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Chair

The Honourable Wayne Easter

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● (1545)

[*English*]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): We'll come to order.

Pursuant to the order of reference of Tuesday, November 6, 2018, we are studying Bill C-86, a second act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures.

My apologies that we're starting a little late. The Prime Minister, the leader of the official opposition, and the leader of the third party are making statements in the House on the Jewish refugees who were prevented from coming into Canada on the *St. Louis*. That's why we're short a few members, but we were worried about the time getting tight for you.

With that, welcome to all. Thank you for coming on very short notice, I know.

We'll start with the Canadian Centre for Policy Alternatives and Katherine Scott.

Go ahead, Katherine.

Ms. Katherine Scott (Senior Researcher, Canadian Centre for Policy Alternatives): Thank you, Mr. Chair.

Thank you very much for the opportunity to address you today on the budget implementation act. My name is Katherine Scott, and I'm a senior researcher with the Canadian Centre for Policy Alternatives here in Ottawa.

Bill C-86 marks an important milestone for Canada with the introduction of part 1 of Canada's first poverty reduction act, followed quickly this week by Bill C-87 yesterday, as well as three other pieces of legislation enshrining the principle of gender equality and efforts to advance gender equality through policy and program.

These bills have been a long time coming. The call for proactive pay equity legislation reaches back decades. It's been a recommendation in the CCPA's alternative federal budget for many years. With this bill, federally regulated employers will be required to create proactive pay equity plans that will help to chip away at Canada's stubbornly high gender pay gap and to uphold women's right to equal pay for work of equal value.

The Canadian gender budgeting act will require governments of the day to assess and report on the impact of all new budget measures, including proposed revenue generation and program expenditures using a gender and diversity lens.

The new department for women and gender equality will ensure that the federal government is actively engaged in both supporting women's rights and gender equality through its own policy and research and providing much-needed support to government agencies and civil society organizations working in communities across the country.

These are foundational pieces for a more inclusive, a more just, and a more prosperous country. At a time when there is a mounting backlash against women's rights, these efforts are significant and important to ensure that, as the preamble to the proposed legislation for the new department attests, all have the opportunity equal with others “to make for themselves the lives that they are able and wish to have”.

The provisions for gender-based budgeting are also essential in modernizing Canada's processes for policy and program development. Around the world, gender budgeting is recognized as key to generating the evidence necessary to inform policy and programs that successfully deliver on their stated goals and contribute to broader societal well-being. The new act provides a vehicle for strengthening accountability and transparency, both key characteristics of effective public policy.

It's one thing to know, for example, that a measure like the employee stock option costs Canadians $755 million a year in forgone revenue. It's another thing to know that 77% of those benefits are claimed by men. The partial exclusion of capital gains delivers 75% of its benefits to men at an enormous cost to the government of $6.6 billion. These policies effectively amplify existing gender disparity in the labour market. A gender analysis poses fundamental questions. Are these tax expenditures effective in achieving their stated goals? Are they just? Could Canadian tax dollars be better spent elsewhere?

The work of the new department and those charged with carrying out GBA+ analysis will require sufficient resources to ensure the positive impact of this work. This will include mechanisms for meaningful engagement with and support for women's rights and gender equality-seeking groups. We have recommended an annual budgetary target of $100 million for the new department in the alternative federal budget.

So too does the new pay equity act hinge on the resourcing available for the new commissioner for training, education, compliance and enforcement.

We fully endorse and support the recommendations of the pay equity coalition with respect to proposed reforms, enshrining existing human rights protections, and the call for a robust mechanism for pay transparency. Without these actions, the proposed pay equity model risks becoming a variant of “comply and explain”, an approach that's met with precious little success in encouraging gender parity on corporate boards.

The issue of resources is also fundamental to the potential success of the new poverty reduction act. The act outlines specific targets for reducing poverty as measured against an official poverty line, and establishes a framework and a process for reporting on progress to both houses of Parliament.

At the same time, the act does not include any new investment in the programs that are needed to achieve the strategy's goals. Indeed, Canada's new plan is really more of a framework than a strategy to accelerate poverty reduction. A strategy implies that we have a plan to get from where we are to where we want to go, and crucially, the resources to back it up. On this score, low-income Canadians are still waiting.

● (1550)

With urgent need across Canada, an effective poverty reduction plan requires more ambitious targets and timelines and greater investments in programs such as universal child care, national pharmacare, training and education for marginalized workers, and the like.

Finally, I would like to commend the government for the amendment to the Income Tax Act taking up recommendation 3 of the consultation panel on the political activities of charities. This is a very important amendment, and we hope that the forthcoming guidelines coming from CRA will uphold the letter and the spirit of the bill's proposed amendments.

Thank you again very much for your kind attention.

The Chair: Thank you very much, Katherine.

We are now turning to the Canadian Council for International Co-operation. We have Mr. Reilly-King, research and policy manager, and Mr. Charles, policy officer.

I believe the floor is yours, Mr. Charles.

Mr. Gavin Charles (Policy Officer, Canadian Council for International Co-operation): Mr. Chair and members of the committee, thank you for the invitation to appear before the committee.

We are pleased to appear on behalf of the Canadian Council for International Co-operation, Canada's national coalition of civil society organizations working to end global poverty and to promote social justice and human dignity for all. Our 80-plus members include many of Canada's leading international development and humanitarian assistance organizations. More broadly, we represent a sector that includes over 2,000 organizations that employ 14,000 people and spend over $5 billion each year.

The 2018 budget implementation act, no. 2 will have important impacts on the work we and our members do to build a fairer, more sustainable and safer world. Today we will focus our remarks on two areas. The first is changes to the rules governing charitable activities and the Income Tax Act, and the second is changes to how Canada delivers and tracks its international assistance.

CCIC wholeheartedly welcomes the amendment of section 149.1 of the Income Tax Act to accept and acknowledge the public policy role of Canadian charities. As we indicated in our submission to the finance committee during the 2019 pre-budget consultations, Canada's competitive advantage includes ensuring that we have a strong non-profit sector. A precondition of this is a legislative and policy environment that is fully conducive to civil society organizations realizing their full potential. It is therefore good to see that the substance and language of the amendments in Bill C-86 reflect the recommendations of the independent consultation panel on the political activities of charities.

We support the continuation of a prohibition on partisan activity by registered charities. However, existing guidance is vague, and these amendments do not clarify, for instance, what exactly is meant by “public policy dialogue and development” or “indirect support of, or opposition to, any political party or candidate”.

We recommend that these terms defining partisan activity be clarified to ensure that charities can maximize their contribution to Canada's society and economy. We also recommend that these and any other further improvements to the legislation and regulations governing Canadian charities be developed in dialogue with Canadian charities. In this vein, it is worth noting that the amendments proposed in Bill C-86 result from the very public policy dialogue the Income Tax Act now limits.

CCIC and other civil society organizations are keen to keep working with the government and parliamentarians to develop a modern regulatory and legislative framework for Canada's non-profit and civil society sector.

My colleague, Fraser Reilly-King, will now turn to the delivery of and accountability for Canada's international assistance.

Mr. Fraser Reilly-King (Research and Policy Manager, Canadian Council for International Co-operation): Thank you also for inviting us to appear.

For the past ten years, since June 2008, Canada’s official development assistance, or ODA, has been governed by the ODA Accountability Act. This act ensures that Canada’s international development and humanitarian assistance focuses on poverty reduction, considers the perspectives of poor people, and upholds human rights—and that it is, perhaps most importantly, accountable to Parliament and the public.

As written, Bill C-86 amends the ODA Accountability Act in two problematic ways.

First, it repeals the current definition of ODA under the act. The current definition is largely aligned with that of the Organisation for Economic Co-operation and Development, the institution responsible for defining and monitoring ODA globally.

The OECD is currently considering potential changes to the global definition of ODA. Until this review is concluded, Canada should not change its domestic definition under the act. Doing so would prejudge the outcomes of this multilateral review and could put Canada out of line with its global peers.

Second, Bill C-86 would delay the release of a report required under the ODA Accountability Act. Currently, the act's report provides preliminary whole-of-government information six months after the end of a given fiscal year, and six months ahead of the final annual statistical report. The report provides access to provisional numbers on Canada's ODA. It is an important and timely report for parliamentarians and the Canadian public. By delaying the release of this report by a further six months, there would be no official data on Canadian ODA until a year after the fact, and timing it with the release of the statistical report would make these numbers redundant.

We therefore recommend that the current definition of official development assistance and the current reporting schedule under the ODA Accountability Act be maintained.

Bill C-86 also introduces the International Financial Assistance Act, allowing the Minister of Foreign Affairs or the the Minister of International Development to offer sovereign loans.

We recommend that Bill C-86 be amended to indicate that only sovereign loans that are concessional, with a minimum grant element of 25%, and which aim to reduce poverty and support economic development, will be counted as ODA, as per the current definition under the ODA Accountability Act.

Finally, we want to comment briefly on three additional measures in Bill C-86.

We commend the creation of the department for women and gender equality and the gender budgeting act, which will enhance gender analysis in the policy process. This will ensure that Canada's actions support implementation of sustainable development goal 5 on gender equality, both at home and abroad.

The poverty reduction act represents another important step toward aligning the global sustainable development agenda with Canada's domestic action. However, here we urge the government to aim higher. Our goal in Canada and overseas should be to eradicate poverty, not merely reduce it.

With that, we'll close.

Thank you again for your attention.

I look forward to any questions.

● (1555)

The Chair: Thank you both.

Now we have the Canadian Labour Congress: president, Mr. Yussuff; and Ms. Smallman, director, Women's & Human Rights. Welcome to you both.

Mr. Hassan Yussuff (President, Canadian Labour Congress): Thank you, Chair and committee members. Good afternoon.

Thank you for the opportunity to appear before you today. Of course, Bill C-86 contains many provisions that are important to working people. I welcome any questions you may have in any aspect of the bill. However, I will confine my opening remarks to pay equity provisions and the amendments to the federal labour standards, the pay equity bill.

We're glad to see the federal pay equity bill finally being tabled. Of course, working women have been calling for this legislation for decades. This historic legislation will hold employers accountable for proactively identifying and correcting systemic wage discrimination. It will put working women in the federal sector on a path towards equal pay for work of equal value.

We also want to commend the government upon repealing the Public Sector Equitable Compensation Act brought forward by the previous government. We're pleased that the bill provides for pay equity committees to both develop and review pay equity plans. The bill also establishes a pay equity commissioner to administer and enforce the bill. We hope the commission and their team will have the resources and capacity required to implement the legislation effectively.

There are some parts of the bill that we need to change in order to reinforce pay equity as a human right and to ensure the process works to accomplish the goals of ending systemic wage discrimination.

First, the "Purpose" clause must be amended to remove the qualifying phrase "while taking into account the diverse needs of employers". This language in this part of the bill undermines the intent of the bill, as well as the human rights of equal pay for work of equal value.

Second, language on voting in pay equity committees states that the decision of the employee groups must be unanimous or they will forfeit their right to vote. We suggest that a majority agreement is sufficient, as in the case of the Quebec legislation.

Finally, the language on maintenance provides for retroactivity when wage gaps have arisen in the interim between the posting of the original pay equity plan and the five-year review. However, it is retroactive to when the revised pay equity plan was posted, not to when the gap first occurs. A similar provision in the Quebec legislation was recently struck down by the Supreme Court of Canada. The federal act should not replicate this unconstitutional language.

On federal labour standards, Bill C-86 makes a variety of changes to the federal labour standards. In our opinion, these changes are overdue and much needed. Since the comprehensive Arthurs commission report was published in 2006, the federal labour standards have lagged behind provincial improvements. Many improvements have failed to keep up with significant changes in work and the world of employment.

We're pleased that the victims of family violence will now be entitled to five paid days for domestic violence leave. We welcome the prohibition on pay discrimination on the basis of employment status. Equal treatment protections in the code will reinforce the new pay equity legislation. They will benefit low-income workers, women of colour and newcomers to Canada who are more likely to be employed in part-time, temporary, casual or seasonal work. Temporary agency workers will also be entitled to equal treatment.

We also welcome the onus on employers to prove that they are not misqualifying employees as self-employed workers or independent contractors. These changes help bring the federal labour standards into the 21st century.

I do want to say that Canada's unions are not satisfied with the provision to end contract flipping at airports and federal workplaces. Bill C-86 provides some protection for non-unionized workers in contract retendering; however, we feel the government missed the chance to stop employers from terminating bargaining rights and cutting the wages and benefits of unionized workers by flipping contracts. We urge the government to take steps to ensure that all workers are treated fairly in such a situation.

I want to thank the committee for the opportunity to present here today. We'll take any questions you may have in regard to my presentation.

● (1600)

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

From the Canadian Union of Public Employees, we have Ms. Desjardins, executive assistant, national president's office.

Welcome, Annick.

[*Translation*]

Ms. Annick Desjardins (Executive Assistant, National President's Office, Canadian Union of Public Employees): Good afternoon.

I will be speaking in French.

Thank you for inviting me to appear to speak to you on behalf of the 665,000 members of the Canadian Union of Public Employees (CUPE).

Of course we welcome Canada’s pay equity legislation, which we hope will have a significant impact on 23,000 to 25,000 of our members who work in federally regulated industries. These members work mainly in the private sector, such as airlines, telecommunications, ground transportation and ports. We also represent civilian employees at the RCMP.

At CUPE, we have four decades of experience with various pay equity regulatory regimes, and we believe that the federal government should be setting a high standard for the provinces to emulate.

Let me also mention that CUPE has successfully challenged the constitutionality of certain provisions of pay equity legislation, particularly in Quebec. I was the lawyer representing CUPE in the class action Mr. Yussuff talked about and which lead to a Supreme Court judgment in May. As a result, if you have any questions about this, I would be pleased to answer them.

We completely agree with the remarks of the Canadian Labour Congress (CLC), and I will move to page 2 of my notes right away, so that there's no repetition.

From the outset, we have noticed a major shortcoming in the bill with respect to its compliance with constitutional obligations. It lacks an overall standard of non-discrimination applied to all of the elements of pay equity plans and their application. It will be very simple to implement it. Section 2 will just have to be amended by adding a few words to make permanent the obligation to ensure that no element of the pay equity plan shall discriminate on the basis of gender. In our written brief, we will recommend the wording to this effect.

Once again, we agree with the CLC's comments on the functioning of committees and the unanimity in the employee vote. From our experience, we can tell you about the challenge with that. All it would take is for one employer to convince a single member of the pay equity committee—such as a bargaining agent representing a predominantly male group—to adopt the position of the employer to stifle the voice of the women around the table. That's just one example. However, when there are multiple bargaining agents on a committee, it is essentially unrealistic to believe that decisions will be unanimous. So there needs to be a majority, not unanimous, vote.

I will now turn to the compensation comparison methods described in section 50 of the legislation. We can tell you right away that the method set out in the bill—the equal line method—will be inapplicable in most cases. We cannot understand in the slightest why the bill has not kept the comparison method recommended in the 2004 final report of the pay equity task force, generally known as the Bilson report. Our written brief will elaborate on this shortcoming, but it's important that you are now aware that it's quite a major problem.

As the CLC mentioned, the bill lacks clarity with respect to retroactive pay adjustments in the maintenance phase. It provides no guarantees, which may well affect its constitutionality. I hope that you have taken note of this.

Finally, the pay equity legislation being proposed would give the pay equity commissioner a significant degree of responsibility. So that the legislation is not a burden for businesses, the commissioner will need to have the resources necessary to support them, but also to quickly and effectively resolve workplace disputes. So the Human Rights Commission will need to receive a whole host of additional resources so that everything works out for everyone.

● (1605)

The dispute resolution mechanisms found in part 8 should not distinguish between the remedies provided to employees and those provided to bargaining agents. Bargaining agents—and unions, of course—must be able to exercise all the rights of their members on their behalf. The possibility of being represented by an association to exercise one's rights is part of the freedom of association, and this must be provided for in the act. Furthermore, the legislator recognizes that there may be reprisals after a complaint is filed, but is taking away the main buffer against those reprisals, the protection of the union. So please review the remedies provided for in part 8.

My final comment for today is on clause 451 of the bill, which amends the Canada Labour Code, relating to equal treatment by adding sections 182.1 to 182.4. I invite you to read the written brief that will be submitted by Friday, in which we recommend, among other things, that the interpretation—made by regulation—of employment status be supplemented with protection against discrimination on the basis of the date of hiring.

That concludes my remarks. Thank you very much. I am ready to answer any questions you may have.

[*English*]

The Chair: Thank you very much.

From Canada Without Poverty, we have Ms. Farha, executive director; and Ms. McLachlan, deputy director. Welcome to you both.

Ms. Harriett McLachlan (Deputy Director, Canada Without Poverty): Thank you.

Good afternoon, and thank you for the opportunity to address this committee.

My name is Harriett McLachlan. I'm deputy director of Canada Without Poverty, and I'm joined today by Canada Without Poverty's executive director Leilani Farha, who is also the UN special rapporteur on the right to adequate housing.

CWP is a non-partisan, not-for-profit and charitable organization dedicated to ending poverty in Canada. For nearly 50 years, Canada Without Poverty has been championing the human rights of individuals experiencing poverty, and since our existence, the board of directors has been made up entirely of people with a lived experience of poverty.

This committee should know that although I'm an educated professional, I lived for almost 35 years in poverty, 19 years as a single parent.

Canada Without Poverty has long called for a national anti-poverty strategy to be secured in legislation. As members of this committee may be aware, United Nations authorities—for example, the UN Committee on Economic, Social and Cultural Rights—have urged Canada to secure in legislation its efforts towards the rights to an adequate standard of living, housing, and food.

We support the entrenchment of the Opportunity for All strategy within Bill C-86 as critical to the fulfillment of Canada's international human rights obligations.

While the strategy and legislation reference the sustainable development goals, the target and timeline invoke the minimum threshold of a reduction in poverty by 50% by 2030. The reality is that when we only commit to reducing poverty, we create opportunity for some and not opportunity for all, especially those who are the most marginalized.

For a country as wealthy as Canada, which should be leading other countries in the implementation of the SDGs, we are disappointed that the legislation does not commit to the spirit of SDG 1, which is to end poverty.

I'll pass it over to Leilani.

● (1610)

Ms. Leilani Farha (Executive Director, Canada Without Poverty): Thank you, Harriet, and thank you, Chair.

Good afternoon.

My comments are going to focus on part 1 of Bill C-86, particularly the provisions related to political activities and purposes of charities at section 17 of the bill.

Let me begin by saying CWP is pleased to say to the committee that we support the proposed amendments. We do so for the following three reasons.

First, and perhaps most obviously, these provisions actually strengthen our democracy. They ensure robust public debate and discussion and that the voices and lived experiences and experiences of persons living in poverty can be heard in the public domain.

Second, and as Katherine Scott has already said, the amendments support recommendation 3 of the consultative panel that deliberated on these issues. I'd add to this that the amendments also are consistent with the Ontario Superior Court's ruling in the case that my organization brought on the very issue of restrictions on political activities of charities.

For those of you who've read it, you'll know, and for those of you who don't, I'll tell you, that Justice Morgan in that case ruled that restrictions on non-partisan political activities curtail CWP's ability to engage with our members and the public in pursuing our charitable purpose of relieving poverty, and that unlike old models of almshouses and soup kitchens, CWP's work to relieve poverty by sharing ideas, achieving attitudinal changes, and engaging in public policy dialogue to identify the causes of poverty and the necessary changes to laws and policies to relieve poverty are necessary for the achievement of our purpose, which is charitable.

He determined in fact that subsection 149.1(6.2) of the Income Tax Act "violates s. 2(b) of the Charter"—that's the free expression article in the charter—and that such a provision was not reasonably justified and that the provision is of no force and effect, and that henceforth charitable activities must be understood to include non-partisan political activities in furtherance of a charitable purpose. That's exactly what the proposed act is saying as well, and is consistent with.

The third reason we support the amendments is that like Justice Morgan's decision, they do not in any way allow groups that do not have an accepted charitable purpose to claim charitable status for political activities; rather, the changes simply recognize that freedom of expression and participation in public policy dialogue are critical components of the effective pursuit of accepted charitable purposes, such as the relief of poverty.

Before I close, I just want to note something for the committee. The government has not yet indicated an intent to withdraw its appeal in the decision of Canada Without Poverty v. Canada and has not recognized yet publicly that the sections of the act are in fact a charter violation. In fact, the government has chosen to frame the issue as one that's simply a matter of policy.

For our sector, it is critical that the sections of the Income Tax Act that are being amended remain recognized as a violation of the charter. Otherwise similar measures could be implemented on a political whim by future governments, leaving the sector exactly where it was prior to the suggested amendments in Bill C-86. We ask, therefore, and in closing, that the government withdraw its appeal in this case.

Thank you, and we're happy to take any questions.

● (1615)

The Chair: Thank you both.

We turn, then, to the YWCA, and Ms. Sultana, manager, policy and strategic communications.

Ms. Anjum Sultana (Manager, Policy & Strategic Communications, YWCA Canada): Thank you.

Good afternoon, fellow members of the panel and honourable members of the Standing Committee on Finance. We thank you for the invitation to appear here before you today.

Once again, my name is Anjum Sultana, and I am the manager of policy and strategic communications at the YWCA Canada. We are the nation's oldest and largest women-serving organization. For nearly 150 years we have been working with women and girls and their families at critical turning points in their lives and providing them with the necessary services and resources to thrive and succeed.

Last week on November 1, over 100 members of the YWCA Canada were here on Parliament Hill and met with over 65 members of your fellow parliamentarians. We advocated for women's economic security. Today we will comment on the contents of Bill C-86. We are encouraged by many of the developments that have occurred in this particular bill, because we see that there is an opportunity to advance women's economic security here in the country.

What we also wanted to share was that we currently work in nine provinces and two territories, and we work with over 330,000 women and girls every year. We're anticipating that by 2020, our 150-year anniversary, we will be working also in our tenth province, which is Prince Edward Island.

What we want to do today is talk about three particular divisions of part 4 of Bill C-86, in particular division 9 of part 4, which pertains to the Canadian gender budgeting act to promote gender equality and inclusiveness by taking gender and diversity into consideration in the budget process. We would encourage, as others have testified to this committee before, that to follow this landmark legislation, it would be critical to ensure that as future standing committees on finance consider pre-budget consultations, there be a target of gender parity. Specifically, others have testified before this committee to the importance of ensuring that at least 15% of future witnesses to this committee be from feminist and women-serving organizations.

The Canadian gender budgeting act marks an important milestone that can be further enhanced by ensuring that at least 15% of the witnesses to this committee come from feminist and women-serving organizations to truly ensure that women's voices are heard in the budget-making process as well as future decision-making processes.

We're also pleased to see inclusion in this bill of division 14 of part 4, which enacts the pay equity act, a call that women-serving organizations have been pushing for for many years, including colleagues from the Equal Pay Coalition, Janet Borowy and Fay Faraday, who appeared before this committee earlier for its consideration of Bill C-86. We fully support their recommendations, and in our brief to this committee we will delineate the specific recommendations, but we fully recommend their calls.

One that we want to draw your attention to is the specific point around the "Purpose" clause, clause 2, which has current language around ensuring that "the diverse needs of employers" are kept in mind. We would encourage that this be deleted, because what we have seen is that this undermines women's experiences in the labour workforce and also undermines the act's purpose and intent of addressing systemic gender bias and discrimination.

We were also pleased to see that in part 4 of this bill, division 18 was the piece of legislation to enact the department for women and gender equality. We were pleased to see that there were many other considerations of diverse social locations and diversities that were embedded in this particular piece of Bill C-86.

We would encourage that there be further inclusion of another identity, which is citizenship. We saw that there was indication that there was an understanding that the diverse experiences of women that are complicated by different aspects of social location such as age, ethnic origin and sexual orientation were considered. We would also encourage that citizenship be another addition to that list. This is consistent with other provincial human rights codes such as Ontario's, which includes citizenship.

● (1620)

Finally, we wholeheartedly agree and support the recommendations of our colleagues at the Canadian Labour Congress with respect to recommendations around leave. We see this in the over 330,000 women we serve every year, many of whom are from working class backgrounds and experience challenges in accessing their entitlement. We would encourage that these recommendations put forward by the Canadian Labour Congress also be considered.

I'd like to thank you again for your attention. We look forward to any questions that you might have.

Thank you.

The Chair: Thank you very much, Ms. Sultana.

We'll go to five-minute rounds because of the time frame.

Go ahead, Mr. Fergus.

[*Translation*]

Mr. Greg Fergus (Hull—Aylmer, Lib.): Thank you very much, Mr. Chair.

First, Ms. Scott, I would like to extend our condolences on the passing of Kate McInturff, who was a member of your organization. Ms. McInturff appeared before the committee on a number of occasions.

[*English*]

Ms. Katherine Scott: Thank you so much.

[*Translation*]

Mr. Greg Fergus: She truly and fully represented your organization and the issues she was advocating. It is really a significant loss. I am sure that all the members of the Standing Committee on Finance were affected by her death. We therefore offer our condolences.

Ms. Katherine Scott: Thank you.

Mr. Greg Fergus: Could you tell us a little bit about your analysis of the part on pay equity and its provisions? You mentioned that this was a good start, but that there were some corrections to be made. So let me give you a chance to briefly comment on that.

[*English*]

Ms. Katherine Scott: Just as a question, when you say the gender equity part, which bill do you mean, the department or the budgeting provisions?

Mr. Greg Fergus: I mean the budgeting provisions.

Ms. Katherine Scott: The gender equality budgeting provisions in the act are fairly broadly scoped out. We certainly believe that the preamble is expansive. It directs the Department of Finance and other agencies to conduct a gender-based analysis on all new budgetary measures, as well as tax expenditures. It's a broad set of directions that will hinge on the level of resourcing that's available to Status of Women or the new WAGE Canada, which I guess is the new acronym, to deliver those resources.

The department has taken tremendous steps already with investments that this government has made in Status of Women over two budget cycles. We're encouraged to further invest in the capacity of Status of Women to achieve those goals and to support other agencies.

Much of this work provides not only assistance with analysis but also investment in the generation of data. Important investments have been made already with Statistics Canada. We need to continue to focus on that, but also to facilitate the meaningful participation of women's rights organizations and that range of groups in the budgeting process.

Actually, this is a tremendous opportunity for the government, as I said, to up its game in policy development, to bring this type of analysis to bear and to really understand the implications and impact of budgetary decisions. I think it's a tremendous opportunity to also engage civil society and increase economic literacy, to generate that kind of engagement and to ensure we have policies that are effective and that deliver the intended impact.

We certainly commend the government and we are happy and anxious to work to ensure these provisions achieve their full impact.

● (1625)

[*Translation*]

Mr. Greg Fergus: Very well.

My second question is for Ms. Desjardins.

Ms. Desjardins, you stated that your union has been working to establish pay equity for a long time. Much like Ms. Scott, you said that what we have started was a step in the right direction. However, you noted that some provisions should be amended.

In your opinion, is the fact that this was included in the budget a major step that the private sector or other sectors of our economy should also take?

Ms. Annick Desjardins: We have been waiting for proactive federal legislation for a long time.

There are proactive laws in some provinces and they work relatively well, except in some problematic cases, which we have had to take to court.

We have known for decades that the pay equity dispute resolution mechanism before the courts does not work for employers or employees. Clearly, proactive legislation was needed. As we say, it was long overdue.

Overall, this piece of legislation is a step in the right direction, but there are still many grey areas in its design. It gives employers loopholes and it will ensure that we will end up in court again.

This is what we want to avoid by adopting proactive legislation. We want to avoid costly litigation for all parties. Unfortunately, the proposed legislation presents this possibility because not all the shortcomings have been adequately addressed. It was poorly put together. It therefore leaves too much discretion or loopholes for employers.

There are also grey areas because a number of items still have to be specified in the regulations. If the regulations are well designed, that's great, but right now, it's difficult to express an opinion on future regulations.

The regulatory process should involve all partners. We will have to be consulted and the government will have to hear our views as experts, because we truly are experts in this field.

[*English*]

The Chair: Thank you all.

Mr. Richards, you have five minutes.

Mr. Blake Richards (Banff—Airdrie, CPC): Thanks, Mr. Chair.

I appreciate you all being here today and sharing your perspectives.

One of things we've heard—or I've certainly heard from a number of organizations and individuals out there—is about the size of this piece of legislation and the omnibus nature of it. There have been many people who have commented on the fact that there was very little time given for individuals and organizations like yourselves to take a look at this piece of legislation and prepare to comment on it here at a committee. This was something they found really problematic.

I want to give all of you an opportunity to comment on that particular aspect of this situation, although I'd be tempted to play favourites and start with Gavin Charles, who once.... I don't know if he's okay with my telling you this, but he's not indicating any opposition: He was once a parliamentary intern in my office. I'd be tempted to give him favouritism and let him start there, but I won't do that. I'll just go from left to right. Anyone who'd like to comment, please feel free to do so.

● (1630)

Mr. Hassan Yussuff: First, let me say that yes, there are many provisions in this bill that have some complexities, and we have examined almost every aspect of it. That does not faze us in terms of what the bill is trying to do overall.

We've been waiting for decades for proactive pay equity legislation. We have identified three very specific things that can be addressed to make this bill even better than it is currently. Similarly, we have Harry Arthurs' recommendations finally seeing the light, along with the recommendations to improve the Canada Labour Code, part III, which has not amended since 1960.

We lay out one area that the government can fix, and it's a regulation that would need to be brought forth, but at the end of the day, this is not the first time this House has had to deal with omnibus legislation. We've been coming here for quite some time and we're very happy to comment on whatever legislation the government brings forward. We think this legislation will enhance gender equality in the federal jurisdiction, but equally we think the labour provision will set a new standard for the federal government in trying to get the provinces to follow suit.

Mr. Blake Richards: Are there others who would like to...? I saw some heads nodding over here. Did you have a comment?

Ms. Leilani Farha: Yes.

First of all, I'd say that Canada Without Poverty is really glad that the income tax amendments made it in. We're very pleased with that. In fact, the issues that we cover that are included in the BIA have received a whole heck of a lot of consultation, actually. We had plenty of time to engage, and we're happy that many of them have made it in.

Mr. Blake Richards: Are there any others who would like to comment, in particular on that? After all that for Gavin, he didn't even comment. Is there anyone else? Oh, I talked him into it.

The Chair: You can answer some questions, Gavin, about what it was like working in his office.

Mr. Blake Richards: Please don't, Mr. Chair.

Mr. Gavin Charles: I could sing the praises of the parliamentary internship program, in which I worked with Mr. Richards as well as with Paul Dewar on the opposition benches.

Certainly the size of the bill means that we need to hear a large number of voices. The spectrum of voices that we have here today is testimony to that, in part. The more substantive point is that there are elements of the bill that I think everyone here supports, and bringing together a wide range of voices to speak to what is in the bill and what could be potentially improved in the bill is a positive step. That's what I'll say.

Mr. Blake Richards: Okay, the last word was to you. Thanks.

The Chair: Okay, thank you all.

Mr. Julian is next.

Mr. Peter Julian (New Westminster—Burnaby, NDP): We have the largest budget implementation act in Canadian history. The Speaker was forced yesterday to separate it out into chunks. I have deeply appreciated your testimony today. I hope it actually will have an impact. What the government has done is establish a legislative bulldozer. We'll have a few more hours of hearings from some very qualified witnesses such as you, and then we'll run into a day when, if amendments are not adopted, the whole package will be simply thrown back to the House of Commons as is.

Mr. Yussuff, Madam Smallman, Madam Desjardins, my question to you is this: What are the impacts if pay equity is not addressed in any way? Yesterday the finance minister refused to commit to any changes in this bill. As I said, the legislative bulldozer is in place. What happens if this bill is adopted without those changes?

Mr. Hassan Yussuff: Let me start.

I think the pay equity legislation, as it is contained in the bill, addresses many of the things we've been advocating for decades. Are there some areas for improvement? Absolutely, and we stated them very categorically before this committee. If they are not addressed in the way we have recommended, I think it could erode the principle of pay equity for women in the federal jurisdiction, and that would be unfortunate.

As one of my colleagues commented, we don't want the courts to be litigating something that's supposed to be a positive onus on employers to ensure—that this is the reality of how women are going to be treated in the federal jurisdiction. At the end of the day, I think our amendments will make it ironclad that women actually are going to be treated in the way that was intended by the legislation. We've been able to determine these areas. Of course, the court has litigated on at least one provision of it, and we see two specific areas in which the bill can be improved.

● (1635)

Ms. Vicky Smallman (Director, Women's & Human Rights, Canadian Labour Congress): If I could just add to that, I want to refer also to Madam Desjardins's comments about the regulatory process. If we pass this, we still have a lot of work we need to do in regulation, and we need to have a robust process that includes some tripartite mechanisms. We need to be able to close some of these loopholes in the regulations and to explain and clarify some of the grey areas. We are anxious to have this bill passed so that we can move on to that next stage, but to start us off on the right foot, it would be good to have it passed with the amendments we're proposing.

The other component I want to recognize is that the resources that are allocated to the pay equity commissioner and the commissioner's unit are also fundamental to this success. If we don't have the right tools at our disposal to implement and enforce the act, then the process will continue.

We already have a timeline built into the legislation. That means we have a lot of steps to take before some groups of employees actually have their wage discrimination addressed. We're anxious to get on with it.

Mr. Peter Julian: Ms. Smallman, just to come back, Mr. Yussuff has just said that the constitutionality of the pay equity legislation might be in question. Women might be forced to go back to court. Do you share that point of view?

Mr. Hassan Yussuff: We're not saying that the bill itself is unconstitutional; we're saying that a specific section of the bill would need to be amended because the court has just recently ruled on a similar provision in the Quebec legislation. It's identical. I think it has problematic application if it's not changed.

Of course, we're very good at taking cues from the court when we are successful. We will be back in the courts, and it would be unfortunate for that to happen.

Mr. Peter Julian: Thank you.

[*Translation*]

Ms. Annick Desjardins: I just want to reiterate exactly what has just been said. I agree. Except for the issue of retroactive payments in the maintenance phase—which we feel corresponds quite clearly to the problem that was raised before the Supreme Court and that was considered unconstitutional in Quebec legislation—implementing the legislation over time will reveal the shortcomings in the legislation.

It is nevertheless important to know that, if the legislation is not appropriately applied and does not help correct wage discrimination, it may be unconstitutional in several respects. In Quebec, in 2004, another case was heard by the Superior Court. On that occasion, a whole other part of Quebec's legislation was declared unconstitutional. However, this became clear only as it was applied. We'll see.

Mr. Peter Julian: So the three of you are saying that it's essential that amendments be made to this bill.

Ms. Annick Desjardins: Yes, of course.

Mr. Peter Julian: Okay.

[*English*]

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Thank you, Mr. Chair.

Welcome, everyone. It's good to be here this afternoon with you.

My first question is for the Canadian Labour Congress with Mr. Yussuff.

In the province of Ontario, we've seen the Ford government attack the rights of middle-class Canadian workers and middle-class Canadian families. In the last few weeks, they have repealed many provisions that would benefit middle-class workers and their families, including sick leave, a minimum wage going up to $15 per hour, scheduling and so forth. Our government has decided to stand with middle-class families and middle-class workers, and in this piece of legislation, the budget implementation act, 2018, no. 2, we've introduced changes to the Canada Labour Code. They are the first such substantive changes since 1960, as I believe you referenced.

What more needs to be done? I know there is some stuff with regard to contract flipping and contract tendering. Can you provide some feedback on where we are and what else can be done, please, sir?

● (1640)

Mr. Hassan Yussuff: First I want to applaud Minister Hajdu for the work she did on the part III provisions of the Canada Labour Code. As you know, it's almost been 15 years since Harry Arthurs first tabled his report when he looked comprehensively at what could be done to improve part III of the Canada Labour Code and to see these provisions brought forward. These provisions represent the 21st century reality for workers in this country, and it's fundamental that we get them into law as quickly as we can.

They will, of course, be contrary to what's happening in Ontario right now, where the government is repealing the things that most recently were amended to improve the employment standards there. A huge swath of workers will now not have that basic protection in the Ontario employment standards.

On the provisions I referenced in regard to contract flipping, part of it that the government still needs to fix is part I of the code. We would require some regulatory changes to that section of the code in order to address workers that we are concerned about, of course, and that might not have protection in terms of what this this bill is proposing. I think we made that clear to the minister on Wednesday of this week. She has said publicly that she will table some amendments as soon as possible to ensure that this provision is fixed as quickly as possible.

Mr. Francesco Sorbara: Thank you, sir.

With regard to the YWCA, the BIA introduces for the first time a department of women, gender and pay equity, which is something that people have advocated for and have been consulted on for a very long time. Frankly, being an economist, I think it's something that's good for the economy. We've seen that the labour force participation rate for women in Canada is now at its highest level ever on record, which is wonderful.

Look, legislation is never perfect. It could be made better. Better is possible. We know that. At the same time, this piece of legislation is ground-breaking—from my humble point of view—on pay equity and a full department. Can you comment on that, please?

Ms. Anjum Sultana: Thank you for the question.

YWCA Canada has been calling for a very long time—as have other women-serving organizations—for proactive pay equity legislation, so we were pleased to see this included in Bill C-86. Our colleagues on the panel have spoken about some of the things that need to be addressed to make it even better, but on the whole we are happy with the spirit of the legislation, because this is something that will impact the lives of many of the folks we serve every day across the country.

Our stipulation, from our understanding of the bill before us, is that there are some exemptions for folks who are in part-time, seasonal or contract work or in non-standard employment. For many of the people we serve every day across the country, this would not help them. It's really important, then, that we address this when we consider the legislation before us, because that exemption impacts primarily—and disproportionately—women. That is something to consider as your committee considers this bill.

On the whole, we are quite pleased with the introduction of a department for women and gender equality. We would encourage the committee to really put this forward in terms of resources in the upcoming budget 2019 to ensure that this department can do all of the great work that is set out in the bill itself.

This is a landmark moment. This is something that we should have in this country. YWCA Canada, with the over 330,000 people whom we serve across the country, is looking forward to seeing what impact this will make in a tangible way for women and girls and their families.

Thank you.

The Chair: Thank you, Mr. Sorbara.

Mr. Kmiec is next.

Mr. Tom Kmiec (Calgary Shepard, CPC): Thank you, Mr. Chair.

Mr. Reilly-King, you mentioned during your presentation some amendments to the concessionary sovereign loans. Can you elaborate a little more on what kinds of changes you would like to see?

● (1645)

Mr. Fraser Reilly-King: I think the idea is that if you're setting up these new tools to leverage the amount of impact we can have internationally, if you're going to count some of those tools as ODA, then you should be using the same standards by which you define ODA for that, so that you count international assistance in.

Mr. Tom Kmiec: One of the concerns expressed by some members is the potential of some of the sections right now and how they would work, in that they may cover, basically, the losses that a private sector participant might experience during an ODA project, and that there's great latitude being given to the Government of Canada here, through the minister, to cover up to 100% of the potential losses. Do you think that's all right to leave as is, or do you have concerns about those sections in the bill?

Mr. Fraser Reilly-King: I think our position with respect to that and with respect to FinDev, the new Development Finance Institute, is that the government needs to put in place very strong measures to ensure that any funding provided to private sector companies is additional, both from a financial perspective.... We don't want to just subsidize companies to do things that they may already be doing. We need to make sure that any finance that's provided is outside of what they might be able to get in the market. It needs to be financially additional and also developmentally additional so that it's going to have a positive impact on development as well.

Mr. Tom Kmiec: Right, so there's a component of moral hazard there, in that the government might take on a project with a private sector participant in it, and the moral hazard comes from how the participant was going to do it either way, but now it gets to write it off or could potentially experience zero loss if the project goes sideways.

You talked about perhaps having tougher rules around how those types of projects are agreed upon by the Government of Canada. Do you think those rules should be legislated rules, or can they be done through the regulatory process or just a guidance document? Do you have any preference between statutory or regulatory?

Mr. Fraser Reilly-King: I'm not sure if Gavin has comments, but I think you would need strong public guidance. I don't know that they necessarily need to be regulatory.

In addition to any legislation that's developed, I think you'll need very strong guidance, very good disclosure both pre- and post-project approval, so that you can assure the public that the guidance that the government has put in place is being followed and implemented and that you're seeing the impacts that you're expecting. You'd be able to measure that financial and development additionality both before, so that you can ascertain this isn't going to be a subsidy, and after, so that you can see that the investments are having a positive developmental impact.

Mr. Tom Kmiec: Gavin, do you have anything you wanted to add?

Mr. Gavin Charles: The only thing I would add is that there are many different ways in which the government can provide international assistance. The Official Development Assistance Accountability Act provides a legislative framework for defining and implementing one element of international assistance, which is official development assistance. Insofar as the new financial mechanisms being introduced are going to be considered official development assistance, it's important that the strong definition and legislative framework of the ODA Accountability Act be maintained.

Mr. Tom Kmiec: Thank you.

The Chair: Okay. Thank you.

I have a question to Mr. Yussuff about your exchange with Mr. Sorbara.

In your submission, you talk about not being satisfied with the provisions to end contract flipping in airports and federal work-places. Do I take you to mean that this could be dealt with by regulation, or does it need a serious amendment?

Mr. Hassan Yussuff: Yes, the section that would need to be amended is in the Canada Labour Code, part I. Certainly, our communication with the minister would mean that she would have to table a regulatory change to plug that hole that we have identified.

The Chair: Okay. Can you give us correspondence on that as well, please?

Mr. Hassan Yussuff: Sure.

The Chair: Thank you.

Mr. Fragiskatos is next.

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

Thank you to all witnesses for appearing today.

I want to focus on pay equity. That was the focus of my questions yesterday during our sessions. I have a number of constituents who are highly interested in this—at least half of my constituency, for obvious reasons—but beyond that it's everyone's issue, quite frankly.

I'll start with Ms. Sultana.

You're an organization that has reached out throughout your history to many women and continues to do so. The changes that have been put forward now on pay equity obviously are applicable to federally regulated sectors. Can we begin a dialogue—and I think we can, now—about how to expand that vision of pay equity beyond and bring in the private sector? Do you have any ideas on how the Government of Canada could work with organizations such as yours, and even beyond that, to really begin a substantive dialogue about pay equity beyond federally regulated sectors?

● (1650)

Ms. Anjum Sultana: First off, I'd like to congratulate and applaud your colleague, Minister Maryam Monsef, for her leadership on advancing gender equality and women's issues in cabinet and beyond. In our comments with her and other parliamentarians last week, we talked about the importance of advancing economic equality for women and gender diverse communities, because not only is it good and important for society in creating a more inclusive society, but it also has an impact on the economy.

A report by the McKinsey Global Institute predicts that if there were economic equality for women and gender diverse communities, it would result in a positive gain of $150 billion for the country of Canada. This is something that we cannot ignore. If there are barriers to women's economic participation, they have an impact not only on them and their families but also on our collective future. The topic of conversation for the pre-budget consultations was Canada's economic competitiveness. If we do not invest in women and their economic future, there will be implications for our economic competitiveness on a world stage.

In terms of how to partner with organizations such as YWCA Canada, I would say the fact that we are in nine provinces and two territories means that we are ready partners for hosting those conversations, because many of the people we serve, many of our constituents, might not know the full details of what pay equity legislation looks like, but it's critical that the public be fully aware of the way in which this will be implemented and rolled out. I think it would be incumbent on all of us to ensure that there is broad awareness and education of the broader public when it comes to this issue.

I would encourage again that our understanding of the legislation before us is that there are some stipulations that exempt people who work in non-standard employment—folks who are working in contract, part-time, seasonal and other non-standard employment—from this legislation and the merits that it has, and we would encourage that this be looked at, because disproportionately women make up the workers in those spaces.

Mr. Peter Fragiskatos: I'm going to have to interrupt you there, because I see that I have about a minute and a half left.

Ms. Anjum Sultana: I'm sorry.

Mr. Peter Fragiskatos: I do want to ask Mr. Yussuff something.

I told you at the outset today that my grandmother is a former labour leader, and I want to put that to you. With regard to organized labour, what are the plans going forward that you and colleagues have to continue this fight for pay equity beyond the federally regulated sectors and have it within the wider society?

Mr. Hassan Yussuff: As you know, there are three jurisdictions now that will have proactive pay equity legislation—Ontario, Quebec and now the federal jurisdiction. In the federal jurisdiction, a little over a million workers will be covered by the code, because the federal government is also going to broaden the coverage to ensure that the federal contractors' program will also have to comply with proactive pay equity legislation. If you're seeking to do business with the federal government, you're going to have to meet that requirement.

I think all of this will have an extremely positive impact on women, but more importantly, this is about not just women's pay equality but also their economic equality.

Statistics have pointed time and time again to the fact that women live in poverty much more than men do comparatively. A large part of that is because we have been discriminating for generations and not paying them adequately. This is certainly going to raise the standard significantly. I think now we have to figure out a way in which we will continue to do it in our federations and our affiliates at the provincial level. How do we get other provinces to bring forth proactive pay equality legislation?

The other thing I would also say is that proactive pay equity legislation, as you know, deals with only one aspect of women's overall equality. I think a national child care system whereby women will be able to have their children in child care will be a tremendous boost to them really engaging, as we've seen with Quebec's history. Where they have the ability, they will be giving back to the economy far more than they take out with child care, but child care is an essential part of bringing women's equality in our society to a higher level.

I can't say enough about what this will do for the challenges. In one case we have noted consistently in our presentation, it took 28 years for women to achieve pay equity in one federal workplace, because that's how the litigation went on and on and on before we were able to kind of resolve this situation.

This legislation will end that history, but more importantly, I think the commission's role will be a tremendous part of this, because the commission can encourage the parties as to how to find solutions to their pay equity problem. I think some of the areas we identified that can be addressed would be a tremendous boost.

A lot of people are misqualified in the federal and provincial jurisdictions. It's critical that those loopholes will be now plugged in part III of the code, but equally we want to ensure that while employers may have diverse interests, they cannot evade their responsibility with regard to how they pay women who work within their jurisdiction.

● (1655)

The Vice-Chair (Hon. Pierre Poilievre (Carleton, CPC)): Mr. McLeod is next.

Mr. Michael McLeod (Northwest Territories, Lib.): Thank you, Mr. Chair, and thank you to all the presenters.

I want to ask the Canadian Centre for Policy Alternatives what the price tag would be on the plan that was mentioned and the different categories. What are we expecting?

Ms. Katherine Scott: Sorry, which plan?

Mr. Michael McLeod: You referred to a plan in your presentation.

Ms. Katherine Scott: We have a recommendation that we submitted to the finance committee this past August or September on the amount of monies that we're recommending to invest in Status of Women Canada to ensure a vibrant and extensive mandate. It's $100 million per annum.

Obviously, a good chunk of this supports the department in its work but also the vitality and impact of their community grants and contributions, which are actually just now having, through projects and funding, an important impact right now as organizations are working again with this funding. Our proposal was to increase the funding for the department to $100 million per year in light of its new responsibilities, which now have obviously been expanded under this act.

Sir, was that the plan, the recommendation?

Mr. Michael McLeod: That's what I was looking for. Thank you.

Ms. Katherine Scott: Yes.

Mr. Michael McLeod: My next question is to Canada Without Poverty.

I found it very interesting that you talked about an adequate standard of living, because it's something we talk about. I represent the Northwest Territories. For us in the north, trying to live to the Canadian standards is a real challenge. I certainly can relate to the issues that you have brought forward. I represent a riding with many small aboriginal communities. We just completed a study on suicide in our smaller communities.

One of the things we heard was that the issue of housing was causing many challenges. Studies have shown that if we could solve the housing issue, we would solve probably 50% of our social challenges. Now that rings true also with poverty. There is a connection there. I wanted to hear a little more on your views on how poverty affects the lives of a great many Canadians across the country, and I think it's maybe even more so in some of the small aboriginal communities.

Ms. Harriett McLachlan: I can't speak for all people who are poor in this country. I can speak to my experience as an educated professional living 35 years in poverty, 19 years as a single parent. It was an enormous struggle, only being able to live in dilapidated housing that had rats in my living space and my kids' beds and making impossible choices between paying half my rent or half my hydro.

I'm a white, able-bodied Canadian-born person who has the ability to articulate these things. How much more difficult is it for someone who doesn't have the privilege that I had, even in my poverty, and how marginalized they are in smaller communities, as you are saying?

I think that—and I'm sure Leilani will speak more to this—if my housing issue with my rats and if I didn't have to live with violent neighbours.... I didn't have a bedroom of my own. I slept on the couch. If just my housing had been taken care of, I think that would have alleviated a lot of stress. I think it would help provide nutritious food on the table for my children. It's critical that housing be taken care of, but it's only one aspect of many issues that affect poverty. It's food, employment, ability, disability. It's all these complexities that come together depending on where you live in the country, but if one element was attended to, such as housing, I think it would make an enormous difference.

● (1700)

Ms. Leilani Farha: I'm here in my capacity as executive director of Canada Without Poverty, but I am also the UN special rapporteur on the right to housing. Maybe I could speak to you afterward about my concerns, extreme and deep concerns, about housing conditions for indigenous peoples across the country, both on reserve, off reserve, in cities, etc. It is, I think, one of the number one issues that we have to deal with.

Mr. Michael McLeod: You have the best stage in the country right now. You could make the recommendations. Feel free.

The Chair: We're a little over time, but go ahead and make your point. Then we'll go to Mr. Julian for three minutes, because we were late starting.

Ms. Leilani Farha: I don't have recommendations because I'm not in a position to make those recommendations right now and here. As rapporteur, I have not visited the communities and done an assessment, but I do intend to do something on that issue. That's why I was suggesting perhaps we could speak afterwards.

Thank you.

The Chair: Thank you.

Mr. Julian, you have three minutes for the final question.

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

Thank you very much, Mr. Yussuff, Madame Smallman and Madame Desjardins. We appreciate receiving your amendments. I'm hoping they will be integrated into the legislation.

One element that I want to flag is the so-called scissors clause, which is under “Regulations” after clause 181 in the pay equity act. It basically allows the minister to exempt any class of employers from the application of any provision of this act. I would put this to you. Is it essential as well to remove that scissors clause that basically allows any government—current or future—to say pay equity doesn't apply? The whole banking industry could be exempt, for example.

My second question is to the Canadian Council for International Co-operation. There have been concerns raised about the provisions that allow federal government funding to the private sector in the event of a loss, guarantees that in whole or in part allow foreign aid in a sense—development assistance—to underwrite the private sector and private sector profits. Are you concerned? I image you're addressing that a bit in your comments. Are you concerned about those particular provisions if the bill gets through without amendment?

[*Translation*]

Ms. Annick Desjardins: I will answer your question about the “scissors clause”. This is the first time I have ever heard that expression.

That's exactly what made chapter IX of the Quebec's pay equity legislation unconstitutional in 2004. That chapter allowed for certain employers to be exempted. Power was granted to the commission charged with pay equity cases. The commission even had to examine the criteria in place. Despite those criteria, some employers were exempted from the legislation. We challenged the constitutionality of the decisions and the chapter. The Superior Court of Quebec agreed with us, and the Government of Quebec never appealed that decision.

So it is clear that, if the minister exercises this power and the section is kept, we will challenge the constitutionality of those decisions in the courts. I believe that, if this section remains in the act, the minister will not be able to apply it.

Mr. Peter Julian: Thank you.

[*English*]

Mr. Fraser Reilly-King: Thank you for your question.

I would say that a blank cheque to a private sector company without insuring development and financial additionality should not and cannot be counted as official development assistance. Of course, if the government still wants to do it, that's its prerogative, but it shouldn't be counting it as ODA.

● (1705)

Mr. Hassan Yussuff: I don't want to elaborate except to say that you can't exempt employers from their human rights responsibility. It would be a fundamental breach of human rights commitments. I hope that excusing employers from applying their responsibility in a way that is equitable for the people who are affected by the decisions they make is not what is intended.

The Chair: Thank you to all our witnesses for your presentations. I do know it was on fairly short notice, but I think everyone's presentations were very thorough. On behalf of the committee, we thank you for that.

We'll suspend for a couple of minutes and ask the second panel to join us.

● (1705)

(Pause)

● (1710)

The Chair: We'll reconvene for panel two, looking at Bill C-86, a second act to implement certain provisions of the budget tabled in Parliament on February 27, 2018, and other measures.

Thank you all for coming on short notice, and for a big bill.

We do have votes tonight. I'm told bells are at 6:15, so we should be able to go to 6:30. I think it's a 30-minute bell.

We'll start Mr. O'Hara, president and CEO of Canadians for Fair Access to Medical Marijuana.

Mr. James O'Hara (President and Chief Executive Officer, Canadians for Fair Access to Medical Marijuana): Thank you, Chair and the standing committee, for the invitation to appear today. My name is James O'Hara, and I'm the president and CEO of Canadians for Fair Access to Medical Marijuana, commonly known as CFAMM. I'm a medical cannabis patient myself.

CFAMM is a national non-profit organization that has successfully represented medical cannabis patients since 2014. We speak on behalf of the approximately 350,000 medical cannabis patients in Canada today. Our organization has emerged as the thoughtful, legitimate grassroots voice for medical cannabis in the non-profit advocacy space today.

Let me begin, Mr. Chairman, by saying “25%”. That's the average amount of tax that has been applied on medical cannabis: 25%. In many cases, that's low. Fully a quarter of the cost of a patient's medicine is consumed by tax today.

It's essential to understand that affordable and reasonable access to medical cannabis is absolutely critical to a patient's health and well-being, and ultimately their lives, but that's not what we have today. In fact, we have the complete opposite, in the form of a significantly tax-burdened medicine.

Let me take some time to recap some of this government's rationale for taxing cannabis. The Right Honourable Justin Trudeau has stated many times that non-medical users will flock to the medical system and abuse it. Given that cannabis legalization was implemented last month, this is no longer a valid reason.

He has also stated many times that legalization has been put in place in order to defeat the black market. This is also no longer a valid reason. This is because these burdensome taxes now do the complete opposite, and that is to encourage a black market, not defeat it. In fact, there's more reason than ever before for a black market to exist.

Let me give you a measure of that. I can honestly sit here today and tell you categorically that I've never, ever, in my life, heard so many patients tell me they will no longer support the industry but instead will go to the black market—the very black market that Mr. Trudeau is trying to eliminate. It has also been stated by many sitting members of this government in written form to their patient constituents that medical cannabis patients need to pay the costs for legalization and enforcement.

Mr. Chairman, let me remind you that we've already paid. We've been paying for almost 20 years. We've paid that bill and then some. This was before legalization even existed, so it was a very long time ago.

Let me add a lesser-known fact here: Medical cannabis patients do more than pay. They save costs for this country and companies through less medication, fewer doctor and hospital visits, and fewer sick days.

Members of this government have also stated that there's an excise tax exemption for medical cannabis patients. The bar for this so-called exemption is anything less than or equal to 0.3% THC. That is not medical cannabis; that's the THC level of hemp. In the end, this is a political defensive measure simply put in place to confuse people, and is effectively no exemption for patients at all.

The latest version of the medical tax justification appears to be the DIN argument. There already are tax-exempt products today that have no DIN. The reality is that this is just another stall tactic on the part of this government in order to continue to collect taxes from health-challenged and economically challenged Canadians as long as possible.

Whether it's the story of non-medical users cheating the system, black market elimination, medical users having to pay a bill, false exemptions, or DINs, these all lead to a single obvious truth: This government desires the tax revenue at any cost. Let me tell you something about that cost. These taxes come at a far greater cost than any one of us, including me, is capable of ever imagining. For literally hundreds of thousands of Canadians each and every day, it's paid for in pain, suffering and death.

● (1715)

I'd like to say to the members of this committee and to the MPs who have supported these taxes that each and every time you state another reason as to why taxes on medical cannabis should exist, please remember who you're saying this to. You're saying this to your ill mother, father, grandmother, grandfather, uncle, brother, sister, whomever, and your constituents. Medical cannabis patients are all around you. They are among us. Realize that you can justify this practice only if you either are seriously misinformed or have no compassion whatsoever for the daily struggles of health-challenged and economically challenged Canadians.

In closing, Mr. Chairman, it's on these very compassionate grounds that I call on this government to end all taxes on medical cannabis immediately.

I want to thank you, Mr. Chairman, and this committee, for your time. I'll be happy to answer questions you may have.

Thank you.

The Chair: Thank you very much.

We'll turn to the First Nations Land Management Resource Centre, with Mr. Louie, chair of the advisory board, and Mr. Bear, chair.

Mr. Louie, go ahead.

Chief Robert Louie (Chair of Advisory Board, First Nations Land Management Resource Centre): Thank you, Mr. Chair.

Good evening, honourable members of this committee. My name is Robert Louie, and I am chairman of the lands advisory board. My Okanagan Syilx name is Seemoo. Seemoo is our ancestral name, which means connected to the land.

I am here with colleagues to speak to this committee in support of the amendments to the First Nations Land Management Act, which I will refer to as FNLMA, in Bill C-86. We hope that all members of this committee will support these amendments as set out in division 11 of the bill, and that the legislation will be passed as soon as possible by Parliament.

This is the legislative step Canada takes to make the act conform to the most recent improvements of the Framework Agreement on First Nation Land Management, originally proposed to Canada in 1994 and signed in 1996.

Though we support the amendments to the FNLMA in Bill C-86, we wish to raise with committee members the need for future reforms to replace the FNLMA with a more appropriate and efficient approach, one that better respects our government-to-government agreement.

I will begin with some background on this most important and historic accord, the Framework Agreement on First Nation Land Management.

I am a former chief of the Westbank First Nation, a self-governing community, and have worked for many years now to advance self-government over our lands. I have chaired the lands advisory board for close to 30 years, since its inception.

With me tonight is my colleague Chief Austin Bear, of the Muskoday First Nation in Saskatchewan, who is chair of the first nations land management resource centre. This is the technical and finance arm of our organization.

Both of us worked together as part of a group of 14 first nations in the 1980s and early 1990s seeking a way to escape the draconian laws and policies of the Indian Act. We were driven by a desire to obtain recognition for our inherent right to self-government of our reserve lands and resources.

After many years of negotiations, research, consultation and extensive discussion, we signed the Framework Agreement on First Nation Land Management with Canada in 1996. This framework agreement was ratified by Canada when the FNLMA was enacted in 1999. The old and grossly outdated Indian Act land system held our communities back and did not respect our decision-making and our traditions. The old system did not meet the needs of community members and harmed our ability to participate in the mainstream economy at the speed of business.

In accordance with the framework agreement, individual first nations have the recognized authority to make decisions regarding their own lands and can promote healthier and more vibrant communities with direct economic benefits for our first nations, and indeed for all Canadians.

Through the framework agreement, we are awakening and improving areas of the Canadian economy that were depressed by the outdated Indian Act. This is a win-win solution. Let me re-emphasize—a win-win solution.

Self-government over lands is not only practical and effective, but is also a step towards meeting Canada's commitments to self-government under the United Nations Declaration on the Rights of Indigenous Peoples, which I will refer to as UNDRIP.

I begin with this focus on the critically important issue of self-government over lands because it is vital for committee members to understand that the framework agreement is at the heart of the matter. The legislation to amend the FNLMA in Bill C-86, and indeed the entire FNLMA, exists only because of the framework agreement.

Canada chose to ratify the framework agreement in Parliament through the FNLMA, but all the details of the agreement on self-government are found in the framework agreement. The purpose of the most recent FNLMA amendments is to reflect the amendments to the framework agreement that we developed in full partnership with Canada.

We are not FNLMA first nations exercising self-government under terms imposed or delegated by federal law; we are framework agreement first nations. The framework agreement is first nation-led, and it drives the FNLMA, not the other way around.

Under the framework agreement, first nations resume the independent exercise of self-government over their lands. First nations do not need any agreements with Canada or any federal legislation in order to exercise the inherent right to self-government.

● (1720)

However, part of the value of signing the framework agreement with Canada is the national recognition of this exercise of self-government combined with Canada's recognition of the need to dismantle the failed Indian Act in a measured and careful manner.

We see the framework agreement as a centrally important document in a new relationship with Canada and all Canadians regarding reserve land governance.

First nations sign a framework agreement to enter the process and first nations ratify the framework agreement to exercise self-government pursuant to their own laws. The framework agreement is not imposed on all first nations by Canada. Participation in the framework agreement is entirely voluntary. The framework agreement only applies to those first nations that choose to ratify the agreement.

The framework agreement is flexible to respect the particular conditions and priorities of individual first nations. In every case, it is up to the members of individual first nations to decide whether or not to leave the Indian Act land provisions and exercise their own self-government over lands.

Each first nation decides whether to ratify the framework agreement approach through their own land code. There is no one-size-fits-all approach, no single land code or set of laws imposed by Canada or by the framework agreement. This is good, and it's what first nations want.

We believe this to be one of the hallmarks of its success. The framework agreement is remarkably progressive and thriving. Now over 200 first nations have either ratified a land code or are in a process of developing a land code or have submitted official notice of their intent to participate. This means that approximately 30% of all first nations communities in Canada are involved today in this very important framework agreement and what we're doing in land management.

The framework agreement was developed by just 14 first nations but now, 22 years later, 81 first nations have resumed their land governance authority and 57 more first nations are actively considering this option right now. Budget 2018 envisions additional first nations over the next five years. We of course would like to see this number increased.

Although the framework agreement has been successful from the outset, we have also successfully worked with Canada on a number of improvements over the years. I think it would be beneficial to highlight these most recent amendments for committee members.

First, the framework agreement was developed before UNDRIP. Many first nations operating under the authority of the framework agreement see Canada's recognition of UNDRIP as an important step toward reconciliation respect for self-government and should be reflected in the framework agreement and in federal legislation.

First nations voters called upon to consider land codes want clarity. The new UNDRIP clause in the framework agreement will be important to voters considering whether to opt out of the Indian Act land system, because it signals Canada's commitment to an approach consistent with UNDRIP. With respect, I think the UNDRIP language in Bill C-86 could be improved. Right now, it says that Canada is committed to implementing UNDRIP; that is fine, but more explicit language might include words to the effect that the interpretation of the framework agreement and this act should be guided by the principles established in UNDRIP.

Second, we wish to emphasize to this committee the amendment to the voting process for land codes. In almost all the votes we have seen across the country, there has been overwhelming support for land codes. In two first nations communities votes, there was unanimous support among voters. On average, land codes are supported by 84% of voters.

However, in some cases when there has been an overwhelming majority vote in favour of the land code, it may be surprising to committee members that those land code votes have still failed. This is because the framework agreement does not only require a majority vote in favour but also that a minimum threshold of 25% of all eligible voters must vote in favour of the land code.

● (1725)

The Chair: Can you sum up fairly quickly? We're considerably over time. We'd like people to try to hold it to five minutes.

Go ahead.

Chief Robert Louie: Thank you very much, Mr. Chairman.

I'll try to go through this a little more quickly and paraphrase a little more.

I want to point out to this honourable committee that just this past month when Brunswick House First Nation in Ontario held a vote with 153 yes votes and only 16 no votes, the land code still failed. Only nine more votes were needed. Bill C-86 can change that.

I can assure you that the success of the first nations with the framework agreement has been overwhelming. This is the sixth amendment to the framework agreement and....

There's so much I would like to say, Mr. Chairman. I appreciate the aspects of this. I wanted to state something about the misstatement of the purpose of the framework agreement and some of the subsidiary policies and things of that nature.

The Chair: Mr. Louie, all members have a copy of the submissions, so they will have what you sent us in writing.

We're doubly over our time. Maybe you could further that information in answers to a question. I'm just starting to worry a little about time.

● (1730)

Chief Robert Louie: You bet.

Thank you very much, Mr. Chairman.

The Chair: When you use the word "frame"—just so the members are clear—you really mean the Framework Agreement on First Nation Land Management?

Chief Robert Louie: Correct.

The Chair: Okay. Good. Thank you.

I'm sorry to cut you off.

Next we have Mr. Lynds from the Intellectual Property Institute of Canada.

Mr. Grant Lynds (Past President, Intellectual Property Institute of Canada): Thank you, Mr. Chair and committee members.

As mentioned, my name is Grant Lynds. I'm the immediate past president of the Intellectual Property Institute of Canada. Thanks very much for inviting IPIC to present to you its initial thoughts on Bill C-86 and to answer any questions.

As you may know, IPIC is the Canadian professional association of patent agents, trademark agents, and lawyers practising in intellectual property law. IPIC represents the views of Canadian IP professionals in making submissions to government and other bodies.

The Chair: Grant, could I slow you down a notch? The folks in the booth here are having a hard time keeping up.

Mr. Grant Lynds: I guess I was just trying to make up time.

IPIC represents the views of our IP professionals in making submissions to government and other bodies. Our activities include a wide breadth of activities in education, continuing professional development and raising IP awareness in the business community. For the past several years, we've even created a voluntary code of conduct for our members in order to belong to our institute.

In the past few days since Bill C-86 was tabled, we've had about 160 of our members looking at the provisions with the proposed changes to the Patent Act, the Trade-marks Act and the Copyright Act. In that brief few days, we've been considering the wording, but we will no doubt want to put in a written submission, given the scope of the detailed proposed changes.

There are a few examples that immediately hit our members, and I'd just like to touch on those.

One change in particular is a change in what's known as file wrapper estoppel in the patent litigation field. This was introduced by the new proposed subsection 53.1(1) in the Patent Act, which is essentially the ability to introduce prosecution histories, the back-and-forth between the applicants for patents and the patent office, into judicial proceedings. This would change many years of our Canadian judicial precedent.

This provision was introduced with little notice or debate and was not mentioned as part of the national IP strategy. More specifically, though, our members felt that there was a lack of an appropriate transition period for this provision, especially with respect to active patent litigation and the fact that existing patents were prosecuted or obtained when this legal doctrine was not part of Canada's patent laws. Based on this new provision, the doctrine would apply immediately if and when these patents are enforced.

In hearing from our committees that looked at Bill C-86 in the past few days, we can say that most amendments are supported by IPIC in principle, but there are many areas that when used in practice would create, in our view, unintended consequences.

To summarize those, some examples would include prior user rights and patents, a continuing lack of a requirement to show use of a trademark to obtain trademark registrations, and the statutory damages remedy for collective societies in the copyright, which appears to remove the availability of statutory damages in regard to sound recordings.

We'll provide a detailed submission to the committee as soon as possible identifying these potential issues.

With that said, our priority in the remaining brief time we have is really to focus on some aspects of the bill that create the college of patent and trade-mark agents.

As many of you know, we're happy to see this enabling legislation in Bill C-86. IPIC has been advocating to have such a governing body for almost 23 years. Looking at the legislation, what I'd like to encapsulate is two items that struck us as issues of concern.

The first issue really relates to two provisions, paragraphs 14(c) and 14(d) of the enabling college legislation. Paragraph 14(d), in effect, prevents IPIC members who have sat on one of our 37 committees in the preceding 12 months from being eligible to sit on the college's board of directors or other important committees of the future college. It would also exclude those who have been volunteers of other organizations representing our profession in Canada and internationally.

IPIC has a great membership of volunteers. We have more than 400 volunteers sitting on our committees, which is about one-quarter of our membership. These are the profession's most engaged members and often the most senior and most knowledgeable people of the profession. Taking into account that these would be excluded, our view is that after that exclusion, you're really left with an extremely small pool of candidates who have the necessary experience and knowledge to sit on the college board.

As an example, we have many committees that deal with professional development. We have members who deal with the Federal Court with regard to changes in Federal Court litigation. We have public awareness committees; one is actively advising on indigenous IP issues. All of these members, based on this provision, would be excluded from the leadership board positions of the college if they had sat on these committees in the preceding twelve months

We believe this provision is unnecessary. It's also inconsistent with other professions. For example, the Law Society of Ontario does not have such a restriction on its board members, its benchers. In fact, they encourage the members to be actively involved in voluntary associations.

● (1735)

In our view, the emphasis should be to repeal paragraphs 14(d) and 14(c). Paragraph 14(c) would actually make a member ineligible for the board based on membership alone. Our view is that the legislation should not prevent the college from having the best chance possible to succeed. The college should have the most qualified pool of candidates available for its leadership.

The second and final issue I'll highlight in our remaining time pertains to subclause 33(1) of the college legislation. It requires the inclusion of a code of conduct in the regulations. The code of conduct should be a living, breathing document. There's a rapid pace of change in both business and the IP profession, and we believe it is very problematic for the code to be part of a regulation. The code is often written into the bylaws or it's referenced by regulations, but it should live outside the regulations.

We recognize that the code may be deemed to be a regulation under the Statutory Instruments Act, but allowing it to exist as a bylaw or in some form outside the regulations would give the college the flexibility to amend the code efficiently and react as a one-stop organization and a guardian of the public interest. To give an example, in the case of the Law Society of Ontario, the code of conduct for them is called the Rules of Professional Conduct, which are not embodied in the regulations under the Law Society Act. The board of directors, known as benchers, oversees and approves the Rules of Professional Conduct, but the rules are not actual regulations under the act. The authority to make the rules and bylaws comes from the Law Society Act by way of legislative delegation.

In our view—

The Chair: Grant, you're starting to pick up speed again, I'm told, and you are going to have to finish up.

Go ahead.

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

I'm just going to wrap up and say that in many cases the code is created through bylaws and there are already several provisions in the legislation that provide for strong oversight by the minister, such as the majority of public seats on the college's board being appointed by the minister, the ability to remove a director for any reason, and even the requirement for the board to do anything the minister feels is necessary.

In our view, the best place for the code is not as part of the regulations. Keeping the code separate would give the college the ability to react, the authority to act as a safeguard of the public interest, and the flexibility to revise the code and treat it as a living document for all of the members and the public.

The Chair: Thank you, Mr. Lynds.

Turning to NVision Insight Group Incorporated, we have Ms. McKay, secretary-treasurer, Nisga'a Nation, and Mr. Mehaffey, senior policy adviser, Carcross/Tagish First Nation.

Welcome, both of you.

Ms. Corinne McKay (Secretary-Treasurer, Nisga'a Nation, NVision Insight Group Inc.): [*Witness speaks in Nisga'a*]

The English translation of my Nisga'a name means "pearly fin", and I've said good evening to you all. It's good to see you all.

As Mr. Chairman has stated, my name is Corinne McKay. I am the elected secretary-treasurer of the Nisga'a Nation. We thank you for the opportunity to present to the Standing Committee on Finance.

I would like to start by noting that the Nisga'a Nation was the first indigenous nation in British Columbia to enter into a modern-day treaty, and I have a copy with me.

The Nisga'a treaty was also the first modern treaty to be constitutionally entrenched as self-government. I note, among the contents of Bill C-86, amendments to the Income Tax Act and the Excise Tax Act, the introduction of the pay equity act, changes to the First Nations Land Management Act, and many other changes.

It's always positive to see budget implementation bills that acknowledge and seek to address the needs of indigenous peoples. This builds on the budget 2018 announcement about specific funding for self-governing indigenous governments. This was the first time that the needs of Canada's modern treaty partners were explicitly acknowledged in a federal budget document.

Future budget processes, including budget implementation, should continue to build on these positive developments in two ways.

First, the needs of self-governing indigenous governments should always be taken into account and be specifically addressed in the budget. For example, there should continue to be specific allocations to self-governing indigenous governments of any infrastructure or housing or gap-closing funds, and I note that there was a discussion on housing just prior to our presentation. Housing is a very real need in our communities, and the status of housing in our communities still leaves much to be desired to improve the housing conditions of our people.

The second is that future fiscal policies related to self-governing indigenous governments should be developed collaboratively. The Government of Canada acknowledged the failings of its pre-existing fiscal policies and invited self-governing indigenous governments to participate in the collaborative fiscal policy development process. It is important to note that this process is separate and apart from the government's engagement with the AFN, the Assembly of First Nations. It is engagement directly with self-governing indigenous governments.

In this collaborative process, indigenous government representatives and federal government representatives work closely to develop a shared understanding of the interests of both Canada and the indigenous governments. They build a new fiscal policy from the ground up. This has never been attempted before. It is important to recognize that the collaborative process for developing policy has resulted in a package of fiscal policy documents that, combined with the commitments Canada has made in modern treaties, are more respectful of the circumstances and needs of the indigenous governments than any previous federal fiscal policy.

This work is to be praised and to be emulated. All future fiscal policies should be developed collaboratively.

We thank you for taking the time to hear the support that we have for the collaborative process. We find it's respectful and it builds on the work that has been done, and we see that this is the start of a new dialogue that will improve the lives of our people, and as Canadians, improve the lives of Canadians.

Thank you.

● (1740)

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

I'll probably date myself here, but I remember well the night—more than a night, 37 hours it was—of voting on the legislation to advance the Nisga'a Nation. I'm probably the only one who's still here from that time.

Now we go to the Public Service Alliance of Canada. We have Ms. Picard, national executive vice-president, and Ms. Berry, legal officer.

The floor is yours. Welcome.

[*Translation*]

Mrs. Magali Picard (National Executive Vice-President, Public Service Alliance of Canada): Good evening.

Thank you for the opportunity to appear before you today on behalf of the Public Service Alliance of Canada (PSAC).

My presentation will be about the new pay equity legislation in division 14 of part 4 of Bill C-86.

Overall, PSAC is pleased with the proposed act. For decades, our union has been at the forefront of fighting for women's right to equal pay for work of equal value.

While we have had successes, the time it took to get results through a complaint-based process often meant that the women who should have received the pay died before they saw a penny.

PSAC believes this act is a good step towards redressing existing pay inequities while at the same time creating a culture where pay equity can flourish and become the norm.

We are also pleased to see the provisions on appointing a pay equity commissioner. However, we caution that she must have sufficient resources to be able to fully implement the act.

But PSAC has two very important concerns to point out.

Let's start with section 2, according to which the purpose of the act is "to achieve pay equity through proactive means by redressing the systemic gender-based discrimination" in compensation. However, this laudable language is undermined by the following phrase: "while taking into account the diverse needs of employers".

PSAC is concerned that the inclusion of this statement, may give employers significant legal weight to be able to challenge decisions of the commissioner.

They can argue that the needs of the employer are equal to the advancement of pay equity as they are both articulated in the purpose of the act.

Legal scholars and the Supreme Court of Canada have weighed in on the legal significance of the purpose clause in legislation.

We do not believe it was the government's intention to undermine the objectives of the new, proactive law. For this reason, PSAC recommends that the committee delete the following: "while taking into account the diverse needs of employers" from the purpose of the act.

While we recognize that responsibility to achieve pay equity resides with the employer, there are multiple provisions in the act allowing an employer to request flexibility, extensions and exemptions that will support the employer's diverse needs.

Our second concern has to do with section 20, which deals with decision-making on joint employer-employee pay equity committees. This provision requires all employee representatives on a committee to come to a unanimous decision or forfeit the employee-side vote, allowing the employer's decision to prevail.

In practice, this would give non-unionized employees a veto over the preferences of unionized employees, and vice-versa, while also giving bargaining agents vetoes over each other's proposals.

It is conceivable that this system would most significantly disadvantage representatives of female-predominant classes over those who may not have the same interest in having a robust pay equity plan.

Again, PSAC does not believe that this was the intention of the government in an act that is trying to redress systemic gender wage discrimination. PSAC asks the committee to amend section 20 by removing:

> A decision of a group counts as a vote only if it is unanimous.

And replacing it with:

> A decision of a group counts as a vote if a majority of the group agrees.

The following sentence will also need to be removed from the section:

> If the members who represent employees cannot, as a group, reach a unanimous decision on a matter, that group forfeits its right to vote and the vote of the group of members who represents the employer prevails.

We believe these two amendments are essential to the effective implementation of the new law and we urge the committee to amend the bill accordingly.

PSAC looks forward to working with the government on the development of the regulations and assisting in any way we can with the expertise many of our staff and union members have in pay equity in the federal sector.

Ms. Berry and I would be happy to answer any questions you may have.

Thank you.

● (1745)

[*English*]

The Chair: That's part four, division 14, section 20, right?

[*Translation*]

Mrs. Magali Picard: Yes, exactly.

[*English*]

The Chair: We'll turn now to Mr. Geist, as an individual.

Welcome, Michael.

Dr. Michael Geist: Good evening. My name is Michael Geist. I am a law professor at the University of Ottawa, where I hold the Canada research chair in Internet and e-commerce law, and I am a member of the Centre for Law, Technology and Society. I appear today in a personal capacity, representing only my own views.

I'm pleased to have the opportunity to discuss the intellectual property provisions found in Bill C-86. As you know, budget 2018 prioritized a national IP strategy, and while aspects of that strategy involve investment in issues such as IP education, there were several legal and policy commitments that required legislative reform.

Many aspects of Bill C-86's IP provisions, I would argue, are both long overdue and welcome. Since abusive intellectual property rights may inhibit companies from innovating or discourage Canadians from taking advantage of the digital market, crafting rules that address misuse can be as important as providing effective IP protection.

There are several examples of how the bill addresses the issue of IP misuse. For example, misuse of Canada's copyright notice and notice system, which was formalized in 2012 to allow rights holders to forward allegations of copyright infringement to Internet users through their internet service provider, has been an ongoing source of concern. The bill amends the Copyright Act to ensure that settlement demands are excluded from the notice and notice process, thereby restoring the original intent of the system.

Patent changes to address patent trolling provide another important reform, I would argue. The bill seeks to combat patent trolls by creating new minimum requirements for patent demand letters, which should discourage the sending of deceptive letters. The rules also include the right for a recipient of one of those letters to pursue damages or injunctions at the Federal Court.

The bill also includes provisions that expand prior use rights, address standard essential patents and create safeguards for research, with a rule that deals with acts committed for the purpose of experimentation not being an infringement of the patent. In doing so, I think the bill restores a better balance to support innovation within the patent system.

Bill C-86 also includes notable reforms to the Copyright Board, including an important reference to considering the public interest in the decision-making process. That's something that the board would say that it would do. Making it explicit in the legislation, I think, is the right thing to do.

It also rightly does not include an expansion of statutory damages among the extensive reforms. Arguments in favour of expansion were unconvincing and would have usurped the role of the industry committee, which is currently engaged in a detailed review of copyright. I think that issue will still be hotly debated as part of the copyright review, but that committee is the appropriate place for discussion of statutory damages, not within a package of largely administrative and governance reforms to the board.

While this represents the positives in the bill, I think there is still some room for improvement. I want to quickly touch on three recommendations.

First, the implementation of some of the reforms, including the patent reforms that I've just described, is likely to be delayed for years, since they are structured to require regulations to define issues such as the requirements to be contained in a patent demand letter. Officials on a call just last week indicated they already know what they'd like to see included. The long delays undermine the likely success of the government's IP policy and innovation strategy. I see little reason not to include those requirements within this bill, as I don't see any reason for the issue to be left to the regulation-making process.

Second, the notice and notice copyright fix is good, but we can still do better. There should be penalties for sending abusive notices. We know that many Canadians, thousands of Canadians, have unknowingly paid hundreds or even thousands of dollars in these cases, and we need penalties for those who abuse the law in this way. There should be common standards established to make it easier for Internet providers to identify compliant notices.

Third, budget 2018 includes several references to artificial intelligence, AI, one of Canada's most important innovative sectors, yet despite the prioritization of both AI and the IP strategy, it leaves a major AI copyright barrier untouched. Several of the world's leading AI companies, including Canada's Element AI, Microsoft and members of the Business Software Alliance, have pointed to the need for an exception for text and data mining or informational analysis. Without such an exception, Canada trails badly behind competitor jurisdictions such as the United States, Europe and Japan, which have already addressed this issue by allowing for data mining without the risk of copyright liability.

● (1750)

Canada should not wait years to address this commercialization barrier. Given the budget's inclusion of both AI and intellectual property as priority areas, Bill C-86 is an obvious place to fix the problem.

I look forward to your questions.

The Chair: Thank you to all of you for your presentations.

We will go to five-minute rounds, beginning with Mr. McLeod.

Mr. Michael McLeod: Thank you, Mr. Chair, and thank you to all for coming here to present.

The majority of the people in my riding are indigenous, and it makes me feel really good to see that we have two delegations here from indigenous communities and indigenous nations. Thank you for coming.

It's the first time I've seen anybody at a committee from the land claims coalition and self-governing nations, I believe. I might be wrong, but welcome to everybody.

I've said it many times, but I want to say again that as we move forward, reconciliation and self-government require a new fiscal relationship. We need to hear more about it.

My question goes to NVision. I want to ask you to explain to us how the First Nations Fiscal Management Act works for self-governing nations.

Maybe you also could talk about how it intersects with the collaborative fiscal process.

● (1755)

Mr. Matt Mehaffey (Senior Policy Advisor, Carcross/Tagish First Nation, NVision Insight Group Inc.): The issue with the first nations finance act is that, like many of the institutions Canada has set up for indigenous people, it leaves out self-governing nations. It deals with Indian bands on Indian reserves and it doesn't provide for access to the bonds for self-governing nations. The amendments that have been developed, again, deal only with Indian bands. All the changes exclude self-governing nations.

This has been a challenge that indigenous governments with self-governing agreements and comprehensive land claims have faced since the very first modern treaty. While Canada is entering into these agreements, it's not changing any policies or processes. The government is not looking at the institutions it's developing and ensuring that this is done in a way that addresses the commitments and changes that have been brought about by these new agreements. Self-governing nations are falling through the cracks when Canada is developing solutions.

The First Nations Finance Authority and the processes that are set up there are important. It's an important tool for indigenous governments, but the way it's been established and the way these amendments have been developed again eliminates access for self-governing nations. This means those nations either have to borrow funds at a much higher rate or save the money before they can spend it.

The challenge there is that when you save that money, it has been used as a challenge in negotiations with Canada. You've saved that money and you have a big surplus in the bank, but it's because you don't have access to financing, so that's the only way you can accumulate the capital you need to develop infrastructure in your communities.

The only way programs and services designed to eliminate the gaps between indigenous Canadians and non-indigenous Canadians are going to be successful is if we have the kind of infrastructure necessary to ensure there's clean water, safe housing and a community that's equal to what other Canadians take for granted.

We need the federal government to work with us. This is a topic we're dealing with in the collaborative fiscal process, which consists of all but one of the self-governing nations in Canada working collectively in an effort to develop a comprehensive fiscal arrangement with Canada. That is what we need.

One of the challenges is that everything to date has been done in silos and in isolation, so it limits the benefits of each of those things. We need it to be done in a comprehensive way, so that we can access the resources we need, but we also need it to be done in conjunction with a fiscal relationship that ensures that indigenous governments get the appropriate share of the wealth that's generated from their territory and are able to then use that to provide services to their communities.

We can't be expected to borrow our way out of poverty, but we need access to financing in order to deal with large expenditures that will then be amortized over many years. We need all of these pieces to come together, and we need the federal government to ensure that when it's developing laws and policies, comprehensive land claims and modern treaty nations are not left behind.

The Chair: Thank you. We'll have to end it there, but that was a very thorough answer.

Mr. Kmiec is next.

● (1800)

Mr. Tom Kmiec: Thank you, Mr. Chair.

Mr. Lynds, I want to focus on and ask you a bunch of questions about the college. You've said that your institute—I looked up your institute online—has been calling for the creation of a college for a long time now.

Maybe you can explain this to me. Is it a serious issue in that a lot of people are misrepresenting themselves as trademark agents? Typically, that's why professional colleges are created.

That's my first question, but before I let you answer, I have a second. You mentioned that you had amendments to the BIA that you wanted to propose. When were you thinking of getting those to the committee?

Mr. Grant Lynds: As soon as you need them, which is probably yesterday, I'm guessing.

Voices: Oh, oh!

Mr. Grant Lynds: Tomorrow, basically.

Mr. Tom Kmiec: Yes. There's a programming motion passed by the opposite side over our objections that basically forces us to be done by November 20. We have to put in our amendments by....

This is for everybody here, just so you know. If you have amendments that you'd like to see proposed—either side—you'd need to have them in to us as quickly as absolutely possible, because we have to submit them by I think 5 p.m. tomorrow. The clerk can correct me if I'm....

The Chair: It's November 15.

Mr. Tom Kmiec: It's November 15? It's quite quick. There will only be five more days of consideration. On November 20, it's clause-by-clause consideration, so we have to get them in right away.

If I could just hear from you on the college—maybe I've totally missed this—is there a rampant issue of people pretending to be trademark agents?

Mr. Grant Lynds: No. If we talk about patent or trademark agents, no, and as you can imagine, we're a pretty conservative profession.

No, we don't have a history of bad behaviour at all. Our impetus, our motivation, for advocating for a college of this sort for 20-some years is to have a self-regulated profession that stands alone so that you have professional advisers for intellectual property for businesses.

We want to be part of that business cycle of developing intellectual property with all of our businesses. Part of that is to have a self-standing governing college akin to those of other professions, be it engineers, the medical profession or the legal profession. These advisers are experts in advising companies on how to acquire intellectual property rights in Canada and on dealing with those rights with corresponding people internationally—

Mr. Tom Kmiec: I'm sorry to interrupt, but they're doing that already. Do they need a college?

A college also typically confers onto a person who registers a protected title. There are some disciplinary procedures that can be taken up against members, but you're saying that there hasn't been a rampant issue of people misrepresenting themselves or failing to meet certain professional standards.

You also mentioned that you have concerns about the way the legislation is going to structure the standards and the code of ethics and about where they are going to be located in terms of statutes versus regulations versus bylaws. Can you explain those concerns?

Mr. Grant Lynds: Sure. As a voluntary association, we're engaged in a lot of these activities already for our members, and we have been historically. Continuing professional education is a core part of what we do.

The aspect of a college really embodies all of the professional education requirements and elevates the view of patent and trademark agents to the public and businesses to show this as a self-standing governing profession that is expert at advising them on intellectual property rights. I think a self-standing college really elevates it in terms of governing the practices and the educational requirements so that you can say to businesses, “We are experts at doing this intellectual property rights advising with you and acquiring those rights.”

I think it really is a self-standing body akin to other jurisdictions in other countries in terms of saying, “These are our professional advisers and we're going to help you build your business, especially in intellectual property rights.”

Mr. Tom Kmiec: For the standard and the code, did the concerns —

Mr. Grant Lynds: The code of ethics—

Mr. Tom Kmiec: Where would it you locate it? Can you just repeat that concern?

Mr. Grant Lynds: Yes, absolutely.

You have an act and you have legislation under an act. The college is composed in the act. You're going to have regulations under the legislation. Our view is that absolutely there should be a code of conduct or a code of ethics. We have one ourselves; it's voluntary.

We believe the most appropriate place is in the bylaws or outside the regulations, and within the control of the board so that they can see how it should be amended over time. If it's in the regulations, you have the added hurdle of getting through the gazetting process and into the regulations if you feel it needs to be amended. It's more cumbersome.

We're not saying, “Don't have a code of ethics.” Absolutely, have a code of ethics or a code of conduct. We just think it's best placed outside regulations and in, for example, bylaws, where you can deal with it as a living document to show to the members and the public. If there are changes to it, then you bring it to the governing body of the board and propose amendments to the members.

Mr. Tom Kmiec: Do I have one more, Mr. Chair?

The Chair: Make it very short.

Mr. Tom Kmiec: I'll just mention that typically in professional associations, there are tier one and tier two associations. The model you're talking about would put you on a par with professionals such as engineers, accountants, physicians and surgeons. Tier two professionals are the ones that are typically smaller in scope, such as the Alberta shorthand reporters, for instance, or the Institute of Planners. There are a lot of these smaller associations. All of them typically will have their code of ethics and their standards in a regulation embedded into it. That's pretty common in Alberta. I used to be a registrar for a smaller profession. That's not atypical.

As much as I don't like defending what the government does and how they do it, it doesn't seem all that unreasonable to put it into a regulatory framework, especially for trademark agents. I'll leave it at that.

● (1805)

The Chair: Okay.

Mr. Julian is next.

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

Thanks to our witnesses, particularly Mr. Louie, Ms. McKay and Mr. Mehaffey, who've come from the other side of the country to be here today. We appreciate your being present and being witnesses.

I'd like to start briefly with you, Mr. O'Hara.

We know that the last BIA was rushed through. There was a mistake made. That was the imposition of the excise tax on medicinal marijuana. I remember sitting around this table and asking this of officials, and the officials weren't even aware of the mistake. However, the government refused to amend the legislation and rammed it through.

What have been the impacts of the government's rush to ram through legislation, even with huge flaws? Are you suggesting that we amend this BIA so that we can remove that excise tax from medicinal cannabis?

Mr. James O'Hara: To start with your last question first, yes, we would like to see that removed.

The impact has been very significant, because you're now talking about compounding tax. You're talking about tax on tax. That has already put medicine, which was already very difficult for most patients to fund because they are economically challenged, out of reach even more.

Absolutely, we should rescind that.

[*Translation*]

Mr. Peter Julian: Thank you very much.

As we have seen, those errors have not been corrected. A number of previous witnesses have mentioned that the proposed legislation on pay equity presents huge problems.

Mrs. Picard, if we want to make sure that pay equity holds up, are the amendments to the new legislation that have just been proposed essential?

Mrs. Magali Picard: They are absolutely essential. As I said, in its current form, the bill opens the door for employers to undermine the government's objective, which is to eliminate pay equity problems. That said, we definitely want the bill to be passed. This is a historic bill that is extremely significant.

We want the amendments to be included, but if that is not the case, let us start by passing the bill and then we can work together to improve it. We have proposed two amendments only, but, in our opinion, they make for a bill that will be welcomed by the entire labour movement, and especially by women.

Mr. Peter Julian: These amendments are essential, aren't they? You are telling me that we cannot pass this bill with these shortcomings because it will lead to problems. Earlier this week, we heard witnesses tell us that, if the bill is adopted in its present form, women will still have to turn to the courts.

Mrs. Magali Picard: Let me try to be as clear as I can.

If you gave me the choice of not passing the bill without the amendments or passing it as is, I would prefer it to be passed and the amendments to be made later.

Honestly, I would be extremely scared to see a bill cast aside because amendments are needed. We have to start somewhere. We do not want this bill to be passed in 100 years. We have been waiting for it for an extremely long time.

The perfect situation would be for the amendments to be included before the bill is passed, but, if that is not the case, we prefer to see it passed in its current form and to work on the amendments afterwards.

I have our legal expert with me.

● (1810)

[*English*]

Do not hesitate, Helen, if you want to say something.

However, that's our approach.

[*Translation*]

Mr. Peter Julian: As I understand it, you share the concern that women will still have to turn to the courts if the bill is passed as is, correct?

Mrs. Magali Picard: Absolutely.

Mr. Peter Julian: Okay.

There is also the so-called "scissors clause", that allows the minister to make an exception for any employer or any category of employers from implementing any section of the bill. A number of witnesses have said the same as you about that provision. If I understand correctly, the current minister, or a minister in a future government, could decide to exempt sectors, like the banking sector, from the provisions on pay equity. So I assume that you want that provision removed from the bill. Is that correct?

Mrs. Magali Picard: Yes.

[*English*]

The Chair: You're out of time, Peter.

Go ahead, Ms. Berry.

Ms. Helen Berry (Legal Officer, Public Service Alliance of Canada): I agree with what Madame Picard said, that we don't want this to not be passed. PSAC has waited a long time for this legislation.

From a legal perspective, we don't know whether legal cases will be necessary in these provisions. We're thinking that will happen. However, there are also provisions in there, and in every other act, that we don't know how we're going to have to react to as the union for many federal public service workers.

I think moving forward with this act is very important to PSAC and to our members. It has been a long time coming, so we are very supportive of it. We do encourage you to look at the amendments. We've made two simple—well, reasonably simple—recommendations for the amendments, and we'll be following up with written submissions with a few more details on those amendments that we're requesting.

The Chair: Thank you all.

Mr. Fergus is next.

[*Translation*]

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

I would like to thank all the witnesses who have appeared here today.

I will continue along the same lines as Mr. Julian, Mrs. Picard and Ms. Berry.

First, thank you for your testimony, ladies.

I understand what you are saying. A diamond in the rough is still a diamond. We want to move forward and we can do so here. The proposed bill on pay equity is a step in the right direction. I am very interested in the criticisms you have made about the bill.

Ms. Berry, your body language tells me that you had something to add to Mr. Julian's penultimate question. What is your opinion about it?

[*English*]

Ms. Helen Berry: I'm actually not quite sure. I don't speak French, so I'm listening to the translation. I'm not exactly sure what my body language said.

Mr. Greg Fergus: I think you were going to make a comment as to whether or not you thought that parts of the bill would be challenged legally. I thought you were going to make a point on that.

Ms. Helen Berry: The point really is that we don't know at this point what parts of the bill, or any bill, we will have to challenge.

PSAC—and you probably know this—has come across a lot of legislation that we've challenged, and had to challenge. Sometimes we don't recognize what aspects of the law will become problems until we're going down that road. We don't know at this point that for sure these measures will cause litigation or long litigation. We don't know.

Again, this is better than the 30 years we spent on the Canada Post pay equity case that the Supreme Court finally ruled on in 20 minutes. As Ms. Picard said earlier, many of our members have worked hard and have not received pay equity, and it will go to their estates when they're dead. We don't want to see that. This is a good first step. We think it's an important first step. I think it will lay the groundwork for equal pay for work of equal value to be the norm in society. We see some areas of difficulty, but we certainly see some positive areas as well.

● (1815)

[*Translation*]

Mr. Greg Fergus: Thank you very much for your answer.

Mrs. Picard, do you have anything to add?

Mrs. Magali Picard: No. Thank you.

Mr. Greg Fergus: Okay.

Once again, my thanks go to the officials from the Public Service Alliance of Canada for their testimony.

Mr. Geist, thank you also for your testimony. Your second recommendation is about

[*English*]

the notice and notice of copyright infringement.

[*Translation*]

This is a good start, you said, but perhaps some amendments are needed. Will these measures solve the problems? How can we improve them?

[*English*]

Dr. Michael Geist: Thanks for the question.

As you may know, the notice-and-notice approach was adopted in 2012 as a better mechanism to try to educate Canadians on the boundaries of copyright and to provide rights holders with a mechanism to raise that awareness while still safeguarding the privacy of the users.

The problem that emerged almost immediately was that because there were no regulations or limitations on what could be included in a notice and because Internet providers were required to forward whatever they got, under potential penalties for failing to do so, we saw certain companies sending out settlement demands to unsuspecting users. They were sending out literally hundreds of thousands of these demands, with unsuspecting people simply clicking and paying hundreds of dollars when there was no requirement to do so.

The bill makes a very important step by saying that an ISP won't be required to forward a notice if it includes any of those kinds of settlement demands.

That's great, but I don't think it goes quite far enough. What it does, in a sense, is to put all the obligation on an Internet provider to fully examine whether or not there is a notification or a settlement demand. Hopefully, they won't forward those notifications. However, given the volume, there are still risks that some of these may go through, and costs may accrue.

I think we could improve this situation by making it clear that there is a penalty for violating the rules for using the system to send along notifications. At the moment, there is no penalty for doing so. The worst that someone who does that faces is the possibility that their notification won't be sent along.

If they send out hundreds of thousands of these, some may get through, and there's no penalty for doing so. I think it would be fairly easy to say that there would be the prospect of some sort of violation or penalty if they've actually violated the rules in that way.

The other thing we could really benefit from is that because of the volume, creating a standard form of what is to be included would allow for greater automation, reducing costs and making it simpler for end-users to receive it. We don't have a clear-cut form either.

In a sense, it's really fine tuning, but allowing the intent of what I think the government is trying to achieve, which takes us back to that original intent. It could improve what is a good first step in trying to get back to what was intended in the first place.

The Chair: Thank you all.

The bells are ringing.

Committee members, are we okay to go another 15 minutes?

We have 28 minutes left, so—

Mr. Tom Kmiec: It will be pretty close. What about 10 minutes?

The Chair: We're only five minutes from the chamber.

Mr. Tom Kmiec: Some of us are faster than others. I know that.

The Chair: Okay, Mr. Kmiec. The floor is yours.

Mr. Tom Kmiec: Thank you, Mr. Chair.

Going back to Mr. Lynds, you mentioned paragraphs 14(c) and 14 (d), the provisions that exclude some of the members of your institute right now from being able to run for the board.

You mentioned that these would be your most senior members in the profession. Essentially, the more junior members would be ones who would then run for board positions.

Currently, I'm guessing, you have an operational group or committee, so do you have some of them maybe doing continuing professional development conferences?

Mr. Grant Lynds: Yes.

We have a wide breadth of committees, from organizing our annual conferences—the educational aspect—to committees that deal with litigation, a litigation committee.

A wide breadth of areas of IP are embodied in committees that members join. We encourage members to join committees and to get involved, to learn more about IP, learn more about the educational aspects of the profession, and get involved in giving webinars and seminars to our members.

Mr. Tom Kmiec: Do they get any CPD points, continuing professional development points, toward current certification, or—

Mr. Grant Lynds: Yes. If they belong to bodies that require it, absolutely. Our courses are qualified.

I know for sure, as a member of the Law Society of Ontario.... It depends on which courses they are, but yes, they can be qualified, and—

● (1820)

Mr. Tom Kmiec: These provisions basically would exclude the most active members who are involved in your profession from—

Mr. Grant Lynds: Absolutely.

Mr. Tom Kmiec: —participating in their own profession's college.

Mr. Grant Lynds: That's right. You're right, and—

Mr. Tom Kmiec: Sorry, can I just—?

Mr. Grant Lynds: You've got it. You have it.

Mr. Tom Kmiec: We have the bells going, so I need to ask the next question.

In here, there is protection provided for the title of the profession, but not an acronym for the profession.

From my experience, the accounting profession is a good example. In their colleges, their regulations, law, their statutes, typically they will protect the word “accountant” and variations of the word “accountant”. As well, they'll protect CPA, CA, CMA, and all the old varieties of accountants.

If this bill passes the way it is right now, because there is no acronym in here, to the best of my knowledge, you will have people who will want to pretend to be trademark agents and will simply use an acronym. I don't know if that's ever been noticed by members of the institute.

It goes back to the question of whether you have current members who perhaps engage in the provision of services that they're not supposed to provide or are not qualified for. Are there people out there pretending to be trademark agents?

Mr. Grant Lynds: Yes, there could be a grey area. It's pretty clear that if you're doing business before the patent or trademark office, you have to be, in those rules, set up as a patent agent or a trademark agent to represent a person before those offices, and those are the titles that are carried forward in the legislation for the college.

There are others out there. You'll see advertisements that will use different phrasing, but they don't encroach on, or at least they shouldn't encroach on, patent agent or trademark agent.

I think the short answer there, if I can make it as short as possible, is that we don't see a lot of nibbling around the titles that are true and accurate to what our professionals are doing, patent agent and trademark agent.

Part of this is education, which we embrace, to get the businesses to recognize who is a qualified patent agent and a trademark agent and the education that goes into that, as opposed to somebody who carries themselves as a business adviser on intellectual property.

Mr. Tom Kmiec: Do you mean businesses in Canada, or do you mean international businesses? Who is having the difficulty figuring it out?

Mr. Grant Lynds: I think for the most part it's mostly SMEs that we're dealing with in Canada. Internationally, we deal with intellectual property rights in council from other jurisdictions every single day. There is a generally regarded acknowledgement of the profession in Germany, the U.K. and Australia. We don't see it as much internationally, perhaps, as we do in Canada.

If you're trying to get SMEs involved in protecting their intellectual property, you want to make sure they get the right professionals to be their advisers and obtain their rights before the Canadian Intellectual Property Office.

Mr. Tom Kmiec: How much time do I have left? Oh, it's just one minute.

Just to go back, just as a suggestion—because I think there may be an amendment I might propose—maybe other international jurisdictions have an acronym also that goes along with the protected title, but that will be a source....

Trust me; there will be individuals out there who will see it as an opportunity to misrepresent themselves by using the acronym to get around some of the rules that have been created here. That's why the accounting profession, engineers, lawyers and others protect the word and the shorthand title. It's just a cover to ensure that people don't misrepresent themselves, especially when you have a college that's been created. It gives another opportunity to misrepresent, in advertising especially. Especially now with the advent of online advertising, that's the popular way to misrepresent one's professional qualifications.

I'll just leave it at that.

The Chair: Okay. Thank you.

Before I come over to Mr. Sorbara for the last round, Mr. Louie, I know you've come a long way and there have been no questions to you and Mr. Bear.

Do you want to take a couple of minutes to sum up your points that you didn't get to make?

Chief Robert Louie: I would appreciate that, and thank you very much, Mr. Chair. I certainly understand the patience here of the committee and the time delays.

I just want to sum up with this. We are in support of the amendments here.

When we're talking about UNDRIP, these are very important provisions, and I think all of the federal legislation needs to reflect this.

We're certainly very supportive of the majority vote, because in this particular case, while we've had two first nations that have unanimously passed their land codes—both of them in British Columbia, in Lake Cowichan and Yakweakwioose—we've had 33 first nation votes across Canada that didn't achieve the threshold, despite community votes ranging from 51% to 90% approval. They didn't pass on the first go-round.

I want to emphasize that only seven votes in the past 20 years were outright “no” votes, so having this amendment here for the majority vote is absolutely necessary, and I applaud the committee members and Parliament for this.

On Yukon lands, having land set aside is very important. We want Yukon involved. Yukon is there, so having inclusion for Yukon first nations is great.

Having the ratification officer replace the verifier will save a lot of money, and this is good. The administrative use of electronic votes is very desirable.

Having not only revenue monies transferred to a first nation when it passes a land code, but also capital monies that are held in the Ottawa trust account through the Department of Indian Affairs, is very, very important.

On enforcement provisions, there are some good aspects in that regard.

Of course on the additions to reserves, for example, my own community spent 17 years to get one particular reserve added to the reserve when we had full provincial support, so anything that can expedite that through ministerial order, as proposed here, is certainly going to help.

Things of that nature we applaud, and we thank you very much, Mr. Chair and the honourable members, for having us here.

● (1825)

The Chair: Thank you.

Mr. Sorbara, you have the last round.

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

Ms. McKay, I was born and raised in Prince Rupert in the riding of Skeena—Bulkley Valley, and I know the beautiful area you live in.

Michael Geist and Grant Lynds, I'm not an IP or copyright expert, but I've tried to get up to speed very quickly. My understanding is there's a lot of good stuff in the BIA, and I'm happy with that, but I've also heard we may need to look at some things.

Take a minute, Grant, and then we'll go over to Michael. Can you comment on where we can improve on these aspects?

Mr. Grant Lynds: You mean in all this legislation?

Mr. Francesco Sorbara: I mean legislation that pertains to IP and copyright.

Mr. Grant Lynds: In IP and copyright, I think on the patent side we touched the file history estoppel, which I think is proposed section 53.2. The major issue that came from our members with respect to that was the timing, because it's in force right away, so that would impact current litigation. In current litigation you're dealing with experts who have been advised of the state of the law, and the file history estoppel brought in with this new legislation was not part of our regime. I think that's the biggest area where we could improve by addressing the transitional aspect of that section and at a minimum saying that it should not apply to any ongoing action or proceeding. I think a little transition time is needed if that's the provision that's going to come into force.

Dr. Michael Geist: With Mr. Fergus I touched on a couple of the possibilities with respect to how the notice-and-notice provisions could be improved. There are two others, just to reiterate: Number one, I think some of the patent changes are very good, and they've been long discussed, especially around the issue of trying to deal with patent trolls. I think the problem is that we know what we want, yet by putting it off into the regulation-making process, we're delaying the effectiveness by several years at a time when innovation is a significant part of the government's overall strategy.

The department says they know what they'd like to see included. I don't see any reason we couldn't include, let's say on patent demand letters as a start, precisely what the requirements would be, so that this could take effect at the same time the full bill takes effect, as opposed to putting it off by several years.

Number two, as I mentioned, has to do with linking the IP strategy issues in copyright with the emphasis that we've seen on artificial intelligence, AI. We've now had just about every major player in the AI space argue that there is a significant barrier within the copyright system that they do not face in the United States, Europe or Japan, so given the investment we've put into this, a one-line change within the Copyright Act would make it clear there is an exception for what's known as informational analysis or text and data mining. It effectively allows those engaged in artificial intelligence, in research, and later in commercialization, to ensure the data they are using can be used without fear of engaging in copyright infringement.

● (1830)

Mr. Francesco Sorbara: Thank you.

Mr. Chair, can we ask Mr. Geist to forward that one line to us?

The Chair: Sure. Michael, can you forward that to the clerk?

Dr. Michael Geist: Absolutely.

Mr. Francesco Sorbara: Can we have Mr. Lynds forward the information that's pertinent to his concerns, please?

Mr. Grant Lynds: Absolutely.

The Chair: It should be done as quickly as possible, I think. Somebody made the point that we need this information fairly quickly.

Mr. Francesco Sorbara: Thank you. I'm done.

The Chair: Thank you.

Committee members, we'll meet at 8:45 tomorrow morning in the room across the hall.

Thank you to all the witnesses for your presentations and putting the effort into your submissions and your work.

The meeting is adjourned.