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Chair

The Honourable Wayne Easter

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● (1535)

[*English*]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): We'll call the meeting to order on the subject matter of the budget implementation act 2018, Bill C-86.

We jumped ahead and did division 4, because we thought it might take longer.

With us to deal with part 4, division 3, financial sector renewal, we have Mr. Dussault, Senior Director; Mr. Paradis-Béland, Senior Economist; and Mr. Fournier, Legislative Policy.

Welcome Mr. Dussault.

[*Translation*]

Mr. Manuel Dussault (Senior Director, Framework Policy, Financial Sector Policy Branch, Department of Finance): Thank you, Mr. Chair.

Our presentation will be on sub-division A of division 3 of part 4, which proposes four amendments to financial institutions legislation. The first two amendments are substantive but targeted, and the last two are corrections.

[*English*]

The first set of amendments, clause 130 to 134, would reduce unnecessary administrative burden for the Office of the Superintendent of Financial Institutions, and for financial institutions.

Superintendent approval is required for substantial investment in entities that engage in financial intermediation activities that expose them to market or credit risk, for example, a non-regulated lender. In practice, because OSFI's supervisory framework focuses on material risk, superintendent approval is granted as a matter of course when investments are relatively small.

The proposed amendments would exempt financial institutions from seeking superintendent approval when the value of a proposed investment relative to the value of the acquiring institution is below a materiality threshold, reflecting superintendent practice.

For large financial institutions, the threshold would be 1% for the acquisition of control and 0.5% for non-controlling substantial investments. Corresponding thresholds for small and mid-sized institutions would be twice as large. The objective of the lower threshold for large financial institutions is to ensure that sizeable investments made by large institutions remain subject to prudential approval by the superintendent.

The second set of amendments, clause 135 to 151, would allow financial institutions to indefinitely hold a substantial investment in the Canadian Business Growth Fund. The fund was established by Canada's largest financial institutions following a recommendation of the advisory council on economic growth.

The fund will make long-term, patient, minority investments in small and medium enterprises that have an established customer base and a compelling growth potential. The financial institutions statute generally prohibits financial institutions from acquiring substantial investment in commercial non-financial entities. The amendments would create an exception for this general prohibition.

The amendments would include a number or restrictions to ensure that this new flexibility is circumscribed.

First, to avoid crowding out capital from other sources, the amount of capital that each financial institution is authorized to invest will be limited to $200 million.

Second, to be consistent with existing venture capital rules and to maintain the commercial financial distinction, financial institutions will not be allowed to invest through the fund in regulated financial institutions and in entities that are primarily engaged in leasing or that are acting as insurance brokers or agents.

Finally, third, to ensure the fund remains focused on small and medium enterprises, the total exposure to a single business will be limited to $100 million. These restrictions are consistent with the fund's business plan.

The third set of proposed amendments, clause 152 to 154, would align the legislation with the policy intent of enabling financial institutions to provide information to customers or shareholders electronically. These amendments would make it explicit that consent can be provided electronically.

[*Translation*]

In conclusion, the purpose of the fourth amendment, which concerns clauses 155 and 156, is to correct an erroneous reference in the English version of the previous Budget Implementation Act from last fall.

Thank you. We will be happy to answer your questions or to provide further details on these proposals.

[*English*]

The Chair: Okay. Does anyone have questions?

Go ahead, Mr. Sorbara.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Mr. Dussault, for your definition of financial institutions, are you strictly talking about schedule I banks?

Mr. Manuel Dussault: We're talking about the financial institutions as Canadian regulated financial institutions.

Mr. Francesco Sorbara: Thank you.

The Chair: Are there any other questions?

With regard to the consent on electronic signatures, are there any security issues around that? Given cybersecurity and all of the issues surrounding Internet electronic signatures, etc., have any concerns been raised regarding security around the points you mentioned under point three, in terms of electronic consent?

Mr. Manuel Dussault: This is really a clarification of the statute. The regulations already allow customers and shareholders to consent electronically, so we're clarifying the legislation to allow this.

I think we've looked at this. Banks have strong models of security. There's really nothing new here in these provisions.

The Chair: Okay.

Mr. Julian.

Mr. Peter Julian (New Westminster—Burnaby, NDP): Thank you, Mr. Chair.

It says in here, "any notice related to that consent may be provided in electronic form". What is the definition? Is it strictly related to email? What is the framework for the regulation around the electronic form?

Mr. Manuel Dussault: They have to agree on the form. The customer and the shareholder have to agree to the form of electronic consent. It could be through email, or it could be through other means, if they agree to the other means.

Mr. Peter Julian: It could be text messages as well?

Mr. Manuel Dussault: Yes.

● (1540)

The Chair: With that, we'll bring up the second grouping under this part 4, division 3, if we could.

Thank you very much, gentlemen.

For amendments in subdivision B, under part 4, division 3, we have Mr. Rob Sample, who is the Director General, Capital Markets Division; Justin Brown, who is the Director, Financial Stability, Capital Markets; and Ms. Bourdeau, Senior Adviser, Capital Markets. Welcome.

The floor is yours. Go ahead, Justin.

Mr. Justin Brown (Director, Financial Stability, Financial Sector Policy Branch, Department of Finance): Thank you.

We're here for part 4, division 3, subdivisions B and C. Perhaps I'll start with subdivision B, give an overview of each type of amendment, and then pause for questions.

All of subdivision B relates to amendments to the Canada Deposit Insurance Corporation Act, or CDIC Act. There are three different types of amendments and they're covered under clauses 157 to 166. The first type of amendment relates to technical amendments, the second relates to set-off; and the third relates to CDIC's borrowing authority.

The government is proposing technical amendments to the CDIC Act to clarify ambiguous language and to ensure that the statute remains clear and reflects its underlying policy intent. There are a few different amendments under this section.

Clause 163 would clarify the provision of the calculation of insured deposits by limiting it to a calculation methodology approved for use for that premium year.

Clauses 157, 162 and 164 would repeal outdated references to the deposit insurance fund and accumulated net earnings, as these references reflect outdated accounting practices.

Clauses 165 and 166 would repeal amendments not in force relating to the minimum annual premium payable by CDIC member institutions.

Finally, clauses 159 to 160 would clarify rules for extended deposit insurance coverage following the amalgamation of two or more CDIC members, or the establishment of a federal credit union.

Also under subdivision B are changes related to set-off, and that would be clause number 161. The proposed amendments to the CDIC Act seek to specify that the liquidator of a CDIC member institution may not apply the law of set-off or compensation to a claim related to insured deposits. This amendment would protect the CDIC by ensuring that it can claim the full payment of insured deposits made to depositors.

Last, under subdivision B, in clause 158, the proposed amendment to the CDIC Act seeks to exempt borrowing by the CDIC under section 60.2 of the Financial Administration Act in the calculation of its borrowing limit. This amendment would support the government's ability to loan money to the CDIC in a timely manner to promote financial stability and efficiency.

The Chair: Thank you.

Turning to committee members, we have Mr. Fragiskatos.

Mr. Peter Fragiskatos (London North Centre, Lib.): Thank you, Mr. Chair.

I have a question on the clarification of ambiguous language with respect to the CDIC Act. For example, what was the problem before and what's the remedy now?

Ms. Yuki Bourdeau (Senior Advisor, Capital Markets Division, Financial Sector Policy Branch, Department of Finance): For example, one of the amendments is to clarify that a CDIC member institution, when it's calculating its premiums for that year, has to use a calculation methodology that's approved by CDIC.

Previously the legislation said any calculation methodology approved by CDIC. Now we're clarifying that language so that it's any CDIC-approved calculation methodology for that premium year. One that was previously approved is no longer approved for that year, so they're not allowed to use that.

Mr. Peter Fragiskatos: Thank you.

The Chair: Mr. Julian.

Mr. Peter Julian: Could you run through the practical impacts of clause 160, proposed subsection 13(1), where the deposits with amalgamating institutions are deemed as separate for a period of two years or, in the case of a term deposit, until the maturity of the term deposit?

With regard to those two separate deposits, how does that have an impact in terms of the limits around the insurance for the CDIC?

● (1545)

Ms. Yuki Bourdeau: The intention here was never to have deposit insurance at a higher level in perpetuity. What this is clarifying is with regard to when two institutions amalgamate. Let's say, for example, you have $100,000 in institution A and you have $100,000 in institution B. You would have $200,000 of deposit insurance coverage once those two institutions amalgamated into institution C.

This is to clarify that it is not forever. It's not in perpetuity. It's only for up to two years following the amalgamation of those two institutions.

Mr. Peter Julian: Then what happens, in terms of the insurance?

Ms. Yuki Bourdeau: Then it would return to the normal rules of the deposit insurance framework. You would have $100,000 for institution C, one member institution.

Mr. Peter Julian: Thank you.

The Chair: Does anyone else want in on this area?

On the calculation of the CDIC borrowing limit, under the Financial Administration Act, can you tell me the process there? How do you determine that limit? What is the process?

Mr. Justin Brown: The limit is specified under the CDIC Act. It's currently around $23 billion. It is indexed to the growth of insured deposits, so it does increase over time.

Then, there's the Financial Administration Act, which has separate powers related to the minister's ability, for example, to lend money where he considers it necessary to promote financial stability or to maintain the efficiency of the financial system.

Currently the minister could lend money under those existing powers to CDIC. However, that money would count towards CDIC's borrowing limit. There may be circumstances where, with sums of money going from the minister to CDIC, the government may not want that money to go towards CDIC's limit, or there may be large amounts of funds.

CDIC's mandate includes paying out deposit insurance and also being the resolution authority for its members. It can use its powers and its money to fulfill those functions. This would allow more flexible, more timely, money to flow from the government to the CDIC if the minister and the Governor in Council deem it appropriate.

The Chair: With the minister's authority, can they go over their limit?

Mr. Justin Brown: Currently, any money lent by the government to the CDIC under section 60.2 of the FAA would count towards CDIC's borrowing limit as specified under the law. The change proposes that any money that goes through section 60.2 of the FAA to the CDIC does not count towards its borrowing limit.

The Chair: In laymen's terms, say they're at their limit and the minister uses other means to say another amount of money, in effect, they could go over their limit with the minister's authority.

Mr. Justin Brown: Put in other words, yes. The legal language is more that the money does not count towards that limit. If their limit is $23 billion and they have already borrowed $23 billion, and the minister would like to lend money to CDIC in addition to that $23 billion, this would allow the government to do so.

The Chair: Can you give me an example of why the minister would want to do that? We have these limits in place for a reason. Why would we want to go over them?

Mr. Justin Brown: Section 60.2 of the FAA is considering extraordinary measures. The financial sector's framework as a whole —including CDIC's powers, but also looking at the Bank of Canada and the Office of the Superintendent of Financial Institutions—is sufficient for the normal course of business. Section 60.2 is deemed for extraordinary use, where the minister deems it necessary to promote financial stability or to maintain market efficiency.

An example of that would be an unlikely event where there is a large Canadian bank that would be failing. Paying out deposits on a large Canadian bank would likely exceed CDIC's borrowing limit. The funds needed to help provide some sort of liquidity assistance to that bank to help make sure it does not fail may surpass CDIC's current borrowing limit. The minister may determine that it's in the better interest of the efficiency of the Canadian financial system, or for financial stability, to lend CDIC that additional money.

● (1550)

The Chair: I have one last question.

I can understand the reasoning behind that, but are there any checks or balances on the minister in terms of wanting to do so? Does he or she have to go to Parliament, or what?

Mr. Justin Brown: In the current framework, it has to meet the parameters of promoting financial stability or maintaining efficiency. In terms of process, it has to go to the Governor in Council.

The Chair: Are there any further questions here?

Thank you to all three.

Oh yes, you do have another section. I'm trying to get rid of you in a hurry.

Go ahead.

Mr. Justin Brown: We are also here for part 4, division 3, subdivision C. This relates to legally privileged information provided to the Office of the Superintendent of Financial Institutions, OSFI.

Mr. Peter Julian: Because of the way the material is organized.... Is that different from the bill?

Would you please mention the clauses right up front so we can refer to the right part of the bill?

Mr. Justin Brown: Yes, pardon me. I missed it for this one. It's clauses 167 to 173.

It's amendments to different financial sector statutes. They would clarify that where a financial institution provides privileged information to OSFI, it does not waive any privilege with respect to this information. These amendments would support continued access to financial institution information to OSFI, which is important for OSFI to be able to fulfill its supervisory mandate.

The Chair: People have the notes in front of them, I assume.

Are there any questions?

Hearing none, I thank you very much.

We're calling up part 4, division 10. We're going out of order here at the request of officials, so we'll go to part 4, division 10, financial consumer protection framework. The witnesses will give us the clauses we need to look for in the bill.

Ms. Ryan is director general, financial institutions division, financial sector policy branch. Mr. Girard is the Director, Consumer Affairs, Financial Institutions Division. Mr. Saeedi is the Economist, Consumer Affairs, Financial Institutions Division. Ms. Goulard is the Deputy Commissioner, Financial Consumer Agency of Canada.

Welcome, all. The floor is yours.

Ms. Eleanor Ryan (Director General, Financial Institutions Division, Financial Sector Policy Branch, Department of Finance): Thank you, Mr. Chair.

My name is Eleanor Ryan. I'm here with my colleagues from the Department of Finance and with Brigitte Goulard, Deputy Commissioner of the Financial Consumer Agency of Canada. We're honoured to have the opportunity to present this legislation to you.

[*Translation*]

Division 10 of Part 4 of Bill C-86, entitled “Financial Consumer Protection Framework”, follows upon the government's commitment made in Budget 2018 to continue to advance consumers' rights and interests when they deal with their bank, and to strengthen the tools at the disposal of the Financial Consumer Agency of Canada.

● (1555)

[*English*]

Division 10 represents a consolidation of the existing legislation and regulatory provisions applying to the relationship between banks and their customers, and new measures intended to address the issues identified in two reports published by the Financial Consumer Agency of Canada in the spring of 2018.

The first report was a comprehensive review of bank sale practices. This report identified a number of risks relating to how bank products are sold to customers. The second report examined best practices for supervision of financial consumer protection.

The Chair: Ms. Ryan, I don't want to interrupt you, but I see some members shuffling paper. Could you give us the clauses that this relates to in the bill? We have a little difficulty, in that we're dealing with the bill that we have.

[*Translation*]

Ms. Eleanor Ryan: Yes. It starts at clause 315.

[*English*]

and it finishes with clause 351, so clauses 315 to 351.

The Chair: Thank you.

Go ahead.

Sorry to have interrupted you.

Ms. Eleanor Ryan: No, I very much appreciate that.

Thank you.

[*Translation*]

Before discussing specific points in division 10, I want to point out that the bill does not explicitly affirm an exclusive federal jurisdiction over bank clients.

The proposed bill does not affect the provinces' capacity to enact regulations to protect consumers, and does not replace the existing rights consumers have under provincial legislation.

[*English*]

In addition to relying on the evidence collected in the two FCAC reports, the Department of Finance consulted extensively on the policy proposals that are reflected in the bill before you. We engaged 100 representatives from the provinces and territories, consumer groups, banks and external complaint bodies. Overall, the proposals were viewed as significantly improving protection for bank consumers.

The proposed amendments to the Bank Act and the Financial Consumer Agency of Canada focus around three themes: to require banks to have new internal bank practices to further strengthen outcomes for consumers; to provide the Financial Consumer Agency of Canada with additional tools to implement supervisory best practices; and to further empower and protect consumers.

If I may, I would like to just go through and explain how each of these themes are reflected in division 10.

First, division 10, as I said, indicates that there are new modifications required for internal bank practices. Perhaps I could start with clause 317. This new measure would require a bank to designate a committee of its board of directors to oversee the bank's obligations to its customers. The committee would report annually to the commissioner of the FCAC on what the committee did in performing its duties. This measure is intended to ensure that the most senior management of the bank assumes responsibility for the protection of consumers in their customers' dealings with the bank.

Another measure is to be found in proposed section 627.06, and there are two related provisions that I will highlight: proposed sections 627.07 and 627.02. These new measures together would require banks to have policies and procedures to ensure that the products and services offered to a person are appropriate, having regard to the person's circumstances and financial needs. In addition, banks would be required to ensure that remuneration practices, including benefits, do not interfere with the ability of employees or agents to comply with the suitability procedures. As well, employees of the bank would need to be trained on the institution's procedures for complying with the consumer provisions. Taken together, these measures are intended to ensure that consumers receive the products and services that are right for them.

I would like to highlight another group of proposed sections: proposed sections 979.1 to 979.4. These measures, taken together, would require banks to establish a whistle-blowing program. The legislation would also protect employees from reprisal by their employers, whether they report on information on suspected wrongdoings through the bank's internal whistle-blowing program or report this information to an appropriate authority. Effective whistle-blowing programs can help to foster transparency, promote integrity and detect misconduct that would otherwise have gone unnoticed.

● (1600)

On the second theme, new tools for the Financial Consumer Agency of Canada, the legislation also, as indicated earlier, provides new tools so as to better align the agency with supervision best practices and promote compliance with the consumer protection framework.

I would highlight the change proposed by section 661.1. In this provision, the commissioner would have the power to direct a bank to take actions to remediate non-compliance by a bank with their legal obligations towards their customer under the consumer protection framework. There is a complementary provision in proposed section 627.997 and this power would extend to ordering restitution to consumers where a bank has collected charges improperly.

A second set of amendments are around subsection 19(1) of the Financial Consumer Agency Act of Canada. That is in clause 344. These proposed amendments to the Financial Consumer Agency of Canada Act would increase from $500,000 to $10 million per violation the maximum penalty that can be imposed on banks that are found by the commissioner to have breached their legal obligation under the framework.

There is a further complementary provision in clause 347, proposed subsection 31(1) of the FCAC Act, which would require the name of the bank that has been subject to a penalty to be publicly identified in the commissioner's decision.

Higher penalties and public naming of banks subject to penalties are intended to increase the incentives for banks to comply with the consumer provisions.

[*Translation*]

The Financial Consumer Agency of Canada Act would also be amended to add an “object” provision. Financial institutions governed by the act would be regulated by a Canadian government organization, in order to contribute to the financial protection of Canadian consumers, notably by strengthening financial literacy.

[*English*]

In addition, the objects of the FCAC would be modified to expressly include that the agency should strive to protect the rights and interests of consumers. That is in clause 338.

Finally, I'll highlight a couple of new measures that would be empowering to consumers.

First, banks would be required to offer consumers the opportunity to receive electronic alerts when their account reaches or exceeds a low-balance threshold on deposit products, or approaches or exceeds a limit on credit products. That's in clause 329, proposed section 627.13. The provision of timely information to consumers is intended to help them better manage the fees they pay.

As well, in proposed section 627.03, the legislation proposes new prohibitions on providing consumers with misleading information, and in proposed section 627.04, applying undue pressure or taking advantage of consumers under any circumstances.

I'll highlight a couple of other provisions.

There are a number of improvements made to the way banks handle complaints from consumers. While banks are expected to address complaints directly with consumers, safeguards are still required to ensure the process is fair and transparent. To this end, banks are already required in the current framework to be a member of an independent external complaint body that must provide its services free of charge and in both official languages.

● (1605)

The proposed legislation would bring improvements to the complaint-handling process. It is proposed that banks keep a record of all complaints, making this information available to the commissioner of the FCAC. That's in proposed sections 627.44 to 627.46. “Establish”—complaint handling—“procedures that are satisfactory to the Commissioner” is in proposed paragraph 627.43 (1)(a). A prohibition on using misleading terms, including “ombudsman” to describe the banks' internal complaint handling procedures is in clause 329, proposed subsection 627.43(2).

With respect to improved external complaints bodies, new requirements are being proposed to increase the transparency of the complaint handling process. These include, in proposed paragraph 627.49(i), a requirement for external complaints bodies to publish a summary of each final recommendation regarding a complaint, including the reasons for the recommendation.

Again in proposed paragraphs section 627.49(j) and (k)—

The Chair: Hang on a second, Ms. Ryan.

Go ahead.

Mr. Greg Fergus (Hull—Aylmer, Lib.): Sorry, Ms. Ryan. It's just because you're going back and forth. We're flipping through the pages to try to catch up to the clauses that you're mentioning. You're going back to 627.01 then to 629.44(1)(a).

It makes it a little tricky, so....

Ms. Eleanor Ryan: Right. Go slower.

The Chair: I think what he's saying is to slow down.

Ms. Eleanor Ryan: All good. Thank you very much for that. I appreciate it.

The Chair: Are you ready there now?

Okay.

Ms. Eleanor Ryan: I was at proposed section 627.49, and I had highlighted paragraph (i), and I was about to highlight paragraphs (j) and (k).

These are two requirements for the external complaints bodies to report annually to the commissioner of the FCAC on the performance of their functions, including their governance and funding, and to also have reports made publicly available. Taken as a group, these are intended to increase transparency and public confidence in the complaint handling process.

This concludes my overview of the consumer protection measures in the bill. We're available to answer any questions you may have.

The Chair: Who are we starting with?

We'll have Mr. Kmiec, and then Mr. Julian.

Mr. Tom Kmiec (Calgary Shepard, CPC): You want me to go first. I thought that Greg was raising his hand.

The Chair: Go ahead, Tom. I don't think you've been through this process before. When we have departmental witnesses, there is no limit on time in questions and we bounce around.

Mr. Tom Kmiec: Thank you, Chair.

I'm going to bounce around a little bit too. Forgive me for this, but under “Definitions” and dealing with customers and the public, it says a “business day does not include a Saturday or a holiday” but a lot of banks are open on Saturdays. Their branches are open and operating. Can you explain to me the logic of not calling a Saturday a business day when, for the banks, it often is a business day?

● (1610)

The Chair: Go ahead.

Mr. Jean-François Girard (Director, Consumer Affairs, Financial Institutions Division, Financial Sector Policy Branch, Department of Finance): This definition is already in the legislation. The reason is that this is used for the calculation of certain delays and timing in the act. We just wanted to keep the status quo in terms of the number of days that pass when certain events occur. It's a reference. It doesn't define when they can or can't do business.

Mr. Tom Kmiec: Okay. I'll go to the whistle-blowing sections, and then I'll let other members ask questions.

On the back end, page 304—it's a big omnibus bill—under “Whistleblowing”, is there a duty to protect whistle-blowers, and if so, can you point it out to me in this section?

Mr. Jean-François Girard: The protections are provided for under proposed subsection 979.4(1) and below.

Mr. Tom Kmiec: But it doesn't actually say there's a duty to protect whistle-blowers. The government estimates and operations committee, back in June 2017, when it came to the public service, said that there should be a legislated duty to protect the whistle-blowers, because that does a better job of actually protecting those people. Reading this, I don't see any penalty, either. Is there a penalty for not following these rules, and what is it?

Mr. Jean-François Girard: The penalties would be the same as in the other parts of the act, so they are the same penalties.

Mr. Tom Kmiec: Which would be...?

Ms. Eleanor Ryan: There are, sorry, civil penalties.

Mr. Jean-François Girard: Yes, so in the civil penalties, it's up to $10 million per violation. You do have an offence under the act being a criminal offence that could be prosecuted as well in principle.

Mr. Tom Kmiec: There is no duty to protect and the civil penalties are up to $10 million. There could be criminal proceedings against bank employees who go after whistle-blowers.

Okay.

The Chair: Okay.

We have Mr. Fergus, and then Mr. Julian.

Mr. Greg Fergus: Thank you very much. Similar to the questions that were asked in terms of the penalties, I'm taking a look again back to clause 329. If you wish, it's division 2, proposed section 627.03, when you talk about false or misleading information. You move on in proposed section 627.04 about prohibited conduct.

What are the penalties for the banks or financial institutions for not complying with these legislative clarifications as to what is considered to be prohibited actions?

Mr. Jean-François Girard: They're the same. The—

Mr. Greg Fergus: It's the same throughout the whole....

Mr. Jean-François Girard: Yes, the limits are set in the FCAC Act and they apply to all the provisions under the administration of the agency.

Mr. Greg Fergus: Okay.

[*Translation*]

Mr. Girard, you will recognize the killer question.

Over the past five years, how often has your organization imposed penalties on financial institutions, and how large were they?

Mr. Jean-François Girard: I'm a Director at the Finance department. I'll ask Ms. Goulard to answer you.

Mr. Greg Fergus: Fine.

Ms. Brigitte Goulard (Deputy Commissionner, Financial Consumer Agency of Canada): Good afternoon. Thank you for your question.

The financial sanctions we impose are not all the same. We use several tools to ensure that the banks do the right thing. A small percentage of banks were subject to sanctions. We sometimes conclude compliance agreements with them to ensure that pro-consumer measures will be taken.

Over the past year, we imposed a few sanctions. Thanks to the measures we took under the powers we have, over $6 million were returned to more than a million clients, and that is what's important. The new powers the bill gives us will allow us to take even more measures so that Canadians will be reimbursed.

● (1615)

Mr. Greg Fergus: I think amicable settlements are always preferable. That said, it is important that one or two exemplary penalties be imposed. Have you ever imposed on any institution the current maximum penalty of $10 million, which may have been lower in the past?

Ms. Brigitte Goulard: We never imposed the maximum penalty because we want to keep some leeway. If we impose the maximum penalty for a given violation, what will happen if the next breach is worse than the previous one? We are very happy to see that penalties are being increased, because that will give us a lot more leeway to impose higher penalties.

The provision of the bill that mandates that in future a financial institution that has caused injury to Canadians will be named is also a good thing. We are pleased that the bill contains transparency provisions.

Mr. Greg Fergus: Thank you.

[*English*]

The Chair: Mr. Julian.

[*Translation*]

Mr. Peter Julian: Thank you very much, Mr. Chair.

Ms. Goulard, in replying to Mr. Fergus' question, you said that you had never imposed the maximum penalty because you wanted to keep that for a much more serious violation. If I understand correctly, you would like the changes to the act to impose much higher penalties, which would have much greater impact.

Ms. Brigitte Goulard: The vast majority of cases involve technology errors or inadequate disclosure. There have not been any fraud cases like the ones in the United States.

In the past, it was important that we keep some room to manoeuvre, but with the proposed changes, we will have much more flexibility to impose higher penalties. Our financial institutions are quite large. This will give us the necessary flexibility.

Mr. Peter Julian: Fine.

Thank you very much, Ms. Goulard.

[*English*]

I'm going to go back to Mr. Kmiec's question about whistle-blowing. I just want to make sure I understand the process, given the changes in the law. It's complaint-driven, as I understand it. If a whistle-blower is sanctioned by the bank, what then happens, according to these changes, to protect that whistle-blower?

Mr. Jean-François Girard: The protections, as I mentioned, can be administered from an administrative perspective to ensure that the institutions comply, but it could be prosecuted as a criminal offence as well. People would be protected through these provisions here.

Mr. Peter Julian: Okay. I'm actually looking for a more practical statement of what the follow-up would be. There's a bank employee who blows the whistle on the institution—a clear violation of the law—and then that bank punishes the whistle-blower. In terms of the complaint, is it up to the individual who was fired because they blew the whistle on their bank? Is it up to the Financial Consumer Agency of Canada?

Who, then, follows up so that those penalties are actually imposed and there's a process?

Mr. Jean-François Girard: For the agency to administer the provision, it has to be aware of the case. Either the individual will report it to the agency or the agency will discover these events through other means of supervision that they carry under their mandate. Once they have the information, they can ascertain the facts, like they do for any investigation or inquiry, and then make a decision based on them.

● (1620)

Mr. Peter Julian: Am I right to say there's no protection in the legislation for the employee? There could be penalties against that bank, but there would be no protection for the employee to actually have their job given back to them.

Mr. Jean-François Girard: One aspect of the proposal is for the commissioner to be able to direct actions to the bank to become onside of a breach. In this case you're describing a breach of these sections. If they have laid off a person, that would be a breach of that section and they could use different parts of the act to direct action that would potentially reinstate that person.

Mr. Peter Julian: Good, thank you.

I want to move to another section, proposed subparagraph 627.17 (1)(a)(i), on page 256, which talks about retail deposit accounts. This is an important issue in my riding because of the incredible cost of housing. We're seeing a lot of people out on the street and they are redlined. They're basically not able to access traditional banking facilities. They end up getting payday loans and they get ripped off and it starts a very vicious debt circle that has real consequences for them.

I'm interested in the retail deposit accounts provisions of the act. It says, “presents to the member bank two documents from a reliable source”, and then there is a listing of what would be considered a reliable source. However, what is not listed are homeless shelters. In my riding, for example, would the Union Gospel Mission, the Progressive Housing Society or the Lookout Housing and Health Society be able to provide documents that would be considered, under the act, to have come from a reliable source? Would they then allow that person access to banking services that they're currently unable to access?

Mr. Jean-François Girard: This set of provisions requires one document, so it could be a statement of benefit, and somebody in the organization that you mentioned could vouch for the identity of the person. It really streamlined the process, but you do need at least one document that would tell who you are.

Mr. Peter Julian: You're referencing that the person's identity could also be confirmed by a "natural person of good standing in the community where the point of service or branch".

Mr. Jean-François Girard: Right.

Mr. Peter Julian: Those are the provisions. Thank you very much for that.

In terms of exemptions for branch closure, particularly in rural areas where there is no other financial institution, there's a six-month notice written in for notice of branch closure. It does provide though, under proposed section 627.994 that, "the Commissioner may, on the request of a member bank, exempt it from the requirement to give a notice" or "vary the time and manner in which such a notice is required to be given."

Does that not water down the provisions that are included in the act forcing written notice?

Ms. Eleanor Ryan: Perhaps I could begin.

The Chair: What was that again, Peter?

Mr. Peter Julian: It was proposed section 627.994 on page 297 of the 850-page budget implementation act, the biggest omnibus legislation we have faced.

The Chair: Okay, I have it, and you made that point before.

Go ahead, Ms. Ryan.

Ms. Eleanor Ryan: Perhaps I might begin by saying these provisions dealing with branch closures are consolidated from the existing legislation. There are no fundamental changes to this part.

What I can do here is turn to my colleague Brigitte Goulard, who can discuss when the commissioner has used this power, and indeed, how the FCAC deals with a branch closure regime.

● (1625)

Ms. Brigitte Goulard: We get more and more notices of branch closures as time goes by, and in January 2016, we issued a new guidance tool to the banks on how to hold community consultations with the public and their customers to ensure that the customers are very well aware of the branch closures. When those guidelines are not followed, the public can make a request for us to direct the bank to hold a meeting with the community. We're happy to say that the guidance document has had a very positive impact in the sense that the banks comply very well with the guidance and that we have seen the banks consult with the community.

Obviously, we are not in a position to tell the bank not to close the branch, but we are confident that the appropriate consultations are taking place within each community.

The Chair: We have Mr. Fragiskatos and then Mr. Sorbara.

Mr. Peter Fragiskatos: Thank you very much.

Thank you for being here.

I have a question with respect to the whistle-blowing amendments that have been made and also the changes that have been made for the complaints handling bodies. What was the situation prior to these changes being brought into effect? Did we have anything close to whistle-blowing? Did we have anything close to a mechanism that would require independent complaints-handling bodies to publish a rationale?

Mr. Jean-François Girard: Currently there's no requirement on whistle-blowing in the Bank Act. The legislation is silent about it. The government decided to propose a specific protection on the one hand, and on the other hand ensure the banks have programs that cover the entirety of their operations.

Most banks that are publicly traded companies have to have a whistle-blower program under provincial securities law. But the scope of it with regard to issues such as audit doesn't extend to the entirety of the activities of the bank. By having this provision it extends it to all the retail activities in particular that started it.

I think your other question relates to external complaints bodies. Right now when the external complaints bodies hear a complaint, they make a recommendation to the parties involved, but there's no requirement to make public any portion of that recommendation. It has been brought to our attention that this was not providing sufficient transparency so that people could see the facts that were taken into account. The plan under these provisions would be that they would publish a summary of the recommendation and protect the person's identity, but the circumstances of what was taken into account would be described and would be available to anyone to look at.

Mr. Peter Fragiskatos: Thank you very much.

One last question on the requirement for banks to provide an electronic alert to help consumers manage fees. How would that work exactly in as basic and concise an answer as you can provide?

Mr. Jean-François Girard: As a customer, you would have the option of setting these thresholds. If you have a deposit account, and you want to be notified when your balance goes to $500 or $200 or $50, you would be able to set that. Once the threshold is reached, you would get a notice by the electronic means of your choice. That would tell you the threshold has been met or exceeded, that you may incur fees and the steps you could take to avoid such fees going forward.

Mr. Peter Fragiskatos: That's very positive. Thank you very much.

The Chair: We'll have Mr. Sorbara, and then Mr. Kmiec.

● (1630)

Mr. Francesco Sorbara: Thank you, Mr. Chair.

We're seeing a lot of questions in this section from my colleagues. We did a study on bank sales practices in the early part of the year, and then followed up. The FCAC came out with their report. I think it's great that we're seeing a number of what I think are good recommendations for banks to follow sound banking practices. It's great to have that in the BIA legislation.

I have a couple of clarification questions.

The penalties of up to $10 million per violation for banks that commit serious breaches of legal obligations, it says now the banks will be publicly identified. Is that a change in the policy from what was before?

Ms. Eleanor Ryan: Yes. The current legislation provides the commissioner with discretion to name. This proposed legislation would require the naming if there is a violation and a penalty.

Mr. Francesco Sorbara: Thank you.

In reference to something a little more technical, this is proposed subsection 627.1(1) on cancellation periods for a product. Sometimes you hear from consumers that they'll enter into a product or service or sign an agreement for a product or service and then not have any recourse if they didn't understand or feel they've been misled. Can you clarify that in terms of, first, the recourse the consumer has, and second. the obligations of the institution?

Ms. Eleanor Ryan: Under the rights of the consumer, the consumer would be able to cancel the agreement. We set out two circumstances in which that could occur. If the agreement is done over the phone or by mail, the consumer would have 14 days to cancel. If the contract was signed in person, the consumer would have three days.

The consumer has to notify—advise—the institution, as indicated here, in writing and without delay. Then the institution itself has to notify the consumer and without delay refund to the person any amount that might be outstanding. This might occur, for instance, when the customer has paid an amount and there would be a partial refund because the product is not being fully used.

Mr. Francesco Sorbara: Is this something new?

Ms. Eleanor Ryan: Yes, it is.

Mr. Francesco Sorbara: Giving enhanced resources to FCAC falls within this clause as well, doesn't it?

Ms. Eleanor Ryan: It is not set out in the legislation.

Perhaps I could ask Ms. Goulard to cover this, as it was covered in their business plan.

Ms. Brigitte Goulard: Yes, that's correct. In the business plan for this year that we submitted to the Department of Finance, we provided a plan to increase our staffing by 60% over the next three fiscal years. The vast majority of that staffing increase will be in our supervision and enforcement team. There are obviously some additional staffing requirements in financial literacy and consumer education, because we will need more education to advise consumers of their rights under the legislation.

We are already in the process of increasing our staff and hope to have all of them on board over the next three years.

Mr. Francesco Sorbara: That is wonderful to hear, because I think when we as a committee undertook the study of bank sales practices, one concern that was raised, about which we as a committee had questions at the time, was whether the FCAC had sufficient resources, first, to continue doing what they were mandated to do, and second, to conduct an investigation thoroughly into bank sales practices. My understanding was that the financial institutions in Canada had provided a vast array of documentation to FCAC on that front.

This is a section I've read a few times. There's a lot of technical stuff, so I don't want to get into the weeds and will thus take a step back. Concerning the obligation for each of the financial institutions to report yearly what I will call an audit of their sales practices or obligations to customers, will there be a format showing what they'll have to submit? Will there be a document developed from you folks? How will that work?

● (1635)

Mr. Jean-François Girard: Do you have the section number for this?

Mr. Francesco Sorbara: I'm speaking of designating a committee, a board of directors to oversee banks' obligations towards their customers.

The Chair: You're on the other one.

Mr. Francesco Sorbara: I think I've become lost in the numbers, to be honest with you. I usually don't get lost in the numbers.

Ms. Brigitte Goulard: I may be able to help with that question.

Each of the banks has a different way of operating. They each have different committees. What we are looking for is the right outcome: making sure that the boards of directors of the banks receive the necessary information and that we receive the information. It's not going to be a standard format whereby paragraph 1 says this and paragraph 2 says that, but we will advise the banks, and as a result of our sales review have already advised them, of the type of improvement we hope to see in their governance, including the type of report they need to provide to their boards and as a result provide to us.

It's not, then, a standard format, but the outcome will be very similar for all the banks to ensure that they meet their obligations when dealing with their staff and their customers.

Mr. Francesco Sorbara: May I ask one last question, on proposed section 627.31, renewal of mortgages?

Can you, in layman's terms, explain that proposed section, please?

Ms. Eleanor Ryan: This is simply to provide the customer with certainty that when they have signed a mortgage arrangement and there is a period of time where they plan to do a renewal, the bank cannot unilaterally change any of the conditions until the consumer has renewed it and agreed to that renewal.

Mr. Francesco Sorbara: Is that a change in the existing language?

Ms. Eleanor Ryan: It's in the current legislation.

Mr. Francesco Sorbara: Thank you.

The Chair: Thank you all.

Mr. Kmiec

Mr. Tom Kmiec: I just want to go back to two things. With a typical bank, when would a complaint go to this external complaints body, and who would take it there? Would it be the bank or the consumer?

Ms. Eleanor Ryan: What normally happens is the customer complains directly to the bank. It could be to a staff member. It could be to a manager. We call that the first level of the complaint. I think the goal is for the bank to resolve those complaints with a customer at that first instance.

If a complaint is not resolved, it could be bumped up to some level within the organization, and a second set of eyes within the bank would look at it. Normally about 90% of complaints are resolved within the bank. There are some complaints for which the customer is not happy with the outcome recommended by the bank. In such cases, it is the customer who decides whether they want to take that to the external complaint body or accept the bank's recommendation.

Mr. Tom Kmiec: In that process, it is the customer who can go to an external body and say, "I pick this external body to review," and now you're proposing these different rules by which they would report the complaint, make it public and just set some standards for this.

Ms. Eleanor Ryan: Right. If I may, it is indeed the customer who chooses whether to take the complaint to the external complaints body. If I could clarify one aspect though, each bank must be a member of one external complaints body, so the customer goes to the external complaints body that the bank is a member of.

Mr. Tom Kmiec: The customer doesn't get to pick. The bank has already picked it because if they have to be a member of just one....

I have a constituent. I know a got an email on something like this, so I just looked up her complaint about the complaint process. If the chartered bank is a member of one complaint body, the customer has no choice after going through the internal process but to deal with the body that the bank has already chosen.

Is that a competitive process for the banks typically? Are these external complaints bodies businesses? Are they not-for-profits? Are they just a panel of people?

● (1640)

Ms. Eleanor Ryan: There are two external complaint bodies that have been approved by the minister for the banks to be members of, and each of them has been reviewed by the commissioner and the Financial Consumer Agency of Canada. They have to meet standards set out in the legislation and the regulations. Once they're approved, they have to continue to meet the standards.

They could be a non-profit, and I do believe one of them is.

Ms. Brigitte Goulard: Yes.

Ms. Eleanor Ryan: They could be a business corporation, and I believe one of them is. There are different models, but they all have to meet the same standards.

Mr. Tom Kmiec: The same standards, right, but if the bank chooses not to be a member of more than one, then the consumer doesn't have a choice. They have to go to the one the bank has selected for whatever reason. Now you have some rules that dictate how this external complaint body is supposed to work, but the consumer doesn't have a choice in this. They have to go with the one the bank—

Ms. Eleanor Ryan: Yes, I'm agreeing with you.

Mr. Tom Kmiec: Unless the bank has more than one....

Is that typical or is it atypical for banks to have more than one?

Ms. Eleanor Ryan: No, I'm sorry. Each bank may be a member of only one external complaints body, and then the consumer uses that external complaints body.

To confirm, it is correct, as you indicate, that the consumer does not choose which body to use.

Mr. Tom Kmiec: It just seems to me that it doesn't really make much of a difference whether that's an internal bank process or external because it's still the same.... The bank has preselected a group of people to do it already. They may have rules upon them, but OSFI has rules upon banks, how they behave, and the rules that they abide by. It seems like a lot of shifting around, but it doesn't achieve the goal of giving the consumer more control about where the complaint goes.

I'm going to move on to something else.

[*Translation*]

Ms. Goulard, you answered Mr. Fergus' question on the number of penalties. You skated around a bit, but you said that a number of compliance agreements were established with the banks.

Can you tell us more about that?

Ms. Brigitte Goulard: You are very astute. You noticed that I was skating around a bit as to the number of penalties we issued. The reason is that at this time some of them may be appealed, and others are just being drafted. It is for reasons of administrative law that I did not want to provide a specific number.

To get back to your question, I would say that at this time we can conclude compliance agreements with certain banks when they breach the law. In that way we want to ensure that they put in place the necessary controls and that they comply with the law.

Mr. Tom Kmiec: Very well, thank you.

Ms. Brigitte Goulard: I fudged a bit, but did I answer your question?

I'd like to give you more information in reply to your question about external complaint processing organizations. Our role is a supervisory role. The situation is a bit different when an individual submits his problem to the bank only. If he or she calls on one of the external complaint processing bodies we supervise to ensure that certain standards are respected, the process is a bit different.

Moreover, if there is a breach of the law, the consumer can submit a complaint to us on that. We can't do anything if a person is upset because a branch is dirty, for instance, but if there is a possible violation of one of the provisions of the act, the consumer can send us a complaint. We can then launch an investigation if that proves to be necessary.

[*English*]

Mr. Tom Kmiec: Okay.

The Chair: Go ahead, Mr. Fergus.

[*Translation*]

Mr. Greg Fergus: The question that begs to be asked is how many times that has happened last year or in the past five years. Can you give us some idea?

Ms. Brigitte Goulard: You want to know what happened...

Mr. Greg Fergus: Can you give us some idea of the number of times Canadians resorted to an external complaint processing body, and then turned to you?

Ms. Brigitte Goulard: I do not have that figure, but I could send it to you. It may be difficult, because in some cases people come to us without telling us that they already submitted their complaint to an external complaint processing body. Sometimes they contact us before calling on an external complaint processing body. When the complaint is not necessarily linked to a breach of the legislation, we refer them to...

● (1645)

Mr. Greg Fergus: I expect that you have data on the number of times people submitted complaints to the system, as per the process, either with the banks...

Ms. Brigitte Goulard: I have data on the number of complaints we receive every year and on the topic of those complaints, but I do not have data specifying which complaints went through the external system before being submitted to us. It will be my pleasure to provide that information to you.

Mr. Greg Fergus: Please send it to the clerk of the committee.

[*English*]

Ms. Eleanor Ryan: I was just conferring with my colleagues and I think we did ask for that information. This is a ballpark number, but the number of complaints that an internal process deals with— we're looking at the large banks—are probably in the tens of thousands every year. The number of complaints that go to the external complaint bodies, both of them together, is about 650.

The Chair: Ms. Rudd.

Ms. Kim Rudd (Northumberland—Peterborough South, Lib.): Of those 650 complaints, how many would come to you?

Ms. Brigitte Goulard: I don't have that answer. I will get back to you on which of those 650 would come to us and which would go to the external complaint body.

Ms. Kim Rudd: Okay.

The Chair: Mr. Julian.

[*Translation*]

Mr. Peter Julian: Thank you, Mr. Chair.

Ms. Goulard, we are putting questions to you because the work you do is of great interest to us. We have all been able to see that the Canadian banking system does not always provide the services we need. That is why we want the system to work better, and we want people to be able to submit complaints to you.

You mentioned that certain cases will be appealed. If I understand correctly, those appeals are based on administrative law. However, I'd like to know how many of those appeals were brought following an intervention by your organization.

Ms. Brigitte Goulard: I will explain the internal process a bit.

The investigations branch conducts an investigation on a potential violation and then submits a compliance report to me. Following this report, I issue a notice of violation to the financial institution. It then has the right to make representations to the commissioner if it does not agree on the penalty imposed, or if it wants to know if it will be named, because it is up to the commissioner to decide to name the financial institution or not.

I used the word “appeal” because people know that word better, but these are, rather, representations made to the commissioner who will then draft her decision.

Mr. Peter Julian: And the bill will not change that process, correct?

Ms. Brigitte Goulard: What will change...

Mr. Peter Julian: The penalties will increase but the process you have just described to us will not change.

Ms. Brigitte Goulard: Two things will change; the first being the amount of the penalty, and the second being the elimination of the commissioner's discretion in naming the financial institution concerned. After having issued a notice of violation, the commissioner will always have to name the financial institution in future. Those two things will change but the process will remain the same.

Mr. Peter Julian: Thank you.

[*English*]

The Chair: Are there any further questions from anyone at the table?

I have just a couple of questions. On the timeline of complaint, is there a timeline going back, a timeline on how far you can go back to issue a complaint under this legislation?

When we held the hearings with the banks and with FCAC, some of those complaints were actually 25 years old, I believe. Is there a timeline going back?

Ms. Eleanor Ryan: There is no limit. If consumers are dissatisfied from five years ago or 10 years ago, they can still bring it.

The Chair: You did say that the banks have to keep a record of complaints filed with them and that it would be accessible. For how long a period of time do they have to keep those records?

Mr. Jean-François Girard: I think it's seven years.

Ms. Eleanor Ryan: We're just going to confer.

The Chair: I forget whether it said.... If it said, I can find it.

● (1650)

Mr. Jean-François Girard: In proposed section 627.44, it has a period of seven years, for the record.

The Chair: Okay. Thank you for that.

Are there any other questions?

Thank you all for appearing and answering questions.

Turning to division 6, Canada Business Corporations Act, part 4, tab 6 in your books, we have Mark Schaan, who is the director general, marketplace framework policy branch with ISED; and Mr. Patterson, director, corporate, insolvency and competition policy directorate. You need a longer name. With Finance, we have Mr. Wright, director, financial crimes governance and operations.

Welcome, gentlemen.

Mr. Schaan, would you like to lead off?

[*Translation*]

Mr. Mark Schaan (Director General, Marketplace Framework Policy Branch, Innovation, Science and Economic Development Canada): Thank you, Mr. Chair.

Today, I am presenting division 6 of part 4 of the bill, which amends the Canada Business Corporations Act, or CBCA, to force corporations to collect and hold information on their effective properties, that is to say the individuals who in the final analysis own and control the enterprises.

[*English*]

I'll be speaking about changes to the Canada Business Corporation Act, with a perspective to beneficial ownership and transparency.

Very quickly, this relates back to a bunch of work we have been doing with the federal, provincial and territorial groups of corporate registries and tax officials, following budget 2017 commitments to increase transparency of beneficial ownership information.

Budget 2018 codified that, by highlighting the agreement of federal, provincial and territorial finance ministers in December 2017, which committed all provinces, territories and the federal government to increase measures of beneficial ownership transparency by July of 2019. In the first instance, they were to do so by amending their corporate statute to require private corporations to hold beneficial ownership information of those possessing more than 25% or control, in fact, of a private corporation. They were also to do so by binding directors and officers of the corporation to pursue best efforts to assemble that registry, to hold it in their corporate books and to provide penalties in place where that was not followed.

This is part of our international commitment related to money laundering, tax evasion and terrorist financing. We're doing so, in recognition of the shared jurisdiction that is incorporation in Canada, by working together with our provincial and territorial colleagues to bring these changes into effect.

With that, I am happy to take any questions.

Mr. Greg Fergus: Which clauses are you referring to?

Mr. Mark Schaan: It's clauses 182 to 186.

The Chair: Okay. I think you know the committee has been looking at this whole issue fairly extensively for the last year and a report will be forthcoming, hopefully this week, on where we are on it.

Are there any questions?

Yes, Mr. Kmiec.

Mr. Tom Kmiec: Is there any mechanism in here that could be used to designate a spouse? I'm reading about individuals with significant control. It describes who they could be and then in proposed paragraph 2.1(1)(c) states, "an individual to whom prescribed circumstances apply."

Are there any conditions under which the spouse of a beneficial holder could be named, under this proposed amendment?

Mr. Mark Schaan: The only requirement on the corporation is to seek out the information of the ultimate natural person controlling of the share, so if that spouse is, in fact, the ultimate controller of that share, yes. If that individual is, in fact, the controller of the share and the voting rights associated with it and any duties and responsibilities associated with it, that is the person who would be listed in the beneficial ownership registry.

● (1655)

Mr. Tom Kmiec: Okay.

The Chair: Go ahead, Mr. Fergus.

Mr. Greg Fergus: Were you involved in the discussions with the provinces and territories, in terms of coming up with this agreement last year?

Mr. Mark Schaan: Yes.

Mr. Greg Fergus: Was there an appetite to take a look at an amount lower than 25%?

Mr. Mark Schaan: There was considerable discussion about what the threshold was. The rationale for the 25% arose from two functions. One is that it corresponds to the current obligation, under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, so we see that this as a belt-and-suspenders approach. Financial institutions are required to ask those entering into financial transactions with their organizations and entities to provide beneficial ownership information and then this would allow corporations to hold it in a particularly easy manner.

The other rationale is that we were trying to find the sweet spot between administrative burdens on corporations. For the Canada Business Corporations Act alone, there are more than 800,000 corporations in Canada. Ninety per cent of them are small and medium-sized enterprises and it should be noted that most of them have fairly simple corporate structures. The goal was, essentially, that we included control in fact, to get at the issue of being able to ensure that we were routing out the behaviour that's the problem, which is the use of the corporation to be able to evade tax or launder money.

Mr. Greg Fergus: Thank you very much, first of all, for that very complete answer and also for the work that you did with the provinces and the territories.

Mr. Mark Schaan: It was my pleasure.

Mr. Greg Fergus: In our committee travels, we had the opportunity to focus in and we had some very frank conversations with our American friends and our British friends over what they're taking a look at.

Especially on the U.K. side of things, there is more of a movement, not only to revisit the notion of the 25% threshold, but also to just revisit the entire notion of having a threshold and to start taking a look at what is—and I think you refer to it in proposed paragraphs 2.1(3)(a) and (b) where it talks not only about if it's 25%, but if they actually have effectively a significant control, so it's moving more towards that front.

Once again, did any of that discussion happen with the provinces and territories?

Mr. Mark Schaan: As we said, the discussion on control, in fact, was the escape valve clause. We wanted to ensure that there were potentially other individuals who held significant debt or had other mechanisms for leveraging control over the entity. That's why we felt comfortable with the 25%, and then this control in fact, which is jurisprudentially well established in terms of what control actually means.

Mr. Greg Fergus: All right.

My second question...perhaps I didn't catch it. Is there a notion of capturing trusts and certain kinds of trusts under this?

Mr. Mark Schaan: Trusts are a beast of the provinces. Part of the goal of the discussion and why we're doing this in lockstep is to try to capture all the different functions of corporate entities. This will bind corporations incorporated under any of the provincial, territorial or federal statutes. We are the starters out of the block. We'll do the federal legislation, and they'll follow.

There are also discussions. My colleagues from finance might be able to speak more in terms of looking at the tax side to try to deal with trusts, where it's not quite as easy to get at from a statute perspective.

Mr. Greg Fergus: When I do refer to trusts I'm not referring to all trusts. I'm referring to trusts that are related to having some beneficial ownership or controlling stake.

Perhaps Mr. Wright or Mr. Patterson would like to comment further.

Mr. Ian Wright (Director, Financial Crimes Governance and Operations, Department of Finance): In budget 2018, it was announced that my colleagues in tax policy are looking at provisions to extend beneficial ownership or the requirement to report control of trusts as well.

Mr. Greg Fergus: Okay.

The Chair: Mr. Sorbara.

Mr. Francesco Sorbara: On the federally incorporated corporations, approximately what percentage of them are incorporating in Canada?

Mr. Mark Schaan: It's roughly around 8% or 9% of the total.

Mr. Francesco Sorbara: Okay. This legislation would pertain to those specific ones.

When would we expect follow on? I guess we're the first movers. The second movers would then be the provinces to enact similar legislation. Is that what the agreement encompasses?

Mr. Mark Schaan: The goal of the working group we struck with the federal, provincial and territorial corporate registries and tax authorities was for exactly that purpose. We agreed on the structure of the segments of the legislation so that it would be comparable across jurisdictions.

Then there was a commitment from all finance ministers of all the federal, provincial and territorial bodies, in December 2017, to fulfill the same legislative amendments to their respective corporate statutes by July 2019.

● (1700)

Mr. Francesco Sorbara: Thank you for that answer.

Does this put us more in unison with our G20 partners?

Mr. Mark Schaan: This is a very important step in our commitments on the international front, including to FATF, and builds on work that's being done in other jurisdictions like the United Kingdom.

Mr. Francesco Sorbara: Thank you. I'll stop there.

The Chair: Does anyone else have any further questions?

Mr. Fergus.

Mr. Greg Fergus: I might as well go for broke here.

I know that it's not in our framework at the federal level, but this is sort of a pan-Canadian approach. I just want to get a sense of the temperature of the pool with the provinces and territories.

Is there any discussion about how we try to get at the beneficial ownership of foreign owners?

Mr. Mark Schaan: There's obviously quite a bit of international co-operation among authorities, particularly on the tax side. They're in a better place to be able to speak to some of that shared information on the legal enforcement side, as are some of our national security and national enforcement folks.

We're simply trying to make sure that the statute has the information being held by the corporation, which then can be utilized by competent authorities in both their respective domestic and international investigations.

Mr. Greg Fergus: Thank you for that.

I'm certain you're anticipating our report with great interest.

Mr. Mark Schaan: Absolutely.

Mr. Greg Fergus: It should be forthcoming.

The Chair: This week....

Mr. Kmiec.

Mr. Tom Kmiec: I will continue Mr. Fergus's line of questioning because the committee has been taken with this issue. In the U.K. experience they talked about one of the problems with their registry being the verification of the data.

I see here there's only one provision asking corporations to update once a year. Was there any other thought given to perhaps putting the onus on them to update when their material changes? That should be reported.

Have I just missed it in this omnibus budget bill?

Mr. Mark Schaan: They have to update it at least once per year. In terms of any material changes they would still stay in the registry.

I will turn to Darryl.

Mr. Darryl C. Patterson (Director, Corporate, Insolvency and Competition Policy Directorate, Marketplace Framework Policy Branch, Department of Industry): There's also an obligation. If the corporation comes into possession of information that needs to be put onto the registry, they must do so within 15 days.

Mr. Tom Kmiec: For this registry, is there any...again, I don't see it in here, so maybe there is.

Is there a reason why the data verification side of it is not legislated? The U.K. registry suffers from a lot of inaccurate information or just errors. There have been reports that you can basically make a circular loop in it—that you could register things being owned by other corporations. You follow the lead and it leads back to the same corporations, so corporations are owning themselves. Is there—in law, in here—a method or a process to stop it, or is that just going to be a procedural process thing?

Mr. Mark Schaan: No. We got around that by requiring the corporation to list in their registry of shareholders the natural person at the end of the chain.

Mr. Tom Kmiec: Where is that in here?

Mr. Mark Schaan: It's the individual. “Individual” is defined in the act. In proposed subsection 2.1(1), then, we identify “an individual”, and then in the individual....

Go ahead, Darryl.

Mr. Darryl C. Patterson: We got around this by creating a new term: “individual of significant control”. It is defined in the thresholds that have been created here. At every subset it's an individual. That individual is a natural person. We couldn't use the word “person”, because “person” incorporates more than a natural individual.

Mr. Mark Schaan: That's the way we got around the challenges of the loop.

In terms of the verification of the information, the corporation is required to make best efforts to populate their registry of beneficial owners. There are penalties for failure to maintain that.

Mr. Tom Kmiec: Right. On the penalties, under proposed subsection 21.1(6), it says, “A corporation that, without reasonable cause, contravenes this section is guilty of an offence and liable on summary”.... It's a fine “not exceeding five thousand dollars.”

Why $5,000?

● (1705)

Mr. Mark Schaan: It's consistent with the other penalties in the statute. There is a penalty, though, for the individual. This is under “Penalty”, in proposed subsection 21.1(5):

> A person who commits an offence under any of subsections (1) to (4) is liable on summary conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding six months, or to both.

In terms of the burden—

Mr. Tom Kmiec: Please slow down right there. On 21.1(5), it says here “Disposal of personal information”, unless I'm reading it incorrectly.

Do you mean proposed subsection 21.4(5)?

Mr. Mark Schaan: I'm sorry. I think it's 21.4(5).

> A person who commits an offence under any of subsections (1) to (4) is liable on summary conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding six months, or to both.

On the burden, the corporation has a consistent penalty for the statute as a whole, which is to do due diligence and maintain a registry of shareholders. Individuals who knowingly seek to prevent themselves from being disclosed to the corporation face much higher penalties.

The Chair: Go ahead, Tom.

Mr. Tom Kmiec: Again, forgive me if I've missed it. Are there any provisions here for exemptions for personal security? The register will have your name, date of birth, last known address, each individual with significant control, and jurisdiction of residence. It's pretty specific.

Is there a mechanism for those individuals who would be listed here for whom there's a personal safety issue to seek an exemption and not to have their address listed? If I have a bunch of kids and I'm the CEO and official owner of a bunch of companies, and I have received death threats, here's a really easy way to find where I live. Is there a mechanism by which that could be blanked out, or is there no personal exception for safety?

Mr. Mark Schaan: I'll say two things.

One is that the information is only available to competent authorities—to the director of Corporations Canada or to a fellow shareholder of the entity. Also, it's only available at the premises of the corporation.

The second is that there is an access affidavit provision that does indicate shareholders and creditors—

Mr. Ian Wright: Appropriate use....

Mr. Mark Schaan: It is appropriate use, yes. It may on application require the corporation or its agent or mandatary to allow the applicant access to the registry of the corporation referred to in proposed subsection 21.1(1) during the usual business hours.

Mr. Tom Kmiec: No personal exemption is possible for safety reasons. That's good enough. Thank you.

The Chair: Mr. Sorbara.

Mr. Francesco Sorbara: Mark, who would currently have access to this information?

Mr. Mark Schaan: Right now there are no requirements for corporations to seek out beneficial ownership information, so the obligations are for the corporation to hold a registry of shareholders. The shareholder is simply the shareholder, not the beneficial owner of that share.

That information right now is similarly available to other shareholders of the business and the director of Corporations Canada. You're allowed to know who you're in business with, the director of Corporations Canada has access to it and law authority has access to it under warrant.

Mr. Francesco Sorbara: To clarify that, you're allowed to know who you're in business with, but are you allowed to know who the actual owner is behind it?

Mr. Mark Schaan: Right now, no, but after these provisions, then yes, you will have access to the registry of beneficial owners.

Mr. Francesco Sorbara: Only and privately....

Mr. Mark Schaan: The corporations would. That's correct.

Mr. Francesco Sorbara: Thank you.

The Chair: Okay, I think that's it for part 4 of division 6.

Thank you all, and I believe, Mr. Schaan, you're going to be here for the next round—part 4, division 7, intellectual property strategy. There are quite a number of witnesses for this one under the Patent Act, trademarks, Copyright Act, college of patents agents and trademark agents act, etc.

We may have to get you guys to introduce yourselves. Who's leading off?

● (1710)

Mr. Mark Schaan: I am.

The Chair: Okay, Mr. Schaan.

We have quite a mixture.

Mr. Schaan was introduced before. We have Mr. Blanar, senior policy analyst, patent policy directorate; Ms. Flewelling, senior policy adviser; Ms. MacMillan, vice-president, corporate services; Mr. Johnstone, director general, national programs and business services; and Mr. Simard, director, copyright and trademark policy directorate.

The floor is yours again, Mark.

Mr. Mark Schaan: Great. I will walk you through the various clauses related to division 7, clauses 187 to 302. They're all related to Canada's national intellectual property strategy. I'll try to walk you through each act as we go.

By a very quick way of background, budget 2017 committed the government to creating a comprehensive national intellectual property strategy within one year. Budget 2018 then provided $85 million, with $10 million ongoing for a number of programs and services related to that intellectual property strategy, and similarly committed to making amendments to the various intellectual property statutes to try to ensure that it was preventing any undue barriers to innovation and also encouraging and attracting investment and an efficient and fair economy.

I'll start with part 4, division 7, subdivision A, which is clauses 187 to 213. They relate to the Patent Act. The changes to the Patent Act essentially relate to five specific measures. The first is to establish minimum requirements for patent demand letters, to allow the recipients to assess the merits of the claims. This essentially ensures that any recipient of a patent demand letter will have sufficient information to be able to make an appropriate adjudication of its merits.

The second is to allow the court to admit patent examination history, sometimes called file wrappers, as evidence to prevent patent owners from taking different positions during litigation than that which they took before the office. The third is to codify the common law patent research exception. The fourth is to modernize prior user rights to ensure that a subsequently patented invention doesn't require a business to cease operations.

Finally, the last is to require subsequent patent owners to honour licensing commitments made by previous owners to standard-setting organizations when incorporating patented technologies into standards. This is sometimes called standard essential patents, and this simply ensures that the negotiated agreements reached between a standard essential patent owner and its users continue even when there's a transfer of ownership.

I'll pause on the Patent Act changes because that's subdivision A, and I can take any questions on that before I move to subdivision B.

The Vice-Chair (Hon. Pierre Poilievre (Carleton, CPC)): Mr. Fergus.

Mr. Greg Fergus: Thank you, Mr. Vice-Chair.

Could you please explain the fourth measure, in terms of in what situation that would occur? You could lay out a typical case or an actual case.

● (1715)

Mr. Mark Schaan: Under the current act right now, when prior user rights are established between an entity.... Essentially you've used a technology without any knowledge that someone else had subsequently invented it. You've been using it and it's fundamental to your business. Right now when that patent is ultimately granted, the law requires you to cease any use of that patented technology, which usually requires you to cease operation. Essentially you end the practice even though you had previously established the capacity to use it independent of knowing that someone else was subsequently patenting it. This would allow you to continue to be able to use that under your prior user rights.

The notion is that you and I are both independent business people. We both come up with the same idea. Prior user right is nullified if I actually did know, if I had been secretly googling you and finding out that you had actually also been taking this action, but it essentially prevents me from having to cease my operations, because I had established prior user rights to the technology, absent knowledge that it was patented.

Mr. Greg Fergus: Is this a common standard in other industrialized nations with similar patent regimes?

Mr. Mark Schaan: Yes, and there are definitely those who have established prior user rights similar to this.

The Vice-Chair (Hon. Pierre Poilievre): My question is about the college. Is this the right time?

Mr. Mark Schaan: No. We'll get to that in subdivision D.

The Vice-Chair (Hon. Pierre Poilievre): Are there any other questions? All right, we'll continue.

Mr. Mark Schaan: Then we'll switch to the Trade-marks Act changes. This is part 4, division 7, subdivision B, clauses 214 to 242.

Just by very quick way of background, this is in part related to concerns from trademark stakeholders about the possibility for what some people call “trademark squatters”, individuals who take out trademarks with no intention of using them for the purposes of trying to shake down individuals who they believe are already using that trademark in a non-trademarked way, or likely will anticipate the need of someone for that trademark.

What this does is a number of things. First, it adds bad faith as a ground of opposition to the register of a trademark and for the invalidation of a trademark.

Second, it prevents the owner of a registered trademark from obtaining relief for acts done contrary to that trademark during the first three years after the trademark is registered, unless the trademark was in use during that period or special circumstances exist that excuse the absence of use.

Very quickly, without getting into too much of the technical details of trademark law, one of the exceptions to use in the trademark process is during the first three years of a trademark, because, in many cases, you will have trademarked a good, but you can't use it because you're just getting going.

Our concern was that it could be a trademark squatter who is hiding under that three-year exception to be able to potentially still use that three years to shake someone down for cash. What we have said is that, during those three years, you have no access to remedies, so you can't pursue damages against that individual if you're not using the trademark.

We also clarify that the prohibitions in subparagraph 9(1)(n)(iii) do not apply in section 11 of the act with respect to a badge, crest, emblem or mark that was the subject of a public notice of adoption and used as an official mark if the entity that made the request for the public notice is not a public authority or no longer exists.

Very briefly, this relates to the system of official marks in Canada. Official marks are, by and large, relegated or are subscribed to public authorities and public entities. The Canada Wordmark is a good example. There is a whole host of other badges and crests that are official marks. They're put on the registry by public authorities. There are a lot of them, and one of the challenges is that some of the people who put them on the list weren't public authorities under the definition, so when people seek to use that official mark, they're prevented from doing so because this public authority put the official mark on the registry.

The other thing is that many of them no longer exist. There are many official marks related to the 1976 Montreal Olympics. There are many related to Canada Games in most cities and provinces across the country, and many for events that took place decades ago. People are prevented from using those official marks currently, despite the fact that they can't reach an agreement with the entity to use them, because the entity doesn't exist anymore. This, essentially, will allow people to be able to use those official marks without having to seek an entity when the entity is no longer in place.

We then also modernized the conduct of various proceedings before the registrar of trademarks under the act, including by providing the registrar with additional powers in such proceedings. This is essentially to give some additional teeth to the trademarks opposition board, including the opportunity for case management and the ability to potentially levy costs in cases where people are making frivolous use of the trademarks opposition board.

Finally, we make certain housekeeping amendments to provisions of the act that are enacted by the Economic Action Plan 2014 Act, No. 1, and the Combating Counterfeit Products Act, which is essentially to bring us in line with changes in anticipation of Canada's accession to the Madrid protocol and that lay on from these provisions that I laid out earlier.

● (1720)

The Vice-Chair (Hon. Pierre Poilievre): Are there any questions?

Mr. Sorbara.

Mr. Francesco Sorbara: I'm going to have to admit that, if our colleague Parliamentary Secretary Lametti were here, who I understand is a former professor of this material at McGill, he would have a lot more insightful questions to ask than we would, than I would, for sure.

But I do want to ask about the Internet trademark squatters. My understanding is that the U.S. system, prior to this material being in the BIA, was more robust or is more robust than ours, and this material in the BIA should elevate our IP protection.

Mr. Mark Schaan: The goal of the strategy was very much to ensure that we had sufficient protections and that we were preserving the balance necessary in the intellectual property realm. These are provisions that bring our regime, which has been modernized consistently over the last decade, even more into the comparator regime of our trading partners.

Mr. Francesco Sorbara: That's it.

The Vice-Chair (Hon. Pierre Poilievre): Please continue, Mr. Schaan.

Mr. Mark Schaan: Then we move on to part 4, division 7, subdivision C, which is related to the Copyright Act “notice and notice” regime.

Here's a reminder for those of you who may not embrace the notice and notice regime every day, although you probably do. The point of the notice and notice regime in the copyright system in Canada is essentially that rights holders are provided an opportunity.... It's a mandatory regime set out in the Copyright Act that requires Internet intermediaries, such as Internet service providers, to forward notices from copyright owners to Internet subscribers alerting them that their Internet accounts have been linked to alleged infringing activities, such as the illegal downloading of movies.

One of the problems encountered since Canada put in place its notice and notice regime is that people were using it to pass along notices that included settlement demands or requests for personal information. Famously, I think the case was of an 86-year-old grandmother in Manitoba who was passed on a notice for the supposed illegal downloading of a zombie apocalypse murder game, which she had no recollections of downloading. The notice indicated that she could make the infringement go away for the low price of "insert number here".

This provision will return the notice and notice regime back to its consumer information intent, by banning settlement demands and the request for personal information in the notice regime.

The Vice-Chair (Hon. Pierre Poilievre): Mr. Julian.

Mr. Peter Julian: What is the penalty when that happens?

Mr. Martin Simard (Director, Copyright and Trademark Policy, Marketplace Framework Policy Branch, Department of Industry): The approach has been to take on the problem at the source, so to speak. ISPs are only required to pass on a notice related to a number of things listed in the Copyright Act. We've added the flip side, which is the things you cannot include in a notice, and then we've added a regulatory power to be able to add other things to that list.

The concept is that ISPs are no longer required to forward a notice, so hopefully fewer notices would reach the end-user, because some of this is automated. If a notice does reach the end-user, it will allow for much clearer communication from the ISP to their users.

The practice ISPs have developed over the years is to add a wrapper ahead of the notice to describe the law and say, "This is a notice. I'm Rogers," or "I'm Bell. I'm forced by law to forward you this notice, but know these facts about the law." Now they'll be able to add in the wrapper, "If there is a settlement demand, if there's a demand for personal information, you're not required by law to pay it and this is probably an invalid notice," and then perhaps they'll ask the user to report it or call the consumer hotline. The idea is to take on the problem at the source.

● (1725)

Mr. Peter Julian: Okay. I see the section. It says, it shall not contain "an offer to settle the claimed infringement", a request "for payment or for personal information", or "any other information that may be prescribed by regulation".

If there is a notice that does request payment—and this happens frequently now—at this point there are no penalties. There is no way to stop that company from doing that.

Mr. Mark Schaan: ISPs have developed a structure to be able to pass along those notices. They would be contravening the law set out by indicating that the notices can't contain that information. There are no direct penalties.

The goal is, as per the structure of the entire system, to inform the consumer of the potential infringement of the right and also to present them with options with respect to how they may access that content legally. We think with consumer education this is getting at the bad practice, as Martin said, at the source, but then it's also allowing for much clearer communication with the consumer about what they may be receiving in their email.

The Vice-Chair (Hon. Pierre Poilievre): Mr. Fergus.

[*Translation*]

Mr. Greg Fergus: Thank you, Mr. Chair.

Mr. Simard, I am going to follow in the same vein as Mr. Julian.

Mr. Schaan said that in the warning preceding the notice, the Internet providers must tell people that they are not obliged to provide their personal information, nor anything else, as they are asked to do further on. However, companies like WarnerMedia, for example, might consider that to be a breach of the law.

Mr. Schaan already answered my question, but I'd simply like to know whether it would be possible to make that more user-friendly. I'm afraid this will be too complicated for a grandmother in Manitoba, for instance, who would have to read the warning and the notice as such. Could we not simply prevent companies like WarnerMedia from asking for this personal information? It seems that we are blowing hot and cold at the same time.

[*English*]

Mr. Mark Schaan: First of all, following the notice and notice regime, ISPs and rights holders and the major rights holders got together to talk about a standard format for notices, including plain language. The vast majority of rights holders are working with the ISPs to ensure that notices are actually effective for both parties, that they are understood by the consumer and that they actually convey the information that the rights holder was hoping to.

The goal with this change is that it will actually allow for the vast majority of those notices never to be sent, because we think ISPs will actually have the capacity to stop them at the source because they violate the law. The goal is to remove the vast majority. The goal is to end the practice, so the ISPs will not be sending those on any further. We've also noted that because of the few that do may make it through the system are so clearly a violation, it's much easier to communicate about them because they're not stuck in this mass of potentially people who have been misusing the system by sending false notices.

[*Translation*]

Mr. Greg Fergus: I misunderstood. So, the providers are not obliged to send a message. They must make the assessment themselves to determine if this is in keeping with the law, and afterwards they can send the information.

Mr. Mark Schaan: Yes.

Mr. Greg Fergus: In any case, there will be a notice saying that you're not obliged to provide this personal information or anything else; is that correct?

● (1730)

Mr. Mark Schaan: Yes.

[*English*]

The Vice-Chair (Hon. Pierre Poilievre): Mark, continue.

Mr. Mark Schaan: Great. I will switch to part 4, division 7, subdivision D.

This is the one that pertains to your question, Mr. Vice-Chair.

Subdivision D of division 7 of part 4 enacts, through clauses 247 to 264, the college of patent agents and trademark agents act. The act establishes the college of patent agents and trademark agents, which is to be responsible for the regulation of patent and trademark agents in the public interest.

Among other things, the act requires that agents obtain a licence and that licences comply with a code of professional conduct. It authorizes the college's investigation committee to receive complaints and conduct investigations into potential professional misconduct. It authorizes the college's discipline committee to impose disciplinary measures. It also creates the new offences of claiming to be a patent agent or trademark agent, and unauthorized practice before the patent office or the office of the registrar of trademarks.

Very quickly, by way of background, patent and trademark agents are an essential part of the intellectual property system. The regulations of the Canadian Intellectual Property Office require in the cases of patents that actions before the office are pursued by a registered agent. In the cases of trademarks, while individuals can pursue their own trademarks, a significant practice of expertise has been built up by the trademark agent community.

Under our existing governance framework for patent and trademark agents, the system is both opaque and incomplete. Right now the commissioner of patents has the capacity to list agents to the registry of registered agents before the office and to remove them from that list, but those are the only powers she possesses. In the case where an infraction, were there to be one, necessitated potentially some other remedial measure, the only option available currently to the commissioner of patents is to simply remove the person from the ability to practice before the office.

Second of all, right now there's no guidance or transparency to the process to investigate complaints. There is no set-upon approved process by which someone may want to take issue with their agent, nor, potentially, transparency to the process through which that individual would be able to either resuscitate their reputation or potentially have the offence confirmed.

Third, part of the reason we're also creating an independent self-regulating body is that the same office that currently grants people access to become registrants is the same office for which those agents litigate their matters. One can imagine that there could be a perceived conflict of interest there. We don't believe there is one. The office acts in extremely good faith. But an agent who consistently and significantly appeals all of their decisions before the office may be perceived as potentially problematic, and should there ever be a movement to remove them from the list, there could be a perceived conflict of interest that perhaps they were being removed not because of the offence they were being accused of but in fact because they were a challenge to the office.

This creates a self-regulating body with significant checks with respect to the public interest to ensure that this doesn't constrain access to the profession or access to the services of the profession.

The Vice-Chair (Hon. Pierre Poilievre): Is it the commissioner right now or the registrar who grants licences to practice? Is it a licence they get right now?

Mr. Mark Schaan: The way it works right now is that the Canadian Intellectual Property Office works with the Intellectual Property Institute of Canada to set out the exams to become a patent or trademark agent. At the completion of that examination process, which is jointly run by the profession and the office, they receive accession to being put on the registry to be able to act before the office.

The process right now and those exams are conducted by the Canadian Intellectual Property Office in conjunction with volunteers from the Intellectual Property Institute of Canada.

The Vice-Chair (Hon. Pierre Poilievre): There is an exam right now.

Mr. Mark Schaan: There's a four-part exam, yes. It's actually an extremely strenuous process to become a patent and trademark agent. It's one of the more comprehensive and difficult sets of examinations in the professional community. It sets very high standards for how to pursue intellectual property matters before the office.

The Vice-Chair (Hon. Pierre Poilievre): How long does it typically take someone to prepare for and pass this exam?

Mr. Mark Schaan: It varies enormously. The pass rate on the first try for the hardest of the four exams is extremely low. The process is usually done in conjunction with acting as a professional. You can't act before the office, but the archetypal journey to becoming a patent trademark agent is that you get picked up by a firm that pursues patent and trademark work. You essentially stage—you work and you do your exams—and then eventually you get your licence. It depends on how much work you're doing and how much time you have to dedicate to the exam process, but it's usually a couple of years to be able to become an agent.

● (1735)

The Vice-Chair (Hon. Pierre Poilievre): That's for a patent agent.

Is the trademark agent roughly the same?

Mr. Mark Schaan: It's the same process, and it's roughly the same amount of time.

Right now, however, it should be noted that there is no registry of trademark agents. Because you can pursue a trademark on your own without the need of a trademark agent, the commissioner of trademarks, who in this case is also the the commissioner of patents, has no list of trademark agents before the office.

Sorry, Andrea, go ahead.

Ms. Andrea Flewelling (Senior Policy Advisor, Marketplace Framework Policy Branch, Department of Industry): I just want to clarify that there is actually a list of trademark agents.

Mr. Mark Schaan: There is a list, but it's not maintained by CIPO. Isn't that correct?

Ms. Andrea Flewelling: No, it is.

Mr. Mark Schaan: It is? Sorry, my bad.

The Vice-Chair (Hon. Pierre Poilievre): You mentioned that individual Canadians who are not agents can act for themselves in the pursuit of a trademark.

Is that also true for patents?

Mr. Mark Schaan: No.

We're just discussing whether or not you can prosecute it. You may be able to pursue it, but you can't prosecute it before the office.

The Vice-Chair (Hon. Pierre Poilievre): Can you file for a patent without a patent agent?

Mr. Mark Schaan: Yes.

The Vice-Chair (Hon. Pierre Poilievre): On the coming into force of this legislation, will you be able to do that, or will you require a patent agent?

Mr. Patrick Blanar (Senior Policy Analyst, Patent Policy Directorate, Department of Industry): It doesn't change the nature of who can do what in front of the office.

Anybody who can do something today in front of the office will be able to continue to do so. In the case of an agent, anything that is restricted to agent work continues to be so. It doesn't change the nature of who can appear before the office and when.

Mr. Mark Schaan: It doesn't take away the rights of an individual inventor to be able to pursue their patent, but the prosecution right still rests with agents.

The Vice-Chair (Hon. Pierre Poilievre): Right.

This really just makes it more strenuous.... I'm not even sure it's more strenuous, but it definitely creates a new process by which the licence to practise as a patent agent or trademark agent is secured.

Mr. Mark Schaan: Yes. It creates a new governance structure that essentially allows for a more robust governance regime.

As I say, right now there are limited powers. It's either on the list or off the list. This will expand the scope, allow for a series of other offences, and allow for an investigation committee, with due process, to be able to ensure that you can take up a complaint, or in the case of an agent, respond to a complaint about you in terms of inappropriate practice related to the code of conduct.

The Vice-Chair (Hon. Pierre Poilievre): Prior to this legislation, where would a complainant go? Was it to the commissioner?

Mr. Mark Schaan: It was to the commissioner.

The Vice-Chair (Hon. Pierre Poilievre): Could the complainant also take an action to court alleging malpractice, in the same way that I could if my mechanic doesn't screw my tire on properly and I go flying off the road?

Mr. Mark Schaan: Contract law would still apply, so you'd be able to—

The Vice-Chair (Hon. Pierre Poilievre): No, it's not “would”. I'm asking about the status quo.

Mr. Mark Schaan: Can you? Yes.

Contract law would apply to the scenario of an individual claimant who has sought the services of an IP agent and is unhappy with that. Right now, they could potentially pursue that through the courts.

The Vice-Chair (Hon. Pierre Poilievre): Will the leadership of the college be elected by the licence holders?

Mr. Mark Schaan: It's a mixed model, so I'll let Patrick explain.

Mr. Patrick Blanar: Because we want the college to also factor in the public interest, there will be a portion of the directors who will be nominated by the minister and a portion elected amongst patent agents or trademark agents.

The Vice-Chair (Hon. Pierre Poilievre): How does that compare to, say, a college of physicians and surgeons, for example? Is it a similar appointment model?

Mr. Patrick Blanar: I can't speak to every college, but I know that in some cases, definitely it is.

The Vice-Chair (Hon. Pierre Poilievre): How many complaints did the office receive about the absence of a college from applicants —not from agents themselves—in order to lead to the necessity for a college?

Mr. Mark Schaan: The drive for the college was less driven by complaints. We believe that the vast majority of patent and trademark agents are acting in good stead.

The drive for the college was the incompleteness of the governance structure. In part, the inability to know how one might complain was potentially preventing complaints from happening in the first place. Even if they were minimal in nature, right now the process is not transparent; it's opaque. That's why we drove it.

It was also driven by a change that we made to the law to grant patent agents and trademark agents the equivalent of solicitor-client privilege. That's so the communications between inventors and their patent and trademark agents would be privileged, so you don't perhaps unduly leak your secrets related to your invention. The feeling was that this privilege was such an important responsibility that we needed a complete and robust governance structure around that privilege.

● (1740)

The Vice-Chair (Hon. Pierre Poilievre): Are there any limits on the fees the college will be able to charge those seeking licences?

Mr. Mark Schaan: No. There is, however, a capacity and a requirement for them to file an annual report and for the minister to be able to seek specific information for them to address, including things such as fees or examination practices.

The Vice-Chair (Hon. Pierre Poilievre): What about the concern that, often, occupational licensing bodies tend to limit the supply of licensees in a given sector? This has been a major problem, in particular for internationally trained professionals and tradespeople who are deprived of the opportunity to apply their skills, skills that they had applied in other comparable jurisdictions, and are condemned to 60%, 70% or 80% pay reductions as a result.

Had you considered the effect of occupational licensing in terms of creating of new barriers to entry?

Mr. Mark Schaan: It was a fundamental preoccupation for us in the creation of the college. That's why the majority member model of the governance structure is not appointed from the profession itself, but appointed by the minister, to allow for that oversight body and a commitment to the public interest that wouldn't be self-interested but actually would feature into the public interest considerations.

The Vice-Chair (Hon. Pierre Poilievre): I hope so. Around the world, there is this phenomenon of occupational licensing. Particularly if we're concerned about minorities and people who face systematic barriers and discrimination, I worry that sometimes these bodies have become more of a barrier than an enabler. I put that on the record.

Mr. Chair, I believe I'm getting the hook.

The Chair: Are there any other questions?

Mr. Kmiec.

Mr. Tom Kmiec: Regarding the college, I was a registrar for a professional association before. Is there a reason that under proposed sections 22 and 23, where it says “Registrar” and “Chief Executive Officer”, it's not explicit that the registrar cannot also be the CEO?

If one of the purposes was to split the two roles so that one person keeps the register and makes sure the professional standards are kept in a certain way and they're the ones administering the exam, making sure you have the ethical standards to be the professional you're supposed to be, and then there's a chief executive officer who actually runs the operations of the college, why isn't it made explicit that one cannot be the other, that it cannot be the same person?

Mr. Mark Schaan: The flexibility was granted to the college to allow for a senior leadership model that was flexible in nature.

Mr. Tom Kmiec: Okay, but that's one of the problems. It's self-regulation in the provinces. In big accounting bodies or engineers, the really big ones, they make it explicit. They divide up the roles. They also make it much more explicit that the person doing the disciplining cannot also be the registrar. In many cases, usually it must be a volunteer member of the profession in order to ensure that there's some type of distance from the registrar.

I wonder why that wasn't there. That flexibility is typically what leads to problems later on, especially for the smaller associations.

How many of these agents do you anticipate there being once the college is formed?

Mr. Patrick Blanar: From memory, I believe the minimum number would be seven.

Mr. Mark Schaan: That's right.

Mr. Tom Kmiec: I mean the total number of members who would appear on the register, an estimate. What do you think is the approximate number?

Mr. Patrick Blanar: I don't know offhand.

Mr. Mark Schaan: I don't have the numbers for it. It exists now. These agents already exist. I would say there are thousands of patent and trademark agents in the country.

Mr. Tom Kmiec: Would you say there are over 10,000, or fewer than 10,000?

Mr. Martin Simard: No, there are fewer than 10,000.

Mr. Mark Schaan: There are fewer than 10,000.

Mr. Tom Kmiec: With fewer than 10,000, then, it would be like a mid-size professional association.

I notice a lot of the rules governing how the election of the board will happen. There are some transitory rules. The minister gets to appoint, and for a transition period, that's fine, but I see that a lot of the ones setting out the terms for elected directors are set in bylaws. I find that a little unusual.

Typically the accounting profession, for instance, provincially, sets those terms out in a regulation. The board itself cannot decide suddenly, well, the elected terms of office are going to be longer than we thought they were going to be, so we're going to extend our terms longer because we're the board and we can do such things.

Is there any mechanism in the legislation to prevent a board from doing that?

● (1745)

Mr. Patrick Blanar: First of all, they're set at three years, and they can be shortened by bylaw, but also—

Mr. Tom Kmiec: Would you point out where it says “three years”? I totally missed that.

Mr. Patrick Blanar: Regarding the board members, proposed subsection 15(1) says:

> Each director is to be appointed or elected for a term of not more than three years, and may be reappointed or re-elected for subsequent terms of not more than three years each.

There is a hard cap, but they can be determined. If you look at “Determination of term” in proposed subsection 15(2), the length of a director's term is “set out by the Minister”, or “determined in accordance with the by-laws”, so terms can be shortened.

Mr. Tom Kmiec: But they can't be lengthened.

Mr. Patrick Blanar: They can be re-elected or renominated, but they can't be lengthened beyond that. There needs to be a process at least every three years.

Mr. Tom Kmiec: Okay.

I have one more question, then. Typically, a professional association will have a designation that becomes a protected title. I don't see it here under the definitions. Will they have a protected title as well, or is there no protected title with this profession?

Mr. Patrick Blanar: There are offences at proposed sections 67 and 68 of claiming to be a patent or a trademark agent.

Mr. Tom Kmiec: Right, but there's no penalty for advertising. You wouldn't be able to advertise that you're an agent, but could you put some types of letters after your name pretending as if that would be a trademark agent?

Mr. Mark Schaan: There are currently no....

Mr. Tom Kmiec: There is none.

Mr. Mark Schaan: There is none right now.

Mr. Tom Kmiec: I could still go out there and confuse people and pretend as if I am hoping to make some business before I get caught, presumably.

Mr. Mark Schaan: It is an offence under the act.

Mr. Tom Kmiec: It is an offence.

Mr. Mark Schaan: If you're not on the register, you can't appear before the office on a prosecutorial side for a patent.

Mr. Patrick Blanar: There are criminal penalties for this. There are fines, and in the event of appearing before the office, there is imprisonment.

Mr. Tom Kmiec: You said that part of the reason to create the college is this governance issue that you identified. Was the creation of the college the only solution to fix that governance issue?

Mr. Mark Schaan: We looked at it in a number of ways. Obviously we wanted to make sure that there was a way of ring-fencing the community that had gained access to privilege and that there was then a robust governance around it. We did look at other models but self-governance was in line with other professions in the country and had considerable numbers of corollaries that we could draw from.

Mr. Tom Kmiec: Okay. You said a lot of this is already happening. Is there a code of ethics? Is there a professional standard of practice? Are all of those documents ready to go already? They would just be moved over and renamed, or does this need to be...?

Mr. Mark Schaan: It's a mix. There's a code of conduct that does currently exist under IPIC, but this will actually regulate it and is in the process of being updated. There's also a transitionary period to allow for that creation.

Mr. Tom Kmiec: Okay. I have one last question.

How many people, currently working for the government, would be moved over into this college? I notice that the college is not a Crown corporation, so the staffing of this thing is not going to be done by civil servants simply moved into the quasi-private sector. Will this be staffed up by new people?

Mr. Mark Schaan: Yes, by new people.

Mr. Tom Kmiec: Okay.

The Chair: Thank you.

I believe, Mr. Poilievre, you have one more question.

Hon. Pierre Poilievre: Yes, my question is also on the college.

Is there a transition planned to go from the Intellectual Property Institute to the college? Does one transform into the other, and how will that transformation occur?

● (1750)

Mr. Mark Schaan: There are two transformations that really have to happen. One is that we have to move from the existing system that lives within the Canadian Intellectual Property Office and the commissioner of patents and the registrar of trademarks, which maintains this list of who they are and who can appear. Right now, the professional body is currently an association.

The Intellectual Property Institute of Canada is a professional association, so what essentially will happen is that there will be a hived-off entity that becomes the college with these ministerial appointments and new governors elected from within the profession. It will then, once it's ready, in some ways, inherit the responsibilities that used to live within CIPO—Canadian Intellectual Property Office—but with a considerable new process around them in terms of fairness and due process and public interest.

Hon. Pierre Poilievre: Will the personnel just automatically transfer over or...?

Mr. Mark Schaan: No, the college will need to—"self-construct" is the wrong word—take shape by having its first governors and then appoint staff and go through the process of actually establishing itself. The goal there is to have sharp separation from the professional association. The professional association can do what it does and the college can become a governance and oversight body and inherit these powers that currently live within the Canadian Intellectual Property Office.

Hon. Pierre Poilievre: Will the professional association keep functioning?

Mr. Mark Schaan: Yes. It's our anticipation that IPIC will carry on and do other things related to the profession, including pursuing the interests of the profession in the legal community in the broader debate.

The Chair: Thank you all, on that section.

We'll turn to amendments related to the preservation of usage rights.

Mr. Mark Schaan: This is part 4, division 7, subdivision E, clauses 265 to 272.

The Bankruptcy and Insolvency Act and the Companies' Creditors Arrangements Act were amended in 2009 to allow insolvent entities that are restructuring under those acts to disclaim agreements in contracts, including intellectual property usage agreements, where doing so would facilitate a successful restructuring. The amendments also sought to protect intellectual property users who relied on the continued use of that intellectual property, subject to the usage agreements. If an intellectual property agreement were disclaimed in a restructuring, the user's right to ongoing use of the intellectual property would not be affected, as long as the user continued to abide by the terms of the initial agreement.

The 2009 amendments only protected intellectual property users affected by the disclaimer of intellectual property agreements in a BIA or CCAA restructuring.

Subdivision E of division 7 of part 4 of the budget implementation act, no. 2, amends the BIA and CCAA to extend those protections afforded to the users of intellectual property in 2009 further, to include asset sales by restructuring companies under the BIA and CCAA as well as liquidations and receiverships under the BIA.

Essentially, if you had a licence to utilize intellectual property with an entity and that entity goes insolvent, we want to ensure that we're preserving those contractually agreed-upon terms so that you're not faced with a potential new owner who's disclaimed your licence, forcing you to renegotiate terms with someone who knows you need the licence so desperately that there can be no level playing field in that negotiation.

The Chair: Sounds logical.

Any questions?

Okay, We'll move to privileged Information.

Mr. Mark Schaan: This is just a small change related to what we were talking about earlier. Patent and trademark agents have privilege, similar to solicitor-client privilege, as we indicated. However, there are patent and trademark agents in the Government of Canada who provide assistance in the patenting and trademarking of government technology.

This just amends the Access to Information Act to ensure that they too will benefit from the privilege and that government inventions will not be unduly disclosed when the information is transferred to a patent and trademark agent.

The Chair: Mr. Julian.

Mr. Peter Julian: What are the clauses, please?

Mr. Mark Schaan: Sorry. This deals with clauses 273 to 277.

The Chair: Is everyone okay?

Then we'll turn to the National Research Council Act, subdivision G.

Ms. Dale MacMillan (Vice-President, Corporate Services and Chief Financial Officer, National Research Council of Canada): I'll speak to clause 278. The National Research Council Act now permits the National Research Council to hold and acquire real property. However, it does not give us the authority to dispose of it.

From time to time when we have infrastructure facilities that are surplus to our needs, after completing all the government processes to make sure that we do our consultation and dispose of property in a proper way, we do not have the authority to actually complete the disposition. Therefore, we are requesting the authority to complete that disposition.

● (1755)

The Chair: Thank you, Ms. MacMillan.

Mr. Fergus.

Mr. Greg Fergus: Thank you, Ms. MacMillan.

Was this born of a situation that happened in Manitoba with the NRC's properties?

Ms. Dale MacMillan: No, actually, this is just to fulfill...because we can acquire property, we can manage it, but we are over a hundred years old and from time to time we do find that we have facilities, land, properties that become surplus to our requirements, particularly as we partner with other organizations and as our needs change through operations.

Now when we identify something that's surplus to our needs, we consult with other federal partners, provincial, municipal and indigenous groups, etc., and perhaps even go to open market, and once all of that process is completed and we have a potential way forward on a disposition, we currently have to go back to Treasury Board to gain the authority to complete that disposition.

What we're seeking is to be able to complete that process. If we do sell something on the open market, any funds received go into the consolidated revenue fund, and we still have to go back to Treasury Board through the estimates process to access those funds, which would also be reinvested in any kind of real property holdings.

This is just a general request in order to complete the whole process for property management.

Mr. Greg Fergus: Is this similar to any of the other granting councils or any of the other scientific bodies that we have?

Ms. Dale MacMillan: Very few government departments are actually real property holders. I don't believe that the granting councils hold any property whatsoever. This is something that is unique to our act.

Mr. Greg Fergus: Thank you.

Ms. Dale MacMillan: Thank you.

The Chair: All in, all done...?

Thank you to all the witnesses.

Mr. Christopher Johnstone (Director General, National Programs and Business Services, National Research Council of Canada): There's one more clause.

Clause 279 has two parts. The first amends the National Research Council Act to broaden the NRC's rights to dispose of its intellectual property to include all forms of intellectual property and future intellectual property rights that may arise under contracts. Previously, the NRC's authority to dispose of intellectual property did not clearly cover certain forms of intellectual property, such as copyright.

The second part of the clause modernizes the act, by moving the administration and control of inventions made by NRC employees from the minister responsible for the NRC to the NRC itself. This brings the act in line with legislation of similar government organizations.

The Chair: Are there any questions from anyone?

Go ahead, Mr. Fergus.

Mr. Greg Fergus: I'm trying to get my head around the first part of this, as opposed to the Public Servants Inventions Act.

Can you just walk me through the need for us to do this, on the intellectual property rights issue of inventions owned by the NRC?

Mr. Christopher Johnstone: It's to expand the intellectual property rights to forms of intellectual property other than patents.

Mr. Greg Fergus: That's right.

Mr. Christopher Johnstone: Other forms of intellectual property include things such as copyrights, which is more common with respect to software. This clarifies the NRC's authority, with respect to disposing of intellectual property to those other forms of copyright, aside from patents. Right now, the act does not clearly extend the NRC's rights to those other forms of intellectual property, such as copyright.

The Chair: Thank you all.

I think you have another group of witnesses to come up for subdivision H.

Thank you for waiting around this long.

In this next group, we have Mr. Schaan again and we have Mr. Simard.

With Canadian Heritage, we have Ms. Beaton, who is director general, creative marketplace and innovation branch; Mr. Cappuccino, who is the director, copyright policy; and Ms. Vigneault, who is policy analyst, legislation and parliamentary affairs.

The floor is yours again, Mark.

● (1800)

[*Translation*]

Mr. Mark Schaan: Thank you, Mr. Chair.

The Copyright Board is a quasi-judicial independent tribunal which establishes fees for the use of works that are protected by copyright. In almost all cases, the board's jurisdiction only applies to the rights managed by collective management organizations. The board facilitates the development and growth of the market that counts on copyright; it acts as a specialized, independent decision maker and protects public interests.

[*English*]

Subdivision H of division 7 of part 4, clauses 280 to 302, amends the Copyright Act to modernize the legislative framework in which the board operates so as to improve the timeliness, predictability and clarity of board proceedings by codifying the board's mandate, establishing decision-making criteria, modifying timelines, formalizing case management and modernizing the existing language and structure.

It also allows more collective societies to enter into agreements directly with users to ensure that the board is adjudicating matters only when needed.

Very quickly, I'll simply say that the board has been the subject of considerable study in both Houses as well as in research reports written by many, and the legislative amendments that we have set out today set out a number of important modernizations. As I indicated, there are clear rules and processes that provide the board with a clear mandate not only formalizing its de facto substantive mandate, which is to set fair and equitable rates, but also proposing amendments that would include a procedural mandate for the board to act as informally and expeditiously as the circumstances and considerations of fairness allow.

It will create clear criteria that require the board to consider two criteria in its decisions: what would be agreed upon between a willing buyer and a willing seller in a competitive market, and the public interest. It would empower case management, which has been demonstrated to be a highly effective tool to advance contested proceedings in a flexible and efficient manner.

It also sets out streamlined timelines, including earlier filing for longer duration. This is all aimed at ending the practice of retroactive tariffs. In the majority cases when the board sets tariffs, they are retroactive in nature, sometimes as many as four to six years retroactive, which obviously freezes capital, forces parties to hold on to significant sums, creates uncertainty and unpredictability in the marketplace and potentially deprives Canadian creators and the Canadian marketplace of new services.

The act sets the need for earlier filing for a longer duration, a modernized publication regime, a shorter opposition period and decision-making deadlines through a new regulatory power that would enable the Governor in Council to establish timelines or deadlines for how the board pursues its work.

It lets willing buyers and willing sellers come to agreements through direct negotiation between users and collectives for communication and public performance rights, but it also allows for individual dispute settlement to ensure there's no undue pressure for someone to enter into an agreement and that there's due process around that.

Finally, on enforcement and remedies, it maintains the current balance with regard to remedies. Existing statutory damages would continue to be available to collectives and their members in respect of communication and public performance.

With regard to filing and review of agreements, the existing mechanisms that allow either party to file agreements with the board to have them available for potential review would be extended.

Finally, on robust protection of the public interest, first of all, as I indicated, the board will be required to consider the public interest and the board plans, as its part of this modernization, to propose regulations that would formalize the ways for the public to be involved without having to incur the cost of full participation.

That is the modernization of the Copyright Board. I'm happy to take any questions.

● (1805)

The Chair: Mr. Fergus.

Mr. Greg Fergus: I'm somewhat familiar with this issue, and I might have a number of questions I'll come back to.

The first is on the structure of the board. I haven't had a chance to take a look at the clause-by-clause approach to the legislation. Could you give me a bird's eye view of the structure, of who gets to sit on the board under the reforms?

Mr. Mark Schaan: The board structure is staying the same. There's a vice-chair of the board appointed through the GIC process. There's a chair of the board, who has to be a retired justice. Then there are up to three additional lay members of the board, who have the capacity to oversee hearings.

What is changing in the process, in terms of the structure, is how they go about their business. As I said, we refer to it as the accordion model. We've set out regulations that will dictate the process leading up to a hearing. Hearings will then be case-managed, which is empowered by this legislation, and then there will be deadlines imposed through regulatory powers on what happens post-hearing towards the decision.

In addition, this relates to new appointments. There have been new appointments to the board, including a new vice-chair and a new lay member. There are additional resources. The board's been given a 30% increase in their resources to allow them to more efficiently work through their scope, which will be significantly expanded since their rules were last updated. Really, it's a comprehensive approach to the structure of the board.

In theory, it doesn't change, because you still have hearings with a vice-chair and a chair and lay members, but every aspect of the process is changing by regulating the starting point of how the process gets kicked off, when to file and for how long, what happens in the hearing process, and then what the deadlines are after a hearing is concluded.

Mr. Greg Fergus: The second issue, I guess, is that, before politics, I was fascinated by the Supreme Court's decision determining what fair access is. How do any of these changes reflect, respect or limit that decision?

Mr. Mark Schaan: We're very aware of the ongoing litigation and the issue of educational copying and fair dealing. This reform and modernization of the board maintains the existing statutory damage model. However, Minister Rodriguez and Minister Bains have written to the Standing Committee on Industry, Science and Technology, and the Standing Committee on Canadian Heritage asking them specifically to look at the applicability of a tariff, the obligation to pay a tariff and the statutory damages associated with non-payment of a tariff, recognizing that this is very substantive and significant issue of effect to creators and that it's one that requires a more considered approach than the modernization efforts that we're pursuing here today.

Mr. Greg Fergus: What you're trying to say in sum, if I understand, is that it requires a more considered approach and the changes here do not weigh in on that debate.

Mr. Mark Schaan: That's correct. We've left the statutory damage model as is.

Mr. Greg Fergus: Thank you.

The Chair: Mr. Julian.

Mr. Peter Julian: I have just one question. What was the degree to which you consulted the artistic community around this?

Mr. Mark Schaan: We ran consultations starting in the summer with a public paper that laid out a whole series of options. We received more than 60 submissions. A significant number came from the creator community. We were, between our two departments, in touch with the creator community routinely in all of its facets: literary publishing, music, songwriting, and dramatic arts.... I'm going to miss someone and then they're going to get mad at me tomorrow when I don't name them.

This is really an issue for which in the copyright community there was, by and large, a consensus that retroactive tariffs were bad for both sides in a contested hearing setting and that modernization of the board was essential for all players.

● (1810)

Mr. Peter Julian: Thank you.

The Chair: That will end that session.

Thank you, Mark, for your long time at the table.

I thank all of the other witnesses for appearing as well. Some of you got off easy.

We will now turn to part 4, divisions 11,12 and 19, dealing with the First Nations Land Management Act, the First Nations Fiscal Management Act, and the addition of land to reserves and reserve creation act.

We have Mr. Eric Grant, Director of Community Lands Development, Lands and Environmental Management; Ms. Waters, Director General of Lands and Environmental Management; Ms. Van De Ligt, Policy Analyst for the Fiscal Policy and Investment Readiness Directorate; and Ms. Walsh, Director for the Fiscal Policy and Investment Readiness Directorate as well.

The floor is yours. Welcome.

We're starting with part 4, division 11.

Mr. Grant.

Mr. Eric Grant (Director, Community Lands Development, Lands and Environmental Management, Lands and Economic Development, Department of Indian Affairs and Northern Development): Thank you, Mr. Chair.

I'm here today to provide a briefing on clauses 352 to 384 of the BIA. They deal with amendments to the First Nations Land Management Act, a long-standing piece of legislation that received royal assent way back in 1999. When it came into force, the act ratified the Framework Agreement on First Nation Land Management. This was a nation-to-nation agreement signed between Canada and 14 first nations in 1996.

Together, the framework agreement and accompanying federal legislation provide a mechanism for first nations to opt out of one-third of the Indian Act and take on authority, control and responsibility for their lands, resources and the environment. It's worth noting that first nations land management only applies to reserve lands, defined as federal lands that have been set aside for the use and benefit of first nations in accordance with section 91(24) of the Constitution.

Today more than 150 first nations from across Canada have opted in to first nations land management, with 77 fully operating their land laws. The community must vote to pass these laws. I'll speak a little bit more about that later.

The department has been working in partnership with the indigenous rights holders since 2016 on the current bundle of legislative amendments. The Land Advisory Board is the indigenous institution that represents the interests of first nations land management communities. A resolution was passed unanimously giving the Land Advisory Board their current mandate in this regard. I mention this just to demonstrate that there is great interest and support among participating first nations in these changes.

While significant, the proposed amendments to the First Nations Land Management Act are categorized as administrative and practical in nature. They form the first phase of a broader land reform strategy that will roll out over the next three to five years. As mentioned previously, the legislative proposal parallels amendments that have been made to the Framework Agreement on First Nation Land Management, which must then be approved by two-thirds of the first nations that are active in this. I mention this because to date, more than 80% have already signalled their interest by signing on to the proposed amendments, and none have opposed thus far.

I'll move on now to a few specifics. I mentioned earlier that the amendments could be categorized as administrative, but they will also make meaningful improvements to communities and simplify the entry process for new communities as they come on.

First, the amendments to the First Nations Land Management Act are proposing to including a statement that acknowledges Canada's pre-existing commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples. In May 2016, the Government of Canada adopted UNDRIP without qualification, and committed to its full and effective implementation in accordance with the Canadian Constitution. Acknowledging UNDRIP within the First Nations Land Management Act aligns with the Government of Canada's commitment to a renewed nation-to-nation relationship with indigenous people based on the recognition of rights, respect, co-operation and partnership. It is a symbolic statement and furthers Canada's reconciliation efforts.

Another set of amendments aligns voting procedures to other democratic processes in Canada by removing the participation requirement that currently exists. As I mentioned earlier, communities must vote for their leadership to exercise the law-making powers of first nation land management. Currently, a minimum number of voters must vote, and of those who vote, more than half must vote to approve. The proposed amendments would allow first nations to decide if they want to use a participation threshold or if they want to align their voting practices to simple majority rules that are used in many other voting processes in Canada.

The proposed amendments will make improvements to how new lands are added to the reserve land base or additions to reserve. Rather than having these new lands come on as Indian Act lands before they then get transferred to first nation lands under this act, the proposed amendments would do an automatic transfer. When the lands are added, they automatically become first nation lands. This eliminates a significant administrative step and a time-consuming step in that process.

The amendments will also transfer what we call “capital” monies —that is, monies generated from non-renewable resources like oil and gas—directly to first nations. Currently, the department manages those monies on behalf of first nations. Right now under first nations land management, only “revenue” monies—that is, monies from permits, leasing and revenue-generating opportunities—are included as part of first nations land management. This would move all Indian monies, as we call them, over to first nation control.

Next, the amendments will provide for first nation employees a protection from liability that's similar to the protection provided for those in other governments. What we mean by this is that employees cannot be personally sued in the conduct of their official duties.

● (1815)

There are several other housekeeping amendments, such as eliminating obsolete clauses that no longer apply due to certain sections of the Indian Act being repealed. We'll clean those up. I won't bother mentioning those here, but I'm happy to take questions on them.

Just to close, the amendments are strongly supported by first nation partners and will further strengthen a successful first nation-led sectoral self-government initiative, one that supports first nations to operate at the speed of business and to enhance community economic development.

I'm happy to take any questions.

The Chair: Okay, we will turn now to questions. Does anybody want to start?

At the briefing night, I asked what the implications would be of supporting the United Nations Declaration on the Rights of Indigenous Peoples. Has there been any legal advice under that? There are rights on all sides, but just what are the implications in the long term for Canadians as a whole of encapsulating that declaration in our own laws?

Mr. Eric Grant: Thank you, Mr. Chair.

We did get your question the other night and we appreciated that. We've looked and we did not get legal advice and did not think legal advice was necessary because this is merely the statement of a pre-existing acknowledgement that the government is implementing UNDRIP.

The Chair: Okay, that's fine, as long as we know.

Are there any other questions from any other members on division 11?

We turn then to division 12, on the First Nations Fiscal Management Act.

Ms. Walsh.

Ms. Leane Walsh (Director, Fiscal Policy and Investment Readiness, Economic Policy Development, Lands and Economic Development, Department of Indian Affairs and Northern Development): Thank you. I'm here to speak to clauses 385 to 414 regarding the First Nations Fiscal Management Act changes in front of you.

This act came into effect in 2006 and has established a strong framework for first nations who opted into the regime to implement taxation and fiscal management and to access long-term financing to meet their economic development and infrastructure needs. There are three first nation institutions that operate under this act. We refer to these as the fiscal institutions. They include the First Nations Financial Management Board, the First Nations Finance Authority and the First Nations Tax Commission.

This act, like the First Nations Land Management Act, is optional. However, more than one-third of first nations across the country have chosen to exercise their fiscal powers under this regime. That's 239 first nations and soon to be 266 first nations.

These amendments are mainly administrative but they are important to the continued evolution of the regime. These were developed in partnership with our first nation fiscal institutions in order to improve their daily operations and respond to the needs of their member first nations.

Budget 2018 committed an additional $50 million over five years, with $11 million ongoing for these institutions to expand their operations nationally. These changes will help them do so.

I would like to give you a few concrete examples of what these amendments will achieve.

There are bijural concerns with the current act. This means that there are inconsistencies between the civil law and common law concepts that speak to rights and interests on reserve lands. These must be addressed in order to ensure national consistency, particularly as we implement in Quebec.

There is a need to strengthen the liability protections for the institutions and their staff as their work continues to evolve. For example, the financial management board is partnering with the Assembly of First Nations and the government to develop a new fiscal relationship. We need to ensure that this work is included.

There is a need for regulations for taxation on lands that are shared by more than one first nation. We refer to these as joint reserves. First nations under this regime want to be able to tax these lands. These amendments will help them do that.

To continue to evolve the regime, there is also a need for regulations to enable aggregate indigenous organizations delivering public services to be able to access the regime to meet their infrastructure needs. For example, the First Nation Health Authority in British Columbia, which delivers health services to all the first nations in that province, has asked for access to the regime for this purpose.

Finally, these amendments will enable first nations under this regime to access their Indian monies upon a successful vote by their communities. These are monies held by Her Majesty for the use and benefit of first nations.

In summary, this regime is optional and first nation-led. These amendments are mostly administrative. They are clarifying language, addressing operational issues for the fiscal institutions and their members, and expanding access to those who have asked for access to the regime.

I'm open for questions.

● (1820)

The Chair: Mr. Poilievre.

Hon. Pierre Poilievre: Does the regime apply both on treaty lands and on reserve lands?

Ms. Leane Walsh: Currently the regime applies to what we call Indian Act first nations although it does contemplate self-governing first nations accessing the regime. There's a regulatory power included in the act, and we're currently working with our partners at the Department of Justice to develop those regulations.

Hon. Pierre Poilievre: When you say “contemplates”, what does that mean?

Ms. Leane Walsh: There's a specific amendment power under section 141 that allows adaptation regulations to the act to enable self-governing first nations to be able to opt in to the regime, just like a first nation would.

Hon. Pierre Poilievre: Absent that particular provision, it would just be reserve lands?

Ms. Leane Walsh: It would be first nations who are still under the Indian Act.

Hon. Pierre Poilievre: Okay.

Ms. Leane Walsh: The way the act is structured is for first nations who are still under the Indian Act.

We would need to be able to modify that in order to address paramountcy concerns with provinces, and with the self-governing first nations as well. That's what those adaptation regulations help us to do. There's a similar change for organizations to also access the regime. It would follow the same process.

Hon. Pierre Poilievre: Do we have a sense of how many will take up these opportunities?

Ms. Leane Walsh: We currently have three treaty first nations who are partnering with us to develop those regulations. However, there are many others who are asking. As soon as these standard regulations are in place, we'll be able to schedule self-governing first nations to choose to opt in to it. There's an amendment in this package that will enable the minister to be able to add them to that schedule through the regulations.

The Chair: Mr. McLeod.

Mr. Michael McLeod (Northwest Territories, Lib.): Thank you, Mr. Chair.

I think Pierre asked most of what I wanted to know. Just for clarity, I want to talk about the self-governing indigenous governments, because this is an important part of it—to be able to develop their own OSR, their own-source revenue, to be able to tax their own people and tax their own lands.

You said that work is under way through a separate process. You mentioned Justice. I just want to make sure that's who's being tasked with doing all the work for the self-governing—

Ms. Leane Walsh: Yes. In order to develop we need to modify the regime slightly. There are some sections of the regime that have to change—the vocabulary, the framework, the governance framework that's in place—in order to work for treaty first nations. They will be able to opt in and choose, just like an Indian Act first nation would be able to do. It works up north. It applies down south, anywhere in Canada. It applies to all first nations.

● (1825)

Mr. Michael McLeod: I might be reaching, but would that apply also to the Métis?

Ms. Leane Walsh: I don't know that I have the wording off by heart. It is indigenous or aboriginal groups that are subject to a treaty, so yes, it could go that far.

Mr. Michael McLeod: Subject to what?

Ms. Leane Walsh: Subject to a treaty with Canada, and I believe there's some modification of that to include provinces and territories.

Mr. Michael McLeod: Okay, because we have Métis nations negotiating land claims, too.

Ms. Leane Walsh: Yes.

Mr. Michael McLeod: Okay, thank you.

Ms. Leane Walsh: That's already in the act. There's that flexibility.

The Chair: Okay.

Mr. Julian, go ahead. You're on.

Mr. Peter Julian: Thanks, Mr. Chair.

It provides for taxation powers. I don't see any reference to the framework around that, for example, taxation notices in indigenous languages. What is the framework? What are the next stages? Am I right to assume that I don't see an administrative framework around the approach in terms of taxation?

Certainly in the communities I'm aware of in British Columbia, a lot of them are very keen to be able to provide for indigenous languages in their communities, and taxation notices would then be subject to perhaps a different legal framework than is currently the case. How does that fit into what is in the bill?

Ms. Leane Walsh: There are no current changes to the act contemplated for indigenous languages yet. I think that perhaps as that bill moves forward, the indigenous languages act, we may see some changes necessary to the act. It's not currently contemplated.

Mr. Peter Julian: The thinking is that this is really a standalone bill within the BIA, which I think should have been—and hopefully the Speaker will agree—separated out.

In a sense you're looking at a tandem, two-piece legislation that would then fit together, which would give powers and the ability of communities to—

Ms. Leane Walsh: I might have misspoken or not spoken clearly enough. Currently the tax commission works with first nation communities who are interested in putting in place a taxation regime. There's nothing to prevent them from already using their indigenous languages, as long as it's available as well in the language of the residents—the taxpayers—who are living in the community. Any first nation could put forward a tax regime that also offers it in their own language.

Mr. Peter Julian: As we know with linguistic history in this country, in the case where an indigenous community is issuing a tax notice in the indigenous language, it might get complicated.

Ms. Leane Walsh: That's where the tax commission would come into play. They would ensure that taxpayers are able to understand the changes—the taxes—that are in front of them. There is a dispute mechanism, as well, for the tax commission. They do ensure representation of taxpayers. That's how the First Nations Tax Commission is set up. There has to be a representative for each of the different classes of taxpayers on the commission. There is always that oversight to ensure it is constitutionally compliant. They will check any laws the tax commission approves.

Mr. Peter Julian: Thank you.

The Chair: Is that it, Peter?

Mr. Peter Julian: Yes.

The Chair: If there are no further questions, then thank you.

We are turning to division 19, the addition of lands to reserves and reserve creation act.

Ms. Waters.

Ms. Susan Waters (Director General, Lands and Environmental Management Branch, Lands and Economic Development, Department of Indian Affairs and Northern Development): Good afternoon.

I'm pleased to provide you with an overview of the legislative proposal to enact the addition of lands to reserves and reserve creation act, clauses 675 to 685 of the budget implementation act.

This is an act to facilitate the setting apart of lands as reserves for the use and benefit of first nations. First, I will provide some brief context for the legislation.

Land is core to the identity of indigenous people. It is their greatest asset and provides the foundations for first nations to contribute to their own self-determination and self-sufficiency through community and economic development. Additions to reserves and reserve creation are part of the Government of Canada's overall efforts to help advance reconciliation from historical practices and honour commitments.

There are currently over 8.8 million acres of reserve land in Canada. Canada's historical practices of administering reserve land under the Indian Act and non-fulfillment of treaty obligations have left first nations with thousands of legacy land issues, including boundary disputes, environmental contamination and unexploded ordnance from military activity.

Over four million acres of reserve land is still owed to first nations, stemming from legal obligations in historical treaties and settlement agreements. Land requirements are also increasing to accommodate community population growth, demand for new housing and public infrastructure.

First nations are progressively interested in adding on to reserves to take advantage of economic development opportunities, in particular in urban areas. The current process of adding land to reserve is complex and time-consuming, with many additions to reserve taking over five years to process.

The proposed legislation is largely administrative in nature and has been called upon by first nations leaders and organizations such as the Assembly of First Nations, the National Aboriginal Lands Managers Association and the National Indigenous Economic Development Board. It also follows feedback from engagements with first nations communities and organizations, leading up to and following the release of the 2016 policy on additions to reserve, in response to the need for additional tools and improvements to streamline the additions to reserve and the reserve creation process. In addition, the proposal reflects recommendations made by the Senate and House standing committees' reports.

Specifically, the changes propose to extend the same benefits that are currently only available in the prairie provinces to all first nations in Canada, for all types of reserve creation or addition to reserve proposals. The proposed changes are part of a number of actions the government is taking to support first nations' efforts to increase their reserve land base. This includes the adoption of the additions to reserve policy in 2016. These changes include repealing the Manitoba, Alberta and Saskatchewan claim settlements implementation acts, and consolidating them into one piece of legislation that would be extended nationally. The proposed legislation would incorporate the best aspects of these acts into national legislation.

The legislation would also authorize all additions to reserve to be approved by ministerial order, rather than Governor in Council, which will result in more timely decisions. It will also better facilitate economic development on reserve land by enabling first nations to designate or zone the land prior to transfer, therefore facilitating the transfer of third party interest through leases or permits prior to lands being added.

The proposed legislation will also authorize the minister to sign off on all statutory easements granted under the Indian Act that it required to address third party interests such as hydro utilities and pipelines that are related to an addition to reserve, rather than having these go to Governor in Council.

The minister will also be able to sign off on voluntary land exchanges in relation to corresponding additions to reserve. The ability to prepare paperwork before reserve creation, which is a lengthy and complex process, and the shortening of the decision-making process will provide access to economically viable lands and resources to first nations in a more efficient manner. As a result, the proposed legislation will better facilitate economic development on reserve land, allowing first nations to operate at the speed of business.

Thank you.

● (1830)

The Chair: Who wants to start on questions?

Ms. Rudd.

Ms. Kim Rudd: Thank you very much.

You talked about the shortening of the process and the fact that this is now a ministerial sign-off rather than a Governor in Council sign-off.

I know these things can take years. Do you have any sense of what effect this will have in months or years?

Ms. Susan Waters: The estimated time for that particular improvement to the legislation can be from about six weeks to three or four months, depending on Treasury Board's schedule and required steps that need to be completed. It's primarily jockeying with a very full schedule, and also the timelines that we try to line up with.

When there is proposed activity on the lands, it is critical for us to be able to work with our first nation to prepare the lands in advance. That is where the real time saving occurs. Currently, a first nation must wait for the land to be added, and then go through the zoning process. That involves a vote by all committee members, and it can take 18 months or so for that process to be completed.

● (1835)

Ms. Kim Rudd: Thank you.

The Chair: Is there anyone else?

Are there any implications on other departments in some of these decisions when it's just done by ministerial order?

The reason you go to executive council is that each cabinet minister or executive council member has their own area, and if you don't talk about a lot of decisions generally.... We all know that this place operates in silos. Sometimes when one minister makes a decision, it affects another minister's area.

I really find it a little strange that executive council is not making this decision, because in the whole cabinet, there will be others for whom maybe the decision implicates some things in their area of jurisdiction.

Is there any thought to that? Are there any problems here?

Ms. Susan Waters: Currently, 80% of additions to reserve are approved by ministerial order, given that the majority are being processed in Manitoba and Saskatchewan, which currently benefit from the claim settlement legislation that allows for it.

Without the legislation, the addition to reserve is done through the royal prerogative. That's why it has to go to order in council. It's just a matter of it being legislated and the minister being provided the authority. When the previous prairie province settlement legislation was introduced, there was always the intent to broaden the application across the country.

With respect to the application to other ministers, we work closely with Natural Resources Canada, with the surveyor general branch, because they are responsible for surveying the land. That's a very technical requirement that is done well in advance of any addition to reserve proposal, and I wouldn't see there being any concern on behalf of the minister with respect to these changes.

The Chair: There are no further questions. Thank you very much.

On division 13, the Export and Import Permits Act, we have Ms. Funtek from Global Affairs. As well, from Justice, we have Ms. Ranger; and from Finance, Ms. Govier.

The floor is yours.

Ms. Michèle Govier (Senior Director, Trade Rules, International Trade and Finance Branch, Department of Finance): I'll just give an overview of a change to the Export and Import Permits Act. It's in clause 415 of the budget implementation act.

The Export and Import Permits Act, or EIPA, provides the Minister of Foreign Affairs with the authority to control the import and export of goods through permit requirements. The Minister of Foreign Affairs currently has the authority to determine import access quantities, to determine a method for allocating those quantities, and to issue allocations for goods included on the import control list for the purpose of implementing an intergovernmental arrangement or commitment.

The budget implementation act, 2018, no. 2, includes one amendment to the EIPA to add an additional authority under which the Minister of Foreign Affairs may determine import access quantities in order to allocate those quantities. The additional authority would be for goods added to the import control list for facilitating the implementation of certain trade actions taken under the customs tariff that may require the use of import permits. This includes safeguard measures that are used in exceptional circumstances to respond to import surges that may harm Canadian producers and workers, and trade measures that respond to actions taken by other countries that adversely affect Canadian trade. This amendment will allow the Government of Canada to administer such trade actions in a more predictable manner that will contribute to market stability.

● (1840)

The Chair: Mr. Sorbara.

Mr. Francesco Sorbara: Thank you, Mr. Chair.

Does this still pertain to part 4, division 13?

Ms. Michèle Govier: Yes.

Mr. Francesco Sorbara: Obviously, we live in a time where our government has put in steel safeguards and we need to be nimble. This change in the Export and Import Permits Act provides for this nimbleness.

Am I reading this correctly, if I speak to various stakeholders back in my riding of Vaughan—Woodbridge?

Ms. Michèle Govier: Yes, that's correct.

We have provisional safeguards currently in place on certain steel products. In consultations that we held ahead of imposing those safeguards, this was identified by stakeholders—both those asking for the safeguards to be imposed and those who had some concerns. They were interested in seeing whether they could be allocated. We didn't have the legislative authorities at the time, so this initiative will ensure that we do so. The safeguards in place right now are provisional in nature, but if we move to imposing final safeguards that are longer term, we would have this ability to allocate.

Mr. Francesco Sorbara: I'm not sure if you can or cannot explain it, but just for clarification, has it always been under the purview of the Minister of Foreign Affairs rather than the Minister of International Trade, or the finance minister? Is there a convention for that?

Ms. Katharine Funtek (Executive Director, Trade Controls Policy, Department of Foreign Affairs, Trade and Development): Yes. The minister for the Export and Import Permits Act is the Minister of Foreign Affairs. There's generally an exchange of letters between the Minister of Foreign Affairs and the Minister of International Trade—or currently, the Minister of International Trade Diversification—which would allow the Minister of International Trade to take on some of the authorities under the act. The minister under the act is the Minister of Foreign Affairs.

Mr. Francesco Sorbara: I have one follow-up question. In terms of the timeliness of this change—I want to just call it an amendment—how much more quickly can the process be done if there is an import surge or, for example, a dumping of certain products? Does this speed up the process for the minister to act exponentially more quickly?

Ms. Michèle Govier: It doesn't change the ability of the minister to act, in terms of imposing a safeguard, because those are actually contained in the customs tariff. This is aiming to say that if we do impose a safeguard and it's in the form of a tariff rate quota, it gives the authority to the Minister of Foreign Affairs to be able to allocate that quota. It's really giving a new authority that's not there now.

Mr. Francesco Sorbara: Thank you for that clarification.

The Chair: Go ahead, Peter.

Mr. Peter Julian: Thank you.

I'm interested in the change. What does this change that didn't exist before?

Secondly, what is the application of something like the Magnitsky act, in terms of making any sort of government intervention for human rights violations abroad? Is the scope larger than what is written here?

First, what do we have now? As I read through this, I don't get a real sense of what the change is.

Ms. Katharine Funtek: Currently under the Export and Import Permits Act....

Let me step back for just a minute. Governor in Council can put goods on the import control list for a variety of purposes. It can be to support supply management, to implement a free trade agreement, that sort of thing.

The act also gives the minister under the act, the Minister of Foreign Affairs, the ability to allocate certain goods for which she has determined an access quantity. That's with reference to the purpose of implementing an intergovernmental arrangement or commitment. A free trade agreement like CETA, for example, is something where the minister has the authority to determine access quantities, which is generally the negotiated quantity. Once she has done that, she then has the ability to determine how to allocate those quantities, and then to issue allocations and permits for those quantities. That is the only purpose right now under the act for which the minister can determine an allocation method and issue allocations.

What this does, as my colleague mentioned earlier, is add an additional purpose for which she can do that. That's under a separate subsection of the act, which is subsection 5(6) of the act, and that's to implement certain actions that are taken under the customs tariff.

Essentially what it means, as my colleague mentioned, is that currently we have the provisional safeguards. The only means of administering those is by way of the issuance of permits on a first-come, first-served basis. Many stakeholders feel that is not conducive to orderly import marketing. Most of them, whether they are in favour of the safeguard, or are not necessarily in favour of the safeguard but are subject to it, would like to have greater transparency and predictability in terms of how those safeguards are administered. They are, therefore, pushing for the minister to have the ability to allocate the quantities under the safeguards.

● (1845)

Mr. Peter Julian: Thank you.

Ms. Michèle Govier: On the second part of the question, the elements within the customs tariff that are now included here.... I mentioned the safeguards. I mentioned where we're responding to the trade actions of another country. It can also be situations around where we have preferential treatment for developing countries, or where we unilaterally undertake certain tariff things.

It doesn't cover things like the Magnitsky act, which I'm not that familiar with, but I know it's not one of them that we're covering. It's just a few of these different situations where trade measures may be imposed or modified under the customs tariff.

Mr. Peter Julian: Thank you.

The Chair: Okay.

We'll have Mr. Kmiec, and then Mr. Shipley.

Mr. Tom Kmiec: Thank you for the explanation of how this is going to work. That was going to be my first question, but Peter asked it and I don't have to.

Can you tell me what the modification for this section is specifically in response to?

Ms. Michèle Govier: It's in response to a couple of situations that have come up recently.

One is the safeguards. In the course of consultations, it became quite clear that people were very interested in having us allocate a tariff rate quota. If we were going to impose one, we realized we didn't have the legislative ability to do so. That was the most immediate one.

I can also flag that in the context of when we were looking at countermeasures to the U.S. section 232 steel and aluminum tariffs, those ended up being in the form of a tariff, but there is also the ability to impose something in the form of a tariff rate quota. Again, we would not have had the ability, had we gone down that road, to allocate those. It was really looking to make sure that we were prepared.

These are the types of provisions that aren't typically used, but in recent months they have been considered.

Mr. Tom Kmiec: Where in budget 2018, do we find mention of the need for this?

The tariff quotas that the Americans imposed were on June 1. The budget document was tabled February 27. The BIA is supposed to follow the budget document. This thing is 900 pages long. It's an omnibus bill, and what you're telling me is that this is in reaction to something that happened after the budget was tabled.

Where in the budget 2018 document does it say there is a need for changes to the Export and Import Permits Act? Do you have a page number for that?

Ms. Michèle Govier: There are references on pages 64 and 67 to the government's intention to ensure that trade is done in a responsible, rules-based way.

I would note that the section 232 investigation, of course, began a good deal before the measures were imposed against Canada in June. The government's consideration of a potential response did date for considerably before that was occurring.

Mr. Tom Kmiec: Okay.

The Chair: Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you very much, Mr. Chair.

I'm just filling in, but it struck me as I sat down, in terms of the EIPA, in the agriculture area for a number of years we've actually been struggling with spent fowl in terms of the agriculture sector.

In terms of correcting that, it's not under the tariff rate quota. I'm just wondering where in the budget you would find how that will be resolved. Do you know what that is, by the way?

Ms. Michèle Govier: You probably know more than I do about that.

● (1850)

Mr. Bev Shipley: I'm sure Ms. Funtek does.

Ms. Michèle Govier: There are other colleagues in Finance who work on that issue so—

Mr. Bev Shipley: It's said to be fowl off of layers coming in, but is broiler meat. It was illegal, and it has been coming in for a number of years. I am just wondering, in terms of the budget process under Foreign Affairs and International Trade, if the foreign affairs minister is taking the lead. How is that addressed in the budget in terms of the final authorization to—

Mr. Peter Fragiskatos: I have a point of order, Mr. Chair.

Is this question relevant to the discussion of the BIA?

Mr. Bev Shipley: I would think it's fairly relevant. If you're in agriculture, it's very relevant.

Mr. Peter Fragiskatos: It's relevant for you, but—

The Chair: Yes, it actually is relevant when it relates to the border issues that are in this section.

Mr. Bev Shipley: At any rate, I am just wondering. If you don't have that tonight, I understand, but I think it would be important in terms of our trade and in terms of what the cost to our industry has been and where that could be addressed in terms of the BIA. Could you do that, please?

Ms. Michèle Govier: I will take that back. As I said, I am not prepared to speak on that today but I will take that back to colleagues.

Mr. Bev Shipley: Thank you.

The Chair: I would put the question to you this way. Will these changes in this legislation make it easier for the Government of Canada to deal with issues like spent fowl, which are in fact undermining the supply management system by replacing domestic production with foreign product that really shouldn't be coming in?

You can get back to us on that.

Ms. Michèle Govier: We'll do that as a follow-up.

The Chair: Okay. Thanks.

Are there any further questions on the division, Export and Import Permits Act, from members?

All in, all done. Thank you very much, ladies.

We go to division 17, international financial assistance, and there is subdivision A and subdivision B, I gather.

The first grouping is Global Affairs and Finance. Is everyone coming up together? That's fine, too.

I hear some sighs around the room. If people want to suspend for five minutes and take a stretch, we can do that after this panel, or we can keep on going. You can think about it.

Mr. Peter Julian: I was on a plane all day. Stretching would be good.

The Chair: Okay, we'll have a stretch for five minutes when we finish division 17.

On part 4, division 17, international financial assistance, and on amendments to subdivision A, amendments to certain acts, we have Ms. Kent and Mr. Heaton with Global Affairs; and from Finance we have Dr. Giles, Ms. Pang, and Mr. Edwards.

Go ahead, the floor is yours.

Ms. Nicole Giles (Director, International Trade and Finance, Assistant Deputy Minister's Office, Department of Finance): Thank you very much, Mr. Chair.

We'll first speak to the reporting and amendments to certain acts, which deals with clauses 654 to 658 in division 17. Budget 2018 announced that Canada would be enhancing its international assistance reporting, which is currently based on different historical and legislative requirements that result in Canada's reporting on its international assistance levels through several different means—multiple reports at different dates with different scopes.

The first component of division 17 proposes legislative amendments to three existing acts in order to align reporting timelines. The first is the Bretton Woods and Related Agreements Act, which falls under the responsibility of the Minister of Finance. The second is the European Bank for Reconstruction and Development Agreement Act, also under the Minister of Finance. The third is the Official Development Assistance Accountability Act, which falls under the responsibility of the Minister of International Development.

The goal is to establish timelines to allow for one consolidated report explaining international assistance activities to Parliament and to Canadians

[*Translation*]

This report will relay in an effective and transparent way the efforts deployed by Canada in the area of international aid.

[*English*]

The amendments to the Official Development Assistance Accountability Act, or ODAAA, seek to repeal the outdated definition of official development assistance currently in the act. These amendments allow for official development assistance to be defined and updated in regulations so that it can be kept consistent with the internationally agreed definition.

I'll now turn it over to my Global Affairs colleague for any additional comments.

● (1855)

Ms. Deirdre Kent (Director General, International Assistance Policy, Department of Foreign Affairs, Trade and Development): We have nothing else to add. We're ready to take your questions.

The Chair: Tom.

Mr. Tom Kmiec: How is the definition outdated?

Ms. Deirdre Kent: The act was originally created in 2008, and in the interim time the OECD has worked to update the act. The updated definition is based on the same elements that are in the ODAAA: the main objective is to promote the economic development and welfare of developing countries; and the assistance must be concessional in character.

The main change came about due to negotiations at the OECD and consensus agreement. It relates to a minimum grant element required for assistance to be considered as ODA. This is traditionally applied to concessional sovereign loans to ensure that donors are giving sufficiently generous loan terms to count as ODA.

More precisely, just to be concrete, the old definition had a grant element of 25%, and now the updated definition has a graduated scale going from 45% down to 10%. This encourages more concessional funding to the least developed countries.

Mr. Tom Kmiec: You're using the OECD new definition. Thank you for that. What you're doing here, however, is giving the Governor in Council...so that the cabinet can make a regulation to change the definition, whereas before it was a statutory definition. Why didn't we just update it to whatever the OECD decided was the reasonable new definition?

Ms. Deirdre Kent: In fact, the OECD is still undergoing discussions on modernizing the definition of ODA to reflect the evolving global context. For example, now there are discussions regarding private sector instruments, and those discussions are ongoing. We expect the definition to be changing again in future. The move to have the definition in the regulations versus in the legislation will allow the updates of the definition to be made more easily than if every update required a change in legislation.

Mr. Tom Kmiec: This would be easier than changing the law every time it changes.

Ms. Deirdre Kent: That's right.

Mr. Tom Kmiec: What are the financial implications of leaving it as it was before? Are there any implications for Canada if we just leave it as it is?

Ms. Deirdre Kent: It would mean our reporting wouldn't be aligned with the now internationally agreed definitions of ODA, and some of our ODA, which would come under the new tools that will be in part B of our discussions, may not be able to be counted.

Mr. Tom Kmiec: Okay.

The Chair: Are there any other questions?

Mr. Julian.

Mr. Peter Julian: We're moving from a definition of 25% grants to a sliding scale, a gradual scale from 45% to 10%. Are there definitions in the regulations for a 45% grant-based development assistance program and a 10% ODA?

Ms. Deirdre Kent: Again, this sliding scale and the definition is based on what has been agreed within the OECD development assistance committee, so it wouldn't be based on anything that Canada would be developing independently. The 45% case would be for the least developed countries and some other low-income countries. A 15% rate would be used for lower to middle income countries, and then down to 10% for upper to middle income countries. You can see that there would be an incentive in there for loans and concessional financing to the least developed countries.

● (1900)

Mr. Peter Julian: Now, you have that list. Is that something you could provide to the committee? I think that would help us to understand it.

Ms. Deirdre Kent: Yes, it is all available on the OECD-DAC website, so we can share the link and that information.

Mr. Peter Julian: Is the change in definition also giving more scope—potentially—to the private sector or for-profit operations within overseas development assistance?

Ms. Deirdre Kent: You will probably find some of that expertise in the next group of my colleagues to come, but in fact it recognizes that some of the new private sector instruments would have ODA reported through this mechanism. I don't know if others want to add to that.

The Chair: We can follow up on that with the next group as well, Peter. Next is the international financial assistance act, and we'll have Global Affairs as well.

Ms. Nicole Giles: As Ms. Kent has just explained, this section pertains to the reporting-out component of this and not to the internal Government of Canada decision-making process regarding the allocations, which is a little more the part B component. That might help to clarify.

Mr. Peter Julian: I'll ask the question again in a few minutes, then. Thank you.

The Chair: Okay. Are there any further questions on part A? Thank you very much, folks.

We'll turn to subdivision B, part B, the international financial assistance act. Dr. Giles, you're remaining here. Ms. Pang is staying. Mr. Edwards is staying.

Coming up from Global Affairs, we Mr. Lusignan, Ms. Kaminski and Ms. Larocque. Who's leading off?

Go ahead.

Ms. Nicole Giles: The second component, part B of division 17, is new legislation. It's the international financial assistance act, referred to in clauses 659 to 660. This is to implement a budget 2018 commitment to provide $1.5 billion over five years to support innovation in Canada's international assistance through the creation of two new programs. First is the international assistance innovation program, the IAIP, and the second is the sovereign loans program.

To provide a bit more context, there is an international consensus that global development needs overwhelmingly exceed the amount of official development assistance that is available. To help fill this financing gap, the international community needs to invest in mobilizing new sources of financing, particularly private sector resources. Other G7 countries and international development partners have been using a variety of tools including development finance institutions, sovereign loans and guarantees as part of their development tool kit.

[*Translation*]

That is why in 2015 the government created a new funding and development institution, FinDev Canada, which encourages investments in developing countries.

[*English*]

The creation of FinDev Canada was an important first step to modernize the tools deployed by the Government of Canada. The authorities of Global Affairs were designed at a time when the focus was almost exclusively a grants and contributions approach. Other development aid partners have expanded beyond this mindset, and it is proposed that Canada do so as well. While these tools are tried and true in other countries, their deployment as consolidated programs will be new for the Government of Canada. For this reason, a pilot approach is being taken to enable an assessment of the effectiveness of the programs after five years. The legislation includes high-level authorities being sought, whereas regulations will be developed to provide more precision on the boundaries of the program, including eligibility criteria and terms and conditions that will be used amongst others.

The Minister of Finance, as per the Financial Administration Act, is tasked with ensuring prudent fiscal management for the Government of Canada. As outlined in the legislation, the regulations that will be developed will provide that certain transactions or classes of transactions will require consultation with or the approval of the Minister of Finance.

I'll turn to my Global Affairs colleagues.

● (1905)

[*Translation*]

Mr. Mark Lusignan (Director General, Grants and contributions Management, Department of Foreign Affairs and International Trade (International Trade)): Thank you.

In order to support the execution of the two new programs, the Minister of Foreign Affairs and the Minister of International Development need new legislative powers, notably: the power to grant sovereign loans to eligible developing countries, to any order of government, as well as to entities or persons, on condition that those loans be guaranteed by the government of the foreign state that will benefit from the loan; the power to provide financial guarantees to ensure the partial execution of an agreement in case the principal contracting party does not do so, which would allow the related investments to proceed;

[*English*]

the authority to acquire, hold, and dispose of equity, ownership in a stock, or any other security representing an ownership interest to catalyze investments, and/or preserve the value of Canada's interest; and the authority to charge fees and to issue guarantees and interest on loans they make in the context of the two new programs.

The IFA Act also provides the authority for equity to be acquired, held and sold in the context of Global Affairs' climate change repayable contributions programming to preserve the value of the government's assets. Overall, by supporting innovation and enabling a broader range of development partnerships including with the private sector, these new financial tools will enable Global Affairs Canada to use Canadian official development assistance more strategically to mobilize additional resources in support of sustainable development.

I'd be happy to take your questions.

The Chair: Okay.

Mr. Massé.

[*Translation*]

Mr. Rémi Massé (Avignon—La Mitis—Matane—Matapédia, Lib.): Thank you, Mr. Chair.

This is my first appearance at the Standing Committee on Finance. I hope my questions will be appropriate.

Regarding the proposed amendment, Mr. Lusignan mentioned that we would be granting sovereign loans to developing countries through new programs, on condition that those loans be guaranteed by the governments of these foreign states. Perhaps it was a translation error. If we grant a loan to a state, and if that state has to guarantee that loan, how does that work? Maybe I misunderstood.

Mr. Mark Lusignan: Allow me to clarify that. Canada may grant a loan, either directly to the foreign government, or to an entity in the other country, or in the context of a project in that other country that is guaranteed by the foreign government, and on condition that that country will benefit.

Mr. Rémi Massé: What I understand is that this mechanism did not exist before. To support a project abroad, we could not grant this type of loan or guarantee before.

Mr. Mark Lusignan: Indeed. The department's current powers are limited to non-refundable subsidies and contributions. That mechanism will thus apply to projects that are not sufficiently commercially viable. This will allow us to mobilize capital. Moreover, this has the advantage of making it possible to redirect direct aid amounts or subsidies to other projects.

Mr. Rémi Massé: Thank you.

[*English*]

The Chair: Are there any other questions?

We'll have Ms. Rudd, Mr. Kmiec and then Mr. Julian.

Ms. Rudd.

Ms. Kim Rudd: This is in terms of the thinking behind this. Is it the anticipation that this makes money available to provide supports for developing countries? Is there “more bang for your buck”, if I can use that expression?

It actually extends the amount of projects and the amount of opportunities we have to support those countries because loans are repaid. I assume the loans go back into that fund. Is that correct?

● (1910)

Mr. Mark Lusignan: They don't go back into the fund. They return to the fiscal framework.

Ms. Kim Rudd: Okay.

Ms. Michelle Kaminski (Director, Office of Innovative Finance, Grants and Contributions Management, Department of Foreign Affairs, Trade and Development): On this point I would add that the authorities are limited to the envelopes. These new authorities are limited to the sovereign loans program as well as the international assistance innovation program as opposed to across Global Affairs Canada's development programming.

Ms. Kim Rudd: Okay.

What are those envelopes? How much are they each?

Ms. Michelle Kaminski: Over the five-year period for the international assistance innovation program, the cash profile is $873.4 million. For the sovereign loans pilot program, it's $626.6 million.

Ms. Kim Rudd: Thank you.

The Chair: Mr. Kmiec.

Mr. Tom Kmiec: Under proposed subsection 6(2), the Service Fees Act doesn't apply. Can I get an explanation of why it doesn't apply? Why isn't it effective in this case?

[*Translation*]

Ms. Chantal Larocque (Deputy Director, Development Finance, Grants and Contributions Financial Policy, Foreign Affairs Canada): First, it is not certain that these are service fees as defined in the law, because these fees do not cover our internal costs for the provision of those services, but rather the anticipated losses resulting from the guarantee. For that reason, those fees will be applied in keeping with the loss, on a case-by-case basis. This could not apply to a complaint mechanism in the law, nor to a consumer price index update applied without consultation on the rates. This would apply very specifically to anticipated losses resulting from the guarantee.

Mr. Tom Kmiec: The issue of fees and interest is raised in section 6(1) of the International Financial Assistance Act, which says that "the competent minister may charge fees and interest as determined under the regulations."

Section 6(2) states, however, that "the Service Fees Act does not apply to any fees or interest referred to in subsection (1)".

Is that because they are donations to foreign organizations? Is it because it is not clear that those amounts could be recovered? Is it because this donation or guarantee does not include fees to be recovered? If so, I want to know why it is worded that way, namely, that it can apply, but not as provided in the Service Fees Act.

Ms. Chantal Larocque: The full text of section 6(1) is as follows:

> The competent minister may charge fees and interest as determined under the regulations for the purposes of sections 3 and 4.

That's right. That means that fees can be charged. That said, the only fees we expect are those resulting from anticipated losses on guarantees, which are not covered in practice by the provisions of the Service Fees Act.

Mr. Tom Kmiec: Okay. Thank you.

Ms. Chantal Larocque: You're welcome.

[*English*]

The Chair: Mr. Julian.

[*Translation*]

Mr. Peter Julian: We are really talking about increasing development partnerships with the private sector, and that seems to be the basis for the approach taken in the bill. The goal is to increase private sector investments, but at the same time, as I understand it, the bill does not refer to limiting profits. It refers to the private sector, but not to limiting potential profits.

Unless I am mistaken, that represents a change in direction for our international assistance, does it not?

[*English*]

Ms. Michelle Kaminski: Thank you.

The objective, as you note, in particular for the international assistance innovation program, is to mobilize additional financing in support of sustainable development. What we would be doing through this is providing risk-absorbing capital to catalyze private sector investments that would otherwise not take place. The intention is not to necessarily enrich the private sector. Of course, there will be profits, but when we provide this funding, we will be applying blended finance principles, which include, for example, ensuring that the funding is additional and is not displacing private sector resources, assuring that the amount of concessionality provided to catalyze this private sector investment is the minimum amount necessary.

This, of course, contrasts with what we currently do, which is that, as Mark was saying, we provide grants for everything. Now what we're trying to do is expand our tool kit to allow us to tailor the type of assistance we provide to be appropriate to the particular instances —the capacity of recipients and also their needs.

● (1915)

The Chair: Just on that point, related to what Peter asked, is the private sector money guaranteed? Is the Government of Canada obligated to repay the private sector if the loan goes into default?

Mr. Mark Lusignan: It's not quite a loan, but no, we would be structuring our contributions, or whatever funding—depending on the vehicle, whether it's a guarantee, a loan or an equity position—in a manner such that we are looking to provide risk-adjusted rates of return that would encourage the private sector to invest in areas where it would not otherwise go. We're also looking to protect against the sweet deal. We understand it's taxpayers' money. We are deploying that money carefully to ensure that, if returns are generated, once thresholds are attained, which are negotiated deal by deal, we would also be repaid.

The Chair: My question really relates to this. Is taxpayers' money at risk to guarantee the private sector that put up their money, to guarantee they don't take a loss?

Mr. Mark Lusignan: Taxpayers' money will be at potential risk. We will obviously employ risk mitigation measures and look at the structure of the transaction and obtain security interests to mitigate those risks. There is an assumed accrual profile. We are getting the authority to deploy $1.5 billion at a net cost to the fiscal framework of $553 million. While we are prepared to absorb and to take risk up to that accrual profile, we wouldn't be prepared to go beyond. Once again, on a transaction-to-transaction basis, if we made the investment, we would be looking to make sure that the private sector's obligations are clearly understood, that all the conditions for repayment, the triggers for repayment, would be respected.

Ms. Michelle Kaminski: I will just add on again by contrasting that with what we currently do, which is where we provide grants and non-repayable contributions that are fully expensed upon disbursement. Again, what we're looking to do is to have a tool kit that allows us, where it makes sense, to actually bring back some money for the Canadian taxpayers. This is value for money and it has a lower hit on fiscal framework than does the traditional funding model.

The Chair: As a politician, if this government or a future government ends up paying out to the private sector, I know what the political spin will be, and that's different from doing international development work and providing monies up front as a grant. There, we know what we're getting into. If you end up guaranteeing, the private sector's not at risk and the taxpayers' money is. It's a completely different scenario, from where I sit as a politician on the government side.

Mr. Mark Lusignan: In the design of the program that we are contemplating right now, we would never issue full guarantees, only partial guarantees, and we would always make sure that the private sector had skin in the game.

The challenge we're facing is literally to mobilize private sector money on the sidelines into the fight against poverty, and to do that, especially for those who are less familiar with developing country markets, contexts or whatnot, either through our participation or our provision of assurances to get that money off the sidelines and into the fight against poverty.

The Chair: There is no question there is need and we understand the intent. I'm just looking at the risk.

Mr. Julian.

Mr. Peter Julian: I want to clarify because we have to deal with what's in the bill. That's our responsibility and yours—which you accomplish very well—to explain the reasoning behind it. On page 572 it says:

> 4 Subject to the regulations, for the purpose of supporting a federal program that promotes international assistance through the use of innovative financing, the competent minister may, directly or indirectly,
>
> (a) guarantee, in whole or in part, any obligation undertaken by a person or entity;

My reading of this law is that we are giving the ability to the minister to guarantee in whole an obligation undertaken by the private sector. That may not be the intent, but that's the power we are giving to the minister.

Would you agree with me?

● (1920)

Mr. Mark Lusignan: Yes, that's correct.

Mr. Peter Julian: Okay.

Ms. Michelle Kaminski: May I add to that? When the legislation was being drafted, all the drafters took an approach to provide broad language, and the intention is for parameters and limitations to be put on during the regulations, which will be put in place subsequently. As my colleague was saying, the intent is that we would be providing partial risk guarantees.

This is a best practice, and this also ensures that the recipients of the guarantees have skin in the game and do proper risk assessments, etc., so it would not be our intention to provide whole ones but again the legislation was drafted to provide flexibility. Parameters would be put around that in the regulations.

The Chair: Is there anything else?

Ms. Nicole Giles: A useful context on this piece as well might be to add that there are international best practices on this. There are OECD-blended finance principles that OECD countries have signed up to and endorsed, including Canada. That provides the framework for this program under which these decisions will be taken, and those blended finance principles have been used very successfully by our like-minded partners to deploy these types of tools, so there is an international framework that will help guide the decision-making.

This isn't an ad hoc piece that has just been developed for Canada in the context of this legislation and regulations. The government will be guided by these international best practices that have a proven track record.

The Chair: Okay, are there no further questions?

Thank you all for coming forward and answering our questions, and for the work you do.

We'll suspend for five minutes to give people a chance to stretch their legs. It's been a long day.

● (1920)

(Pause)

● (1930)

The Chair: We'll reconvene.

We're on part 4, division 18, with the department for women and gender equality act.

Ms. Bélanger, the floor is yours.

Ms. Danielle Bélanger (Director, Gender-Based Analysis Plus and Strategic Policy, Policy and External Relations Directorate, Status of Women Canada): Thank you very much.

I'm going to be speaking to clauses 661 to 674. My name is Danielle Bélanger. I'm from Status of Women Canada.

The department for women and gender equality act, which is proposed in these clauses, formalizes the important role of the former Office of the Coordinator at Status of Women and its minister and legislation by creating this new department and minister for women and gender equality. Budget 2018 pledged to formalize into law the important roles of these two, and this is what is being proposed at the moment.

Status of Women Canada was originally created through an OIC and through the appropriation act of 1976. The appropriation act was a procedural budget bill of the type that is no longer used today.

In terms of this proposal, the minister will have a mandate for women and gender equality, including advancing social, economic and political equality with respect to sexual orientation, gender identity or expression, and promoting a greater understanding of the government's gender and diversity lens.

By the gender and diversity lens, we mean gender-based analysis plus, which is commonly referred to by the Government of Canada. It is the government's approach to ensuring that all decisions have taken into account how people experience government activities and decisions differently based on the way sex and gender interact with other identity factors such as race, indigenous identity, national and ethnic origin, age, sexual orientation, socio-economic status, geographic location and disability.

● (1935)

[*Translation*]

In order to promote gender equality, and in particular to continue to improve the lives of women, the minister responsible for women and gender equality will rely on the previous work of the office of the coordinator of the status of women and of organizations that promote equality by developing and implementing policies and programs, carrying out research, and awarding grants and contributions.

Finally, in carrying out this mandate, the minister may conclude agreements with provincial and territorial counterparts and establish advisory boards.

I am now ready for your questions.

[*English*]

The Chair: Who wants to be the first to roll?

Mr. Julian.

Mr. Peter Julian: Anyone else can go first.

The Chair: Does anybody else on this side want to go?

You're the only one so far, Mr. Julian. If you ask the right question, it might twig some more.

Mr. Peter Julian: How many ministries are established by statute?

Ms. Danielle Bélanger: Do you mean how many departments?

Mr. Peter Julian: Yes.

Ms. Danielle Bélanger: I don't know the number off the top of my head. In terms of Status of Women Canada going from an agency to a department, it is certainly one of the first in recent history.

Mr. Peter Julian: I think that would be relevant for our study and perhaps for the analysts, too. I understand the framework and I've read through the legislation, but I'd be very interested to know how many statutory ministries we have.

The Chair: We can have the analysts look into that and get back to the committee.

Are there any further questions?

Mr. Kmiec.

Mr. Tom Kmiec: Are there any new monies associated with this change? You said it's a new department, but it's renaming a current department. Is that correct?

Ms. Danielle Bélanger: Yes. Right now Status of Women Canada is an agency. It would be formalizing it into a new full department, similar to other full departments in the Government of Canada.

There's no funding associated with this piece of legislation. In 2016 and 2017, consecutive budgets have invested in gender equality over time, and there have been modest investments within Status of Women.

Mr. Tom Kmiec: This particular legislation doesn't require any new monies. Maybe you know this from the departmental plan. Is there an increase in FTEs expected in conjunction with the change from agency to full department?

Ms. Danielle Bélanger: In terms of an expanded mandate for Status of Women, the current activities would continue. Then there could be opportunities to expand those activities beyond what we're doing. At the moment, this is really just about creating a department. We're looking at ways we could be doing more, in terms of our capacity.

Mr. Tom Kmiec: It's creating a department from an agency but it's the same people currently in the agency who will be...so it's just a renaming.

Ms. Danielle Bélanger: Yes, absolutely.

Mr. Tom Kmiec: Then all the business cards—all that stuff—have to be changed over. Is that correct?

Ms. Danielle Bélanger: In terms of the title, yes, exactly.

Mr. Tom Kmiec: Okay.

The Chair: But there would be a deputy minister, etc., etc. Am I correct?

Ms. Danielle Bélanger: Yes, absolutely. There would be a deputy minister and minister. Currently, Minister Monsef is the Minister of Status of Women. If this legislation passes, either she continues in her role or there would have to be another decision made.

The Chair: Okay. But it would basically be a full-fledged department. Departments differ in their sizes but there would be the bureaucracy that normally goes with the department, headed up by a deputy minister.

Mr. Kmiec.

Mr. Tom Kmiec: I guess you're leading me to another question. What is the difference between the civil service in an agency versus the civil service in a department?

There is a deputy minister so that requires more financing. Is there a difference in the FTEs? There are different sizes of departments and all that, but there has to be a certain minimum. Is there?

● (1940)

Ms. Danielle Bélanger: Right now we do have a deputy minister that was named for Status of Women. She would continue on as deputy minister and there would be no change in FTEs.

Mr. Tom Kmiec: Okay.

The Chair: Okay. Thanks very much, Madame Bélanger.

We turn then to division 9, Canadian gender budgeting act. That will be from finance, Ms. McDermott; and from, I assume, TBS, Treasury Board Secretariat, Mr. Armstrong.

Who's the lead?

Ms. Alison McDermott (General Director, Economic and Fiscal Policy Branch, Department of Finance): I can start.

[*Translation*]

We are here to discuss section 9 of part 4, which implements the Gender Budgeting Act.

[*English*]

This bill is introducing gender budgeting into the federal government's budgetary and financial management processes.

Beyond the preamble, it has two parts. The first part is a statement of policy that articulates the government's policy of promoting gender equality and inclusiveness by taking gender and diversity into consideration in the budget decision-making process, and by making information available to the public on the impacts of government decisions from a gender and diversity perspective.

The second part of the bill establishes reporting requirements related to the analysis of gender equality and diversity impacts of various measures.

There are three requirements in particular. Proposed section 3 establishes a new responsibility for the Minister of Finance to publicly report on the gender and diversity impacts of all new, announced budget measures. This is a requirement that is in place every time there is a federal budget plan published.

Proposed section 4 establishes a new responsibility for the Minister of Finance to publicly report on the analysis of gender and diversity impacts of tax expenditures. These are deductions and other tax revenues forgone. I'll tell you more about tax expenditures. This is an annual requirement to make this analysis available. There is some discretion on the part of the Minister of Finance with respect to which part of tax expenditures to report on annually, but there's a requirement to report once a year.

Finally, proposed section 5 establishes a new responsibility for the President of the Treasury Board to make analysis of the gender and diversity impacts of existing government programs that are program expenditures, and to make that information available on an annual basis. That's an annual requirement as well. Again, there's some discretion on the part of the president to determine in consultation with the Minister of Finance which programs to cover in what order and in which years.

I'm happy at this point to take your questions.

The Chair: Are there any questions?

We'll go with Mr. Massé and then Mr. Julian.

[*Translation*]

Mr. Rémi Massé: Your last point pertained to the program analyses that the President of the Treasury Board will be making public. Have you already determined, in consultation with the Minister of Finance, the types of programs you would like to look at?

[*English*]

Mr. Derek Armstrong (Executive Director, Results Division, Expenditure Management Sector, Treasury Board Secretariat): At this point we haven't determined the specific programs that we'd be looking at, but we would certainly look at potentially any programs in the government's current spending and how they're related to the gender results framework.

[*Translation*]

Mr. Rémi Massé: Okay.

[*English*]

The Chair: Mr. Julian.

Mr. Peter Julian: Thanks, Mr. Chair.

There are really three components to this stand-alone bill within this omnibus budget legislation, two of which are providing for an option to print reports on an annual basis that the minister considers appropriate. Then for the third there is an obligation to submit a report on the impacts in terms of gender and diversity of all new budget measures described in the budget, if an assessment is not included or any related documents that the minister has made public.

Just so we understand, the analysis on tax expenditure and the analysis on programs is an option that is granted to the minister. It is not an obligation.

● (1945)

Ms. Alison McDermott: There is a requirement to report annually on the GBA impacts of tax expenditures, on gender and diversity impacts of tax expenditures.

Where there's discretion is that there's not a requirement to report annually on all tax expenditures every year. There's some allowance, recognizing that these types of expenditures, just like the government's annual ongoing expenditures, are the same from year to year, unlike new budgets. Budgets bring forward new measures, so each budget has a new set of initiatives.

For budgets, we're covering all of them every year. With respect to the tax expenditures and programs it might make more sense to look at some during some years and look at others in other years according to relevance and according to what the capacity of the department to examine is. There's a little more discretion there to avoid repeating the same kind of analysis year after year.

In most cases there is a requirement to make information available on an annual basis.

Mr. Peter Julian: I'm just looking at the actual legal language. It says, all analysis "that the Minister considers appropriate."

I understand what you're saying in terms of an obligation. Given that the appropriateness is determined by the minister, I think that leaves a fairly large loophole. I do understand the implementation of the new budget measures if an assessment is not included in the budget plan or any related documents that the minister has made public. There is an obligation provided that things are missing in the budget papers.

Ms. Alison McDermott: What that's really allowing for is the government may choose and may opt to include in the budget documents themselves that GBA+ analysis, that analysis of impacts. It may be published in an annex or as a stand-alone document as part of the budget. If the government does not do that, it's obligated to within those days, I think it's 30 days, to make it available and table it in both houses, because the budget itself is tabled.

It's just a way of saying that if that requirement is already met through the budget itself, it wouldn't be separately required.

Mr. Peter Julian: Thank you.

The Chair: Okay.

All in, all done. Thank you very much, folks.

We turn to division 14, pay equity.

I believe you're remaining, Ms. McDermott, for this one.

All right, I believe we have a full delegation for this one. We have with us from Treasury Board Ms. McDermott, Mr. Graham, and Mr. Stuart; Ms. Straznicky and Mr. Kennedy with ESDC; Mr. Bernard and Ms. Gagné from PSPC.

Welcome, all. Who's the lead?

Ms. Straznicky, go ahead.

Ms. Lori Straznicky (Executive Director, Pay Equity Task Team, Strategic Policy, Analysis and Workplace Information, Labour Program, Department of Employment and Social Development): Thank you.

Division 14 introduces new, proactive pay equity legislation. It repeals the Public Sector Equitable Compensation Act and it amends both the Canadian Human Rights Act and the Parliamentary Employment and Staff Relations Act. The legislation and proposed amendments are intended to create a proactive pay equity regime that ensures equal compensation for work of equal value for employees in female-predominant jobs in federally regulated workplaces.

In terms of how the act applies, the pay equity act will apply to all federally regulated employers with 10 or more employees, including the federal private sector, the federal public service, and the Prime Minister and ministers' offices. In addition, the regime will apply to parliamentary workplaces through amendments to the Parliamentary Employment and Staff Relations Act. Individuals and workplaces with fewer than 10 employees would remain covered under the current regime of the Canadian Human Rights Act.

In terms of the key elements and the process, the pay equity act establishes requirements for all employers with 10 or more employees. However, the requirements are different for small employers—those with 10 to 99 employees—and large employers, which have 100 employees or more. Regardless of their size, all employers will be required to develop a single pay equity plan within three years from the coming into force of the legislation, or from becoming subject to the act.

That plan would set out a number of pieces of information, including job classes that have been identified in the workplace; gender predominance of job classes; value of work of job classes that have been assessed based on skill, responsibilities, effort and working conditions; compensation associated with each job class, using a total compensation approach; and results of comparison of the compensation of female- and male-predominant job classes of similar value, using an equal line or equal average model. It will identify those female-predominant job classes that require an increase in compensation, it will set out when those increases are due, and it will provide information on the dispute resolution procedures available to employees.

Plans are to be developed by joint committees for large employers, or those with unionized employees irrespective of their size. These joint committees would have both employer and employee representatives. Two-thirds would be employee representatives, and 50% of them would be women. For small employers or those with no unionized employees, the plan would be developed by an employer-led process. Regardless of the size or the way the plan is developed, all employees will be given an opportunity to comment on the plan before it's finalized.

Increases in compensation will be required to be made by employers within three to five years, depending on the size. Large employers would have up to three years to phase in increases, so long as the payments are at least 1% of their annual payroll. Small employers would have up to five years to phase in those payments, provided again that those payments are 1% of their annual payroll.

Employers would be required to review their plans at least every five years in order to identify and close any pay gaps that may have emerged. They would also be required to provide a short annual statement to the pay equity commissioner each year to ensure sufficient oversight. In terms of that oversight and enforcement and compliance with the pay equity act, a pay equity commissioner would be appointed by the Governor in Council to the Canadian Human Rights Commission.

The pay equity commissioner would administer and enforce the act through a range of compliance and enforcement tools that would include administrative monetary penalties. There would be an appeal mechanism for certain decisions or orders of the pay equity commissioner to the Canadian Human Rights Tribunal.

There would be a creation of a pay equity unit that would consist of officers and employees of the Canadian Human Rights Commission that would support the pay equity commissioner in fulfilling her or his duties under the act. There would also be the creation of a pay equity division within the CHRC, which the pay equity commissioner would preside over in order to address complaints of discriminatory practice related to pay equity in federally regulated workplaces with fewer than 10 employees.

● (1950)

Finally, there would a provision for three additional members with knowledge and expertise in pay equity matters to be appointed to the Canadian Human Rights Tribunal.

In terms of the amendments that would be made to the Parliamentary Employment and Staff Relations Act, there would be the creation of a new part of the PESRA that would provide that the pay equity act applies to all parliamentary employers and employees in a manner that's tailored to respect parliamentary privilege.

Oversight would also be by the pay equity commissioner, who would have the authority to conduct compliance audits and investigations of parliamentary employers and issue compliance orders and notices of contravention to deal with complaints. However, the pay equity commissioner would need to provide notice to the Speaker before entering any place under the authority of parliamentary employers.

Sanctions for non-compliance with decisions or orders of the pay equity commissioner would be tabled in Parliament by the Speaker, and appeal for decisions or orders of the pay equity commissioner would be made to the Federal Public Sector Labour Relations and Employment Board.

At this time, if you have any questions we would be happy to answer them.

● (1955)

The Chair: We'll start with Mr. Massé.

[*Translation*]

Mr. Rémi Massé: Thank you, Mr. Chair.

Please help me understand something. I was a public servant for 17 years and was subject to the Public Sector Equitable Compensation Act, as it applied at that time, before it was amended, of course.

The bill provides for the creation of the position of a pay equity commissioner, but practically speaking, what steps will departments have to take once the act comes into force to comply with it? I am trying to understand the difference between what existed before and what the new act will establish over and above certain elements that you mentioned and that are clear, such as creating the position of ethics commissioner and presenting plans and reports.

[*English*]

Mr. Don Graham (Senior Advisor to the Assistant Deputy Minister, Compensation and Labour Relations Sector, Treasury Board Secretariat): The obligation isn't so much on the department. The obligation would be on the core public administration in the case of the public service, and it would be to develop a pay equity plan. That would have to be developed, and then that would be developed jointly with the unions and be the basis for the pay equity adjustments that would follow.

The Chair: Ms. Rudd.

Ms. Kim Rudd: Thank you.

I remember dealing with this issue in child care about 25 years ago. I haven't checked in for some time, but I'm sure it's still going on.

I notice, in your remarks as well as in the overview, that organizations with fewer than 10 employees are exempt. Is that correct?

Ms. Lori Straznicky: Yes, that's correct.

Ms. Kim Rudd: I have two questions.

One, can they voluntarily go through the process? There are lots of small organizations out there that I think, indeed, would want to do that.

Also, do we know how many federally regulated organizations there are with fewer than 10 employees? Are there two and we had to mention them, or is there a significant number? I wouldn't think there would be many.

Ms. Lori Straznicky: I'll answer the first question first, and then we do have statistics that I believe are responsive to the second one.

There is nothing in the legislation that would prohibit an employer from voluntarily undertaking a pay equity process and becoming pay equity compliant in the workplace. They would still remain under the Canadian Human Rights Act, but if they were to be pay equity compliant using the proactive regime, then—

Ms. Kim Rudd: Do they have to report as the others do, or would it be a strictly internal thing to the organization?

Ms. Lori Straznicky: No. If they were using the process to voluntarily bring their compensation practices to be providing equal pay for work of equal value, then the obligations under the act would not apply to them. They would still be exempted, or it wouldn't apply because they would be below the threshold.

Also, in terms of the statistics, in the federal jurisdiction, one to nine employees.... These stats are looking at the number of women, broken down by employer size. There are approximately 24,000 women working in workplaces with one to nine employees, and that makes up about 7% of the share of total female employment.

● (2000)

Ms. Kim Rudd: So 24,000 women will not necessarily be able to participate in this, but their colleagues, because they have 11 employees, will.

Ms. Lori Straznicky: The way it would work is that when we're given the number of women in these workplaces, until the process has been undertaken to identify which of the female-predominant job classes would need to be compared with male-predominant job classes of the same value, we won't know how many of those women will actually be affected and, therefore, entitled to an identified increase if there is a gap.

Ms. Kim Rudd: If I understand you correctly, if they're in organizations with under 10 people, they may never find out.

Ms. Lori Straznicky: If their employer does not voluntarily undertake the process...?

Ms. Kim Rudd: Right.

Ms. Lori Straznicky: That's right. The burden—

Ms. Kim Rudd: Under this process, approximately 24,000 women would be outside the realm of accessing pay equity.

Ms. Lori Straznicky: Yes.

Ms. Kim Rudd: But if their employer has 12 people, they would be in.

Ms. Lori Straznicky: If they have 12 people, yes, they would be covered as a small employer under the act.

Ms. Kim Rudd: I'm just wondering where the "10" threshold came from. Maybe it was arbitrary. Was there any statistical analysis done on why that threshold, or if there even should be a threshold?

Ms. Lori Straznicky: That is a good question. Off the top of my head, I don't have an answer to give you. We'd be happy to come back with one.

Ms. Kim Rudd: Okay. That's fine.

The Chair: You can forward that answer to the clerk and we'll distribute it.

Mr. Sorbara.

Mr. Francesco Sorbara: I have a quick question.

Obviously, this applies only to federally regulated sectors of the economy. Is that correct?

Ms. Lori Straznicky: Yes.

Mr. Francesco Sorbara: What percentage of employees will be covered out of the whole employee base in Canada?

Mr. Bruce Kennedy (Manager, Pay Equity Task Team, Labour Program, Department of Employment and Social Development): I think in the federal private sector it's about 9%.

Mr. Francesco Sorbara: Therefore, 91% of Canadian workers will not be covered by this legislation.

Have you undertaken preliminary data on the quantitative side? We often hear the numbers that are put out in terms of a differential in the pay gaps between men and women. The number I tend to refer to is 88.5¢. That's a number that I believe is in the literature that's been put out with regard to the BIA. Is that correct?

Ms. Lori Straznicky: The 88.5¢ reflects the hourly wage gap, yes.

Mr. Francesco Sorbara: That's when you're comparing apples to apples or oranges to oranges.

Ms. Lori Straznicky: I can't say specifically what the comparisons would be, but on the hourly wage difference, yes, it's 88.5¢.

Mr. Francesco Sorbara: Was any analysis done on the differential within the federal private sector versus the private sector that's covered by a federal statute of law? That would be someone working for the federal government here in Ottawa versus someone working for an airline or a bank or a telecommunications company or a railway.

Ms. Lori Straznicky: In terms of the gender wage gap in the public sector...?

Mr. Richard Stuart (Executive Director, Expenditure Analysis and Compensation Planning, Expenditure Management Sector, Treasury Board Secretariat): The wage gap for the public sector wouldn't include private sector, because unless the Crown—

Mr. Francesco Sorbara: Sorry, let me rephrase. There's the wage gap in the public sector that's covered by federal legislation —"government workers", if I can use that term—and then the wage gap for the sectors that are not public sector that are regulated by federal statute.

Ms. Lori Straznicky: In terms of the breakdown of the 88.5¢, it is Canadian workers, as I understand it. On the specifics of the wage gap in the public sector, we could review that and come back to you if we don't have stats on hand.

Mr. Richard Stuart: We can check what data we have available. TBS doesn't have data on the federal private sector—

● (2005)

Mr. Francesco Sorbara: Federal public sector workers....

Mr. Richard Stuart: For public sector workers, that's available, and it's higher. It was 94.1¢, if I'm not erring, last year.

That was the ratio, 94.1¢ on average, for female workers compared with men.

Mr. Francesco Sorbara: In the federal public sector...?

Mr. Richard Stuart: That's right.

Mr. Francesco Sorbara: Do we have the data for workers who are regulated under federal legislation in the private sector: telecoms, banks, railways, airlines, etc.?

Ms. Lori Straznicky: I'm concerned that I'm not appreciating your question.

The wage gap data that we use for the private sector is the 88.5¢ of the hourly wage.

Mr. Francesco Sorbara: But there is a differential between that and the 94.1¢ that you just referenced.

Ms. Lori Straznicky: There are different methodologies that are used to calculate the wage gap, depending on what we're looking at. But yes, there's a difference between what we've just used as the public sector wage gap number and the 88.5¢ stat.

Mr. Francesco Sorbara: Okay.

This is the first time—and I don't mean to belabour the point, which I may be—that I've ever heard the number of 94.1¢, which is obviously getting close to parity. That is great to know, but there's obviously more work to be done. This is the first time, in my memory, that I've heard of the 94.1¢.

Thank you for providing that data point.

The Chair: Mr. Massé.

Mr. Rémi Massé: Thank you, Mr. Chair.

I want to go back to my previous question.

Maybe it's late and my brain isn't functioning right, but I'm wondering who will have to develop this pay equity plan within the federal public service.

If I understood it correctly, the federal public service is part of the disposition of this act, so when you said there was a plan that needs to be prepared, I presume that every department will have to follow this.

Mr. Don Graham: No, every department is not an employer.

The departments are part of what we call a "core public administration", which is all of the departments for which Treasury Board is the employer. There are also separate agencies, and they would be separate employers and have to develop a plan on their own, but for the core public administration, there would be one plan developed.

Mr. Rémi Massé: I see.

Who would be responsible for developing this plan? Would it be the Treasury Board Secretariat?

Mr. Don Graham: It would be the Treasury Board.

Mr. Rémi Massé: All right. I get it.

Thank you.

The Chair: I'll come to Bev in a second.

There's no question in my mind, regardless of gender, that people who do equivalent work should be paid equivalently.

However, I want to look at the other side of it. What's the cost, in terms of more public servants, etc., to administer this? We have a new pay equity commissioner. We have three more people in another agency. Is there any desire within the federal government to balance that off by reducing public servants in other sectors? Are we going to add to the cost of administration in government?

I have a question for Mr. Graham with the Treasury Board, and maybe you can't answer this question, but I'll ask it anyway. It's a loaded question. I'll tell you that up front.

Could you tell me how many managers there are today versus front-line workers, compared to say, 10 years ago? What I'm seeing —and I'll tell you right up front—is that in the outlying areas, there's always a shortage of front-line workers, but Ottawa seems to grow a little bit with more managers. I'd like to see the workers.

In any event, can you answer that question, before I get astray here?

Mr. Don Graham: I can't answer that question, but we can endeavour to get you an answer.

The Chair: Okay, that would be dandy.

Mr. Shipley.

Mr. Bev Shipley: I have a quick question.

I think it was 91.2% equity towards male salaries.... What was the percentage?

Mr. Richard Stuart: I apologize if I provided the wrong number there.

There are numbers for the core public admin and numbers for the public service. They vary. We can get back to the—

Mr. Bev Shipley: Someone had mentioned that—and it was said to Mr. Sorbara—we're getting close to the equity of female wages to male wages. I thought that percentage was 90—

● (2010)

Mr. Richard Stuart: I think you're right.

Mr. Bev Shipley: Okay.

Mr. Richard Stuart: Now you've triggered my memory. I inverted the numbers. I apologize.

Mr. Bev Shipley: Can you tell me what that percentage was—and you may not have it with you—five years ago, and what that percentage was 10 years ago?

Mr. Richard Stuart: I will.

The Chair: Are there any further questions? There is some amount of information to come back through the clerk to the committee. That's fine.

Peter, go ahead.

Mr. Peter Julian: It's a stand-alone bill. I won't ask you to comment on that, but my temptation would be to ask you how much debate there was within the ministry to submit this differently, as opposed to within omnibus legislation. I won't ask you that question.

I'll ask you the question around the exemption regulations, in proposed paragraph 181(1)(a) on page 431:

> The Governor in Council may make regulations
>
> (a) exempting, with or without conditions, any employer, employee or position, or any class of employers, employees or positions, from the application of any provision of this Act;

As I read that, the minister could exempt the whole industry or series of industries. Is that not true?

The Chair: What page is it on?

Mr. Peter Julian: It's page 431. It's on the top, proposed paragraph 181(1)(a), under "Regulations".

I only read that one way. A whole industry could be exempted from all provisions of this act.

Ms. Lori Straznicky: The intention at this point is that there is no identified industry that would be contemplated. As the legislation rolls out, it does provide flexibility if there is a class of employee or position, for example, that may need an exemption from the application of the provision of the act.

Mr. Peter Julian: I'm just seeking clarification. I read "any employer" or "any class of employers"..."from the application of any provision of this Act". That does give the ability to the minister to exclude a whole industry, a whole class of employees or a whole class of employers.

I know that may not be the intention, but I'm just reading what's on paper. Our job is to look through and see how this bill and its wording matches up with the intention of the government.

Would you agree with me that this would allow a basic blanket exemption of whole industries, industrial sectors or employees?

Ms. Lori Straznicky: As you read it, I agree that it states that exemptions can be made with or without conditions for employees, employers or positions. Yes, I would agree.

Mr. Peter Julian: Thank you.

The Chair: I don't see any further questions. There is some information you can come back to us with. It's mostly Treasury Board, I believe.

Thank you very much for your presentation and for your work.

We'll turn to division 21.

We have Colin Spencer James, on his own, to talk about poverty reduction measures.

Mr. Colin Spencer James (Senior Director, Social Development Policy, Strategic and Service Policy Branch, Department of Employment and Social Development): Thank you.

On August 21, the government released “Opportunity for All—Canada's First Poverty Reduction Strategy”. This strategy sets concrete targets for poverty reduction by 2020, reducing the poverty rate by 20% from its 2015 level, and reducing the poverty rate by 50% from its 2015 level by 2030. This aligns with United Nations sustainable development goal to eliminate poverty. Meeting these targets will lead to the lowest poverty rate in Canada's history, reducing the number of Canadians living in poverty to one in 10—or about 10%—by 2020, and one in 17 by 2030—a target of 6%. That means lifting approximately 2.1 million Canadians out of poverty by 2030.

The poverty reduction targets are being proposed to be put into law to cement a federal commitment to poverty reduction.

● (2015)

The Chair: Thank you.

Mr. Kmiec.

Mr. Tom Kmiec: Can you tell me what the legal force is of the word “aspire”?

Mr. Colin Spencer James: The targets by their very definition are aspirational. That is inherent in the legal definition of what a target is, so that is why you find the word “aspire” in the legislation.

Mr. Tom Kmiec: Why are we legislating it? It looks like a news release to me.

Mr. Colin Spencer James: During the consultations on the poverty reduction strategy, a broad range of stakeholder groups and Canadians called for legislation that would entrench a federal commitment to reducing poverty. By putting the targets in legislation, it provides Canadians and parliamentarians with a tool to hold the government to account to reduce poverty.

Mr. Tom Kmiec: I don't see how it could do that. It says “aspire”. I can aspire to a whole bunch of different things. It's so short. When you get to the second part, it says “the level of poverty”, so “20% below the level of poverty in 2015 by 2020”.

Nowhere in here do we define what we mean by any of it. It doesn't say, “I'm going to use Statistics Canada's LICO, the low-income threshold.” It doesn't say any of that. It just says “level of poverty”. Future governments can just say, “What I meant to say by 'level of poverty' was X”, when it could be Y or Z or whatever. It's so broad that it could mean anything. I'm just trying to understand.

Is this what stakeholders asked for? Is the broadness of this portion of the omnibus budget bill what they asked for?

Mr. Colin Spencer James: The poverty reduction strategy committed to putting three things in legislation. The bill that's before you today only includes the targets, but the government has also committed to putting into legislation the establishment of Canada's official poverty line, which is that measure that you're referring to, for how poverty would be measured, and that would be based on the market basket measure. The other element to put in legislation would be the national advisory council on poverty.

Mr. Tom Kmiec: You said “to hold the government to account”. There's no penalty assigned in here if the government doesn't meet that goal, so how are parliamentarians supposed to hold them to account?

I know you're just the messenger, but I'm asking you these questions.

Mr. Colin Spencer James: I am just the messenger. There is no consequence set out in legislation; however, it does, again, as I said, give Canadians and parliamentarians a tool to hold government to account by asking, for example, challenging questions like the one you're asking now.

The Chair: In fact, we'll probably see that question in question period someday, Tom. You never know.

Mr. Tom Kmiec: Perhaps, Mr. Chair.

The Chair: Is there any further...?

Mr. Julian.

Mr. Peter Julian: You drew the short straw, Mr. James, because by this time of night we've been at it for six hours today, so we're a little punchier than we might normally be.

I wonder why this was tossed into this massive omnibus budget bill, because the previous attempts to do the same thing have been separate. I think the landmark example that I can cite is Ed Broadbent's motion for the elimination of child poverty by the year 2000. That was passed by Parliament unanimously back in 1988 and of course has been the benchmark that subsequent governments have not met.

It would seem to me that the only value of this particular provision of the omnibus bill would be if it was taken out and presented separately and Parliamentarians got to vote on it as opposed to rolling it in in a way that doesn't even do justice to the titles.

You're not responsible for that, but I don't understand why it was tossed in so lightly. It kind of diminishes the whole exercise. I appreciate your presenting on it, and I wish there was something to reinforce it so it was more than a parliamentary motion and that there were provisions that would force the government to take action.

● (2020)

The Chair: Ms. Rudd.

Ms. Kim Rudd: I can assure Mr. Julian that it wasn't thrown in lightly. There was a lot of thought behind this.

To Mr. James's point, there are three elements to this. As you know, there's been an announcement that Minister Duclos will be making the announcement this week that will provide a definitive line in terms of poverty and that benchmark that you were talking about. As that will be announced prior to our making recommendations, I think we'll have the comfort of that prior to making the recommendations, so thank you for laying out the three. This is not stand-alone. This is part of three commitments that were clearly delineated for the plan.

Thank you.

The Chair: I don't think there was a question. I think you just made a point.

Mr. Kmiec.

Mr. Tom Kmiec: I'm glad somebody knows how Minister Duclos feels.

The only thing I can go from is the legislation and the BIA. All I see here is “aspirational”. The word is actually used. It's like a news release. Can you tell me why the decision was made not to include specific data points that could be tracked and then used by parliamentarians to hold the government to account on these so-called targets under proposed paragraphs 2(a) and 2(b)?

Mr. Colin Spencer James: By putting Canada's official poverty line into law.... As was mentioned, that would follow separately. By putting that into law in addition to these targets, it would create the data points by putting those two pieces together.

Mr. Tom Kmiec: But they're not in here. Those data points, there's no reference to them in any way. There are just lofty goals that someday, something might be reached.

I also went through budget 2018. To the point Mr. Julian made about this omnibus budget bill, nowhere in there does it say that a poverty reduction act will be coming. There are 55 uses of the term “poverty” and nowhere does it mention legislation in any way whatsoever in budget 2018. I just did a “control+F” and went through the whole document trying to find it.

Why is it in here when it's not part of budget 2018 and specifically listed? I've asked that question of others on other divisions. I'm also asking you.

Mr. Colin Spencer James: Budget 2018 reinforced the government's commitment to the United Nations sustainable development goals. They include the goal of eliminating poverty, which is the first UN sustainable development goal. The target that is part of that UN sustainable development goal is aligned with the targets here. It's for that reason that these targets are being put in as part of the budget implementation act.

Mr. Tom Kmiec: Can you tell me if any other western states or western nations have introduced similar types of legislation? Is this modelled on other legislation of other governments, or is this Canada's swing at it?

Mr. Colin Spencer James: There are a number of different jurisdictions that have put targets into legislation. The United Kingdom did it for child poverty in 2010. In Canada, British Columbia is in the process of doing it right now. There are precedents for this.

Mr. Tom Kmiec: You said that the United Kingdom did so in 2010. Would you be able to provide the committee with the wording specifically used by that parliament?

Mr. Colin Spencer James: Of course.

Mr. Tom Kmiec: Thank you.

The Chair: You can provide that, Mr. James.

Mr. Sorbara.

Mr. Francesco Sorbara: I just wanted to make clear that our government did introduce a national poverty reduction strategy a few months ago, and this obviously dovetails with that.

Mr. James, there is something currently in use, which I think is called LICO, by Statistics Canada that, for the time being, defines the poverty rate in Canada or the low-income threshold. Is that correct?

Mr. Colin Spencer James: Yes. There is something called the low income cut-off.

Mr. Francesco Sorbara: Yes, the low income cut-off.

We do have an existing basis point at which poverty within Canada can be measured. Is that correct?

Mr. Colin Spencer James: Yes, but I have a point of clarification. Statistics Canada actually produces three different measures of low income. They have the low income cut-off. They have the low-income measure, which is a relative measure. They also have the market basket measure, on which Canada's official poverty line is based.

The strategy you mentioned actually ends the debate on which one the government will use to report on poverty. It has selected the market basket measure, which will be referred to as Canada's official poverty line.

Mr. Francesco Sorbara: Thank you very much for that clarification, Mr. James.

● (2025)

The Chair: Mr. Fragiskatos.

Mr. Peter Fragiskatos: Could you, Mr. James, go into that last point you made a bit more, on the market basket measure and how it differs from the other approaches and what it offers?

When we talk about this policy being truly historic, for me at least, it's the market basket measure that holds that potential because of how well rounded it is as a measure for poverty.

Mr. Colin Spencer James: Unlike the low-income measure, the market basket measure is an absolute measure of poverty. It doesn't change necessarily over time in the way the low-income measure does, based on how everyone else is doing in the country. The low-income measure is a better measure of income inequality, for example, than whether or not someone has the absolute necessary goods to be above the poverty line.

The market basket measure is based on the amount of income required to purchase a basket of goods and services that includes food, clothing, shelter and transportation and that would allow Canadians to have a modest standard of living and participate in their communities. The benefit of the market basket measure is that it's available regionally. It's actually available in 50 different regions, including 19 specific communities. It allows Canadians to say where they stand relative to the poverty line in their community. It's being expanded to the territories as well.

Mr. Peter Fragiskatos: What I like here is that I can look at, for example, poverty levels in the southwest of Ontario where I'm from —I represent London, Ontario; that's the region I also advocate for— and compare that with poverty levels in British Columbia or Alberta and so on and so forth.

When I say it's well rounded, you have put your finger right on it. Thank you very much for that.

I have one last question. I'm not sure how long you have been in your position, but have there been previous governments that have advocated for the market basket measure to be used as a measure of poverty in Canada?

Mr. Colin Spencer James: I'm not aware of what previous governments have advocated for.

Mr. Peter Fragiskatos: I'm sure that, if they had, we would know.

Thank you very much.

The Chair: Go ahead, Mr. Kmiec.

Mr. Tom Kmiec: I have one last question. When they are stand-alone or as part of the BIA, usually these acts include a provision that has a report to Parliament.

Is there a reason why this particular one doesn't have it?

Mr. Colin Spencer James: As part of the poverty reduction strategy, the government committed to establish a national advisory council on poverty that would produce an annual report. As part of that obligation, that annual report would be tabled in Parliament.

Mr. Tom Kmiec: Doesn't a statutory provision require that tabling?

Mr. Colin Spencer James: Not in this particular part of the legislation.

Mr. Tom Kmiec: The future government might renege on that promise or change its mind...?

Mr. Colin Spencer James: I can't tell you what a future government might do.

Mr. Tom Kmiec: Okay.

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

We will go to division 8, on parental benefits and related leave, with ESDC.

We have Mr. Brown, Ms. Astravas, Ms. Moran and Ms. Winter. Welcome.

Who's taking the lead?

Mr. Brown, the floor is yours.

Mr. Andrew Brown (Director General, Employment Insurance Policy Directorate, Skills and Employment Branch, Department of Employment and Social Development): Thank you, Chair, for the introductions.

[*Translation*]

Good evening, committee members.

We are here to discuss the proposed changes to the Employment Insurance Act that will increase the number of weeks of parental benefits when they are shared, and related amendments to the Canada Labour Code.

[*English*]

I will begin by sharing with the committee some information on the employment insurance program and the support it offers for Canadians.

Employment insurance is Canada's largest labour market program playing a key role in Canada's economic and social union. When workers lose their jobs through no fault of their own, the program provides temporary income support, known as regular benefits, and in specific life circumstances that may occur over the course of one's working career, known as EI special benefits.

Special benefits play an important role in helping individuals balance work and life responsibilities and include maternity, parental, sickness and caregiving benefits.

Workers need to have accumulated at least 600 hours of insurable employment during the last year, or 52 weeks, before the start date of their claim or since their last EI claim, whichever is shorter, to qualify for special benefits including maternity and parental benefits. It's important to note that the proposed legislative changes do not change the eligibility requirements.

Currently, there are 35 weeks of EI parental benefits available that can be shared among parents. In 2016-17, over 196,000 parents received EI parental benefits representing a total of $2.7 billion in that year. Eighty-five per cent of those parental claims were made by new mothers.

The bill would amend the Employment Insurance Act to introduce a parental sharing benefit. The objective of the measure is to promote gender equality and would provide parents with additional weeks of parental benefits, for parents who share these benefits when welcoming a newborn or newly adopted child.

With the parental sharing benefit parents would be able to receive five additional weeks of standard parental benefits for a total of 40 weeks. They would continue to be paid at 55% of average weekly insurable earnings, over a period of 12 months. No parent would be able to access more than 35 weeks of standard parental benefits, so if one parent took 35 weeks, there would be five weeks left for another parent.

Since December of last year, an extended parental benefits option has also been available that offers 61 weeks of EI extended parental benefits paid at a lower replacement rate. For the extended parental benefits option, the parental sharing benefit would offer eight additional weeks of benefits for a total of 69 weeks. These are paid at 33% of average weekly insurable earnings, over a period of 18 months. Again, no parent would be able to access more than the 61 weeks of extended benefits that are currently available, thus ensuring that there would be eight weeks available for another parent.

● (2030)

[*Translation*]

The shared parental benefit will be inclusive and will be offered to eligible parents, including biological and adoptive parents, and parents of the opposite sex or of the same sex. It will be offered to parents whose children were born or placed for adoption once the amendments come into effect, which is scheduled for March 17, 2019, and who agree to share parental benefits.

The employment insurance shared parental benefit includes aspects of the Quebec model, which has shown that incentives are key in deciding who stays home to care for the children. Before Quebec's parental insurance system was implemented, in 2006, 20% of fathers in that province claimed parental benefits. In 2015, 80% of fathers in Quebec claimed paternity benefits under Quebec's system.

These proposed changes to employment insurance will not have any direct impact on Quebec residents, since Quebec currently offers benefits under its own system.

[*English*]

It's estimated that up to 97,000 Canadian parents may claim the EI parental sharing benefit per year. The bill ensures that the same changes that apply to insured workers will also apply to self-employed workers who voluntarily participate in the EI program by paying premiums.

This proposed amendment for EI parental benefits represents an incremental cost of $344.7 million per year, with the cost of $1.3 billion over five years.

In accordance with the Employment Insurance Act, these costs will be charged to the EI operating account and recovered through EI premiums. This measure is expected to result in an upward pressure on the EI premium rate by approximately two cents for $100 of insurable earnings.

Employers and labour organizations will need to determine whether this change would have impacts on any employment contracts and benefits plans and to assess any implications for their organization and members.

● (2035)

[*Translation*]

I will now give the floor to my colleague, Ms. Moran, who will talk about the related amendments to the Canada Labour Code.

[*English*]

Ms. Barbara Moran (Director General, Strategic Policy, Analysis and Workplace, Labour Program, Department of Employment and Social Development): Thank you.

I'm going to briefly discuss the proposed amendments, clauses 310 to 313, which are amendments to part III of the Canada Labour Code.

Part III of the code establishes minimum working conditions in the federally regulated private sector, such as hours of work, annual vacations and various types of unpaid leave. The federally regulated private sector includes about 6% of all Canadian employees, employed in industries like banking, telecommunications, inter-provincial and international transportation, federal Crown corporations, and certain activities on first nation reserves. Part III does not apply to the federal public service.

In general, when amendments are made to the employment insurance special benefits, corresponding amendments are made to the unpaid leaves under the code. This ensures that the federally regulated employees have the right to take unpaid job-protected leaves while receiving the employment insurance special benefits, without fear of losing their jobs. Amendments are, therefore, being proposed to part III to increase the amount of parental leave that may be taken when shared between employees.

More specifically, the amendments will increase the maximum aggregate amount of parental leave that may be taken by more than one employee for the same birth or adoption from the current 63 weeks to 71 weeks, while the maximum amount of leave taken by one employee will remain at 63 weeks, and it will increase the maximum aggregate amount of maternity and parental leave taken by more than one employee from the current 78 weeks to 86 weeks, while one employee cannot take more than the current 78 weeks of maternity and parental leave. These amendments align the code with the extended EI parental benefits that Andrew just described.

We're happy to answer any questions.

The Chair: Do I see any takers?

Mr. Massé.

[*Translation*]

Mr. Rémi Massé: I have a brief comment, not a question.

I am very pleased that the Quebec model has inspired the amendments to the Employment Insurance Act. I am a father of four young boys and I took advantage of those measures to spend time with my children who are growing so quickly, and also to help out my spouse. I simply wanted to say that I am very happy to see these measures in the budget, which will be take effect in the coming weeks.

[*English*]

The Chair: Mr. Kmiec.

Mr. Tom Kmiec: How do these provisions apply to adoptive parents? Do they apply equally just as they do for—I don't know what word to use to describe it—natural birth parents?

Ms. Rutha Astravas (Director, Employment Insurance Policy, Special Benefits Policy, Department of Employment and Social Development): Thank you for the question.

Parental benefits are for the care of a child. Biological or birth parents, as well as adoptive parents, are eligible for those benefits. The maternity benefit is uniquely available to birth mothers to recover from pregnancy and childbirth. Maternity benefits are not available to adoptive parents.

Mr. Tom Kmiec: Can I just do a follow-up? I tabled a petition in the House on this, which was signed by a few thousand people. I have a constituent who adopted a baby, and she didn't qualify for the maternity benefits, but I can tell you she was just as sleep deprived as anybody else. I have three living kids, and I know I've gone through this with my spouse as well. There's really no difference. It's more like a broader kind of policy issue, not specific to this, but I feel as if we're not doing enough for adoptive parents.

In that 15 weeks when you're adopting a baby, you're just as exhausted as a birth parent. I know that my wife supports the idea of broadening it and just having one leave for all parents, whether taking leave because of giving birth.... Those 15 weeks would really make a difference. It's a broader policy issue.

Lindsey Salloway, in my riding, is the one who would ask me why I didn't bring it up, so I'm making sure I do right by Lindsey by bringing it up.

The Chair: Do you have a response or statement? Go ahead.

Ms. Rutha Astravas: As I said earlier, the parental component is for the care of the child, but the purpose of maternity, under EI as well as the labour code, as well as other sorts of protections for pregnant workers, is distinct. It's for the mother. That's why we separate the two.

However, recent changes that we did bring about through budget 2017, which came into force last December, included offering parents a choice of the standard benefit of 35 weeks versus the extended benefit of 61 weeks, which offers more time to care for their children.

● (2040)

Mr. Tom Kmiec: For the same money...?

Ms. Rutha Astravas: It's prorated. The total amount available is roughly the same.

The Chair: Okay.

Ms. Rudd.

Ms. Kim Rudd: I just want to follow up on what Tom was saying. Sometimes I think we have to look at where we've come from to realize how far we've come. In 1979, we had 48 hours' notice when we had a baby. I had to make a decision about whether to quit work and stay home or go back to work on Monday. There was no benefit to us at all. In 1979, for adoptive parents, if you didn't physically have a baby, why would you need time off? That was the logic.

My daughter will be 40 next year. It's not that long ago that we had none, so I'm really thrilled to see that we don't just have the benefits, but we have the option of extending those benefits, and having both parents eligible to take those benefits.

I'm thrilled. We're here, yes. We could be further, but considering where we were, I think we've come a long way. Thank you very much.

The Chair: With that, we thank you, all, for appearing and answering our questions and going through the explanations.

We'll now call up part 4, division 15, subdivision A. Maybe you're all coming up together. I'm not sure.

Barbara, I believe you're staying. You're hanging in here.

Ms. Barbara Moran: I am.

The Chair: Welcome.

With ESDC, on the Canada Labour Code, subdivision A, division 15, we have Ms. Moran. We have also Mr. St-Arnaud and Mr. Rochon. Ms. Baxter is here for the next round.

Okay, go ahead.

Ms. Barbara Moran: Thank you.

I was going to briefly outline clauses 441 to 534, modernizing labour standards. Just briefly, federal labour standards were established in the 1960s when most jobs provided decent wages and benefits. They were full-time, generally permanent. Those labour standards have really remained relatively unchanged until recently.

In recent years, significant economic and technological changes have affected the world of work and altered the way Canadians work. We look at gig work, on-demand work, and so on. While many of these changes are positive, they also present challenges for Canadians. They struggle to support their families in part-time, temporary and low-wage jobs, and they may work several jobs to make ends meet, face unpredictable hours, and lack benefits and access to certain labour standards.

To ensure that labour standards are robust and modern in the new world of work, and that they both protect employees and support productive workplaces, amendments are being proposed to update federal labour standards to strengthen the rights and protections of employees in the federally regulated private sector, and provide a solid foundation to equip employers and employees to succeed in the changing world of work.

[*Translation*]

Right now, a person has to be continuously employed by a single employer for a period of time in order to qualify for many of the protections and labour rights set out in part III of the Code. It can be difficult for employees who change jobs often to meet those requirements.

[*English*]

To improve employees' eligibility for labour standards, amendments are being proposed to eliminate the minimum length of service requirements for general holiday pay, sick leave, maternity leave, parental leave, leave related to critical illness and leave related to death or disappearance of a child.

The length of service required to be eligible for three weeks of vacation with pay would also be reduced from six years to five.

[*Translation*]

Many employees have difficulty achieving work-life balance due to lack of time or scheduling conflicts. This is especially true for non-unionized employees and employees with precarious jobs, who do not enjoy the same stability and working conditions as permanent full-time employees.

[*English*]

To further improve work-life balance, the Canada Labour Code would be modified by adding an unpaid break of 30 minutes for every five hours of work, a minimum eight-hour rest period between shifts and unpaid breaks for nursing or medical reasons.

Amendments would require employers to provide employees at least 96 hours' advance notice of their schedules; add four weeks of vacation with pay after 10 years or more of service with the same employer; introduce a new five-day personal leave, of which three days are paid, and five days of paid leave for victims of family violence out of 10 days in total; improve access to medical leave by allowing it to be taken for medical appointments, clarifying that it covers organ or tissue donation, and only allowing employers to request a certificate for a leave of three or more consecutive days; and introduce a new and unpaid leave for court or jury duty.

Amendments are also being proposed to enhance the leave of absence for members of the reserve force in order to ensure that reservists are properly trained to deploy on missions while balancing fairness for employers. Specifically, the proposed amendments would reduce the length of service requirement to be eligible for the leave from six to three months, allow the leave to be used to attend Canadian Armed Forces military skills training, and limit the maximum amount of leave that an employee may take to 24 months in any 60-month period, subject to exceptions such as declared national emergencies.

● (2045)

[*Translation*]

Workers in atypical jobs face different challenges from those faced by employees with normal jobs, and those challenges can vary from worker to worker. For instance, temporary and part-time employees may not be paid at the same rate as their full-time colleagues and may have trouble qualifying for certain rights and protections, which makes their situation more precarious.

[*English*]

To ensure that employees in precarious work are paid and treated fairly and have access to labour standards, amendments are being proposed to require that casual, part-time, temporary and seasonal employees are paid equally to full-time employees when performing substantially the same job for the same employer. This requirement would not apply if the differences in rates of pay are based on objective factors such as seniority or merit.

Amendments would protect temporary help agency employees from unfair practices such as being charged a fee for being assigned work; require employers to provide employees with information about labour standards requirements and their conditions of employment; entitle all employees to be informed of employment or promotion opportunities; and prohibit employers from treating an employee as if they were not their employee in order to avoid their obligations or to deprive the employee of their rights.

Amendments would treat employees' length of service as continuous in cases of contract retendering within the federal private sector, or when their employment is transferred from a provincially regulated employer to a federally regulated employer. They would allow an employee to seek reimbursement of work-related expenses and raise the minimum age for work in hazardous occupations from 17 to 18 years of age.

[*Translation*]

Amendments are also proposed so that employees who are terminated receive advance notice and sufficient compensation to protect their financial security.

[*English*]

Specifically, in situations where 50 or more employees are being terminated, employers would now be allowed to provide pay in lieu of the required 16-week group notice or a combination of notice and pay in lieu. Employers would also be required to give employees eight weeks' individual notice of termination or pay in lieu. The ability for employers to request waivers from the group termination requirements would be eliminated.

In situations where less than 50 employees are being terminated, the current two-week individual notice termination requirement would be replaced with a graduated notice of termination that would range from two weeks' notice, pay in lieu of notice or a combination of notice and pay in lieu for employees with between three months and less than three years of continuous employment, to a maximum of eight weeks after eight years of continuous employment. Employers would also be required to inform terminated employees about their termination rights.

Finally, a number of amendments to the code's administration provisions are also being proposed to resolve technical issues, eliminate duplication of recourse mechanisms, clarify existing provisions and ensure the efficient treatment of complaints.

Some examples of the proposed changes include broadening the scope of health care practitioners—nurse practitioners, physiotherapists, midwives—who can issue medical certificates. This is to reflect changes in the way health care services are delivered and improve access to the leaves as well as to help reduce pressure on the health care system.

Amendments would also transfer responsibilities for adjudicating genetic testing complaints from adjudicators to the Canada Industrial Relations Board, as will also be the case with respect to the adjudication of wage recovery and unjust dismissal complaints.

I will now turn to Charles Philippe Rochon to outline subdivision B, head of compliance and enforcement.

● (2050)

The Chair: Yes, we'll go to questions on subdivision A first. I know there are a number of questions on this tonight, about the briefing.

Who wants to start?

Mr. Sorbara.

Mr. Francesco Sorbara: Thank you, Chair, and welcome everyone.

What I really like in these CLC changes is something that I've read about for a very long time with regard to what happens at Pearson airport. This is with regard to contract flipping or contract retendering and how folks out there, and workers out there, have been...I'm going to use the word “injured” and I'll use it in that context, figuratively and not literally. This would apply to that sector of business where they are under a union contract, where the contract for the business potentially gets retendered and it wouldn't be a race to the lowest common denominator.

Am I reading that correctly?

Ms. Barbara Moran: Yes, it would. What's proposed in the part III is that if an individual is working.... Let's say they're a forklift operator. They're driving the forklift one day and that contract changes. It's gone to a different employer. There's no break in employment. That same person is still driving the same forklift. It means they'll be seen as having continuous employment for the purpose of eligibility to leaves and other things.

Mr. Francesco Sorbara: Of course, and it's with reference to the wages that were.... Effectively for a person working for $18 or $19 an hour, the contract was retendered, say for fuelling the planes or loading. The next day or the next week, the employees would be re-offered the employment, but then their wages would be cut. That's generally what, in a sense, was happening in some circumstances.

Ms. Barbara Moran: The part III changes that I described won't affect the remuneration. The remuneration piece is a part I aspect, and in fact, in our recent news release, there was a commitment from the Minister of Employment and Workforce Development to look at doing a regulation that would extend the protection of remuneration levels to workers covered by collective agreements at airports and airlines.

Mr. Francesco Sorbara: Thank you.

For the 96 hours' advance notice of scheduling, that strikes me as.... My question is this. If there is a collective agreement in place, for example in the transport sector, when there's a big snowstorm and the railways need to get employees there, you may not have 96 hours of notice. In the airline sector, if there's a disruption due to weather, you may not have 96 hours' notice.

Does the collective bargaining agreement supersede the 96 hours? I'll be frank. This just does not seem very realistic in today's world.

Ms. Barbara Moran: For the 96-hour advance notice provision, there is also a provision in the legislation that says, if the issue of scheduling is covered by a collective agreement, the collective agreement would supersede this, so it addresses just the sorts of cases you described.

Mr. Charles Philippe Rochon (Senior Policy Analyst, Labour Standards and Wage Earner Protection Program, Workplace Directorate, Department of Employment and Social Development): I can perhaps add that there is a provision with respect to the 96 hours, but also with respect to some of the other elements, in terms of breaks and all that, to provide exceptions in the case of unforeseen circumstances that could have a health and safety impact, an impact on the public, or on the operations of the employer. The legislation recognizes that there may be certain circumstances where that is just not feasible.

Mr. Francesco Sorbara: I'm going to touch on that, because that both comforts and worries me.

Is the legislation broad enough, or do we have to go back every time and define the certain situation where that's applicable?

Mr. Charles Philippe Rochon: The legislation is fairly broad in terms of the wording.

Part of the reason, of course, is that if it were overly prescriptive, it can become very difficult to administer afterwards.

The objective at the end of the day is to give enough flexibility, but to make sure there are some clear limitations in terms of those exceptions so that they couldn't be abused and that employees would benefit from protections.

I should probably add, as well, that there will also be regulation-making powers added as part of this. If needed, there may be a possibility, through regulations, to further specify the circumstances that are subject to exceptions or not.

● (2055)

Mr. Francesco Sorbara: Of course.

If you look at just-in-time inventory management, just-in-time manufacturing supply chains, a 96-hour period, literally, is relevant enough for firms to bring products in and ship them across the world two or three times within that time frame. I hope we're not bringing in something where the principle may be good, but the legislation is so narrow that it impacts us.

I'll stop here, in case some of my other colleagues want to jump in.

The Chair: Are there any other questions on this section?

Seeing none, I will turn to subdivision B.

I believe it's you, Ms. Baxter or Mr. Rochon, whoever wants to go.

Mr. Charles Philippe Rochon: I'll deal with that. Thank you, again.

This is to talk about subdivision B of division 15, and clauses 535 to 625.

The purpose of these amendments is to adjust part II, "Occupational Health and Safety"; part III, labour standards; and the new part IV, administrative monetary penalties of the Canada Labour Code.

This is to provide for the designation of a new head of compliance and enforcement by the Minister of Labour.

The head of compliance and enforcement would exercise the powers and perform the administrative duties and functions that are currently conferred on inspectors, regional directors and the Minister of Labour by the code. The head of compliance would have the authority to delegate to any qualified person or class of persons any of those powers, duties and functions, and to make that delegation subject to any terms and conditions that the head of compliance and enforcement considers appropriate.

Now, although the head of compliance and enforcement will be responsible for the day-to-day administration of the code, the Minister of Labour will still have some well-defined responsibilities under the code. That includes a number of things, including recommending regulations to the Governor in Council, appointing advisory committees, and dealing with any prosecution, so consent to prosecution. The minister could also impose any terms and conditions on the head of compliance and enforcement's delegation powers.

The minister would retain ultimate authority for the administration and enforcement of the code, should no head of compliance and enforcement be designated.

[*Translation*]

First, you have to understand that improving client service is the main objective. We want to reduce the time required to process labour standards complaints and to more quickly resolve occupational health and safety issues.

How will this be achieved? The designation of a new chief of compliance and enforcement, with the ongoing support of the labour program inspectorate, will make it possible to improve monitoring and consistency in program delivery, offer greater operational flexibility, for example by delegating certain duties to the best level possible, and provide greater harmony among the various parts of the Code. The goal is for parts II and III of the Code, and the new part IV, to include similar administrative measures and delegations, which can be problematic right now owing to the different systems in place.

This measure is also in response to the longstanding recommendations of the Federal Labour Standards Review Commission, which issued a report in 2006 that called for a more consistent approach to the compliance and enforcement activities of the labour program.

[*English*]

All of the amendments contained in this subdivision, just to be clear, are related to the new head of compliance and enforcement. These are technical changes. They do not change the obligations, responsibilities or rights of employees or employers. They should have no direct impact on any stakeholders, albeit perhaps improved client service.

Just to clarify, because it is fairly long—there are a good number of pages on these amendments—for the most part the amendments are aimed at simply replacing wording. Where we talk about inspectors, regional directors, the minister, this subdivision replaces those with the new head of compliance and enforcement. It is lengthy, but it is really dealing with a relatively limited technical change to the legislation.

Thank you.

The Chair: Do we have any questions on this subdivision? Hearing none, I'll leave it at that.

I hate to do this to you, Ms. Baxter, but we have a hard stop at nine o'clock, and we have only division 16 left, which you're involved in, on the Wage Earner Protection Program Act. Tomorrow afternoon we have the minister from 3:30 p.m. to 5 p.m., and we have officials from 5 p.m. to 6 p.m. We can deal with this subdivision right after the minister at 5 p.m. The officials we have between 5 p.m. and 6 p.m. are from the department and are in relation to estimates.

We'll deal with division 16 tomorrow around five o'clock.

Thank you very much for your presentation.

The meeting is adjourned.

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