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The Honourable Wayne Easter

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● (1835)

[*English*]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): We'll call the meeting to order. I think, as everyone knows—they've heard this speech many times—we're dealing with the budget implementation act.

First of all, I understand that there are officials here for every division, and I do apologize. I know a good many people may have had plans tonight, and we really appreciate your coming to appear before our committee and breaking whatever plans you may have had.

We'll start with division 4 of part 6, which is "Securities Issued or Guaranteed by Foreign Governments". We have Mr. Nick Marion, who is the director of reserves management, financial sector policy branch, Finance; and Mr. Grahame Johnson, managing director, funds management and banking department, with the Bank of Canada

Welcome. You have a short statement, I believe, and then we'll go from there.

Mr. Grahame Johnson (Managing Director, Funds Management and Banking Department, Bank of Canada): Thank you, Mr. Chairman.

Thank you for the invitation to discuss the proposed legislative changes in Bill C-74 to the Bank of Canada Act.

Under section 18(d) of the act, the Bank of Canada has the authority to buy or sell securities issued or guaranteed by the government of the country in the European Union. The Bank of Canada is proposing amendments to the act in anticipation of the United Kingdom's exit from the European Union. These amendments would ensure that the Bank of Canada can continue to buy and sell securities that are issued or guaranteed by the United Kingdom.

That's really it. I'd be happy to take questions if there are any. It's a technical amendment reflecting the Brexit vote.

The Chair: That's the Government of Canada being proactive, I believe.

Are there any questions?

Mr. Kmiec.

Mr. Tom Kmiec (Calgary Shepard, CPC): Thank you, Mr. Chair. I'm so happy we're here this evening. It's a wonderful thing.

The exchange fund account, how much does it have in it right now?

Mr. Grahame Johnson: The size of the exchange fund account is about $75 billion U.S.

Mr. Tom Kmiec: Is that account for the securities of all the different European Union members?

Mr. Grahame Johnson: No, the currencies that are held in it are U.S. dollars, euros, Japanese yen, and sterling. The euro-denominated securities would include countries such as Germany, France, and the Netherlands, but not all European members.

We have an internal credit rating assessment group. The statement of investment policy stipulates that securities must be of a minimum investment grade. It's roughly equivalent to single A-. We have an internal credit rating group that examines the rating of the sovereigns, assigns a rating to them, and investment is restricted to those entities that meet the minimum credit standards.

Mr. Tom Kmiec: Basically, does this technical amendment make it possible, whether it's a soft Brexit or a hard Brexit, for the Government of Canada to able to continue to purchase United Kingdom securities?

Mr. Grahame Johnson: The Bank of Canada would be able to continue to purchase and sell securities issued or guaranteed by the United Kingdom, yes. Without the amendment, the United Kingdom is not in the current legislation specifically broken out from members of the European Union.

Mr. Tom Kmiec: Good.

The Chair: Mr. Poilievre.

Hon. Pierre Poilievre (Carleton, CPC): Can you list the types of securities?

Mr. Grahame Johnson: They're all investment-grade, fixed-income securities mostly issued by sovereigns, but there are some super-sovereigns and agencies as well.

Hon. Pierre Poilievre: Basically, they are treasury bills and government bonds.

Mr. Grahame Johnson: That would be correct, yes, the bulk of the portfolio. There would be some issued by agencies or government-guaranteed entities, but this is an extremely liquid, very high-quality portfolio.

Hon. Pierre Poilievre: By extremely liquid, does that mean you're buying short term?

Mr. Grahame Johnson: No, securities can go out to ten and a half years, but given the nature of the securities we purchase, a ten-and-a-half-year U.S. treasury, bund, OAT, or U.K. gilt would be extremely liquid.

Hon. Pierre Poilievre: Because you can sell them instantly.

Mr. Grahame Johnson: Right.

Hon. Pierre Poilievre: Okay.

The Chair: Mr. Kmiec.

Mr. Tom Kmiec: Just so I can better understand the mechanism, you said $75 billion U.S., but I have a sheet here that says $86.6 billion from January 2018 is the market value.

Mr. Nicolas Marion (Chief, Capital Markets and International Affairs, Securities Policies Division, Department of Finance): I'll give you a few points of clarification with respect to the figures. I think $86 billion is the totality of Canada's official international reserves. Within that, there is a portion that are within the exchange fund account. Within the exchange fund account, we have the fixed-income securities that Mr. Johnson spoke about, as well as special drawing rights issued by the IMF.

Mr. Tom Kmiec: So there is $75 billion of liquid assets, like cash from currencies of other countries, and the difference then is $11 billion for everything you just mentioned including special drawing rights.

Mr. Nicolas Marion: There is the IMF reserve position as well.

Mr. Tom Kmiec: Okay. There's a subsection amendment here to the Currency Act to allow the Minister of Finance to make payments from the exchange fund account to the consolidated revenue fund. Is that part of it too? Is that just so you can flow money from this international account to the general revenue fund? Is that where it's going?

Mr. Nicolas Marion: There are two points here.

Mr. Chair, if you would like us to speak about the next division—

Mr. Tom Kmiec: Sorry, have I moved on too far?

The Chair: Why don't we do that? We'll put division 5 on as well, for which we have the same witnesses.

That's on the exchange fund account, and we'll deal with questions on both, Pierre.

If Nick and Grahame can give their opening statements on division 5, then we'll have questions on both 4 and 5.

Mr. Nicolas Marion: Would you like us to proceed with that now?

The Chair: Yes, please.

Mr. Nicolas Marion: Excellent, Thank you, Mr. Chair.

The exchange fund account represents the largest component of Canada's official international reserves. In 2011, the government announced that the exchange fund account would be part of the government's prudential liquidity plan if, for instance, markets were severely disrupted or inaccessible.

The proposed technical amendments in division 5 of part 6 would clarify this objective by stipulating that the exchange fund account may provide a source of liquidity for the Government of Canada. The amendments would also clarify that funds in the exchange fund account can be transferred to the consolidated revenue fund.

● (1840)

The Chair: Mr. Dusseault.

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Just on the first point, without this amendment, the Bank of Canada would not be able to buy securities from the U.K. post-Brexit?

Mr. Grahame Johnson: That's correct.

Mr. Pierre-Luc Dusseault: The legislation provides the authority for any securities that you can buy on the market?

Mr. Grahame Johnson: Yes. The powers of the Bank of Canada are very specifically spelled out in the Bank of Canada Act and we cannot deviate from those at all. Specifically, the United Kingdom was included in the euro area countries. It may well no longer meet that definition, and this is a technical amendment to adjust that contingency.

Mr. Pierre-Luc Dusseault: Thank you.

The Chair: Mr. Kmiec.

Mr. Tom Kmiec: To go back to my question then on clause 224, which allows the Minister of Finance to make payments from the exchange fund account to the consolidated revenue fund, you're saying it's a technical amendment, so would this apply only to the U.K. or is this a broader change to modify how the money is transiting? With the consolidated revenue fund, would this give ministers of finance access to the international fund to transfer between the two accounts, or would it be just one way?

Mr. Nicolas Marion: This is a technical amendment in the sense that the policy was announced by the government back in 2011 and it has been reiterated in every subsequent budget that the funds within the exchange fund account would be available for liquidity purposes if, for instance, domestic markets were severely disrupted and the government couldn't borrow on domestic markets—

Mr. Tom Kmiec: Now I have a question before you go on, because I'm going to lose my train of thought.

How are the transactions reported to the public and to parliamentarians?

Mr. Nicolas Marion: There are a couple of different ways. There is a statutory requirement for the minister to report on the exchange fund account, on the management of Canada's official international reserves, on an annual basis. It's a document that's tabled in Parliament, typically in October, for the previous fiscal year. In addition to that, Canada adheres to IMF reporting standards, which require us to report monthly the position of the exchange fund account five days after the closing of the month.

Mr. Tom Kmiec: Would it be true to say the only mechanism that exists to make it public is that money has moved from this exchange fund into the consolidated revenue fund?

Mr. Nicolas Marion: Under the Currency Act, there is currently a mechanism for advances to be made from the consolidated revenue fund to the exchange fund account. That mechanism exists, and some would suggest that the concept of advancement of funds embodies a concept of being able to transfer the funds back. However, from a legal perspective, we wanted to make sure it was crystal clear.

Mr. Tom Kmiec: In the legislation?

Mr. Nicolas Marion: Exactly.

Mr. Tom Kmiec: I'll go back to one of the first questions I had. This is a one-way process, correct? This would be going from the exchange fund to the consolidated revenue fund—and a public reporting mechanism exists already—but it wouldn't happen the other way. That would be done through the regular estimates budgetary process, and it would have to be reported that the government is putting money back in.

Mr. Nicolas Marion: The reporting mechanism exists in terms of the positions of the exchange fund account, so that isn't being changed here, and amendments aren't being made to the requirements with respect to monthly and annual reporting.

This is simply to clarify that it is in fact a two-way street, and that funds can move from the CRF to the EFA, but EFA funds can also move to the CRA.

● (1845)

Mr. Grahame Johnson: The Currency Act stipulates that advances can go from the CRF to the exchange fund account, and from the exchange fund account to the consolidated revenue fund, so it does move both ways.

Also, on the Bank of Canada's website we report the size and composition of the reserves on a weekly basis, so any change in the size or composition would be available on notice to the public on a weekly basis.

Mr. Tom Kmiec: Good.

The Chair: Mr. Poilievre.

Hon. Pierre Poilievre: Is the total value of the exchange currency fund considered on the balance sheet of the Government of Canada?

Mr. Nicolas Marion: We have to report the assets on the balance sheet, but the fund is held in the name of the Minister of Finance and is reported on the balance sheet. It is managed with an asset-liability framework. For every dollar of asset, there's an equal liability. From a net position, it effectively neutralizes one with the other.

Hon. Pierre Poilievre: The market debt of the Government of Canada is about $1 trillion, and the net debt that Finance Canada reports is $669 billion this year. Is this exchange fund one of the assets that explains the difference?

Mr. Nicolas Marion: It's both an asset and a liability, so to fund the assets in the EFA, the predominant mechanism is to issue government debt in the domestic market and then synthetically convert it into a foreign currency funding tool through a cross-currency swap. From a debt issuance perspective, the portion that is issued in domestic debt would be part of those $600 or so billion.

The Chair: However, it zeroes itself out, right?

Mr. Nicolas Marion: Correct, with the asset.

Mr. Grahame Johnson: These are financial assets. Translated to Canadian dollars, they represent over $100 billion in financial assets that would be an offset to come to the net debt amount.

Hon. Pierre Poilievre: It is one of the assets that explains the difference between the $1 trillion in market debt and the $669 billion of net debt.

Mr. Grahame Johnson: Yes.

Hon. Pierre Poilievre: You say it's $75 billion U.S. and $100-something billion—

Mr. Grahame Johnson: Yes, it's $105 billion Canadian equivalent.

Hon. Pierre Poilievre: You were just explaining to my colleague that you update the transactions monthly.

Mr. Grahame Johnson: On the Bank of Canada's website, we publish weekly, high-level updates of the size and currency composition. Monthly, more detailed reports are published on the Department of Finance's website, and on an annual basis there's the official report on the international reserves, which gives a much more fulsome and detailed explanation of the holdings and activities.

Hon. Pierre Poilievre: Obviously, the value in Canadian dollars of these currencies fluctuates, so do those fluctuations not affect the balance sheet of the Government of Canada?

Mr. Grahame Johnson: No, they don't, because the beauty of the way we manage the reserves—and we're somewhat unique in this way—is, as Mr. Marion mentioned, by doing an asset and liability hedge. If we own a 10-year U.S. treasury, for example, that is funded with a 10-year U.S. dollar obligation, so the currencies are matched. We are long U.S. dollars owned in the treasury, and we are short U.S. dollars in the funding of that, so the currencies are matched.

The interest rate exposure is matched, so movements in either exchange rates or interest rates have no net impact on the fiscal position of the Government of Canada. We do manage to earn a small positive return, because—happily—the interest rate we pay to fund these reserves is a little bit lower than the interest rate we receive on the assets.

Hon. Pierre Poilievre: That's because other governments are paying higher yields than we are at present.

Mr. Grahame Johnson: Yes, sir.

Hon. Pierre Poilievre: Not to stray, but do we expect that to continue?

● (1850)

Mr. Grahame Johnson: It has been the case for some time, and I'm extremely reluctant to forecast interest rates, because that's a bit of a losing game. However, we are setting the portfolio up. It has maturities out to ten and a half years, and we lock the funding in. I think, as portfolio managers, we're reasonably confident that we can continue to earn a small but positive return for our forecast horizon, which I would say would be two to four years.

Hon. Pierre Poilievre: When was the last time the Bank of Canada owned, as part of this portfolio, precious metal like gold?

Mr. Grahame Johnson: Just to remind you, the portfolio is held in the name of the Minister of Finance. We do manage it, but it is the property of the Minister of Finance of the Government of Canada. It has been a while since we've held gold. I don't know exactly. We can confirm. I believe it was 2001 when the last of the gold was sold.

Hon. Pierre Poilievre: I have one final question. Does the Bank of Canada—the governor, for example—have any authority to restrain a finance minister's ability to draw on these exchange funds? As you pointed out multiple times, this is funded in the name of the Minister of Finance. Does he have absolute discretion?

Mr. Grahame Johnson: It is held in the name of the Minister of Finance, and he has discretion to use the funds.

Hon. Pierre Poilievre: Thank you.

The Chair: Mr. Dusseault.

Mr. Pierre-Luc Dusseault: I have just a small question. You said that now in the law it's for one-way streets, and you want to clarify that it could be a two-way street or process. Do you mean it's already something you do or have done from the exchange fund to the consolidated revenue fund, or have you done it before, and it's just to clarify in the law that you can actually do it?

Mr. Grahame Johnson: We have done it before. It's normal practice in very small amounts, and that is because, as I said, the exchange fund account earns a little bit more in interest than it pays in expenses; so over time you build up a positive balance. We do try to manage it on hedged basis, so over time, as the amount of the unhedged builds up, we transfer that out into the consolidated revenue fund.

As well, if there were times when the size of the exchange fund account needed to increase, there was a commitment to keep it at a minimum of 3% of nominal GDP. When that was increasing, it would obviously have to be funded by money from the CRF. It does happen, then, and under the legislation it's permitted.

This is simply—as Mr. Marion said—a technical amendment to bring the Currency Act consistent with other legislation and policies that have been regular practice for some time now.

Mr. Pierre-Luc Dusseault: The law already provides you with the authority to do it, then. I'm just wondering why we are doing this amendment if it's already something that is happening.

Mr. Nicolas Marion: The law currently provides that monies can be advanced to the exchange fund account from the consolidated revenue fund. Also, for those who look at the legal meaning of "advance", some would say that there is an inherent concept of being able to pay back those funds. This is where we want it to be crystal clear with effect to the authorities in the legislation that this is in fact what is possible. The law currently provides the authority for net revenues from the EFA to flow back to the CRF, and that's already very crystal clear in the act.

Mr. Pierre-Luc Dusseault: Okay, thank you.

The Chair: Thank you very much, Mr. Marion and Mr. Johnson.

We'll turn to division 6, "Bank Notes". From Finance, we have Marie-Josée Lambert, who has been here before, I believe; and from the Bank of Canada, Mr. Richard Wall.

Who will give us the short overview?

● (1855)

[*Translation*]

Ms. Marie-Josée Lambert (Director, Crown Corporations and Currency, Financial Sector Policy Branch, Department of Finance): Good evening.

Canadians need secure banknotes that they can use with confidence and pride.

[*English*]

Removing the legal tender status of banknote denominations that are no longer issued by the Bank of Canada and hardly ever used, such as the $1,000 banknote, would have no impact on most Canadians.

Mr. Richard Wall (Managing Director, Currency, Bank of Canada): Good evening, Mr. Chairman. Thanks for the invitation to discuss the proposed legislative changes to the Bank of Canada Act and the Currency Act.

These changes will allow the government to remove legal tender status from Canadian banknotes, and allow the Bank of Canada to more effectively manage the quality of notes in circulation. Notes issued by the Bank of Canada, together with coins issued by the Royal Canadian Mint, are what is known as legal tender, which means they are the money approved in the country for paying debts.

Removing legal tender status means that some banknotes can no longer be used for payment of debt.

[*Translation*]

Generally speaking, it will be more difficult to make purchases with banknotes that are no longer legal tender. They will be refused by retailers, who will not be able to use them to pay their debts. However, these banknotes will not lose their value. The Bank of Canada will continue to honour them.

[*English*]

The Bank of Canada supports this initiative because having the power to remove legal tender status from banknotes means that we can do a better job of keeping notes that are in circulation more secure. Newer banknotes have better security features that make them difficult to counterfeit, and they are in better condition overall. Keeping notes current means they work more efficiently for all of us.

To date, every note issued by the Bank of Canada since 1935 remains legal tender despite the fact that the security features on those older notes are either non-existent or easily simulated. Withdrawing older notes from circulation will contribute to the public's confidence in using banknotes and the systems in place to efficiently process them.

As stated in budget 2018, if the power to remove legal tender is granted by Parliament, the government's intention is to remove this status from the $1, $2, $25, $500, and $1,000 banknote bills. Legislative changes are required to both acts, because the powers for issuance of banknotes resides in the Bank of Canada Act, but the specifics of banknotes are in the Currency Act.

[*Translation*]

Many central banks have the authority to remove the legal tender status of older banknotes. At the Bank of England, for example, calling in legal tender is often part of the strategy for issuing banknotes. When a new banknote is issued, the old and new series circulate at the same time for a predetermined period of time. After that, the old notes must be redeemed by the central bank. For example, in September, the Bank of England issued a new 10-pound note, and in November it announced that the old note would cease to be legal tender four months later.

In Canada, however, the banknotes that will lose legal tender status are no longer in circulation. They are the $25 and $500 notes, which date back to the first issue of notes by the Bank of Canada in 1935; $1 and $2 notes, which stopped being issued in 1989 and 1996 respectively; and $1,000 notes, which have not been issued since 2000.

This decision should have no significant impact on Canadians. These banknotes have not been produced for decades and are rarely used in transactions.

[*English*]

If the government is granted this power, the bank will provide clear information to Canadians on how to redeem the affected banknotes. This will involve a period during which the notes can be redeemed through financial institutions, as Canadians can do today. After this period, the notes can be redeemed directly with the Bank of Canada.

I'm happy to answer any questions you may have.

The Chair: I have a question before I turn to Mr. Albas.

How long would they be redeemable at the Bank of Canada? The reason I ask is that I know there are a lot of old cattle buyers out there who still who have $1,000 bills. I'll never forget going to one guy to borrow money one time. He pulled me out $18,000, and on a handshake, lent me the money. They were all $1,000 bills. He wasn't long getting paid back either, with not a word signed.

In, say, five years' time, will they still honour those $1,000 bills?

● (1900)

Mr. Richard Wall: The Bank of Canada will honour the face value of these notes forever.

The Chair: Okay.

Mr. Albas.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): I do recognize that there has to be a practical process. Obviously there will be loss due to damage and people burying them in their backyards and then forgetting them and they get lost, so I understand. As well, with printing being so sophisticated, there has to be a process. However, are we not concerned that, for example, we will be creating a grey or somewhat black market where, since the bank is the only vehicle that can accept them, there will be basically people who will pay someone $500 for their $1,000 bill because they can't utilize it somewhere else? Were any alternatives looked at? For example, if you put basically a 25-year limit on it, then it's not decided by politicians.

By the way, I do have some concerns when it's politicians who get to choose which bills are acceptable and which ones aren't. Keeping it somewhat independent is important.

Were there any other proposals, such as a 25-year span with a five-year redemption, just so it's not up to an individual government to decide suddenly which currency people can use anymore? I'm just struggling here, because again, I do think we're going to be making a situation where, for some people, perhaps successful entrepreneurs with personal safes where they have that, the only way they can actually get market value for the money is to sell at a discount.

Mr. Richard Wall: Let me break apart the question a bit.

There is a process at the Bank of Canada that deals with mutilated notes, which is separate. If you find notes that are buried and you're not able to determine what denomination they are, they can still be redeemed at the Bank of Canada. Whether they're buried or destroyed, or sometimes destroyed in a fire, we have a service that we provide to Canadians in order to make sure they retain their value.

With respect to legal tender status, we looked globally at what the best practice was internationally. Generally, it's a period of time after the announcement of the removal of legal tender status where in fact you do enact that. It's the first time in Canada, so we're going to be learning as we go along in terms of what the appropriate actions need to be in how we communicate that to Canadians. However, in response to your direct question about whether there are alternatives and whether there is an extended timeline that can be provided, you have to recognize that we have not issued a $1,000 note for 18 years now, since 2000. Understanding that there are still some that are out there, as I said, they will always be redeemed at the Bank of Canada. We have mechanisms in place today where we can accept and give credit and face value for those notes.

Mr. Dan Albas: What do you say about the creation of alternative markets: for example, where someone has a pawn shop and says, “We'll buy your old bills”, and will give half value for it? For many people who cannot get to the Bank of Canada personally, that might be one of their only options if no one else will accept the bills.

Mr. Richard Wall: Most financial institutions now accept all series of bills. We see them come into our processing centres all the time. They work on a know-your-customer basis, so if you're a customer of the bank, they know who you are. If you're not a customer of the bank, you can communicate directly with the Bank of Canada through the mail.

Mr. Dan Albas: Mr. Wall, as I mentioned earlier today, and this is not a question of whether I believe you, the problem is, for example, when people buy travellers' cheques. I met a constituent who had purchased them and tried to use them in the United States. People would not accept them in the United States, so she brought them back to her financial institution, and they said, “Sorry, we don't accept them anymore because of some security changes.” Again, that's something that she actually paid a premium for and now can't have that money returned by her own financial institution, where they know that client because she has banked there for well over 20 years.

I do see those cases quite frequently. So the system doesn't always work that way, and I'm afraid we're going to see where some people with an older note will end up going to a secondary purchaser, who will then, at a profit, bring it in to the Bank of Canada.

● (1905)

Mr. Richard Wall: I think that the situation you discussed does happen today. Older notes are brought into banks. They can't actually identify or authenticate the note because it is so old. There's a collection process they undertake where they send it to the Bank of Canada. We authenticate the note and then provide value to the bank, and then, they provide value to their customer.

The Chair: Okay, that's on the record.

Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: I want to be sure that I understand correctly.

Are changes being made to the legislation to prevent what happened before? The one-cent coin, or the penny as we call it, was taken out of circulation.

With this bill, the government will no longer be required to introduce legislation to withdraw currency from circulation, as was the case with the penny. Is that the purpose of the bill?

[*English*]

Ms. Marie-Josée Lambert: These legislative amendments will provide the government with the power to declare certain denominations, certain banknotes, non-legal tender. It does not demonetize them in any way. They remain legal tender, and they're redeemable for their face value.

[*Translation*]

Mr. Pierre-Luc Dusseault: Okay.

Unlike the penny, which is currently—

Ms. Marie-Josée Lambert: The penny still has a value. We continue to give a value to the penny and to redeem it.

Mr. Pierre-Luc Dusseault: Does the current legislation allow for the removal of currency from circulation. It is not a matter of withdrawing, but of—

[*English*]

Ms. Marie-Josée Lambert: No. In the Currency Act, the power to remove from circulation only exists for coinage. It's not parallel for banknotes, which is why we're looking to have it put in legislation for banknotes.

[*Translation*]

The Act as it stands today does not allow us to do what was done with the penny.

Mr. Pierre-Luc Dusseault: Okay.

I would like to ask another question about legal tender.

Once all is said and done and people are told that they can redeem their banknotes at the Bank of Canada, will retailers be required to refuse this money?

[*English*]

Ms. Marie-Josée Lambert: Retailers.

Mr. Richard Wall: A transaction exchange is an exchange between two parties. What they use is up to them to determine. There's no obligation now for a retailer to accept money in a transaction unless they agree to do that.

That exists before and after the removal of legal tender status. Basically what we're saying is that if that retailer who accepted that money that had legal tender status removed came to the government and tried to say, pay their tax bill, it would not be accepted at that point. Between parties, there's always an agreement on what they're going to use in order to settle a transaction.

[*Translation*]

Mr. Pierre-Luc Dusseault: Okay. Thank you.

[*English*]

The Chair: Thank you very much, Ms. Lambert and Mr. Wall.

Now, for part 6, division 7, “Payment Clearing and Settlement”, could the witnesses come forward?

We have from Finance Canada, Ms. Bourdeau, senior advisor, financial sector policy branch; Mr. Sample, acting director general, capital markets division; Mr. Brown, director, financial stability; Mr. Vaillancourt, director, payment policy. From the Bank of Canada, we have Mr. Chande.

Welcome, and the floor is yours.

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

Division 7 of part 6 proposes to amend the Payment Clearing and Settlement Act to implement a financial market infrastructure resolution framework so that the appropriate tool kit is in place in the unlikely event that a systemically important FMI fails.

Financial market infrastructures, which are known as FMIs, are hubs for financial transactions, and facilitate the clearing, settling, and recording of payments. Certain FMIs are designated and overseen by the Bank of Canada if they are considered to pose systemic or payments risk. It is important that these designated FMIs continue operating, even at times of stress.

Therefore, these amendments would introduce a resolution framework to support the development of feasible, credible resolution plans for designated FMIs, and to provide a legal basis for federal authorities to intervene if a designated FMI is unable to recover from a stress event.

These proposed changes would help preserve financial stability, maintain critical services of the FMIs, and minimize public exposure to loss during a financial crisis.

Thank you.

● (1910)

The Chair: Financial market infrastructures are what, specifically?

Mr. Justin Brown: They conduct three types of activities: payments, clearing, and settling. The specific FMIs we're referring to in this case have been designated by the Bank of Canada and reside in Canada. There are four of them. First, there is the large-value transfer system, which is the only system for settling large-value and time-critical Canadian dollar payments. Second, there is the automated clearing settlement system, or ACSS, which is a retail payment system for cheques, direct deposits, and pre-authorized debits. Third, there is the central counterparty CDSX, which is the only system that settles securities and maintains a central securities depository. Finally, there is the Canadian Derivatives Clearing Service, or CDCS, a central counterparty for fixed-income securities and repurchase agreements.

The Chair: Thank you for that.

Are there any questions?

We're all done, then. That is unusual.

Thank you very much for your testimony. It must have been a clear explanation.

We now turn to division 8, which is the "Canadian International Trade Tribunal Act".

We have Ms. Villeneuve, economist, trade rules, at international trade and finance branch of the finance department; and Ms. Govier, senior director, trade rules, international trade and finance branch, finance department.

Welcome, the floor is your.

[*Translation*]

Ms. Léticia Villeneuve (Economist, Trade Rules, International Trade and Finance Branch, Department of Finance): Thank you, Mr. Chair.

[*English*]

Division 8 of part 6 proposes amendments to the Canadian International Trade Tribunal Act in relation to the appointment of tribunal members. The CITT is a quasi-judicial tribunal that conducts inquiries and hears appeals on various aspects of trade policy. Its mandate includes conducting injury inquiries for anti-dumping and countervailing duty or safeguard investigations in Canada's trade remedy system, hearing government procurement complaints related to Canada's free trade agreements, and adjudicating appeals on customs and excise tax matters.

The tribunal is composed of up to seven members, including a chairperson, who are appointed by the Governor in Council for a term of up to five years.

[*Translation*]

Division 8 of part 6 of the Budget Implementation Act, 2018, No. 1, includes three amendments to the Canadian International Trade Tribunal Act. The first would create one vice-chairperson position. Thus, the tribunal would always have a maximum of seven members, including one chairperson and one vice-chairperson.

The second amendment clarifies the rules for member's eligibility for re-appointment.

The third amendment clarifies that the vice-chairperson may act as chairperson in the interim, as necessary, and provides for the appointment of the vice-chairperson in the interim.

These changes will provide greater clarity, flexibility, and efficiency in the process for appointing members to the tribunal.

[*English*]

We're happy to take any questions.

Thank you.

The Chair: Thank you.

Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: The bill makes reference to a period of 60 days; Governor in Council approval is required for a longer term. Is there a reason for this 60-day period? Why was this period chosen?

● (1915)

[*English*]

Ms. Michèle Govier (Senior Director, Trade Rules, International Trade and Finance Branch, Department of Finance): The 60-day period was something that existed in the previous law, and I think it's just because a period under 60 days is considered a very short-term replacement, so perhaps the higher-level approval isn't required, contrary to the requirement for a longer-term replacement.

Mr. Pierre-Luc Dusseault: It gives latitude.

The Chair: So there is no change in the total number of people on the tribunal.

Ms. Michèle Govier: That's correct.

The Chair: It's just adding a position with the same individual.

Mr. Kmiec.

[*Translation*]

Mr. Tom Kmiec: For permanent members of this group, has the chairperson's absence at a meeting been problematic in the past? I am simply trying to understand the usefulness of and real need for a vice-chairperson. Have meetings been cancelled in the past due to the absence of the chairperson?

[*English*]

Ms. Michèle Govier: There haven't been situations like that. Usually the replacement of the chair would be for a longer-term vacancy in the position. For example, if a chair's term had expired and a new chair had not yet been appointed, or if there had been an illness or some other long-term issue. It's not about the issue of this short-term coverage or any issues that have arisen there. Two vice-chair positions were phased out, resulting from budget cuts in 2011.

The intent here is to make it much clearer if there is that kind of a gap in the chair position, who the appropriate person would be acting in that position. Right now, it can be any of the other members and requires that—

Mr. Tom Kmiec: These are all permanent members here.

Ms. Michèle Govier: Yes.

Mr. Tom Kmiec: Obviously there's a pay difference between vice-chair and chair?

Ms. Michèle Govier: There is, yes.

Mr. Tom Kmiec: What is it?

Ms. Michèle Govier: I'm not sure of the exact amount between vice-chair and chair. I know between the vice-chair and the members, it's approximately $40,000 per year.

The chair is perhaps two levels above that. I'm not sure of the exact amount.

Mr. Tom Kmiec: Okay. You said vice-chair positions were eliminated before that for budgetary reasons, and why was that?

Ms. Michèle Govier: It was part of the deficit reduction action plan.

Mr. Tom Kmiec: We don't have a deficit anymore, so it's totally fine. Okay, good, just checking.

The Chair: Mr. Albas.

Mr. Dan Albas: Okay. In regard to this, obviously the rationale would be some more meetings would be carried on if there is a delay of the chair, or if the chair has not been reappointed, for example.

Is this a problem where the efficiency of the tribunals are in question, and this is to make them more productive? Do an increased number of hearings need to be done?

Ms. Michèle Govier: The tribunal certainly is facing a fairly busy time right now. There have not been any issues in being unable to have enough members to fulfill their work or anything of that nature.

The idea behind these different amendments is to clarify certain aspects of the act. In the case of the vice-chair position, it's to ensure a clear, second-in-command, if you will, if there are vacancies in the chair position, but it's not related to any kind of existing vacancy or concerns that have happened in recent times.

Mr. Dan Albas: Okay. Thank you.

The Chair: Okay. Thank you, both, for answering our questions. That completes division 8.

Division 9 is on “Canadian High Arctic Research Station and Application of an Order in Nunavut“.

All three witnesses are representing crown-indigenous relations and northern affairs: Patrick Barthold, director, northern governance and partnerships directorate; Annie Moulin, acting director, arctic science policy integration, northern affairs, crown-indigenous relations and northern affairs, and Dan Pagowski, legal counsel, justice Canada.

Ms. Annie Moulin (Acting Director, Arctic Science Policy Integration, Department of Indian Affairs and Northern Development): Hi. I'll be speaking to the Canadian High Arctic Research Station Act, and my colleague here will be speaking to the application of an order in Nunavut.

[*Translation*]

The Department of Crown-Indigenous Relations and Northern Affairs Canada manages the construction of the Canadian High Arctic Research Station located in Cambridge Bay, Nunavut. Once finished, the station will house the offices of Polar Knowledge Canada. Transferring the land and the research station from Crown-Indigenous Relations and Northern Affairs Canada to Polar Knowledge Canada is the last step in the creation of the most recent federal research organization.

● (1920)

[*English*]

The Federal Real Property and Federal Immovables Act describes two situations whereby the transfer of federal real property from one federal organization to another can take place, either from one minister to another or via crown corporation.

Polar Knowledge Canada is a departmental corporation, and Minister Bennett is responsible for both Polar Knowledge Canada as well as the department holding the real property that is to be transferred. Therefore, neither condition is met. The proposed amendments to the act would address this inconsistency by allowing Polar Knowledge Canada to be treated as a crown corporation, solely for the purpose of transferring federal real property.

[*Translation*]

Thank you.

[*English*]

The Chair: Okay. Go ahead, Mr. Barthold.

Mr. Patrick Barthold (Director, Northern Governance and Partnerships Directorate, Northern Governance Branch, Northern Affairs, Department of Indian Affairs and Northern Development): Thank you.

In 2014, the Northwest Territories Devolution Act repealed an important order in council regarding game declared in danger of becoming extinct. An unforeseen consequence of this repeal is that the legislature of Nunavut may no longer have the clear authority to restrict or prohibit indigenous people from hunting game for food. This situation creates a regulatory gap and uncertainty for the Government of Nunavut in its ability to manage wildlife.

Therefore, the proposed initiative would clarify that the order in council is deemed to have continued to be enforced and to apply in Nunavut. This would provide the necessary authority and would cover the period from the time of the repeal of the order in April 2014, and going forward.

[*Translation*]

This retroactive provision would ensure the validity of legislative actions taken by the government under the Nunavut Act and ensure greater certainty in relation to wildlife management for the benefit of Nunavummiut and all Canadians.

[*English*]

In conclusion, I want to thank the committee for continuation of these measures related to the Canadian High Arctic Research Station Act and the Nunavut Act.

We are ready to answer any questions you may have.

The Chair: Go ahead, Mr. McLeod.

Mr. Michael McLeod (Northwest Territories, Lib.): Mr. Chairman, I want to know how the Northwest Territories Devolution Act accidentally impacts Nunavut's ability to manage their own wildlife.

Maybe you can give me an example of how that happens.

Mr. Patrick Barthold: For sure.

As an example, when the Nunavut Act was negotiated and created, basically, they took the NWT Act and copy-and-pasted everything. For some reason, Nunavut also has the ability to manage wood, but we all know there's not a lot of wood in Nunavut. Basically, when the NWT Devolution Act repealed the order in council, it was an oversight and the order in council was repealed for Nunavut as well.

Does that answer your question?

Mr. Michael McLeod: Sorry. I guess it's the same thing for the forest fire money.

Mr. Patrick Barthold: Sorry, I couldn't—

Mr. Michael McLeod: I think that answered my question.

Thank you.

The Chair: I think the second comment applies to division 6.

Are there any questions over here?

Yes, Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Given that the Species at Risk Act applies across Canada, it applies in Nunavut. From what I have understood, you are trying to use this amendment to close the gap concerning the game declared in danger of becoming extinct order, which has not applied since 2014, but which will apply retroactively.

Mr. Patrick Barthold: My answer is yes with respect to the order, which was repealed in 2014 and could apply. However, the Species at Risk Act is not at issue here because it is overseen by the Department of the Environment. Both laws are needed for proper wildlife management in the territories.

Mr. Pierre-Luc Dusseault: At present, you are trying to address —

Mr. Patrick Barthold: ...a legislative gap.

Mr. Pierre-Luc Dusseault: We are talking about a legislative gap affecting wildlife protection in Nunavut.

Mr. Patrick Barthold: That's right.

Mr. Pierre-Luc Dusseault: We are talking about wildlife protection and not species at risk.

[*English*]

The Chair: Okay.

Regarding the idea of treating an entity as a crown corporation for this purpose, has that happened before? It's not a crown corporation, but you're treated as a crown corporation for a specific decision, or sale, or whatever.

Are there other instances where that's happened or is this a new development?

● (1925)

Ms. Annie Moulin: I'm not aware of it, but I can get back to the committee on this.

The Chair: Okay. I just find that strange that you're acting like a crown corporation, but you're not.

If you can find an example, find it.

I believe that's it on this division.

Go ahead, Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Do we know what is involved in the transfer of real property and immovables?

Are significant costs involved?

Ms. Annie Moulin: It is a transfer between the Department of Crown-Indigenous Relations and Northern Affairs Canada and another federal organization. Administration of the station is simply being transferred to another department. The new department has the funds needed to manage the buildings.

Mr. Pierre-Luc Dusseault: Do you know how much the buildings are worth?

Ms. Annie Moulin: I do not have that information with me.

Mr. Pierre-Luc Dusseault: I am not familiar with the station.

Ms. Annie Moulin: It is fairly large. There are four separate buildings: a large research centre, an office complex, and two buildings with apartments for visiting researchers.

Mr. Pierre-Luc Dusseault: Nevertheless, these are significant assets.

Ms. Annie Moulin: Yes. The station is almost 7,000 m^2.

[*English*]

The Chair: It will be the pride of the north, Mr. McLeod. Thank you very much for your information.

We're now turning to division 10, "Canadian Institutes of Health Research Act". We have Mr. Sylvain, who is director general, corporate and government affairs, Canadian Institutes for Health Research.

Welcome, and you know the drill.

[*Translation*]

Mr. Christian Sylvain (Director General, Corporate and Government Affairs, Canadian Institutes of Health Research): Thank you, Mr. Chair.

Good evening everyone.

[*English*]

Three amendments to the Canadian Institutes of Health Research Act are being proposed in the bill. I will describe them very briefly.

The first and perhaps most important is to separate the roles of president and chairperson of the governing council. Currently these two roles are combined and held by the same person.

The second is to simplify the language to describe the responsibility of the governing council to establish policies and to clarify to whom certain powers can be delegated.

[*Translation*]

The third would ensure that the French version of the act is clear because the term "président" is used to refer to both the chair of the Governing Council and the organization's chief executive officer. This creates confusion.

[*English*]

These three changes will modernize the governance of our agency. I'd be happy to answer questions you may have.

The Chair: Are there any questions for Mr. Sylvain?

We'll have a quick one from Mr. Albas.

Mr. Dan Albas: There are 18 members on the board, correct?

Mr. Christian Sylvain: There are up to 18 members.

Mr. Dan Albas: Is that to represent a diverse confederation? Are there provincial representatives and then an executive? That's a really large group.

Mr. Christian Sylvain: Yes, it is in part to capture the diversity of the health research community that is 13,000-strong in the country. There are so many different disciplines and so many sectors that we feel a board of that magnitude is needed.

Mr. Dan Albas: All right.

Mr. Christian Sylvain: However, we rarely have 18 members.

The Chair: Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Clause 253(1)(a) of the bill, which probably concerns CIHR's mandate, states the following: "developing its strategic directions and goals". I do not have the current version of the legislation. What change is being requested?

Mr. Christian Sylvain: The term "policies" appears in two places within this section of the act, which creates confusion internally. The goal is to combine these two paragraphs into a single paragraph in order to give the Governing Council the authority required to establish all the organization's policies.

The change will simplify the text.

Mr. Pierre-Luc Dusseault: This term is found between paragraphs 14(a) and (g).

Mr. Christian Sylvain: Exactly.

Mr. Pierre-Luc Dusseault: Okay.

● (1930)

[*English*]

The Chair: Thank you, Mr. Sylvain.

Moving on to division 11, "Red Tape Reduction Act", we have Ms. Ritchot, executive director, regulatory cooperation, Treasury Board Secretariat.

Welcome, Jeannine. The floor is yours.

Ms. Jeannine Ritchot (Executive Director, Regulatory Co-operation, Regulatory Affairs Secretariat, Treasury Board Secretariat): Thank you, Mr. Chair, for the opportunity to speak this evening about the government plans to amend the Red Tape Reduction Act.

The Red Tape Reduction Act establishes a one-for-one rule to control the amount of administrative burden that is imposed on business through Government of Canada regulations. Whenever a new or amended regulation is brought forward by a department, it must take out an equal value of administrative burden and must also remove a regulatory title.

To date, we have seen a net reduction of 123 regulations and $30.1 million in annual administrative burden.

[*Translation*]

At present, the Red Tape Reduction Act only applies to Canadian federal regulations. The government's proposed amendments will allow Canadian departments to reduce the administrative burden on Canadian businesses resulting from the regulatory measures of other countries, such as the United States, as part of an official cooperative initiative for regulatory reduction.

For example, we have formal regulatory cooperation relations with the United States and the European Union. The goal is to incentivize Canadian departments to work more closely with their counterparts of these countries to reduce the regulatory burden that can adversely affect international trade.

[*English*]

I will stop there and take any questions that you may have.

The Chair: Mr. Sorbara.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Thank you, Mr. Chair. I have a quick question.

If I am understanding this division correctly, any new regulation brought in by the federal government could be offset by another level of jurisdiction, whether its provincial, municipal, or international organizations. Is that correct, or does it have to be offset strictly with another federal government rule or regulation of the sort?

Ms. Jeannine Ritchot: The rule in the way that it works now is that anytime a federal regulation comes in within a portfolio.... So, if, for example, the Minister of Health brings in a new regulation within the health portfolio, she must remove administrative burden in an equal amount as well as the title.

This law would allow administrative burden reductions that are taken as a consequence of actions perhaps by her counterpart, the U. S. Food and Drug Administration, at the federal level. She would be allowed to calculate that in her offsets in the health portfolio.

Mr. Francesco Sorbara: Right now, the way the rule is, she has to do an offset within her portfolio, and this would allow her to do an offset if just an FTA rule changed but not necessarily something else changed within her portfolio currently.

Ms. Jeannine Ritchot: Yes, that's right. If the change in the U.S. federal regulation had administrative cost savings for Canadian businesses, that could count in her bank of offsets.

Mr. Francesco Sorbara: Okay. I do not want to belabour this point. If the FDA acted to increase regulatory burden that impacted our side, would we not then have to offset that?

Ms. Jeannine Ritchot: No. The objective behind this is to incite regulatory co-operation. Federal departments have indicated that in its present form the one-for-one rule does not always encourage them to work with their counterparts in other jurisdictions to find ways to align their regulatory frameworks. This is meant to demonstrate to them that when you work together to align a framework and there's a cost reduction, then you can count that as your offset.

Mr. Francesco Sorbara: Okay. Thank you.

The Chair: Mr. Dusseault.

Mr. Pierre-Luc Dusseault: Do you mean that if a counterpart adds a regulation on the one-for-one rule, it would give the Canadian department the right to add another one to balance it out?

● (1935)

Ms. Jeannine Ritchot: No. It's only in the case of a reduction. The rule would not kick in in the case of an increase of administrative burden in the U.S. I would point out that the U.S. has just instituted a two-for-one, so it's unlikely that we'll see any increases in burden that would impact Canadian businesses as a result, since they are also undertaking an exercise to reduce burden on business.

The rule would only apply in the case of a cost reduction, not a cost increase.

Mr. Pierre-Luc Dusseault: In the case of a cost reduction, a reduction of administrative burden in the U.S., for example, it would give Health Canada, for example, the right or the authority to take one burden, one measure. As you said, it would give her the right, in her bank of regulations, to put in another one.

Ms. Jeannine Ritchot: Yes. She would be able to put that in her bank. That's exactly a good analogy and one that we use often. She would put that credit in her bank so that if she did bring forward a regulation that increased administrative burden, she would be able to use that amount from her bank as her offset.

Yes, she would be able to bring in an additional burden because she would already have an offset from the regulatory co-operation initiative that's been undertaken with her partner in the U.S.

Mr. Pierre-Luc Dusseault: As long as the other countries and partners around the world are fine with reducing the burden, Canada can at much the same pace increase the burden on Canadian business in Canada?

Ms. Jeannine Ritchot: The Canadian regulators will still always have to pay very close attention to any increase in administrative burden because of the one-for-one rule in general. They can't just increase the burden without a commensurate amount being removed —

Mr. Pierre-Luc Dusseault: It could be another country in that case.

Ms. Jeannine Ritchot: But it's removed on Canadian business. If it's only removed on American business, this rule will not apply. The impact has to be quantified and felt here in Canada.

I would also point out, because I'm not sure that I was clear enough in my statement, that it only applies where we have formal regulatory co-operation arrangements. Right now we have one under CETA, with the EU. We have the regulatory co-operation council with the U.S. The Canada free trade agreement established a regulatory co-operation table as well.

It's only in those situations. It's not with just any country without which we have an arrangement.

Mr. Pierre-Luc Dusseault: Yet it had all these upsets in regulatory co-operation.

Ms. Jeannine Ritchot: Yes.

The Chair: Mr. Albas, go ahead.

Mr. Dan Albas: I think it was Mr. Kmiec.

The Chair: Okay. Mr. Kmiec, you're up.

Mr. Tom Kmiec: Thank you, Mr. Albas. That's so generous of you.

You answered one question. I was going to ask about the formal, but my other question is about the removal of a regulatory title from existing stock. I have it in bullets here. Ministers have 24 months.

Ms. Jeannine Ritchot: That's right.

Mr. Tom Kmiec: My question is if this is introduced, how many are there that are still outstanding to meet the requirement of the one-for-one rule that would then fall under this new rule that allows them to have it offset through formal co-operation with another jurisdiction? How many are still outstanding to meet the requirements?

Ms. Jeannine Ritchot: I want to make sure I understand the question. You're wondering how many departments have their 24 months that still haven't run out?

I actually don't have the specifics on that, on how many might be left. We publish an annual report to Parliament on the cost in and cost out under the rule. I'm not sure if I know with specificity, but I will go back, and I will check, and I will endeavour to find an answer to that question, yes.

Mr. Tom Kmiec: Can you provide that to the committee?

The other question I had was about subsection 5(1), the control of administrative burden. I'm not going to read the whole paragraph, but there are four words being added, “imposed by a regulation", on the last line. What is that supposed to encompass?

Ms. Jeannine Ritchot: I'm sorry, I'm just going to find my—

Mr. Tom Kmiec: It's section “260 Subsection 5(1) of the English version of the Act is replaced by the following”, and it says, “Control of administrative burden”.

Ms. Jeannine Ritchot: The purpose of that clause is to amend the English version of the act to clarify that the reference to administrative burden in section 5 of the act relates to administrative burden that is imposed by Canadian federal regulations, not by American regulation, for example.

Mr. Tom Kmiec: Then it shows the exchange you had before.

This is just so I understand it completely. It's only through formal co-operation under the CETA body that you mentioned. So let's say Germany has a rule that the federal government engages with and says this rule is bad for Canadian companies and asks if we can find a way to harmonize it with ours to make shipping easier. If they change the rule, it would count towards, say, the Minister of International Trade's amounts, the one-for-one rule, so they would get to tick it off?

● (1940)

Ms. Jeannine Ritchot: As long as they can quantify administrative burden reductions for Canadian business, yes, they can put it in their bank account, so to speak.

Mr. Tom Kmiec: Okay.

The Chair: Mr. Albas.

Mr. Dan Albas: Regarding the new definition for “other jurisdiction”, why would we include a province or a municipality within the country?

Ms. Jeannine Ritchot: The reason for including the provinces is because the Canadian Free Trade Agreement established a regulatory reconciliation and co-operation table. There are examples on which we are actively working right now to establish our first work plan under this table. There may be examples in which changes that come from that regulatory co-operation arrangement will reduce administrative burden.

Mr. Dan Albas: I'm a big believer that the mechanism for outside the country, for example the U.S. or CETA, to me, makes a lot of sense and encourages more business between countries. I think, though, that the idea of harmonizing within Canada should just be a non sequitur. That's something that we should be doing every day.

I do look forward to the committee receiving the Red Tape Reduction Act report to Parliament. I haven't viewed the most recent one, but I do appreciate the work that's being done. I think this particular section, at least on international co-operation, is a very good measure.

The Chair: We have Mr. Kmiec.

Mr. Tom Kmiec: If we go back, then, to section 261 “Offset — regulatory cooperation”, there's a new series of paragraphs being introduced and it includes “with the approval of the Treasury Board”.

Was Treasury Board involved in approving what a department was considering sufficient quantification for the purposes of the red tape one-for-one rule? Is that new, that the Treasury Board Secretariat would be involved?

Ms. Jeannine Ritchot: No, we've always administered it at the Treasury Board Secretariat, yes.

The Chair: Mr. Poilievre, you're next.

Hon. Pierre Poilievre: What do you consider to be “a unit of burden”?

Ms. Jeannine Ritchot: Administrative burden—I'm sorry, I'm having such trouble with my earpiece here—"a unit of burden”—and I must apologize, I'm not an economist by any stretch. I don't necessarily understand the cost calculator that we use. We have economists who do that for us, but we have a very specific methodology that calculates administrative burden. Generally speaking, administrative burden is paperwork, for example, forms that you have to fill out to demonstrate how you comply.

We do have a very specific cost calculator that is standardized, so all departments calculate it in the same way. That's why we're able to know the amount that we have saved as a result of the Red Tape Reduction Act.

Hon. Pierre Poilievre: You're trying to trade one elimination for one addition. It's not rule for rule. It's dollar for dollar?

Ms. Jeannine Ritchot: It's a bit of both, actually. It's dollar for dollar, which I would say is the part that is really most tied to the reduction of the actual burden on business. The second component of the rule is removing a title. Every time you introduce new admin burden, you have to remove, dollar for dollar, the amount you have introduced, and you also have to take one title off of your regulatory stock.

In a way, what it has done is it has compelled departments to clean up their stock, which they hadn't necessarily cleaned up in quite a while. When the rule was introduced, it allowed departments to take a look at their regulations and to remove the titles that were no longer necessary.

Hon. Pierre Poilievre: Can they get credit for removing those titles as a reduction in burden even though some of those titles are really not even being enforced or relevant anymore?

Ms. Jeannine Ritchot: The title they have to remove has to contain admin burden within it. They have been able to take credit for some that maybe have been spent, or that were no longer relevant, but from a monetary perspective it has always had to be dollar for dollar. They have always had to remove the commensurate amount.

Hon. Pierre Poilievre: Since the act took effect, what has been the dollar value reduction in administrative burden?

Ms. Jeannine Ritchot: It's $31.1 million net annual.

Hon. Pierre Poilievre: To clarify the change in the proposed budget bill, if a foreign government with which we have regulatory co-operation reduces burden on Canadian businesses, for the relevant department to get credit, must the Canadian government have made a corresponding reduction, or must it simply be a lighter burden on the Canadian business doing commerce in the foreign jurisdiction that originated the change?

● (1945)

Ms. Jeannine Ritchot: There is no requirement for the Canadian government to do a commensurate with the.... Let's use the U.S. as an example. In these amendments, there would be no requirement for the Canadian government to do a commensurate reduction.

I would note that in the implementation of the two-for-one currently being brought into force in the U.S., our counterpart, the Office of Information and Regulatory Affairs, in the policy guidance they issued to U.S. regulators, noted to U.S. regulators that if Canadian regulators through regulatory co-operation decreased burden quantifiably on American business, then they could count that in their two-for-one regime.

There is a bit of reciprocity in that both Canada and the U.S., probably because of the Canada-United States regulatory co-operation council, which has been quite successful since 2011, have recognized that burden reductions in one jurisdiction are positive for the other jurisdiction because we're really a very similar common marketplace.

Hon. Pierre Poilievre: I could understand the rationale in giving a Canadian department credit for a burden reduction that it instituted as part of cross-border co-operation. However, I'm having a hard time understanding why that department would get credit for what its foreign counterpart does. I don't understand that. Can you give me the rationale?

Ms. Jeannine Ritchot: They get credit because they have been working formally under a regulatory co-operation arrangement with their counterpart. In other words, that reduction is really the result of work that this regulator has been doing. Generally speaking, formal regulatory co-operation initiatives have regulators work together to develop work plans. Those work plans are meant to reduce burden on business in both jurisdictions.

The rationale is that the Canadian regulator is not doing nothing in this scenario. They are actively working with their partner in the U.S., and together they have come up with a regulatory co-operation work plan, the output of which may just require a change in one jurisdiction, but that still reduces burden here at home, and it is the result of a co-operative arrangement.

Hon. Pierre Poilievre: What documentation would a department need to have, to claim credit for a foreign reduction in paper burden?

Ms. Jeannine Ritchot: They would have to be able to quantify, similar to how they would have to quantify here in Canada. We would likely be applying the same costing that we apply to the Canadian—

Hon. Pierre Poilievre: That's not my question. My question is what would they have to do to prove that they had any role whatsoever in reducing the foreign government's—

Ms. Jeannine Ritchot: Sorry, I misunderstood the question.

There would be a formal work plan under either the Canada-U.S. regulatory co-operation council or the regulatory co-operation forum with the EU, or the Canadian Free Trade Agreement reconciliation and co-operation table. That would be the demonstration.

Hon. Pierre Poilievre: I still have a really hard time understanding why a Canadian government department, whether it's holding meetings with foreign governments or not, should take credit for regulatory reductions in those foreign jurisdictions. I understand that we're in a global economy and we're an open economy and all of that, but I don't understand how the public is served by empowering our departments to add new regulations just because foreign governments get rid of old ones.

The Chair: Does it not mean that when the regulatory change is made in say, the United States, it lessens the amount of administrative burden for a business here?

Is that not how it works?

Ms. Jeannine Ritchot: Yes, that's right.

Hon. Pierre Poilievre: I totally understand that. That's absolutely terrific, if it happens. However, just because something good happens to Canadians outside of Canada doesn't mean something bad has to happen to them within Canada.

The Trump administration is insisting on massive reduction in regulations, and that will obviously reduce the burden on Canadian businesses who operate there. I don't understand why the Canadian government should then be empowered to impose new regulations here at home. Even if they've been having working groups, I still don't see how that changes anything.

● (1950)

Ms. Jeannine Ritchot: Certainly the objective is not to empower new regulations without taking into account the burden. I would say that the government, through this budget, has also proposed a number of other initiatives.

This is one component of a regulatory agenda that's being pursued at this moment. There are also stock reviews in key sectors that were announced in the budget. There is also some money that was set aside for an e-portal. Globally, there's quite a lot of effort in my shop to look at other ways to foster innovation, agility, and reduce burden on business.

I would say that this is one piece of a larger regulatory puzzle.

Hon. Pierre Poilievre: I appreciate it, but even if those other pieces do good work, I am not seeing why we want to weaken the Red Tape Reduction Act by giving Canadian departments the legal authority to add new red tape, just because some foreign government got rid of some red tape and we attended working group meetings with them before they did.

Ms. Jeannine Ritchot: I understand the concern you're raising. I would say that regulatory co-operation is....

In a world where tariffs have been significantly reduced, perhaps notwithstanding some of the most recent events in the U.S., the biggest barriers to trade are these technical barriers that come from regulation. What we have seen is that regulators require incentives in order to embark on some of these regulatory co-operation initiatives. They ultimately have the same goal, which is to reduce burden on Canadian businesses as well as increase choice of goods in the marketplace for Canadian consumers.

The regulatory co-operation agenda is one that is meant, overall, to reduce unnecessary burdens that are the result of duplicative requirements. This is one tool in the tool kit that the government is trying to give itself.

Hon. Pierre Poilievre: It sounds like a tool, to me, that will do more damage than repair.

I worry that it could be really damaging. The American government is massively reducing its regulatory burden. Obviously, that will reduce the burden on Canadian businesses operating there. If the federal government takes that as a signal that it can add regulations by taking credit for the reductions south of the border, then we could be in a situation where, ironically, we are not only falling behind competitively on taxes, but moving in a deliberate and diametrically opposite direction on regulation as well. We're adding a regulation because they cut one.

The Chair: But we don't necessarily have to add one, correct?

Hon. Pierre Poilievre: No, but you're giving departments legal authority to add regulations, which they would not otherwise have without this amendment.

The Chair: I expect you would be able to outline that point to the minister in the speech on the final reading. If he can get the message —

Hon. Pierre Poilievre: But would it not? If the government in the United States of America massively reduces the regulatory burden, as it has begun to already, all your departments would have to do to have the legal authority to add new ones is to say, “We had a working group with the commerce department in the States, so if they cut a regulation, we get to add one over here”, or “The EPA in the States has made it easier to develop natural resources, so that will help Canadian companies doing business down there.”

The Chair: I think, Mr. Poilievre, we're getting into the political arena, the decision—

Hon. Pierre Poilievre: No, Mr. Chair, we're not.

The Chair: Yes, we are.

I think Ms. Ritchot is outlining that whether or not we can add a regulation for one taken away by a foreign country is a political decision. She can't answer that question.

Hon. Pierre Poilievre: No, but Chair, if I may, the reality is we are looking at a piece of legislation that would empower the government to add that regulation. I'm not commenting on the eventual political decision that a government or a department would make to add a regulation. I'm simply pointing out that this bill would give them new authorities to do so.

The Chair: Be that as it may, that's your point.

Is there any further discussion or questions to Ms. Ritchot?

Thank you, Ms. Ritchot.

We'll turn to division 12, “Communications Security Establishment”. Hopefully, we can get through this one.

Mr. Donald Parker, director, strategic policy, Communications Security Establishment.

Welcome.

● (1955)

Mr. Don Parker (Director, Strategic Policy, Communications Security Establishment): Thank you, sir.

[*Translation*]

Good evening, Mr. Chair.

[*English*]

I'll keep my opening comments as brief as possible this evening.

Budget 2018 announced the government's intention to establish a Canadian centre for cybersecurity. As part of this initiative, this portion of the budget implementation act includes a provision to regroup technical cybersecurity experts from across three distinct parts of the public service within the Communications Security Establishment. It's an administrative measure to move implicated employees.

Thank you.

The Chair: Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Does this mean that the Canadian Centre for Cyber Security and the Security Operations Centre of Shared Services Canada no longer exist? Does this mean that the employees will be transferred to the Communications Security Establishment?

[*English*]

Mr. Don Parker: To be clear, it will move employees who currently reside within Public Safety as well as employees currently with Shared Services Canada so they become employees of the Communications Security Establishment.

[*Translation*]

Mr. Pierre-Luc Dusseault: Okay.

I don't know if you will be able to answer the next question.

I am not an expert in translation. The English reads:

[*English*]

"managerial or confidential position".

[*Translation*]

I believe that the French translation of "confidential" is "*confidentiel*", but the French reads "*poste de direction ou de confiance*". We therefore have "confidential" and "*confiance*".

I do not know whether the use of the term "*confiance*" is intentional in the French. It may not be the right term.

Mr. Don Parker: Thank you.

[*English*]

I'm not an expert in legislative drafting. Certainly, I'll look into it.

[*Translation*]

Mr. Pierre-Luc Dusseault: Yes, please.

Perhaps you could check with the drafters or jurilinguists before sending your answer to the committee. I would like you to look into this so we know that we are using the right word.

[*English*]

The Chair: We can have the analyst look at that.

Mr. Pierre-Luc Dusseault: There's a difference with "confidential" and "confidence".

The Chair: Yes, in what subsection?

Mr. Pierre-Luc Dusseault: Proposed subsection 265(3).

The Chair: Mr. Kmiec.

Mr. Tom Kmiec: Do any of these sections have material budgetary impact? Are there dollars associated with the redesignation of any of these employees?

Mr. Don Parker: Yes, there would be salary implications that would be transferred through a separate administrative measure. It's not contained within the budget act itself. It would be settled through the estimates process.

Mr. Tom Kmiec: Are you saying that by doing this redesignation of jobs, certain people, I'm guessing, are going to be put into a higher classification? I doubt they will be put into lower classification jobs as they're being reassigned. Is that correct?

● (2000)

Mr. Don Parker: In fact, there would be, through this measure, no change to their salary or compensation. From a budgetary perspective, it would be net—

Mr. Tom Kmiec: Net zero, or near zero.

Mr. Don Parker: That's correct.

What I meant to imply in my earlier answer—and apologies if I wasn't clear—was that the resources associated with those employees today would be transferred through that separate reconciliation process I referred to.

The Chair: Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Can we continue the meeting?

[*English*]

The Chair: What am I hearing from you, Mr. Dusseault, is that you want to keep going. I don't know whether people do.

Do you want to go another half an hour?

Mr. Raj Grewal (Brampton East, Lib.): What number are we at?

The Chair: We are at division 12.

Mr. Albas and I were at a meeting this morning at 6:45, but if you folks are willing, we're willing. It's been a long day. We'll go another half an hour at least.

Mr. Dusseault.

Mr. Pierre-Luc Dusseault: If I were at the back of the room since 6:30, I would prefer getting it done tonight.

The Chair: Thank you, Mr. Parker, for your presentation.

We'll turn to division 13, "Department of Employment and Social Development Act". From ESDC, we have Pirthipal Singh, director, tier 1 partnerships and services offerings for federal partners; and Julie Lalonde-Goldenberg, director general, partnerships development and management directorate.

Ms. Lalonde-Goldenberg, the floor is yours.

[*Translation*]

Ms. Julie Lalonde-Goldenberg (Director General, Partnerships Development and Management Directorate, Department of Employment and Social Development): Good evening Mr. Chair and members of the committee.

[*English*]

We're here today to talk about some proposed amendments to the Department of Employment and Social Development Act to promote better service delivery to Canadians.

As you know, the Department of Employment and Social Development is responsible for delivery of many social programs to Canadians, including the Canada pension plan, old age security, employment insurance, to name a few.

The department has an extensive network of service delivery, including online, on the phone, and in person presence of up to 150 points of service across the country.

Like other departments, this department has the mandate to deliver its own services, but not deliver services for partners. Over the years, the department has been granted authorities to assist other partners, including other federal departments, in the delivery of their programs. It's achieved those authorities on a case-by-case basis. A machinery of decisions culminating in orders in council has, for instance, provided the department with the authority for the 1 800 O-Canada, the Canada.ca, and the delivery of domestic passport services.

The case-by-case approach can be time consuming. Once a mandate for a service delivery partnership authority is in place, then the department needs to go and get cost recovery authorities from Treasury Board. This case-by-case approach can be time consuming, and prevent nimble response to partnerships, service delivery, that can assist Canadians.

The proposed amendments today to the departmental statute are to broaden the minister's mandate to provide authorities for service delivery partnerships. The partners that we're envisioning in this legislation are other federal partners, provincial, municipal, for instance, and also some indigenous communities.

The provisions will allow the department to provide services using the service delivery infrastructure. They'll also clarify the responsibility for personal information collected in the service delivery partnership.

Finally, they'll also permit the department to cost recover for the services that it provides to its partners.

Another amendment proposed is to allow the department to use CRA's business number under the Income Tax Act when it works with businesses to identify the validity of the businesses.

This is really a proposal that is machinery in nature. It does not seek funding. It is permissive. It's not a mandatory mandate. Partners who would like to avail themselves of ESDC's service delivery network and expertise could come to the table and negotiate a partnership.

The service delivery authorities are not directly related to any budget initiative. However, they could facilitate some initiatives, such as responsibility to improve access in indigenous communities on reserves and in the north.

I'll stop with that.

● (2005)

The Chair: Thank you. I have one question.

Does this have any privacy implications with exchange of information between departments?

Ms. Julie Lalonde-Goldenberg: The Department of Employment and Social Development Act has provisions that provide the management of personal information collected by the department for its programs. The provisions here will amend those particular personal information management provisions to make it clear that the department will collect personal information for the partner for the service delivery. It will use it for the purpose for which it was collected, which is to provide that service, and do nothing else with it but give it back to the partner who will protect the personal information under their regime.

It does not amend the Privacy Act, but only the provisions within the departmental statute.

The Chair: Are there any questions?

Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: What is the cost recovery mechanism associated with this? If another territory or department asks you to provide a service on its behalf, you assume the related cost. Consequently, what mechanism ensures that they actually pay for this service?

Ms. Julie Lalonde-Goldenberg: You are quite right. There will be negotiations and an agreement concerning the cost of this service, which will be recovered in the usual manner as the right to cost recovery is legislated.

Mr. Pierre-Luc Dusseault: Okay.

[*English*]

The Chair: Thank you for the information, and thank you, Julie.

We'll turn to division 14.

On division 14, “Employment Insurance Act”, also with the ESDC, we have Mr. Brown, acting director general employment insurance policy; and Ms. Scales, director policy analysis and initiatives.

Mr. Brown.

[*Translation*]

Mr. Andrew Brown (Acting Director General, Employment Insurance Policy, Skills and Employment Branch, Department of Employment and Social Development): Good evening.

As you may know, the employment insurance system provides workers who have lost their jobs with temporary income support, known as regular benefits. It also provides special benefits in specific circumstances that can arise during an individual's career.

I am here to talk about the proposed amendments to the Employment Insurance Act, which determine how benefits are adapted when a worker earns income while receiving employment insurance benefits. These are known as working while on claim provisions.

● (2010)

The intent of the provisions is to encourage claimants to accept work while receiving EI benefits.

[*English*]

Each year, about 800,000 EI claimants do some work while receiving EI benefits, with women more likely than men to work at least one week while on claim.

The current legislative provisions have been in place since 1971, and a series of pilot projects over the last 12 years have tested various approaches to adjusting EI benefits when a claimant earns income while receiving EI benefits. Budget 2018 proposed to make one of these approaches permanent.

I'll go through the amendments first. The amendments proposed in the budget would make the default rule of the current pilot project permanent. Under these rules, workers retain all of their employment earnings, and EI benefits are reduced 50 cents for each dollar earned, up to 90% of their pre-claim earnings.

Second, for a limited time three-year period, EI claimants who opted for the alternative treatment of earnings could continue to do so. This three-year period would provide time for this small group of claimants to adapt to the permanent "50 cents on the dollar working while on claim" rule.

Third, working while on claim provisions would be extended to sickness and maternity claimants for the first time. Extending these rules to maternity and sickness claimants is not intended to encourage work, rather this change would allow workers to benefit from the same treatment as other claimants if they choose to stage their return to work, and they would be allowed to retain some additional income.

Finally, there are some technical amendments included to ensure that the changes to the working while on claim rules do not result in unintended consequences on other aspects of the EI program, such as the waiting period and the EI premium reduction program.

[*Translation*]

As indicated in the budget, these measures should cost $351.9 million over five years and $80.1 million per year after that. According to the Employment Insurance Act, these costs will be charged to the Employment Insurance Operating Account and recovered through employment insurance premiums.

[*English*]

The measures would come into force August 12, 2018, if approved, to ensure there is no interruption between the pilot provisions and the proposed new legislative provisions.

Thank you.

The Chair: Mr. Sorbara.

Mr. Francesco Sorbara: How many people are employment insurance recipients on an annual basis? Will this assist on a yearly basis?

Mr. Andrew Brown: Currently we see about 1.8 million to 1.9 million recipients of EI benefits annually. Roughly 1.3 million to 1.4 million receive regular benefits, and about 500,000 receive EI special benefits, so about 800,000 are working while on claim.

Mr. Francesco Sorbara: Approximately 800,000 could possibly be eligible for this top-up, I'll call it, this incremental benefit, while they are working.

Mr. Andrew Brown: That's right. These provisions are administered essentially automatically through reporting by claimants, so every two weeks when they report on any earnings they have had while receiving EI benefits, we make adjustments. Service Canada, which delivers the service, makes adjustments to the EI benefits they receive.

Mr. Francesco Sorbara: Okay, one of the two current pilot projects is de facto being made permanent.

Mr. Andrew Brown: That's correct. The default rule of the current pilot project is being made permanent and the alternate rule of the current pilot project is being allowed to remain in place for a three-year period so if people have opted for the alternative treatment over the current pilot, which is of a two-year duration, they will be allowed to opt in to that for this three-year period.

● (2015)

Mr. Francesco Sorbara: Okay.

I have one last question. When you hit 90% of earnings has the clawback rate been changed, or is it existing?

Mr. Andrew Brown: Once they have hit that 90% then it is dollar for dollar beyond that until their EI benefits are reduced to zero. At the point where their benefits are reduced to zero, they simply do not receive an EI payment that week, and a claimant could still access that particular week of benefits later in their benefit period if needed.

The Chair: Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: I would like you to confirm one thing for me. If I have understood correctly, the problem we are attempting to address is that when there is a small number of hours per week an EI claimant is better off staying at home than going to work.

[*English*]

Mr. Andrew Brown: That's correct. The object of the pilot projects has been to determine which measures have had a greater impact on the incentive to work. Absent special rules in the program, when somebody earns a dollar, we would reduce their benefits by a dollar. These different measures have tested different ways to encourage work because now their benefits are only reduced by a portion of those earnings, and the person is then receiving a greater total income in employment earnings and their EI benefit than if they did not work during that week.

[*Translation*]

Mr. Pierre-Luc Dusseault: Was this measure included in Bill C-74 because of specific cases? Without going into details, there has been a case in Sherbrooke that you may be familiar with. Are they specific cases? If yes, how many cases led you to propose such an amendment?

[*English*]

Mr. Andrew Brown: I would not say it's related to a particular case. It's taking a look at the EI program and its objectives to achieve an effective and efficient labour market. Along with that is looking at measures within the program that would create an incentive to return to work, and while a variety of approaches have been tested over a 12-year period, this is one that has been found to have a greater incentive, in particular because it offers a sustained incentive to work. In other words, if you work for one day, you are earning some additional income. If you work for a second day or if you work for a third day, you continue to be earning greater income overall.

Some of the approaches in the past have had a threshold beyond which those incentives disappear. Someone who worked beyond one day during the week would complain that they were working for nothing, because the EI program would be reducing their benefits by $1 for each dollar of earnings. This is a different approach, where it is 50¢ on the dollar.

The Chair: I could give you a specific example. There are lots of them in P.E.I.

In the potato industry in the winter months, when potato growers need somebody to grade potatoes, they might need them for two and a half days. Somebody on EI could work one day, but to work their second day, or at least their third half day, it would actually cost them more to work than not to work, because, first of all, they had to drive to work and they were losing dollar for dollar. It does two things: it hurts the person who's on employment insurance; and it affects the economy by them not being available for work.

Mr. Poilievre.

● (2020)

Hon. Pierre Poilievre: That is a good point. Do you have any data on the impact on labour market participation by EI recipients who have been eligible over the years for this pilot compared to those who were not?

Mr. Andrew Brown: First off, any claimant who has been doing some work while on claim would have been eligible to receive this treatment, with the exception of maternity and sickness claimants, where currently they face dollar-for-dollar reductions. Otherwise, anyone who was receiving regular benefits for job loss, fishing benefits, parental benefits, or compassionate care benefits—I think I've caught them all—would have automatically been eligible for this measure.

Hon. Pierre Poilievre: Since what year?

Mr. Andrew Brown: The series of pilots began in 2005. They were initially regional in nature. There have been some adjustments to the pilots over the years, as well as making them national in scope rather than regional.

Hon. Pierre Poilievre: They were piloted. Presumably the department kept data on the results of the pilots. Because they were originally rolled out in batches rather than being national, do we have any data comparing people who were eligible to those who were not at the time, or longitudinal data that compares the way people behaved before the pilots were introduced versus how they behaved after they were introduced?

Mr. Andrew Brown: Yes. I'll turn to Ms. Scales to comment.

Ms. Cara Scales (Director, Policy Analysis and Initiatives, Employment and Insurance Policy, Department of Employment and Social Development): The annual report on the EI program is presented to Parliament every year. Within the monitoring and assessment report on the EI program, we do report on the results of the pilot projects, dating back to 2005. This current pilot, pilot 20, was included in a suite of pilot projects that were evaluated recently. In the 2017 evaluation, the results from pilot projects 18 and 19, which also used the 50% rule, found that the probability of working while on claim rose by about 11%, and the number of weeks worked increased by about one week for claimants who were using the 50% rule.

Hon. Pierre Poilievre: Have you calculated whether that reduces the net cost of employment insurance? If you take that behavioural change into consideration and compare it to the extra cost associated with bringing about that behavioural change, is the government better off financially? Is the EI system better off financially by having the pilot than otherwise?

Ms. Cara Scales: Yes. The increase in work while in claim led to a decline in EI benefits paid, of at least $100 per claim.

Hon. Pierre Poilievre: What does that work out to as a total, ballpark?

Ms. Cara Scales: I'd have to go back and ask the analyst.

The effect is that the claimants in fact bring home more income, because they have their EI benefits as well as their income from employment, but the EI account itself sees savings as a result of the rule.

Hon. Pierre Poilievre: Right, so everyone is better off—the EI account and the claimant as well.

Thanks.

The Chair: Thank you very much.

On division 15, “Judges Act”, our witnesses from Justice Canada are Ms. McKinnon, senior counsel, judicial affairs, courts and tribunal policy; and Ms. Dekker, counsel, judicial affairs, courts and tribunal policy. Welcome.

Ms. McKinnon, you are on the floor.

Ms. Catherine McKinnon (Senior Counsel, Judicial Affairs, Courts and Tribunal Policy, Department of Justice): Thank you, and good evening.

Ms. Dekker and I will be speaking to division 15, which contains amendments to the Judges Act and the Federal Courts Act to create new judicial positions for the provincial superior courts and the Federal Court. I will be speaking briefly about the changes that impact the provincial superior courts, and Ms. Dekker will speak to the changes to the Federal Court complement.

In terms of the provincial superior courts, you will see that the amendments propose an increase to the complement of the Ontario Superior Court of Justice by six judges, and an increase to the complement of the Saskatchewan Court of Appeal by one judge. These new judicial positions are in response to demonstrated existing and projected workload pressures in these courts, and will assist them in dealing with their caseloads in a timely manner.

The funding for these new judges is effective immediately, and new appointments can be made to these positions once the necessary legislative amendments are in place authorizing the salaries.

In addition, the proposed amendments will create a pool of 39 new judicial positions for unified family courts, or UFCs, in Canada. Just to briefly explain the UFC model, it is designed to enhance access to the family justice system by consolidating all jurisdiction over family law matters in a single level of court, the superior court. The UFC provides a corps of judges who are specialized in family law, and promotes simplified procedures and the use of a full range of community and support services.

The UFC model is found presently in some Canadian jurisdictions, but not all of them. It is up to each province and territory to determine the court structure that best meets their needs. Provinces and territories pay the administrative costs associated with the UFC, while the federal government appoints and pays the UFC judges.

These 39 new UFC positions are intended to support the introduction of the UFC model in key sites in Alberta; the next significant phase of UFC expansion in Ontario; and the completion of the model province-wide in Nova Scotia and Newfoundland and Labrador.

The funding for the UFC positions is effective as of April 1, 2019, and the bill includes a coming-into-force provision to this effect, so that judicial appointments to the new UFC positions can be made after this date. The intervening period will allow time for the necessary steps to be taken to implement the UFC in the new sites.

I'll now turn to Ms. Dekker for the Federal Court changes.

● (2025)

Ms. Anna Dekker (Counsel, Judicial Affairs, Courts and Tribunal Policy, Public Law Sector, Department of Justice): Thank you.

I'll speak briefly to the amendments that would authorize the salaries for a new associate chief justice for the Federal Court and for creating one new position for that court through the Federal Courts Act amendments.

A new associate chief justice would share the managerial responsibilities that are currently borne by the chief justice alone. This position would allow the chief justice to devote more time to hearing cases, for example, and writing judgments, which are both important components of providing effective leadership for a court.

This position would be created through the conversion of a puisne judge into an associate chief justice position. At the same time, an additional judge would be added to the Federal Court to address projected increases in workload, for example, in the area of immigration cases.

We would be happy to answer any questions you may have.

The Chair: We spent considerable time on this issue this afternoon with witnesses, and the proposal certainly made the Law Society of Ontario happy, and a professor of law from Queen's University.

Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you for being here.

Clause 305 deals with the absence or incapacity of the Chief Justice of the Federal Court of Appeal. In fact, it adds several new paragraphs.

Did the Act not already have this type of mechanism for replacing, on an interim basis, the Chief Justice during an absence?

● (2030)

[*English*]

Ms. Anna Dekker: Yes, there is currently. The addition is that instead of it being the judge the chief justice would designate, now the first option would go to the associate chief justice. Only if the associate chief justice is not available would it then go to the next one down the line.

[*Translation*]

Mr. Pierre-Luc Dusseault: Okay.

It is therefore an amendment in relation to the new position of Associate Chief Justice.

I have another jurilinguistic question.

The French version of clause 297 reads as follows: "*s'agissant du juge en chef et du juge en chef adjoint de la Cour fédérale : 344 400 $*". Yet, the English version indicates that it is $344,400 "each".

Is there a reason why the term "*chacun*" does not appear in the French version? This should not cause confusion.

[*English*]

Ms. Anna Dekker: When the drafting is done on the Judges Act, you would see in the French provisions, it's done slightly differently. When the drafters add a new position to the court, they would simply try to model what is done in other courts so there is internal consistency between the languages. It's just done slightly differently. But in each case it's clear that only the chief justice and the associate chief justice would be receiving that particular salary.

[*Translation*]

Mr. Pierre-Luc Dusseault: Therefore, it is about consistency.

Is there a reason why they have the same salary? The titles "Chief Justice" and "Associate Chief Justice" suggest that these positions are at different levels.

[*English*]

Ms. Anna Dekker: Currently all the chief justices and associate chief justices across the superior courts, which include all the provincial superior courts, whether trial or appellate, as well as the federal courts—the Federal Court of Appeal, and the Tax Court of Canada—wherever there is a chief justice and an associate chief justice and/or a senior associate chief justice where they exist.... All these positions receive the same salary, which is paid to all managerial judges across superior courts.

Mr. Pierre-Luc Dusseault: Thank you.

It's consistent.

The Chair: Thank you very much, Ms. McKinnon and Ms. Dekker.

Mr. Fergus.

[*Translation*]

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

[*English*]

The Chair: Sorry, you're not done yet.

[*Translation*]

Mr. Greg Fergus: I will be brief.

There is a lot of support for the unified family court.

First, can you tell me the lag time between the coming into force of these provisions in 2019, and the hiring of judges?

Second, can you anticipate this lag time? Could we work together in advance so that the judges are in place as soon as possible?

[*English*]

Ms. Catherine McKinnon: The authorization for the appointments will be effective as of April 1, 2019. It will be possible for appointments to be made any time after that date. Of course, there are steps that need to be taken in advance, because the judges who are appointed to the unified family courts will have to apply through the superior court's regular appointments process. They could be family law lawyers who wish to apply for the unified family court. They may also be judges who are in the provincial family courts who may wish to express their interest in that court. There will be efforts made to ensure that the family law practitioners and judges are aware that these opportunities and new positions will be coming available in the locations where the unified family courts will be established, so if they are interested in making their application, they can do so.

As well, there will be the whole process where the judicial advisory committees that assess the applications will have an opportunity to do so, and make recommendations with respect to those candidates. We are not in a position to say specifically when each new position will be filled.

● (2035)

Mr. Greg Fergus: My question was trying to anticipate what you would estimate would be the length of delay between the positions coming into force and them actually being filled.

Ms. Catherine McKinnon: I'm not sure that I can say. I understand you heard this afternoon that everyone is very excited to have these new courts established and operationalized. I think everyone who's involved—the potential candidates, the judicial advisory committees, and of course, the Minister of Justice and the Governor in Council who makes the appointments—will be making best efforts to fill the vacancies as quickly as possible when they're authorized.

The Chair: It's a good point for you to bring in up in caucus, Greg. Tell the minister to get this done, and fast.

Thank you both.

Next is division 16, “Financial Sector Legislative Renewal”. We heard a fair bit about this this afternoon as well.

From finance, we have several people: Mr. Brazeau, senior director, framework policy; Mr. Dussault, senior director, framework policy—

Mr. Francesco Sorbara: Mr. Chair, are we going to continue again?

The Chair: Yes, we are. We're going to try and finish.

We have Ms. Tolsma, senior economist, sector policy analysis; Mr. Weil, senior project leader; and Mr. Sample, acting director general, capital markets division, who I believe we met with before.

The floor is yours, Mr. Dussault.

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

Part 6, division 16 of the bill, entitled “Financial Sector Legislative Renewal”, proposes amendments as part of the financial sector legislative review prior to the statutory sunset date of March 29, 2019. The periodic sunset of financial sector legislation is designed to ensure that the financial sector framework is reviewed regularly and that it remains effective and technically sound.

The Department of Finance began the financial sector legislative review in 2016. Over the course of 2016 and 2017, the department led comprehensive public consultations with stakeholders in order to understand their priorities and perspectives. Through these consultations, we heard that the financial sector framework is functioning well and that the foundational elements of the framework continue to be supported. These elements include strong and clear mandates for financial sector regulatory agencies and a principles-based approach to regulation. They also include a separation between banking and insurance activities, which we are not proposing to reform.

Stakeholders also told us that certain targeted updates would help Canada's financial sector keep pace with global developments and the changing needs of businesses and consumers. To that end, amendments are being proposed in four priority areas.

[*Translation*]

The bill proposes four priority reforms as part of the financial sector review.

First, proposed amendments will provide greater flexibility for financial institutions to undertake and leverage fintech activities.

Second, proposed amendments will provide prudentially regulated deposit-taking institutions, such as credit unions, the flexibility to use generic bank terms, subject to certain disclosures.

Third, proposed amendments will allow life and health insurers to make long-term and predictable investments in infrastructure.

Last of all, proposed amendments will renew the sunset date for legislation governing federal financial institutions for five years from the date on which the Budget Implementation Act receives royal assent.

I will take a moment to explain the changes with respect to infrastructure.

● (2040)

[*English*]

Part 6, division 16 proposes amendments to the Insurance Companies Act to permit life and health insurance companies to make long-term investments in infrastructure to help them obtain predictable returns. These new investment powers would also be granted to fraternal benefit societies and insurance holding companies.

Through our consultations, we heard that life and health insurers are seeking greater flexibility to invest in infrastructure assets that would support their asset-liability matching needs. Life and health insurers are attracted to infrastructure as an investment class because, generally, it gives long-term, stable, predictable returns. These characteristics make infrastructure a suitable type of investment for insurers to match against the liabilities they take on.

As part of a general restriction on commercial investment under the Insurance Companies Act, the current legislation does not permit life and health insurers to make such investments. By enabling insurers to invest in infrastructure assets, the proposed amendments will support the industry asset-liability matching needs, which will make insurers more financially resilient.

The proposed amendments will also have the added benefits of unlocking a new source of infrastructure financing that can support Canadian communities.

My colleague, Mr. Brazeau, will speak to the proposed amendments in the area of financial technology and bank terms.

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

Part 6, division 16 of the budget implementation act amends a number of acts governing federal financial institutions, in order to adapt the legislative framework in response to the emergence of financial technology or fintech.

Fintech refers to both the innovative delivery of financial services through technology and a technology-focused firm that offers financial services or related products.

The further development of fintech can make the financial sector more efficient and useful for Canadians, as it has with such previous innovations as online banking and email money transfers.

[*Translation*]

In our consultations, stakeholders pointed out that the shifting expectations of customers with respect to products, services, and service channels put pressure on their business model.

[*English*]

I'd like to underline that a vast majority of stakeholders across the financial sector, from financial institutions, such as banks and insurers, to small and large fintechs, emphasize that adapting the federal framework was a core priority for their businesses and the financial services industry in Canada.

The statutes covering financial institutions are one of the more direct levers that the federal government has to foster innovation through setting a regulatory framework that is technology-neutral and less prescriptive in its approach.

[*Translation*]

Generally speaking, the framework governing the financial sector currently limits investments by federally regulated financial institutions, such as banks or insurers, to financial services. The difficulty concerns mixed business plans to provide financial and non-financial services through technological interfaces, because our laws currently do not provide for this model.

Take the example of a business called Square.

[*English*]

Square is a financial and merchant services aggregator and a mobile payment provider. While Square is clearly focused on the delivery of financial services, it is also harnessing its technology for food delivery services, as well as real-time GPS tracking.

Under the current legislation, a bank would not be permitted to invest in Square, owing to the fact that Square's business model includes both financial services and business lines that are not financial in nature.

The proposed amendments would extend the scope of activities related to financial services in which federal financial institutions may engage, to be consistent with an evolving market environment. This includes the ability of federal financial institutions to undertake, invest in, and refer to financial technology services. The proposed amendments would also provide the ability of federally regulated financial institutions to offer identification, authentication, and verification services.

While the proposed amendments provide greater flexibility for innovation, I remind the committee that this flexibility is bounded in the context of a world-leading regulatory system known for its prudence and balanced approach. Federal financial institutions are required to meet a comprehensive set of legislative and regulatory requirements and are subject to ongoing monitoring by federal financial sector agencies such as the Office of the Superintendent of Financial Institutions and the Financial Consumer Agency of Canada.

I would also highlight what the proposed legislation does not do. It does not change the government's long-standing policy framework wherein banks are limited in undertaking the business of insurance. While these amendments may have added, expanded, or clarified certain powers of banks, they do not override the existing blanket prohibition in the Bank Act, which prevents banks from undertaking the business of insurance unless explicitly permitted. The insurance business regulations also explicitly prohibit a bank from indirectly providing an insurance company, agent, or broker with any information respecting a customer of the bank in Canada. This prohibition on banks indirectly providing information would prevent banks from using their relationship with a third-party fintech to provide information to insurers.

Secondly, I would underline that this legislation must also be read in the context of Canada's existing federal and provincial privacy frameworks. Federally regulated financial institutions are, and remain, subject to the Personal Information Protection and Electronics Documents Act, PIPEDA, which sets out rules for all private sector organizations regarding the collection, use, and disclosure of personal information, including the requirement to obtain consumer consent. The proposed amendments for the committee have been developed against this overall policy framework that has served Canadians well, with well-trusted financial institutions and strong regulators.

I will now briefly outline the proposed amendments in the area of bank terminology. Part 6, division 16 of the budget implementation act amends the Bank Act in order to provide prudentially regulated financial institutions such as credit unions with the ability to use the terms “bank”, “banker”, and “banking”, subject to disclosure requirements. As you may know, the Bank Act currently limits the use of the words “bank”, “banker”, and “banking” to banks only. These terminology rules exist so that consumers know when they are dealing with a bank and when they are not. These rules also exist so that consumers understand which jurisdiction is responsible for the regulation of a given institution, including any applicable deposit insurance protections. The distinction is especially important in times of financial distress.

Through our consultations, we heard that the credit union industry is seeking greater flexibility to use the terms “bank”, “banker”, and “banking”. Such flexibility would help them better compete with banks to offer financial services to Canadians. The government recognizes that the credit union system is an important part of the Canadian economy and contributes to competition in financial services. As such, the proposed amendments would allow credit unions and other prudentially regulated deposit-taking institutions, such as trust and loan companies, the flexibility to use the terms “bank”, “banker”, and “banking” to describe their services. The proposed flexibility would be subject to certain disclosures regarding institutional identity and the applicable deposit insurance regime. As an example, provided that the required disclosures were made, a credit union would be permitted to refer to online “banking” services on its website or invite prospective clients to “bank” with them in their advertising materials.

Consistent with the current rules and international best practices, only banks would be able to use bank terminology in names and identifying marks. Other non-bank financial institutions, such as fintechs and payday loan companies, would continue to be restricted from using bank terms in all circumstances. The government is also proposing amendments to the Bank Act and the Office of the Superintendent of Financial Institutions Act that would provide the superintendent of financial institutions with better calibrated and more flexible tools to enforce the rules around bank terminology.

Lastly, technical amendments are also proposed that would clarify certain provisions relating to the use of bank terms.

Thank you.

● (2045)

[*Translation*]

Mr. Manuel Dussault: In closing, the last amendments proposed in division 16 of part 6 concern the sunset date in legislation governing financial institutions. It is proposed that the sunset provisions in certain laws governing federal financial institutions be renewed to five years after the day on which the budget implementation bill receives royal assent.

These amendments would ensure that the financial sector regulatory framework continues to be reviewed regularly and that it remains effective and technically sound. The proposed amendments apply to the Bank Act, the Insurance Companies Act, and the Trust and Loan Companies Act.

Thank you for your attention. We would be pleased to answer any questions.

[*English*]

The Chair: Thank you very much for the overview.

I have just one question, on the sunset provisions. Will those in any way impact the Bank Act review?

Mr. Manuel Dussault: This is the conclusion of the first part of the review of the Bank Act. We're renewing the sunset date for five years from the coming into force of the legislation, so for another five years. That will allow the government and the department to do another review. That's what we're proposing.

The Chair: When would that review of the Bank Act take place?

Mr. Manuel Dussault: It depends on when the legislation comes into force, when it receives royal assent. It would be five years after that.

● (2050)

The Chair: So it really in effect delays the Bank Act review from where it is?

Mr. Manuel Dussault: The amendments we're proposing now are part of the 2019 Bank Act review. This is the priority of amendments arising from that review. The focus is on fintech infrastructure, and on bank name use.

The Chair: Does anybody have any questions?

Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: My question concerns financial technology.

You talked about one of the criticisms that we heard. You may have anticipated questions about the separation of banks and insurance companies.

You say that it is impossible for a bank to communicate a customer's information to a financial technology company, which would then offer insurance based on the information received. You say that this is prohibited even though the bill frequently mentions "collecting, manipulating, and transmitting information" as well as " developing, manufacturing, and selling technology".

Where can we find this prohibition?

Was this part of the Act amended to to take into account financial technology?

Mr. Julien Brazeau: Amendments to Part 8 of the Bank Act are subject to sections 416 concerning the prohibition against banks undertaking insurance business. This prohibition applies to all sections in part 8. Thus, any new flexibility provided for by the bill remains subject to section 416.

Mr. Pierre-Luc Dusseault: Okay. I think that this will be reassuring for some people watching.

With respect to the terms "bank" and "banking", the reporting and communication requirements for any corporation using the terms "bank", "banker", or "banking" without authorization, with the exception of a bank, require that they indicate what they do and that they are not a bank.

The bill seems to indicate that most of these rules will be defined by the regulations. Is that correct?

Mr. Julien Brazeau: Yes, that is the case.

The bill sets out the "what", or what information must be disclosed, namely the insurance plan and the status. An entity must indicate whether it is a bank or a co-operative.

The "how" and the "where" of disclosure will be set out in the regulations and will be discussed with the industry.

Mr. Pierre-Luc Dusseault: The industry seems to want to develop a voluntary code of conduct. I do not know how that could be incorporated. Perhaps the regulations will reflect what the industry has already defined as acceptable when it comes to communicating the real nature of the business.

Mr. Julien Brazeau: We plan to discuss that with the industry to find out what its voluntary code of conduct covers. We want to ensure that the code would provide consumers with the protection they need.

Mr. Pierre-Luc Dusseault: Okay. Will those discussions occur as soon as the bill receives royal assent?

Mr. Julien Brazeau: Yes.

Mr. Pierre-Luc Dusseault: We are giving you the regulatory authority to do that, so we hope that it will be done as soon as possible.

Mr. Julien Brazeau: Yes. I understand.

Mr. Pierre-Luc Dusseault: Thank you.

[*English*]

The Chair: Mr. Sorbara.

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

With respect to the legislation in the BIA with regard to life insurance companies making investments in infrastructure, do there need to be any corresponding capital adjustments in terms of how capital is accounted for by OSFI for the insurance companies? It's one thing to have it in the BIA here, but in terms of the capital ratios and capital requirements that the insurance companies operate on, I'm just curious. I'm still thinking that they'll need some sort of adjustments on how they have to set aside capital to invest in these assets.

● (2055)

Mr. Manuel Dussault: There is no proposal in the legislation to make adjustments to capital rules. OSFI sets the capital rules independently. Of course, as you learn by experience—and we very much see this as a journey on new types of investments—there'll be lessons to be learned and adjustments to be made, probably.

Mr. Francesco Sorbara: If this legislation, hypothetically, were implemented this evening, what would change tomorrow morning for the insurance companies in Canada, which manage literally hundreds of billions of dollars and definitely can use the ability to invest in assets in Canada?

Mr. Manuel Dussault: At this point, life insurers are not allowed to take investments in infrastructure on the equity side, so this will open up a new area for investment for them in terms of better asset-liability matching. That's what's going to change for them. It's a new asset type of investment that they will be allowed to make.

Mr. Francesco Sorbara: Historically, they have been able to do debt investments up to a certain amount depending on the internal rating, private and public, and so forth.

I think Mr. Dussault may have alluded to that, if I was listening correctly. In terms of the structure between banks and insurance companies right now, there is no change in terms of banks directly or as we would say say in the House of Commons, indirectly, being able to offer any clients, business, or persons insurance projects' products.

Mr. Julien Brazeau: That's correct.

Mr. Francesco Sorbara: If they were to take investments in fintech companies, is that still correct?

Mr. Julien Brazeau: They would still be covered by the direct or indirect prohibition.

Mr. Francesco Sorbara: Okay.

I have a bunch of other stuff, but I'll stop there. It's been a long day.

The Chair: Mr. Albas.

Mr. Dan Albas: Thank you.

Just going back to life insurance companies, the provisions under subdivision B, are there still restrictions on the ability of life insurance companies to hold infrastructure for 14 years, or does that only pertain to the debt and not the equity provisions?

Mr. Jeremy Weil (Senior Project Leader, Financial Sector Policy Branch, Department of Finance): Thank you for the question, Mr. Chair.

I think you may be making reference to the specialized financing regulations that include a 13-year term limit on investments. We've heard from stakeholders from time to time that the term limits in those regulations can be a constraint; they are, by definition. The investments as proposed in this legislation wouldn't be made pursuant to the specialized financing regulations; rather, they'd be held pursuant to a new set of regulations on which, if adopted, it would be our intention to work collaboratively with the industry to develop, and those as contemplated would not include a term limit such that long-lived infrastructure assets could be held for their life.

Mr. Dan Albas: Okay, so subject to some sort of Governor in Council process where there could be a time limit, but you still haven't got to that point with consultations as to what's appropriate. Is that correct?

Mr. Jeremy Weil: That's right. What we heard very clearly from the industry in this investment space is that it's not appropriate to impose a term limit. We wholeheartedly agree that those regulations were not designed for this type of asset, so that we're not contemplating a term limit.

Mr. Dan Albas: The use of the term “permitted infrastructure entity” sounds similar to some of what's gone on in the European Union when they've made special provision for infrastructure to be held by certain companies. Is that following the model that was used in the E.U.?

Mr. Jeremy Weil: We're aware of the project that EIOPA, the European Union insurance regulator, undertook from a prudential standpoint to find ways to relieve their insurers of capital requirements. That was more of a prudential project, but it's certainly something that we're aware of, that we did research into, and in which we engaged with the Europeans in the context of this project, so not a direct parallel, but—

Mr. Dan Albas: Yes, it's not a direct parallel, but again, just a useful mechanism to kind of forward this particular—

Mr. Jeremy Weil: It's a significant project that's happening in the same sort of policy space, so we would have been aware of that.

Mr. Dan Albas: All the special regulations that I spoke of before, that is for the debt side. These are now the proposed rules for the equity side. Is that correct?

Mr. Jeremy Weil: That's right, for infrastructure specifically. There are existing regulations for real property.

Mr. Dan Albas: I believe it's a 6% holdback, or capitalization, that needs to happen for debt. Is that also going to be for the equity side? I believe it's what you said to Mr. Sorbara.

● (2100)

Mr. Jeremy Weil: If we're dealing with the sort of prudential regulatory capital side of the house, the rules, this legislative amendment wouldn't contemplate changes to the life insurance capital adequacy test, or LICAT, that life insurers are subject to. As Mr. Dussault mentioned, that's sort of OSFI's purview to manage independently.

That said, we work with OSFI regularly, so no change is being contemplated to the amount of regulatory capital that a life and health insurer would have to hold against a given investment.

Mr. Dan Albas: What industry would argue is that pension plans within Canada or sovereign funds from outside of Canada don't need to hold that kind of capital back, and can obviously bid higher for some of these assets. That being said, it's a different argument for a different day, because it's not part of the BIA, but I appreciate your answers on this.

I'd like to quickly go back to the fintech side. I'm basing this on our analysts' report which says:

> respectively, to permit financial institutions to act - subject to the terms, conditions and restrictions set out in regulations - as an agent for any person involved in the provision of financial services.

What they're saying is that if I have a depositor, I'm going to act as an agent to help them receive financial assistance, whether it be an app-based service, etc., so that we're just authorizing the bank to be able to digitize the information on behalf of their depositors.

Is that what's contemplated here?

Ms. Saskia Tolsma (Senior Economist, Sectoral Policy Analysis, Economic Development and Corporate Finance, Department of Finance): These are existing provisions already in the Bank Act that allow for financial institutions to act as agents with respect to financial services. These amendments clarify and modernize the fact that this agency relationship can happen without a financial institution having had to take a direct investment in a company.

Currently, the feedback we received from stakeholders is that it's not clear whether a financial institution will actually have to hold an investment in a company in order to act as an agent on their behalf, and we have clarified that it would not have to hold an investment in that company.

Mr. Dan Albas: Are there any rules, because, for example, clause 322 adds section 522.081 to the Bank Act to allow the Governor in Council to make regulations indicating when a foreign bank, or entity associated with a foreign bank, can acquire or hold control of, or acquire or hold a substantial investment in a Canadian entity that engages in financial services activities.

Is this a way to circumvent the Investment Canada Act where there are certain provisions that relate to foreign entities purchasing Canadian companies?

Ms. Saskia Tolsma: No. The fintech-related amendments, again, apply to the existing framework. They don't set aside any of the existing other legislation.

What they do is establish for foreign banks operating in Canada the same type of flexibility that we're offering other financial institutions operating in the domestic space.

Mr. Dan Albas: Would they still be subject to all Canadian privacy laws, PIPEDA, etc.?

Mr. Saskia Tolsma: Correct.

Mr. Dan Albas: That's helpful to know.

Last, I want to go to the banking terminology.

This is something that I know puts some people off, or at least it did with the Minister of Finance, but it is realistically.... Section 983 of the Bank Act restricts entities that are not banks from using the words “bank, banker” or “banking”. When we have food banks or blood banks, I know clearly that most of us would say that consumers are likely to have the common sense to not relate to them, but technically, if OSFI interpreted that someone was using it.... Is this specifically in the Bank Act where it's only related to those in the financial institutions space?

Mr. Julien Brazeau: That's precisely it.

Mr. Dan Albas: I just want to make sure we're not capturing legitimate activity in a way that doesn't make sense to Canadians, so I appreciate the common sense of hearing that.

With regard to ATB and some trust companies, again, I'm not as familiar with the trust companies that do take deposits. I assume there has been a proper consultation with them. I know ATB is very supportive of this legislation.

I just wanted to make sure of that.

That's it, Mr. Chair.

● (2105)

The Chair: Mr. Poilievre.

Hon. Pierre Poilievre: We are getting correspondence from constituents suggesting that provisions in the budget bill would give banks the ability to share private information with insurance companies.

How do you address that concern?

Mr. Julien Brazeau: We've certainly heard those calls as well. I think some context on this section would be useful.

The existing provisions in terms of information technology activities date back to 2001. The proposed amendments don't seek to change those existing provisions. They are looking at making the provisions more technology neutral.

The provisions continue to be subject to federal and provincial privacy legislation, including PIPEDA, which would require that consumers consent to the sharing of any information a bank would want to share.

Those privacy acts and regulations continue to apply in the context of these new provisions as well.

Hon. Pierre Poilievre: Back to the issue of insurance companies investing in infrastructure, how do financial regulations ensure insurance companies have liquidity to pay out unexpectedly high claims if a large part of their float is invested in hard, non-liquid assets like toll roads and other infrastructure?

Mr. Jeremy Weil: That is first and foremost the role of the Office of the Superintendent of Financial Institutions. Its mandate is to protect not just depositors and creditors but policyholders on the insurance side as well. One of the key ways in which it does that is by ensuring that federally regulated life and health insurers hold enough regulatory capital against the investments they make, and that the amount of capital held is commensurate with the risk profile of the given investment, the credit risk, the regulatory risk, the operational risk, such that there would be an adequate amount of capital available to that institution to weather an unexpected event.

That being said, I don't work for the superintendent's office. I'm sure it could give you a far more detailed account of how it goes about that, but that is first and foremost the safety net that exists to ensure policyholders can be confident that their life and health insurance companies are investing soundly.

The Chair: One final question.

Mr. Dusseault.

Mr. Pierre-Luc Dusseault: Back to fintech.

[*Translation*]

Mr. Poilievre's question had to do with the Personal Information Protection and Electronic Documents Act, which could apply to the transfer or sharing of client information between two companies. However, in the case where the financial technology is the property of the bank, where the bank purchased insurance-related financial technology, do the privacy regulations still apply?

It is the same entity. If I do business with one company, it can share the information within the same organization. Would that not compromise the barrier that exists between insurance companies, insurance-related financial technology, and the banks that could acquire such companies?

[*English*]

Ms. Saskia Tolsma: With respect to your question on insurance, the insurance business regulations continue to apply. They provide that a bank shall not provide directly or indirectly an insurance company, agent, or broker with any information respecting a customer of a bank in Canada.

These restrictions would apply to investments or partnerships a bank may undertake with third parties such as fintechs. The indirect provision will continue to apply.

With respect to the question on PIPEDA, the existing framework respecting the transfer, sharing, collection, or dissemination of client information would always be subject to consent, subject to the existing privacy frameworks.

Mr. Pierre-Luc Dusseault: So a bank cannot own an insurance company, a fintech, and it would be called a partnership with a fintech?

Ms. Saskia Tolsma: If it's a partnership with a fintech, it could not indirectly provide customer-related information that would be used for insurance purposes.

Mr. Pierre-Luc Dusseault: Thank you.

The Chair: With that, we will thank the five witnesses for their presentations.

Other than division 19, I don't see a lot of controversy in the next four. Are you still willing to push ahead, and try to finish this?

Some hon. members: Agreed.

● (2110)

The Chair: On division 17, Western Economic Diversification Act, the witness is Mr. David Dewar, director, strategic policy and government affairs.

Mr. Grewal.

Mr. Raj Grewal: I think we all have access to the preambles, so I think we should make it optional if they want to say them or not.

The Chair: Yes, we have access to them.

Perhaps you could be very brief on your preambles.

Go ahead, Mr. Dewar.

Mr. David Dewar (Director, Strategic Policy & Government Affairs, Policy & Strategic Direction, Department of Western Economic Diversification): Thank you, Mr. Chair.

I do have a short opening statement.

The Department of Western Economic Diversification is a regional development agency in the innovation, science, and economic development portfolio. Our mandate is to promote the development and diversification of the economy of western Canada, the four western provinces.

We are seeking a minor amendment to our enabling legislation, the Western Economic Diversification Act.

Currently, in order to sign an agreement with a province, the act requires that our minister first seek the approval of the Governor in Council, essentially cabinet and the Governor General. This requirement can add months to the process which can delay the implementation of federal initiatives as well as provincial initiatives. We're seeking to amend the Western Economic Diversification Act to eliminate this requirement. This change would allow us to respond more quickly to opportunities to collaborate with provinces in areas of shared responsibility.

The Chair: Thank you.

On the preamble, Raj, I know we have access to it, but I do know people read some of these transcripts to find out what's happening, and the preamble informs them. That's part of the reason for it. We do have access, but there are people who do read the transcript, surprisingly.

Are there any questions for Mr. Dewar?

Hearing none, thank you, Mr. Dewar.

On division 18, which is the Parliament of Canada Act, from the Privy Council Office, we have Selena Beattie, director of operations, cabinet affairs; and Madam Burgess, legal counsel.

The floor is yours.

Ms. Selena Beattie (Director of Operations, Cabinet Affairs, Legislation and House Planning, Privy Council Office): Mr. Chair, and members, I'll be brief, given that you have the preamble, but some folks may still be looking for a bit more information.

As you are aware, members of Parliament do not currently have access to maternity or parental leave. You do not contribute to employment insurance, and therefore, you don't have access to benefits under the Employment Insurance Act. As part of its study of ways to make Parliament a more family-friendly environment, the House of Commons procedure and House affairs committee recommended amending the Parliament of Canada Act to make maternity and parental leave possible for members of Parliament.

The amendment that the government is proposing as part of the budget implementation bill would allow for the House and the Senate to make regulations that would enable maternity and parental types of leave provisions for parliamentarians.

[*Translation*]

I am happy to answer any questions.

[*English*]

The Chair: Thank you.

Mr. Albas.

Mr. Dan Albas: Thank you.

Actually, one of my daughters was born while I was in the last Parliament, so it's just interesting to see how this mechanism would work. Maybe you can explain exactly how that would work for a female member, or I guess a male member, so that they could utilize the said benefit, compared to EI, for example.

Ms. Selena Beattie: Members do not receive a salary. They receive an allowance. The Parliament of Canada Act currently provides that for every sitting day a member does not attend the House, their income is cut by $120 a day. Three exceptions are within section 57 of the Parliament of Canada Act. Those reasons are: if the House or Senate was not sitting—if you didn't miss a sitting, you're not cut for missing a sitting; if you're on public official business; or by reason of illness. Pregnancy or parental leave wouldn't fall into any of those categories.

The procedure and House affairs committee recommended adding maternity or parental leave as a fourth category. The government has chosen to achieve the same end in a slightly different way because if it were simply added as a fourth category, that would be a blanket that would apply with no restrictions and no parameters until the House or the Senate chose to apply parameters.

The approach the government is recommending to Parliament in the budget implementation act instead would create a new power for the House and the Senate to create regulations for its own members. The details of how this would operate will be up to members themselves to decide, and the House would then have the ability to adopt an order setting out those regulations, if this amendment is adopted.

There would then be a subsequent stage whereby members would determine what those parameters would be. Would there be a limitation to the number of days? Would it be less than the full income for a specific number of days? Any number of parameters would be up to the House to determine for members of the House.

When the House adopts an order, that would have the power of regulations, which would then regulate how this would apply to members.

The specifics of the actual scheme will be for you to decide for members of the House.

● (2115)

Mr. Dan Albas: Would this motion be like a committee of the whole where all members could speak to it, or would it go to PROC for examination before it was ratified by the House? What would the process for that be?

Ms. Selena Beattie: Both the House and the Senate would have the power to adopt an order for the regulations, and the House could adopt an order by any number of mechanisms. Normally, a motion would be moved but it could potentially be a motion for concurrence in a committee report. It could be another type of motion. Again, those are subject to the rules of the House, and it would be for members of the House to decide.

Mr. Dan Albas: I appreciate that perhaps there is a process whereby PROC could dive into this because, again, we want to make sure it works for parliamentarians. I would imagine that PROC would appreciate being consulted before something was done.

Thank you.

The Chair: Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

Thank you for being here today.

Your answer seems to be “no”, but out of curiosity, I would like to know whether, under the current regulations, it is already possible for women to obtain a doctor's note for sick leave after giving birth. Obviously, given the circumstances, it isn't possible to return to work the next morning.

With regard to the allowance, would a doctor's note not already allow for some flexibility and prevent women from having their pay cut by $120 a day, even though pregnancy and parental leave do fall under the three exceptions? Could part of the leave already be covered that way?

We agree that women cannot get a doctor's note for a whole year after giving birth, but could this approach remedy part of the problem?

Ms. Selena Beattie: I would not want to say too much about the sick leave practices of the House of Commons. I'm not an expert on the matter and I do not know what standards have been applied to date.

However, maternity-related absences are not always necessarily because of illness. The new regulation would give the House of Commons the opportunity to also adopt regulations to cover pregnant women and parents other than the woman carrying the baby who could also be entitled to parental leave to take care of a newborn or newly adopted child.

Some women may experience illnesses associated with pregnancy, but that is not always necessarily the case. We do not want to imply that with pregnancy comes illness, which is not necessarily the case. If a pregnant woman finds herself in a situation where she has to take sick leave for reasons that are not related to her pregnancy, the two provisions of the act could apply.

It would be up to the House of Commons to decide how the two provisions of the Parliament of Canada Act would apply to its own members.

● (2120)

Mr. Pierre-Luc Dusseault: Thank you for your answer. I was mostly asking out of curiosity. It is true that I do not know all the details of how that works or how flexible it is, and that pregnancy is not an illness. Thank you for correcting me.

Mr. Greg Fergus: Yes.

Mr. Pierre-Luc Dusseault: I understand the sensitivity of this issue. I was just saying that there might be a way for women to take leave as things now stand. That is what we want and what we are hoping for.

[*English*]

The Chair: Okay. It is in the bill in any event, and further decisions have to be made.

Thank you, Ms. Burgess.

Thank you, Ms. Beattie.

We're on division 19, Canada pension plan.

Mr. Countryman, from Finance, you've been here before. With you, from ESDC, is Ms. Giordano.

Welcome. Who would like to start?

Ms. Marianna Giordano (Director, CPP Policy and Legislation, Income Security and Social Development Branch, Department of Employment and Social Development): Thank you very much. I will make this brief, as I know you've all had a hard day.

[*Translation*]

This bill proposes amendments to the Canada pension plan consistent with the agreement in principle reached unanimously by Canada’s finance ministers in December 2017. The changes eliminate the pension reductions for young survivors and fixes the amount of the death benefit at $2,500 for all eligible contributors, which will mainly benefit low- and moderate-income families who contribute.

What is more, the amendments provide for an additional benefit for disabled retirement pension beneficiaries under the age of 65. The bill also implements a disability drop-in and a child-rearing drop-in to protect pension amounts under the CPP enhancement for individuals who are disabled and parents with lower earnings during child-rearing years.

In addition, this bill also maintains portability between the CPP and the Quebec pension plan, following the enhancement of the latter. It also authorizes the making of regulations to support the sustainability of the CPP enhancement.

[*English*]

These amendments will provide additional support to Canadians and their families and will be especially beneficial to women, as they are more likely to reduce work to care for young children, become widowed at a young age, or collect a disability pension. In addition, integrating the Canada pension plan and the Quebec pension plan enhancement ensures the full portability of the enhanced benefits across Canada for all workers.

As well, Canadians can rest assured that the fully funded enhanced CPP will remain well funded over time, providing them with benefits they can count on.

[*Translation*]

I am happy to take any questions.

[*English*]

The Chair: Thank you, Ms. Giordano.

Are there any questions on the Canada pension plan provisions?

Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

Thank you for being with us.

My question has to do with the benefits and with the attribution of income as opposed to the exclusion of income. The system that the government chose involves attributing earnings during the years in which the person in not part of the labour force.

Did you examine the difference between the system of excluding earnings, which from what I understand is how the current system operates, and the proposed system of attributing earnings?

Did you figure out what that would mean for those receiving the pension?

● (2125)

Ms. Marianna Giordano: The difference will depend on the earnings of each beneficiary. Of course, it will be less beneficial for those who have children at a young age.

[*English*]

It will be less beneficial for these individuals. However, the trend is that people have children later in life. For these individuals it may be more beneficial as we're taking the five-year average prior to their taking time off to take care of children. It really depends on your pattern of earnings.

[*Translation*]

Mr. Pierre-Luc Dusseault: The fact of the matter is that you have data that shows that this could have a more serious impact on young people, particularly young women.

Ms. Marianna Giordano: If we look at the participation of young people in the labour market, we see that, when they have a child at age 18, their earnings are generally much lower than when they have a child at age 35. In general, people have a lower income when they are young, but we are also seeing that women are waiting until later in life to have children.

Ultimately, it will depend on each individual's earnings.

Mr. Pierre-Luc Dusseault: I'm simply trying to determine whether or not this system is better.

What do you think?

Ms. Marianna Giordano: I cannot answer that, but I can tell you that the enhancement is structured very differently than the base benefit and that it adapts much better to the situation. The enhancement is based on years of service. We always use the best 40 years to calculate the pension.

When it comes to the base benefit, we are talking about an average of years. If we calculate an average, we take out the low earnings and periods. That does not happen in the case of the enhancement. The enhancement is always based on an accumulation. Rather than including zeros, we are crediting people with earnings. This practice is used in many countries, including Belgium, Sweden, and Japan. Systems that exclude earnings are the exception rather than the rule.

Mr. Pierre-Luc Dusseault: Does the system pass the gender-based analysis tests?

Ms. Marianna Giordano: I have to say that most of the enhancements in this bill are directed more at women than men because women are the ones who leave the labour market to take care of children, they are more likely to suffer from disabilities, and they are widowed at a younger age.

Mr. Pierre-Luc Dusseault: You seem to be saying that women who have children at a young age will no doubt be penalized by the measure.

Ms. Marianna Giordano: Depending on their earnings, young women will likely receive lower amounts, but thresholds have been set for parents who have not accumulated sufficient earnings.

Mr. Pierre-Luc Dusseault: Okay. Thank you.

[*English*]

The Chair: Do any of you want to add anything else? Okay.

Thank you for your endurance hanging around with us for three hours this afternoon and evening.

Thank you very much.

The last division is division 20, Criminal Code.

We have Ms. Sheppard from Justice Canada.

Madam Sheppard, the floor is yours.

Ms. Ann Sheppard (Senior Counsel, Criminal Law Policy Section, Department of Justice): Thank you very much.

Division 20 of part 6 would create a remediation agreement regime in a new part of the Criminal Code. It would be XXII.1.

What is a remediation agreement? A remediation agreement is a made-in-Canada version of what other countries call a deferred prosecution agreement, which is essentially an agreement between a prosecutor and an accused whereby charges are stayed pending successful completion of the terms of an agreement that the parties make between them.

Remediation agreements would be a new tool for prosecutors in Canada to use at their discretion in appropriate circumstances where it's in the public interest to do so. They would be available for use in addressing corporate criminal wrongdoing, so serious economic crimes that are listed in the schedule that a corporation or an organization has been alleged to have committed.

The regime in the Criminal Code has a purpose clause that outlines the importance of making sure that the agreement constitutes an effective, proportionate and dissuasive penalty. Another purpose is to provide for reparation for harms done to victims and it is there intended to reduce the negative consequences to uninvolved third parties.

What the regime does is it sets out factors that the prosecutors are to consider in determining whether a remediation agreement would be appropriate, such as the the gravity of the offence, the degree of involvement of senior management of the corporation, whether the company is willing to identify implicated individuals, that sort of thing. There is an invitation to negotiate that the prosecutor issues to a company and part of the code sets out what that would contain. It would explain that the negotiations must be carried out in good faith. There would be a time limit for accepting the terms, and there's a lot of other procedural detail set out in the draft bill.

There are mandatory contents of remediation agreements so they must all have an agreed statement of facts. The company must admit responsibility for the act or omission that would constitute the offence. They have to co-operate. They have to forfeit any property that they've obtained through the commission of the wrongdoing and they have to pay a penalty. They have to make reparations or explain why that's not viable in the circumstances, if the victim cannot be identified, for example, and they have to pay a victim surcharge. Those are just some of them.

There are also optional conditions that may be included, and that can be anything, but the code would set out three. One of them is an obligation to enhance the compliance measures that the company has in place, such as training of employees. Another is to appoint an independent corporate compliance monitor to monitor the company's compliance with the terms of the agreement, in particular, the enhanced compliance measures, but it could be other....

There are four court processes. One is to approve the agreement; once the company and the prosecutor have negotiated what they considered to be a fair agreement, they go to court. The court will approve it if they are satisfied that the organization has been charged with an offence, that the terms are fair, proportionate, reasonable, and in the interests of justice. They will specifically advert to the victim reparation term.

During the course of the agreement, which could last— it's negotiated between the parties—in other jurisdictions three to five years, typically, the prosecutor may go back to court to vary the terms, typically to extend it to give the company more time to comply. They could go back and terminate it if there's non-compliance and it looks like there's no possibility of compliance. At the end of the process, the prosecutor will go back to the court and seek a declaration of successful completion, and the company can say they've been cleansed, that there are no proceedings hanging over their heads.

For transparency reasons, there is a requirement to publish all the orders as well as the agreement itself. That is for other companies to see the kinds of terms that might be negotiated, if they were in a similar situation.

There's authority to promulgate regulations to deal with compliance monitoring because it's new in the Canadian criminal system, but there's enough detail that it could operate without the regulations.

● (2130)

The offences to which it would apply are set out in a schedule. There are 31 of them right now, but there is a power of the Governor in Council to add or take away offences. The coming into force would be 90 days after royal assent.

In a nutshell, that's what it does.

I'm happy to answer any questions.

● (2135)

The Chair: I have Mr. Fergus on the list, and then Mr. Albas.

Mr. Greg Fergus: Thank you very much, Ms. Sheppard, for drawing the short straw and being here with us very late.

Actually, I do have some serious questions about this. I have to admit, I did not read this provision before coming here tonight. I got through most of it, but not all of it. Perhaps you can help me out.

What strikes me as being wrong is that these remediation provisions seem to be focused on white-collar crime, or at least limited to white-collar crime. I was just going through sections 404 and 405. Please correct me if I'm wrong and if there are other provisions in the Criminal Code that allow for similar kinds of remediation agreements for non-economic crimes.

Ms. Ann Sheppard: First of all, this came from a consultation on economic crime, so it's the result of that. It was a government-wide consultation that was carried out throughout the fall.

It is unique because there are diversion schemes in the Criminal Code for individuals, but there is no possibility of imposing a fine. That's part of the reason that this is a statutory scheme.

It's also aimed at emulating one of the goals in other countries' regimes, which is to encourage companies to come forward and admit to wrongdoing to enhance detection. There is a requirement that the company make reasonable efforts to identify implicated individuals so that they can be prosecuted. That's how it works.

Mr. Greg Fergus: It leaves a bad taste in my mouth in the sense that it seems we're going to let off people who would commit a very serious economic crime, which has very serious effects against those who are not capable of negotiating these agreements in other crimes they might be victims of or are perpetrators of. We seem to be letting off people in white-collar crimes with a little slap on the wrist.

In fact, if we're going to do this kind of remediation, it seems we would want to extend this to other forms of crime, where we would be better off not putting people in jail, or having them face stiffer mandatory penalties. It's just something that strikes me as being a little off here.

I understand the purpose of trying to negotiate with companies to encourage them to come forward, to admit, to not litigate, so that we can make some reparations. Again, though, it seems that we're letting those with the means have an easier time of it than those who don't have the means.

Ms. Ann Sheppard: Well, it is true that some of the features, such as compliance monitoring, would not lend themselves to small-value crimes. That's for sure. It would be more likely used for larger-scale offences, and—

Mr. Greg Fergus: In a sense, then, if I steal $10, I'm in trouble, but if I steal $10 million, I can work this out—to be crude, sorry.

Ms. Ann Sheppard: This regime is applicable only to organizations, which of course can't go to jail anyway. It's not available to natural persons, only to legal persons. Individuals would not be able to avail themselves of this regime.

As far as the types of offences go, it is possible to expand it in the future. What we heard from participants in the consultation was that we should keep it focused at the outset, because certain features of it, like the compliance monitoring, are fairly new in Canadian law. It was felt that it was desirable to keep it focused so we could see how it worked in practice.

The Chair: Mr. Albas.

Mr. Dan Albas: Thank you, Mr. Chair.

I appreciate your presence here today, Ms. Sheppard.

In what section of the budget book was this particular proposal?

Ms. Ann Sheppard: I don't know the exact section, but it was a commitment made in the budget speech.

● (2140)

Mr. Dan Albas: Was there a direct reference?

Ms. Ann Sheppard: There was a direct reference to it.

Mr. Dan Albas: Regardless of whether it was in the budget document, I think that this is not a good provision to have as part of an omnibus piece of legislation, especially to have it in the last section. That is no criticism on you. I'm simply pointing out a few things for the record. This is quite a change of approach.

Given the fact that the Governor in Council can add to a schedule and add or delete other crimes, we are giving a tremendous amount of discretion. Considering that, this should be a separate bill or part of one of the other omnibus bills—I think it's C-75—where at least the justice committee could hear this directly and take a look at this to see if this is the right approach.

I have deep concerns. Even the fact that you can have the bribery of a foreign official, to me that is not just an average, everyday, white-collar crime. That is something that someone who is politically connected or at a very high level in business can do. I share many of Mr. Fergus's concerns that some people will view this as a way to remediate your way out of jail if you are connected. I have some deep concerns here. I would really hope that we could talk about separating this out or at least have the justice committee review this, because this is a fundamental departure from the way we handle the Criminal Code.

I'm all for new thinking, but to have this as the last division in an omnibus bill—believe me, I have no issue with having justice as remuneration as part of a budget bill. You need to put it somewhere. To have a stand-alone bill for such a small section on something that is so routine—I get that—but this is not an appropriate use, in my understanding. This does not help the economy. In fact, it may encourage some people to push the envelope.

Mr. Chair, I don't know what to say other than maybe we should probably consider hiving this off and sending it to the justice committee. I'm not sure that's going to do me any good though.

The Chair: Thank you, Dan.

Go ahead, Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

I will not repeat what my colleague just said, but I had the same reaction when I read that section. I wondered how the Standing Committee on Finance would be able to analyze this section and ensure that it is given the necessary attention given the nature of the proposed changes.

That being said, I would like to ask you what motivated this change. Was there a particular case that led you to propose such a change in order to deal with similar situations? Could the amendments that you are proposing today apply to a railway responsible for a derailment that destroys a downtown?

[*English*]

Ms. Ann Sheppard: It can't apply. There's an exclusion for situations where there has been serious bodily harm or death. It cannot apply in those situations.

In answer to your first question, it was not motivated by any particular case, but it's something that is being considered in other countries or has been in place in other countries. It's been in the U.S. since the 1930s, but they've started using it more since the Enron case, when a lot of employees lost their jobs. The U.K. has enacted it. Australia has legislation going through their house right now.

It's something that businesses have said that we should be looking at in Canada. It was part of an economic crime consultation. There were two discussion streams. One was on the regime for procurement debarment. It went forth as an economic crime consultation in that context.

● (2145)

The Chair: Ms. Sheppard, what I'm hearing to a great extent here is that nobody is arguing against the concept, but there is a huge question of whether this should be in a budget bill. Even I will say that.

Mr. Poilievre, did you want in?

Hon. Pierre Poilievre: Yes.

I just want to make sure I understand the provision. Division 20 of part 6 would allow those who are suspected of the crimes of stolen property, fraud, insider trading, and bribery of a foreign public official to avoid prosecution by signing onto a deferred prosecution agreement, obeyance of which would allow them to avoid charges altogether and prevent prosecution from pursuing them on the same offence.

Do I have that right?

Ms. Ann Sheppard: Almost, but they would have to be charged for the agreement—

Hon. Pierre Poilievre: They would have to have been charged.

Ms. Ann Sheppard: That's why we call them "accused"; we refer to "accused" at the outset.

The prosecutor would have to be convinced that the prosecution threshold had been such that there was a prospect of conviction, that the evidence was there. They could invite them to negotiate the terms, but the agreement itself could not be approved until the court was satisfied that they had been charged. They could be charged years ago or right up until the last minute, but they have to have been charged before the agreement could be approved by the court and take effect.

Hon. Pierre Poilievre: What would you say is the precise difference between this and a guilty plea?

Ms. Ann Sheppard: The guilty plea would result in a conviction.

Hon. Pierre Poilievre: Right, whereas this would mean that they would have no conviction.

Would there be any penalty?

Ms. Ann Sheppard: The penalty would be the terms of the agreement, and as I mentioned, there are mandatory terms. They have to pay a fine, a financial penalty. They have to forfeit any profits that they have obtained and disgorge any benefits they have as a result of their conduct. They would have to make reparations to victims or explain why they can't do that. They would have to pay a victim surcharge. Especially if compliance monitoring is involved, they would have to pay for that, which can be very significant financially. They would have to make a sincere effort to comply.

First of all, it's up to the prosecutor to determine, in their absolute discretion, whether to offer to negotiate. They have to be convinced that it's in the public interest, and the court has to be convinced that it's in the public interest. Also, partway through, either party can withdraw from negotiations, or the prosecutor can apply for termination. If they don't believe the compliance and remediative effect is being achieved, they can terminate and resume the prosecution. There's the threat of that, too, out there until it's finished.

Hon. Pierre Poilievre: Are these all offences that are prosecuted by the Director of Public Prosecutions or the Public Prosecution Service of Canada?

Ms. Ann Sheppard: Not necessarily. They could be prosecuted by the provincial prosecutors as well.

Hon. Pierre Poilievre: Yes, because it's in the Criminal Code.

Ms. Ann Sheppard: Unless the Public Prosecution Service of Canada is operating within the—

Hon. Pierre Poilievre: Yes, contract prosecution.

Ms. Ann Sheppard: Yes. The AG's consent is required as delegated, so it would likely not be private prosecutors but any public prosecutor.

Hon. Pierre Poilievre: By the AG, you mean that the authority, for example, at a federal level is delegated to the DPP, and at the provincial level is delegated to the crown attorney bureau in their respective province.

For such agreements to occur, would the public prosecutor have to agree that this is an appropriate remedy? Okay, so this would not. If someone were charged with these offences, they would not automatically have recourse to this deferred prosecution agreement. It would only occur if lawyers from the defence and the prosecutors agreed that it was appropriate.

● (2150)

Ms. Ann Sheppard: The prosecutor has to be convinced that negotiating the agreement is in the public interest and appropriate in the circumstances, and then there are a series of factors the prosecutor has to consider in determining whether that's the case. There are the circumstances in which the act or omission came to light. Did they disclose proactively or did they hide their conduct? There's the gravity of the omission, whether corruption was rampant throughout the senior ranks, and whether the organization has taken disciplinary measures against the individuals who caused it. There are a whole bunch of factors they would have to take into account in arriving at the determination that it's in the public interest, and they are under no obligation to offer this when it's at their discretion.

Hon. Pierre Poilievre: Did this come from any kind of recommendation from provincial prosecution services? Who asked for this?

Ms. Ann Sheppard: It came as a result of a public consultation. It was a Government of Canada consultation, as I mentioned, that had two discussion streams. It was a broad consultation. There were NGOs, accountants, business associations, prosecutors, small and medium-sized enterprises, so there was quite a diversity of views. Individual prosecutors made submissions. It attempts to respond to the feedback that was given by the vast majority, actually.

Hon. Pierre Poilievre: Okay.

The Chair: Mr. Albas, you have the last question, I believe.

Mr. Dan Albas: Thank you, Mr. Chair.

I'm going to actually ask some questions now.

In regard to this, I would say probably the attorney general of each province would be the one to decide whether or not they would actively use these DPAs. Is that correct?

Ms. Ann Sheppard: Do you mean the remediation agreement?

Mr. Dan Albas: Yes, the remediation agreements. They would be the ones who decide whether or not they were appropriate to be used in their jurisdiction. Is that correct?

Ms. Ann Sheppard: It would be up to whoever was delegated the authority to negotiate them and to determine that.

Mr. Dan Albas: Okay. You could have one particular province deciding they don't feel this is a particularly useful tool, and just not choose to take it up and use it. Is that correct?

Ms. Ann Sheppard: I suppose it's possible.

Mr. Dan Albas: Theoretically, where someone commits a certain type of fraud in one province, they would not necessarily face the same sanctions as someone else in a different province who did the same kind of act, or maybe was involved in multi-jurisdictions where you would have a level adjudication of justice, because one would use a certain tool and one wouldn't.

Ms. Ann Sheppard: It's a discretionary tool. It applies to companies and not individuals, so there's no charter issue. That would be the argument that companies make now, that they are potentially eligible for operations under the jurisdiction of the U.K. or the U.S., but not in Canada.

Mr. Dan Albas: Yes, but, again, this is Canada, so I would expect when people are in Canada they're going to follow Canadian laws and not have the expectation they should get the same treatment in the United States or in Great Britain.

Mr. Chair, this Parliament passed the Magnitsky Act, specifically where we've said that we want to come down hard on those who are engaged in bribery and other types of actions abroad, and we'll see those things as here in Canada.

I would really suggest that we are probably going to need to find an alternative forum because this is a major leap. I'm not sure all Canadians, not just the opposition, are ready for such a massive departure. While there may have been a consultation process, to me it sounds like it was oriented around a certain cadre of Canadian strata, rather than a wide variety of people who might have very different ideas.

The Chair: Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Schedule 6 sets out about thirty offences. I'm sorry. I was not aware of that schedule when I asked my question earlier.

What are the sentences associated with those offences. I believe there are actually 29 of them.

● (2155)

[*English*]

Ms. Ann Sheppard: Are you talking about the range of the financial amount or those in the schedule of offences?

[*Translation*]

Mr. Pierre-Luc Dusseault: Schedule 6 lists all the offences from 1(a) to (z.3). Do you have any idea of what sentences are currently set out in the Criminal Code for those offences?

[*English*]

Ms. Ann Sheppard: There is a range. They can range, but they can be fairly significant, such as that for foreign bribery, as was mentioned, which is a 10-year sanction, and there are unlimited fines.

Again, this is a regime that applies to companies that have been accused, and the companies have to identify individuals for prosecution for conduct flowing out of the same offence, so really the sanctions.... Imprisonment can't apply to a company that's charged. It would be subject to a fine, and a fairly large one because there is generally no upper limit.

[*Translation*]

Mr. Pierre-Luc Dusseault: I thought that, to some extent, the board of directors or management could be held accountable for fraud or any other criminal act.

[*English*]

Ms. Ann Sheppard: The company can through them, but it's the company, so the company can't be imprisoned. But you're right that obviously the actions would be committed by an individual, and the company would have an obligation to identify the individual so that individual could be prosecuted. It's not at all a way of getting individuals off the hook. One of the objectives, in fact, is to try to identify conduct more easily.

The idea behind offering an incentive to the company is that it would help detect wrongdoing.

[*Translation*]

Mr. Pierre-Luc Dusseault: So it's an incentive for a company that discovers this type of wrongdoing within the organization to identify the person responsible itself and bring that person to justice.

[*English*]

Ms. Ann Sheppard: That's right. It has an obligation to make its best efforts to identify implicated individuals.

The Chair: With that, we thank you, Ms. Sheppard.

Just for committee members' reference, we will meet tomorrow afternoon at 3:30 with quite a number of witnesses, and that should be our last session this week, we hope.

The meeting is adjourned.