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Chair

Mr. Leon Benoit

Standing Committee on Natural Resources

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● (1105)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good morning, everyone.

We're here to continue our study of the parts of the budget implementation act that were referred to us by the chair of the finance committee.

Just before we get to that and get to the introductions, we have a budget for costs for this committee meeting. You all have it in front of you. The total amount requested is $4,000. I'm just looking for approval of up to that amount for budget for these two meetings. It's for witnesses travelling in some cases and that kind of thing.

Is there agreement on the budget?

Some hon. members: Agreed.

The Chair: It is agreed. Thank you.

I have one more reminder, which is just that next Tuesday's meeting is in 1 Wellington, so don't end up here, because apparently there's another meeting scheduled for this room. It's in 1 Wellington. You'll see it in the notice. It could be televised. It's up to someone to request that.

Ms. Chris Charlton (Hamilton Mountain, NDP): I don't think you indicated at the last meeting whether the minister would be with us for one hour or both.

The Chair: The minister will be with us for an hour, and then we'll have the officials for the second hour.

I want to welcome Mr. Lauzon to our committee. It's good to see you, Guy. I think most of you know who he is, but we certainly welcome him officially as a member of this committee now. I understand the committee will probably will be meeting regularly from now on. I think things have been dealt with. That's my understanding. I hope I'm not jumping the gun.

Today we're dealing with the extractive sector transparency measures act portion of the budget implementation act. We have a list of witnesses. Some are here in person, and some are here by video conference.

We have, first, from the Mining Association of Canada, Ben Chalmers, vice-president of sustainable development. From Publish What You Pay Canada, we have Claire Woodside, director. We have Andrew Bauer-Gador, economic analyst from Natural Resource Governance Institute. From Oxfam Canada, we have Lina Holguin, policy director for Oxfam Quebec.

Welcome to all of you.

By video conference from Edmonton from the Canadian Association of Petroleum Producers we have Ben Brunnen, who is the manager of fiscal and economic policy and Alex Ferguson, who is vice-president of policy and performance.

Welcome.

Again, thank you all very much for coming on relatively short notice. For presentations we will follow the order on the agenda today, starting with the Mining Association of Canada for up to seven minutes.

Mr. Ben Chalmers (Vice-President, Sustainable Development, Mining Association of Canada): Thank you very much, Mr. Chair, for the opportunity to speak before you on an issue that has been very important to the Mining Association.

For the last two years, we've spent an enormous amount of effort and resources in working with our partners here, Publish What You Pay, to design what we feel is an appropriate approach to implementing mandatory disclosure for payments to governments from extractive companies in Canada.

As you're aware, the resource revenue transparency working group published the framework that we feel played an enormous role in bringing us all to the point where we are today. We're able to discuss a piece of federal legislation to see that this is implemented and lives up to the Prime Minister's commitment that he made at the G-8.

By and large, we think that the act is very true to the recommendations that were made by the resource revenue transparency working group, and we support that. When we envisioned this, we first designed our recommendations to fit in with security regulation, and now we're discussing a piece of federal legislation.

There are a few areas that our framework didn't quite address in the same way that this act, under criminal law, addresses some of the issues. I specifically want to speak to a couple of areas, one being the way in which fines and penalties are addressed in the act, and then I want to talk quickly about the equivalency provision, if I have time.

When we envisioned this, it was under security regulation. Securities regulation is a venue that is very used to dealing with this kind of disclosure, and it has enforcement mechanisms that the industry is very comfortable in dealing with. We believe that the purpose of this act is about companies providing greater transparency around the legitimate payments that they make to communities, to help communities hold their governments to account for the best use of that revenue. As such, this is an opportunity for companies to help out in the accountability area.

We want to suggest some amendments to some of the ways in which the fines and penalties are dealt with. We prepared a note that we weren't able to get translated in time, so you don't have it in front of you today. I have English copies that I can share afterwards. We will get it translated as quickly as we can and provide it. However, I want to read through some of the changes that are most important to us to get them on the record, if you'll bear with me.

The first thing we want to do is under proposed section 24 of the extractive sector transparency measures act. There are a number of fines proposed for different offences related to the non-reporting, to reporting in error, and then organizing your payments to avoid reporting. We actually want to propose that these fines be increased. They're currently set at $250,000. For proposed subsections 1 and 3, the offences of non-reporting, and the section related to organizing payments to avoid reporting, we believe that these should be increased to a maximum of $1 million, and the reporting in error should be doubled, to $500,000.

Consequently, we are asking that the committee consider removing wording in the fourth proposed subsection, which states, “under this section is committed or continued on more than one day, it constitutes a separate offence for each day on which the offence is committed..”. We'd like to see that deleted. We'd like to see the following proposed section 25 related to personal liability to officers and directors deleted too.

The closest analogy we can come to in terms of the daily offence is that there's not a lot of precedent for disclosure obligations in criminal law. The government has drawn from safety and environmental regulations, which often have continuing harm every day that an offence is in process. This does not have that continuing harm. When you report an error or fail to report, the harm is done at the time the offence is committed. We don't believe the harm continues day after day, so we are suggesting that a one-time fine is appropriate here.

We draw a comparison to the Lobbying Act, which is also a transparency-related and disclosure-related legislation and doesn't contain similar provisions around daily offences.

● (1110)

We'd also like to add a third paragraph to proposed section 26, a paragraph (c) that would read “no person or entity is to be found guilty of the offence relating to a breach of section 9”—this is the section that requires entities to report on their payments—“if the payments reported by the person or entity are reasonably accurate in the context of the total amount paid by the person or entity to the applicable payee in a given reporting period”. This just sets a reasonableness test in terms of the accuracy of the reporting.

The way the legislation is written now, companies are obligated to report down to the dollar in terms of accuracy and to be accountable for that. There's a due diligence defence contained in the act, however, the typical due diligence process that a company would have in this area is around their audit practices. Company audit practices are calibrated to address a material level of significance and that is a very different level from what we're talking about here where you need to be accurate down to the dollar. So our typical audit practices are not equipped to provide that due diligence approach in this particular case.

The other area that we wanted to address is around the equivalency provision. When we first started working with Publish What You Pay, a foundational principle was a strong equivalency element that would allow companies to avoid duplicate reporting in different jurisdictions such as reporting the same data in Europe or under the Dodd-Frank Act in the U.S.

Our belief in the way proposed section 10 of this act is written is that it enables the minister to enact equivalency at the minister's discretion. It says the minister may determine that requirements of other jurisdictions are acceptable. We would like to see that amended to the minister “must determine”. There are some conditions contained in this clause so it's not an absolute obligation, but it would go a long way to giving us comfort that this regime will remain consistent with the global standard that is emerging around the reporting of payments.

The precedent for that we believe is found in CEAA 2012, the Canadian Environmental Assessment Act, where there's an equivalency provision that finds that at the request of a province that has a comparable environment assessment regime the minister must find equivalent.

I'm hoping that you will take those under consideration, and given the amount of work that we've put into this over the last two years and how we've contributed to being very constructive and getting Canada to a point that it can show leadership we hope that will carry some weight in causing you to consider our suggestions here today.

The Chair: Thank you very much for your presentation.

We have an hour and a half for this section before we go in camera to discuss the letter that will be sent to the chair of the finance committee.

We have the second presenter today, Claire Woodside, director, from Publish What You Pay.

Go ahead with your presentation up to seven minutes, please.

● (1115)

Ms. Claire Woodside (Director, Publish What You Pay Canada): Thank you.

Good morning, members of Parliament. Thank you for the opportunity to participate in today's hearing.

Publish What You Pay Canada is part of an international coalition of more than 800 civil society organizations working to increase transparency and accountability in the resource sector. The disclosure of payments by mining, oil, and gas companies to government is critical in the global fight against corruption, as it allows citizens to hold their governments accountable for the revenues they receive from resource extraction.

Publish What You Pay Canada would like to commend the Canadian government and the Canadian mining industry for their leadership on this issue. The extractive sector transparency measures act is a welcome step forward in the global transparency movement.

Many key elements of the proposed legislation reflect the global standard and align very well with the EU transparency and accounting directives and section 1504 of the Dodd-Frank Act in the United States, which are two comparable pieces of legislation.

Mr. Chalmers raised several amendments that I hope we will have time to discuss during the question period. However, I would like to focus here on one critical aspect of the legislation that differs from the global standard. To address this concern, we are proposing an amendment detailed on page 1 of our formal submission, which I believe you have in front of you in French and English.

I would like to refer you to subclause 9(5) of the act. This specifies the form and manner of reporting and states that:

> The Minister may specify...the way in which payments are to be organized or broken down in the report — including on a project basis....

There are three problems with the lack of clarity and specificity in this subclause. First, the lack of clarity in subclause 9(5) suggests that the form and manner of reporting is not a critical aspect of this legislation. This is untrue. It is critical that payments be reported on a disaggregated basis, broken down by the government to which the payment was made, the country in which that government is located, the payment category—such as royalties or bonus payments—and the project with which that payment is associated.

The purpose of the act, as stated in clause 6, is to deter and detect corruption. To achieve this purpose, the act relies upon citizens, parliamentarians, community groups, and journalists, using company reports. Without disaggregated, project-level disclosure, end users would be unable to conduct this oversight, thereby defeating the purpose of the act.

Second, the lack of clarity in subclause 9(5) is not in line with the legislation in other jurisdictions. In the United States, section 1504 of the Dodd-Frank Act, which passed into law in 2010, includes considerable detail regarding the form and manner of reporting, with a clear requirement that payments be reported on a disaggregated, project-level basis. Similarly, in 2013 the European Union passed two legal acts that unambiguously require disaggregated, project-level reporting. Please see pages 2 and 3 of our submission for excerpts of those acts.

In both the EU and the U.S., legislators specified that payments are to be reported on a disaggregated, project-level basis due to the clear recognition that this type of disclosure is essential for mandatory payment reporting laws to have an impact. If Canadian legislation is to be broadly aligned with other jurisdictions, as has been stated as a goal of the Government of Canada in the recently released CSR strategy, disaggregated, project-level reporting must be a mandatory requirement of the act.

Third, the lack of clarity in subclause 9(5) creates considerable uncertainty. Because the minister has the sole discretion to determine, and hence change, the form and manner of reporting, it would be relatively easy for changes to be made that dramatically impact company reports and availability of information. This uncertainty can make it challenging for companies to begin to prepare their internal systems and controls to collect, report, and provide assurance for the data included in their reports. It can also make it challenging for the end users of the information, who need to be able to view Canada's reporting standard as a reliable source of accurate, timely, consistent, and trustworthy information.

The Government of Canada has repeatedly clarified its intention to require disaggregated, project-level reporting. We heard this clearly at this committee hearing on Tuesday. We have also heard that the form and manner of reporting is best clarified through an administrative process that is at the discretion of the minister.

● (1120)

In this case, the flexibility and ministerial discretion in the legislation come at the expense of achieving the purpose of the act, aligning with international standards, and create uncertainty for companies and citizens. For Canada's payment disclosure law to positively impact resource governance and arm the fight against corruption with a critical new source of information, disaggregated payment disclosure is a must.

On page 1 of our submission we propose an amendment to proposed subsection 9(5) in the bill. This amendment will not remove the flexibility accorded to the minister, nor the need for an administrative guidance document. However, by adopting this amendment, committee members ensure that the legislation can achieve its purpose, that Canada's legislation is aligned with other jurisdictions, and that the legislation provides direction to the administrative process that will ensure a stable, consistent reporting standard.

With this amendment, the act will satisfy the needs of citizens, industry, and government, thereby ensuring that Canada will continue its global leadership on extractives transparency.

Thank you.

The Chair: Thank you very much for your presentation.

Before I go to the next presenter, I want to point out that Pierre Gratton, the president and CEO of the Mining Association of Canada, is at the table with Mr. Chalmers.

We go now to Andrew Bauer-Gador, economic analyst with the Natural Resource Governance Institute.

Go ahead with your presentation, please.

Mr. Andrew Bauer-Gador (Economic Analyst, Natural Resource Governance Institute): Thank you, Mr. Chairman.

Good morning. Thank you for inviting me to speak today, Chairman and all the members of the committee.

By way of introduction, as Mr. Benoit said, I'm an economic analyst with the Natural Resource Governance Institute. I've been working with Publish What You Pay Canada, the Mining Association of Canada, and the Prospectors and Developers Association of Canada for the last few years on exactly this issue, payments transparency. My organization is a non-profit policy institute, working in over 30 countries on improving the management of oil, gas, and mineral resources. Previously I was with Finance Canada.

I'm here today to talk about division 28 of Bill C-43 and I'll be referring to the same handout Claire was referring to and will be highlighting one recommendation and two revisions that would align what's been proposed with EU and U.S. standards.

We strongly support Publish What You Pay Canada's call to include project-level reporting in the legislation. The U.S. and EU laws require disclosure of payments for each project. This is important for a few reasons.

First, in more than 30 countries, payments made on extractive projects determine fiscal transfers from the national to subnational governments. Local governments in Mongolia, Myanmar, the DRC, Ghana, the Philippines, and lndonesia each collect a share of oil, gas, or mineral revenues on their land, as prescribed by formulas. Project-level disclosure is essential for helping these local governments plan their budgets, but it can also mitigate violent conflict in resource-rich regions.

An example that I know quite well and I think is a good one is the Philippines. There, some mining communities are entitled to a minimum 1% royalty on the minerals extracted on their lands. Since they don't have access to this information, there's no way for them to determine whether they're receiving their 1%. As a result, communities usually don't receive their legally entitled benefits. The result has been that this has fuelled kidnapping, the destruction of mining company property, and a communist insurgency. The U.S. and EU laws are designed to address exactly this type of problem.

Second, knowing the payments companies are making at the project level can help investors in oil and mining companies determine the political and social risks. lnvestors managing over $5.8 trillion have written publicly that this information is critical to deter corruption and improve the overall business climate in the countries where they invest.

Both the U.S. and the EU clearly require project-level disclosure, and we recommend that Canada does the same.

I would also highlight two additional concerns that we have with the draft legislation.

Our first concern is that the current draft leaves open the possibility of exemptions from disclosure. Any exemptions would undermine the intent of the legislation, which is to improve governance in the places that need it most. I think we can all agree that we would not want to give tyrants veto power over Canadian lawmakers. The EU rules specifically rule out exemptions, and we encourage Canada to do the same. If you turn to page 3 of the joint submission from Publish What You Pay Canada and NRGI, you will see that section 23(1)(b) explicitly opens up the possibility of exemptions in possible future regulations. We recommend that this provision be removed.

Our second concern involves the public availability of information and format of disclosure. Under the current draft, there is no clear and unequivocal commitment to making the information public. Keeping this information secret defeats the purpose of the legislation. We're recommending that we remove section 23(1)(f) to ensure that no information is hidden from public view. Linked to this issue, for the law to be effective, all users must have access to it. The U.S. and EU rules require that the information be centrally provided and publicly available. Canada should align with this international standard. We agree with the Canadian mining industry that these rules serve Canada's interests well and as such the bill is welcome. But in order to achieve the stated goals, improvements are needed. A requirement to disclose information at the project level, and addressing concerns around exemptions and format of disclosure would align with the U.S. and EU standards and level the playing field globally.

Thank you.

● (1125)

The Chair: Thank you very much for your presentation.

We go now to Lina Holguin, policy director, Oxfam-Québec and Oxfam Canada. Go ahead please with your presentation for up to seven minutes.

Ms. Lina Holguin (Policy Director, Oxfam-Québec and Oxfam Canada, OXFAM): Thank you.

Honourable members, thank you for inviting Oxfam to address you today. My name is Lina Holguin, and I work for both Oxfam-Québec and Oxfam Canada. We are members of a confederation of 70 organizations working in over 90 countries. We work with partner organizations to end the injustices that cause poverty.

Oxfam cares about this legislation that is in front of you today, because for 15 years we have been working with communities impacted by the mining sector, the extractive sector. We know that by keeping communities in the dark, not knowing how much the companies are paying to their local governments, it's keeping them from seeing the positive development outcomes. This is why we're here today.

Oxfam-Québec and Oxfam Canada are both members of Publish What You Pay, and we welcome the proposed extractive sector transparency measures act. However, the point I want to make here today is that for this act to be effective and deter corruption, it must require disaggregated, company-by-company, project-level payment disclosure. I'm asking you to seriously consider the amendments put forward by Publish What You Pay Canada today, which have the full support of Oxfam.

Here are four reasons why Oxfam considers disaggregated, project-level reporting to be critical.

First, communities must know how much each company is paying their governments for each mining or oil and gas project so that they can hold their governments to account for the responsible management and use of those scarce resources. Allow me to present you with the example of Peru. It is a priority country for Canadian foreign policy and mining investment. The district of San Marcos, where the Antamina mine is located, receives large royalty transfers from the national government. The Antamina project sponsors are said to have spent $314 million between 2007 and 2013 on infrastructure and social projects in the region. But poor communities in San Marcos are not seeing the results. The district has no hospitals, no water treatment plants, and no paved highways. Nearly one third of toddlers suffer from chronic malnutrition.

If citizens in San Marcos knew specifically how much this project generated each year in payments to the government, they would be able to demand investment in their community and determine whether the amounts of transfers to the local government were actually what was legally due.

Second, we all know that corruption is not inevitable. If citizens, parliaments, and oversight institutions were empowered with project-level information, prosecutions for corruption could proceed. The transparency would serve as a powerful and cost-effective deterrent to malfeasance.

Allow me to present a second example. This is Burkina Faso, the fourth-largest producer of gold in Africa. It also ranks among the ten poorest countries in the world. With the recent overthrow of the government, transparency around the lucrative mining industry will be crucial to contribute to stability in the country during this transition. Today the people of Burkina Faso are asking their parliament to double the country's contribution of mining revenues to communities. This contribution will pay for health, for education, for clean water.

Members of Parliament, by amending the act to specifically require project-level payment disclosure, you will demonstrate your commitment to ensuring that mining revenues are properly used to tackle poverty in countries like Burkina Faso.

Third, transparency at the project level is essential to prevent conflict with communities. Furthermore, in a recent study, the University of Queensland in Australia found that delays caused by conflict with project-affected communities can incur costs of roughly $20 million per week for larger mining projects.

● (1130)

Fourth, Canada should not be left behind. We can and should be a leader. Project reporting is explicitly required by the U.S. Dodd–Frank Act, and the EU transparency and accounting directive. This has maybe been mentioned by the industry and by my colleagues here. Also, it is required by the global standard of the Extractive Industries Transparency Initiative and by the World Bank. It is also considered a best practice by the International Monetary Fund.

Members, you have an historic opportunity to make a low-cost contribution to fighting corruption and improving the lives of thousands of communities around the world. Our legislation should clearly require disaggregated company-by-company project-level payment disclosure now. It will establish a practical tool to tackle corruption and improve governance in the extractive sector.

Thank you.

The Chair: Thank you very much for your presentation.

We go now to Edmonton by video conference to the Canadian Association of Petroleum Producers. We have as witnesses Ben Brunnen, manager, fiscal and economic policy; and Alex Ferguson, vice-president of policy and performance.

Go ahead with your presentation for up to seven minutes.

Mr. Ben Brunnen (Manager, Fiscal and Economic Policy, Canadian Association of Petroleum Producers): Thank you, Mr. Chair and committee members, for the invitation to speak today on the proposed extractive sector transparency measures act.

As you know, CAPP represents companies large and small that develop and produce natural gas and crude oil throughout Canada, representing approximately 90% of Canada's natural gas and crude oil production.

CAPP commends the Government of Canada for its leadership in undertaking this initiative. Our members recognize the importance that this act will have in the fight against international corruption through enhanced disclosure of payments by companies doing business in Canada to all levels of government both domestically and abroad.

While our members are broadly supportive of this legislation and the potential role we can play, we are also cognizant of the need to ensure that this legislation is effective at achieving its outcomes while minimizing the administrative burden on business. In this regard we offer our commentary today based on three key principles.

The first is recognizing existing financial reporting practice and standards. Second is minimizing administrative burden while harmonizing with other jurisdictions. And the third is variations arising from competitiveness and conflict situations.

With respect to existing financial reporting practice and standards, perhaps the most substantial challenge confronting CAPP members relates to the issue of attestation under subclause 9(4). The proposed section, as currently worded, establishes a standard that is more stringent than any other major established forms of legislation on the issue of financial disclosure. By comparison, the certifications required by both the federal Income Tax Act and the Sarbanes–Oxley Act, which was introduced in response to the major corporate and accounting scandals of the early 2000s, both contemplate an element of reasonableness with respect to the attestation of the financial statements.

While there may be instances where an officer or director would be comfortable with the true, accurate, and complete language with respect to one entity that he or she is very familiar with such as a tax filing, where an officer is certifying with respect to many payments over $100,000 made by multiple entities around the world, the insertion of a knowledge and due diligence qualifier would be reasonable. This is especially important when considering the complexity of the payment categories contemplated in the act in combination with the potential penalties.

So to address this challenge CAPP recommends that subclause 9 (4) be amended and the words “to the best of my knowledge and belief” be added to the end of the sentence.

Second, it's important to consider the impact of the proposed legislation on Canada's extractive sector. A core consideration in this regard is ensuring that the Canadian reporting framework aligns with established reporting frameworks in other jurisdictions. While the U. S. continues to develop its Dodd-Frank framework, the EU transparency directive and its imminent application in the U.K. is the most relevant precedent. The structure of the U.K. reporting framework is comparable to what Canada has proposed. CAPP recommends that the federal government develop an approach similar to that developed in the U.K., particularly as it pertains to the engagement of industry in the development of its industry guidance material.

Key considerations for our members include the definition of project and format of reporting, the identification and attribution of payments, whether reporting will be required for parent companies of reporting entities, and the process for determining substitutability or equivalency of other reporting frameworks. These are complex issues and it is important that the government work collaboratively with industry to achieve the policy objectives of the proposed legislation in the most effective and reasonable manner.

Finally, I'd like to speak to the issue of variations arising from competitiveness in conflict situations. Many contracts have confidentiality clauses and often foreign jurisdictions will legislate confidentiality agreements with respect to payments to government. Compliance with the proposed Canadian rules may therefore require some companies to break confidentiality provisions of contracts and will force them to choose between complying with the proposed act or complying with foreign legislation.

Another consideration is the potential disclosure of information under the act that may be commercially sensitive, at least on a temporary basis. The inability to recognize this consideration was the main focus of the successful legal challenge in the U.S. and is something Canada needs to consider. Other pieces of related Canadian legislation allow for exemptions. The most relevant example is the Canadian securities regulations, which enable a report issuer to report material changes on a confidential basis if such disclosure would be unduly detrimental to the interests of the issuer.

The proposed act contemplates this consideration by regulation and CAPP recommends that the government work with industry now to identify situations where variations to the standard reporting requirements will be warranted and develop a regulation that comes into force concurrently with the legislation.

● (1135)

Thank you very much for the opportunity to present today.

The Chair: Thank you very much.

Again, thank you all for your presentations. They were very interesting and helpful.

We go now to questions and comments. In the seven-minute round, we have Ms. Crockatt, from the government side, followed by Ms. Duncan and Mr. Regan.

Ms. Crockatt, go ahead please, for up to seven minutes.

Ms. Joan Crockatt (Calgary Centre, CPC): Thank you very much.

Thank you to all of our witnesses who are here today speaking about this important piece of legislation. I was particularly interested to hear that there seems to be, sort of, agreement among all parties—even though you represent a broad range of organizations—that the thrust of the legislation is the correct one and that it does resolve a problem we all know, which can be corruption in other countries with how Canadian companies are involved with them when they're trying to do business there.

We're talking about some of the finer points of what you may or may not like to see, and I was interested in all of the suggestions that came forward. I wanted to talk to Ben Brunnen for a moment, to start.

I was interested in some of the things that we think may be solved by this piece of legislation and the difficulties for Canadian companies, which are very highly regarded in doing business in other countries, as a rule. But what do you think is the main thrust of what this kind of legislation would solve for them? Are they put in ethical dilemmas that this would help to make clearer?

● (1140)

Mr. Ben Brunnen: I think the key benefit of this legislation would be improved disclosure in foreign jurisdictions, frankly. Our assessment is from a domestic perspective. There is a pretty substantial level of accountability that already exists within Canada, at a municipal and provincial level and federally. However, the key opportunity here is improved disclosure from an international perspective.

Mr. Alex Ferguson (Vice-President, Policy and Performance, Canadian Association of Petroleum Producers): I will add to that, if I could. You're right to interpret that at least our sector, the oil and gas sector in Canada, has an outstanding reputation in terms of our contributions to the socio-economic fabric of Canada. We see some of the opportunities here domestically—to be able to bring that to the fore, in a little more structured way, among our membership—but balancing that with, certainly domestically, the need for some efficiency and effectiveness on what we're telling the people, because we have a pretty substantial fiscal footprint in Canada, much more so than our Canadian companies have outside of Canada.

Ms. Joan Crockatt: Maybe I'll come back to the efficiency and effectiveness in just a minute, but I wanted to ask Ben Chalmers the same question.

Can you tell us and give us a real-world example of what the problem is that some of our mining companies might be facing when they're doing business in other countries, which this will help to resolve, on the corruption point?

Mr. Ben Chalmers: Absolutely. Increasingly, as we look around the world at the challenges that our sector faces in terms of getting projects built and online, a lot of it has to do with social licence. One of the elements of that is that communities don't necessarily believe the benefits that our colleagues at CAPP talked about, when we tell them how much they're going to benefit from the presence of a mine. I think the example that Lina shared is very relevant. This is an opportunity for us to disclose the legitimate payments that we make to governments at all levels and allow the communities to begin to hold their governments to account for the responsible use of the financing, of the payments, to start to provide the benefits in the communities, so that they can realize the benefits associated with a mine in their area.

Ms. Joan Crockatt: Maybe I could just ask you to be even more specific, so the people do actually understand what the nub of the legislation is. Hypothetically, you make a payment to a local government official, in cash. Can you tell me, on the ground, how this would actually have happened in the past, and how this legislation would improve that in the future?

Mr. Ben Chalmers: This legislation covers all types of payments typical to government, whether they be royalty payments, tax payments, or whatnot. We track those payments; our companies track them; we know what we pay. We often, increasingly, are very transparent on our own to communities about what we pay, but the governments that are receiving them are not always transparent. This offers an opportunity, I think, to allow much more credible disclosure of these through legislation in Canada, so that this information is accurate, without question, and the communities can know exactly what we are paying in taxes and can make sure that those taxes are not only being received by the governments but being used for legitimate purposes like building schools, hospitals, infrastructure, and roads to help drive their economic well-being.

Ms. Joan Crockatt: Okay, thank you for that.

Now, maybe I could just come back to CAPP and talk about the efficiency and effectiveness. We, of course, want to ensure that we are lessening the ability for corrupt practices to go on, and our Canadian companies certainly support that. But you've talked about the administrative burden as well, and I wonder if either Ben or Alex Ferguson could address that issue regarding your concerns about the administrative burden and how you think this will promote the efficiency and effectiveness of disclosure.

● (1145)

Mr. Ben Brunnen: From our perspective the real key comes down to how this act will apply in practice, domestically in particular. We would want to be working quite closely with the government to establish parameters around how we would be disclosing our payments.

The industry we're in is very complex, so the types of payments are relatively comprehensive and the types of operations can be quite complex and differentiated. As a result of that, the construct or the direction of the legislation is good. The key for us will be that, on implementation, we would like to work quite closely with government to create a document that meets the reporting requirements [*Technical Difficulty—Editor*] our financial reporting structures in a manner that also achieves the objectives. We're a little bit more complex than the mining sector might be in this situation. From a domestic perspective particularly, we have a number of different operations and a number of different jurisdictions. The key really comes down to how we can do this in a way that's win-win.

Ms. Joan Crockatt: Thank you so much.

The Chair: Thank you, Ms. Crockatt.

We go now to Ms. Duncan for up to seven minutes.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Thank you very much, Mr. Chair.

I'd like to thank all of you for coming to present, and the fellows there in my city of Edmonton for joining us.

If you have looked at the record, you're probably aware that we've received briefs and submissions from other people, and I might refer to those, as well. World Vision, the Canadian Bar Association, and so forth have all submitted very good briefs.

One thing I noted was the great effort taken by the miners and prospectors along with non-governmental organizations to work together and come up with joint proposals for a form. Kudos to you for doing that.

What I really noted was your early submissions and, based on your submissions here today, the abject failure of the government to actually listen to your very sound recommendations. I speak specifically about your recommendations to be consistent with U. S. and European laws. I've taken the opportunity to study those, since this is important because the government is alleging they are doing this to be consistent with our trading partners, to be fair, and to have a level playing field for our Canadian corporations operating here and in other countries.

You may or may not be aware that we have also received a submission from the United States Senate, who seem to be concurring with a lot of the recommendations made today, particularly that project-by-project reporting be publicly accessible and that there be no host company exemptions.

Sadly—and thanks for your analyses on this—if we look at the bill before us, those basic provisions do not appear to be reflected. It is not allowing for, as you recommend, project-by-project reporting. There are broad exceptions and waivers, which the E.U. are very strongly saying they do not want to allow. It's seems very clear, looking at the European and U.S. legislation and at the presentations by the Canadian Bar, by mining and prospectors, and by the non-governmental organizations, that it's very important for the law to require that the information be provided, particularly for the communities adjacent to or centred in these mining or oil and gas activities so they are able to receive the information and so that in fact we do avoid corruption and they can track payments that should be made.

I guess my question to any or all of you is, based on the reforms you're identifying and the inadequacies in the bill, whether you stand by those and whether you would recommend those changes be made before the bill goes forward and is voted on.

The Chair: Go ahead, Ms. Woodside.

Ms. Claire Woodside: We have been very pleased to see the government take leadership on this issue, and we have played a very important role in the process, and we appreciate the inclusion throughout the process by which this legislation was developed.

But we have pointed here to a few issues that we think could be remedied quite easily, and that would bring Canada up to the global standard.

I think you know Publish What You Pay is a global organization. We represent some of the primary users of this data so the 800 civil society groups in our network are going to be accessing these company reports.

I hear from them all the time as to what they really need. Without the project-level disclosure, if for example some of the countries they live in like Cameroon, which has been put forward as a country from which the oil and gas sector might want an exemption, was to be excluded from the legislation, these are the kinds of things I think would be to the detriment of the purpose of the legislation. This is why we have pointed out these concerns. We stand by the amendments we have put forward. I believe they will strengthen the legislation and bring Canada into alignment without hindering the flexibility that we know industry needs to ensure things like equivalency.

As long as these provisions are in other legislation, and we know they clearly are, we're going to be able to achieve equivalency with other jurisdictions.

Those are the kinds of concerns we hear, and that's what we're expressing here today. It's to make sure this data is used for the purpose of the act.

● (1150)

Ms. Linda Duncan: Rather than asking you all to elaborate again what you have already said, I simply need a yes or no. Are you recommending that these amendments are necessary to deliver on sound legislation consistent with the EU and the United States?

Ms. Lina Holguin: Absolutely, yes.

Mr. Andrew Bauer-Gador: Yes. We're recommending alignment with the U.S. and EU.

Mr. Ben Chalmers: Yes. We believe our recommendations are needed.

Ms. Linda Duncan: Okay.

I have a quick question for the Mining Association. I notice in the bill before you section 10 talks about other jurisdictions, but what's not clear is there's no differentiation between a Canadian jurisdiction such as a province or territory and a foreign government.

Both CAPP and the Mining Association seem to be talking about the ability to claim equivalency with a province or territory for example under CEAA or CEPA . Is that what you're speaking of?

My understanding is that the U.S. and EU do not agree on relying on reporting mechanisms in foreign nations.

Mr. Pierre Gratton (President and Chief Executive Officer, Mining Association of Canada): May I add one point here on the issue of equivalency? We have always hoped this would be enabled through provincial securities legislation, but besides Quebec no province has yet committed to doing so. Quebec hasn't done anything yet. They have just said they will.

But we certainly still hope that Ontario, Quebec, and British Columbia, the three key jurisdictions for mining, will eventually.

Ms. Linda Duncan: So you're speaking of Canadian jurisdictions?

Mr. Pierre Gratton: It's just one example. We want equivalency with the EU, the U.K., and the United States, but probably more than anything else, when the provinces come on with securities legislation, we would want the federal government to immediately acknowledge that reporting through securities is deemed equivalent. That's why we have certainly strongly recommended the “may” be a “must”.

Mr. Ben Chalmers: Equivalency is absolutely critical here because essentially this data becomes most relevant, and to Claire's point, most usable when it's reported consistently. If you're dealing with multiple jurisdictions internationally or domestically that have slightly different rules you could end up with different numbers.

Ms. Linda Duncan: To clarify, my question was very simple. Are you talking about the ability to claim equivalency simply with Canadian jurisdictions law, or are you also talking about Mozambique, Nigeria, foreign jurisdictions?

Mr. Ben Chalmers: It's Canadian provinces, Canadian and international jurisdictions where equivalent laws are in place.

Ms. Linda Duncan: So the law as it stands right now needs to be clarified and perhaps differentiated between foreign jurisdictions and Canadian jurisdictions.

Would you agree with that?

Mr. Ben Chalmers: No. I don't think so. The equivalency provision in here speaks to other jurisdictions as long as they have mechanisms that are equivalent to this.

Ms. Linda Duncan: That includes foreign jurisdictions, so are you recommending that you should be able to claim equivalency and not report under Canadian law?

Mr. Ben Chalmers: If you are reporting to say the requirement has been established under the European directives and in the U.K., then absolutely.

The Chair: Thank you, Ms. Duncan.

We go now to Mr. Regan to end the seven-minute round. Go ahead, please, for up to seven minutes.

Hon. Geoff Regan (Halifax West, Lib.): Thank you very much, Mr. Chairman, and thanks to the witnesses.

I hope I get the opportunity today for Ms. Woodside, Mr. Bauer-Gador, and Ms. Holguin to respond to Mr. Chalmers' recommendations in particular, and perhaps also to the CAPP ones. I had a heads-up from a colleague about Mr. Chalmers' recommendations, so I hope we'll hear some responses to see if you're in agreement with those recommendations, or if there are key ones that you disagree with while agreeing with the rest.

That said, let me ask all of the witnesses to briefly respond to what I'm about to propose. Based on the testimony this committee has heard today and Tuesday, it's obvious that divisions 28 and 29 of Bill C-43 need to be modified and strengthened. In light of that clear evidence, there are a number of recommendations for amendments that I will be proposing when we go in camera to discuss what recommendations we should report back to the finance committee. Mind you, I'll be amazed and pleased if my Conservative colleagues agree to change a comma.

I will ask the committee to include the following recommendations and hope that the Conservatives will not kill them when we're in camera. First, with respect to division 28, proposed section 29 provides that the act will apply to aboriginal entities two years after the definitions section of the bill comes into force. I will recommend that this section of division 28 be deleted, given the clear evidence from Mark Pearson—

● (1155)

The Chair: On a point of order, we have Ms. Block.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Mr. Chair, I understand that we will be going in camera at the end of the meeting to discuss any recommendations that this committee may want to bring forward to the finance committee. I'm just wondering why the member feels it necessary to read into the record the recommendations that he will be making at that time.

The Chair: What he's doing, Ms. Block, with all respect, is completely in order.

Mr. Regan, you can continue. You can use your time as you choose. It's relevant. Your comments are relevant to the discussion, obviously.

Hon. Geoff Regan: Thank you, Mr. Chairman.

I will recommend that proposed section 29 be deleted, given the clear evidence from Mark Pearson that there is absolutely no evidence of corrupt practices in the extractive sector inside Canada. In the absence of any evidence of corruption, one can only surmise that this is a punitive measure.

Secondly, if my Conservative colleagues will not agree to delete proposed section 29, I will recommend that the act not apply to aboriginal entities for a period of not less than five years and that aboriginal governments be included in the development of standards that will apply to them.

Thirdly, with respect to division 28, I will propose that the committee recommend the following change to proposed subsection 9(5), to read as follows: 9(5) The Minister shall specify, in writing, the way in which the payments are to be organized and broken down in the report—including requiring disclosure of

(a) the payee to which each payment has been made and the country of that payee;

(b) the total amount of payments made to each payee;

(c) the total amount per category of payment made to each payee;

(d) where those payments can be attributed to a specific project, the total amount per category of payment made for each such project and the total amount of payments for each such project;

and the form and manner in which a report is to be provided. The Minister is to make those recommendations available to the public, in the manner that he or she considers appropriate.

Fourth, and finally, I will recommend that division 29 be amended to state that the three-year Public Service Superannuation Act provisions will apply to new employees of the Canadian Nuclear Laboratories in exactly the same manner as it applies to existing employees.

Mr. Chairman, I'd be interested in hearing comments from witnesses.

The Chair: Is there any particular witness you would like to start with, Mr. Regan?

Hon. Geoff Regan: Who's anxious to answer? Everyone, right?

The Chair: Mr. Gratton, go ahead, please.

Mr. Pierre Gratton: I'll just comment on the issue of payments to aboriginal entities.

This was not part of our work together. It was a deliberate decision. It wasn't an oversight. We felt that this would be an undertaking that would require a lot more time, and it's not really the thrust behind the international movement behind transparency. No other jurisdiction in the world goes to that level, so it's a unique kind of feature of this particular act.

We are pleased that the government listened to us and delayed implementation for two years to allow further consultation with aboriginal governments, which we think is really important. We've been having many conversations with aboriginal groups and entities about this ourselves.

In the end, I think transparency is always valuable, and the more transparency the better. While I think at our board table there would be broad support in principle for including that, it's how we get there that I think is also very critical for our industry. We wouldn't want to be finding ourselves in any way in conflict with aboriginal governments with whom we deal on a daily basis, so taking more time is critical.

Ms. Claire Woodside: With regard to your comments, thank you for the support on the amendment we've put forward to subclause 9(5). It's very much appreciated.

I can only echo what Mr. Gratton said. Our process did not cover aboriginal payments and so that is something new to this movement. We were very supportive of the two-year delay and of further consultation. I would reiterate that this consultative process will be incredibly important moving forward.

That said, I think that the anti-corruption benefits of this legislation will extend to communities, and I don't think we can exclude Canada from that. I'm not implying there are wide swaths of corruption, but we have, over the last year, witnessed significant incidents of municipal-level corruption, for example, in Canada. I think we do need to keep in mind that this type of accountability and transparency can have positive impacts on the ground wherever there are communities that are looking to increase the benefits they receive from the resources in their region. That's the only comment I would make.

● (1200)

The Chair: Thank you.

Go ahead, please, sir.

Mr. Andrew Bauer-Gador: I would support what's just been said, both from the Mining Association and Publish What You Pay Canada.

The issue I wanted to raise, using this opportunity, was on something that CAPP mentioned earlier. First, we're obviously quite pleased to hear that CAPP would like to align with the U.K. The rules there are fairly strong, but I did want to raise this issue of confidentiality and exemptions.

It's a bit of a red-herring issue. Quite simply, the information that we're requesting, or that this legislation will make available, is not the stuff of trade secrets. There are things that are found in contracts or in legislation that are trade secrets—geological information, sometimes information about future deals—but payments information isn't. There's not a single example that any companies in the United States or in Europe have come up with to show that a foreign jurisdiction does not allow this type of information to be made public.

Two examples were brought up—China and Angola—in various submissions, say, to the SEC and elsewhere. Petrobras in Brazil provides payments information in both those countries.

The Chair: Actually, I'm sorry, the time is up for the answer so we'll have to leave it at that.

We'll go to the five-minute round now, starting with Mr. Trost, then going to Ms. Block, and then Mr. Gravelle and Mr. Leef.

Go ahead, please, Mr. Trost, up to five minutes.

Mr. Brad Trost (Saskatoon—Humboldt, CPC): Mr. Chair, since my line of questioning was going to be fairly similar to that, I guess I'll start with CAPP and basically ask what is your response to that? The argument from another witness was that your arguments about confidentiality were a red herring. Give a response, give an example, something concrete whereby the members on the committee can say, okay, this makes sense, the other gentleman was well-intentioned, but here's something he didn't understand. What would be your response?

Mr. Alex Ferguson: We've made it pretty clear in our consultation with government that this is a rare occurrence, and what we've suggested is that when it does occur and we could rationalize that, to come with the right evidence and proof of that, then there should be an avenue for us to have that discussion.

We have not asked for a blanket exemption. In fact, we've suggested to the federal government, in our somewhat more limited engagements than others have had, that what's important for us is to ensure you have a piece of legislation that is not relying on exemptions to work to its effect. If you do that, then there is obviously a problem. But we do look at our sector being fairly more complex than the mining sector, certainly domestically in particular.

Mr. Brad Trost: So to a certain degree, you're asking for this adjusting case on a very rare circumstance. Is that what I'm getting?

Mr. Alex Ferguson: It would have to be justified, and rationalized, and proved, yes, no question about it.

Mr. Brad Trost: Then let me ask this question following up.

In the legislation there's built in ministerial exemption, and the reason for the ministerial exemption would be a very rare circumstance. This seems to be ideal, built for what you're looking for. Would that be sufficient, what we have already in the legislation for the situations you're looking for—the ministerial opt-out clause, his judgment—because let's face it, the minister still has to justify whatever he does in the court of public opinion? Is it sufficient, the ministerial exemption?

Mr. Alex Ferguson: Yes, we would think so at this point, given that ministers' orders are somewhat transparent, or we expect them to be transparent themselves. If there's a rationalization for a minister ordering or allowing a variance in one of the provisions, then that would be a way out for everybody. So the answer is yes.

Mr. Brad Trost: Okay.

Then I'll throw the follow-up to the NGOs, because we're going a little bit back and forth on this one.

You've basically said under no circumstance whatsoever, ever—blanket—should there be flexibility. It should be in the legislation, and the minister who is, as I said, going to be publicly pressured by groups like yourself if he gives an exemption, shouldn't have this flexibility.

Can you see no circumstance where there might be an exemption, a legal conflict between two countries, etc.?

● (1205)

The Chair: Mr. Bauer-Gador, go ahead.

Mr. Andrew Bauer-Gador: The EU and the SEC in the U.S. looked at this issue carefully. The EU included very clear language —and I'll just read it out because it's here— to “not provide for any exemptions in cases of alleged disclosure prohibitions in foreign law or on confidentiality or commercial sensitivity grounds”. They've been unequivocal. The SEC didn't mention this either. They didn't allow exemptions in their first rule-making process.

The danger—

Mr. Brad Trost: But you can understand why I just wouldn't accept other countries' legislation. I mean we'll look at—

Mr. Andrew Bauer-Gador: No, of course. I'm bringing those up as examples.

In the Canadian context, the danger of including a process for granting exemptions is that you create an incentive for foreign jurisdictions to pass secrecy laws. In the literature, this is called the “tyrant's veto”. What we want to do is make sure that transparency transcends any of those laws and is enforced even in the toughest places. That's where this law would work the best: not in places that are already transparent, but places that need more transparency.

Mr. Brad Trost: Okay.

Go ahead, Ms. Woodside.

Ms. Claire Woodside: Can I just add one thing?

In most contract negotiations—for example, in the oil and gas sector—there is a clause that allows companies to fulfill their home-state laws. They're allowed to furnish information in accordance with home-state laws. In Canada we wouldn't want to encourage companies to modify that clause in any way to not allow them to furnish information in accordance with their home-state laws. When we've looked at hundreds and hundreds of publicly available contracts, we consistently see that clause in every contract, regardless of jurisdiction, including Angola and China, for example.

I think that's also very important. It's just keeping best practice in industry, which is to allow that home-state disclosure.

The Chair: Thank you, Mr. Trost.

We go now to the parliamentary secretary to the Minister of Natural Resources, Ms. Block, for up to five minutes.

Mrs. Kelly Block: Thank you very much, Mr. Chair.

I join the rest of my colleagues in welcoming you all here today. It would appear that we are actually zeroing in on the issues that you are raising with us and how we reconcile the concerns of civil society and industry.

It would appear that, quite honestly, this legislation should be seen as perhaps finding a middle ground between the concerns that your groups are raising and those that industry is raising. My question really does follow on the questioning of many of my colleagues who have already been able to ask their questions around ministerial discretion.

In this act, there are no exemptions granted at this point in time. The issue is that there may be exemptions granted in the future. You read for us what was in the EU's legislation. It would appear to me that it has been prescriptive where exceptions may not be made, but it hasn't actually prescribed where exemptions may be made. My argument to you may be that they've actually left the door open to make exemptions down the road.

What I do want to ask you to comment on is that ability to make exemptions and the ability to respond to changes in other countries' legislation, the ability to respond quickly, and how regulations might fit into the discussion we're having today.

The Chair: Go ahead, Mr. Bauer-Gador.

Mr. Andrew Bauer-Gador: Forgive me, I didn't read the entire EU language, because I didn't want to take up too much of your time.

But the transparency directive does evoke a principle of universality with regard to reporting payments, which states that:

> no exemptions, for instance for issuers active in certain countries, should be made which have a distortive impact and allow issuers to exploit lax transparency requirements.

There is clear language eliminating exemptions.

With regard to your second point about regulations, you're right that this legislation doesn't open up exemptions, it opens up the possibility of exemptions. We're calling for that possibility to be closed off.

● (1210)

Mrs. Kelly Block: Does anybody else want to answer that question around the role that regulations will play in the conversation that we're having?

The Chair: From CAPP I see a willingness to respond.

Alex.

Mr. Alex Ferguson: I agree and I think we're both saying the same thing. I think we're aligned on the principle of what we're trying to achieve here. I don't think this is a rationalization. I think we're talking more about the mechanics of getting there the most efficient, effective way possible, which is a pretty important piece for any piece of legislation.

If we see very limited, rare occurrences of exemptions, if we turn our minds to that we can probably limit the need for exemptions. Perhaps if we had more clarity on other aspects of the legislation in how it applies to us domestically, that is a primary concern for our sector here in Canada.

Most of our companies that are listed in Canada operate in Canada. Very few of our members—and we represent the majority of Canadian production, as you can imagine—operate internationally. It's more the international companies that interact and invest in Canada.

We're happy with the substitutability, the equivalency. Our companies operate in those other jurisdictions, subject to the EU and Dodd–Frank provisions, and the Foreign Corrupt Practices Act provisions in the U.S.

We're primarily concerned with the efficiency and the effectiveness of this domestically.

Canada has a really good reputation. Yes, issues always come up. I would suggest that any issues we have in corruption in Canada—and we're recognized worldwide as a pretty stable jurisdiction in that space—are due more to where money has gone as opposed to where money came from. I think there are provisions and rules and laws in Canada to address those municipalities or those other places where bad practices may be going on.

At this point we're concerned about the exuberance of taking a fairly big.... which I think we all agree on, and and without understanding the details, being able to fully support all the provisions that are here, without some flexibility.

The Chair: Thank you.

Thank you, Ms. Block.

We go now to Monsieur Gravelle for up to five minutes.

Mr. Claude Gravelle (Nickel Belt, NDP): Thank you, Mr. Chair.

It certainly is my pleasure to be here today around the table with my colleagues, although it's only temporary. I'm especially pleased to be here with my colleagues from the mining community.

I want to emphasize that Ms. Charlton; our leader, Tom Mulcair; and I met with some of your board members on Tuesday. Your board members recognized that we support mining as long as it's done in the right way, and I think that's what we're trying to do here today. We recognize your contributions, which are good jobs, taxes, the contribution to the GDP, and of course the employment of many aboriginal people, which is very important.

I'm going to direct my questions to the Mining Association for now. I'd like to know the target of this legislation, and why you think the penalties need to be increased?

Mr. Pierre Gratton: I think Ben made the comment at the very beginning of his opening remarks that we have to remember who the target is here. This is not going after companies, per se. The target here is to try to fight corruption within governments, particularly in some countries around the world. We recognize that the penalties provision in here has a role to play, because if companies don't participate, it won't work. You need to ensure compliance with this act. But the way it's currently drafted, with the daily compounding penalty, we find that it's disproportionate to the nature of the offence. It's kind of sending the signal that we're the culprits here, when actually we're the solution. The culprits we're trying to get at are the governments that aren't transparently disclosing what they're doing with the funds that they receive from industry.

I would note, too, that the Canadian Association of Petroleum Producers had a different way; I think their first recommendation addresses in a different way the same issue that we're raising in our first recommendation around penalties. I think there's a commonly shared concern around the way this particular aspect of the legislation has been addressed.

● (1215)

Mr. Claude Gravelle: Okay.

The government is using the criminal law power to support this legislation. What difference does this make in comparison with what the provincial securities legislation would put in place? Is there a difference here?

Mr. Ben Chalmers: The big difference, I think, is that securities regulation has a long and established track record of dealing with financial disclosures. The regimes are well understood by companies. The accuracy issues, which we spoke to as part of our recommendations, are well managed in terms of the level of disclosure versus the due diligence that companies must conduct to make sure they're accurate. And the enforcement schemes are there. A number of steps can be taken for corrective action.

The consequences in securities are very significant. They could eventually result in the delisting of a company. There's a very powerful stick there, or enforcement mechanism; it's just that these are tools that are well equipped to deal with this specific type of disclosure.

Mr. Pierre Gratton: I would just add that it's the materiality question, which I think CAPP also raised. In securities law, it does take into account the materiality. If in your disclosure you're off by a dollar, through securities legislation, it's kind of irrelevant. You can correct it later. But under this particular legislation, because it's the criminal law power and there isn't a recognition of materiality, you can be off by a dollar and actually be in violation of the act.

That's why our amendments are trying to get at that issue, just so that it's properly balanced.

Mr. Ben Chalmers: I would just add that the daily compounding is actually a disincentive to correcting errors when they're found. I mean, if a company detects an error, let's say several months after issuing the report, if they go and correct it then they've given evidence to support that they're offside and there's an offence there.

That's one of the reasons why we think the daily compounding should be taken out and replaced with a higher one-time fine.

Mr. Claude Gravelle: Okay.

Why is this equivalency important to the industry?

Mr. Ben Chalmers: The equivalency provision is absolutely critical. As I had started to articulate earlier to Ms. Duncan's question, this data is most useful when it is reported consistently. We have many companies that report in multiple jurisdictions. We have companies that are listed in the U.S. that would ultimately be required to report under the Dodd-Frank requirements, and we have companies that are listed in Europe. If they have to report in Canada and also in Europe, there's a reporting burden that's doubled, especially if the rules are not quite aligned. If the definition of "payees", for example, is a little different, or the payment categories are a little different, or the project definition is a little different, then all of a sudden you have to prepare two separate reports with potentially different numbers.

There's an added burden to companies and also there is the possibility of inconsistent numbers that render the data much less useful.

The Chair: Thank you very much.

Thank you, Mr. Gravelle.

We have two more questioners: first Mr. Leef, and then Ms. Charlton.

Mr. Leef, go ahead, please, for up to five minutes.

Mr. Ryan Leef (Yukon, CPC): Thank you, Mr. Chair.

Thank you to all our witnesses.

I want to get a point of clarification on the continuing harm aspect of it. If I understand right, the strict liability application is certainly applied to the non-reporting, or the steps to mislead. Does it apply as well to the section on error in reporting?

Mr. Ben Chalmers: We've been advised that it does.

Mr. Ryan Leef: Okay.

Obviously your testimony today is greatly appreciated, but I would suspect, given that you said you've been highly involved in working with this legislation and working with the government on this, that this isn't the first time you've raised this particular aspect. I'm just curious; while I can appreciate what you're saying, without sort of going back and asking some more questions to understand any unintended consequences or the rationale behind this, have you heard any rationale for the continuing harm section and the consecutive offence option, versus the higher penalties that you're proposing? Have you heard any feedback on that?

● (1220)

Mr. Pierre Gratton: I would just note that this particular aspect wasn't addressed in our work with Publish What You Pay and Andrew's group; I keep forgetting the name since they changed it.

We are actually new to this issue. It's really been only since the legislation was tabled that we have identified this as a problem for us. It is pretty new.

And what was the second part of your question?

Mr. Ryan Leef: It was effectively that: had you raised the issue before, and if you had, what was the response?

Mr. Pierre Gratton: I'll be honest, I don't think the response has been all that.... It's just an alternative way they chose to address it. We've been having ongoing discussions with Natural Resources Canada on this particular aspect just in the last week.

Mr. Ryan Leef: Okay. So effectively, this submission is a fairly new discussion piece for the committee.

Mr. Pierre Gratton: Yes. That's right.

Mr. Ryan Leef: Thank you. I just wanted to get a sense of that.

I'll put this question to everybody. Do we know the order of magnitude of this legislation in terms of how many payments are made by these sectors over $100,000? I can appreciate that we're not going to have an exact figure, but what's the scale of this? What's the order of magnitude?

Mr. Pierre Gratton: It will depend on the company, but a large operating mine will have lots and lots of payments. It's not just royalties. It depends on the country, too, because there could be all sorts of fees. There could be port fees that are very high, there could be various types of infrastructure payments, there could be payments at state level and national levels of government, and various forms of taxes. For a large operation, $100,000 is not a lot of money. There could be multiple payments.

I could let CAPP speak to the oil and gas part. My suspicion is that it's larger, but I could let them answer that part.

Mr. Alex Ferguson: Just quickly, it's definitely the same concern we have, but more so domestically in terms of what constitutes that $100,000 threshold. Is it a series of continual payments up to that threshold; over what time period; for what aspects? The definition of a project becomes a little complex for us on that given the nature of the different resource plays that we have here in Canada.

Depending on how you define a project, the $100,000 could capture literally hundreds and thousands of payments within a reporting year.

Mr. Ryan Leef: Thank you.

The Chair: Ms. Woodside.

Ms. Claire Woodside: I just want to say that if Canadian legislation is to align with international standards, then it would include a series of related payments or a single payment. If a company makes a monthly payment and it is $10,000, but over the course of a year it accumulates to over $100,000—so it's $120,000—they would need to report that payment, because it is a series of related payments.

We would expect the Canadian legislation, once it has been fully formed, and the administrative processes to include single payments or a series of related payments. That's what would be consistent with the global standard.

Mr. Ryan Leef: My understanding is that it will be broken down in that manner. As mentioned by I think everybody here, Canada has an excellent global reputation. I think the development of this legislation is effectively to be a key partner in transparency.

I guess I'm wondering—

The Chair: Sorry, Mr. Leef, your time is up. You can wonder, but you'll have to do it in silence to yourself.

Voices: Oh, oh!

The Chair: But thank you so much.

Mr. Ryan Leef: You only gave me two and a half minutes last time. I thought you'd give me more today. No?

The Chair: Thank you so much. I'm not a nice guy.

Ms. Charlton, go ahead, please. You have up to five minutes.

Ms. Chris Charlton: Thank you very much, Mr. Chair.

That was a very nice way of telling Mr. Leef to use his inside voice for the remainder of his questions.

First of all, let me thank all of you for the incredible work you've done to get us to this point. I know it's not always easy when industry and civil society groups come together and work toward a consensus. I think you've done incredible work to get to this point.

My other observation is that, if you've put all this work into it and you've arrived at a consensus, it's a bit disappointing that we don't see that consensus fully reflected in the legislation. That's not a fair question to put to you. It's a question we should have put to the government representatives in the brief opportunity we had to speak with them about why that consensus isn't accurately reflected here.

By way of observation, I'm also deeply disappointed that we find a section in this bill relating to first nations when they've been very clear. I've got a letter in front of me from the Chiefs of Ontario who are saying that the Government of Canada has never consulted and accommodated first nations on the mandatory reporting initiative, which is a position that's been echoed by others including the Canadian Bar Association. I find it—I don't know what the right word is that doesn't get me in trouble with the chair—profoundly troubling that clause 29 is in this bill without such consultation. I think, in fact, that clause ought to be deleted in its entirety. If such consultation were to take place down the road and a consensus were achieved, then the bill could always be amended down the road.

Let me ask you this. If that clause were to come out of the bill, I assume it would make absolutely no difference to the objectives that you're trying to achieve, if we exempted the applicability to first nations in Canada.

● (1225)

The Chair: Mr. Gratton, go ahead, please.

Mr. Pierre Gratton: I'll make two comments.

One is to respond to your opening comment, and Claire might add to this. It would be fair to say that we are almost there. This is Canada on the cusp of demonstrating incredible global leadership. This legislation goes a long way and is largely faithful with the recommendation. I don't want people to think that Canada has dropped the ball here. However, there certainly are some additional amendments that would truly distinguish Canada. That's why we're here today, to put those forward, because it does fall short in some key areas. I see it as an opportunity, so I implore all of you to seize that opportunity by considering our proposals.

On the issue of aboriginal payments, I spoke to it earlier. Generally speaking, it's not critical and it has never been critical to our work. We think that ultimately transparency is valuable in all respects. I would say that it would be a good thing to ultimately get there, particularly as aboriginal governments become more and more autonomous and empowered. But, it's how we get there that's important. It has to involve very comprehensive outreach and consultation with them. In the end I think it will make a lot of sense to actually do this, but we have to get there in the right way.

Ms. Claire Woodside: I think we can echo what Pierre said.

As a transparency organization, I will never dispel the benefits of transparency to anybody. I do think there are very broad benefits. That said, we've been very supportive and concerned around the consultation issues and supportive of the delay, and in contact with groups like the Chiefs of Ontario to discuss their concerns. I think there does need to be a concerted effort to not only develop a consultative process that meets the needs of first nations but then to fulfill that over the next few years.

Ms. Chris Charlton: Thank you.

I certainly appreciate that this is something you've been working on for a very long time. I didn't at all mean to suggest that this bill wasn't a step in the right direction. I do think that it's in committee for a reason. We ought to have an opportunity to improve the bill. I think you've made some very concrete suggestions, particularly around looking at things on a project-by-project basis and disaggregating data for it actually to be meaningful. I think we ought to take that recommendation to heart. I'm hoping that it was heard on all sides of this committee room.

We haven't spent very much time talking about the requirement to make information public. It's actually a big concern of mine. I think it always matters how we make information public and therefore to whom that information is accessible. Not everybody has access to fast Internet. Might any of you want to speak a bit more about that?

The Chair: Very, very briefly, one of you.

Ms. Woodside.

Ms. Claire Woodside: Public information is at the heart of this bill. Without it you don't have a purpose of the act, because if citizens or other end users cannot access the information then the information cannot be used to deter corruption. Because it's so central to the bill we would say that it should be the clearest commitment in the act that the data will be made public. We have never heard from companies that they want to keep this data secret.

● (1230)

Ms. Chris Charlton: But there is always how you make something accessible—

The Chair: I'm sorry, Ms. Charlton, time is more than up. Thank you.

Before I thank the witnesses and before we go in camera for our discussions on the letter to the chair of the finance committee I just want to ask the committee a question. We have students from McGill University involved in the program Women in House, which gives them a chance to shadow female MPs in the House of Commons. There are 37 students involved in this with MPs from all parties. We have three here today and I want to ask whether the committee would allow them to stay for the in camera session. We would need unanimous consent, as it's not the normal practice. Is there consent?

An hon member: Yes, if there's confidentiality.

The Chair: Obviously the students have to respect the confidentiality, absolutely, and I don't see a problem with that. Is it agreed?

Some hon. members: Yes.

The Chair: It is agreed so they will stay. Thank you very much.

Thank you to all the witnesses: from the Mining Association, Ben Chalmers and Pierre Gratton; from Publish What You Pay, Claire Woodside, director; from the Natural Resource Governance Institute, Andrew Bauer-Gador, economic analyst; from Oxfam, Lina Holguin, policy director; and by video conference from CAPP, the Canadian Association of Petroleum Producers, Ben Brunnen, manager fiscal and economic policy, and Alex Ferguson, vice-president policy and performance.

Thank you all very much for some very useful information today. I thank the members for their questions. We will suspend and go in camera in about two minutes. So if the witnesses and anyone else who isn't allowed to be in an in camera meeting would leave the room we'll get right into the in camera portion.

The meeting is suspended.

[*Proceedings continue in camera*]