard maybe a fair bit about LIBOR, about some scandals and so on.

In Canada, the Canadian dealer offered rate, or CDOR, is an average of rates submitted by seven banks. Since they are banks that submit the rates, it was concluded at the heads of the agencies that you referred to, which includes the AMF, the Autorité des marchés financiers in Quebec, that OSFI was best placed to supervise the submission process for the calculation of that rate—since they are seven banks that submit.

[*Translation*]

Mr. Guy Caron: I have another question for you.

You referred to the second part of the legislation, which deals with financial benchmarks.

Regarding the Governor in Council's explicit power and the regulation of derivative products, did you consult provincial authorities or agencies, including the Autorité des marchés financiers?

I'm asking this question because it's important. In fact, if we look at all of Canada's stock exchanges, derivative products are a specialty of the Montreal Exchange. I would basically like to know whether the Autorité des marchés financiers approved this decision.

[*English*]

Mr. Wayne Foster: So in regard to the first part of the provision that deals with the regulation of derivative transactions by banks, we're talking about over-the-counter derivatives, not exchange traded derivatives, which would include those products traded on the Montreal Exchange that are rightly regulated by Quebec authorities. So these are interest rate swaps and other transactions used for hedging purposes that are transacted by banks primarily between Canadian banks and foreign banks.

In terms of that activity, again it is clearly banking activity, so the right authority for that is a federal authority and under the Bank Act. Currently the office of the superintendent would be responsible for supervising banks' activities in this regard.

● (2000)

[*Translation*]

Mr. Guy Caron: Just to clarify, you are telling me that the proposed amendment to the legislation does not apply to the products traded on the Montreal Exchange, but rather to any negotiated over-the-counter derivatives, which don't currently come under the jurisdiction of the Autorité des marchés financiers.

[*English*]

Mr. Wayne Foster: Yes. It wouldn't include exchange-traded derivatives that are traded on the Montreal Exchange that are regulated by the AMF.

The Chair: We'll vote on clause 210.

(Clause 210 agreed to)

(On clause 211)

The Chair: Thank you very much, Mr. Foster. I appreciate your time here this evening.

We will move to division 14, Insurance Companies Act.

We'll ask Mr. Wu to come forward. We have one clause and three amendments.

Our first amendment is LIB-15 with Mr. McKay.

Hon. John McKay: Thank you.

This involves the demutualization, as you know. Mutual insurance companies play a pretty important role in rural communities. When the government held consultations on the demutualization framework, they heard from Finance Canada and their own summary of the consultation said:

> Concerns were expressed that demutualization could lead to consolidation, reduce competition, access to services, and weaken ties to the rural communities in which most mutual companies are based.

The committee also heard concerns that votes in demutualization proposals could be decided by just mutual policyholders and not all policyholders. Amendment Liberal-15 helps respond to these concerns by requiring that all policyholders be entitled to vote on the demutualization proposal. It also requires that any such vote take place at a meeting with a quorum of a majority of all policyholders in person or represented by proxy holders.

This amendment was requested by the Canadian association of mutual policy companies.

So there are my instructions from my colleague but it's fairly simple. If in fact demutualization is going to be taking place then it has to be all policyholders rather than just simply a restricted pool of policyholders and the fear is that mutual companies will simply disappear, particularly in rural Canada but in other places as well.

The Chair: Mr. Caron, please.

[*Translation*]

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

In our opinion, the content of clause 14 is not in line with the government's commitment to establish an effective and fair regulatory framework for the demutualization process.

I think the provisions that enable the government to bring certain matters before the courts illustrate a lack of seriousness. They also illustrate a lack of political will to establish a real framework and to protect the industry against private interests.

Once again, clause 14 of Bill C-31 does not take into account the need to modernize laws and procedures relative to subscription notes and, consequently, to subscribers' right to vote in the context of a demutualization process. This bill contains no information on the nature of mutual companies' assets and the way they should be used and allocated following a demutualization.

In addition, a witness representing the Canadian Association of Mutual Insurance Companies said that mutual companies' assets should be considered as the mutual insurance industry's collective assets. That's especially the case when a mutual insurance company goes bankrupt, as other mutual companies should handle any outstanding contracts.

We heard a number of witnesses discuss this. Several of my colleagues from this committee were there when we studied the issue of demutualization during a meeting entirely dedicated to that topic. The discussion was interesting because this is a very complex sector. During that study, some fairly informative facts were brought forward, especially when a typical case was discussed involving the Economical Mutual Insurance Company, which talked about some issues with demutualization.

The company currently has over one million insurance policies. However, only 943 individuals are mutual insurance policyholders. The company has a capitalization of about $1.3 billion. An attempt at demutualization had begun that would have enabled each of the mutual policyholders—so each of the 943 individuals—to obtain personal assets in the amount exceeding $1 million. What would have happened to regular policyholders? They would have been left high and dry.

In short, it is really important to think about the interest of all those mutual insurance companies' users. It is also important to ensure that those policyholders—not only mutual policyholders, but all policyholders—can have a say in the case of demutualization proposals.

Currently, the bill delegates far too much authority to the courts. It relieves the government of its responsibility to make a decision, despite the commitment the government has made. Finally, the legislation allows the courts and tribunals to determine what happens in the case of a demutualization, and that could put all the power in the hands of mutual policyholders.

So if mutual insurance companies or shareholders are driven by short-term profits, the mutual company itself is at risk. The company is also potentially at risk. In fact, the president of the Economical Mutual Insurance Company did not even conceal the fact that the company, or the mutual, planned to be absorbed by or to merge with another company and eventually disappear altogether.

Once again, individual policyholders ultimately suffer in a situation where mutual policyholders are interested in short-term profits.

I know that our amendments are somewhat similar to those moved by the Liberal Party. However, ours aim to integrate policy holders, either by ensuring that they are invited to general meetings where demutualization would be discussed, or by giving them a say should they participate in that general meeting.

I invite my colleagues to seriously consider the decision they will make during this vote because some fairly significant consequences will arise for thousands, if not millions, of individuals. I know that Mr. Van Kesteren, among others, has done business with a mutual insurance company in his riding.

Give this some serious thought because your vote will have a fairly considerable impact.

Thank you.

● (2005)

The Chair: Thank you Mr. Caron.

[*English*]

I'll go to Mr. Van Kesteren now, please.

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

We're talking about the framework. The authority to create the framework should be set out in forthcoming regulations, as it was done in the life demutualization process. The property and casualty companies' unique circumstances require a framework that is flexible enough to address the dual structure of some of the companies that they seek to demutualize.

The government has committed itself in economic action plan 2014 to consult on this framework. We must remember that this sets out the authority to set out that framework alone, and that consultations will take place when that process begins.

● (2010)

The Chair: Thank you.

Further discussion, Mr. McKay...?

Hon. John McKay: For some reason or another that's not giving me great comfort. Let me just ask Mr. Wu a couple of questions here.

It seems to me that when there is a business opportunity for merger or demutualization, or possibly even in bankruptcy, that the mutual policyholders seem to be able to jump to the head of the line, make the decisions, and leave the others holding the bag. So I don't quite understand what the opposition is to this particular amendment if in fact you're trying to level the playing field among policyholders.

Mr. James Wu (Chief, Financial Institutions Analysis, Department of Finance): Thank you very much for the question. Let me try to elaborate a little bit on the process that is envisioned in respect to this framework. As was stated in the economic action plan 2014, the government committed to providing a demutualization framework for P and C companies. As occurred in the case of the mutual life insurance companies, the legislation just gives the broad regulations-making authority...and many of the details and issues I think that were raised earlier are set out in the regulations.

So for example with respect to who has the right to vote, which I think is one of the concerns raised, in the process those details and definitions are set out in the regulations. The view is that the regulations are in the appropriate place to develop and articulate the framework. There are many complicated pieces to how a demutualization framework could operate, and it's important to have a vision of all those pieces together to understand how the framework would operate. I think it is important to get the framework right the first time because these are major structural changes for the companies.

Hon. John McKay: Why wouldn't you take this opportunity to secure the rights of the folks who are the policyholders?

Mr. James Wu: These issues, as well as many of the others that were identified to the government during the consultation process in June 2011 and in subsequent consequence processes, formed considerations that are assisting the department in formulating proposals on the framework. It's up to the government to decide what to do with those considerations in articulating the framework.

Hon. John McKay: Here's the government and they're presenting this massive bill and they want to do this so the mover of the amendment is suggesting that this is time to protect some people by giving them votes at special meetings. If you're going to establish a framework surely you should have some guidance from Parliament as to what the framework should look like, and it's actually generated from your own consultations. I'm not saying you're being hoisted on your own petard here, but you're the ones that raised the issue. This is a response, and it is to a framework, and it is to a protective framework, so why not?

Mr. James Wu: Thank you for the question. I don't presume to comment on the prerogative of Parliament to decide what is legislation versus regulations. Let me just say that in respect of, again, the existing framework for mutual life insurance companies, the framework seemed to have operated well. Again very similar to this case, the framework under which regulations were made were set in legislation, and the details including who gets to vote and who gets the benefits were set out in regulations.

Hon. John McKay: Well it seems to have worked very well for those who are the owners of the special policy, the mutual policyholders, but it hasn't worked quite so well for everybody else. I'm sure that Manulife shareholders converted their policies into shares and thank you very much we've done very well, but that sometimes leaves the others high and dry.

So why wouldn't the Government of Canada as an even-handed approach try to protect the rights of shareholders with this amendment?

Mr. James Wu: Again I don't presume to speak for the government, but on behalf of the department let me just say in using the similar approach in the framework that exists under the life demutualization framework we appreciate there are concerns and unique aspects of the mutual P and C industry, and hence that's why adjustments or expansions of the regulations-making framework were recommended and tabled in Bill C-31.

● (2015)

Hon. John McKay: But why would people make representations to the minister or the department? The department takes note of their concerns, and in fact publishes their concerns, and when an opportunity comes up to level the playing field to protect, the department stands back and says, “Well, maybe we'll cover it off in the regulations, or maybe we won't.”

I don't understand your reasoning.

Mr. James Wu: Let me try to answer this way. The proposed framework that the department would have in mind would set out all the relevant factors in the regulations.

The Chair: Monsieur Caron.

[*Translation*]

Mr. Guy Caron: Mr. Wu, thank your for joining us today. I have a few questions for you.

You said the following regarding the issues covered in this amendment.

[*English*]

You say they would be better addressed by the regulations. Why do you say that?

Mr. James Wu: If we use the mutual life insurance demutualization process as an example, a lot of the relevant details, and if you will, even the concerns that were raised by policyholders in the P and C process, were articulated in regulations. I think, as you said, sir, this process can be very complex, and the regulations try to factor in all the relevant and important issues together in one framework, in one proposal, and in fact, if you will, in one consultation process, because when the regulations move ahead through the regulatory process in part I of the *Gazette*, they will be published, and there will be a common period, and all the relevant factors will be seen together, and appropriate comments will be obtained from relevant stakeholders for further consideration.

Mr. Guy Caron: On the other side, you would agree with me that the process of regulation and publishing through the *Gazette* and so on is much less transparent and gives more possibilities of inconsistency in decision-making?

Mr. James Wu: I don't think I'm in a position to comment on that, sir.

Mr. Guy Caron: I'm just saying that for the regulatory route, the way you're expressing it is actually allowing for the possibility that the decision made by the government—and I'm not saying that they will do it—regarding one mutual company, in terms of that specific aspect, will be different from the decision made for another mutual company in a similar situation.

Mr. James Wu: All I would say in response to that, sir, is that we heard loud and clear the concerns of the stakeholders during the June 2011 consultation process and subsequently...and I do appreciate your point that different companies have different views.

Mr. Guy Caron: I understand that. You know that the organization that is basically the umbrella organization of the mutuals is actually opposed to the regulatory route and in favour of having something legislated, the way the amendment is proposed.

Mr. James Wu: If you say so, sir.

Mr. Guy Caron: Okay.

The consequence of the proposed amendments—and, as I said, our amendments aim at the same objective—would be to ensure that those who hold a regular policy with the mutuals will be involved in the process. What's the drawback in that?

Mr. James Wu: Again, it seems to be moving forward very quickly with one key part of the entire framework, and again the entire framework, in our view, should be set out together with all the relevant important components so that everyone, all stakeholders, can see how the framework will operate. The way it is set up now under the Insurance Companies Act, that framework is articulated in the details of the regulations.

Mr. Guy Caron: Some proposed modifications to this section actually relate to—and you probably have it in front of you—subsection 237(2), which seems to facilitate—and correct me if I interpret this.... I'll do it in French.

[*Translation*]

I apologize if I am reading the provision incorrectly, but I am talking about subclause 237(2) of the bill.

Am I wrong to think it would be easier for the Governor in Council to refer the case directly to the courts instead of making the decision himself?

[*English*]

Mr. James Wu: Ultimately the process has to be approved by the government, and the decision on whether to approve a demutualization returns to the Minister of Finance.

● (2020)

[*Translation*]

Mr. Guy Caron: Does this amendment facilitate the involvement of courts or tribunals?

[*English*]

Mr. James Wu: Yes. Certainly the intention was to permit the government to consider the use of a court, but it's not specified here in the legislation what exactly the court would do. One possibility would be that the court would facilitate negotiations between all the relevant parties.

[*Translation*]

Mr. Guy Caron: Okay.

[*English*]

The Chair: I want to clarify something with Mr. Wu.

You said in following up on some of the questions that the government wants to establish a framework and have some flexibility now so they can detail everything in regulations. But if you look at the first amendment, it says, "All policyholders of a policy issued by the mutual company, whether or not they are eligible policyholders, are entitled to notice of and to vote at a special meeting."

That phrase "whether or not they are eligible policyholders" occurs in all of the amendments we're dealing with in this clause.

Isn't that one of the concerns I think you—

Mr. James Wu: Yes.

The Chair: —and the department would have, whether or not they are eligible policyholders? It's a definition of what an eligible policyholder is, and subsequently it's the view that eligible policyholders, however you define that, are the ones who should be voting.

Mr. James Wu: I think that's a fair statement. In effect the proposed amendments would set the definitions for these terms more or less in legislation as opposed to leaving it for regulations. Indeed it also purports to, I believe, change other definitions in regard to when there is quorum for special resolution votes and other corporate matters that are already set out in the Insurance Companies Act under other provisions.

The Chair: Okay. Thank you.

We'll go back to Mr. McKay.

Hon. John McKay: I would have thought, if the Canadian Association of Mutual Insurance Companies felt this was a necessary precondition to demutualization of any company, the government would have had a better reason than just taking care of it in regulations, and doing it by case by case.

Obviously the companies themselves are concerned about inequities that may well be generated by virtue of just simply leaving it to the backrooms of regs. So I'm still having trouble understanding why, if the mutual insurance industry—and I'm assuming these folks do represent the industry—are saying there is a need for protection of all policyholders, eligible or otherwise, by means of a notice or a vote and a special meeting.... If the industry is saying that, and if the industry is saying this is a necessary protection for all policyholders, really the government should have some darn good reason why this isn't necessary.

Mr. James Wu: Thank you very much for the question.

I would perhaps just refer back to your reference to the consultations that occurred in June 2011. I think it was clear, as it was articulated already, that there is actually seemingly little consensus on various aspects of frameworks such as who has the right to vote and where the benefits should go from such a demutualization—

The Chair: That's little consensus within the industry.

Mr. James Wu: It's not clear to me there is consensus.

Hon. John McKay: Maybe consensus is a bit in the eye of the beholder because I don't think Mr. Brison would be putting this forward unless this was requested by the Canadian Association of Mutual Insurance Companies. I'm assuming that's an umbrella group. I'm assuming it represents the industry.

Mr. James Wu: I would defer to them to speak to whom they represent and whom they don't represent.

Hon. John McKay: Well, do you think they represent the industry or not?

Mr. James Wu: I would just refer back again to what is already in the public domain—the consultations from the June 2011 process. I think our summary there is very clear that there's no consensus.

Hon. John McKay: There's no consensus apparently.

● (2025)

The Chair: I think we've covered that.

On LIB-15, do you want a recorded vote, Mr. McKay?

Hon. John McKay: Yes.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We'll deal with amendment NDP-16. Recorded vote...?

An hon. member: Who's moving?

The Chair: Amendment NDP-16, Monsieur Caron will move.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: For amendment NDP-17, recorded vote...?

Mr. Guy Caron: Yes, please.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: A recorded vote on clause 211 or do you want a show of hands?

Mr. Guy Caron: No, a recorded vote....

(Clause 211 agreed to: yeas 5; nays 4)

The Chair: I want to thank Mr. Wu for being with us here this evening. Thank you for your participation.

We'll move to division 15, colleagues, Regulatory Cooperation, clauses 212 to 238.

I do not have an amendment from clauses 212 to 230. Can I group those together?

Mr. Guy Caron: Up to clause 222....

The Chair: Clauses 212 to 221 or to 222...?

Mr. Guy Caron: Including clause 222....

The Chair: Okay.

Shall clauses 212 to 222 carry?

(Clauses 212 to 222 inclusive agreed to on division)

(On clause 223)

The Chair: Monsieur Caron, go ahead.

Mr. Guy Caron: We'll need the....

The Chair: Oh, you need the officials.

Okay, we want to welcome our officials. We have officials here for this division from Transport, from CFIA, and from Agriculture.

[*Translation*]

Mr. Guy Caron: Mr. Chair, can I ask questions about different parts of the bill?

The Chair: Yes, absolutely.

Mr. Caron, go ahead.

Mr. Guy Caron: Thank you.

I want to welcome the witnesses.

I don't know who among you is responsible for clauses 223, 224 and 225, which pertain to motor vehicle safety.

Mr. Donald Roussel (Acting Associate Assistant Deputy Minister, Safety and Security, Department of Transport): Mr. Chair, Kash Ram will answer any questions on that issue.

Mr. Guy Caron: Thank you very much.

Regarding clauses 223 and 224, which concern the Governor in Council's powers in terms of the Motor Vehicle Safety Act, could you quickly tell me or remind me what the government's objective is or what the consequences of the proposed amendments are?

● (2030)

[*English*]

Mr. Kash Ram (Director General, Road Safety and Motor Vehicle Regulation, Department of Transport): Certainly. Mr. Chair, with regard to clause 223, that clause amends the Motor Vehicle Safety Act by removing the requirement to prepublish regulations. This existing requirement to prepublish regulations is already addressed by the cabinet directive on regulatory management, and that existing requirement is considered out of date. There is also an explicit [*Inaudible—Editor*] to incorporate documents or any reference.

With regard to the cabinet directive on regulatory management and its predecessor directives, since 1986 federal regulatory policy has made prepublication mandatory, has made consultations with stakeholders mandatory, and the only exceptions would be those that are approved by the Governor in Council, and those would be restricted to certain situations such as emergency situations where the Treasury Board can grant an exemption or where there are proposed amendments that are very minor or editorial in nature.

Therefore, this removal of a mandatory publication merely aligns the act with many other acts out there and aligns it with the cabinet directive on regulatory management.

To summarize, consultation is necessary. Prepublication is necessary under most circumstances. In rare instances where it's justified, Treasury Board can allow us to avoid that step where it's in the interest of doing so.

[*Translation*]

Mr. Guy Caron: Who determines whether it is preferable to do so?

[*English*]

Mr. Kash Ram: Basically there are situations where, in the interests of aligning in a swift and efficient manner with other international regulators with whom we work, the part I prepublication could be unnecessary, could be an impediment when there is broad consensus among the regulated industry, among our safety stakeholders, and there is large agreement to go forth and avoid an extra step. This could save us time. It also reduces red tape within government.

[*Translation*]

Mr. Guy Caron: However, that reduces transparency and accountability toward Canadians.

The purpose of publishing regulations in the *Canada Gazette* is to make them official and to ensure the participation of the public or stakeholders, as you mentioned, in the process of developing, amending or eliminating regulations.

This is a matter of motor vehicle safety. Consequently, a large portion of the population will be affected by the various regulatory amendments proposed by the government. Regarding what is proposed, I am glad to hear you confirm that this is indeed the case. You are actually proposing to eliminate the publication in the *Canada Gazette*. That is currently a required step.

You said the publication is not a mandatory step for several regulations, but it is for most proposed regulatory amendments. Once again, in the interest of transparency, I would like to know whether the government is not providing itself with flexibility,

[*English*]

Some would say flexibility. Others would say expediency

[*Translation*]

by sacrificing public interest and transparency.

[*English*]

Mr. Kash Ram: Mr. Chair, I can reassure the committee members that there is no trade-off. The reality is that under the cabinet directive on regulatory management, broad stakeholder consultation is required prior to the part I publication, and this involves all affected stakeholders across the economy. This would include the regulated community and manufacturers of vehicles and equipment. It would involve the general public through public safety organizations, as well as the provinces and territories.

That does occur and that will continue to occur even if there is an instance where there's a need to go directly to the step of a part II final regulation, so there is that transparency now. There is stakeholder consultation, and that is certainly not being sacrificed in the interest of expedience.

● (2035)

[*Translation*]

Mr. Guy Caron: You said that some of the stakeholders are concerned by the amendments made to the public safety or protection measures.

However, is it known whether all those organizations—as they are clearly more than one—have been informed of those amendments to regulations? Are there any organizations that could be forgotten or that the government could fail to inform? Are there any people who are not members of those organizations, but who are also concerned by road safety in general?

We may be talking about people who have been affected by a situation that would require new regulations. They could be related to past victims.

I am wondering who decides who should be consulted on or informed of such changes. So far, all that information has been published in the *Canada Gazette*, which is available to the public. That way, organizations and stakeholders to whom such information is communicated are not selected voluntarily or involuntarily.

[*English*]

Mr. Kash Ram: With regard to our proactive outreach to stakeholders, we count, among our stakeholders, public safety organizations very broadly. We discuss the issues of potential regulatory changes in open fora with the Canadian Council of Motor Transport Administrators and its working groups. The CAA, which represents six million members, is an important stakeholder, as is the Canada Safety Council. These organizations are aware of our activities. There is an e-mail distribution list that covers a large number of stakeholders.

In addition, it would be worth mentioning that we have two 1-800 numbers through which we receive direct feedback from the Canadian public. That helps shape our regulatory opportunities and initiatives. We receive tens of thousands of phone calls per year from the Canadian public who are very interested in public safety issues governing consumer products.

In addition to tens of thousands of phone calls, we also deal with thousands of e-mails from the general public. We believe that we have a very good idea of where the general public is going, through their thoughts with regard to public safety issues.

Mr. Guy Caron: I understand what you're doing. You're doing your job, and you have explained the reasons and the motives behind that. I'm afraid we're moving toward a slippery slope where we are going to remove [*Inaudible—Editor*]. We're talking about car safety, for example. That logic can be applied to any type of regulation that government is going to propose, either this government or any future government.

This justification doesn't make sense to me. We're supposed to be broadcasting any change, or changes, in the regulations to the public at large; that's why we have a *Canada Gazette*. If we are starting to make exceptions and increasing the number of exceptions, because it's more expedient and because government knows how to reach those people who are directly impacted buy those regulations, then why bother to make these changes public?

In that sense, I am puzzled.

Monsieur Leclerc.

Mr. Michel Leclerc (Director, Regulatory Affairs Coordination, Department of Transport): We shouldn't presume that the part I of the *Canada Gazette* is the only means by which the government can give notice of its proposed regulatory intentions. There is a requirement for government departments to publish, on their websites, regulatory initiatives that they are going to be working on in the very near future. This is a requirement under the red tape reduction action plan. We are trying to move to the standard, imposed by the cabinet directive on regulatory management, that requires prepublication. That standard is more comprehensive than what's in the statutes right now. It requires an active conversation with stakeholders and interested parties throughout the life of a regulation, not only when we're developing regulations, but also when we're enforcing them.

These committees that exist with stakeholders are the opportunity for a continuous dialogue on regulations and what's coming. Normally, prepublication is something that happens after the consultations have been completed. Most people who are concerned already know about it. It's really a last shot at letting people know.

Even if a regulation weren't prepublished in the *Canada Gazette* part I, people could consult our website and know what's going on. They could, because this is related to the Canada-United States Regulatory Cooperation Council, look at the action plan that Canada and the U.S. are putting together. There are a lot of opportunities for transparency other than those provided by the *Canada Gazette* part I.

● (2040)

Mr. Guy Caron: Once again, I understand what you're saying. I don't doubt the will to make them public. But one of the advantages, and one of the reasons that we have a *Canada Gazette*, is to be able to put everything that happens in over 25 departments into one single place. We're not going to be more transparent by having information on 25 different websites.

I understand what you're saying, and I understand the need to reduce red tape, but there's still a need for that information to be accessed easily, and the *Canada Gazette* is one way to centralize this. This is why I don't think it increases transparency.

The Chair: I think we have a difference of opinion that we could talk about all night.

Do you want to respond further?

Mr. Michel Leclerc: It's true that it provides a central mechanism for prepublishing everything. However, if you look at what happens in practice in the regulatory process, you find that the motor vehicle crowd are interested in what's happening in motor vehicle regulations and they're not interested in what's happening in forestry. The forestry people, for example, are interested in what Natural Resources is doing, so they would go to that website.

The advantage of asking people to look at the website of the department, and at the proposed regulations, is that they see those proposed regulations in the context of the rest of the department's policies and in the context of the rest of the department's legislation. It's a better parking spot for the proposed regulatory initiatives. People know about these websites now.

The Chair: Thank you. Merci.

A yes or no question.

Mr. Guy Caron: It's actually a question that asks for a yes or no answer.

[*Translation*]

As you say, would it have been possible to make this work by pre-publishing on various websites and also keeping the information in the *Canada Gazette*.

Mr. Michel Leclerc: When draft regulations are pre-published in the *Canada Gazette*, the entire regulations have to pre-published. Realistically, about 70% or perhaps 50% of regulations have a very minor impact and hold very little interest for the people affected by them. This may include amendment regulations that correct an issue caused by a discrepancy between English and French versions. That is not a major amendment and does not require extensive consultation. People accept the fact that the Official Languages Acts requires regulations to be identical in both official languages.

[*English*]

The Chair: That was a very substantive yes or no answer.

Can I group clauses together, Monsieur Caron?

[*Translation*]

Mr. Guy Caron: No, we want to consider them separately.

[*English*]

The Chair: Each one or...?

[*Translation*]

Mr. Guy Caron: Yes, and I call for a recorded vote.

I will have additional questions about other provisions, but we can start voting, if you like.

[*English*]

The Chair: So a recorded vote on clause 223.

Mr. Guy Caron: Clauses 223 and 224. I will have questions on clause 225.

The Chair: Do you want to group clauses 223 and 224?

Mr. Guy Caron: If we have a recorded vote, yes.

The Chair: Okay. We'll do a recorded vote on clauses 223, then.

(Clause 223 agreed to: yeas 5; nays 4)

The Chair: Can I apply that result to clause 224?

[*Translation*]

Mr. Guy Caron: Yes.

[*English*]

The Chair: Okay.

(Clause 224 agreed to: yeas 5; nays 4)

(On clause 225)

The Chair: Discussion?

[*Translation*]

Mr. Guy Caron: Any one of our guests can correct me if I am reading clause 225 wrong, but it seems clear to me that this provision stipulates that inspectors, under the Motor Vehicle Safety Act, cannot be compelled to testify without the minister's permission. I do not see why additional powers would be given to the minister for issues related to public safety and situations that could lead to court proceedings or a court ruling.

● (2045)

Mr. Donald Roussel: Mr. Chair, if the court feels that an inspector must appear before it, it will send them a subpoena, and the inspector will appear before the court. Given the number of road accidents and the number of claims in this area, you quickly see that our inspectors are becoming low-cost consultants. Numerous individuals from private companies are capable of providing professional advice in the case of civilian claims. So the goal of this provision is to establish some sort of control over the use of our experts. Naturally, in the public interest, the department or the minister will clearly provide the court with any required advice.

Mr. Guy Caron: If the government was in one way or another involved in a civil action—for instance, if an event took place on land belonging to a department or the government—don't you think it would be problematic that the minister could decide whether an inspector, who would be asked to testify, could do so?

Mr. Donald Roussel: Mr. Chair, since this is a hypothetical question, I will not answer it. That would be decided on a case-by-case basis when such a situation would arise.

Mr. Guy Caron: Okay, thanks.

The Chair: Thank you, Mr. Caron.

[*English*]

Clause 225 will be dealt with separately?

[*Translation*]

Mr. Guy Caron: Mr. Chair, we call for a recorded vote, please.

[*English*]

The Chair: Okay.

(Clause 225 agreed to: yeas 5; nays 4)

The Chair: Is there discussion on any clauses from 226 to 230? No?

(Clauses 226 to 230 inclusive agreed to)

The Chair: Colleagues, we have clause 231.

We have amendment PV-13, which is deemed to have been moved. I have a ruling on this amendment.

Bill C-13 amends the Railway Safety Act by removing section 50, which requires prepublication of certain proposed regulations in the *Canada Gazette*. The amendment seeks to re-establish the prepublication requirement by expanding it to every regulation made under the act.

As *House of Commons Procedure and Practice*, Second Edition, states on page 766:

> An amendment to a bill that was referred to a committee after second reading or a bill at report stage is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the amendment seeks to maintain the prepublication requirement, which is contrary to the principle of the bill; therefore, the amendment is inadmissible.

I shall move to clause 231.

Is there discussion?

[*Translation*]

Mr. Guy Caron: Yes.

The Chair: Mr. Caron, over to you.

Mr. Guy Caron: I will be brief, Mr. Chair.

Once again, this is about the decision to stop announcing regulatory amendments in the *Canada Gazette*. We feel that this causes unacceptable problems in terms of process transparency and information availability. This time, the change applies to railway safety instead of motor vehicle safety. For that reason, we will also vote against this provision.

We call for a recorded vote.

The Chair: Thank you, Mr. Caron.

[*English*]

We'll have a recorded vote.

(Clause 231 agreed to: yeas 5; nays 4)

The Chair: We do not have any amendments to clauses 232 to 238.

May I group them together, Monsieur Caron?

● (2050)

[*Translation*]

Mr. Guy Caron: We still have clause 232 to discuss.

[*English*]

Hon. John McKay: Chair.

The Chair: There are clauses 232 to 238.

Hon. John McKay: Chair, you can group up to clause 233.

[*Translation*]

Mr. Guy Caron: I would like to say something about clause 232.

[*English*]

The Chair: Okay.

[*Translation*]

Mr. Guy Caron: I will be very brief.

The reasons are the same ones I just mentioned—in other words, a lack of transparency and cohesion in terms of regulatory amendments. This time, the issue has to do with the transportation of dangerous goods by rail.

We will once again vote against this provision. We call for a recorded vote.

[*English*]

The Chair: Okay, recorded vote.

(Clause 232 agreed to: yeas 5; nays 4)

The Chair: We'll go to clause 233.

Is there discussion?

(Clause 233 agreed to)

The Chair: May I group any more, or do you want each one?

(Clause 234 to 238 inclusive agreed to)

[*Translation*]

Mr. Guy Caron: Up to clause 238.

[*English*]

The Chair: I want to thank our officials for being here tonight. Thank you so much for participating, and for your patience.

We've had a request for a five-minute break, then.

Thank you.

● (2050)

(Pause)

● (2100)

The Chair: I call this meeting back to order, as we continue our meeting 39 discussing Bill C-31. We are at division 16, Telecommunications Act.

There's a request for a number of recorded votes, so I'm going to propose that we could do it as we do in the House, but I need the unanimous consent of the committee. We can do anything we want by unanimous consent, but if people want a recorded vote, I could say, "Mr. Saxton, how are the Conservatives voting?" and I could say, "Monsieur Caron, how are the NDP members voting?", and "Mr. McKay, how are you voting?" That way everybody is recorded, but we can hopefully speed it up, because the concern is that colleagues have amendments on issues that we may not get to before 11 o'clock, and as you know, at 11 o'clock I just put every clause forward without any discussion. So that's my proposal, but I need unanimous consent to do it that way.

Go ahead, M. Caron.

[*Translation*]

Mr. Caron, do you have something to add on that?

Mr. Guy Caron: I was also about to propose a motion to speed up the process.

It was just to have this vote applied to the next vote. Usually, it's consecutive. My suggestion is simply for you to ask to have the vote applied to the next vote. We would agree to doing it that way.

[*English*]

The Chair: So we would just apply it.

Mr. Guy Caron: So we do it once and then we apply it for the others.

The Chair: But people might switch votes from yes to no.

Mr. Guy Caron: If I'm suggesting that we apply it, it will be the same.

The Chair: Okay, I don't have unanimous consent, so we will do it this way.

We'll go to division 16, Telecommunications Act, clauses 239 to 241.

We'll have discussion on clause 239, please.

[*Translation*]

Mr. Guy Caron: No, it's fine.

[*English*]

The Chair: Recorded vote.

(Clause 239 agreed to: yeas 9; nays 0)

The Chair: We'll go to clause 240.

Mr. Guy Caron: And include 241, if you want.

(Clauses 240 and 241 agreed to)

The Chair: That's unanimous as I see it. All right, thank you to our officials for being here. I apologize for the delay and waiting. Thank you so much.

We'll now move to division 17, Sickness Benefits.

Go ahead, Monsieur Caron.

[*Translation*]

Mr. Guy Caron: I have the following suggestion.

We can have a recorded vote again and apply it to clauses 243 to 248.

[*English*]

The Chair: Okay.

(Clause 242 agreed to: yeas 9; nays 0)

(Clauses 243 to 248 inclusive agreed to: yeas 9; nays 0)

The Chair: Thank you, colleagues.

We'll now go to clause 249. Do we want to group 249 to 251?

[*Translation*]

Mr. Guy Caron: Yes.

[*English*]

The Chair: Okay.

(Clauses 249 to 251 inclusive agreed to: yeas 9; nays 0)

The Chair: We're done with that division. Thank you. Merci.

We will go to division 18, Canadian Food Inspection Agency Act, clauses 252 and 253. Can we group these two clauses together?

(Clauses 252 and 253 agreed to)

● (2105)

The Chair: Thank you so much.

We are on division 19, Money Laundering and Terrorist Financing, clauses 254 to 298.

Colleagues, I do not have any amendments for this division, so I'm looking for suggestions on how to group these clauses.

Monsieur Caron.

Mr. Guy Caron: We wish to speak to clause 258.

The Chair: Okay. Can I group clauses 254 to 257?

Mr. Guy Caron: Yes.

(Clauses 254 to 257 inclusive agreed to)

(On clause 258)

The Chair: Mr. Rankin.

Mr. Murray Rankin: Thank you, Mr. Chair.

In our view, this clause dramatically expands the monitoring of financial transactions from many Canadians and their family members and close associates. Included in the list, as you'll know, are judges, legislators, heads of government agencies, so this is a significant expansion of the monitoring of Canadians' personal financial information. We object to it being buried in a 359-page omnibus bill.

Twice the Privacy Commissioner of Canada has raised concerns about the potential violation of personal privacy under the FINTRAC system. The government has not addressed these serious questions. Frankly, it's alarming that they're trying to push this through under cover of a bill that changes more than 60 pieces of legislation.

We cannot and will not support such an initiative.

The Chair: Thank you, Mr. Rankin.

Is there any more discussion on clause 258?

Do you want a recorded vote?

Mr. Murray Rankin: Yes, please.

(Clause 258 agreed to: yeas 6; nays 3)

The Chair: Can I group clauses 259 to 298?

Mr. Guy Caron: We want to speak on clause 294.

The Chair: Then we will group clauses 259 to 293.

(Clauses 259 to 293 inclusive agreed to)

(On clause 294)

The Chair: Mr. Rankin.

Mr. Murray Rankin: In our view, clause 294 would give the minister sweeping powers to designate Canadians as what are termed here as “politically exposed domestic” persons, and as a result make them subject to extensive and invasive financial monitoring and reporting.

We think this is over-breadth writ large, and we would oppose this initiative.

The Chair: Thank you.

Do you want a recorded vote on this one?

Mr. Murray Rankin: Yes, please.

(Clause 294 agreed to: yeas 6; nays 3)

The Chair: Can I group clauses 295 to 298?

An hon. member: Yes.

(Clauses 295 to 298 inclusive agreed to)

The Chair: Thank you so much for being with us tonight.

We'll move to division 20, Immigration. We have a number of amendments for this division, so I'll ask our officials to come forward.

I'll proceed with clause 299.

Is there any discussion?

(Clause 299 agreed to)

(On clause 300)

The Chair: Monsieur Caron.

● (2110)

[*Translation*]

Mr. Guy Caron: This clause pertains to temporary foreign workers. We aren't against the principle of choosing a portion of foreign workers by matching their skills with our needs. But we are opposed to this government's approach to labour market opinions and their use in the Express Entry system, as provided for in this clause.

These are the same flawed labour market opinions that gave companies the ability to hire foreign workers over Canadians. That's a much talked about issue these days.

We don't think this provision addresses the concerns that were recently raised. And for that reason, we are going to vote against clause 300.

[*English*]

The Chair: Okay. Merci.

All in favour of clause 300?

An hon. member: Recorded vote.

(Clause 300 agreed to: yeas 6; nays 3)

(On clause 301)

The Chair: We have amendment LIB-16, and we'll go to Mr. McKay.

Hon. John McKay: Thank you, Chair.

The Liberals support the measures in this section to increase penalties for those who abuse the temporary foreign workers program. We also support the measure in this section that corrects an oversight in the last omnibus bill. It seems that the government originally forgot to include the provincial nominee program in the expression of interest system. Sometimes things happen, Mr. Chair.

We oppose clause 303, which kills the immigrant investor program. The Conservative's unilateral approach to killing these programs is hurting our international brand. It is already subject to a serious court challenge.

Finally, on clause 301, the amendment ensures electronic applications are optional, not mandatory. The amendment was recommended by The Canadian Bar Association in recognition of the fact that many applicants have limited access to the Internet and that, “The online application system used by CIC continues to be problematic.”

I can speak to clause 302, but we're only on clause 301 at this point.

The Chair: We'll deal with clause 301.

Amendment LIB-16, then.

A recorded vote, Mr. McKay, I presume.

Hon. John McKay: Oh, why not?

The Chair: You don't have to have one. It's up to you.

Hon. John McKay: I just feel so much better supporting my colleagues with a recorded vote.

(Amendment negatived: nays 5; yeas 4)

(Clause 301 agreed to)

(On clause 302)

The Chair: We have two amendments here. We have, first of all, LIB-17.

Mr. McKay, do you want to make further comments?

Hon. John McKay: Yes.

On clause 302, Bill C-31 introduces severe penalties for employers found in breach. This amendment adds a formal review mechanism for employers against whom penalties are imposed. Again, this amendment was recommended by The Canadian Bar Association in order to ensure there's fairness and due process given the severity of the consequences.

The Chair: Okay, thank you.

Do you want a recorded vote on this?

Hon. John McKay: Can I just...?

The Chair: Yes, go ahead.

Hon. John McKay: Just out of curiosity, to the officials here, this strikes me as an eminently sensible amendment on the part of the Canadian Bar Association, and there is an issue of due process. I'm assuming that you don't think it's a necessary amendment.

Mr. Colin Spencer James (Director, Policy and Program Design, Temporary Foreign Workers, Skills and Employment Branch, Department of Employment and Social Development): I think that's a fair assessment about not being necessary. The authorities set out in clause 302 before the amendment do not preclude a review process that could be set out at the time of regulatory development.

Hon. John McKay: The authorities do not preclude...?

Mr. Colin Spencer James: The authority in the clause is an enabling authority that is broad enough in scope that a review process could be put in place at the time when the administrative monetary penalty scheme is put in place in regulations.

Hon. John McKay: Doesn't that just make it a hit-and-miss scheme, then?

Mr. Colin Spencer James: It's not for me to say.

● (2115)

Hon. John McKay: So you'd rather go hit and miss than go on a regularized process?

Mr. Colin Spencer James: Again, it's not for me to say.

Hon. John McKay: I was curious. All right.

The Chair: Okay, thank you.

Do you want a recorded vote on amendment LIB-17, then?

Hon. John McKay: I'll allow you to deem the previous vote.

The Chair: Okay. Do you want me to apply the results of LIB-16 to LIB-17?

Hon. John McKay: I would paint the sky, I tell you. I'm all in favour of hit and miss, though.

The Chair: Okay.

(Amendment negatived: nays 5; yeas 4)

The Chair: We'll go to NDP-18, and we'll go to Monsieur Caron.

[*Translation*]

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

I waited until now to discuss the temporary foreign worker program at greater length. Thanks to the government's changes, the program has ballooned obscenely, driving wages down and causing Canadians to be replaced with foreign workers. There are numerous examples showing that to be the case.

The minister has repeatedly said that concrete steps were swiftly taken as soon as the violations came to light. But it's obvious that the Conservative government only takes action when wrongdoing is in the media spotlight.

The minor measures that have been proposed thus far are not enough to fix the situation. We have called for a moratorium on the stream for lower-skilled occupations while the program is under independent review. Last year, we proposed important amendments to improve the program, but the Conservatives rejected them.

So we are proposing another amendment to make the program more transparent. We hope the Conservatives and the Liberal representative on the committee will get behind it.

In the House, when we ask the government whether administrative measures have been imposed—for instance, whether a number of employers have been put on the blacklist—the government says yes. As we see the situation, no real measures have been taken. There's even some confusion as to how many employers are on the blacklist, four or none. Whatever the case may be, it's obvious that the information is inadequate and that we, as members of Parliament, should be able to obtain regular reports on the blacklist and the penalties that have been imposed.

In short, the point of amendment NDP-18 is to give us the ability to obtain reports on how the program is being administered.

The Chair: Thank you.

[*English*]

Is there any further discussion?

Mr. Cullen.

Mr. Nathan Cullen: Through you to the officials, can you inform me if there is a range of fines that can be applied to employers that are found to be abusing the program?

Mr. Colin Spencer James: Absolutely. The details of those penalties are set out in the regulatory scheme.

Mr. Nathan Cullen: Okay.

Mr. Colin Spencer James: We don't call them fines. They're administrative penalties.

Mr. Nathan Cullen: Administrative penalties.

Mr. Colin Spencer James: Fines would be in a criminal proceeding.

Mr. Nathan Cullen: Is that why there's a—

Mr. Colin Spencer James: There's a distinction there.

Mr. Nathan Cullen: Excuse me. I'm just coming to the debate.

Sorry. Can you name that range?

Mr. Colin Spencer James: The range would be set out when regulations are developed.

Mr. Nathan Cullen: Those haven't been set out yet?

Mr. Colin Spencer James: They haven't been set out yet.

Mr. Nathan Cullen: Thank you.

Is the department contemplating what that range might be? Are there other statutes within Canadian law that allow for such administrative—what is it?

Mr. Colin Spencer James: Administrative monetary penalties. There are a number of different regimes that the federal government has in place under different pieces of legislation for monetary penalties. Some of those will be a guide to what the amounts will be, but it's difficult to say at this point in time what the specific range will be.

Mr. Nathan Cullen: Okay. I have one more question on this. If such an administrative penalty were enforced or applied would the publicization of that, making that a publicly known figure, be some sort of a breach of a business's privacy? There's no contract that's associated when an administrative fine is applied. It's not as if the government and the employer are in some sort of legally bound agreement. Would it break any privacy issues that a private employer might have?

Mr. Colin Spencer James: The regulations now stipulate that any employer found non-compliant gets published on the list, gets posted publicly.

Mr. Nathan Cullen: And the amount?

Mr. Colin Spencer James: And the amount, that will be set out at the time when regulations are developed, but it will be the employer's name, the reason they're non-compliant. It would be posted on the Web, similar to the same compliance regime we have now. We'll just build on that.

Mr. Nathan Cullen: Right, and to build on it. I'm sorry, I may have missed it just in the midst of your answer there, but the amount is also posted publicly online? You said the employer—

● (2120)

Mr. Colin Spencer James: It could be determined, but it could be.

Mr. Nathan Cullen: It could be. It's a possibility within the regime that you work in right now.

Mr. Colin Spencer James: Yes.

Mr. Nathan Cullen: I guess my question, then, is that there's nothing restricting you from also making that public when you list an employer's abuse of [*Inaudible—Editor*].

Mr. Colin Spencer James: Identifying the type of penalty... Other penalties could involve a ban from the program, for example. You could identify a—

Mr. Nathan Cullen: Those could all be listed.

Mr. Colin Spencer James: —one, two, three-year ban, for example.

Mr. Nathan Cullen: I understand.

Okay.

The Chair: Thank you.

Monsieur Caron, *encore*.

[*Translation*]

Mr. Guy Caron: Can you assure us that the proposed regulatory changes will be published in the *Canada Gazette*?

[*English*]

Mr. Colin Spencer James: All regulatory changes get published in the *Canada Gazette* I guess. I'm not entirely sure I understand the question.

Mr. Guy Caron: We just heard from the other officials, before you, justifying the fact that some regulatory changes won't have to be published in the *Gazette*. So I just wanted to make sure that these will be.

Mr. Colin Spencer James: During a normal regulatory process, regulations are published in the *Gazette* sometimes for pre-publication, sometimes straight to *Gazette* part II for final publication.

The Chair: Is that a yes?

Mr. Colin Spencer James: I'm not in a position to offer guarantees.

Mr. Guy Caron: According to the process, that should be the case?

Mr. Colin Spencer James: Yes.

The Chair: Thank you.

All right, so on NDP-18, it's a recorded vote, I assume.

Mr. Guy Caron: Please.

The Chair: Recorded vote on NDP-18.

(Amendment negatived: nays 5; yeas 4)

(Clause 302 agreed to)

The Chair: Can I group clauses 303 to 307?

Hon. John McKay: No.

The Chair: Which one...?

Mr. Nathan Cullen: I was looking at 303, not 302. It was an incorrect vote cast by me and my fellow New Democrats. Is it possible to revisit it?

The Chair: Do you want to vote in favour?

Mr. Nathan Cullen: That's right.

The Chair: Can we unanimously consider adding a unanimous vote in support?

Mr. Gerald Keddy: Sure.

Mr. Nathan Cullen: Voting in favour....

Mr. Mike Allen: In this case, a happy circumstance....

The Chair: Okay, everybody is getting along.

We'll go to clause 303.

Mr. McKay.

Hon. John McKay: I'm fine with voting but not for discussion. I just wanted to....

(Claude 303 agreed to)

The Chair: Can I group 304 to 307?

Mr. Guy Caron: You can group clauses 304 and 305.

(Clauses 304 and 305 agreed to)

The Chair: Clauses 306 and 307, all in favour?

Mr. Nathan Cullen: Just to allow for some expediency, can we go through to 310, or do we need to...because we're switching issues?

The Chair: I can go as far as the committee wants.

Shall clauses 306 to 310 carry?

Mr. Nathan Cullen: We'll be voting against but just for....

The Chair: Okay, all in favour...?

No, I can't do that?

Let's do clauses 306 and 307.

Hon. John McKay: Go to 307 and then we'll....

(Clauses 306 and 307 agreed to)

The Chair: I want to thank our officials for division 20.

We'll now be moving to division 21.

Can I group the three together?

We'll bring our officials forward for division 21.

Okay, welcome to the committee.

Mr. McKay will speak on clause 308, then we will have discussion.

Hon. John McKay: Chair, this division—that is, clauses 308 to 310—corrects an oversight in the last omnibus bill C-4, following a pattern by the Conservatives wherein each omnibus bill includes several measures to correct previous omnibus bills. We've already seen that earlier this evening where we're just correcting previous bills that did not receive the scrutiny they should have received because they are improperly before us.

Conservatives are forcing these massive omnibus bills through Parliament, each one including hundreds of clauses changing 50 or so different laws and none of these measures are given the scrutiny they deserve. Conservatives have established this process where they're passing bad laws and having to correct them after the fact. I know you'll be upset about that, Chair.

In terms of this measure before us, we support the correction but we deplore the process.

● (2125)

The Chair: Mr. Keddy.

Mr. Gerald Keddy: To me the Liberals are saying one thing and doing another.

Mr. Andrew Saxton (North Vancouver, CPC): That's not unusual.

The Chair: Thank you for that commentary.

(Clauses 308 to 310 inclusive agreed to)

The Chair: Thank you to our officials for being here. Enjoy the rest of the hockey game.

Colleagues, what's the next clause a member wishes to speak to? Maybe that's the best way.

Mr. Nathan Cullen: We would like to speak on clause 330.

The Chair: Clause 330.

Mr. Nathan Cullen: We have a couple of different votes we'd like to see.

Mr. Guy Caron: Division 25.

The Chair: So can I group clauses 311 to 316?

Mr. Guy Caron: No.

The Chair: No or yes?

Mr. Nathan Cullen: It's 311 and 312. We need a vote on 313. That's different. Sorry, it's bit of a hodgepodge.

The Chair: All in favour of clauses 311 and 312?

(Clauses 311 and 312 agreed to)

The Chair: Those are unanimous I think.

Mr. Nathan Cullen: Just because we were voting for it doesn't mean you don't.

The Chair: We'll deal with clause 313 separately.

(Clause 313 agreed to)

(Clauses 314 to 316 agreed to)

The Chair: That's unanimous.

We'll move to division 25, Amendments Relating to International Treaties on Trademarks. We'll ask our officials to come forward, please.

I'll indicate we have an amendment for clause 330 in this section, and we have one for clause 339 and clause 345.

Do you want to start at clause 317?

Hon. John McKay: Yes.

The Chair: Mr. McKay.

Hon. John McKay: Bill C-31removes the requirement to use a trademark before it can be registered and the owner can be given exclusive rights.

Canadian Chamber of Commerce has sent out a call to action for its members against this section of C-31. We have since heard from chambers across the country, from Surrey to Gander to Northwest Territories, who are warning that this provision will increase business costs and risks in Canada, complaining about a lack of consultation from the government, and asking that the trademark provisions of C-31 be removed from the bill pending further study.

We are also hearing these concerns from numerous employers across Canada; everyone from the retailer Giant Tiger, food manufacturer Pepsi-Cola, and Canadian Institute of Plumbing & Heating.

The Canadian Bar Association also warned us that the provisions "…will cause such serious problems that we recommend they be removed". Furthermore, it stated:

> The CBA Section is not aware of any specific consultations with any interested parties on the effect of these amendments. It has been suggested that the change is at the request of [the] Canadian Intellectual Property Office and may be more driven by internal efficiency for the Trade-marks Office than protection of Canadian business interests. There is no apparent policy reason behind these changes, and the changes are not required to adhere to the Madrid Protocol nor the Singapore Treaty.

It continued that these provisions in C-31 would:

> …have a negative impact on Canadian business. Canadian business people and those seeking to protect trademarks in Canada will face additional expense and economic disadvantage vis-à-vis business people in other jurisdictions.… At the same time that Canadian businesses face these increased costs and uncertainties, they will also likely face increased filing fees for separate class fees and more frequent renewals.

And finally they said:

> An abrupt change from a use-based system, without consultation and analysis by stakeholders, serves only to disrupt the economic relationship between Canada and the U.S. CBA Section members have been contacted by the American Bar Association members who were shocked to hear that these changes were in progress.

To address these concerns, the Canadian Bar Association explicitly requested three amendments to re-reinstate the requirement for the applicant to use the trademark before obtaining a registration. We've introduced these as Liberal-18, 19, and 20, which amend clauses 330, 339, and 345 respectively. They also help address the very serious concerns we've heard from Canadian businesses from coast to coast to coast.

It's pretty obvious, Chair, that the business community both large and small is upset. It is upset from one end of the country to the other. They complain about the same things that the Canadian Bar Association is complaining about; i.e., there was no consultation, and interestingly the Bar Association also says that there is no policy reason behind these changes, and they are not required in order to adhere to the Madrid Protocol or the Singapore Treaty. And just to add insult to injury, you have the Americans upset as well.

As we read this, you have pretty well covered all of North America. It's kind of hard to do, to get done, apparently it's an accomplishment of some kind, but nevertheless it does seem to have generated a lot of commentary, all of which is negative, from all of the chambers and both the American and the Canadian bar associations.

● (2130)

The Chair: Thank you, Mr. McKay.

I have Mr. Cullen and then Mr. Keddy.

Mr. Nathan Cullen: Thank you.

This is one of challenges with this process that we've talked about a great deal. The amendments being sought here around trademark and intellectual property, and we'll be supportive of the amendments that have been moved by my friend.... I suspect that these votes are going to lose, and the bill is going to pass as it is.

But I offer this sincerely to my friends across the way. Have some pause here, because initially the minister tried to describe this as just a bunch of lawyers wanting more trademark work. But you do get the warnings from the Canadian Bar Association and from the American Bar Association as well, plus the Canadian Manufacturers & Exporters, the Canadian Chamber of Commerce, and dozens of other chambers of commerce across the country writing to the government and, in fact, pleading with them not to do this because of one particular stipulation around the need-to-use clause.

Some, like myself, have had to learn about the way trademark actually works in Canada. In terms of registering a trademark, it makes intuitive sense to actually use the trademark. You're intending to trademark a name, and that name is associated with a product, product line, or something you are doing.

This change goes far beyond any international requirements and far beyond what we're expected to do in any of the conventions that Canada is seeking to come in line with. It actually eliminates that stipulation, so that you then invite trademark trolls into Canada. Some will remember the inception of the Internet, when people—trademark trolls—would sit in their basements and register hundreds and thousands of Internet domain names in order to try to make money. Now, this is a tax on the system, as any conservative economist will tell you, because they're not actually adding any value. It's simply a cost of business. They have to pay off the person who has that domain name in order to secure the name they want for, you know, Montreal Canadiens.com, or whatever it happens to be. It's an absolute concrete tax on the system, and that's why these different groups have come forward.

I get why the Conservatives want to ignore the Canadian Bar Association. No love lost there. I understand. But certainly the Canadian Manufacturers & Exporters, and certainly the Canadian Chamber of Commerce, who are not known for being hyperbolic about these things, have said clearly in all their comments that have already been well stipulated.... I'll read just one, from the director of intellectual property and innovation policy at the chamber. Here's the quote, and I'll end soon here, Mr. Chair:

> This amendment would mean that anybody could register a trademark for any goods of services simply by paying a government fee. This would open the door for trademark trolls to register currently existing brand names and trademarks and effectively extort value for them from current, unregistered owners.

That's a problem. That hurts productivity, efficiency, and all those things that government seeks to help in the Canadian economy, as fragile as it is.

So, for goodness' sake, this has been rammed into an omnibus bill. I understand the imperative of my colleagues across the way, who are given vote sheets and are going to vote a certain way, but these amendments seeking to remove this one stipulation and satisfy the exporters, the Canadian Bar Association, and the Canadian Manufacturers & Exporters should give people some pause on the Conservative side of the table.

● (2135)

The Chair: Okay. Thank you.

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

Mr. Gerald Keddy: Thank you.

I have two questions to our witnesses here.

The first one deals with section 16 of the Trade-marks Act. It ensures that an applicant's entitlement to registrations in Canada is based on activity in the Canadian marketplace or an intention to use in the Canadian marketplace.

I'm listening to the arguments from across the way, and I really don't understand their reluctance to agree to amendments that state quite clearly that, if you're going to register in Canada, it has to be used in Canada, and there has to be a real intent to use, which takes away that nefarious, hyperbolic person sitting in the basement trying to register all these trademarks. It's eliminated by that first issue.

The second point is, if this motion was accepted, that person would be entitled to register a trademark in Canada by making it known.

Also, I want an answer on this: would this give them priority over other businesses that have already filed that have a trademark?

Ms. Darlene Carreau (Chairperson, Trade-marks Opposition Board, Department of Industry): The answer is yes.

Mr. Gerald Keddy: So really, if we accept this—and this is what the opposition wants to do, and they went into great detail about it—then for anyone who's already in the queue and already wants to get a trademark registered, they're not going to be able to, because this other person is going to jump the line, and without any intent to use it.

Mr. Paul Halucha: Absolutely. If I could echo what you said, “use” has not been removed at all from the trademarks system. It's absolutely not the case that we're removing the concept of use. The intent to use—

Mr. Gerald Keddy: We're reinforcing the concept.

Mr. Paul Halucha: We're reinforcing the concept of use, absolutely.

We're eliminating a paper burden. It's a form that is not used by the Canadian Intellectual Property Office. It's also not used by the courts if there is a dispute over whether a trademark is actually being used on the marketplace. In that case, what actually gets brought forward as evidence is whether or not a mark is being used in the marketplace.

In terms of some of the letters and some of the comments that were just raised, I'll take one example that I think goes to some of the fears and the arguments that have been raised. On the domain name case, it's being portrayed as “this is the same as a domain name”. The fact is that the registry is not going to be wiped out the day after we join the Madrid protocol. Everybody who has trademark rights in Canada will have those rights. In a domain name situation, you have a new dot-whatever that's been created, and you have no property rights assigned with any big name. Everybody knows the value of the big name, so there is a free-for-all that happens in that case.

We're not at all taking the registry down. I think it's an indication of the type of fearful argument that's been brought forward. All three of the amendments, if I can make a comment on them, essentially reinforce the status quo. The government has made a decision in terms of acceding to Madrid, and we're the ninety-third country in the world to do this. This is not a new system. It's a tried system that has brought benefits to every single economy and every single country that has joined it, and that is the policy reason for Canada joining this.

Mr. Gerald Keddy: That's good.

The Chair: Thank you, Mr. Keddy.

Mr. Saxton?

Mr. Andrew Saxton: Thank you, Chair. My question has been answered.

The Chair: Okay.

I have Mr. Cullen, and then Mr. McKay.

● (2140)

Mr. Nathan Cullen: One of the concerns raised is around the process of how we got here. What consultations were done with groups like the Canadian manufacturers association or the Intellectual Property Institute of Canada?

Ms. Darlene Carreau: A paper was published on the Canadian Intellectual Property Office, dating back to 2001. That was a technical paper and went through the various possibilities for accession to Madrid and Singapore. Following that, the Canadian Intellectual Property Office did conduct consultations that were open to all stakeholders and intermediaries in 2005 and again in 2010. Dedicated or targeted consultations were also conducted in the fall of 2013.

Mr. Nathan Cullen: Could you provide the list to the committee—not tonight, obviously—of the groups that attended those consultations? Particularly the last two would be of some interest.

Mr. Paul Halucha: Sure, we'd be pleased to do that. Actually, we had the same question when we testified before the industry committee. We provided that list in writing to them last week.

Mr. Nathan Cullen: Here's the challenge we have as legislators. Before us we have the groups that have been identified so far—the Canadian bar, the manufacturers and exporters, the Canadian chamber, the Intellectual Property Institute, a series of large companies that have some credibility when it comes to business and understanding how intellectual property works—and they are saying the exact opposite of what you've just told us.

This is the challenge we have. How did we end up, as my friend said, in this “hyperbolic” scenario if there are two completely different versions of this piece of legislation coming forward to the public?

Mr. Paul Halucha: Two different sets of views on the legislation? We very carefully have considered all of the complaints we have heard. No one has I think read them more attentively—

Mr. Nathan Cullen: Sure.

Mr. Paul Halucha: —and we feel we have a very strong analytical basis to the decisions that were made.

Of the 93 countries, for example, on the declaration of use form, the only other countries that have it are the Philippines and the United States. The United States legitimately had a constitutional issue that required them to keep the form.

Had we maintained the form in Canada, we would have effectively had two systems, and the goal of this was to reduce paper burden. It was very much like smart regulation, where you want to have a single system so that countries operating in different jurisdictions don't have to relearn a new regulatory environment every time. It's the same principle here. We want countries that want to sell their products in Canada to have an easy process to bring them in. We don't want to have our trademark system being effectively a non-tariff barrier or a tax on companies coming in.

Likewise, for the Canadian firms, the government has made opening export markets a critical policy objective, and we do see this as aligned with that. We want Canadian firms to enter those marketplaces. If they have one set of rules in Canada and then have to learn another set as they go into those export markets, it's going to reduce that likelihood or their chances. It will complexify it. Building a brand is more than just doing a registration. Actually, the big expense, and where we really want companies to make the investment, is to actually get to build the brand to go into export markets and to compete successfully. We see it all aligned with those policy objectives.

Mr. Nathan Cullen: Sure, so we share common objectives in terms of increasing efficiency—

Mr. Paul Halucha: Yes.

Mr. Nathan Cullen: —but the challenging thing for us is what you're suggesting, that the traditional use and filing of this paper is what all of these different associations object to, that getting rid of that one-step process, the paper filing, is enough to get the Canadian manufacturers, the Intellectual Property Institute, the Canadian Bar, and the Canadian Chamber all in a tizzy.

Mr. Paul Halucha: Respectfully, sir, going through the analytical process ourselves that is the conclusion. It all leads back to the decision to eliminate that paper burden on firms.

Mr. Nathan Cullen: Yes, but do you understand my incredulity?

Mr. Paul Halucha: Yes, sir.

Mr. Nathan Cullen: I'm good. I'll stop here, Chair, and this is absolutely no comment on your work—we were going to have a briefing that was meant to happen today and we got five votes and we'll get there—but this puts us in such a funny conundrum where we have industry associations depicting one version of the world after this bill passes; civil servants depicting another; and members of Parliament being caught in between, because I don't think there are any copyright lawyers around this table—

Mr. Paul Halucha: Just trademark lawyers.

Mr. Nathan Cullen: Excuse me, trademark lawyers around this table. See, I get my terminology wrong, exposing my shame. Should I apologize and resign? I forget how that works.

Mr. Paul Halucha: I would suggest, sir, the one thing that could help is the fact that we're not the first country to go through this process—

Mr. Nathan Cullen: No, I—

Mr. Paul Halucha: —we're the ninety-third, and we have looked carefully at the other jurisdictions. For example, one of the arguments is that opposition rates will go up in Canada. We've looked at jurisdictions and that hasn't happened. The idea that there are trademark trolls just waiting to descend on Canada.... I work on all the intellectual property laws in Canada, including patents, and in patents you do have a phenomenon around patent trolls, and even that's not happening in Canada. It's happening almost exclusively in the U.S. We've seen a little of it.

I did a set of round tables around the country in the early part of the year on the subject of trolling and the minister did one as well, and we did not hear any concern at all in any jurisdiction that trademark trolls were going to enter the Canadian market.

● (2145)

Mr. Nathan Cullen: Don't take it personally, but we're going to vote for the amendment. I hope you're right and all these other groups are wrong for the sake of trademark in Canada.

Has any sort of a sunset or any sort of a reconsideration of the policy been included in your contemplation of this?

Hon. John McKay: It'll be in the next omnibus bill.

Mr. Nathan Cullen: In the next omnibus bill, just in case we get it wrong, we've got another omnibus coming in six months.

The Chair: I have one more question for the witness.

Mr. Nathan Cullen: He was giving a Liberal response there.

The Chair: He hasn't had to answer a question in a while.

Mr. Paul Halucha: There will be a regulatory process. Much of this needs to be implemented in regulation. CIPO will be taking steps to develop office policies on many of the practices, and we intend to fully engage with stakeholders on that process.

Mr. Nathan Cullen: All right, thank you.

The Chair: Thank you.

Are there any further questions? Mr. McKay.

Hon. John McKay: Somebody here is blowing smoke, and I don't know who. I dare say my colleagues across the way have no idea, but they've got their voting sheets and they're supposed to do what they're supposed to do.

Who benefits from these proposals?

Mr. Paul Halucha: Canadian businesses benefit, absolutely, for certain.

Hon. John McKay: Canadian businesses are saying they don't benefit. So, who benefits if they say they don't? Surely to goodness it's their right to say that they don't?

Mr. Paul Halucha: I maintain that Canadian businesses will see benefits from this process.

Hon. John McKay: They will see?

Mr. Paul Halucha: Absolutely.

Hon. John McKay: So Giant Tiger doesn't know what they're talking about and Pepsi doesn't know what it's talking about and Canadian Institute of Plumbing and Heating doesn't know what it's talking about. The CBA, ABA, and all the ones that Nathan mentioned as well don't know what they're talking about?

Mr. Paul Halucha: Let me give you two examples. Right now, to do a trademark application the cost is roughly about $4,000. After this, the only fee that will remain will be the actual application process with CIPO, which is $450. A firm can do that now without having to go to.... They can go to a lawyer or they cannot go to a lawyer. If they make the decision that they don't want to, they can do that. That's a savings.

In the instances where companies are exporting, so they're seeking to protect their intellectual property in foreign markets, the maintenance of a package of trademarks will be significantly reduced. It's not me saying this, this is the International Trademark Association that said that a trademark owner wishing to register a mark in the U.S. plus 10 other countries is going to save more than 62% in total fees. So there are significant reductions—

Hon. John McKay: Mr. Halucha, I've been here 17 years and I don't think I've ever heard the Canadian Chamber of Commerce come to this committee or any other and say please tax me and keep my fees up there. It just stretches credulity. I think around 10 o'clock at night it's maybe stretching a few other things as well.

You make the claim that you're going to reduce the fees from $4,000 to $400, and these people are saying, don't change it, don't touch it. Why is it that you know better than they do and they're the ones who are going to be paying the fees?

Mr. Paul Halucha: Again, I would point not to me.

I got this question at the Senate committee as well. My suggestion there was to look at what has happened in the other jurisdictions that have joined these protocols.

Hon. John McKay: I'm sure the Canadian Bar Association has looked at these other jurisdictions, and they've said they don't like it.

Mr. Paul Halucha: In a number of these—

Hon. John McKay: You say you've had specific consultations. Well, the Canadian Bar Association says there haven't been any.

Mr. Paul Halucha: Well, if you go to a—

Hon. John McKay: There's no distance between those two statements.

Mr. Paul Halucha: If you look on CIPO's website, the consultation documents are all there.

Hon. John McKay: Was the Canadian Bar Association there?

Ms. Darlene Carreau: I believe they did comment.

I can't remember what year it was, but you will find them in either the 2005 or the 2010 consultations.

Hon. John McKay: So they're just blowing smoke when they say they're not aware of any specific consultations with interested parties.

The Chair: You're asking her to comment on an organization.

This organization has one view. The officials are answering your questions, so let's ask questions not about what they think about the Bar Association, but about the specific policies of it.

Hon. John McKay: I didn't ask them what they think about the Bar Association. All I'm saying is that from what's being said here about consultations, and what the Canadian Bar Association thinks —

The Chair: Okay. So let me, as the chair, ask this.

The Canadian Bar Association, apparently, according to Mr. McKay, says there were no consultations.

Ms. Carreau, can you repeat what you said with respect to consultations?

● (2150)

Ms. Darlene Carreau: A technical paper was published by the Canadian Intellectual Property Office in 2001. Following that, the Canadian Intellectual Property Office conducted public consultations in 2005 and again in 2010. In the fall of 2013 we conducted targeted consultations with a number of our stakeholders, including the major IP associations: FICPI , INTA , and IPIC. We also consulted with the Molson Coors company in Canada.

The Chair: And the Canadian Bar Association is opposed to this?

Mr. Halucha, can you describe the difference between the price a business had to pay under the old system and, if this passes, the price it will have to pay under the new system? What is that price difference again?

Mr. Paul Halucha: The savings could be up to $4,000 per trademark over the application process.

The Chair: Who do businesses currently pay that $4,000 to?

Mr. Paul Halucha: Typically, it's to a legal intermediary.

The Chair: Thanks. I appreciate that clarification.

I was also concerned about the Canadian Chamber of Commerce releasing something. Although I'm a fan of the Canadian Chamber of Commerce, they don't always get everything right.

I recall going home and listening to the new Chamber of Commerce talking about their concerns with anti-spam legislation and saying how the anti-spam legislation coming into effect was going to ensure that a real estate agent in Leduc would not actually be able to continue sending electronic information to its customers. I know that's a bit off topic here today, but it proves my point.

Can you comment on that, Mr. Halucha, in the sense that absolutely incorrect information was distributed across this country by this esteemed organization?

Mr. Paul Halucha: I'll take your word for that, sir.

The Chair: I love the Canadian Chamber of Commerce, but as every human organization, they're not always perfect.

Mr. McKay, do you have any further questions?

Hon. John McKay: I have one final comment.

You just advertently or inadvertently illustrated why this process is so terribly flawed. This is a serious amendment, and there are diametrically opposed views.

Maybe I can narrow the view by saying that the consultation has not taken place with respect to what's in Bill C-31.

Is that true?

Mr. Paul Halucha: Do you mean that the actual legislation was provided to people in advance? Is that what you're suggesting?

Hon. John McKay: No, but you didn't consult with the Canadian Bar Association on the drafting of Bill C-31?

Mr. Paul Halucha: On the drafting, we did not.

But all the essential concepts were there and the actual treaties have been known publicly as countries have been acceding for many years.

Hon. John McKay: Maybe you could have saved yourself a little grief, and you could have taken us out of an awkward position. I don't know whether you're right or whether you're wrong—

Mr. Gerald Keddy: He's badgering the witness.

The Chair: All right. Okay, I think that's fine.

Hon. John McKay: Badgering? You haven't seen badgering, buddy.

The Chair: Mr. Keddy, do you want to respond on this point?

Mr. Gerald Keddy: Respectfully, it's really not a question to the experts at the table or to the newly minted experts across the way, but really it's a question about the process, Mr. Chairman.

Respectfully, we really need to respect our witnesses' time, and I really don't think we have the right as individuals and members of Parliament to be rude and to badger and to ask repetitive questions. We do have important succinct questions that need to be asked and that have been asked during the evening, but we have to move this on and get to a better level.

The Chair: I certainly agree with that last sentiment about moving on. Frankly, I for one think the witnesses before us provided very clear and concise answers. I thank them for that, and I think all members do. I appreciate that.

Colleagues, how do you want to deal with the amendments or the clauses? I do not have an amendment until clause 330. Can I group any of the clauses together?

Mr. Nathan Cullen: Say it again, Chair.

The Chair: I don't have an amendment until clause 330, so can I group any clauses together?

Can I group clauses 317 to 329?

Hon. John McKay: Yes.

(Clauses 317 to 329 inclusive agreed to)

(On clause 330)

The Chair: We'll ask Mr. McKay to move LIB-18.

Hon. John McKay: Do you think we should go at this again, Chair?

The Chair: We'll consider LIB-18 moved. Do you want a recorded vote?

Hon. John McKay: Let's just do that.

(Amendment negatived: nays 5; yeas 4)

(Clause 330 agreed to)

● (2155)

Hon. John McKay: We are all clear to clause 338.

(Clauses 331 to 338 inclusive agreed to)

(On clause 339)

The Chair: We'll go to clause 339, Mr. McKay, if you could just move the amendment briefly.

Hon. John McKay: I can make your life wonderful, sir, by simply suggesting that the amendment to 330 is the amendment to 339.

The Chair: Thank you. I sincerely appreciate that.

We'll apply the vote from LIB-18 to LIB-19.

(Amendment negatived)

(Clause 339 agreed to)

The Chair: Can I group clauses 340 to 344?

Hon. John McKay: Yes.

(Clauses 340 to 344 inclusive agreed to)

(On clause 345)

The Chair: We have LIB-20.

Go ahead, Mr. McKay.

Hon. John McKay: It's the same application.

The Chair: It's the same application as LIB-19.

(Amendment negatived)

The Chair: We'll have a recorded vote on clause 345.

Mr. Nathan Cullen: It's a recorded vote.

(Clause 345 agreed to: yeas 5; nays 4)

The Chair: There is no amendment for clauses 346 to 368. Can I group those together?

Mr. Nathan Cullen: Yes.

(Clauses 346 to 368 inclusive agreed to)

The Chair: I want to thank our officials here. That was a fascinating discussion at 10 o'clock at night. We appreciate that. Thank you.

We shall go to division 26, Reduction of Governor in Council Appointments. We have two clauses, 369 and 370.

(Clauses 369 and 370 agreed to)

The Chair: We have division 27, Old Age Security Act, clauses 371 to 374.

Go ahead, M. Caron.

[*Translation*]

Mr. Guy Caron: Mr. Chair, I assume the officials should be with us.

[*English*]

The Chair: We'll wait for the officials.

We'll deal with clause 371.

Monsieur Caron, you have a question.

[*Translation*]

Mr. Guy Caron: Yes, Mr. Chair.

Ms. Martel, I have a quick question.

How much does the government hope to save through the measures set out in division 27 of part 6?

Ms. Nathalie Martel (Director, Old Age Security Policy, Income Security and Social Development Branch, Department of Employment and Social Development): I have the numbers with me. Savings won't be achieved until 2027. The provision is expected to come into force by order in council around 2017. The current measures are expected to eliminate the backlog at Immigration Canada.

When immigrants in the parents and grandparents category who are subject to the new 20-year sponsorship rule start arriving in Canada, the provision will come into force. That will be as of 2017. A person will have had to live in Canada for at least 10 years in order to qualify for the guaranteed income supplement and old age security. This applies to income-tested benefits, so it deals mostly with the guaranteed income supplement. Given, then, that the person will have had to reside in Canada for at least 10 years, if they come to Canada in 2017, they will start receiving benefits in 2027. And since the person will still be sponsored at that point, they won't be able to receive the benefits. They will have to wait another 10 years. So we won't see the savings until 2027, because that is when the difference in the status quo will be felt.

● (2200)

Mr. Guy Caron: Can the post-2027 savings be estimated today?

Ms. Nathalie Martel: I'll give you the figures for that. It is estimated that, in 2027, the savings will be $23 million. And that amount will increase gradually until it reaches the annual cap of $700 million in 2036.

Mr. Guy Caron: Thank you kindly.

I say savings, but obviously I use the word as the government understands it.

There is much talk of creating opportunities and the substantial economic contribution immigrants make, but in our view, this provision discourages the reunification of families. The government touts its promotion of economic immigration as a vehicle to help Canada recover from the economic downturn and assist families. Why go after these kinds savings? Ultimately, the savings expected in 2027 will be penny-wise and pound foolish. I can't seem to figure out the real reason the government put forward these measures. I don't think we'll be able to support them.

Ms. Nathalie Martel: May I say something?

Mr. Guy Caron: Go ahead.

Ms. Nathalie Martel: I'd like to make clear right off the bat that this measure, which is in the budget, isn't new. The Old Age Security Act currently includes a provision that prevents a person who is subject to a sponsorship agreement from receiving the guaranteed income supplement.

But now, after having resided in Canada for 10 years, the person can begin to collect the guaranteed income supplement whether they are being sponsored or not. The only thing the amendment is changing is removing the reference to the 10 years. This amendment will mean that if the person is still being sponsored, they will not qualify for the guaranteed income supplement, no matter how long they have lived in Canada.

This is being implemented to ensure consistency with the new sponsorship rules that came into force on January 1, 2014 for immigrants in the parent and grandparent category, which raised the period from 10 years to 20.

Mr. Guy Caron: That doesn't necessarily mean we supported the measure that was previously proposed.

Thank you very much.

The Chair: Thank you, Mr. Caron.

[*English*]

Mr. Saxton, please.

Mr. Andrew Saxton: Thank you, Mr. Chair.

Regarding this particular clause, it has been brought to the government's attention that there was a minor technical drafting error that could impact the intent of the OAS change.

The government's intent has always been that this change impact new applications only and ensure that no senior currently receiving the GIS benefit will be impacted.

In order for this to be the case, I am submitting three minor technical amendments that are required to ensure no senior receiving the GIS will be impacted. I'd like the committee to vote on these amendments at the appropriate point.

I will read the three amendments to the committee right now. I also have—

The Chair: Do the amendments deal with clause 371?

Mr. Andrew Saxton: This is clause 371.

The Chair: Yes, they're all with 371. Is that correct?

Mr. Andrew Saxton: Correct. They all deal with.... Hang on, let me see, no, clauses 371, 372, and 373 as well.

The Chair: Can I accept them as tabled? Can I recommend we take a five-minute break and we'll share them with the other members? Is that agreeable?

Mr. Andrew Saxton: That's agreeable.

The Chair: Okay, I'll suspend for about five minutes and we'll share the amendments. We'll get the law clerk.

● (2205)

(Pause)

● (2210)

The Chair: I call this meeting back to order. This is meeting 37 of the Standing Committee on Finance, and we're considering Bill C-31.

Colleagues, we are on division 27 of part 6, dealing with the Old Age Security Act. There are three amendments. The first amendment amends clause 371, the second one amends clause 372, and the third one amends clause 373.

Perhaps we could ask the official to....

Mr. McKay.

Hon. John McKay: On a point of order, Mr. Chair, as you know, I'm not a member of this committee, but I had understood that all amendments had to be submitted prior to a particular date. They're described as "minor" amendments, etc., but we have no idea whether that's true. Actually, it's almost impossible to find out, because we have 45 minutes left of sitting and then everything is deemed moved anyway.

I don't know why the government, 45 minutes before the end of the sittings of this committee, is moving amendments when none of the rest of us could ever even contemplate doing that. It does seem to be contrary to the rules of this committee as already set up, so I'd invite a ruling that these amendments are entirely out of order.

The Chair: Thank you.

On the same point of order, Mr. Cullen.

Mr. Nathan Cullen: I have some sympathy for what John has raised here, and we'll hear a ruling from the chair if that's what's required.

It's difficult, because this is an attempt to try to understand what the implications are, and that's why we have an administrative deadline, but it's not a hard deadline, as far as I'm aware, of bringing a motion up until the moment of.

I don't know if the government would contemplate bringing them at report stage, or even if that would be in order, just to give us the time to figure out what the implications are. This affects OAS, from my initial understanding, and that matters to people. It's not one of those things you want to rush at the last second and get wrong.

If that's not possible procedurally, and I seek that through you, Chair, then I suspect that it is in order. But we're sitting here looking through, on our BlackBerrys, the actual act itself to try to determine what the impact will be. It's fine that we have an official here, but it's a trust exercise that we're eventually into. You can forgive us for having some level of mistrust when it comes to Conservative omnibus bills.

So I think it's probably in order, but it's not very good. It certainly asks for a lot of faith that hasn't been earned with respect to just what the changes will be to our social security system.

● (2215)

The Chair: On the same point, I have Monsieur Caron, Mr. McKay, and then Mr. Saxton.

[*Translation*]

Mr. Guy Caron: I'd like to add to what Mr. Cullen just said.

We are currently bound by the motion preventing us from debating amendments or main clauses after 11 p.m. So nothing would prevent the government from proposing amendments as late as 10:58 p.m., without our being able to discuss them. In that respect, then, I think Mr. Cullen's proposal is entirely warranted and reasonable.

[*English*]

The Chair: I have Mr. McKay on the speakers list, and then Mr. Saxton.

Hon. John McKay: Could the government tell us when they established that this was a problem?

The Chair: Mr. Saxton.

Mr. Andrew Saxton: Thank you, Mr. Chair.

I just want to address some of the comments made by my colleagues across the way. First of all, as I mentioned earlier, these are minor, minor amendments. They do refer to the subject at hand. And there isn't anything stopping a member of this committee from table-dropping amendments of a minor nature as long as they are dealing with the subject at hand.

With regard to understanding these amendments, I mentioned earlier that—whether you trust it or not—really it's to reverse an unexpected consequence so that people who are currently receiving the GIS will not lose that right. In fact it's to some extent watering down what was put forward, making it have less of an impact.

If there are other questions or specific questions, then, as was mentioned, we have the official here from the department. You may not trust me, but you can trust the official, I'm sure.

We also have the act. The act is available online. We have it on the iPad here.

Look, as mentioned, we're not trying to pull any wool over anybody's eyes. It is what it is. We're being open about it and clear as to what the intention was, and I'm sure you would understand that.

Mr. Chair, I would ask that you allow these amendments to be put to the committee now.

The Chair: [*Technical difficulty—Editor*]...further on a point of order?

Mr. McKay.

Hon. John McKay: I didn't get an answer. When did you identify the mistake, and why weren't we notified earlier?

The Chair: Okay, is there any further point on that discussion, Mr. Saxton?

Mr. Andrew Saxton: He said "you". I think he's asking you, Chair. When did you first hear of the mistake?

The Chair: I think, through me, he's asking the government.

Hon. John McKay: When they just heard previously....

The Chair: Look, I'm going to rule on this. The fact is, as the chair, I have to accept the amendments. It's on page 998 of *House of Commons Procedure and Practice*:

> Normally, there is no requirement to give notice of amendments moved at committee stage. However, to ensure an orderly and comprehensive consideration of a bill, a committee may adopt a motion requiring that Members submit their amendments to the committee clerk before the beginning of the clause-by-clause consideration; such a motion does not prevent the tabling of amendments once clause-by-clause consideration has begun, unless the committee decides otherwise.

We did set an administrative deadline. I think that is the best way for me to put it. So I'm going to rule the amendments in order.

They're in order but I would agree with some of the comments that it's not very good. The reason we have deadlines is, frankly, for the chair and for the functioning of the committee. I would just point out that I hope this is not a precedent for future bills, that the opposition copies.

Mr. Nathan Cullen: It's an admonishment, then, but a warning to us, I think, is how that worked out.

The Chair: No, it's something that I don't want to see practised because as the chair it's easier for the chair to have everything done in an orderly process. So that is my ruling.

Mr. Nathan Cullen: Do we get one free one, though?

The Chair: Mr. Keddy.

Mr. Gerald Keddy: Thank you for the clarification, Mr. Chairman. I think we all accept that.

I just want to be helpful. We do have the part of the act up that it would change. Mr. Allen has it on his iPad and perhaps he could read exactly to the opposition members how it affects this.

The Chair: I thought we were going to have Ms. Martel speak to it. That's where we left it off.

Is that agreeable to the committee? I think that's how we should proceed.

Some hon. members: Agreed.

Mr. Gerald Keddy: Okay.

The Chair: Ms. Martel, could you speak to the three amendments?

There is obviously some concern about the fact that members don't have the OAS Act in front of them. Obviously, some of them do, but some of them don't.

● (2220)

Ms. Nathalie Martel: What the amendment does is very simple. The only thing that is new here is proposed paragraph (a), and it's the same for clauses 371, 372, and 373. Paragraph (b) already exists; it's already in the act.

Basically, as Mr. Saxton indicated, it's to protect current GIS beneficiaries. I'm going to give you an example.

I would think it would be very rare, but not impossible, that someone who has recently immigrated to Canada, reached 10 years of residence in Canada—for example, last year—but is still under a sponsorship agreement. This is possible if the person were in Canada previously and accumulated a period of residence at that time. For example, if they came in the seventies to undertake university studies and then they came back to Canada under a sponsorship agreement, they would reach the 10 years of residence in Canada while their sponsorship were still on. After they reach 10 years, under the status quo, they can start receiving the GIS, but in 2017, once the amendment kicks in, they would lose the GIS because they're still sponsored.

We don't want this to happen. We want to protect these individuals so this is what paragraph (a) does here, which is to make sure that people in receipt of the guaranteed income supplement or the allowances—in the case of clauses 372 and 373—are protected by the time the provision comes into force. They will not see their benefits cut. So it's simply a protective measure.

The Chair: Thank you.

Are there any questions on this?

Okay, then I think we'll proceed in order, clause by clause.

(On clause 371)

The Chair: Is there any further discussion?

Mr. Nathan Cullen: We better come back to the actual bill, if you don't mind.

A voice: You're moving the amendment.

The Chair: Unless there's further discussion, we'll deal with the amendment to clause 371.

Is there further discussion on the amendment?

Mr. McKay.

Hon. John McKay: Out of curiosity, when did you identify the mistake?

Ms. Nathalie Martel: I'm not comfortable to call it a mistake, because it's your choice to decide if you think these people should be protected or not.

Hon. John McKay: I'm simply asking when it was identified.

Ms. Nathalie Martel: It happened as part of briefings with our minister's office, when we discussed these amendments.

Hon. John McKay: When was that?

Ms. Nathalie Martel: I'm not comfortable talking about when we meet with our minister's office, the recommendations we give, the briefings we give, etc. I'm just not comfortable talking about it.

Hon. John McKay: You're not comfortable.

Ms. Nathalie Martel: Yes.

Hon. John McKay: You can appreciate our discomfort, then.

Ms. Nathalie Martel: Yes.

The Chair: Thank you.

Is there anyone else?

Can I call the vote on the first amendment, then? Is it a recorded vote, or are all in favour of the first amendment?

Mr. Guy Caron: We will abstain.

The Chair: Okay.

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

(Clause 371 as amended agreed to)

The Chair: We'll go to clause 372, and we obviously have a second amendment.

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

(Clause 372 as amended agreed to)

The Chair: Next is the amendment to clause 373.

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

(Clause 373 as amended agreed to)

The Chair: There's no amendment for clause 374.

(Clause 374 agreed to)

The Chair: Okay, I want to thank our official.

[*Translation*]

Thank you, Ms. Martel.

[*English*]

All right, we'll go now to division 28.

Colleagues, we have an awful lot of amendments on this, but I'll highlight them for you.

We have amendment LIB-21. That's the first one I have to deal with. The vote on amendment LIB-21 applies to amendments NDP-19, NDP-20, LIB-22, LIB-23, NDP-21, LIB-24, NDP-22 and LIB-25, as these amendments are consequential.

I suggest we ask Mr. McKay to move amendments LIB-21, and then we have NDP-20. First, I'll ask Mr. McKay to move amendment LIB-21, then I'd recommend colleagues speak generally to the amendment and the clause, then obviously we'll vote on amendment LIB-21.

Mr. McKay.

● (2225)

Hon. John McKay: This clause allows the federal government to collect tolls on the new bridge, but the federal government has yet to provide a solid business case justifying these tolls. The proposed tolls are opposed by the City of Montreal because of how they will divert traffic and contribute to greater congestion, thereby hurting the region's economy. We've proposed five amendments—and as you've rightly pointed out they are consequential—to remove specific provisions allowing the federal government to establish and collect tolls on the new bridge.

It's pretty simple. Unless there's a business case that's been made, which it hasn't, there's no basis for getting an amendment to a bill.

The Chair: Okay, thank you.

Is there any further discussion?

Mr. Keddy.

Mr. Gerald Keddy: I have a question to our witness on the diverting of traffic.

It's an interesting point. I think most of us have driven a fair amount on both highways. I'm not aware of any studies where tolled highways cause diversion in traffic, actually. I'd simply ask our official if she's aware of any other studies.

Ms. Thao Pham (Assistant Deputy Minister, Federal Montreal Bridges, Department of Transport): Good evening, Mr. Chair.

Actually there were studies done with respect to the potential traffic diversion. That study is part of a business case that, as you know, is now confidential because we have started the procurement process. It is very important that we keep it confidential at this stage, because it will affect of course the bids, the competitive bids that will be coming in.

In general terms though, Mr. Chair, with respect to traffic diversion, what we see around the world and in big cities is that initially there is some diversion but then there is a return to achieve equilibrium between the different roads. That is my answer to the question.

The Chair: Thank you.

Mr. Keddy.

Mr. Gerald Keddy: Yes, I wasn't quite clear. I think you've answered the question with other examples around the world, but I'll use an example from Nova Scotia. It's the only part of the Trans-Canada Highway that has a toll on it. It goes through the Cobequid Pass, from the other side of Truro up to the New Brunswick border practically.

When that tolled highway went in, everyone said that there was no way that people would use it. They would drive around; it's the same distance. I'll guarantee you, no one drives around it—no one. They use the tolled highway. It's closer. It's a better road. It does not affect traffic flow. It affects traffic flow to the tolled highway.

Mr. Nathan Cullen: And one road is—

The Chair: Order. Order.

Thank you, Mr. Keddy. We'll go to Monsieur Caron.

● (2230)

[*Translation*]

Mr. Guy Caron: I want to say that Mr. Keddy just made my point. He compared having a toll highway and the option to use back roads instead. Obviously, there isn't a choice. It's the only highway and the only place that takes you to Truro or Halifax, but the Champlain bridge is one of four. The Trans-Canada Highway wasn't replacing another road, but in this case, the bridge is replacing another one.

It was mentioned that studies had been done to find out the impact that a toll would have on traffic. We won't have access to those studies. Not Mr. Keddy or anyone else can deny the fact that a toll is generally set up to adjust the flow of traffic. Tolls always have an impact on traffic. No one is questioning the fact that the Champlain bridge isn't new infrastructure, but one that is being replaced. As things stand, the bridge doesn't have a toll, but the Conservatives plan to put one on the new bridge.

In Montreal, when the extension was done on Highway 25, a toll was set up. On Highway 30, an extension, a toll was put in place and met with little resistance. But in this case, a toll is being put on one of the main gateways to Montreal, one that is used to transport 19% of Quebec's GDP. And yet we're being told that a toll won't have any impact on traffic on the Champlain bridge or the other bridges. Clearly, it will have consequences and they have been studied.

Ms. Pham, you said the studies hadn't been released. They exist but are confidential. The transport committee heard from Transport Canada officials. They said they didn't have all the necessary information and hadn't studied the impact a toll would have on the region or the island's other bridges.

I am willing to accept what you're telling us, but other Transport Canada officials—I don't know whether it was you or others—said that all the analysis hadn't been done.

The Quebec government is obviously against the toll. The business organizations don't want a toll, because they understand the negative impact it will have. I can't wrap my head around why the government is so determined to go this route. It should work with the provinces more.

Now we're hearing that the federal government is willing to divest itself of the would-be toll bridge in the hope that the Quebec government will manage it. Then the Quebec government will be told that, if it doesn't agree, it will have to get rid of the toll and take responsibility for the bridge. The federal government is being totally irresponsible. It is putting Montreal's economic well-being in jeopardy. And that is why we proposed a slew of amendments, including four that address the toll on the bridge.

I don't understand why the federal government is being so stubborn about this. The Minister of Infrastructure, Communities and Intergovernmental Affairs talks constantly of consultation. There's no consultation. The federal government is imposing its will. The Quebec government is against the decision, the Board of Trade of Metropolitan Montreal is against it, and the Agence métropolitaine de transport is against it. All of them understand the impact a toll is going to have on the Jacques-Cartier bridge, the Victoria bridge and the Louis-Hippolyte-La Fontaine bridge-tunnel.

Once again, I'd like to know who supports the Conservatives' plan to impose a toll. Do you even have a single witness who is in favour of putting a toll on the new Champlain bridge? I have yet to hear one.

Before voting on this solution and the amendments, I'd like you to show me people who will be affected by the toll and who are in favour of it. I still need to meet a single one. We've been discussing this for about a year or a year and a half now.

[*English*]

The Chair: Okay. Merci.

Can I go to the vote then on amendment Liberal-21? It's a recorded vote, I assume.

Mr. Nathan Cullen: A recorded vote.

The Chair: A recorded vote on amendment Liberal-21.

(Amendment negatived: yeas 5, nays 4)

The Chair: That amendment is defeated. As I mentioned, that applies to all the other amendments on this clause.

We shall now go to clause 375.

Shall clause 375 carry?

● (2235)

Mr. Nathan Cullen: A recorded vote, please.

(Clause 375 agreed to: yeas 6, nays 3)

The Chair: Thank you very much, Ms. Pham, for being with us here tonight. I appreciate your staying this late.

Ms. Thao Pham: Thank you.

The Chair: We'll now go to division 29, Administrative Tribunals Support Service of Canada Act. With respect to clause 376, we have amendment NDP-23. We'll allow our officials to come to the table.

Again, thank you so much for being with us. We appreciate you staying to this hour. We appreciate that.

And I appreciate all my colleagues for being here and working very hard. I sincerely do.

We will go then to amendment NDP-23. Who will move that?

Mr. Rankin, please.

Mr. Murray Rankin: Perhaps I can put a little context around the amendment and signal where we're going on division 29 as the official opposition. We are opposed to this initiative, but I want to say specifically that we are essentially 25 minutes before closure and are dealing with another omnibus bill, a part that would create a new administrative tribunal mechanism that has really nothing to do with the budget. But that's just like how the Mr. Justice Nadon thing was dealt with on the back of the last omnibus budget bill, trying to retroactively bless that.

Here we are caught because in a sense one could support a shared services model. We've seen that in Ontario. We've seen that in British Columbia. There's much to be said in favour of it if there is any level of trust in trying to achieve administrative efficiency and cost savings by grouping tribunals together in some fashion and providing shared services for them. As I say, that has been done elsewhere and we applaud those initiatives.

What is concerning to so many people, of course, and to so many tribunals with which I've consulted, and administrative law professors is that there's a need for administrative independence for these agencies. That's why they were created in the first place and there's a great fear of them on the part of this government, since this individual who's the subject of this amendment, this administrator, essentially is going to be accountable to the Minister of Justice, the same Minister of Justice who has appointed cronies to the Enterprise Cape Breton Corporation and unbelievable patronage.... It gives us pause that there would be this kind of initiative to deal with at this time.

For that reason, my says that the individual should hold office during good behaviour for a term of up to five years, but may be removed at any time by the Governor in Council for cause. That's the reason for the amendment. Simply put, there's a great fear that the ability to appoint an administrator at pleasure, as the government would wish to do, for a term of five years, would simply create another patronage pool for this government. That's the reason for the amendment, Mr. Chair.

The Chair: Thank you, Mr. Rankin.

I will go to Mr. Keddy, please.

Mr. Gerald Keddy: It's a well-known proposition, Mr. Chairman, that the opposition wants to talk about the process and they've taken at least an hour out of the discussion this evening on the process and have waxed eloquently on it, instead of dealing with consecutive amendments or the issues.

Quite frankly, since everyone is taking their time to talk I'm going to take mine. I've been around this place as long as anyone else at the table and generally, Mr. Chairman, not in every case, but generally, if someone doesn't have any real substance to their article, to their amendments or to their statements, then they criticize the process.

The Chair: Thank you.

I'll just remind colleagues that we're getting near the end, and I would like to finish this before 11 if we could. I think I have Mr. Cullen first and then I have Mr. Rankin.

Mr. Nathan Cullen: Yes, so very specifically, if these things matter then they would deem to have proper debate and scrutiny. This matters in the sense that I have a specific question, not on process, but on substance with respect to the tribunals that settle international trade tribunals. There have been legitimate concerns raised from those who deal with the trade tribunal, the Canadian Manufacturers & Exporters. Did the government consult with this group before considering this amalgamation of all these tribunals into one administrative body?

Ms. France Pégeot (Special Advisor to the Deputy Minister, Department of Justice): Good evening.

This measure is actually to put together the various resources of all the tribunals, and it's essentially an administrative measure, so the powers of the various tribunals with respect adjudication and other substantive functions are not changed by this legislation. The chairs and the members of the tribunals continue to have control over their rules and their procedures. They continue to have all the adjudicative and other statutory powers that their legislation provides them.

The tribunals themselves remain autonomous. They remain under their respective ministerial portfolio and they remain an entity. It's the services and the resources. The resources are being transferred to this new organization, and the services will be provided to them. But this organization is an administrative body; it doesn't have adjudicative power.

● (2240)

Mr. Nathan Cullen: Yes, I understand.

So again my question was, did the government consult with a group like the Canadian Manufacturers & Exporters before this move was made?

That was my question.

Ms. France Pégeot: No.

Mr. Nathan Cullen: Thank you.

The second part of that is, you said it's merely an administrative move, but is not the chief administrator the one who then holds the purse strings, so to speak? Are they not the ones making decisions as to resources and allocation of those resources across the tribunals?

Ms. France Pégeot: That's right.

Mr. Nathan Cullen: Is that not a concern with respect to independence of those tribunals? If money is a factor in what the tribunals are able to investigate and what they're not, I deem money would be a factor in all of the tribunals. The chief administrator would hold a certain amount of influence over each of those tribunals and what they're able to spend in a given year.

Ms. France Pégeot: Each tribunal is coming with its share of resources, and we're actually identifying that share of resources as we are preparing for the merger. There will be some natural, I would say, integration in the area of corporate services, for example, finance, administration, and in IM/IT. This leads to more integration and sharing, but at the same time there are some resources and some staff that have the expertise required for the tribunals. For example, for the CITT, you have lawyers and you have economists. These will not be able to serve other tribunals that require art historians, for example.

Mr. Nathan Cullen: My question was, does the chief administrator control the budgets of the various tribunals?

Ms. France Pégeot: It controls the budget of the ATSSC, which provides the services to the tribunals.

Mr. Nathan Cullen: So it directly controls the budget of the tribunals.

Ms. France Pégeot: Tribunals per se will not have a budget. The budget will be in the ATSSC.

Mr. Nathan Cullen: You're adding a layer of bureaucracy there. But in terms of the tribunals and how much resource they have available to them, that will be determined by the chief administrator.

Ms. France Pégeot: Yes, in consultation with the chairs.

Mr. Nathan Cullen: I understand, in consultation.

The Exporters Association has raised specific concerns about their ability to trade and seek remedy through the trade tribunals and whether that tribunal will have resources sufficient to what their task is. If we're interested in trade at all, you'd think that would have been a warning sign to the government that one of the main trading agents and lobby groups within this country has raised concerns.

The fact that they weren't consulted, the fact that the chief administrator, appointed and beholden to the ministers themselves, is controlling the purse strings on something so important, make it seem that even the notion of independence or arm's length is somewhat questionable. But I'll leave it at that. It seems to be a thrown-together process.

The Chair: Thank you, Mr. Cullen.

I have Mr. Rankin and then Mr. Saxton.

Mr. Murray Rankin: Chair, just as a point of order, are we talking about my amendment or the merits or the specifics of this section?

The Chair: We're on NDP-23.

Mr. Murray Rankin: All right. So the point of the amendment was to change the appointment of the chief administrator to appointment during good behaviour as opposed to the bill before us, which would have that appointment during pleasure. Our objective is to ensure that there's a greater independence on that individual who, if appointed during pleasure, could be of course turfed out at any point in time when the government didn't like what he or she was doing.

Is there a distinction at law, in your judgment, between good behaviour and during pleasure?

Ms. France Pégeot: There is a distinction. The Administrative Tribunals Support Service's chief administrator will not have adjudicative power, as I've mentioned. Its role will be to provide the administrative services to the tribunal. So his role is a management role. The chairs and the members will continue to have adjudicative power, and typically when you look at that type of appointment, it is those quasi-judicial appointments that are made on good behaviour. For example, the chairs and the members appointments are all for good behaviours.

● (2245)

Mr. Murray Rankin: But with respect, we're not talking about those tribunals. We understand that they're independent—of course that's the case—but we're talking about the chief administrator, and there's a difference, is there not, between good behaviour and during pleasure for that individual?

Ms. France Pégeot: Yes, there is a difference.

Mr. Murray Rankin: So in answer to my colleague, Mr. Cullen, and the point he was making about the management of the purse strings—and I'm going to ask this later—there's either 10 or 11 tribunals that we're dealing with here. It's unclear. If that individual, for example, wanted to provide little or no budget to the Public Servants Disclosure Protection Tribunal that deals with whistle-blowers, and didn't like that particular tribunal for positions it took, all it would need to do is starve that tribunal of a budget. Is that not correct?

Ms. France Pégeot: Well, if he were to do that, he would not therefore be carrying out his role. His role is to provide the services that are required by those tribunals. So if this person is not providing the services that are required, then this person would not be accomplishing his work.

Mr. Murray Rankin: So if that person chose not to provide as much revenue to that tribunal to do that service, that individual—who is responsible for the care and feeding of the tribunals—could simply starve it.

Ms. France Pégeot: Well, each tribunal is coming with a certain level of resources. Of course, resources are not unlimited, so each tribunal would have to be served within what is reasonable and given the type of mandates they have, just as they are now. There will be eventually some efficiency, but initially there is no budget target reductions, so each tribunal comes with the resources it currently has.

Mr. Murray Rankin: But if a Governor in Council appointment, as chief administrator, of a person at the pleasure of the government of the day chose to have that tribunal, which might not be in favour, given little or no income, there would be nothing under this statute that could stop that. It's a discretionary call by an individual who is appointed at the pleasure of the government.

That's my point. That's the reason, Chair, for the amendment. There's no reason to continue.

Ms. France Pégeot: I could give you the example of the Courts Administration Service. The chief administrator of that organization also serves “at pleasure”. Persons whose job is to manage organizations typically serve “at pleasure”.

Mr. Murray Rankin: But the courts are very different from the Public Servants Disclosure Protection Tribunal, to take an example—but that's simply my position.

The Chair: Thank you.

Mr. Saxton, please.

Mr. Andrew Saxton: I think I'll wait for Liberal-26 to make my comments.

The Chair: Thank you.

On NDP-23, do you want a recorded vote?

Mr. Nathan Cullen: Yes, please.

The Chair: Okay, a recorded vote.

(Amendment negatived: nays 5; yeas 4)

The Chair: All in favour of clause 376, please signify.

Mr. Guy Caron: Recorded vote.

The Chair: You want a recorded vote on clause 376.

(Clause 376 agreed to: yeas 5; nays 4)

(On clause 377—*Definitions*)

The Chair: We now have Liberal-26.

I have Mr. Saxton on my list, but first I'll go to Mr. McKay to move.

Hon. John McKay: I'll try to keep Mr. Keddy happy by waxing ineloquent. I see we have about 10 minutes left, so I guess I have to run with those 10 minutes, do I?

We heard from the Canadian Steel Producers, who are very concerned about the changes in the Canadian International Trade Tribunal. They wrote the following to the committee about the proposed change:

> [It] introduces clear risks to the functioning of the trade remedy system, with direct impacts on the domestic industry, importers, and the government itself. Substantive impacts are likely to weaken the trade remedy system, not strengthen it. This is of direct concern to Canadian Steel Producers.

They also said, "we note that there was no prior consultation"—where have we heard that before?—"on the ATSSA proposal with domestic industries most likely to be affected, nor with trade legal advisors." And they ask CITT be removed from the section in Bill C-31.

We also heard from the Canadian Bar Association, who apparently have a few opinions about these things, including:

> ...that the ATSSCA not be passed into law. If the ATSSCA is to become law, we recommend that at a minimum excluding the CITT, the CIRB and the PSDPT from its reach.

So as I say, Mr. Chairman, we seem to be hearing this as a refrain, this is the kind of legislation which should be dealt with separately, it should not be part of an omnibus bill, there was no consultation, and both the trade associations and the lawyers are upset. It's quite a testimony to how to run a government.

● (2250)

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

Mr. Saxton, please.

Mr. Andrew Saxton: Thanks, Chair.

I just want to point out, with regards to the proposed Liberal amendments, that the ATSSC will improve the services received by the tribunals it supports, including the Canadian International Trade Tribunal, the Canada Industrial Relations Board, and the Public Servants Disclosure Protection Tribunal, and will generate efficiencies. This will lead to an improved access to justice for Canadians.

The ATSSC will operate at arm's length from the Minister of Justice, the decision-making independence of the tribunals is protected as indicated in the legislation. And tribunals will continue to have access to all the expertise they require, and there will be no reduction in the protection given any confidential information they receive.

Thank you.

The Chair: Can we do the vote, then, on Liberal-26?

Mr. McKay.

Hon. John McKay: [*Inaudible—Editor*]...with the decision is the explanatory note. It does try to remove the three bodies from this division, from this vote, in part because of a fierce independence and a fear that the independence will actually be eroded. Anyway, it is what it is, and we know where this one's going.

The Chair: Thank you, Mr. McKay.

The legislative clerk has reminded me that the decision the committee takes on Liberal-26 applies to Liberal-27, Liberal-28, Liberal-29, Liberal-30, Liberal-31, Liberal-32, and Liberal-33, as all these amendments are consequential. In other words, if this amendment is defeated, there are no more amendments for clauses 378 to 482.

Hon. John McKay: I'm happy to help with the efficiencies.

The Chair: Do you want a recorded vote on this?

Hon. John McKay: I do, please.

The Chair: We will have a recorded vote on Liberal-26.

(Amendment negatived: nays 5; yeas 4)

The Chair: We shall go to clause 377.

Mr. Rankin.

Mr. Murray Rankin: I have a question for the officials, as I simply don't know whether there's an issue here.

Clause 377 lists, under the definition of administrative tribunal, 11 tribunals. Schedule 6 lists 10 tribunals. I just wondered if you could comment on why there's a difference?

Ms. Ann Chaplin (Senior General Counsel, Department of Justice): The 11th tribunal will be the public service employment and labour relations board, and that body is one that was created two years ago in legislation that is not yet in effect. So clause 481—I believe—is a coordinating amendment that will add the public service employment and labour relations board to the schedule of the ATSSC act when that statue comes into effect.

Mr. Murray Rankin: Thank you for that information.

(Clause 377 agreed to)

The Chair: There are no amendments for clauses 378 to 482. Can I group these together?

Mr. Guy Caron: Well, we'll—

The Chair: Yes? Okay? That's a great idea? Wonderful.

Mr. Guy Caron: It's okay up to clause 420.

● (2255)

The Chair: Up to clause 420 it's okay? All right. I'll take it.

(Clauses 378 to 420 inclusive agreed to)

(On clause 421)

The Chair: What would you like to do there, Monsieur Caron?

[*Translation*]

Mr. Guy Caron: According to the rather compelling evidence we heard, especially from the Canadian Bar Association, integrating the Canadian Industrial Relations Board into the new administrative tribunal will lead to a loss of expertise when it comes to administering the Canada Labour Code.

For that reason, we will vote against this clause and ask for a recorded vote.

[*English*]

The Chair: We'll have a recorded vote on clause 421.

(Clause 421 agreed to: yeas 5; nays 4)

The Chair: Can I group clauses 422 to 482?

Mr. Guy Caron: You can for clauses 422 to 423.

The Chair: Okay.

(Clauses 422 and 423 agreed to)

(On clause 424)

The Chair: Monsieur Caron.

[*Translation*]

Mr. Guy Caron: This clause and the ones that follow are designed to integrate the Canadian International Trade Tribunal into the new administrative tribunal. However, several witnesses told the committee that doing so could lead to a loss of expertise, even legal challenges under World Trade Organization rules. It would be reckless to adopt this clause without undertaking a more in-depth study, an idea the government seems to be resistant to.

Therefore, we are again asking for a recorded vote in this case.

[*English*]

The Chair: Can I apply the previous recorded vote to this recorded vote?

Mr. Guy Caron: Yes.

(Clause 424 agreed to: yeas 5; nays 4)

The Chair: Those two clauses carry according to the previous recorded vote. Thank you.

Can I group clauses 426 to 482?

Mr. Guy Caron: Actually we're at clause 425 right now.

The Chair: I thought you wanted clauses 424 and 425 together.

Mr. Guy Caron: No, it was only for clause 424. But I'll do clause 425.

Mr. Nathan Cullen: He wanted the vote to apply to clause 424, and he wanted to comment on clause 425.

Mr. Guy Caron: That's right. We can apply what was on clause 421 to clause 424. That's what I meant.

The Chair: Okay.

(On clause 425)

Mr. Guy Caron: This will also be fast.

[*Translation*]

The clause pertains to the integration of the Public Servants Disclosure Protection Tribunal into the new tribunal. That completely flies in the face of the tribunal's mandate of protecting whistleblowers. The tribunal is losing some independence, and that could deter potential whistleblowers from reporting wrongdoing.

That is why we are going to vote against this clause. I would like a recorded vote, and it can indeed be applied to the others.

[*English*]

The Chair: The last recorded vote applies to clause 425.

(Clause 425 agreed to: yeas 5; nays 4)

The Chair: So how far can I go then?

Mr. Guy Caron: You can go up to clause 482.

The Chair: All right. I guess you have to ask the question.

Mr. Murray Rankin: Ask and you shall receive.

The Chair: Shall clauses 426 to 482 carry?

(Clauses 426 to 482 inclusive agreed to)

The Chair: We want to thank our two officials especially for staying so late. We appreciate that very much.

Some hon. members: Hear, hear!

The Chair: We'll go to division 30, the Apprentice Loans Act. I do not have any amendments for these clauses, clauses 483 to 486.

We want to thank our official again for staying so late. We appreciate that.

We have two minutes, so can I group these together, or are there any questions?

Mr. Nathan Cullen: I wouldn't mind getting just one minute from Mr. Rahman to explain what this part of the act will do.

As succinctly as you can, sir, just explain for us what it will be. And then we'll ask for a recorded vote, which we can apply, Mr. Chair.

Mr. Atiq Rahman (Director, Operational Policy and Research, Department of Employment and Social Development): Thank you.

The Apprentice Loans Act is very similar to the Canada Student Financial Assistance Act and will introduce loans for apprentices. These loans would be interest-free until apprentices complete or terminate their apprenticeship training, after which interest will be charged and they will go into repayment.

Mr. Nathan Cullen: I have a quick question on this, Chair, regarding the length of time. We're strongly in favour of this and of expanding the use of apprenticeships, which we know are under-utilized in Canada. How long can that last? Because some apprenticeship programs like the Red Seal programs can take quite a while.

Mr. Atiq Rahman: Those details will be laid out in the regulations. We have been consulting apprenticeship stakeholders as well as provincial and territorial authorities, and their views will be taken into account in laying this out in the regulations.

Mr. Nathan Cullen: So to this point, we don't know what the length of time is, but it's meant to incorporate.... I'm just concerned that the loan stipulation time will not meet the realities of how apprenticeships actually work in the country.

● (2300)

Mr. Atiq Rahman: Yes. Those numbers have not been finalized yet.

Mr. Nathan Cullen: Okay.

The Chair: Thank you.

(Clause 483 agreed to: yeas 9; nays 0)

The Chair: Can I apply that to clauses 484 to 486?

Mr. Nathan Cullen: The recorded vote—

The Chair: The recorded vote will apply to clauses 484, 485, and 486.

(Clauses 484 to 486 inclusive agreed to: yeas 9; nays 0)

The Chair: I want to thank Mr. Rahman very much for staying so long. We appreciate that.

Mr. Atiq Rahman: Thank you.

Some hon. members: Hear, hear!

The Chair: Colleagues, it is 11:01, so I have to move everything else—but we're almost finished.

We have six schedules. Could I group them all together? Is that possible?

Hon. John McKay: I believe so. The first two, yes.

The Chair: Okay.

Hon. John McKay: The next one, no.

The Chair: We'll have a show of hands, then.

(Schedule 1 agreed to)

(Schedule 2 agreed to)

(Schedule 3 agreed to)

(Schedule 4 agreed to)

(Schedule 5 agreed to)

(Schedule 6 agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

Hon. John McKay: What do you want to call it?

The Chair: Is that unanimous or on division?

Mr. Nathan Cullen: On division, please.

The Chair: Okay, on division.

Shall the title carry? On division?

Some hon. members: Agreed.

Mr. Nathan Cullen: On division.

The Chair: Shall the bill, as amended, carry? On division?

Some hon. members: Agreed.

Mr. Nathan Cullen: Sure.

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

Some hon. members: Agreed.

Mr. Gerald Keddy: Absolutely.

Mr. Nathan Cullen: Unless he doesn't feel like it.

The Chair: Okay. All right; I feel like it.

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

Some hon. members: Agreed.

Mr. Nathan Cullen: Yes, it'll be a best seller.

The Chair: So that's it.

Yes, Mr. Cullen.

Mr. Nathan Cullen: Your staff, the team that supports this committee, have done a remarkable job. It's a complicated bill that we've gone through.

As well, to you, Chair, for guiding us through a tenuous process, such as it was, thanks.

Thanks to all of you and your team.

The Chair: I'd like to echo that. I want to thank all of you as colleagues. I know it's been a very intensive process. I want to thank you and your staff.

I do want to thank our clerk for her exceptional work. I want to thank our legislative clerks for their exceptional work, the analysts for their outstanding work on an ongoing basis, and the interpreters who are here now, and the entire team who've done an outstanding job as well, and lastly the Finance officials who have worked through the entire list. They've done an outstanding job.

Some hon. members: Hear, hear!

The Chair: I have bad news for some of you: the Canadiens lost tonight.

Thank you so much.

Mr. Saxton, do you want to make a point?

Mr. Andrew Saxton: You've said it all.

The Chair: Thank you.

The meeting is adjourned.