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Chair

The Honourable Wayne Easter

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● (1600)

[*English*]

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

The meeting is related to the order of reference of Tuesday, May 10, 2016 for Bill C-15, an act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures.

As everyone knows, we're under limited time frames due to votes taking place in the House. There will be a vote at about 4:15 or 4:20, another vote at approximately 5:30, and then one at 6:45.

There are a number of divisions under part 4 of the bill that we haven't heard evidence from officials on as yet.

In the discussion I had with members, we'd like to have Justice come forward. Ms. Raitt and Mr. Caron had questions related to Justice as it relates to this bill. We will start with those questions. If we finish the round, then we could let Justice officials go and we would be back right after the vote.

Without going in any particular order, we'll start with Mr. Liepert who I know has a question for Ms. Raitt.

I might introduce Justice officials first. From the Department of Justice, we have Ms. Lieff and Ms. Hassan.

The floor is yours. I don't know if you have anything to say to start or if you want to go directly to questions.

Ms. Elissa Lieff (Senior General Counsel, Family, Children and Youth Section, Policy Sector, Department of Justice): I have a statement.

Thank you for inviting us to respond to your questions.

I am here to speak to you about the impact of the new Canada child benefit on the federal child support guidelines.

Bill C-15 proposes to replace the Canada child tax benefit and the universal child care benefit with a new Canada child benefit, which for simplicity, I will refer to as the CCB. The CCB will be a monthly amount paid to help families with the cost of raising children. It will not be considered income for tax purposes. The Department of Justice has been asked to provide information on the impacts, if any, of the CCB on the federal child support guidelines. The current Canada child tax benefit is used for comparison purposes, as from a child support perspective, it's very similar in its application to the new CCB.

Federal, provincial, and territorial governments share responsibility for family law matters. Provincial and territorial governments are responsible for laws that apply to unmarried couples and married couples who separate but do not divorce. The federal government is responsible for marriage and divorce laws. The federal child support guidelines are regulations under the Divorce Act. They consist of a set of rules and tables to apply to determine child support in divorce cases. Provinces and territories have adopted similar guidelines, except the Province of Quebec, which has its own model.

Would the Canada child benefit be considered income under the federal child support guidelines? A key point in understanding the impact on child support is that the CCB would not be considered income for the purpose of the federal guidelines. Under the federal guidelines, the amount of child support paid is determined in part based on a parent's income. The income is used to determine the appropriate basic child support amount under the federal child support tables, which are based on the number of children and the parent's province or territory of residence. The federal guidelines include specific rules to calculate income for child support purposes.

First, you look at the sources of income set out under the heading “total income”, which is line 150 in the T1 general income tax form. Because it will be non-taxable, the CCB will not be included in a person's total income. Second, you adjust the parent's total income in accordance with schedule 3 of the federal child support guidelines. Schedule 3 does not contain adjustments to allow the inclusion in a parent's income used for table purposes of governmental benefits such as the Canada child tax benefit or the new Canada child benefit. This is because these benefits are considered the government's contribution to children and not general income in the hands of parents.

● (1605)

The Chair: Thank you very much. I believe we're going to have to go and vote and come back to questions following the vote because we're down to about eight minutes. It's hardly worthwhile getting into questions.

Mr. Caron.

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): I did have a question, but it's not related to CCB. Do I wait?

The Chair: Yes, officials will have to stay.

We'll go to vote. We'll come back and get right into questions. There are some from the government side as well.

I apologize for that, officials. We figured we might be able to let you off.

The meeting is suspended until after the vote.

● (1605)

(Pause)

● (1635)

The Chair: We'll reconvene.

Mr. Liepert's not here, and he had a question, so we'll start with you, Mr. MacKinnon.

[*Translation*]

Mr. Steven MacKinnon (Gatineau, Lib.): Thank you, Mr. Chair.

I want to thank everyone for joining us today, as well as Ms. Lieff for her presentation.

My questions have to do with the Canadian child benefit, especially as it pertains to the province of Quebec. This has been said already, but I repeat that, for Quebec taxpayers, the Canada child benefit is not taxable, at the federal or provincial level.

Ms. Elissa Lieff: That's right.

Mr. Steven MacKinnon: Divorce can result in all kinds of situations when it comes to child custody, which may be given to one parent or shared.

How is the income determined, especially in cases of joint custody, when calculating the Canada child benefit amount a couple or a parent will receive?

Mr. Pierre LeBlanc (Director, Personal Income Tax Division, Tax Policy Branch, Department of Finance): Thank you for the question.

When custody is shared, the two parents can divide the benefit. That is now the case with the Canada child tax benefit, and will also be the case with the new Canada child benefit.

I want to specify that the amount is calculated based on each parent's individual net income. If the two parents agree, they can each receive half of the benefit amount. Those are the rules.

Mr. Steven MacKinnon: When one of the divorced parents remarries, the income of the step-parent in the new blended family is not used to calculate the benefit. When the benefit is calculated, it is always based on the income of the mother, the father or both parents.

Mr. Pierre LeBlanc: Yes. Even if one of the parents remarries, the child is still theirs. Only the parent's income enters into the calculation.

Mr. Steven MacKinnon: So the income of the new spouse is not taken into account when the benefit is calculated.

Mr. Pierre LeBlanc: That's correct in that case.

Mr. Steven MacKinnon: I have one last question.

When divorced parents cannot agree on how to divide the potential benefit, what would be the method used by the government to decide who will receive the benefit?

Mr. Pierre LeBlanc: We could confirm that later on.

Mr. Steven MacKinnon: We know there are situations where it is difficult for the parents to agree on a wide range of issues.

Mr. Pierre LeBlanc: Yes. However, I would like to confirm the information. We will provide you with an answer later.

Mr. Steven MacKinnon: Okay. Thank you for being so clear.

[*English*]

The Chair: Thank you very much, both of you.

I should introduce you, Mr. Leblanc, as the director, personal income tax division, tax policy branch, Department of Finance. You're not on our list, but welcome just the same.

Mr. Pierre LeBlanc: Thank you.

The Chair: Mr. Caron, I know you have one related to division 1, with other officials. Do you have anything you want to ask here?

● (1640)

[*Translation*]

Mr. Guy Caron: When I spoke with the officials, I asked them a question, and they told me they could not answer it. I asked that someone from the Department of Justice come answer that question.

Is that someone here?

[*English*]

The Chair: They're there.

Do you want to rephrase your question so we're all clear?

Mr. Guy Caron: I will, once there is a change.

The Chair: Okay.

Mr. Steven MacKinnon: Lisa Raitt's question, or Ron's question was first.

The Chair: Yes.

When Mr. Liepert comes down, we may have to call you officials back.

We'll go to Mr. Caron's question with different officials.

We have Mr. Recker and Ms. Hassan.

Go ahead, Mr. Caron.

[*Translation*]

Mr. Guy Caron: Thank you very much.

The answer to my question may not take a lot of time, but I still need to get clarifications on the repealing of the Federal Balanced Budget Act.

The question I put to the official who was here last time, Mr. Recker, was about the intention to repeal a piece of legislation. The repeal clause is worded simply and only takes up a paragraph: “The *Federal Balanced Budget Act*, section 41 of chapter 36 of the Statutes of Canada, 2015, is deemed never to have come into force and is repealed.”

Is the act currently in force?

Mrs. Sandra Hassan (Assistant Deputy Minister, Central Agencies Portfolio, Department of Justice): The Federal Balanced Budget Act is currently in force.

Mr. Guy Caron: Okay.

Could you tell me, in your own words, about the consequences of the act, especially as of June 1, 2016.

Mrs. Sandra Hassan: The act currently stipulates that, if a deficit is forecast in a budget owing to a recession, certain measures will take effect in the fiscal year subsequent to the year during which the recession comes to an end. A recession occurred in 2015-2016, and it ended in the same year. The act, as currently worded, stipulates that the measures will take effect in 2016-2017.

Mr. Guy Caron: When you say fiscal year, you mean the year starting on April 1.

Mrs. Sandra Hassan: Yes, the act stipulates that the measures will take effect on the first day of the fiscal year—April 1, 2016, in this case.

Mr. Guy Caron: We can say that, given the current wording of the Federal Balanced Budget Act, the government has responsibilities as a result of its application.

Mrs. Sandra Hassan: I think the answer is nuanced. What we have before us is a provision. The government made the decision to submit to Parliament the legislative provision to repeal the Federal Balanced Budget Act. The answer has to be nuanced, as we have to take that provision into consideration. There is a discrepancy between the provision currently being studied by Parliament and the legislation as it will be once the provision is adopted. If and when Parliament adopts clause 79 of the Budget Implementation Act, it will have never violated the Federal Balanced Budget Act, as this legislation will be retroactively deemed never to have been in force.

Mr. Guy Caron: That's exactly my point. In the current circumstances, the government is breaking its own law. It is deciding to repeal the Federal Balanced Budget Act retroactively. The act is applicable now, but once the provision is adopted, it will never have been applicable, as if by magic.

Is it common practice to retroactively repeal a piece of legislation the government itself is violating? Has that been done often in the last 10, 20 or 30 years? The government is currently violating a piece of legislation and is exempting itself from that offence.

I want to clarify that I'm not especially fond of the Federal Balanced Budget Act. For me....

● (1645)

Mr. Steven MacKinnon: Ah....

Mr. Guy Caron: I'd like not to be interrupted while I'm talking.

What matters to me is the principle. The government is ignoring a legal obligation by simply legislating to be exempted from it.

Mrs. Sandra Hassan: I cannot talk about the last 10 or 20 years. I can't go that far back.

However, I can tell you that there have been other examples. You asked the question at a previous meeting. I should point out that this approach was not invented under the current Budget Implementation Act. In fact, the technique whereby a piece of legislation or a provision is repealed and deemed never to have come into force has been used before. I have even been given a list of provisions for which that technique has been used. It is actually also used elsewhere in the bill for certain tax provisions.

Mr. Guy Caron: Yes, but there is a difference between repealing tax provisions and the fact that the government is violating a piece of legislation it enacted. I'm not talking about the current government, but about the Government of Canada in general.

Mr. François-Philippe Champagne (Saint-Maurice—Champlain, Lib.): [*Inaudible*]

Mr. Guy Caron: Please don't interrupt me. Thank you.

A precedent is not really being set. That was done in other cases. However, I think it is inherently problematic for the government to exempt itself from obligations it should fulfill, under an existing piece of legislation, by saying that the legislation had never existed.

It is one thing to use that technique to change tax provisions. However, I have serious issues with enabling the government to say that something is ultimately an offence, but then to decide that it will no longer be one. I am really bothered by this kind of a provision, especially under a rule of law where the government's powers must be somewhat limited.

Mrs. Sandra Hassan: As a lawyer, I can tell you that the Parliament of Canada is sovereign and that, should it adopt clause 79, once the bill receives royal assent, the Federal Balanced Budget Act will no longer have the force of law and will even be deemed never to have had it.

I understand your discomfort. However, as soon as the bill receives royal assent, any violation of the Federal Balanced Budget Act committed while the legislation was in force will be deemed never to have been committed.

Mr. Guy Caron: In conclusion, we have a piece of legislation that exists and is applied, but the royal assent will magically result in the legislation never having existed and never having been applied.

I would like to point out that this is the second time in six months that the government has used such a measure. The first time was to exempt itself from its obligations; the second time was to enable Air Canada to exempt itself from its obligations. I see a dangerous trend here.

Thank you very much.

[*English*]

The Chair: Mr. Champagne, just for members' information we are on part 4, division 1. The Justice officials here have been informed by other people who had questions for Justice that those questions were answered both in your statement and the exchange.

Does anybody else have any questions for Justice?

Then you're free to go. Thank you very much for coming. We won't hold you any longer.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): Justice was served.

Voices: Oh, oh!

The Chair: Justice was served.

Mr. Champagne, you have a question for Ms. Hassan.

[*Translation*]

Mr. François-Philippe Champagne: I would first like to officially apologize for interrupting my colleague Mr. Caron, for whom I have a great deal of respect. I'm sorry.

As a lawyer, I would like to ask some questions. My colleague Mr. Caron mentioned certain practices. Since you are a lawyer at the Department of Justice, we will talk about law.

Is every Parliament indeed sovereign?

● (1650)

Mrs. Sandra Hassan: Of course it is.

Mr. François-Philippe Champagne: Can a government engage another government from another Parliament?

Mrs. Sandra Hassan: Parliament is sovereign and can do as it pleases.

Mr. François-Philippe Champagne: In other words, there is nothing unusual about a government, in a sovereign Parliament, repealing a piece of legislation that was adopted in a previous Parliament. That is completely acceptable in the practice of Canadian or British law.

Mrs. Sandra Hassan: I can only say that it has happened over the course of history.

Mr. François-Philippe Champagne: So this is a practice that we have seen in the past and that is completely acceptable under our Constitution and our legal practices. Ms. Hassan, you are confirming that every Parliament is sovereign. The practice of applying a provision repealing a piece of legislation adopted in another Parliament has already been used by the Parliament of Canada.

Mrs. Sandra Hassan: I can confirm that we do have other examples of such repeal clauses.

Mr. François-Philippe Champagne: Exactly.

So I will close by pointing out, Mr. Chair, that there is nothing unusual in repealing a piece of legislation, given the Parliament of Canada's sovereignty.

[*English*]

The Chair: Mr. MacKinnon and then Mr. Caron.

I want to remind members, we're sticking to the budget implementation act, and we're not going to go far astray of that, or I'll cut the discussion.

Mr. MacKinnon.

[*Translation*]

Mr. Steven MacKinnon: I'll pass, Mr. Chair.

[*English*]

The Chair: Are you done?

Mr. Caron.

[*Translation*]

Mr. Guy Caron: Thank you very much.

I would like to ask a question, which you probably cannot answer, but I want to do it anyway. If Parliament is sovereign and can, as my colleague Mr. Champagne said, decide to change decisions made by a previous government, could the fact that a government is exempting itself from an obligation while it is in force be considered as moral or ethical in the eyes of Canadians?

Mrs. Sandra Hassan: I cannot answer questions concerning morals or ethics.

Mr. Guy Caron: That's what I thought, but I felt it would be important to ask the question.

[*English*]

The Chair: Thank you very much, Ms. Hassan and Mr. Recker.

We'll turn to division 5, the bank recapitalization regime bail-in.

From the Department of Finance we have, Mr. Daniel Robinson, who is senior project leader; Mr. Glenn Campbell, who is director of financial institutions; and Ms. Alexandra Dostal, who is senior chief, framework policy, financial institutions division.

Welcome, and thank you for coming.

Do you have a statement or an overview of division 5 first?

Mr. Campbell.

Mr. Glenn Campbell (Director, Financial Institutions, Financial Sector Policy Branch, Department of Finance): Yes, Mr. Chair. Thank you.

While I provided an introductory comment at my previous experience on Tuesday, May 10, I thought a quick recap of part 4, division 5, of Bill C-15 would be helpful.

The proposed amendments in part 4, division 5, provide a legislative framework for a bank recapitalization, or a bail-in regime. Bail-in is the power to convert certain long-term debt of a failing bank into common shares to absorb losses, recapitalize the bank, and allow it to keep operating.

As we clarified in our last discussion, all deposits are excluded. Amendments to the Canada Deposit Insurance Corporation Act would provide CDIC with the power to undertake a bail-in conversion. Implementation of the proposed bail-in regime would give authorities an additional tool to deal with the unlikely failure of a major bank in a manner that protects financial stability as well as taxpayers.

These reforms would strengthen our tool kit for managing bank failures, so that it remains consistent with international best practices and standards endorsed by the G-20 following the financial crisis. We would be pleased to address any additional questions the committee may have.

● (1655)

The Chair: Thank you, Mr. Campbell.

We'll start with with Mr. Sorbara.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): I'm glad you re-emphasized the fact depositors will remain unaffected in the event that a bail-in mechanism takes place, or in bank talk, if capital levels become so low at a major bank there needs to be a recapitalization of that bank, if I remember the way it works.

I want to ask about systemically important banks. Could you clarify that for all of us, please?

Mr. Glenn Campbell: A systemically important bank is a categorization and a nomination by the Superintendent of Financial Institutions. The superintendent, under law, will have the power to nominate or declare which institutions are deemed to be systemically important. In Canada, the superintendent has already so declared that our six major banks are deemed to be sufficiently systemic in nature, so that their failure would pose harm to the Canadian economy, and therefore, they would be subject to additional supervisory requirements. In this case, under the act, they would be subject to the bail-in regime. The determination is multifold, it's made by the superintendent, and it's consistent with international practices.

Mr. Francesco Sorbara: My understanding is that they are also, because of this designation, required to hold an extra buffer of capital. It's called tier one capital. It is 1% or 1.5%.

Mr. Glenn Campbell: Institutions that are deemed to be systemically important basically attract a whole host of additional supervisory and regulatory oversight, which includes additional capital, constraints on risk management, and overall supervision. Really, they attract even more than just the additional capital buffer.

Mr. Francesco Sorbara: We've seen this framework put in place in the United States—it's my understanding that it has been put in place already through the Federal Reserve—and in Europe. Do you have any idea of the timeline this will follow within the legislative framework that is being developed?

Mr. Glenn Campbell: On the timeline going forward, we have consulted intensely with the industry about having a path forward for banks that need to be compliant and effectively introduce these new instruments to the marketplace. The banks have asked us that question. Of course, pending parliamentary approval of the legislation, we would anticipate moving forward with regulations in the fall. That would include additional consultations. We would anticipate that it would come into effect sometime in 2017, at which time banks could start issuing this new form of debt. The coming into force date would be determined in regulations.

Mr. Francesco Sorbara: Just for my recollection, will these regulations also include the category of holding additional loss capital?

Mr. Glenn Campbell: No, they will not. The superintendent of OSFI will be moving concurrently, under his proviso, to stipulate the amount of losses or of incapacity in each bank. We expect that in the coming months. It would be a concurrent decision on the superintendent's part.

Mr. Francesco Sorbara: Thank you.

That's it, Mr. Chair.

The Chair: Mr. Caron is next, and then Mr. Albas.

[*Translation*]

Mr. Guy Caron: Good afternoon, Mr. Campbell. Thank you for joining us. At our last meeting, we began a discussion that we could unfortunately not finish. So I will put some questions to you that I felt were rather important.

On either side of the political spectrum, there are many people who are worried by such legislation because they draw parallels with what happened in Cyprus, where small depositors' money was seized and used to bail out failing banks or financial institutions.

I know that's not what the bill provides for, and I want to use your presence to reassure our audience. However, I am worried by the fact that the bill does not establish a definition of what constitutes a long-term debt that would be converted into shares when a bank is failing. That will only be defined through the regulations, but regulations can be amended, since Parliament is sovereign, as Mr. Champagne said, and since the executive makes that decision within a sovereign Parliament.

Could you explain to us the mechanism through which a bank would be bailed out, and explain what that implies, especially in terms of converting certain elements into shares? What safeguards are there to prevent a government from amending regulations in order to use, for instance, clients' deposits?

● (1700)

[*English*]

Mr. Glenn Campbell: Thank you for the question.

Let me step back to explain. What is in the proposed amendments is the legislative framework for setting out how the conversion process would work and the authorities under the Minister of Finance, the Superintendent of Financial Institutions, as well as the CDIC.

The whole concept here is around long-term debt securities. The nature of long-term debt securities, which are what would be bailed in under that scenario, can shift over time, so you're quite right that the definition could be adjusted over time.

The purpose of putting them in regulations and not in legislation is twofold. First, we need to consult with the industry precisely on the definition of what constitutes a long-term debt security—the nature of a debt security going over 400 days, the type of composition—and make sure that we have it stated in legislation precisely enough to capture what banks are going to have to do under contract law to issue these new securities. It needs to be quite precise.

We'll also need to have the certainty under which they can issue these, and that will come from legislation and regulations. Banks currently issue non-viability contingent capital, that instrument being under contract law. The industry is looking for more certainty, which is being provided by the act and by the regulations.

Deposits are not referenced in the legislation because they're not contemplated. Really, the framework here is long-term debt securities.

As we mentioned in our last discussion, the whole premise here is to keep a bank operating, to keep customers protected, and to retain deposits and attract new ones. That's the whole purpose of trying to keep a systemic institution serving its customers and the Canadian economy. That's what is at root attracting this level of oversight and this power. It's because the institution is so important to keep its deposits and its customers going that we have this tool.

To answer the latter part of your question, concerning the process and safeguards, in this instance we're entrusting that the process would work in the future. If there were a bank that potentially got into trouble, it would obviously be made known to the Superintendent of Financial Institutions and all the agencies that are involved. If we got to a point that there was deemed to potentially be non-viability of that institution—which means that there's a very significant, remote, circumstance in which their level of regulatory capital or losses would be such that the bank would technically be insolvent—the superintendent would go to the CDIC and basically indicate that there's a scenario of non-viability.

They would consult on what the appropriate remedy would be. As you can see in the act, there are various options in the tool kit for taking control of an institution: temporarily or over time, assets and liabilities, bail-in. It depends on the circumstance.

The superintendent would in turn go back to the Minister of Finance, who would have to come to the government authority to seek permission and authority to use one of those tools. The safeguard is built in that the Minister of Finance has a role and that the Governor in Council has a role. The Governor in Council would then approve which of the tools in the tool kit could be exercised for that bank under that scenario. That would be communicated to the CDIC, and then they would have the authority to move forward on one of those options around taking control and, depending on the scenario, executing bail-in.

[*Translation*]

Mr. Guy Caron: I will quickly summarize what you just said. It's not as simple as the cabinet, or the Governor in Council, deciding to change the definition and amend the regulations, which would then be published in the *Canada Gazette* and applied. The executive could not proceed in this fashion. Is that what you are saying?

[*English*]

Mr. Glenn Campbell: Yes, that's what I'm saying.

Also, to clarify concerning what is included in the regulations, before we promulgate regulations, we need to consult with all of the industry. If a future government or Governor in Council wanted to change those regulations, the same rules would apply. They would have to go back and negotiate with all of the industry that have issued this debt and these securities and with all the investors.

To change the nature of what constitutes a long-term debt or what constitutes an asset available for bail-in is quite a complicated ordeal. The premise here is to give the industry certainty and to give foresight into how long it would come into play. It does not apply to legacy assets; it only applies to new instruments. The Canadian regime would be fully transparent. It would really be set in the framework and legislation and clarified in regulations.

● (1705)

[*Translation*]

Mr. Guy Caron: Mr. Chair, I have other questions, but I can let my colleagues ask some before I come back to mine.

[*English*]

The Chair: Okay. Mr. Albas, then Mr. MacKinnon, and then Mr. Bittle.

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

Thank you, witnesses, for being here today and for the work you do for Canadians.

I would like to discuss some of the unintended consequences of a new policy. Obviously, the terms “risk” and “reward” come up quite often when we talk about financial institutions and whatnot. With this new framework it sounds to me that putting more certainty in these kinds of scenarios is a good thing. Elected officials making decisions by the seat of their pants is not something most people want to see. I think people want to see what kind of plans we could do ahead of time.

Will the market respond by offering new ways to use this system to trade in different options on whether or not someone or a bank will be viable? Will any of that come because of this legislation?

Mr. Glenn Campbell: That's a good question. Thank you for it.

In simple terms, a bank will issue different varieties of short-term and long-term debt securities to fund itself in the ordinary course where those creditors are funding the bank for a return over time and there are different types of instruments. Those instruments are issued and they're also traded on the secondary market, much like on the other side of the balance sheet you have shareholder equity where you'll have common shares that are issued and held by individuals, but are also traded in the secondary market.

On any given day, shares or debt securities are constantly being traded, based on the market scenario and their understanding of the profitability of an institution.

I can't speculate on whether new instruments will be created, but I can say on any given day in the normal course or in stress times the market on both sides does work as it should, and it offers pricing scenarios on both of those instruments. I would see that as a normal functioning of the marketplace.

Mr. Dan Albas: Secondary markets are usually not as transparent as a primary market. You spoke earlier that the aim is to be fully transparent. I'm going to leave that thought, and I'll come back to it in a second.

We've made it very clear that depositors are not included in this regime, which I think is an important message to send to Canadians, so they understand what the model is trying to do.

Hard-working Canadians have put a lot of investments into pension funds. Obviously, you have the Ontario teachers and their very large pension funds, but individual investors have also put money into banks and whatnot.

Many Canadians invest in banks and often they may or may not have put in the time and energy to investigate a bank, where it's at and its viability. In this unprecedented remote scenario, If a bank were in a conversion process, would that put their investment at a disadvantage?

Mr. Glenn Campbell: Again, that's a very clear question. In ordinary course and in stressful times the value of a bank's market capitalization, which is the value of its shares, will fluctuate. In ordinary and in stressful times where there is profitability, headwinds that are fully transparent on a listed exchange, then the value of those shareholdings will fluctuate whether Canadians own them directly or indirectly. That's just a common share, which is not being touched here.

A debt security will have a value on its own for a period of time that will be repaid and will not necessarily fluctuate. There will be some impacts on the secondary markets if the bail-in is converted, in the sense that the value of the common share will obviously decline to some degree. To the extent to which any asset or any fund has exposure to any of the debt securities they will also decline. In that case you're converting a debt to a potential common share, which may have future value.

It would be very rare for average Canadians to have direct exposure to big bank debt securities. Generally large asset managers and pension funds own them on a very diversified funding basis, and even funds, mutual funds and others that Canadians may be exposed to that have the debt security side rather than the equity side are likely highly diversified if not to the whole banking sector, let alone an individual bank.

Of course, if the bank were to get into trouble, whether or not we have a bail-in regime, the value of those instruments in the capital market will adjust appropriately.

As last comments, one, we would hope that any Canadian would get the advice they need to prudently manage their exposure to any financial instruments, and two, trading in the secondary market for debt securities is quite transparent to all the large players in the market.

● (1710)

Mr. Dan Albas: I have a very brief comment, because I want to tie the two of them together. You're absolutely right. If an investor participates and is a shareholder, there is inherent risk with that, so it's incumbent upon them to get the information.

The one thing I would simply ask is whether the current legislation requires the Office of the Superintendent of Financial Institutions to publicize the stress tests that are done to make sure that these banks are within a comfortable zone.

Mr. Glenn Campbell: No, this legislation does not do that. The issue of a stress test is at the discretion of the Office of the Superintendent of Financial Institutions. During different parts of an economic cycle they may do stress tests, but the decision about whether to publicize them in any jurisdiction is always one that trades off various balances. It's really a decision for the superintendent, but there's nothing in the bill here that pertains to stress testing.

Mr. Dan Albas: As a parliamentarian, I would just say that's a concern, because again the whole idea of the legislation, as you've said a number of times, is to create a fully transparent model and to make certainty. If there is going to be secondary market trading of instruments that are not available today, your ability to trade is only as good as the information you have.

That is a very sophisticated market. I'm not as concerned with that, but when you go back to it, many Canadians hold their wealth in banks through shares or through mutual funds. I do believe that we need to be fully transparent.

I would ask government members to maybe consider, as part of a future budget implementation act, requiring that stress tests be made freely available, so that both the public and the professionals who deal in these secondary markets can actually make up their own minds.

Thank you.

The Chair: Thank you, Mr. Albas.

Mr. MacKinnon, the floor is yours.

[*Translation*]

Mr. Steven MacKinnon: Thank you.

Thank you for the work you are doing to facilitate the long-term work before us.

We all know that Canada has a very strong financial system that is the envy of the whole world. It is thanks to people like yourself, and to other institutions not represented here today, that we have this kind of a system.

I have a few questions. If there is a lesson we have learned from the financial crisis, it's that the notion of systemic risk goes beyond the banking sector, correct?

[*English*]

Mr. Glenn Campbell: Generally speaking, that is true, in the sense that this legislation clearly pertains to the banking sector, but clearly, it has a feedback mechanism into the whole economy.

[*Translation*]

Mr. Steven MacKinnon: I would like to follow up on the questions of my colleague opposite.

We know that pension fund managers, including the Caisse de dépôt et placement du Québec, hold securities in our financial institutions—either shares or debt securities—which represent a considerable amount of the investments and shares in those institutions.

[*English*]

Mr. Glenn Campbell: They do. Our Canadian asset manager class, which includes pension funds and other asset managers, does hold an extensive exposure to the Canadian banking and financial sector. A lot of global asset managers also have exposure to the Canadian banking sector.

If I understand the premise of your question, whether you're an asset manager or anyone else who is a shareholder in a bank, there is a responsibility to be an owner and to actually influence the outcome of that institution.

Likewise, if you're a creditor and a significant creditor of a bank, this legislation basically means that even as a creditor, you're also responsible and your incentive should be aligned to ensure that the institution in which you're investing is following prudent, responsible practices. It's actually the incentive of those asset managers' pension funds to ensure that they know what they're investing in and that they have an influence through their shareholdings on the common side, but also an influence given that big debt purchasers of the bank also have a role in the solvency of that institution.

● (1715)

[*Translation*]

Mr. Steven MacKinnon: The risk or the risk premium has to be calculated and assessed properly by those security holders.

[*English*]

Mr. Glenn Campbell: Correct. This is all about aligning the risk to the appropriate return and ensuring that incentives are aligned for prudent management.

[*Translation*]

Mr. Steven MacKinnon: I know that we are discussing remote possibilities. I hope they are not even remote, but minute.

It is explained here that there is a process regarding provisions on redress available to holders of securities or debt in a bank. Who is in charge of that process?

[*English*]

Mr. Glenn Campbell: Under the legislation that exists now, CDIC is in charge, or a steward, if you will, of an institution while under control, as we transition to the private hands.

If a bail-in were to have been triggered, there is a redress mechanism for compensation built into the regime on due process, to basically allow any affected party from the bail-in to ensure that they would have a claim on the CDIC if it turns out in some way that they would have been better off in a bankruptcy insolvency situation. This is a very high standard, but it is built in as a redress mechanism for those. So those who do invest in bank securities, they are aware under that very remote, highly unlikely scenario that there is a redress mechanism built in so that if they can make a claim that they would have been better off under insolvency, they could seek redress from the Canada Deposit Insurance Corporation.

[*Translation*]

Mr. Steven MacKinnon: So the request....

[*English*]

The Chair: Let me interrupt you to seek unanimous consent that we continue until the countdown is about—the bells have started—10 minutes away from the vote. Is there consent?

Some hon. members: Agreed.

The Chair: Mr. MacKinnon, can we keep the questions pretty tight?

[*Translation*]

Mr. Steven MacKinnon: I'm almost done, Mr. Chair.

So the CDIC is in charge of the redress process. If a pension fund or another systemically important financial institution were exposed in such a way, that would be done transparently by a public insurance corporation like the CDIC.

[*English*]

Mr. Glenn Campbell: I'll go back to clarify my last remark.

CDIC would be responsible for the redress process, as well as the overall management of that institution. There are also provisions for a third party assessor. It's not only the corporation itself, there would be a third party, and clearly a number of tools are available to CDIC through that juncture about what is the future of that entity. Is it some other form of ownership control, a reorganization? All the tools would be on the table and the powers would be available to them.

[*Translation*]

Mr. Steven MacKinnon: I have one last question.

When did all the work that has led to this bill begin? How far back does it go?

[*English*]

Mr. Glenn Campbell: My team has been working on it for several years at Finance Canada together with our various supervisory agencies. The genesis of this work goes back to the G20 and the financial stability board and their work post financial crisis.

A lot of the work that has been done over the past years was on the prevention side, so bringing in all the new standards, capital, all the regimes. This is the trailing piece that, assuming we can't prevent it, let's make sure there's a smooth landing. This is really six or seven years in the making. A lot of work went into this not only in Canada but around the world.

● (1720)

The Chair: Thank you, Mr. Campbell.

Mr. Bittle.

Mr. Chris Bittle (St. Catharines, Lib.): Thank you, Mr. Chair, for letting a stranger ask a question or two.

It's a question on behalf of my colleague, Mr. Ouellette, with respect to clause 129 that amends subsection 30(1) of the act. The question is, why is the language permissive? Why is it “may” instead of “shall” send a report?”

Mr. Glenn Campbell: Actually, this is not an amendment. It's a provision that is actually in the current act that is not being amended, but we're happy to follow up to give you clarity on the “may” versus “shall.” Every time I ask that of my lawyers, I always get a lecture.

Mr. Chris Bittle: Thank you.

The Chair: You're not going to lecture us, Mr. Campbell, right?

Mr. Caron.

Mr. Guy Caron: Actually, I'm just looking at the French one.

The French hasn't changed. I guess it might be a translation thing that you are trying to....

The Chair: Okay, Mr. Champagne, you have an answer. Make it a short one.

Mr. François-Philippe Champagne: Always.

Just in the line, there was a conforming change between French and English as we were looking at that, so it might just be an issue that some Department of Justice lawyers have suggested a conforming change between the two languages.

That might just be the answer.

The Chair: In any event, the witnesses will get back to us on the question, Mr. Bittle

Do you have another question?

Mr. Chris Bittle: That's it; that's all.

The Chair: That's it.

Mr. Caron.

[*Translation*]

Mr. Guy Caron: I will be brief. Once again, I am asking this question mostly for our viewers or those following the committee's work.

There are three options when a systemically important bank is experiencing serious difficulties.

The first option is to let it go bankrupt, with the consequences that follow. There are economic consequences, but there are also consequences for investors, especially those not protected by the Canada Deposit Insurance Corporation.

The second option is a bailout, a recapitalization with government funding, so as to avoid economic consequences.

The third option proposed is internal recapitalization.

Are there any other options? Are those really the only three that are recognized internationally?

[*English*]

Mr. Glenn Campbell: Yes, to a certain extent all prudential or supervisory authorities have very similar options when it comes to a private institution that reaches a point of non-viability. Of course, the circumstance under which that happened drives the outcome of what choice is taken: is it idiosyncratic, one institution, is it multiple, is it something outside your borders? The scenario can really be different and likewise the size of the institution.

In this case for those institutions deemed systemic, insolvency is not an option because they are systemic. The premise here for bank customers is that they would not see an effect; their deposit accounts, their deposits, the bank would be there, they would not be affected. This is really about somebody else taking control of that institution to ensure it continues to serve Canadians and the Canadian economy.

Yes, there would be choices that are made either to bail-in or even other options about using other tools available to support that institution. It's really not a few, there's a suite of options, but in the case of a systemic institution this is designed to avoid a protracted insolvency that would not be in the best interests of the Canadian economy.

Mr. Guy Caron: In one case basically it would be all Canadians suffering through the economic shock, or in a different instance it would be all taxpayers through the government. In this instance the bail-in actually aims at only having those who have contracted some form of long-term debt security with the bank, and they should actually have been aware of the risk of actually doing this. So the risk is limited to them.

● (1725)

Mr. Glenn Campbell: I think you've nailed it in that sense. It's really about putting creditors as well as shareholders in the sequence of response ahead of the taxpayer in that scenario.

Mr. Guy Caron: I have one last quick question.

I think Mr. MacKinnon wasn't sure about the question that he asked, so I might be repeating him. I'm sorry about that.

[*Translation*]

It is ensured that those who have a TFSA, an RRSP or an RRIF with a banking institution are not at risk, as investors are not at risk either.

[*English*]

Mr. Glenn Campbell: If I may, let me differentiate. If you were a customer of an institution and you had deposits or mutual fund RRSPs, from a portfolio point of view, none of your client's interfacing with the bank should be disrupted. It should not be disrupted. Your client's interface with that institution should be maintained: their accounts, their provisions, loans, mortgages, car loans, should continue seamlessly. However, if they own an instrument that it in itself is exposed to this, or the general economy, that's not to say that the value will not fluctuate with whatever is happening to the institution or to the bank.

That's how those two scenarios differentiate.

The Chair: Thank you, Mr. Caron.

Mr. Sorbara, you have a comment.

Mr. Francesco Sorbara: I have two brief comments.

I think you said this a second ago, Mr. Campbell. The framework that was developed through the FSB and the G20 was really something to shift the risk or to have skin in the game for shareholders and creditors, and to ensure that—whether by equity injections from a federal government, which happened in the United States, or by creating a bad bank-good bank, maybe in Europe—what happened in Ireland and the U.K. is not repeated, that there is no risk for taxpayers. It is obviously a piece of legislation that is needed and that we need to continue forward with.

I would say that, in terms of regulation, the Canadian banks and regulators have demonstrated a certain level of prudence and overall capability that is second to none in the world. I think that has been seen overall.

History sometimes doesn't repeat itself, but having worked at a financial institution for many years, I want to say that the level of interaction among OSFI, the officials, and the banks is very good, and that is demonstrated in terms of the results. Whether it is loan losses that the banks carry, provisions, capital levels, or looking at value at risk and all the measures that are in place, Canadians should be well confident when they go to sleep at night that their financial institutions are sound and very well regulated.

Mr. Glenn Campbell: May I respond, Mr. Chair?

Thank you for that. I agree. I just wanted to be clear in interpreting my last statement that this puts creditors and shareholders ahead of the taxpayer. Just to be clear, there is always contingent liability on the taxpayer where we backstop, in many ways, the financial system. I think we had that conversation earlier, that this really mitigates the risk in ensuring that, before you ever contemplate the taxpayer's being involved, you have the creditors and shareholders there in advance.

Thank you.

The Chair: Are there further questions for this group of witnesses?

Thank you very much, witnesses.

We will turn to division 8. This does not look like a long division, so maybe we will get through it quickly. We get 10 minutes.

Division 8 deals with the Financial Administration Act. We have Mr. Ram and Ms. David.

Ms. David is an adviser and economist with the funds management division, and Mr. Ram is director of the funds management division.

The floor is yours, Mr. Ram, and I believe you have a brief overview.

Mr. Elisha Ram (Director, Funds Management Division, Financial Sector Policy Branch, Department of Finance): Thank you, Mr. Chair.

As you mentioned, we are here to speak to you about part 4, division 8, with respect to the Financial Administration Act.

These proposals are with respect to the provisions in part 4 of the bill, which I will refer to as the FAA for short. This part authorizes the Minister of Finance, with the approval of the Governor in Council, to borrow on behalf of the government, including for issuing securities and undertaking related activities.

Prior to 2007, the Minister of Finance was required to seek approval from Parliament to increase market borrowing. Amendments were made to the FAA in 2007 that removed the need for the minister to seek parliamentary approval in seeking to increase market borrowing. This division amends the FAA to restore the requirement for the Minister of Finance to seek parliamentary approval of borrowing activities, including the borrowing of agent crown corporations.

I would be pleased to take your questions.

● (1730)

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

Who wants to start?

You did say agencies of the government as well. Did I catch the last part?

Mr. Elisha Ram: Agent crown corporations, that is correct.

The Chair: Who wants to start? Are there any questions?

That would really be unusual. Somebody said they had questions. That is why we have the witnesses here.

We will let you go, Mr. Sorbara.

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

I was wondering if you could comment on the changes within this bill and how it differs from the current process, please.

Mr. Elisha Ram: Certainly.

The current process essentially means that when the Minister of Finance wishes to increase market borrowing, he or she makes a submission to the Governor in Council. Once the Governor in Council approves, the minister has the authority to proceed.

What is being proposed here is that the minister, in wishing to increase borrowing, would have to come before Parliament and seek parliamentary approval for doing so.

Mr. Francesco Sorbara: In effect, you'll restore parliamentary oversight?

Mr. Elisha Ram: That is correct.

Mr. Francesco Sorbara: Thank you.

The Chair: Mr. Champagne do you have a comment?

[*Translation*]

Mr. François-Philippe Champagne: I have a question. I would like to come back to my colleague Mr. Caron's comments on this provision.

I know that this provision has existed in the past, that it was repealed by the previous government and then reinstated under the current bill. Could you tell me about the history of that provision, of the chapter or section that provides for requesting Parliament's authorization? There is a legislative history behind this, and I would like you to share it with us, for the benefit of our viewers.

[*English*]

Mr. Elisha Ram: Thank you for the question.

You're correct, Mr. Champagne, that prior to 2007 the Minister of Finance was required to come before Parliament and seek authority to increase market borrowing.

I want to make it clear that even under the pre-2007 provisions, the minister had standing authority to refinance any existing market debt. Once a dollar was borrowed, the minister could continue to refinance that dollar without seeking parliamentary authority. The minister had to come back in order to increase market borrowing.

In 2007, the act was amended, and it essentially delegated that authority to the Governor in Council. Between 2007 and the present time, if the minister wanted to increase market borrowing, the minister had to go to the Governor in Council and not to Parliament. What is being proposed here is to, in large part, restore the provision that existed prior to 2007 in terms of requiring parliamentary authority. There are a number of differences between the regime that's proposed here and the regime that existed prior to 2007.

With your indulgence, I'll quickly run through those. Prior to 2007, there were some provisions that allowed the minister to borrow in circumstances that required urgent action without coming to Parliament. We are introducing measures with a similar intent in this bill, but in a slightly different way. In particular, the minister would have standing authority in extraordinary circumstances to go to the Governor in Council rather than Parliament to seek borrowing increases.

Whenever the minister makes use of this authority, there is an onus to inform Parliament within 30 sitting days. The minister would be required to report on this extraordinary borrowing separately from regular borrowing until they are extinguished. In addition, as I've already referred to, we are including borrowing from agent crown corporations in the authority that the minister must seek from Parliament. This was not previously the case, even prior to 2007.

Finally, the amendments that were made in 2007 included some additional reporting requirements of the minister, and those remain in force.

The Chair: Okay.

Mr. MacKinnon, you have the last question in this section.

[*Translation*]

Mr. Steven MacKinnon: Thank you.

Thank you for joining us.

I would like to know what constitutes exceptional circumstances, in the context of this amendment.

● (1735)

[*English*]

Mr. Elisha Ram: Extraordinary circumstances by their nature are difficult to define, because we don't know what we don't know. We have provided a number of examples in the bill, including a natural disaster or circumstances that imperil the stability of the financial system in Canada. These are intended to communicate the gravity of the situation we are trying to decide. In other words, we mean unpredictable, large-scale types of impact that cannot be previewed and where urgent action is necessary, but the language was drafted to retain flexibility in case something was to occur that we did not anticipate.

[*Translation*]

Mr. Steven MacKinnon: As a measure of transparency, when something is approved by Parliament instead of by the Governor in Council, Canadians are better informed, by definition.

Is that right?

[*English*]

Mr. Elisha Ram: The population is being informed in either situation because of the requirements on the minister to table reports in advance of making borrowings at the beginning of each fiscal year and at the end.

Whether the borrowings were approved by Parliament or the Governor in Council, those would be reported to Canadians.

[*Translation*]

Mr. Steven MacKinnon: That still requires better planning and better communication by the minister...

[*English*]

Mr. Elisha Ram: Absolutely.

[*Translation*]

Mr. Steven MacKinnon: ... since they must come to Parliament to obtain the approval.

[*English*]

Mr. Elisha Ram: Correct.

[*Translation*]

Mr. Steven MacKinnon: I have one last question.

In 2007....

[*English*]

The Chair: We're going to have to suspend. We don't have time.

Mr. Steven MacKinnon: If we have to go—

The Chair: We do. We're down to nine minutes.

Do you need these witnesses back?

Mr. Steven MacKinnon: I don't, no.

An hon. member: No.

The Chair: Anybody else? Okay.

Thank you very much.

We have three divisions left: division 9, division 12, and division 14. We'll reconvene right after the votes.

The meeting is suspended.

● (1735)

(Pause)

● (1850)

The Chair: We will resume the meeting.

I apologize to the witnesses for the disruption. We're actually going to have to call you back a third time for those divisions that we didn't deal with. When we start clause-by-clause consideration, we might be able to do that.

I think the agreement was to adjourn rather than to go into discussion.

The meeting is adjourned.