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Chair

The Honourable Wayne Easter

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● (1550)

[*English*]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): I call the meeting to order. Pursuant to Standing Order 108(2), this is a continuation of the subject matter of Bill C-63, a second act to implement certain provisions of the budget tabled in Parliament on March 22, 2017, and other measures.

We went through a couple of parts of Bill C-63. Today we'll start with part 3, the Excise Act.

From the Department of Finance we have Mr. Coulombe, chief of the sales tax division in the tax policy branch.

Welcome, Gervais. The floor is yours.

[*Translation*]

Mr. Gervais Coulombe (Chief, Sales Tax Division, Tax Policy Branch, Department of Finance): Thank you, Mr. Chair.

I'm here to speak to two measures in Bill C-63, Budget Implementation Act, 2017, No. 2.

The first measure I'll be describing is in part 3 and has to do with the taxing of beer. The measure is dealt with in clauses 165 to 168, which amend the Excise Act so that beer made from beer concentrate for consumption on the premises is taxed in a manner that is consistent with other beer products.

[*English*]

The Government of Canada generally applies an excise duty on such alcohol products as beer, wine, and spirits that enter into the Canadian duty-paid market. The regular excise rate on beer is equivalent to $2.61 per 24 bottles of beer. It has been brought to the attention of the government that as a result of existing excise rules, new ways to sell draft beer may be taxed twice—first as spirits, given their high alcohol content, during the manufacturing process, and secondly as beer, once transformed into a form ready for consumption, at the point of sale.

This measure amends the Excise Act to ensure that beer concentrate is appropriately taxed according to the maximum quantity of beer that can be transformed at the point of sale in a manner approved by the Minister of National Revenue from that concentrate. Beer concentrate will not be taxed as spirits during the manufacturing process.

[*Translation*]

Public consultations on the measure were conducted in the past couple of months. The proposal appeared in the news release put out by the Minister of Finance on September 8.

I'd be glad to answer any questions you have on part 3 of the bill.

[*English*]

The Chair: Thank you, Mr. Coulombe.

I take it this is a request from industry to make that change.

Mr. Gervais Coulombe: That's correct, yes.

The Chair: Okay.

Any questions, anyone?

Go ahead, Mr. Boulerice.

[*Translation*]

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you, Mr. Chair.

I want to make sure I fully understand. The purpose of the measure is to ensure that a product with high alcohol content being transformed into beer is not taxed twice. Is that correct?

Mr. Gervais Coulombe: That's exactly right. They are new products entering the market. They are not already on the market.

Mr. Alexandre Boulerice: Okay, I see.

Mr. Gervais Coulombe: Basically, it is beer from which the water has been removed, resulting in a lighter concentrate that is easier to transport and takes up less space. The water will be added at the bar or the location where the draft beer will be drawn.

The excise tax legislation dates back to the 19th century and is no longer appropriate. This is what is known as a housekeeping amendment, meant to address this new practice in the beer sector.

Mr. Alexandre Boulerice: Microbreweries in my riding, then, will not see any difference. Is that correct?

Mr. Gervais Coulombe: If they start adopting this practice, they will benefit from the amendment.

Mr. Alexandre Boulerice: Thank you.

[*English*]

The Chair: Are we all done? Okay.

Thank you. That deals with part 3.

We'll turn now to part 4, the Federal-Provincial Fiscal Arrangements Act.

You're on for this one as well, Mr. Coulombe.

[*Translation*]

Mr. Gervais Coulombe: Thank you, Mr. Chair.

[*English*]

Let's move on to cannabis taxation. This measure is under clauses 169 to 171 of the bill. It amends the Federal-Provincial Fiscal Arrangements Act to allow the Minister of Finance on behalf of the Government of Canada, with the approval of the Governor in Council, to enter into coordinated cannabis taxation agreements with provincial governments. Such agreements currently exist—for example, in the context of the harmonized sales tax.

Among other things, these agreements would allow for the application of cannabis product taxes—under a single act of Parliament—that would be collected, administered, and enforced by Canada, and that would have rates that may be set on a province-by-province basis. The agreements would also permit the Government of Canada to make payments to the government of a province in respect of the revenues from cannabis taxation.

[*Translation*]

A coordinated approach to the taxation of cannabis would help to reduce the amount of contraband cannabis on the future legal market, while supporting other key objectives such as keeping cannabis out of the hands of youth and reducing compliance costs for businesses.

The authority to implement the federal cannabis tax rate and the additional rate with respect to the provinces and territories entering into the coordinated cannabis taxation agreement will follow the usual legislative and regulatory process in due course. Those amendments do not appear in the bill before you. This simply involves the ability to continue negotiations with the provinces.

That concludes my presentation on part 4 of the bill.

[*English*]

The Chair: We'll start with Mr. McLeod.

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

I just wanted to get clarification. Does this amendment to the Federal-Provincial Fiscal Arrangements Act also apply to territorial governments and if it doesn't, how are the territories incorporated into the cannabis tax framework?

● (1555)

Mr. Gervais Coulombe: My understanding is that it does. If it does not, we'll come back with some clarification.

Mr. Michael McLeod: It only refers to provinces now.

Mr. Gervais Coulombe: Based on the Interpretation Act, usually in federal legislation, a reference to province includes territories. Again, my understanding is that it does apply to potential territorial arrangements. If it does not, we'll come back to the committee with a clarification because the intent of the government is to negotiate with territories as well.

The Chair: If you could double-check that, it would be great.

Go ahead, Mr. Albas.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): Thank you, Mr. Chair.

Thank you for your presence here today. There are no numbers in here, but there has been an announcement by the Minister of Finance saying that 50% would go to the provinces and 50% would go to the federal government from established excise tax. It doesn't appear that this is in here. Basically, it allows the finance minister the authority, obviously through a delegated authority.... I guess he has to take it to the cabinet for approval. Is that correct?

Mr. Gervais Coulombe: This is correct. The details and the excise duty framework itself will probably be announced by the government in the near future, but the amendments that are here are only able to allow the continuous negotiations with provinces.

Mr. Dan Albas: If an individual province was unhappy with the announcement and perhaps said they were going to be taking on more of the load, they could theoretically negotiate a different agreement with the federal government. Is that correct?

Mr. Gervais Coulombe: We're leaving the purpose of the amendments here a little bit, but the amendments themselves do not define what could be part of the final—

Mr. Dan Albas: It just says there will be.

Mr. Gervais Coulombe: In that sense, negotiations will follow, yes.

Mr. Dan Albas: Okay. Provinces, there you go. Get ready.

The Chair: Next, we have Mr. Fergus.

[*Translation*]

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

Thank you very much, Mr. Coulombe.

I'd like clarification on something the member across the table brought up. My understanding is that, through these legislative measures, it will be possible to establish the legal framework the Minister of Finance, as Governor in Council, needs to negotiate tax rates for cannabis products with the provinces and territories. Is that correct?

Mr. Gervais Coulombe: Thank you for your question, Mr. Fergus.

That is correct. The list of powers that such an agreement may include appears on pages 233 and 234 of the bill. At this point, I can't confirm or deny the position that the government will take in the negotiations. This involves the framework. I can't comment on anything further.

Mr. Greg Fergus: Very good. Thank you.

[*English*]

The Chair: Go ahead, Mr. Boulerice.

[*Translation*]

Mr. Alexandre Boulerice: Thank you, Mr. Chair.

My first question is simple. Why are we planning for individual tax agreements with the provinces, rather than one agreement for the entire country? Why is there not a consistent framework for all of the provinces and territories? What sort of flexibility is the government looking for, here?

Mr. Gervais Coulombe: Thank you for the question.

If you look at previous agreements, in the case of harmonized sales tax, for example, you will see that the rates can vary slightly from one province to another. I'm not an expert on the HST, but I believe that it's 8% in Ontario, and around 9% or 10% in Prince Edward Island, so slight variations are possible. In addition, tax bases can differ in certain cases.

Again, I would point out that I am not here to discuss how the government is going to implement these amendments during the negotiations, in other words, whether bilaterally or multilaterally. It is possible that some agreements may be similar, from one province to the next, but the precedents show that, generally speaking, agreements are negotiated on a bilateral basis, even if it means whole provisions are repeated in each agreement.

● (1600)

Mr. Alexandre Boulerice: Once the tax agreement has been signed, the federal government's payments to the provinces will not have strings attached, will they?

As things stand, there is no mention of dedicated funding. It is not specified, for instance, that the money has to go towards youth prevention or awareness in terms of the risks associated with cannabis use. The measure talks about payments, but the provinces will be able to use the money however they please.

Mr. Gervais Coulombe: The authority allowing the payments to be made will be defined in the agreements, which may or may not include such conditions. That's part of the regime. The payment specifics appear in proposed new section 8.81 of Bill C-63.

Mr. Alexandre Boulerice: Thank you.

[*English*]

The Chair: Mr. Fergus.

[*Translation*]

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

As I already said, I don't claim to be an expert, but from what I understand, it's similar to the tax regime in place with the provinces in the case of the cigarette sales tax. This framework provides some flexibility when it comes to negotiating the tax rates that the provinces implement.

Is that correct?

Mr. Gervais Coulombe: I don't want to get into the details, but I must point out that, in the case of the tobacco tax, the government does not have coordinated tax agreements in place with the provinces and territories. Each is free to do as it pleases. In fact, Canada has 14 tobacco tax regimes, the federal regime, as well as those of the 10 provinces and three territories. Such an approach necessarily means a heavier burden and more red tape, making it more difficult for companies to comply, among other things.

In the very specific case of the legalization of cannabis, the government has repeatedly stressed the importance of using tax measures wisely. The government is of the view that establishing taxation agreements with the provinces and territories will go a long way towards achieving the objectives of the legislation.

As far as I know, the government has not yet announced the terms and conditions, framework or excise taxes. What we are looking at here deals with the authority for the taxation negotiations with our provincial and territorial counterparts to continue.

Mr. Greg Fergus: Thank you for clarifying that.

[*English*]

The Chair: It looks like we've exhausted the questions.

Mr. Coulombe, on Mr. McLeod's question, maybe you should just send us a note on that, rather than have us be left in the dark on whether or not it applies. Double-check it, and send the clerk a note on that question relative to provinces and territories.

[*Translation*]

Mr. Gervais Coulombe: Very good. Thank you.

[*English*]

The Chair: Thank you very much for your explanations.

Now we'll turn to division 1 of part 5, the Bretton Woods and Related Agreements Act.

We have Mr. Brunelle-Côté, director of international policy and analysis division in the international trade and finance branch, and Mr. Sajkunovic, chief of international monetary and financial policy in the international trade and finance branch.

Welcome. The floor is yours.

● (1605)

Mr. Antoine Brunelle-Côté (Director, International Policy and Analysis Division, International Trade and Finance Branch, Department of Finance): Thank you very much.

[*Translation*]

We are here to discuss the amendments to the Bretton Woods and Related Agreements Act, which governs Canada's engagement with the International Monetary Fund, or IMF, and the World Bank Group, or WBG, and provides the Minister of Finance with authorities related to these institutions.

The proposed amendments are intended to ensure that the Bretton Woods and Related Agreements Act reflects the modern realities of the Canada-Bretton Woods relationship, reasserting the act as the primary legislation governing Canada's relationship with these institutions.

[*English*]

Aside from a few small tweaks over the years, the Bretton Woods act has remained largely unchanged since it came into force in 1985. As you may imagine, a lot has changed over the last 30 years in how countries engage financially with these institutions. For example, in addition to contributing permanent share capital, IMF members now also make temporary lines of credit available to the IMF in times of elevated global risk. It's also now common to channel grants and loans through World Bank trust funds or related bodies, rather than directly to the institution.

None of these ways of interacting with the Bretton Woods institutions were features of the relationship 30 years ago.

[*Translation*]

Consequently, over the past 30 years, in order to conduct these kinds of transactions, Canada's finance ministers have had to rely upon interpretations of their authorities under other statutes not directly linked to the IMF or the WBG, such as the Financial Administration Act and the Royal Canadian Mint Act.

The administrative changes being proposed would consolidate, within a single piece of legislation, the authorities necessary for financial transactions with Bretton Woods institutions.

[*English*]

The proposed changes do not grant additional powers to the Minister of Finance, and there are no new spending or fiscal implications with any of these changes.

The Chair: Thank you, Mr. Brunelle-Côté.

We'll start with Mr. Albas.

Mr. Dan Albas: Thank you.

Is there a consensus by G20 countries that these new changes need to be put in place, or is this something the government has come up with on its own, in consultation with the IMF? Where do these changes stem from?

Mr. Antoine Brunelle-Côté: There is consensus on the new ways to grant money to the IMF and the World Bank. A lot of countries do this. I will take the example of the bilateral loans that many countries made to the IMF following the crisis. It's just that in Canada there is no clause in the current legislation, the Bretton Woods act, that allows us to do this. We have to rely on legislation in other acts to do the transactions.

We're just consolidating all the different authorities under one act to be able to do these transactions. It's just good governance. There are no significant changes.

The Chair: I'll just rephrase that question, if I could. What is different under this proposal in division 1 from what happens now, other than legislative?

Mr. Antoine Brunelle-Côté: It doesn't grant any new power. It just transfers authorities from different laws to the Bretton Woods act. That's all it does.

The Chair: Mr. Boulerice, go ahead.

[*Translation*]

Mr. Alexandre Boulerice: In other words, for years, Canada lacked the power or authority to enter into these kinds of arrangements in a simple, clear, and specific manner, so we got creative and relied on other statutes to achieve the same ends. Is that more or less the situation?

Mr. Antoine Brunelle-Côté: Yes, exactly.

Mr. Alexandre Boulerice: Why the long wait before these changes were made?

Mr. Antoine Brunelle-Côté: Making the changes is a complicated endeavour. When the government authorized a $15-billion contribution to the IMF, it came to recognize the importance of making the changes. A large contribution was being made, so there was a desire to clarify things for future generations.

[*English*]

The Chair: Does anyone else have any other questions?

Okay. Thank you both very much.

We'll turn to division 2, the Asian Infrastructure Investment Bank agreement act.

We have Ms. Nicole Giles, director, international finance and development division, international trade and finance branch; Ms. Nadarajah, economist, multilateral institutions, international finance and development division, international trade and finance branch; and Mr. Saravanamuttoo, who is the chief of multilateral institutions, international finance and development division.

Welcome, all three. The floor is yours.

● (1610)

[*Translation*]

Ms. Nicole Giles (Director General, International Finance and Development Policy Division, International Trade and Finance Branch, Department of Finance): Thank you, Mr. Chair.

[*English*]

The first issue to address is the Asian Infrastructure Investment Bank, the AIIB, so part 5, division 2. By way of context, international financial institutions, including multilateral development banks, are an important part of the international order and are key mechanisms for international development.

Launched in 2016, the AIIB is the newest international financial institution. It is focused on economic development by addressing what are very significant financing infrastructure gaps in Asia. The AIIB has 57 founding members, including Australia, China, France, Germany, Italy, South Korea, and the United Kingdom, and there are currently over 80 current or prospective members.

By way of context, in December 2015, cabinet approved Canada's strategy to join the AIIB, with the Minister of Finance as the governor. Canada then applied for membership at the AIIB and was accepted in principle by the board of governors in March 2017. Budget 2017 then allocated funding for the purchase of Canada's initial shareholding and announced Canada's strategy for joining the AIIB.

The AIIB articles of agreement, along with an explanatory memorandum, were tabled in Parliament for 21 sitting days, between May 3 and June 8, 2017. As a budget 2017 measure, the corresponding legislation is thus being proposed as part of this budget implementation act.

There are a couple of quick points on the operations of the AIIB. The AIIB is working very closely with other international financial institutions to maximize the impact of their investments. For example, in April 2017, the AIIB signed an MOU with the World Bank in areas of common interest, including development financing, staff exchanges, and analytical and sector work.

The AIIB has adopted best practices from other IFIs and multilateral development banks, again such as the World Bank, and that includes on operational policy such as corruption sanctions; social, environmental, and labour laws; and safeguards. There's not an interest in reinventing the wheel. It's rather trying to draw from best practices that have demonstrated their effectiveness and that are already in play.

Lastly, I'd like to highlight a couple of benefits for Canada and Canadians that could potentially accrue from Canada's membership to the AIIB. First, by addressing the significant infrastructure financing gap in Asia, the AIIB will help to enhance crucial trade links that create jobs in Canada and help to bring goods and services to market.

Second of all, by supporting sustainable economic growth and economic development through infrastructure, it could represent significant private sector opportunities for Canadian companies. Canadian membership could give Canada a seat at the board table and provide an opportunity to influence governance and sound policy-making in line with Canada's priorities, and provide Canadian visibility into AIIB project pipelines, which could be used to support Canadian commercial interests.

Thirdly, this is part of reaffirming Canada's renewed commitment to multilateralism. As committee members know, Canada is committed to economic development globally. We invest time and resources into economic development based on the belief and the research that Canadians are more prosperous when the world is growing and is stable. This is sometimes called the “rising tide raises all boats” principle.

Lastly, this is an opportunity, through joining the AIIB, to reinforce the government's priority to strengthen relationships in the Asia-Pacific region.

I welcome questions.

● (1615)

The Chair: Thank you, Nicole.

We're starting where...? I'll start, then, while others are thinking.

You said “could” provide Canada a seat at the board table of the AIIB. Does that mean we don't have one? How many people are on that board? Where do they come from? You don't need to name them all.

Ms. Nicole Giles: It was “could”, in that if we did choose to join —if the legislation goes through—that opportunity would present itself to Canada. In terms of the specifics of the board, I'll hand that to Neil.

The Chair: My question really relates to how we're putting in this amount of money to basically buy our way into this investment bank. We do not necessarily have a seat at the table or do we automatically have one when we make this infusion of money?

Mr. Neil Saravanamuttoo (Chief, Multilateral Institutions, International Finance and Development Division, International Trade and Finance Branch, Department of Finance): Chair, to answer that question, there are 12 board seats that are provided. Nine are for Asian countries, countries that file from the Asian region, and three are for non-regional members. Currently, those three are chaired by the U.K., Germany, and Egypt. As Canada joins the bank, we would enter into one of those constituencies. There's negotiation as to who leads a constituency and when. Because there are multiple countries involved, there's no set promise as to any one country getting a chair.

That said, the expectations are that Canada would be the largest member if it were to join the constituency that is currently chaired by Egypt. In being the largest member, there's a significant probability that we would end up with the chair.

The Chair: There's another question I had. When you named various countries, I didn't catch them all. Did you name the U.S.?

Ms. Nicole Giles: No, Mr. Chair, I did not.

The Chair: Okay. The U.S. is not a participant.

That's all I have at the moment. Do people have any other questions?

Mr. Boulerice.

[*Translation*]

Mr. Alexandre Boulerice: Thank you, Mr. Chair.

I have a few questions to help me better understand this.

In budget 2017, the government indicated that it planned to invest $256 million over five years in the Asian Infrastructure Investment Bank. The bill before us, however, is going to authorize the Minister of Finance to transfer $480 million to the bank. What is the reason for the sizable increase?

[*English*]

Ms. Nicole Giles: That's an excellent question.

Because Canada was not a founding member of the AIIB, there's been a little bit of uncertainty regarding the possible shareholding. There is a shareholding allocation formula for the AIIB. The government's decision to join the AIIB envisioned Canada purchasing up to a total of $375 million U.S. in shares, depending on availability. That is the maximum possible amount of shares Canada would have been able to purchase based on the AIIB's shareholding allocation formula.

However, because we're a late joiner, at this point there is only $199 million U.S. in shares available to purchase. If other potential members choose to not purchase all of their shares, there could be an opportunity for Canada to purchase additional shares up to that maximum of $375 million U.S. In that case, however, any potential increase or purchase would be brought back to Parliament through the estimates process.

[*Translation*]

Mr. Alexandre Boulerice: I see.

I understand that Canada wants to make a large investment by purchasing shares. Aside from promising trade ties and possible opportunities for Canadian companies in future projects, what return on Canada's investment do you foresee? Do we write a cheque, and it ends there, or will taxpayers see a return on their investment?

[*English*]

Ms. Nicole Giles: There is the potential for dividends to be paid back to members of the banks, as there is for most multilateral development banks and international financial institutions; however, to my knowledge, that hasn't occurred. There are normally not dividends that are paid back, but that is an option that could potentially be pursued.

If there are concrete questions about the exact return on particular investments, that really happens on a project-by-project basis, and it depends on each individual country, but if your question is about money that would potentially flow back to Canada concretely in terms of the shares we've purchased, there are dividends that are accrued, but normally those are not paid back to shareholders, and I don't believe that's ever been the case.

● (1620)

Mr. Neil Saravanamuttoo: No.

[*Translation*]

Mr. Alexandre Boulerice: Does this relatively young infrastructure bank tend to favour privatization opportunities in countries, broadly speaking?

You'll no doubt sense that my question is tied to my political stripe.

[*English*]

Mr. Neil Saravanamuttoo: It's not sufficiently clear to know what that record is. The record doesn't exist. There certainly has been an emphasis to encourage private sector participation in infrastructure projects. Given the scale of the needs that are envisaged in Asia, which is estimated at about $1.7 trillion annually, there is a sense that there would have to be a role for private capital in some of these investments. The approach the bank has taken so far has been to look for public-private partnerships as opposed to pure privatization opportunities.

[*Translation*]

Mr. Alexandre Boulerice: Very well. I see the difference.

I have one last question.

You mentioned existing international protocols in terms of environmental and labour best practices. I'd like you to provide more details on that. You'll appreciate that these are issues of concern to me. I want to make sure I have a good understanding of the situation.

Ms. Nicole Giles: Of course.

[*English*]

I can take you through a couple of the specific policies, and then we'd be happy to provide you with additional information, if required.

The first one to take is the policy on prohibited practices. The AIIB has a very specific policy on this and this applies to sanctions malpractices, which include coercive practice, collusive practice, corrupt practice, fraudulent practice, misuse of resources, obstructive practice, and theft. As you can see, it's quite a comprehensive policy. Again, if it would be of interest to the members, we'd be very happy to share copies of that policy with you.

As I mentioned in my opening remarks, because the AIIB is a new bank, it is relying on its MDB partners in putting some of these practices in place. By way of example, nearly 75% of their projects to date have been co-financed with other MDBs, including the World Bank. When that happens, that means there has to be full alignment in these safeguards and practices.

The social and environmental safeguards parallel existing ones, as I'd mentioned, and they were formalized in spring 2016, quite early in their infancy, following a round of public consultations that had taken place in 2015. Those were led by former World Bank staff and so were quite comprehensive. While the AIIB had received considerable feedback during that public consultation phase, there has not been that much public criticism following the publication of the final version, which was largely seen as addressing any concerns that had been raised during those practices.

For example, the restrictions on child labour requires project conformity with the International Labour Organization's minimum age convention. They've signed on to that international convention. There are requirements around consideration for environmental damage, including pollution abatement processes, biodiversity consideration, and sustainability of land and water use. There are also considerations around involuntary settlement either for physical or economic displacement, and a series of other pieces as well.

An entire section is also devoted to managing relationships with indigenous people under a client project, which is quite progressive. It requires a client to design and implement projects in a way that fosters full respect of indigenous peoples' identity, dignity, human rights, economies, and cultures as defined by the indigenous peoples themselves so that they receive culturally appropriate social and economic benefits and do not suffer adverse impacts. It's also so they can participate actively in the projects that involve them.

Those are a couple of examples, but we'd be very happy to provide you with additional information.

● (1625)

[*Translation*]

Mr. Alexandre Boulerice: Thank you very much.

[*English*]

The Chair: Thank you very much, Mr. Boulerice and Ms. Giles.

Now we have Mr. Kmiec and Mr. Poilievre.

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

How big is this voting share that Canada has purchased with this $500 million?

Mr. Neil Saravanamuttoo: Canada is purchasing just under 1% of the bank, with a $256-million purchase.

Mr. Tom Kmiec: How are decisions made at the bank in order to fund the project?

Mr. Neil Saravanamuttoo: Decisions are made by the board of directors, by those 12 chairs that we mentioned earlier. There's a fairly elaborate process for projects coming to the board, which involves going through the due diligence required.

Mr. Tom Kmiec: How are decisions voted on? At some point eventually somebody makes a decision. Is it the 12 members of the board who decide, or is it the share of votes by all of the countries?

Mr. Neil Saravanamuttoo: It is essentially both. It's a weighted vote, so each of those 12 can chair.

Mr. Tom Kmiec: What's the threshold to proceed with the project?

Mr. Neil Saravanamuttoo: It's a majority vote of 50%, although for certain votes AIIB requires a supermajority of 75%.

Mr. Tom Kmiec: So we're getting 1%, and some votes will require a supermajority of 75%, for half a billion dollars?

Mr. Neil Saravanamuttoo: That's correct.

Mr. Tom Kmiec: How does this bank do its business—

The Chair: It's $256 million, I believe, Tom.

Mr. Tom Kmiec: Is that U.S. or Canadian?

Mr. Neil Saravanamuttoo: It's Canadian.

Mr. Tom Kmiec: Then how does this bank compare with the ADB, the Asian Development Bank, which is in a very similar line of business, but which is actually led by one of our allies, Japan, whereas China is not one of our allies. This actually advances the foreign interests of China in its “one belt, one road” initiative.

How does AIIB compare to the ADB, which is led by one of our allies, and what's our voting share in the ADB in comparison?

Ms. Nicole Giles: I think it's important to be clear about the leadership of the different multilateral banks. Both of them are multilateral banks. Neither of them is led by one particular country. They have multiple shareholders. The AIIB right now is looking at 80. It had 57 founding members. The Asian Development Bank has a slightly broader focus. It looks at a whole range of development issues, development projects, and development financing, whereas the AIIB is focused on infrastructure.

We'd be very happy to provide you with some of the details relating to the specific shares of the banks, but I just wanted to clarify that they're both multilateral institutions.

Mr. Tom Kmiec: You said this bank is not led by the Chinese government, but who is the president of the bank?

Mr. Neil Saravanamuttoo: The president of the bank is a Chinese national, and China holds about 30% of the shares of the AIIB.

Mr. Tom Kmiec: It's not led by China but it has a Chinese president in charge of it?

Mr. Neil Saravanamuttoo: That's correct.

Ms. Anchela Nadarajah (Economist, Multilateral Institutions, International Finance and Development Division, International Trade and Finance Branch, Department of Finance): Currently that is the case, but it doesn't necessarily have to be a Chinese president.

Mr. Tom Kmiec: Are there mechanisms and rules whereby someone else could, at some future point, be switched out?

Ms. Anchela Nadarajah: Yes. The articles of agreement for the AIIB require that the president be in power for only five years. It could be up to 10 years, but the president should be a regional member. There doesn't have to be a Chinese one.

Mr. Tom Kmiec: Do you mean regional to Asia? You said nine out of 12 are seats assigned to the Asian region.

Ms. Anchela Nadarajah: That's correct.

Mr. Tom Kmiec: Finally, when the government made the decision to proceed with participating.... I apologize, I was just walking in and sitting down when you mentioned this. When was the agreement tabled in Parliament?

Ms. Nicole Giles: It was in May and June of this year.

Mr. Tom Kmiec: I'm guessing the government did a review of all the projects that were being considered by the bank in terms of financing before making a decision on whether or not to join, to see if these projects fit within the government's intentions internationally. Is that correct? Was there a review done of all the projects that the AIIB was financing or considering financing?

Ms. Nicole Giles: There's a constant review of the projects, because the list of projects is not stagnant. There are constantly new projects in the pipeline, which are being considered and brought forth. There's a constant examination of the projects. If it would be helpful to the committee, we could provide some examples of the projects that have been funded to date.

Mr. Tom Kmiec: Sorry to interrupt you, but there are only two lists available online. One shows 21 projects approved, including the approval date of the project, and there's also a list of proposed projects that includes searchable documents.

I ask this because within the 21 approved projects, two are pipelines. One is actually a natural gas pipeline project in Bangladesh, and the other one is in Azerbaijan. We've had such great difficulty in getting pipeline projects approved and built in Canada. Why are we facilitating the construction of regional infrastructure in these countries?

When you go into the definition of why they're building them and the purpose behind them, the Bangladeshi one is to integrate it into the southeast Asian market, and the Azerbaijani one is to integrate it into the southeast European market. I just don't understand how this fulfills Canada's foreign affairs goals, especially at the price tag we're talking about.

● (1630)

Ms. Nicole Giles: I think the pipeline projects are very interesting, in particular the Azerbaijan one, because that's a project that was not exclusively financed by the AIIB and speaks to the enormity of the costs of bringing these pipeline and infrastructure projects forward. The Azerbaijan pipeline is a project that not only involves AIIB but is also funded by the World Bank, by EBRD—the European Bank for Reconstruction and Development—and by the European Investment Bank. That's an example of the enormity of investment that's required and the broad consensus that is being built.

I think there are strategic considerations to those projects that some of our colleagues in other parts of town would be better able to speak to, but it may provide you with some comfort to know that when the projects are brought to the banks—including the Azerbaijan one, which we vetted from the EBRD side because we weren't yet members of the AIIB—the Canadian directors at the bank who are involved in the consideration bring those projects back to the Department of Finance if the Minister of Finance is the governor of that bank, or to Global Affairs Canada if the Minister of Foreign Affairs is the governor. Then a careful assessment of those projects is done jointly between the officials at Global Affairs Canada and Finance Canada, which is exactly the type of assessment you are asking about.

There is a very careful process by officials, and then advice is given back by officials to the people who are representing Canada at the banks. That allows us to ask questions and look for certain safeguards before a vote is taken.

The Chair: Mr. Kmiec, we can come back if we need to.

Mr. Poilievre, go ahead.

Hon. Pierre Poilievre (Carleton, CPC): Thank you.

Can we sell our shares in the Asian Infrastructure Investment Bank at any time and for any reason?

Ms. Nicole Giles: The AIIB articles of agreement do include exit provisions, and a country could sell its shares back to the bank. I do not believe there is any restriction around timing.

Mr. Neil Saravanamuttoo: That's right.

Ms. Nicole Giles: There is no restriction around timing.

Hon. Pierre Poilievre: Who would buy them back, the bank?

Ms. Nicole Giles: I believe they would be reopened to other shareholders who are looking to increase their shareholding in the bank. The bank would retain them and then open them up according to the allocation formula.

Hon. Pierre Poilievre: At what point would Canada be paid back for its shares? Is it at the moment when the bank sells them to another buyer or at the moment when Canada decides to dispose of them?

Mr. Neil Saravanamuttoo: Canada would be repaid when we return the shares to the bank.

Hon. Pierre Poilievre: Would we be repaid the book value of the shares, or do we expect that the value of those shares would fluctuate in the marketplace?

Mr. Neil Saravanamuttoo: Essentially, we would be paid the market price. By that I mean.... All countries have contributed a certain amount of capital to the bank. The bank will invest that in loans and other projects that will have a return. Most of that return will go back into the bank's retained earnings. Our share of those retained earnings would be reflected in the sale price back to us, or any members who chose to sell back their shares.

Hon. Pierre Poilievre: The only intrinsic value of any share ever is in its ability to pay dividends. There is literally no other intrinsic value to a share. There is speculative value, but that value is based only on the presumption that some day, somewhere down the road the share will result in dividend payment.

You said earlier that it's very unlikely that this bank will ever pay dividends to any of its shareholders. How is it possible, then, that the share value will maintain the same level as the book value after we purchase the shares?

● (1635)

Mr. Neil Saravanamuttoo: We have the benefit of the experience of having invested in other multilateral development banks over a number of years, starting with the World Bank in the 1940s. We've been able to see the track record of those institutions. They have protected the capital that the shareholders have invested, and they have grown their retained earnings. The growth of the total value of that institution has worked out to as low as 2% a year and up to much higher returns in some cases.

Although we've said that it has not been the case that multilateral development banks have paid out dividends, that has been a conscious choice of shareholders, including ourselves, in that the purpose of these banks is to advance some of our collective foreign policy interests around the world, including global development. We felt that the funds are better retained within the bank to allow for an increased capacity to lend and to support projects, as opposed to paying back dividends to shareholders on a regular basis.

Hon. Pierre Poilievre: That further proves that there's no intrinsic value to having the shares. If they're not paying dividends, then they're not worth anything to anybody other than a nice goodwill gesture. No person would use his or her own money to buy those shares if it weren't possible to extract dividends in return for the purchase. How is it that you expect these shares to retain any value for resale down the road?

Mr. Neil Saravanamuttoo: The articles of agreement specify exactly what those share prices would be or how they would be determined should a member choose to withdraw.

Hon. Pierre Poilievre: Can you explain to us what those articles stipulate about the determination of share value?

Mr. Neil Saravanamuttoo: Yes. They say that if a member were to withdraw from the bank, they would be entitled to, for the return of their shares, the book value of those shares plus that member's pro rata share of the retained earnings.

Hon. Pierre Poilievre: You expect there would actually be a profit for Canada if it sold its shares from this bank.

Mr. Neil Saravanamuttoo: There would be growth, yes.

Hon. Pierre Poilievre: If that's the case then why aren't there private investors able to do this?

We know that there are literally trillions of dollars of infrastructure investments that slosh around world markets all the time, people using their own money, pension funds, private equity firms, investment banks—that's what they do for a living. Why wouldn't they invest in this if, as you say, the minimum return we should expect is 2% and returns could be much higher than that on an annual basis?

Ms. Nicole Giles: First of all, Neil can speak to the investment of some major institutional investors from the private sector in particular projects, but because these are international financial institutions, private sectors cannot actually become members of these banks.

Hon. Pierre Poilievre: Of course not.

Ms. Nicole Giles: It's a sovereign-to-sovereign guarantee. If you're asking about specific projects, we can provide some information about private sector involvement.

Hon. Pierre Poilievre: If these are commercial transactions designed to generate a rate of return, then why can't the underlying activity just remain with the private sector?

Ms. Nicole Giles: There's a series of quite detailed thinking that's surrounding this where the finance officials have provided a lot of the thought leadership around this internationally. It involves things such as being able to create recognizable classes of infrastructure for emerging markets.

Neil has led most of the work on this and can give you a bit of a flavour for some of the challenges.

Mr. Neil Saravanamuttoo: Yes. It's a very fair question as to why public funds are required if there's a possibility that private funds could fund some of these investments. The purpose and the mandate of multilateral development banks is to invest where it hasn't been proven for commercial interests.

When MDBs make investments, including for the Asian Infrastructure Investment Bank, they're required to pass an additionality test. That's asking the question, "What does the MDB bring to this project that would not otherwise occur through purely commercial finance?"

In some cases, it's as simple as the returns to private interests would not be high enough, but we recognize that there are public benefits here that justify a public investment. It could be that the risks are too high to a private investor, and there might be an opportunity for public finance to find ways to reduce that risk.

● (1640)

Hon. Pierre Poilievre: We can't reduce the risk. We can't reduce it at all. We can simply transfer it from them to us. In other words, for the wealthy investor who wants to profit off of the project, he will no longer face the risk, but this taxpayer-funded bank will take it off of his books and put it on ours.

Mr. Neil Saravanamuttoo: In fact, what the MDBs would respond is to say that, because they operate with a range of actors, including the sovereigns in the country in which they're operating, they're able to have certain risks addressed at a regulatory level so that those risks are taken off the table before the investment even goes ahead. They're able to have policy reform and regulatory reform that makes it a much more stable investment for everybody.

Hon. Pierre Poilievre: It's a risk-free environment, so then, in that case, we don't need the bank because there's a risk-free investment for a private sector investor to make.

Mr. Neil Saravanamuttoo: No. It's the role of the bank to come in to create that environment. They can do that through project finance.

Hon. Pierre Poilievre: That sounds magical to me, that there's this international bank that's able to go in and remove the risk of an engineering failure or a natural disaster or a cost overrun, which are inherent in every single infrastructure project that occurs. Maybe the folks in these international banking systems have found ways to eliminate all of those risks. It sounds to me more like we're taking $100 billion of taxpayers' money from around the world and using that money to relieve the risks of the private sector investors who seek to profit from these projects.

Ms. Nicole Giles: I think another consideration in terms of how the multilateral development banks work and how they're able to both de-risk individual projects and make them of more interest to private sector investors is the technical assistance and the capacity building that goes along with it. There's the ability on a particular project for an MDB to go in and provide support in terms of how to do the environmental assessment, how to assess whether indigenous rights are being respected, and how to set up separate special-purpose allocation accounts to be able to track the investment for the project, moving in and out. There's a lot of technical capacity that the multilateral development banks provide that, for example, pension funds would not be able to provide—or be willing to provide, quite frankly—if they're moving in to invest on a particular project.

I think another consideration as well is that the books of the banks are more balanced internationally. There's a different ability to balance risk because it's such a varied portfolio.

Hon. Pierre Poilievre: Listen, some of these wealth management firms that invest in infrastructure projects have $1 trillion under management. They do this for a living. They are extremely sophisticated. I find it very hard to believe that we require an intergovernmental system to replace that. It seems like those investors don't want to carry the risk. There is this fake magic trick where the risk all of a sudden vanishes from sight. It doesn't vanish in reality. It just goes on to taxpayers.

I want to return to the issue of the gap between the $256 million that the budget presentation allocated to the bank and the $375 million U.S. that is authorized in this bill. As I understood your earlier testimony, the $256 million is the initial purchase, but you are seeking this authorization because we have the potential to purchase more shares later on. Is that accurate?

Ms. Nicole Giles: Correct.

Hon. Pierre Poilievre: When would you expect the Government of Canada to purchase the additional almost quarter of a billion dollars' worth of shares?

● (1645)

Ms. Nicole Giles: It would depend entirely upon when other prospective bank members made their decision about whether or not they were purchasing their full portion of shares.

They're not available at the moment. If another prospective member chooses to not purchase their full shares, then at that point Canada would have the option.

Hon. Pierre Poilievre: Where will these purchases be accounted for in the accounts of Canada? Will they be considered an expenditure in this fiscal year?

Ms. Nicole Giles: For the current purchase...?

Hon. Pierre Poilievre: Yes.

Ms. Nicole Giles: Part of it would be for this fiscal year and part of it would be for subsequent years.

Hon. Pierre Poilievre: Right. Is it over the next five years?

Ms. Nicole Giles: Correct.

Hon. Pierre Poilievre: Each purchase is considered an expenditure, correct?

Mr. Neil Saravanamuttoo: Technically, we're purchasing an asset, but we fully expense it based on the expectation that.... The public sector accounting rules require this to be treated as a concessionary investment.

Hon. Pierre Poilievre: Explain what that means.

Mr. Neil Saravanamuttoo: It's an investment for which we don't necessarily expect to get a full return on our capital the way we would with a non-concessionary investment.

Hon. Pierre Poilievre: In other words, you don't expect that we'll get the money back—or at least the accounting is set up so that we don't have to get it back.

Mr. Neil Saravanamuttoo: The accounting is set up that way. That's right.

Hon. Pierre Poilievre: Finally, you mentioned that if there are retained earnings, there would be a formula to determine what share of those retained earnings belonged to Canada. If there were no retained earnings but there were in fact net losses, then I suspect the reverse would be true as well.

Mr. Neil Saravanamuttoo: That's the assumption we would work on, yes.

Hon. Pierre Poilievre: Thank you.

The Chair: I have Mr. Albas and Mr. Boulerice.

On this last question on accounting, which was along the lines of money, I take it what you said in your testimony is that this is more than just an investment in a bank. I think you said that the purpose is global development. Can you expand on that?

Yes, the Government of Canada is possibly going to invest $256 million. What are the other things beyond the money that the Government of Canada is hoping to get in terms of global development because this is not just about money or we wouldn't be doing it?

Ms. Nicole Giles: There are several pieces in response to that question. We know that a lack of infrastructure is one of the biggest brakes on economic development in any region. We know in particular that in Asia the infrastructure financing gap is approximately $1.7 trillion per year. In the absence of addressing that gap, economic development will be slowed in that region. That means on a slightly more inward-focused commercial perspective there are fewer opportunities for Canadian companies and less ability for Canadian companies to be able to move products to market and then move products back the other way into Canada.

From a purely international development perspective we also know that in the absence of economic growth, countries aren't able to sustain reliably strong and good governance: strong in good public health care systems, education systems, the justice sector. An example of that is that if there's not strong economic growth, there's not a strong and reliable tax base. That can translate into, for example, police officers not being paid a living wage, which makes them more susceptible to corruption, which in turn creates a negative investment climate in that country, and then the cycle continues.

We know that economic development is the foundation for growing strong countries, and we need stable, strong countries to be allies and to help ensure a stable international order, which Canada quite frankly depends upon to be able to function internationally.

● (1650)

The Chair: Thank you for that. Those are all good objectives.

I want to come back to Mr. Kmiec's earlier point on the pipeline issue. I'm one who certainly feels great sadness over the loss of the energy east pipeline. How do you make the point to a Canadian industry that is trying to get pipelines across this country to create jobs on both ends, and use our own resources to create economic activity when this bank could be—and I say could be—financing a situation that would be in competition with our resources? How do you answer that?

Ms. Nicole Giles: I think when it comes to the sensitive issue of pipelines, this is where our ability to assess projects on a project-by-project basis as they're brought to the bank is incredibly important. Canada would be at the AIIB table, and would have a seat, would have a voice, and the ability as well to work with other shareholders.

One of the things that we find very effective about our engagement with multilateral development banks broadly is that we work very closely with our G7 and our G20 allies on individual projects in our joint assessments, in determining whether those projects will meet Canadian national interests or our international development objectives. If we are not members of the bank we don't have a voice and we don't have the opportunity to contribute to the decision-making on particular projects. It's difficult to predict projects that may be in specific competition but this is where we would need Canada's ability and the officials' ability to provide that analysis on a project-by-project basis, and to be able to influence decision-making at the table.

The Chair: Thank you.

We'll go to Mr. Albas, then Mr. Boulerice, and then back to Mr. Poilievre.

Mr. Dan Albas: Thank you, Chair.

In regard to currency shifts and whatnot, ultimately we're authorized I believe in American dollars—is it?—through this act for a total amount, but obviously the shares themselves, I'm sure, are being bought in a different currency. Or are they using the American dollar as the standard?

Ms. Anchela Nadarajah: Our commitment is in U.S. dollars and the shares will be in U.S. dollars.

Mr. Dan Albas: When we purchase from the AIIB, we will be getting an exact share value. There will not be any arbitrage between the use of a different currency besides the United States dollar.

Ms. Anchela Nadarajah: No. It will be in U.S. dollars.

Mr. Dan Albas: If the bank is a complete failure.... Let's just say the governance isn't very good and a future Canadian government looks at this and says, “You know what? This isn't working out, so we want to sell our shares.” What happens if everyone else is trying to sell their shares and no one is purchasing them?

Book value is not a proper estimation of what something is worth; the market is. If other countries are unhappy with the program, the price of those shares will go down or we won't be able to sell them. Can you give us some sort of assurance that we won't end up in this kind of situation?

Ms. Nicole Giles: When we look historically at the performance of multilateral development banks and international financial institutions, we haven't seen that kind of concern brought forward. We haven't seen a run on shares. When you look historically at our engagement with similar institutions since the 1940s, we haven't seen that pattern of behaviour. Obviously we would never be in a position to guarantee the performance of every bank, but I think there's a quite solid historical record.

I think as well that given the broad membership of the bank, including many of our like-minded partners, if there were such a large concern with the governance of the bank that everybody was looking to potentially pull out, that would also voice common concerns that presumably would be raised at the bank, where the governance would be able to be dealt with, if there is a majority of shareholders with those concerns. Presumably we would be able to work with our like-minded and other shareholders to be able to address those concerns in a meaningful way at the bank.

● (1655)

Mr. Dan Albas: Okay. Could you please define "like-minded" partners in terms of which countries you would identify that with?

Ms. Nicole Giles: That would of course be our G7 counterparts. We have of course France, Germany, and the U.K. Many of the G20 we would also identify as our like-minded partners, including Australia. We can give you a full list of the membership.

Mr. Dan Albas: I don't need a full list. Right now, I'm asking you to give some assurance to my constituents as to who you would identify as "like-minded" partners. We have France, Germany.... Could you start reading out some of the ones that my constituents would identify as being like-minded?

Ms. Nicole Giles: I'll identify partners that in my capacity I would identify as like-minded, but I think that given that this is a public record we may want to review the statement after that as well, because there could be potential foreign policy implications for the assessments that I'm about to provide, Mr. Chair, if that's acceptable.

The Chair: That's okay.

Mr. Greg Fergus: Perhaps, Mr. Chair, we should let them come back with that official assessment.

Mr. Dan Albas: I'm sorry. For the purposes of my questioning, I need to have this right now, please.

The Chair: Are you comfortable giving it right now, Nicole? If you're not, you can send it to us in writing.

Ms. Nicole Giles: I'm comfortable to provide my assessment now, but I'm not at this point able to define for the Government of Canada our like-minded partners internationally.

The Chair: Okay.

Ms. Nicole Giles: I can define our assessment of like-minded partners for interests in this bank, but again, I do not have the capacity to provide like-minded partners in a foreign policy context for the Government of Canada.

The Chair: I think you've clarified it, because you're saying that it's like-minded partners for this bank.

Ms. Nicole Giles: That's correct.

The Chair: Okay. Go ahead.

Ms. Nicole Giles: In this case, I would put on that list: Germany, Korea, Australia, France, the U.K., Italy, Spain, the Netherlands, the Philippines, Poland, Hong Kong, Israel, Switzerland, Sweden, South Africa, Norway, Austria, New Zealand, Denmark, Finland, Belgium, and then there's a series of other countries as well that are G20 partners.

Continuing on the earlier list as well, there are Peru, Ireland, Hungary, Luxembourg, Portugal, Cyprus, Iceland, Malta, Chile, Greece, Brazil, Argentina, and then there is a series of other partners on here that are also G20 partners that we share many interests with, but again, I'm slightly concerned about the foreign policy implications of defining "like-minded" partners. Potentially included in that list could be Singapore, Romania, Malaysia, Nepal, Brunei, Mongolia, Armenia, the Philippines, Thailand, Turkey, and Indonesia.

We're in very good company.

Mr. Dan Albas: You mentioned the Philippines twice, as well as Hong Kong, which I wouldn't say is its own sovereign country.

Let's go back to the G20 list of countries because many of these other countries I wouldn't say are ones that you would habitually pull out of a hat and associate with Canada—no offence to them. It's just that the average Canadian wouldn't say those are the ones we most often deal with. What percentage of the bank's share ownership will that list you provided comprise?

Ms. Nicole Giles: We're very happy to provide you with a detailed list of the estimated percentage of shares.

Given that China has approximately 30% of the shares at the moment—and that could drop down to 26% if additional shares are purchased—that leaves 70% of the shares with other countries. There's a balance in terms of their proportion, just as there is with ours. For example, India is at 8.37%, Germany is at 4.48%, Korea is at 3.74%, Australia is at 3.69%, and France is at 3.68%.

We'd be very happy to provide you with a detailed list.

● (1700)

Mr. Dan Albas: I would appreciate that.

It's just that, again, for a country like India, for example, they probably would foresee that many of the projects may end up benefiting their region or their country. I can see them wanting to play a closer role in that, but again, I'd be interested in finding out what the share ownership is for some of these smaller partners, countries like Iceland.

With regard to generally accepted accounting practices, or GAAP, is that going to be the standard for this bank?

Ms. Anchela Nadarajah: It's going to be the IFRS.

Mr. Dan Albas: Okay, so it's the international equivalent.

I think that answers most of my questions.

The Chair: Mr. Boulerice.

Mr. Alexandre Boulerice: Thanks.

Mr. Saravanamuttoo, a little bit earlier my colleague Mr. Poilievre asked you a question about whether, at the end, there will be some profits for Canada. Your answer was that there would be growth. Did I miss a nuance here between profits and growth?

Mr. Neil Saravanamuttoo: The nuance is that, yes, the bank will, hopefully, turn a profit. Again, the history of other multilateral development banks is that they quite regularly turn a profit every year. They have a positive net income.

The difference, as my colleague has mentioned, is that it hasn't been the norm to distribute these profits as dividends, but rather to keep them within the bank as retained earnings to allow the bank to have additional financial capacity to do more of what it's doing. Whether we call it profit or retained earnings that would be sitting on the bank's balance sheet, yes, that would be the case. There would be a certain percentage of these attributed to each shareholder. That's the nuance we were trying to clarify.

[*Translation*]

Mr. Alexandre Boulerice: Thank you.

As I understand it, then, the main idea behind this financial transaction—which is still going to cost Canadian taxpayers a pretty penny—is not to achieve a quick, direct, or annual return. The idea, rather, is to be a partner in a region of the world where we want to see economic growth, which can spawn a host of other socio-economic and legal benefits.

Canada is writing a cheque to purchase shares, and the goal is not to turn a quick profit, but, instead, to foster economic growth in the region and, by extension, a market receptive to Canadian companies looking to do business in the region. It provides both an economic incentive and a means for us to assert our role on the world stage. Is that correct?

Ms. Nicole Giles: Absolutely.

[*English*]

I think indicative of that is that the funding source is from the international assistance envelope, which is the portion of funding that the federal government sets aside for artificial development assistance. Most of the funding provided to the AIIB would be counted as official development assistance in terms of how it's reported through the OECD DAC.

[*Translation*]

Mr. Alexandre Boulerice: Thank you.

[*English*]

The Chair: That last point is an important point.

I have on my list Mr. Poilievre, Mr. Kmiec, and Mr. Fergus.

Hon. Pierre Poilievre: In the articles of incorporation of the Asian Infrastructure Investment Bank, chapter 1, under "Purpose", it says, "The purpose of the Bank shall be to: (i) foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia".

In article 1.2, Asia is defined as "the geographical regions and composition classified as Asia and Oceania by the United Nations, except as otherwise decided by the Board of Governors."

I take that to mean that any country that falls within the borders of the United Nations' definition of Asia and Oceania would be eligible to receive funds from the Asian Infrastructure Investment Bank for the purposes of construction. Is that accurate?

● (1705)

Ms. Nicole Giles: Yes. They'd be able to bring projects forward to the bank for consideration.

Hon. Pierre Poilievre: Are there any Asian countries that would be forbidden from receiving these funds?

Mr. Neil Saravanamuttoo: They would have to be members of the bank. For instance, North Korea is not a member of the bank, so they would not have access to those funds.

Hon. Pierre Poilievre: What about Singapore, for example?

Mr. Neil Saravanamuttoo: Singapore is a member, and they would in theory be able to come forward. Obviously, we have a very short track record to look at, but the emphasis has been on promoting sustainable development, as you mentioned, so the focus has been geared more towards the middle- and lower-income countries.

Hon. Pierre Poilievre: Will the bank fund projects like wind and solar electricity?

Mr. Neil Saravanamuttoo: Yes.

Ms. Nicole Giles: Potentially.

Hon. Pierre Poilievre: Is there any desire to learn from the experience in Ontario, where such public investments have, for example, increased poverty among people whose electricity costs have gone up by 100%?

The Chair: Pierre, I don't think you can expect our witnesses to answer that question.

Hon. Pierre Poilievre: Okay. Thank you.

The Chair: Mr. Kmiec.

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

At one point you mentioned human rights and the approval process. The bank supposedly does a review of these things. Is it the case that government will do a separate review as well? You seemed to be intimating that at one point, that there's a review done by the AIIB on an individual project and then the Government of Canada would do its own as well. Is that correct?

Ms. Nicole Giles: That's correct.

Perhaps I could take a few minutes to describe the project process, if that would be helpful for members.

Mr. Tom Kmiec: That's on the website. I'm just interested in that human rights component.

Ms. Nicole Giles: Yes, the project process, as it relates to Canada, is that, when a project is presented, the bank itself will do an assessment against all of the safeguards, including human rights safeguards. That project is then presented to members of the bank.

In Canada, as part of our project assessment, we would do our own review of those pieces. We would look at the documentation provided by the bank. We would look at information coming from our posts and our missions abroad. We would consult with like-minded partners, and we would provide our own assessment.

Mr. Tom Kmiec: If the Government of Canada finds a particular country project wanting in its human rights record and then decides it is opposed, what would the Government of Canada do? Within the process of AIIB, could you just vote against a project? Is that all you can do?

Ms. Nicole Giles: Correct. You can vote against the project. You can abstain, and then as always in international multilateral forums, we work with partners to try to influence in terms of Canadians' interest.

Mr. Tom Kmiec: We have 1% of the votes, though. How would that work?

Mr. Neil Saravanamuttoo: Right. It's true that we have 1% of the vote, but I think it's important to understand also that, in a context like this, there's a lot that shareholders can do before projects even come to the board for a vote. We absolutely would do our own scrutiny of each project, and if we see concerns, we would want to bring those forward to the bank and to bank management, before they even come forward for a vote, in the hope that we can address them before they reach the table.

Mr. Tom Kmiec: You raised a good point about senior management.

Are there any Canadians working in senior management at the AIIB?

Mr. Neil Saravanamuttoo: Anchela, do you want to take this?

Ms. Anchela Nadarajah: Yes. There are in certain aspects.

Mr. Tom Kmiec: I mean Canadians working for the AIIB.

Ms. Anchela Nadarajah: Yes, exactly. Within the bank, there are five or so.

Mr. Tom Kmiec: In senior management positions...?

Ms. Anchela Nadarajah: I know of one who is in senior management, in communications. There are a few who are higher up, but perhaps not in senior management.

Mr. Tom Kmiec: You mentioned that the government has done a review of these 21 projects that were approved in March 2017 and earlier, before the government decided to join.

If the government had done these human rights checks.... I mean, Bangladesh is a recipient. Bangladesh has a horrible human rights record. Bloggers have been murdered for the past few years. Gay rights activists have been murdered. Pakistan continues to oppress Sindhis, Baluchs, and other minorities.

Egypt is also receiving money. Actually, 11 solar power projects are being financed. There are private companies that are co-signers on the project, so they're the ones that have been de-risked. The risk is all taken on by taxpayers of other countries. Egypt has been pursuing a crackdown on civil society.

Did the Government of Canada say that those were okay, that the human rights records are fine and to just proceed with participating in the AIIB?

● (1710)

Ms. Nicole Giles: As we weren't members of the bank, and as we're still not officially a member of the bank, we didn't have a voice in those projects. We did not provide our advice to the bank in terms of voting because we were not members. We're still not members.

Mr. Tom Kmiec: Right, but now you're joining an institution that does finance these types of projects in these types of countries, and the supermajority vote.... China has enough shares that there is no veto allowed for any other country, except for China, for supermajority-related votes. Between China and Russia, they can block most things that go on at the AIIB, if they don't like a direction that's being taken.

You mentioned this as well; you said “if we don't have a voice at the table to decide”. We should only have a voice at the table if we've put money into it. That's when we care. Outside of that, why does it impact Canada's environmental and human rights record when other countries choose to pursue an infrastructure project in another country? We have our own issues and our own other multilateral organizations, like the ADB, where we could be ensuring we're all playing by the right rules and to the standard that we have.

We're giving $375 million U.S., according to proposed section 7 here of division 2, to an organization that is financing projects in countries that have poor human rights records, like Azerbaijan.

Ms. Nicole Giles: I think those are interesting project examples, because those are projects where the AIIB is co-investing with other multilateral development banks. For example, the natural gas project in Bangladesh is a project that's being jointly done with the Asian Development Bank. The project in Egypt, the solar one—I assume that's the one you're referring to—is being done jointly with the World Bank's IFC, which is the private sector window of the World Bank, and some of the other projects as well.

As I mentioned, for the AIIB at this point, because it's a relatively new institution, 75% of the projects it has done have been joint with other multilateral development banks. They will be doing shared assessments of those projects. Again, the analysis is done on a project-by-project basis.

Mr. Tom Kmiec: I'd like to go back to the initial question I had.

If Canada finds a particular project wanting, whether for environmental reasons, human rights reasons, foreign affairs, or the project is not to our liking for whatever issue we have, we have a 1% share of the vote, which is equal to I think Poland or Israel. We don't have a spot at the board of governors or the directors, or at least not yet. Potentially we could be one of the third or fourth substitutes to have a seat and have a bigger voice, but we have 1% of the shares.

There are so many other countries working at this, and nine out of 12 are reserved for countries in the region of Asia as defined by the agreement. How can our voice be heard for this $375 million U.S.?

Ms. Nicole Giles: In terms of the board seat, again if and when we do become a member, in the constituency that we would likely be joining, that would make us the largest shareholder in that constituency. There would be a very good likelihood that we would be taking that seat at the table or it would be alternated with the other largest shareholder in that constituency. I think the voice at the table wouldn't be a third or fourth alternate. It would be a consistent voice or perhaps an alternating voice with the other large shareholder in that group.

One of the challenges that I think Canada always has in any multilateral forum—and this is the same in terms of our membership at the World Bank, at the IMF, at the EBRD, the Asian Development Bank, and the African Development Bank—is that the nature of our country and the size of our economy is such that we're never the majority shareholder. As Neil mentioned, our influence comes from being able to influence early in that project process, being able to work effectively with our partners to encourage the right type of project coming forward, and to have a voice in the development and the assessment of those projects.

Generally, this is the role that Canada tends to play in the international order because of the size of our country and the size of our economy. The influence is greater than just that 1% share. The influence comes from the variety of levers that we're able to pull.

● (1715)

Mr. Tom Kmiec: In the project assessment for the trans-Anatolian natural gas pipeline, TANAP.... This is just to continue on with something that the chair had said, and I'm not putting words into your mouth, Mr. Chair.

In the project objectives and expected results, it says that the project's development objectives are to "integrate Azerbaijan with regional and European energy markets by strengthening its connectivity and transit role", to diversity Azerbaijan's gas export markets, and "to improve the energy supply security of Turkey and South Eastern Europe."

Those are all fine goals, if you live in southeastern Europe, Turkey, and Azerbaijan, but we have difficulty in securing our energy supply in eastern Canada using western oil. Why are we financing these goals and objectives with $375 million U.S. from Canadian taxpayers? These are competitor markets to Canadian natural gas.

Ms. Nicole Giles: That project is one that was done jointly with EBRD, EIB, the World Bank, the Asian Development Bank, as well as the private sector. I believe that Canada would have some foreign policy interests in diversifying the pipeline of oil into southern and southeastern Europe from the primary oil pipeline right now that is pulling the oil through eastern Europe. However, again, I'm not able to testify to our foreign policy interests at this point.

For this particular one, there is value to diversifying that market and to diversifying how that oil is moved to market.

The Chair: Hopefully, these are the last questions. Go ahead, Mr. Fergus.

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

Thank you very much, Ms. Giles and all the witnesses.

I would like to go to the penultimate question from Mr. Kmiec. I'm trying to place this in the right order. It really is a choice. We could either be a part of the AIIB or we could choose not to be. Let's explore that.

If we choose not to be, as we haven't been up until this point, we wouldn't have any say or influence over the projects that the AIIB would choose to fund. Am I correct?

Ms. Nicole Giles: Correct.

Mr. Greg Fergus: We wouldn't have an ability to work with our different partners to try to develop coalitions to bring about a particular sensitivity to the types of projects that we would like to have happen. Is that correct?

Ms. Nicole Giles: Correct.

Mr. Greg Fergus: I'm assuming that we would also not have the ability to make a contribution, *à la Canadienne*, for us to encourage developing countries to achieve a certain level of development that would allow them to have the necessary resources to provide for their internal domestic needs and provide some economic and presumably political stability. Is that correct?

Ms. Nicole Giles: Correct.

Mr. Greg Fergus: It seems that, if we want to have influence, we would need to or we should take part in the AIIB. That's on the philosophical level. I hope that's an appropriate question to ask an official.

Ms. Nicole Giles: We can only influence the bank if we're a member of it.

Mr. Greg Fergus: Very good. Let's explore that side of things. We become a member of the bank. We are not going to be coming in at a 30% share of the bank. It's not available, nor would we be able to politically sustainably offer to finance at that level. Am I correct?

Ms. Nicole Giles: Correct.

Mr. Greg Fergus: When we are placed in such a condition, as you pointed out in your, I thought, very substantive answers to this question, you had taken the perspective that this is par for the course for a country the size of Canada. Is that also correct?

Ms. Nicole Giles: Correct.

Mr. Greg Fergus: Then it would behoove us when we want to have some influence in a country of our size, of our population, of our economic size, although our economic size is nothing to sneeze at, we would want to seek to create partnerships, to seek coalitions at the multilateral level.

Ms. Nicole Giles: Correct. That is traditionally how Canada exerts both its foreign policies as well as its international development policy.

Mr. Greg Fergus: This is, again, normal, par for the course, for Canada to take part. Really it comes down to whether we want to continue to play that "punch above our weight" role by taking part in as many multilateral organizations as possible, or do we want to pull our marbles back and choose to only play on a field where we'll have, frankly, what comes down to an effective veto, and I'm assuming there are not many organizations that we can do that at the global level. Would that be correct?

● (1720)

Ms. Nicole Giles: Correct. To give you, perhaps, some perspective on this, our shareholding at the Inter-American Development Bank is 2.6%.

Mr. Greg Fergus: Yet Canada plays a pretty significant role at the Inter-American Development Bank because of the connections and the coalitions that we've built with the members of that bank.

Ms. Nicole Giles: We would like to think so.

Mr. Greg Fergus: Very good. I think a lot of smaller countries actually turn toward Canada to play that role, and look to Canada to have that kind of influence to help gather other players around a set of values, and to bring that to the table.

Ms. Nicole Giles: Our executive director at the Inter-American Development Bank is seen as one of the leaders at the board, even with our 2.6% share.

Mr. Greg Fergus: I think we have the right frame here. Let's take a look at some other multilateral organizations that we're part of and leadership roles Canada has played, or has come to play. Could you provide us with examples of where other countries have asked Canada to join so that we can help bring people together and to play that leadership role because, frankly, that's a role in which we are seen as an honest broker? Are there any other examples where we've played that role?

Ms. Nicole Giles: That's an interesting question. For the vast majority of the other multilateral development banks, Canada was a founding member and the request was for Canada to be a founding member, and it was considered at the time. I can ask Neil to speak to an example of where we were not, in one portion of the World Bank, and how that played out.

Mr. Neil Saravanamuttoo: If we can come back to the Inter-American Development Bank example, we were a founding member of the bank itself, but the bank then went on to create a private sector focused wing of the bank that was capitalized differently. They were a one-bank group but two separate organizations. We did not join that second Inter-American Investment Corporation from the start. We were asked to, and a number of countries in the region asked us to join and were keen for our voice at that table.

That's one example. In fact, looking beyond multilateral development banks, I started to say that was the case with the Organization of the American States also and we were not a founding member of that. That's one where Canada's absence at the table was noticed and is one we were actively asked to join.

Mr. Greg Fergus: Thank you very much for those answers. I guess fundamentally this seems to be consistent. Would it be seen consistent for Canada to join the AIIB to play this role of leadership of middle powers, or perhaps larger smaller powers, to help bring a certain set of values to the table and a certain expertise to the table as well?

Ms. Nicole Giles: It's consistent with the renewed commitment of this government to multilateralism. It's also consistent with this government's desire to have renewed engagement with the Asia-Pacific region.

Mr. Greg Fergus: We seem to have a long history over the 20th century, and certainly into the 21st, of playing a similar role in multilateral organizations.

Ms. Nicole Giles: Canada has traditionally been a leader in multilateral organizations and in punching above its weight.

Mr. Greg Fergus: Thank you very much for your very informed testimony.

It was a real pleasure to listen to you folks today.

Ms. Nicole Giles: Thank you.

The Chair: Thank you.

Our list seems to be getting longer again.

We'll have Mr. Albas, and then Mr. Sorbara.

Mr. Dan Albas: I won't be asking such kind leading questions.

Earlier, Mr. Boulerice had asked a question about privatization and whether or not the AIIB encouraged privatization as an outcome. I believe you said it was roughly agnostic, that it wasn't part of it.

Can you confirm that?

Mr. Neil Saravanamuttoo: The answer was that there is no track record to make an assessment on that. What is clear is that the bank has certainly encouraged private participation in infrastructure projects throughout Asia, but with a P3 approach, not necessarily a privatization approach.

We would need a track record to be able to ascertain that.

● (1725)

Mr. Dan Albas: If this becomes law, then Canada will join with the other 56 shareholders per se to build infrastructure. Maybe they will be more successful than the Liberal government's ability.

That being said, the question is that they won't be building it out of money. They will be building projects that will be contracted to someone. Correct? They are not going to be constructing it themselves. They will issue a public or some sort of tender.

Is it going to be a public tender? Is that the way the bank will carry it out?

Mr. Neil Saravanamuttoo: Yes.

Mr. Dan Albas: Will there be any provisions for state-owned enterprises?

Mr. Neil Saravanamuttoo: There will. With a typical project, the country may choose to come forward and say they would prefer to do it through their state-owned enterprise. That's their sovereign right. The bank can certainly propose alternative ways of financing it, but that would then get taken to the board for discussion.

Mr. Dan Albas: Earlier we talked about accounting principles for the conduct of the bank. I appreciate that, but obviously state-owned enterprises operate in a much different field than the liberal western democracies.

Usually when you have a state-owned enterprise like a crown corporation there are a lot of accountability mechanisms and transparency mechanisms so that people can know the state of play, so to speak, or the state of those assets. State-owned enterprises in that end of the world do not.

What assurances can we have here at this table that we are going to be contracting through this bank with state-owned enterprises that are focused on building high-quality infrastructure, because, again, there's not a lot of transparency with how these state-owned enterprises operate. You can see the Americans have a lot of concerns with many of these state-owned enterprises and have a whole host of conditions if they want to invest in their markets, the same here in Canada.

Ms. Nicole Giles: Again, each project would be assessed on a project-by-project basis. Regardless of whether it's being delivered through a state-owned enterprise or a private company, the project will still need to meet those safeguards and those conditions that are set out in anti-corruption practice, sanctions practice, human rights, and the environment. The criteria and the bar that will need to be met will need to be met regardless.

If we were members of the bank, we would have the opportunity early on in the project development process, if we did have concerns about transparency, to flag it and to ask for it to be addressed in the project preparation.

Mr. Dan Albas: With what per cent? That doesn't always mean you're going to get co-operation from others, but thank you for your answers today.

The Chair: I remind members we have 11 divisions yet to go through.

Mr. Sorbara.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): I'll just make one quick comment. Forty-seven other countries have joined the bank. If I'm not mistaken we're the first one from our area.

Ms. Nicole Giles: There are 57 founding members. At the moment there are 80 current and prospective, so there are a number of countries that are also going through the same process that we are.

Mr. Francesco Sorbara: There are, for example, the U.K., Germany, Italy, France—

The Chair: We went through the list earlier, Francesco. We don't need to go through that whole list again.

I don't think you want to either, Nicole.

Ms. Nicole Giles: I'm very happy to.

The Chair: Anyway, that's it.

Number one, I do want to thank you for all your work, Neil. I know you put a lot of work into this, and others did as well. Thank you. I think we had a very thorough discussion on this point at committee, so thank you for your forthright answers. That will be it for this division.

You're still going to be here, I gather, Neil, for the next one—

Mr. Neil Saravanamuttoo: Yes.

The Chair: —as will Nicole. That's great.

From the international development financing arrangements area, we have Ms. Giles and Mr. Saravanamuttoo.

Go ahead, please.

● (1730)

Ms. Nicole Giles: For division 3 of part 5, the short title we're using is program transfer. This item relates more specifically to the program transfer of the global agriculture and food security program's private sector window, GAFSP, and the financial mechanisms for climate change facility. This is largely an administrative transfer.

In terms of context, as has already been touched on in previous discussions, for several years the Government of Canada has been exploring how to bring in and leverage private sector financing for international development. There have been a whole series of movements involving different approaches away from purely traditional grants and contributions. This is part of the “billions to trillions” agenda.

In 2010-11 the government engaged with the World Bank's private sector window, the International Finance Corporation, in this area in terms of how to look at bringing in the private sector financing. This led to three agreements that were focused on climate change and food security.

The first is on the financial mechanisms for climate change facility, concessional finance. The second agreement is on the financial mechanisms for climate change facility, the concessional finance and technical assistance agreements, excluding the IFC Catalyst Fund. The third is on the global agriculture and food security program private sector window.

At the time, the Minister of Finance, under the Bretton Woods act, had the ability to make use of equity investments, which was required for these types of agreements. The Department of Finance at that time also had the required expertise in working with equity investments and within private sector financing windows, so the decision was made at that point that the three agreements would be administered by the Department of Finance.

With the launch last year of Canada's new feminist international assistance policy, increased focus is being put on the need to develop mainstream, innovative financing approaches, including with regard to loans and equity investments. This also requires building additional capacity and expertise on how to work in these private sector windows.

At the moment the Minister of Foreign Affairs does not have the necessary authorities to hold equity investments and is therefore unable to administer the three programs in question. As a budget 2017 measure, required legislative changes to the Minister of Foreign Affairs' authorities for the administrative transfer of the programs are being proposed as part of this budget implementation act.

The scope of the proposed legislative changes to the authorities of the Minister of Finance is limited to the transfer of these three programs only for this time. The Department of Finance and Global Affairs Canada officials are considering options with regard to how to potentially consider expanded authorities beyond these programs in order to better facilitate innovative development financing, but that's not being considered as part of this budget implementation act.

Lastly, these legislative changes will not alter, in any substantive way, Canada's relationship with the World Bank or with the IFC.

The Chair: Okay.

We're open to questions.

Just to start those, how are the equity investments held? Just expand on the equity investments that you talked about, Nicole or Neil.

Mr. Neil Saravanamuttoo: Sure. The Government of Canada holds equity investments through multilateral development banks that have programs to do these. We're just a limited partner in those funds.

The Chair: Okay, does anyone else have any other questions?

Mr. Kmiec.

Mr. Tom Kmiec: I just have a quick question. You mentioned that this would enable the Minister of Foreign Affairs to hold equity through these three programs. I'm just curious. How common is it for other ministers to hold equity in other government-run programs? I would like a point of comparison here.

Ms. Nicole Giles: Do you mean across other countries or within the Government of Canada?

Mr. Tom Kmiec: I mean within Canada.

Ms. Nicole Giles: I don't know about other ministers.

Mr. Neil Saravanamuttoo: To be honest, we'd have to look into that and compare across the entire portfolio.

Essentially, what this program is doing is recognizing that there are times when there are different financing vehicles that are the most appropriate to achieve certain objectives. In the case of these programs, equity happens to be a component of that. That's why we were seeking authorities.

● (1735)

Mr. Tom Kmiec: Okay. Could we maybe get that information, if it's available within the Government of Canada? It's just out of curiosity, because I always thought the Minister of Finance would hold equity on behalf of the Government of Canada. I just want to know which other ministers have to do that in order to fulfill their obligations.

Ms. Nicole Giles: We can absolutely get that for you. To provide some context as well, these are authorities that many of the other ministers of foreign affairs or ministers of international development do hold in other countries so they're able to engage directly. We'll be aligning a little bit more with our other G7 partners on this.

The Chair: That's it. It was a shorter discussion than the previous one.

Thank you both once again. That will complete the discussion on division 3 of part 5.

We will call up those who are here for division 4, the Canada Deposit Insurance Corporation Act.

We have Mr. Dussault, senior chief, framework policy, financial sector policy branch, and Mr. Robinson, senior adviser-economist, financial sector policy branch.

Welcome. The floor is yours.

Mr. Manuel Dussault (Senior Chief, Framework Policy, Financial Institutions Division, Financial Sector Policy Branch, Department of Finance): Thank you.

I have a very short presentation, and then we can turn to questions.

The proposed amendments to the CDIC Act would clarify the treatment of and protections for eligible financial contracts in a bank resolution process. They aim to ensure an appropriate balance between a robust bank resolution tool kit that prevents mass termination of a bank's financial contracts in a resolution and adequate safeguards for the rights of parties to these contracts to manage their risk.

The proposed amendments clarify that, generally, the state preventing parties to eligible contracts from terminating those contracts for reason of insolvency or deteriorated financial condition of a bank applies only for a period of two days following entry of the bank into a CDIC resolution process.

Thank you.

The Chair: You're right. You were short. Thank you very much.

Are there any questions? All in, all done.

That was simple and to the point, gentlemen. Thank you very much.

Turning to division 5, Bank of Canada Act, we have Mr. Brown, director of financial stability, financial sector policy branch with the Department of Finance, and from the Bank of Canada, Mr. Graham, principal economist.

The floor is yours. Welcome, and thank you.

Mr. Justin Brown (Director, Financial Stability, Financial Sector Policy Branch, Department of Finance): Thanks, and good evening, everyone.

We'll provide a very brief overview and then be happy to answer any questions.

Part 5, division 5 relates to emergency lending assistance. Emergency lending assistance is a loan or advance to eligible financial institutions or financial market infrastructures at the Bank of Canada's discretion. It is designed to provide last-resort liquidity to individual financial institutions facing serious liquidity problems.

In 2015, the Bank of Canada modified its emergency lending assistance policy to include mortgages as acceptable collateral. This decision to accept mortgages as collateral significantly increased the capacity of eligible financial intuitions to draw on emergency lending assistance. It also provided the Bank of Canada with greater flexibility in the types of collateral it may choose to accept. However, under the Bank of Canada Act, the bank is legally required to lend on a secured basis, meaning it must obtain a valid first-priority security interest in any collateral pledged for emergency lending assistance. In the case of collateral backed by real properties, such as mortgages, this requires the transfer of the legal title and its registration in the land registry or title office where the mortgage is located. This process is time-consuming and effectively limits the quantity of collateral that can be pledged.

The proposed amendments seek to overcome these impediments and allow the Bank of Canada to take mortgages as collateral in meaningful quantities by allowing loans secured by real property to be pledged by assignment only, that is, transferring the rights to the mortgage without registration. The proposal also seeks to clarify existing provisions in the Canada Deposit Insurance Corporation Act, protecting the bank of Canada and the Canada Deposit Insurance Corporation's ability to exercise their rights as secured creditors on obligations secured by real property or immovables, whether on a secured or assigned basis. It's a related consequential amendment.

● (1740)

The Chair: Thank you, gentlemen.

Mr. Sorbara.

Mr. Francesco Sorbara: During the global financial crisis, a liquidity facility was entered into with the Bank of Canada. Does this relate to that or harken back to those days, these amendments?

Mr. Christopher Graham (Principal Economist, Bank of Canada): Which facility do you have in mind?

Mr. Francesco Sorbara: I believe it was $150 billion or $75 billion that was entered into with the Canadian banks. It gave them more liquidity in terms of the mortgages they had at the time.

Mr. Christopher Graham: Emergency lending assistance is something that we haven't used since 1986, so it's not related to that.

Mr. Francesco Sorbara: Thank you.

The Chair: Any questions for anyone else?

The bottom line is to provide greater security. Is that what this is all about?

Mr. Justin Brown: It's to allow the Bank of Canada to use mortgages as collateral in more meaningful quantities. Under the current policy, they would have to go to the local registry offices and register each individual mortgage, which would be time-consuming and might not meet the liquidity needs. This would allow them to do that in larger quantities.

The Chair: It's all about government efficiency.

Thank you, gentlemen. We'll call up division 6, which deals with the Payment Clearing and Settlement Act.

Mr. Vaillancourt is chief of the financial sector policy branch in the Department of Finance.

Welcome, Mr. Vaillancourt. The floor is yours.

[*Translation*]

Mr. Hugues Vaillancourt (Chief, Financial Sector Policy Branch, Department of Finance): Thank you.

Like my colleagues, I'm going to provide a quick overview of the proposed amendments. I would then be glad to answer any questions you have.

The Payment Clearing and Settlement Act gives the Bank of Canada responsibility for the oversight of payment and other clearing and settlement systems in Canada for the purpose of controlling systemic risk or risk to the payment system. The proposed amendments in part 5, division 6, strengthen the Bank of Canada's ability to identify risks to financial market infrastructures and to respond in a proactive and timely manner.

The proposed amendments to the Bank of Canada's powers are primarily meant to expand the bank's power to issue directives for a broader range of risks and situations; provide the bank with the power to approve significant changes to operations, rules, procedures, or other documentation related to the financial market infrastructure; and clarify the bank's ability to enter into oversight agreements with financial market infrastructures.

The proposed amendments will make it easier for the Bank of Canada to exercise its powers, duties and functions by providing more graduated tools to improve its oversight over financial market infrastructures.

[*English*]

The Chair: Okay. Are there any questions?

You said, “broaden its authority”. As a layman, it always worries me when somebody is going to broaden their authority and I'm on the other end of the pipe. I made a note, earlier in the bill.... “A clearing house shall provide the Bank with reasonable notice before making...any significant change in relation to the designated clearing and settlement system”.

How do you define “significant”?

Mr. Hugues Vaillancourt: We define it in the legislation. Let me just walk you through it.

The bank reviews significant changes for unintended consequences on the risk management practices of clearing and settlement systems to ensure that risk continues to be controlled. Presently, the PCSA—the Payment Clearing and Settlement Act—only requires designated systems to provide the bank with advance notice of significant changes to their design and operation. Given the ability of significant changes to impact risk management, it was proposed that this power be expanded to allow the governor the ability to approve significant changes prior to their implementation.

● (1745)

The Chair: Okay. Is there anyone else?

Thank you, Mr. Vaillancourt. You got off an awful lot more easily than the second panel we had today.

Mr. Hugues Vaillancourt: I have no comment on that.

The Chair: Thank you very much.

I call for division 7, the Northern Pipeline Act.

Ms. Lorraine McKenzie Presley is the director general of the portfolio management and corporate secretariat at Natural Resources Canada. With her is Mr. Victor Ndihokubwayo.

The floor is yours. Go ahead.

Ms. Lorraine McKenzie Presley (Director General, Portfolio Management and Corporate Secretariat, Department of Natural Resources): Thank you very much.

Good evening, everyone. What I'd like to do tonight is to quickly describe the issue and our proposed solution. Then we can respond to any questions you may have.

First, the Northern Pipeline Agency is a federal agency within the Department of Natural Resources' portfolio. It was established by the Northern Pipeline Act, and it is responsible for the administration of the act. The agency's core mandate is the federal regulation of the planning and construction of the Canadian portion of the Alaska Highway gas pipeline project.

The issue is that, at present, the agency is over-collecting its cost from TransCanada, which is the project proponent. This is an unintended consequence of the current cost-recovery regulations, as the agency is required to use estimated operating costs, as set out in the main estimates, to bill the proponent.

Our solution is to resolve the over-collection of funds permanently through a minor technical amendment to section 29 of the Northern Pipeline Act. Specifically, we are seeking a technical amendment through the cost-recovery framework used by the agency, as set out in section 29.

We are looking for two things. First, the amendment would allow the agency to recover its full cost from the project proponent based on its actual spending, its actual costs, rather than estimated costs, which is now the case. Second, the amendment would remove from the act the requirement to use the National Energy Board's cost-recovery regulations. The unintended consequence, as I mentioned before, is to cause the agency to over-collect from the project proponent because it uses estimated costs, as opposed to actual costs. The amendment would be simple and would allow the government to quickly, efficiently, and permanently address the issue and prevent future over-collection.

Why now? Budget 2017 identified the need to modernize or streamline the framework for recovering costs for this project. The government believes that this amendment would improve the existing cost-recovery framework, making it more efficient and enhancing transparency. Also, it is a federal responsibility to correct this over-collection issue and enable the repayment to the project proponent, and to do so as soon as possible.

To conclude, the proposed amendment would resolve the issue of over-collection permanently, which is a key element of the amendment we are seeking. This technical amendment, once approved, would allow the agency to bill the project proponent based on its actual costs rather than its estimated operating costs. The government is of the view that an improved cost-recovery mechanism would further support the agency in carrying out its federal responsibilities: first, to efficiently and effectively fulfill Canada's obligations as set out in the act and in the Canada-U.S. agreement, and second, to maintain a state of federal readiness should the proponent proceed with the construction of the northern portion of the project.

With that, I will open it up for questions.

The Chair: Who wants to start? Mr. Kmiec.

Mr. Tom Kmiec: It's about pipelines, so of course I'm going to ask a question.

How much is the Government of Canada over-collecting right now?

Ms. Lorraine McKenzie Presley: As of March 31, 2017, it's $4.8 million.

Mr. Tom Kmiec: Is this accumulated or on an annual basis?

Ms. Lorraine McKenzie Presley: It's accumulated.

Mr. Tom Kmiec: Okay. That's all.

The Chair: On that question, that money that's over-collected and accumulated, do you pay that back? Do you do it annually? How does it work? This is going to create more efficiency in the system.

● (1750)

Ms. Lorraine McKenzie Presley: That's right.

Currently the government has been relying on a provision under the Financial Administration Act, which allows the government to repay over-collected funds through remission orders. It is a repetitive process. It's inefficient. We have to do it every so often when we encounter this problem with the Northern Pipeline Agency.

This provision would allow us to halt this repetitive process. It would allow us to repay the proponent the monies that are owed right now, and in one remission order. We are proposing that. It's not part of this provision. It would just be done through the usual government mechanism. We would not have to redo that process again. This would basically eliminate this over-collection process, which is an unintended result of the current regulations that the NPA has to use.

The Chair: I take it that this particular cost recovery doesn't fall under the Service Fees Act?

Ms. Lorraine McKenzie Presley: No, it doesn't.

The Chair: It's a different act.

Ms. Lorraine McKenzie Presley: Yes, it's completely different.

The Chair: Okay.

Mr. Sorbara.

Mr. Francesco Sorbara: Just out of curiosity, the regulation of regulated pipelines done through the NEB using the cost of capital and assumed depreciation and all that stuff.... I can understand this avenue, but why follow this avenue versus just looking at the formula that's been used for this pipeline and changing that?

Ms. Lorraine McKenzie Presley: That's a very good question.

We looked at a number of different options, including the regulatory option. The way it works is that the Northern Pipeline Agency has one proponent, and the NEB does not, so it's a different scenario there. With dramatic fluctuations in the way that the agency has to bill the proponent, it causes it to over-collect based on the estimated costs that it bills the proponent on.

At the end of the year, we're looking at actual costs so that the proponent would only be billed based on actuals. That puts more efficiency in the system so that we're not billing up front, four times a year, based on estimates. We're actually billing once at the end of the year based on actuals. It would be more transparent to the proponent as opposed to using the formula that we have right now, which would perpetuate the problem that we're dealing with at the moment.

Mr. Francesco Sorbara: Okay. Thank you.

The Chair: Thank you, Lorraine and Victor, for your information. We will release you and go to division 8, Canada Labour Code.

Mr. Gagnon is a senior policy analyst with the labour program at Employment and Social Development Canada. Ms. Hill is a senior director in the labour program at Employment and Social Development Canada, as well.

Welcome. I'm not sure who's starting off, but the floor is yours. Ms. Hill, go ahead.

Ms. Margaret Hill (Senior Director, Strategic Policy and Legislative Reform, Department of Employment and Social Development): Thank you, Mr. Chair. I will begin.

Division 8 of part 5 of the budget implementation act is focused on proposed changes to part III of the Canada Labour Code, and the need in particular to provide greater flexibility for employees to give them more ways to balance the demands they face at work and outside of work.

Part III of the code, as you may know, establishes minimum working conditions for about 900,000 employees in the federally regulated private sector. That includes industries such as banking, telecommunications, interprovincial and international transportation, as well as federal crown corporations. Part III sets out the rules for things like maximum hours of work, minimum wages, hours of work, scheduling, and a number of leaves and provisions with respect to termination of employment. There is a total of about 18,000 employers who are covered by part III.

Nearly 60% of Canadians regularly say they are overloaded due to the pressures associated with the multiple roles they play at work and outside of work. Allowing employees to seek changes to where, when, and how they do their work, and also to take time away from work to deal with family and other responsibilities without fear of losing their jobs benefits employees and employers. There are benefits through improved well-being, reduced absenteeism and presenteeism, better recruitment and retention of labour, better employee engagement, greater labour market attachment, and increased productivity in innovation.

With this in mind, division 8 proposes three sets of changes to part III of the code.

The first is to introduce a right for an employee to request changes to the terms and conditions of their employment related to the number of hours they work, their work schedule, and the location of their work, on a temporary or permanent basis. An employee would be able to make an unlimited number of requests, subject to any regulations that may be set at a later point in time. The employer could refuse a request on specific grounds, such as the cost being burdensome, or that accepting the change would have negative impacts on business performance. The employer would be prohibited from taking reprisal against an employee who makes a request for flexible work arrangements.

The second set of changes relate to the creation of three new unpaid leaves that would allow employees in the federally regulated private sector to take job-protected time away from work. The first is an unpaid family responsibility leave of up to three days. The second is unpaid leave for victims of family violence of up to 10 days. The third is unpaid leave for traditional aboriginal practices of up to five days. The existing bereavement leave under part III of the code would also be enhanced, adding to unpaid days, and giving employees more flexibility with regard to when they actually take their bereavement leave.

The third and final set of changes is being proposed in order to implement the right to request, codify certain existing practices, and remove a provision that is outdated. These changes would amend provisions related to hours of work, annual vacations, and general holidays—again, to allow more flexibility. The changes would also repeal an existing provision that requires a commission of inquiry to be established before certain hours of work regulations are put in place or changed.

● (1755)

The Chair: Thank you, Ms. Hill.

We turn to Ms. O'Connell for the first questions, then Mr. Dusseault, and Mr. McLeod.

Ms. Jennifer O'Connell (Pickering—Uxbridge, Lib.): Thank you, Mr. Chair.

My first question is in regard to the consultations you had on this, whether it was the unions or other labour departments.

Can you speak to the consultation that was done in coming up with these changes?

Ms. Margaret Hill: Extensive consultations were held in 2016. More than 1,000 Canadians and stakeholders participated. The previous minister held round tables in five locations across the country, one of them by video conference. We also ran a survey, which was open to all Canadians, all associations, all organizations, to get their views on what flexible work arrangements the federal government should move forward on. In total, there were over 1,000 representatives of labour and employer organizations, university experts, not-for-profit groups, advocacy organizations, and of course, individual Canadians.

Ms. Jennifer O'Connell: Thanks.

Were the public service unions involved and consulted?

Ms. Margaret Hill: Yes, certainly the Public Service Alliance of Canada was involved. I would note that these changes to part III do not apply to the federal public service. But yes, they were involved and they were very helpful.

Ms. Jennifer O'Connell: Thank you.

In regard to the change around unpaid leave for victims of family violence of up to 10 days, who does that include? I would assume, for example, that there could be a number of scenarios that this could impact, sadly, but it could be individuals who had violence done to them or also, I would assume, a family member. Are there provisions around who this applies to or where this would be applicable?

● (1800)

Ms. Margaret Hill: This new leave would provide up to 10 days of leave per calendar year for victims of family violence and parents of a child who is a victim of family violence.

Ms. Jennifer O'Connell: Thank you.

My last question is around unpaid internships. Are there changes to this? Can you speak about how this came about—I'm assuming through the consultations—and what these changes will mean?

Ms. Margaret Hill: We're actually going to talk about unpaid internships in the next division.

Ms. Jennifer O'Connell: I'll leave it there. Thank you.

The Chair: Go ahead, Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Thank you, Mr. Chair.

I'd like to thank the witnesses for being with us today.

How much did you rely on 2006's Arthurs report?

Ms. Margaret Hill: I actually have it here, in front of me.

Mr. Pierre-Luc Dusseault: To what extent are the amendments based on the report's findings?

[*English*]

Ms. Margaret Hill: The Arthurs report is obviously a touchstone for federal labour law and federal labour reform. The report in 2006 is linked to several of the ministers' mandate letter commitments. In the particular case of these sets of amendments, the right to request flexible work arrangements was one of the recommendations, and there was also a recommendation from Dr. Arthurs with respect to leave for family responsibilities.

The one thing I would highlight is that since 2006, more than 10 years ago, the world of work has changed significantly. In the meantime, some changes have been made to the code, particularly with respect to strengthening care-related leaves that employees are entitled to—compassionate care leave and things like that.

[*Translation*]

Mr. Pierre-Luc Dusseault: The report recommends 10 days of leave for family responsibilities. Why, then, did you propose only three? What was the basis for proposing three days of leave, versus four, six, or 10?

[*English*]

Ms. Margaret Hill: Indeed, Dr. Arthurs recommended 10 days. As I said just a few moments ago, since 2006 the code has been amended to provide a number of new leaves related to caring for family members. For instance, there is now a 28-week compassionate care leave, 37 weeks for which employees are entitled to provide care for a critically ill child, and a new leave for employees who experience the death or disappearance of a child, of 104 weeks and 52 weeks respectively. Most recently, as of this December, a new 17-week leave to care for a seriously ill adult will come into force. The difference between three and 10 is partly due to these other kinds of care-related leaves being introduced.

I would also say that the family responsibilities leave in the immediate package is part of a package that would introduce a total of 18 days of leave for employees, some again related to family responsibilities.

Finally, if you look across the country in other jurisdictions, you'll see that provinces and territories generally provide from three to 12 days of family leave, so we're right in the ballpark.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you for your answer.

Overall, do you also look to provincial regulations in establishing Canada's labour standards? I would think you do a pretty comprehensive review of all the provincial rules. How much did you rely on those rules? Why do you decide to give more weight to one province's regulations over another's?

[*English*]

Ms. Margaret Hill: Part of our due diligence as public servants is to look at comparable leaves and, in fact, different kinds of leaves that are offered in jurisdictions across Canada, but also internationally. Sometimes it's a question of the federal private sector being quite laggard compared with other jurisdictions. Those are the kinds of things that we take into consideration, as well as the whole package of leaves and other supports that are provided under part III to employees and their employers.

● (1805)

[*Translation*]

Mr. Pierre-Luc Dusseault: My last question has to do with something you mentioned. I am referring to the proposed flexible work arrangements provisions and new subsection 177.1(3), which lists the grounds on which the employer may refuse to make the requested change.

As I see it, the scope is so broad that the employer could, practically speaking, refuse to grant any request at any time, without having to provide any sort of evidence. It would be very easy for the employer to claim that the requested change would have a detrimental impact on the quality or quantity of work in the establishment. What's more, the additional costs mentioned are not clear. The employer may even cite “any ground prescribed by regulation”, which will open the door to a myriad of excuses.

Why did you choose to cast such a wide net in terms of the employer's grounds for refusing a request, as opposed to limiting those grounds, thereby giving the employee a recourse mechanism at the end of the process? To my mind, recourse will be limited given how many excuses are available.

[*English*]

Ms. Margaret Hill: I just want to be certain. We are talking about the right for the employer to refuse a request for flexible work arrangements? Yes.

It's proposed that there would be three reasons for which an employer could turn down a request for flexible work arrangements. The first is if it would cause additional costs that are burdensome for the employer or have a detrimental impact on the business. The second is if there would be insufficient work available for the employee as a result of the change in working arrangements. The third is if the work cannot be reorganized or replacements recruited. As you note, there is provision for regulatory authorities.

The model that was used for the right to request is very much informed by practice in New Zealand and the United Kingdom, which introduced a right to request several years ago. These provisions mirror very closely those that are in the United Kingdom. There is ample evidence that suggests they have been quite successful. Guidance is provided by labour inspectors about how these criteria should be interpreted.

I think it's also important to note that during the consultations that we held, we regularly heard concern from employers—small and medium-sized businesses, for instance—about what these criteria should be. There was an agreement amongst almost all stakeholders that there needed to be a formality around the process. There needed to be a way for employers to reject a request for flexible work arrangements.

The reason why the regulation-making authority is there is that, if we get it wrong, it will allow us to make adjustments, depending on the experience that evolves once the changes take effect.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you.

[*English*]

The Chair: Thank you both.

Mr. McLeod is next.

Mr. Michael McLeod: I'll be quick.

I really like the section on paid leave for traditional aboriginal practices. As a person who has worked with aboriginal people my whole life, I know that when the geese are flying, when the fish run is on, or when it's moose season, that's usually the time when we lose a lot of aboriginal employees.

I'm curious because I know that moose hunting.... I'm the only Liberal MP that lives in an aboriginal community, I believe. My relatives and the elders in my community probably could take just a couple of days to go get a moose or a caribou, whereas if it were me, it might take more than five days or a couple of weeks maybe. My skill level is not the same.

Anyway, I'm curious as to how the department consulted with indigenous Canadians when it determined that the five days of leave was the number for traditional aboriginal practices.

● (1810)

Ms. Margaret Hill: One of the consultations, regional round tables, that I mentioned was specifically done with indigenous people from indigenous communities, employers who had indigenous employees, chambers of commerce in the north, and things like that. A telecommunication company, the Aboriginal Peoples Television Network, was the one that was done by video conference just because it was easier to do it that way. That's how they were consulted.

You may be interested to know that in the discussion paper that was released to underpin the consultations, specific reference was made to a leave for people to participate in indigenous practices. It generated a lot of discussion, almost all of it positive. In fact, a number of employers told us that they already offer that kind of leave. Our estimate is that about 25,000 employees in the federally regulated private sector could potentially benefit from this leave.

In terms of the five days—because this is a groundbreaking leave—we have a very unique data base of collective agreements across the country, not just federally regulated. We found 21 federally regulated employers, unionized, who have collective agreements for these purposes. They range from offering two days to seven days, and most of them were five days. We tried the five out with the people we consulted with, and they thought that was a good number, that it made sense to them.

Mr. Michael McLeod: I'm going to assume, from what you said, that there is strong support from the aboriginal and indigenous organizations.

Who determines what a traditional aboriginal practice is? Is that defined somewhere?

Ms. Margaret Hill: In the proposed legislation, it indicates that the leave would be to participate in traditional indigenous or aboriginal practices including hunting, fishing, and harvesting. That's a suggestive list. These three things were things that were clearly identified for us as practices. There would obviously be other practices that would satisfy the requirements to take this leave.

Mr. Michael McLeod: As I said, I live in a small aboriginal community. When court is going to be held, and there is jury duty, they need all these potential jurors. The community I live in has 800 people in it, and they put a call out for maybe 250 people to show up for jury selection. It shuts down the whole town. The school and the stores shut down because there is nobody left to work.

What is in this to protect the employers if they have a staff of 10, and they are all indigenous, and they all want to take unpaid leave at the same time? Is there a mechanism so that there is a way that the employer can decide he needs a certain number of people to operate?

Ms. Margaret Hill: In fact, one of the employers we spoke with described a similar situation. What they told us was that they, as an employer, took quite significant efforts to make sure that people were flown in to the town to be able to keep operations going, or work was adjusted in terms of when it got done.

The Chair: Thank you, Mr. McLeod.

We'll have Mr. Kmiec and then Mr. Fergus.

Mr. Tom Kmiec: Mr. McLeod asked all the great questions I was going to ask on that specific section, but I have more. I always have more.

On the leave for traditional aboriginal practices, in proposed paragraph 206.8(1)(d) it says “any practice prescribed by regulation”. To Mr. McLeod's point, who then gets to decide what will be prescribed in that regulation?

● (1815)

Ms. Margaret Hill: That's a power that's given to the Governor in Council. In compliance with the federal regulatory process, which I'm sure you're familiar with, any proposed regulations would go through consultations, various prepublications, and things like that.

Mr. Tom Kmiec: Which minister, then, would be responsible for filling that in? Would it be a regulation or go through the Standing Joint Committee for the Scrutiny of Regulations?

That's kind of the catch-all term for anything that could be missed that's not hunting, fishing, or harvesting.

Ms. Margaret Hill: Right, and that was the “including” part.

Mr. Tom Kmiec: It says in the documentation, though, that the employer can then request in writing from the employee documentation to prove all the things in the leave, but it also says:

> The employee shall provide that documentation only if it is reasonably practicable for him or her to obtain and provide it.

Can you explain what that means? If I go on a hunting trip to hunt moose because I need to, because I live in a community that doesn't have a grocery store, which a lot of communities, even in northern Alberta, lack, do you want me to bring the sausage into the office to show you or the hunting licence, or...?

Ms. Margaret Hill: The provision, as I recall, is that the documentation relates specifically to the issue of whether the employee is an aboriginal person.

Mr. Tom Kmiec: Okay.

Ms. Margaret Hill: It's not the purpose.

Mr. Tom Kmiec: Is it a status card? In the case of Métis...?

Ms. Margaret Hill: They would need to be Métis, Indian, or Inuit, which is the definition in the Constitution.

Mr. Tom Kmiec: In the case of the Métis, in Alberta, for instance, there are really two types. There's the Métis Nation of Alberta, and you can get a card through them. They have their own process for confirming whether you are a member they will recognize. There's also the Metis Settlements General Council. We have settlements in Alberta that have been given authority and the ability to designate who is a member of their community. There are almost two definitions there.

Would a federally regulated employer in the province of Alberta be able, then, to determine which one they use, or are they supposed to use both for the purposes of this documentation?

Ms. Margaret Hill: Do you want to try that one, Réal?

Mr. Réal Gagnon (Senior Policy Analyst, Strategic Policy and Legislative Reform, Labour Program, Department of Employment and Social Development): The act has been drafted taking into consideration all the situations of all the aboriginal groups in the north of provinces and sometimes in the south, in Quebec, Ontario, and all of that. Some have a kind of status, if I may say so, and some don't. Actually, we heard that Métis sometimes don't even have any card, any status, and all of that.

We drafted it so that if it's reasonably practicable to document and to prove it, yes, but basically the employer will have to rely on good faith and on the goodwill of the person who says, “I'm aboriginal”. The person may claim that, yes, it was traditional practice, but that's not what they have to document. They have to document that they are aboriginal, but there are situations where there won't be any card, any status, or any documentation to prove it, and they shouldn't be denied. We don't want to exclude these aboriginal people.

Ms. Margaret Hill: I would add that the leave is for five days and it's unpaid, so the chance that someone would falsely claim an entitlement is probably quite small.

Mr. Tom Kmiec: I have another question. In the section on leave for victims of family violence, what definition of “family violence” is used?

Ms. Margaret Hill: There is a regulation-making authority provided for in the proposed legislation to define “family”. At the moment, the most recent definition of “family” in the code is the one related to compassionate care. Logically, that would be a similar one to emulate. It is quite inclusive.

● (1820)

Mr. Tom Kmiec: Proposed subsection 206.7(3), under “Exception”, says:

> An employee is not entitled to a leave of absence with respect to any act of family violence if the employee is charged with an offence related to that act or if it is probable, considering the circumstances, that the employee committed that act.

I understand the purpose of this. In cases of domestic violence, a person can say that they need time off because they hit their spouse. I understand that, but what about in the cases where it's not clear cut, where it's not perfectly obvious? Doesn't this put the supervisor, the employer, in an odd position in having to decide before the court decides if the person is guilty, not guilty, or guilty enough to not be able to take advantage of this leave section?

Ms. Margaret Hill: That's a very important question. I think you've zeroed in very quickly on why it's there. The main purpose of this leave is to provide people in untenable situations with support quickly. Being charged with an offence is dealt with through a formal legal or justice system exercise, and as you say, it can be timely. It can take much time.

Based on common law jurisprudence, an employer cannot take frivolous or vexatious allegations or hearsay, say, from a false accuser in making their decision about whether the employee is entitled to take the leave or not. In addition, the provision is very clear that the employer must consider the circumstances of the individual claiming the leave and assessing whether it's probable that the employee committed the offence. Probability at law is much more than just possibility, so the threshold is set quite high for denying the leave.

Again, as in the case of the leave for traditional indigenous practices, the risk that someone would take 10 unpaid days off is probably quite minimal.

Mr. Tom Kmiec: Is there an appeal to this decision? Let's say I ask my employer for time off related to this and they say no, because they think I did it. Based on the circumstances, is there an appeal mechanism? The document is so disjointed sometimes it's hard to tell what you can and cannot do, considering there are other sections of the act that I don't have in front of me.

Ms. Margaret Hill: Yes. There are provisions elsewhere in the code that relate to challenging a decision, filing a complaint, and they would all apply to this particular leave. If someone claimed, for instance, they had been denied the leave unjustly, they could make a complaint to the labour program of the Government of Canada.

Mr. Tom Kmiec: You have in here in proposed subsection 206.7 (5), “Documentation”. I see the same type of section is repeated in different ones. In the case of domestic violence with spouses involved, a lot of the documentation being requested could be either legal documents or really personal documentation.

I was a registrar for the HR profession in Alberta, and I would probably never counsel any of my members to request that type of documentation in their workplace, just because then you have to keep it either on paper in your office or as a digital copy, and there is the risk that somebody might find it or use it improperly. It says, “only if it is reasonably practicable for them to obtain and provide it”. It would obviously be easy for them to fight it because it would have it be legal documentation. It would be pictures.

Why have that section in here for the employer to request it? Could the person also appeal and say they didn't want to provide it because it's very personal?

Ms. Margaret Hill: It's very standard under the Canada leave provisions with respect to leaves that someone who is seeking leave indicates to their employer the purpose and the duration of the leave. In the particular case of family violence leave, under the proposed changes an employee would need to indicate that they wished to take this particular leave, and in proposed subsection 206.7(2), the specific reasons for which the leave can be taken are enumerated. Those are things like seeking medical attention or obtaining services from a victim support organization.

To be eligible for the leave, the employee needs to indicate the reasons. Nothing requires an employee to provide any more information. They just need to say they need to seek medical attention or they need to take their child to their family physician to seek medical attention.

● (1825)

Mr. Tom Kmiec: That would be the limit of what would need to be provided to satisfy that section?

Ms. Margaret Hill: Yes. That information would be part of the education, outreach, and awareness-raising that the labour program inspectors would do with workers and employers should these changes be implemented.

I'd like to highlight one other thing, and I think it's very relevant to this because you've identified a very important question around confidentiality. It's important to remember that federally regulated private sector employers are subject to the Personal Information Protection and Electronic Documents Act, known as PIPEDA to its friends.

Under the legislation, an employer must obtain an individual's consent when they collect, use, or disclose personal information. The business must provide assurance that the information will be protected by appropriate standards. The reason there aren't more details about this in the code is that this other legislation applies across the code, or at least with respect to part III.

Mr. Tom Kmiec: My colleague just showed me the section. It says, “The employer may, in writing and no later than 15 days after an employee’s return to work”.

Ms. Margaret Hill: Yes.

Mr. Tom Kmiec: I want to to understand the context under which you would ask for it after the fact. Usually when you ask for leave, you tell the employer the situation you're in, and now you have all these extra sections under which you could get unpaid leave. Why would you ask for it after the fact? Is it just for documentation purposes?

Going back to my time in human resources, I would think once I've given you your leave, why would I need to confirm that I made the right decision to give you the leave to start with? If I did that, I'd be stuck with all these personal documents that I now need to protect under PIPEDA and other provincial acts that regulate other portions of my business. I would rather not even ask for this information.

Ms. Margaret Hill: That's our understanding of what will happen based on our consultations. The emphasis on “after the return to work” is consistent with other leaves in the code. In particular, in the case of family violence, there are circumstances where a woman, man, or child needs immediate care, and the last thing they need to be worried about is providing appropriate documentation.

Mr. Tom Kmiec: Okay.

The Chair: We have one more questioner and I remind members that we have a hard stop at 6:30 because some members have to speak in the House. We will finish this section, and the only other time we have to finish these divisions is probably 5:15 to 5:45 on Wednesday night.

Mr. Fergus.

Mr. Greg Fergus: Thank you very much.

During my time as a member of Parliament I've had the opportunity to meet with parents of children who are severely disabled. I noticed that there are no new dispositions that refer to them. Are there other dispositions in the law that refer to employees who have children with severe disabilities and who need to take off regular time to provide that basic duty of care?

Ms. Margaret Hill: During the consultations we held, we heard very powerful stories from groups representing people with disabilities, not just children. We heard from people with various kinds of illnesses that may be episodic and affect their ability to be in a workplace.

You are correct that there is nothing new in these changes, particularly with respect to children with disabilities. That being said, caring for children with disabilities or caring for other family members for other reasons is a fundamental principle of these proposed changes. Under the Canadian Human Rights Act, there are protections for employees who have family responsibilities, so there's also that avenue if they feel they are not able to agree with their employer on alternative work arrangements that allow them to look after their child, or an elderly parent, or to access family responsibility leave.

● (1830)

Mr. Greg Fergus: I'll wrap it up there.

The Chair: That should end this division. You'll have to come back again, Ms. Hill, for the economic action plan, which is another division. My apologies to those in the room who will have to come to before committee, I expect, on Wednesday night again.

Thank you, Mr. Gagnon and Ms. Hill.

The meeting is adjourned.