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Chair

The Honourable Wayne Easter

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• (1535)

[English]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): Committee, come to order, please.

Today we're dealing with the Budget Implementation Act 2016, Bill C-29, A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures.

There are a couple of items before we get to departmental officials. First, we need a budget to hear from witnesses. That schedule is all laid out according to a previous motion of this committee, but a cost has been calculated for us to do the hearings on Bill C-29, which will all be in Ottawa. We need to request \$10,100.

Does somebody want to move that? It is moved by Mr. Liepert.

Is there a seconder? It is seconded by Mr. Sorbara.

All those in favour?

We don't need a seconder. Sorry; I'm used to *Robert's Rules of Order*.

All those in favour?

(Motion agreed to)

The Chair: You had a point you wanted to raise, Dan, before I go to witnesses.

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

Earlier today, I believe through the clerk, we received a request from the Canadian Medical Association in regard to the contents of the bill that we're going to be discussing today. They have some concerns, and as Parliamentarians, we obviously want to do all of our due diligence, so I would just make a suggestion that if we can accommodate them, it would be very helpful. They're the largest organization representing doctors.

The Chair: Okay. In fact, we've received that email, and we are looking at trying to schedule them into our list of witnesses.

Mr. Dan Albas: You're amazing, Mr. Chair.

The Chair: I tell you.

In fact, I think they raised some good questions in their brief. There may be an opportunity to discuss some of those questions with departmental witnesses today. I expect you'll be on your toes and do that.

This is the way we will proceed, just to get a kind of a feel of where we're at here so maybe we can finish in the two hours.

We will deal with the bill in its parts: part 1, part 2, part 3, and part 4. On part 4, there are seven different divisions. We will deal with them division by division in case people have questions on those sections.

If any committee member has a particular area where they think they are going to have a lot of questions, if it's down the list on part 3, part 4, or divisions, you could indicate that to me, and we'll maybe try to get there a little faster.

In any event, we will start with part 1. Officials will give a brief overview of what that section means in terms of the legislation. For part 1, Amendments to the Income Tax Act and to Related Legislation, we have with us Mr. McGowan, Mr. Greene, and Mr. LeBlanc.

Mr. McGowan, I believe you're to lead off. The floor is yours.

Thank you.

Mr. Trevor McGowan (Acting Chief, Tax Legislation Division, Tax Policy Branch, Department of Finance): Thank you.

I'll provide a brief overview of the bill so that we can get to the questions section. I'll proceed measure by measure, aligning with when they first appear in the bill.

The bill replaces the existing eligible capital property regime in the Income Tax Act with a new class of depreciable property, which is intended to replicate, to the extent possible, the old eligible capital property regime, but in a simpler way, as for any other class of depreciable property. These amendments include simplification measures to, for example, allow taxpayers to eliminate small balances in their eligible capital property pools within the first 10 years after the transition.

It extends what are known as the back-to-back rules of the Income Tax Act in three important ways. These are rules designed to apply wherever certain tax consequences apply when a transaction occurs between two entities that typically are related. It prevents the avoidance of tax consequences when those entities interpose a third party between the two of them. The classic example is using a company in a low-tax treaty jurisdiction to make a loan through that treaty jurisdiction to a Canadian entity and thus obtain a lower rate of withholding tax on interest.

These rules are extended, as I said, in three important ways. The first is to apply to rents, royalties, and similar payments. The second is to prevent their avoidance through the use of character substitution transactions or the introduction of multiple intermediaries, meaning that rather than back-to-back, there might be back-to-back-to-back arrangements. Third, it prevents the avoidance of the shareholder loan rules through the use of the back-to-back techniques I described.

Next, it provides rules for the valuation of derivatives, ensuring that if they're held as inventory, they cannot use the "lower of cost or market" method.

Next, it applies to the sale of linked notes to ensure that the tax consequences arising on a sale before maturity of a linked note align with the tax consequences on maturity.

It introduces tax rules to clarify the tax treatment of emissions allowances under emissions trading regimes.

It prevents the use of so-called "debt parking" techniques to avoid a realization of an accrued foreign exchange gain on the repayment of a debt denominated under a foreign currency.

It closes loopholes relating to the use of life insurance policies to extract income, free of tax, from a corporation.

It provides for the appropriate use of an exception to our existing anti-surplus-stripping regimes, which prevent the use of somewhat artificial structures by foreign multinationals to make use of an exception that is intended only for Canadian companies.

It indexes the Canada child benefit, beginning in the 2020-21 benefit year.

It includes measures that are intended to prevent the multiplication of the small business deduction.

It prevents the tax deferral on switches between classes of shares in what's called a "switch fund" mutual fund corporation.

It would introduce the country-by-country reporting standard for transfer pricing for multinationals.

It contains rules relating to estates donations to provide more flexibility for giving by certain graduated-rate estates.

It refines and improves the trust loss restriction event rules, in particular to ensure that they apply appropriately in the case of investment funds.

It again amends rules relating to spousal and similar trusts to provide more flexibility and to ensure appropriate tax consequences on the death of the primary beneficiary under such a trust.

It allows for alternative arguments to be presented in support of an assessment after the expiry of the normal limitation period, provided the total amount on assessment does not increase.

● (1540)

Last, it introduces the OECD common reporting standard. That's a tax information sharing standard designed to prevent fiscal evasion, and it provides for the sharing of account information between tax authorities.

Those are each of the provisions in part 1 of the bill, with a fairly short bit of detail.

The Chair: We will go to questions in no particular order. Whoever wants to start has the floor.

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

Thank you for the work you do. I'm glad you could be here to talk about this today.

I'm going to start with the common reporting standard and work my way backward.

The common reporting standard has come under a fair bit of scrutiny by various groups, particularly the credit unions, in that it imposes a one-size-fits-all regime. We all obviously want to keep the integrity of our tax system and align with other jurisdictions, but unlike the FATCA regulations that were brought into place a few years ago, where there was a risk-based assessment of 2%, these common reporting standards are actually slightly different. They require a slightly different bit of information to be sent on, and there is no risk-based assessment. All credit unions, regardless of size, have to comply.

I have the Summerland Credit Union in my riding, with a staff of about 10, and this actually seems to be quite an onerous process.

Could you please address why the law was written in such a way so as not to allow the same treatment as under FATCA?

Mr. Trevor McGowan: My colleague Jim Greene can speak to that.

The Chair: Mr. Greene, go ahead.

Mr. James Greene (Director, Business Income Tax Division, Tax Policy Branch, Department of Finance): Thank you, Mr. Chairman.

The agreement with the United States with respect to FATCA, of course, was a bilateral agreement. The common reporting standard is a similar system in the sense that it involves a requirement on financial institutions to identify accounts that are held by non-residents and to share that information with the CRA, which will then provide it to the tax authority of the person's residence.

It's essentially an extension to the kind of reporting on financial accounts that we've been used to for many years, the idea that if you open.... If you're a Canadian resident and you have a bank account in Canada, the income you earn on that bank or investment account will be reported to the CRA through a T5 slip or a T3 slip. However, when accounts are held by a non-resident, that person's home country has no way of knowing that information unless the person reports it.

The common reporting standard is an international arrangement by which countries have agreed to collect this information from their financial institutions and to exchange it among their financial criteria. The international community, when it was looking at this approach, considered the fact that the U.S. FATCA agreements have a carve-out for certain small institutions. There were discussions around that, but there was no agreement that small institutions should be exempted.

There was a concern, essentially, that if a group of institutions was carved out, they could then become a pathway for non-reporting. If people know that if they place money in a certain kind of institution, they'll be safe and it won't be reported, this could create an incentive to use those institutions.

More than a hundred countries have now agreed to this standard. I'm not aware that any country has departed from the standard in that way.

• (1545)

Mr. Dan Albas: On this point, you do recognize, though, that in provinces like British Columbia—obviously, credit unions are provincially regulated—you cannot be a credit union member unless you've resided in the province for six months. You have to be a resident of British Columbia to open an account.

While I can understand that there may be some issues, right from the beginning they're not allowed to offer services of any type unless someone has been there for some time.

Mr. James Greene: Certainly it's understood, in that case, that the requirement with respect to existing accounts in place on July 1, 2017, when it's proposed the system will come into place, is that institutions can rely on the address they have on file for a person. The requirement is essentially that they identify any non-residents they have on file. If there are very few, one might expect that it will not be such an onerous exercise. They're not required to contact people. They're entitled to rely on their paper records, or I guess, in cases today, on electronic records.

Mr. Dan Albas: Was the agreement written in such a way that it was overly prescriptive in requiring this, or did we just generally agree to a set of principles and then institute it by a very top-heavy, Ottawa-centric system?

Credit unions, I understand, are all provincially regulated, and perhaps that fact isn't known widely enough here. I would like to know if we agreed, knowing specifically that these kinds of rules would have this impact on small credit unions.

Mr. James Greene: The standard is extremely detailed. It's not a set of broad principles; it's a set of quite detailed rules, which are reflected in the provisions of the bill.

Mr. Dan Albas: Okay.

This is my last intervention, Mr. Chair, and then I'll let someone else go ahead.

FATCA was implemented by the Americans; we really had no say in the matter. However, the OECD requirements are something that Canada voluntarily signed up to. Is that correct?

Mr. James Greene: That's correct. The view of the Canadian government has been that the common reporting standard is an important tool to ensure reporting of assets and income that individuals have abroad; it's considered to be an important tool in the fight against international tax evasion.

• (1550)

The Chair: Okay.

Jim, just before we go on, because the credit unions were on the table—and I too hear the complaint that Dan has talked about—whether it's a case of reporting to FINTRAC or of the paper burden

that will be required under these measures, one difficulty for the credit unions is that the big banks have an administrative structure that looks after all that. In the case of the credit unions and individual credit unions—Malpeque Bay in my riding, which is not very big—the administrative burden on the operation to do that paperwork for this area and for FINTRAC is proportionally much higher. It really is. It's a real burden, because they're a small operation.

Do you see any way of addressing that? In my view, it's a legitimate complaint by credit unions. I don't know how we can deal with it. We have to do these things because we're a global player and we have international agreements, but I think we have to recognize as well that the burden on a small credit union that may have 10 employees to do all this administrative work, plus satisfy FINTRAC, is a huge proportional cost to them versus what it may be for the Royal Bank of Canada.

I think we're on the same wavelength. Do you see any way of reducing that burden on those credit unions?

Mr. James Greene: Mr. Chairman, I think the government recognizes that for smaller institutions, regulatory requirements of all kinds have, relative to their size, become more significant, and I think that is a real issue, as you indicate.

As I say, the intent with this standard has been to try to have it operate in as streamlined a way as possible and, with respect to accounts that are less than \$1 million, to allow institutions to do a relatively straightforward paper-based search through their records. They're entitled to rely on the address on file, in which case, as long as it isn't a non-resident address, they're not required to make further inquiries.

On a go-forward basis, it simply means that when somebody opens a new account, the institution has to ask the person to indicate their jurisdiction of tax residency and to record that accordingly.

The government and the international community, in devising this standard, have certainly tried to devise it in such a way that the burden is minimized, but it's not zero.

The Chair: Okay, you are aware of the issue for sure. It's something we had to keep uppermost in our minds.

Now we'll turn to Ms. O'Connell, and then Mr. Caron

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

Thank you all for coming.

I want to ask a couple of questions on the emissions allowances. I've had to read it a few times just to make sure I fully understand it and I would just like some clarification.

Essentially, if I'm reading it correctly—and I'm actually going off the Library of Parliament brief right now—the emissions allowances are treated as inventory. However, they're only included as income for tax purposes if the accumulated emissions exceed the taxpayer's emissions allowance. Is that correct?

• (1555)

The Chair: I can hear the wheels turning up here.

Mr. Trevor McGowan: You can see the hamster.

Probably the best way—and I'm trying to think of the clearest way to answer that question—is to go through how the rules work and also, somewhat, how they address the current issues, because they were intended to be put in to clarify and provide rules for the taxation of emissions allowances.

Right now all we have are somewhat general tax principles. There are no specific rules in the Income Tax Act saying how to treat them nor, as I understand, are there any accounting principles. Beyond the obvious uncertainty problem, there is a real issue of double taxation that can arise. If you, for example, receive a free emissions allowance from the government, that could be taxable, and then you could be taxed again when it's used to satisfy an emissions obligation.

What the rules essentially do, through kind of a rolling balance mechanism, is they treat emissions allowances as inventory, as you said. That means that the purchase and sale of them is an income account. They're held as inventory, although they're not able to use the lower of cost or market rule, as some other types of inventory property could.

When they're received, they're held at their cost, and to the extent they can be used to satisfy emissions allowances, you can get a deduction. If they're not used in that year, then in the following year you get an inclusion and then another deduction for when they are used. This cycle of inclusions and deductions ensures that you can accrue the deduction not just in the year you get it but until it's used.

Last, I'll talk about the disposition, when you give up one of these emissions allowances to satisfy your obligations under an emissions regime. It's not when you sell it to a third party if you're a trader or what not, but it's when you give it up to satisfy your obligations under one of these regimes. Then there's no gain or loss on the satisfaction of it. It allows you to deduct, in essence, your cost accrued year to year until ultimately it's used to satisfy an obligation.

Ms. Jennifer O'Connell: Okay.

I can see this being an issue in the sense that it is essentially putting a completely new tax regime on emissions, obviously, and there will be trading and what that means. You mentioned accounting standards and things like this, and you mentioned double taxation.

However, I look at it as not being competitive in the sense that if there are no international standards either, how do we understand its financial value, and then how do we keep that in line with others? Are there mechanisms in place?

This is such a new thing that's happening in a lot of economies. With these emission-pricing regimes, how flexible can the process be to allow these changes to come into place relatively quickly so that

other markets are not completely different from what Canada is doing, for example?

Mr. Trevor McGowan: These rules, of course, govern the tax treatment, which is often aligned with accounting treatments, but that's not necessarily the case. If in the future accounting standards are developed that are inconsistent, these rules will still be what they are and govern the tax consequences, which we consider to be appropriate in the circumstances.

I said that there were no existing clear rules on how to tax these emission allowances that are purchased, sold, and used to satisfy obligations under these regimes, but it wasn't completely the Wild West. There were different interpretations of how, under the general principles in our tax system, they ought to be taxed. One of those theories, and a basis upon which I understand some taxpayers filed or people thought was the correct answer, was actually to treat them as inventory, which is what we have here.

I understand they could also have arguably been treated as eligible capital property. That is the class of property akin to depreciable property, soon to become a new class of depreciable capital property, but that's probably not the appropriate treatment, for a number of reasons. It's intended to apply to property with enduring value, whereas the emissions allowance is for one-use property. Often you'd imagine capital property declining in value, where that's not necessarily going to be the case for emissions allowances.

There were different theories of how it should be taxed, and this provides certainty by legislating that the inventory approach, which we consider to be the best approach, is the one to be used.

Also, you can see in the coming-into-force rule that there's an election that would allow taxpayers who either have been filing on the basis that it is inventory or who could be subject to double taxation to elect to have the rules apply retroactively to them. In the case that they determine that this is a benefit and this is how we've been considering them, it helps us out in avoiding double taxation. People can actually elect to have it apply back a number of years, so it's not a whole new system that's kind of made up ad hoc. Rather, it's legislating what we consider to be the appropriate approach to taxation.

• (1600)

The Chair: Thank you. We can come back if you've got more later, Jen.

Mr. Caron is next.

[*Translation*]

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): Thank you, Mr. Chair.

I would like to thank the witnesses for being here.

I'll continue with emissions. The sections of the Income Tax Act that dealt with emissions didn't apply only to carbon. I imagine that they were from the days when we used market mechanisms to limit sulfur dioxide. Has it been in place even longer? Do you know when these legal provisions went into force?

[English]

Mr. Trevor McGowan: Sir, are you asking about the coming into force for the provisions relating to emissions allowances?

Mr. Guy Caron: Oh, when we're looking...

[Translation]

Currently, clause 10(1) of the bill would amend section 27 of the Income Tax Act by introducing specific rules on the tax treatment of emissions allowances. Was there tax treatment of emissions allowances in the past? At the time, there was a market mechanism for sulfur dioxide to fight acid rain. So there already were pollution rights mechanisms, ultimately. So there had to have been a tax system. Is that correct?

[English]

Mr. Trevor McGowan: There were the general rules in the Income Tax Act that various taxpayers had to apply to their particular situations. None of those rules dealt specifically with emissions allowances, so prior to the introduction of the rules contained in Bill C-29, taxpayers applied the general tax principles as they thought most appropriate, because there was a real element of uncertainty.

One of the things we're hearing is that taxpayers want certainty in how these things are taxed. Of course, they were taxed. Some taxpayers took the position they were inventory; some took the position they were eligible capital property. There were issues with each. It is true that the general tax rules would apply prior to this, and this doesn't override that unless a taxpayer elects to do so.

You also mentioned carbon and the definition of emissions allowance applying to carbon. That's what I would call the paradigm example of something to which they would apply, but the definition itself, which is introduced in subsection 248(1), is broader than that. Emissions allowances can be used to satisfy—and I'm going from memory—an obligation with respect to emission of a controlled substance. Carbon, of course, is the classic example, but it's not limited to that.

Mr. Guy Caron: Sir, what did you say was a classic example?

Mr. Trevor McGowan: It was of carbon emissions qualifying—

Mr. Guy Caron: Yes.

Mr. Trevor McGowan: —but it doesn't just apply to carbon emissions. It could be other emissions.

Mr. Guy Caron: My question might be directed more to an historian, but back in the eighties the question I was really referring to was.... If you are proposing this, I'll assume that you're not reinventing the wheel, but I also think that there was a mechanism back in the eighties to fight acid rain, a cap and trade system on sulphur dioxide, which basically was addressed through emissions or polluting rights, basically, for sulphur dioxide. These rights had a certain value, which you could compare with the value we're giving to carbon emissions at this point.

If we had that back in the eighties, how different is the current system with carbon that it necessitates those changes, and why weren't they initially used with sulphur dioxide emissions?

• (1605)

Mr. James Greene: If I may, Mr. Chair, I think the issue is essentially the same.

What the Income Tax Act is trying to do in these cases is recognize that in a regulated system that involves creating allowances to emit or control a substance and then requiring firms to provide the permits in order to make the emissions, those permits have value that fluctuates up and down, so there's a potential for profit and loss in those situations.

Basically, the Income Tax Act is just trying to establish the rules by which we will recognize those profits and losses. The situation with SO_x trading is akin to the issue that we have today with carbon trading.

The systems in the 1980s applied to a very small number of taxpayers, but there was and has always been a certain amount of uncertainty, as my colleague has been saying, about how those transactions should best be treated for tax purposes. The purpose of the provisions in this bill is essentially to codify the treatment and to remove some of these questions around the proper way to account for these in tax terms.

You could argue that in the 1980s there might have been a case for providing more clarity, but a strong case was not made.

Mr. Guy Caron: Basically what you're saying is that we're modernizing what we had back in the eighties.

Mr. James Greene: Yes, I think it's fair to say that we're codifying a set of specific rules, as distinct from relying upon very general rules.

[Translation]

Mr. Guy Caron: I will ask one last question and come back to the subject afterwards.

[English]

The Chair: If you're going to a different subject we can come back to you, or if you're okay to continue, there's no problem, Guy.

Mr. Guy Caron: I'll continue with one more question on a different topic; it's probably the only one I will have.

[Translation]

July 1, 2020, was chosen as the date for indexing the Canada Child Benefit.

Was the decision based on mathematic calculations aimed at optimization and at determining whether the timing was ideal?

In other words, was it a political decision by the government?

I'm not necessarily asking you to comment on the merits of the decision.

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

The Canada Child Benefit established by the government is much more generous than the previous program. The government wanted to stick to the July 2016 deadline for implementing this new benefit, despite the economic conditions and other budget pressures, and announced its intention to implement indexing by 2020. That is what was indicated in this provision of the bill.

Mr. Guy Caron: My question was about the choice of the date.

Why 2020 and not 2019, 2021 or another date?

Mr. Pierre LeBlanc: Nine out of ten families benefit from this program. It also involves keeping a balance between these benefits and the expenses. I think that's why the government chose July 2020.

• (1610)

[English]

The Chair: Mr. Ouellette is next.

Mr. Robert-Falcon Ouellette (Winnipeg Centre, Lib.): Thank you very much, Mr. Chair. I appreciate it.

I was interested in the amendments with respect to the exception in the anti-avoidance rules in the Income Tax Act for cross-border surplus-stripping transactions.

Could you in layman's terms explain that a little bit more? Then I have a couple of other supplementary questions to ask.

Mr. Trevor McGowan: I would be happy to.

Cross-border surplus-stripping is unfortunately a bit of technical jargon. "Surplus" in this case refers to the retained earnings in a corporation. Normally when they are paid out, they are paid out as dividends. Dividends, when they cross a border, are generally subject to a 25% withholding tax, which can be reduced under tax treaties. In a parent-sub situation, it's usually reduced to 5%, but of course 5% is still more than 0%.

These cross-border—Canada to another country—surplus-stripping techniques, which is the extraction of these retained earnings from a Canadian entity up to its foreign parent, free of Canadian withholding tax, are of course contrary to tax policy. They typically rely upon an exemption under Canada's tax treaties whereby dividends might be subject to a 5% withholding tax rate, but a sale of shares of a Canadian entity can be tax-exempt under the terms of the treaty.

In very general terms, a dividend involves moving a certain amount of cash from Canada up to the parent, but when you sell shares, that also involves moving cash from the purchaser to the seller. If you contrived a situation that could be as simple as one Canadian subsidiary buying shares of its Canadian sister company from the parent, you can have money going from a Canadian company up to its foreign parent, but as proceeds from the disposition of another Canadian company's shares. That could be exempt from tax, absent these anti-surplus-stripping rules.

Mr. Robert-Falcon Ouellette: That's a pretty good explanation. You're essentially closing a loophole about transferring money and

making sure it is taxed at a proper rate and that people aren't hiding money and getting away with it.

What might be the impact of closing this loophole on sales of these shares? Would it have some impact on the ability of non-resident corporations to buy resident Canadian corporations?

Mr. Trevor McGowan: The big loophole would be surplus-stripping. Then there's an important exception to that rule when you have—I'll provide a bit more background—a Canadian entity buying a foreign company that happens to own another Canadian entity. You could say that the foreign target in that purchase is sandwiched between the two Canadians.

For a number of reasons, you want to unwind that sandwich and move the bottom Canadian company up. That might ordinarily be caught within the surplus-stripping rules, so there's an exception saying that if you have a Canadian company that buys a foreign target with a Canadian sub, you are allowed to unwind it.

The specific amendment here deals with foreign parent companies reorganizing to work their way into that exception in cases in which it really isn't a Canadian entity buying a foreign target, but a foreign parent establishing a Canadian entity that has another foreign entity; cases in which they are trying to get into this situation.

In terms of cross-border purchases and sales of shares, this basically clarifies an existing exception to an anti-avoidance rule that prevents people in inappropriate circumstances from essentially either stripping Canadian—

Mr. Robert-Falcon Ouellette: Would there be other methods for people to find a way to transfer those without paying taxes? I will say this is almost esoteric in some ways.

Mr. Trevor McGowan: It is, and I apologize for getting a little bit into the weeds, but I think that's important to understand it.

There are a lot of techniques used in cross-border mergers and acquisitions planning. This doesn't affect the most common of them. For example, I think probably tax planning 101 is to establish a Canadian acquisition corporation, fully funded with the purchase price by a non-resident, who would use it to buy the Canadian target. That would not be affected.

What would be affected is, as I described earlier, in-house reorganizations that, essentially with a non-resident parent on top, try to get into the exception we're dealing with in subsection 212.1(4), but there are a number of examples, such as the one I just described, that would not be affected. I think it's probably, and certainly from my experience, the most common way of doing it.

• (1615)

Mr. Robert-Falcon Ouellette: Thank you very much.

The Chair: Thank you, Robert.

Go ahead, Mr. Sorbara.

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

Thank you for a most insightful commentary on the questions.

I'm looking at the amendments to the anti-avoidance rules in dealing with the multiplication of access to the small business deduction. I think this component has received a lot of press and a lot of commentary from various stakeholders. I do want to ask a couple of questions. How frequently is this used by partnerships to multiply the small business deduction?

Mr. James Greene: It's a type of planning that had not become infrequent. The government has provided an estimate of the revenue gain from restricting the availability of the small business deduction. It has always been the long-standing policy that a business, whether it's owned by one individual or by several individuals operating together in a partnership, should be entitled to one small business deduction, so they're entitled to the low small business rate on \$500,000 a year of taxable income.

Mr. Francesco Sorbara: First of all, do we have an estimate? What would be the revenue gain from this amendment?

Mr. James Greene: In 2017-18, the two measures in the act are expected to raise about \$70 million a year of revenue, and on an ongoing basis it's a little bit lower than that.

Mr. Francesco Sorbara: Do we have any idea in which sectors partnerships are most commonly used and which would be impacted? It would be one sector over another. Do you have any commentary on that front?

Mr. Trevor McGowan: We know that the rules apply regardless of sector. They apply to all taxpayers in this situation, and it's not targeted at one industry or another. We have heard comments from lawyers and accountants, and I'm assuming the commentary from the Canadian Medical Association is related to this because we've heard from doctors as well, but there's nothing in this restricting it to a particular segment of the economy or type of business. It's a rule of general application. We certainly heard from stakeholders, professionals, lawyers, accountants, doctors, and maybe dentists. I'm not sure about that.

Mr. Francesco Sorbara: Thank you for filling some holes in there for my knowledge.

Paragraph (g) in the summary of part 1 refers to amendments to clarify the tax consequences "of a disposition of an interest in a life insurance policy". I read that over. What is the reason for the change? What's the rationale behind the change on that, please?

Mr. Trevor McGowan: It essentially addresses two issues relating to the use of life insurance products to extract profits from a corporation free of tax. I'll discuss them separately.

The first—I'll call it a loophole—involves the fact that when a corporation receives proceeds from life insurance, the amount of the proceeds is added to what's called their capital dividend account, but it's not the whole amount of the proceeds. It's the amount by which the proceeds exceed the policyholder's adjusted cost basis in the policy. The benefit of the capital dividend account is you can pay capital dividends out of a corporation to shareholders free of Canadian tax.

As I said, the formula for an addition to your capital dividend account is based upon your proceeds from the insurance policy, the amount by which it exceeds the adjusted cost basis to the policyholder. However, if the proceeds go to one corporation in a group, and the policyholder is another corporation, for example, that type of planning was used so that the entity receiving the life insurance proceeds wasn't a policyholder, so it didn't have an adjusted cost basis. Therefore, instead of \$100 proceeds minus a \$20 cost base for an \$80 capital dividend account increase, they could just add the \$100. The first set of amendments clarifies that in that situation, you take into account the basis of the policy, and even if it's held by another entity, it's still the same calculation.

The second type of planning involved the transfer of life insurance proceeds or life insurance policies to a non-arm's-length corporation. Normally when you transfer life insurance policies to an arm's-length person, your proceeds are included in your income. However, there's a special rule in the tax act that deals with transfers of these life insurance policies to related companies. It's called the policy transfer rule. It says that you're considered to receive, as the transferor, the cash surrender value in respect to the policy. That's the amount of cash you could get for the policy if you were to transfer the policy to the issuer of the policy.

That, in many cases, is going to be the value of the policy, but that's not always the case. If, for example, there's a reasonable likelihood that the policy is going to pay out sooner than initially anticipated—perhaps the insured is sick, or for whatever reason—

• (1620)

Mr. Francesco Sorbara: If I can just interject, I believe it is part 1 of these income tax measures dealing with the efficacy of the tax system or the tax code in bringing in a number of measures that clean up the tax code and make it more efficient overall. The exact details, without having to go through the tax code, are sometimes flying over my head. I will admit that, but I think I understand the gist of your comments. I am happy with your explanation. Thank you.

The Chair: Thank you, Mr. Sorbara.

Mr. Caron, go ahead.

[*Translation*]

Mr. Guy Caron: Mr. Sorbara asked one of the questions that I wanted to ask.

I'd like to come back to the issue raised by Mr. Albas: the costs of meeting the requirements of the common reporting standard.

When we talk to credit unions or the caisses populaires that have had to comply with the requirements of the Foreign Account Tax Compliance Act, they tell us about the fairly high costs that they have to bear for the very low risks that one of their members or clients is likely to criticize or report.

Canada isn't the only place with a credit union or *caisse populaire* structure. Wouldn't it be possible to get a general exemption when, as in Canada's case, the risks are low because of the particular legal structure of these credit unions or *caisses populaires*?

• (1625)

[English]

Mr. James Greene: Thank you, Mr. Chairman. I think it's a fair question.

It certainly was recognized in the international negotiations that led to this common reporting standard that this imposes a burden on institutions and that it has a cost. An attempt was made to try to develop principles and rules that could be applied to minimize those costs to the extent possible. Given the model of the U.S. FATCA approach, which carved out small institutions, as I say, that idea was specifically considered and debated.

The prevailing view in the international community was that if small institutions were carved out from the standards, and even though presently they may be little used by non-residents, it could create a pathway. People would know that it's safe to put money in these places and it wouldn't get reported back to your home country. There was a lot of nervousness about that.

[Translation]

Mr. Guy Caron: Thank you.

[English]

The Chair: Is there anyone else?

Mr. Albas, go ahead.

Mr. Dan Albas: First of all, I'm always happy when I see legislation, because that means I may be useful on behalf of my constituents, Mr. Chair.

In regard to valuation for derivatives, the Government of Canada had been given the authority by Parliament, or the authority has been delegated by Parliament to the finance minister, to regulate in the area of derivatives. It was pretty wide open, so I'm just wondering why legislation is being used, rather than the statutory authority that was delegated to do regulations.

Mr. Trevor McGowan: I would say, in answer to that question, that were we to put these changes in the regulations....

First, I should actually give a little bit of background on what they do. For taxpayers who have derivatives, they're held as inventory. These rules set how they can be treated for tax purposes. Specifically they prevent taxpayers from using what's called the "lower of cost and market" method for valuing these derivatives they hold as inventory.

Under the basic rules in the Income Tax Act, if you have inventory, you can use this lower of cost and market method. I'm not certain that if something were put in the regulations, it would be able to override the tax rules in the Income Tax Act.

Mr. Dan Albas: It's more the tax consequences from the use of derivative products than the actual regulation of the products themselves.

Mr. Trevor McGowan: That's correct. It really applies to the holding of them as inventory and this one specific lower of cost and market method.

Mr. Dan Albas: Okay.

I may have missed it, Mr. Chair, because some of us are slower than others. On the Canada child benefit indexation, could you just cover what that will cost to government? I do know there was reference in the annex of the fall economic update.

Second, although I'm sure the government would say it's just a logical follow-through of ongoing policy, why wasn't this included in the original legislation? Really, I think Bill C-2 was one of the first pieces that the government put out. Why wasn't it included in the original legislation?

Mr. Pierre LeBlanc: On your first question, as you say, in the fall economic statement we reported that the cost of indexing in the 2020-21 fiscal year would be \$505 million, and in the 2021-22 fiscal year it would be \$1.2 billion.

On your second question, the government didn't make the decision until after the first budget implementation act, Bill C-15, was tabled in Parliament. That's why it's in the second budget implementation act.

Mr. Dan Albas: Okay. Thank you.

• (1630)

The Chair: Mr. Ouellette, the floor is yours.

Mr. Robert-Falcon Ouellette: We haven't dealt with graduated tax rate estates, have we?

The Chair: No, we have not.

Mr. Robert-Falcon Ouellette: I'd like to get into that section, actually, and the amendments to increase flexibility for recognizing charitable donations made by an individual's former graduated rate estate. For those 35 viewers at home listening to this wonderful conversation, I'm wondering if you could just explain what that is. Then I have a few questions for you.

Mr. Trevor McGowan: Yes, of course.

A graduated rate estate is a trust that is entitled to use the graduated rates. Trusts are generally taxed at the top marginal rate, but these trusts, the graduated rate estate trusts, arise on the death of an individual, and they're entitled to use the marginal tax brackets.

When they make a donation, there's some flexibility in what income that donation can be applied against. It can be used in the taxation year of the estate in which the donation is made, in an earlier taxation year of the graduated rate estate, or in the last two taxation years of the deceased individual.

The issue arises because a graduated rate estate only is in existence for 36 months. What these measures do is increase up to 60 months the period in which you can make one of these donations and have it applied against a previous year of the estate or against the last two years of the individual. It thus gives extra time for donations to be made after a graduated rate estate crosses that 36-month threshold.

Mr. Robert-Falcon Ouellette: These are not small people; these are large trusts or large estates—essentially the assets of people who have passed away, in layman's terms. What would be the cost, then, to the Canadian estate for increasing it from 36 to 60 months? Obviously you're allowing greater flexibility in that time period. That's one question.

Then I was wondering, if you happen to know it, what the potential impact would be from the difference between now and before we had the graduated rate.

It's probably a very difficult answer to come up with, I'm sure.

Mr. Trevor McGowan: I don't think we have the specific costing of it. I think it's fairly small.

I should say that it's not necessarily the case that the estates that take the longest are the biggest-dollar ones. You can have complicated estates and contested estates, I'm sure, without big dollars at play. However, no, I'm sorry; we don't have the cost of it. It is small.

Mr. Robert-Falcon Ouellette: That's okay.

Do you think this is going to allow more donations, though, to be given out to charities? This is also enshrined with shares, obviously, and capital gains, and tax-free capital gains. Is allowing those shares to remain tax-free going to lead to an increase or to an ability for more charities to receive a greater level of funds?

Mr. Trevor McGowan: My colleague Pierre can fill this in.

It's always difficult to talk about behavioural responses to a tax change, and particularly one in which, as here, we're introducing more flexibility so that these donations, when they're made, can be applied against previous years, the last two years of the individual, or any of the years when it was a graduated estate.

Would the donor have made the gift otherwise...?

Mr. Robert-Falcon Ouellette: That means probably you made the change because there has been a request of some type made, and then you've seen probably a number of groups saying they haven't had enough time to wind up the affairs of these estates. Would that be a good characterization?

Mr. Trevor McGowan: Yes. I think what we heard is that it takes a fair bit of time sometimes to wind up the estates, and sometimes for the remainder of the estate—what's left after each interested party gets their share—there might be a provision saying “and donate the remainder to charity”. That might be the last thing to be settled, and that provision might push it to the end of the process, which might be past the end of the 36 months.

Mr. Robert-Falcon Ouellette: Thank you very much. I hope more Canadians will use this for our loved ones when they wind up their estates.

Thank you.

•(1635)

The Chair: Thank you.

Are there any other questions on this round, anyone?

I'll just come back to the first thing that was mentioned. We will likely be having the Canadian Medical Association as a witness at some point, but I think I can give you an idea of what they're going to be suggesting.

They're going to be suggesting that altering access to the small business deduction will impact incorporated physicians in group medical structures. They believe that could have an impact on these group medical structures when undertaking medical research, training future doctors, and delivering specialized care in our academic health science centres and communities. I expect they will be asking us to exempt group medical structures.

From your perspective, is that a good idea? Is there any reason that we shouldn't do it? We may as well ask the question now rather than after we hear from them, so that we can hear from them with this testimony on the table.

Mr. Trevor McGowan: The department has also heard from a number of stakeholders, including the medical community. I can't speak to any specific discussions, but I can make a few points.

First, it applies to partnerships and corporations. As you said, in these joint medical arrangements one question is whether it has to be a partnership or if it is in fact a cost-sharing arrangement to which the rules would not apply.

Second, as I said earlier, the rules are of general application and are intended to ensure that where you have one business operated through a partnership, you have one \$500,000 small business limit, and that limit cannot be multiplied. For example, if you have 10 partners each entering into this type of structure, it could go from \$500,000 to \$5 million or \$5.5 million, I suppose. It's a broad application, and it ensures the integrity of the small business deduction rules without regard to the industry in which the people practise.

I'm sure there's a question about the benefits to be spent on medical research or paid to doctors. I think one tax policy question is whether or not additional incentives or funding ought to go to a particular business or category of business through the maintenance of a loophole in the tax system that they've been using, or if it ought to be done through direct spending. I think that's one important consideration.

Also, I think that in order to respond to specific comments, it's necessary to understand what exactly from a business perspective these expenditures are preventing. Of course, if a researcher is paid a salary, that's paid out of pre-tax dollars, which, regardless of the tax rate, would not be affected. As I said earlier, if you have a cost-sharing arrangement rather than a partnership, that's not going to be affected. There are a lot of details and specific facts in any particular case that can come to bear on the extent to which a particular industry or type of business is affected.

To summarize, ultimately it comes back to the question of whether or not this is an integrity rule intended to protect the integrity of the small business deduction and to ensure that the policy of one \$500,000 limit for one business is maintained. To the extent that the exclusion from an integrity rule for a particular industry creates a tax preference for that industry, there might be a question as to whether it's appropriate to deliver those revenues through the maintenance of a technical provision like this in the tax act versus through direct spending. It is probably an important question as well.

•(1640)

The Chair: Thank you for that.

Two more questions have popped up while we were going through that discussion. We'll go to Mr. Ouellette and then Mr. Albas.

Mr. Robert-Falcon Ouellette: Thank you very much.

I just wanted to go to the amendment to the Employment Insurance Act regulations.

The Chair: We'll talk about that later.

Mr. Robert-Falcon Ouellette: Oh, we're doing that? It's already part 1, though.

The Chair: Okay. Is it in part 1?

It's under part 4, division 1, I believe.

Mr. Robert-Falcon Ouellette: We'll come back later, then.

The Chair: We'll come back later. We'll get to that down the road a little piece.

Go ahead, Mr. Albas.

Mr. Dan Albas: Thank you, Chair.

I certainly appreciate your explanation for the change. I believe we've probably all been receiving the same volume of emails as many other members of Parliament, particularly in Ontario. The arrangement that the provincial government has with research hospitals to be able to have this work done requires them to be in a partnership.

While I totally understand your argument that in order to keep the integrity of the tax code we shouldn't have one particular type of preference, this is again the province saying that they want it done a certain way. Now the federal government is saying that they can't do that.

The inevitable consequence of that, if it's a bit of a standoff, is that often these private doctors will just say, "I'll just go and practise by myself in something else where I don't have to deal with these kinds of rules." Then the public value of that research and all the

consternation that goes on will affect both provincial members of Parliament as well as members of Parliament here.

Has there been any outreach, specifically with the Government of Ontario, with representatives of doctors who are currently regulated under this practice and who are utilizing the small business deduction in this current arrangement? Has there been any consultation to be able to ensure that this is a smooth transition?

Mr. Trevor McGowan: One thing my colleague reminded me that I may have glossed over in terms of numbers is that the current small business tax rate is 10.5% on active business income and the general rate is 15%. What we're talking about here in terms of the impact of qualifying or not for the small business deduction is that 4.5% point spread.

Without getting into specifics, I can say that the Department of Finance has heard from stakeholders. We've been in consultation with stakeholders and are familiar with the issues raised by those in the medical community. We have heard from not just one jurisdiction, as well.

We have, then, been consulting with stakeholders. Whether that extends specifically to the Province of Ontario, which you mentioned, I can't say, but I know we've been having numerous consultations with affected stakeholders and have heard some of the same points.

Provincial regulatory authorities require you to be operating in partnership, although one question that came up is whether it really is a partnership, because I think one agreement said, "This is not a partnership," or, "This is not to be construed as a partnership". That's why I mentioned earlier that there are some technical things we are working through with stakeholders in trying to come to a better understanding, and not only with external stakeholders but also with Canada Revenue Agency as to how they would apply these new rules.

Mr. Dan Albas: Based on that—and I appreciate that you've been very consistent, which is a virtue in the public service, because when we ask questions, the answers should be consistent every time—is there any practical value, then, in not proceeding with this clause at this time until those discussions with the provinces can happen?

I guess I could be asking this of the members opposite, not you, so I can appreciate your possibly not wanting to answer that question.

Mr. Trevor McGowan: No. It's in the bill.

We often have consultations with stakeholders on many of our measures. I think there are two or three measures in the bill—I'll point to the spousal trusts, the loss restriction events dealing with investment funds, and the graduated rate estates, and I think we talked about two of these earlier—for which those changes came in in 2013, and because of ongoing consultations with stakeholders, as we constantly do, we made refinements to those rules to achieve the appropriate tax results.

As I said about graduated rate estates, those changes came in a while ago. Then we heard from estate planners that for those gifts they really needed a bit more time, and so further amendments were made down the line.

I will point out that this is a continuing process that we do, and there is certainly evidence of it in this bill.

•(1645)

Mr. Dan Albas: Thank you.

The Chair: Thank you.

Coming back to Mr. Ouellette, there are amendments to the Employment Insurance Act in part 1. I believe they relate to a name change, but go ahead; ask your question.

Mr. Robert-Falcon Ouellette: Thank you very much.

It's related to clauses 85, 86, and 87, changing the name "Canada child tax benefit" to "Canada child benefit". Actually these, especially clause 87, change the Canada Pension Plan Regulations, the Employment Insurance Regulations, and the Immigration and Refugee Protection Regulations. For instance, just with EI, I was interested in knowing—because there's a supplement that families can receive—what impact those name changes would have on those families who receive that supplement.

It's a very pointed question, and I apologize—

Mr. Pierre LeBlanc: I would say that our colleague from ESDC is better placed to answer. He is on later. I might just pause that question.

Mr. Robert-Falcon Ouellette: You would pause the question? Okay.

The Chair: All right, we'll deal with it when we're dealing with part 4, division 1.

There being no further questions, thank you, gentlemen, for your presentation.

We will suspend for three or four minutes while we turn to part 2.

I believe Mr. Mercille is next up.

Thank you very much, folks. We are suspended.

•(1645)

(Pause)

•(1650)

The Chair: We'll reconvene.

Welcome, Mr. Mercille.

We'll deal with part 2, amendments to the Excise Tax Act in relation to GST/HST measures and other related texts.

We'll deal with part 2 first, and then, I believe, you're also the witness for part 3. We'll look at part 2 first, and then go from there.

Welcome.

[*Translation*]

Mr. Pierre Mercille (Senior Legislative Chief, Sales Tax Division, Tax Policy Branch, Department of Finance): Good afternoon. My name is Pierre Mercille. I am the senior legislative chief of the Department of Finance Sales Tax Division.

As you said, part 2 of the bill deals with the goods and services tax, or GST, and the harmonized sales tax, or HST. Part 2 starts at clause 89 and ends at clause 99.

•(1655)

[*English*]

There are four GST/HST measures in this bill.

The first measure provides a GST/HST relief for exported call centre services. More specifically, the relief will apply to supply of a service of rendering technical or customer supports to individuals by means of telecommunication. We understand "by means of telecommunication" as by telephone, by email, by webchat. The relief will apply if the service is supplied to a non-resident who is not a consumer of the service and if the person is not registered for GST/HST purposes. The amendment will allow Canadian call centres to compete more effectively with call centres located outside Canada.

The next measure is fairly technical, and it deals with the "closely related" test under the GST/HST.

Under the GST/HST, there are special relieving rules that allow members of a closely related group of corporations or partnership to neither charge nor collect GST on intercompany supplies. To qualify, each member of this group must be considered to be closely related to each other member of the group by having a degree of common ownership of at least 90%. The amendment in this part will require that in order to meet the closely related test in the future, in addition to having that degree of common ownership of 90%, a corporation or partnership must also hold and control 90% or more of the votes in respect of every corporate matter of the subsidiary corporation.

The next amendments are consequential to the repeal, effective January 1, 2017, of the eligible capital property regime. That was explained earlier because these amendments to the Income Tax Act are included in part one. Because some provisions of the GST/HST refer to those amended provisions in the Income Tax Act that are being amended, the amendments are made to ensure that the application of the GST/HST in this area is not affected. Essentially, these amendments ensure that there's no change for GST/HST.

The last measure in part 2 of this bill is an administrative measure. It clarifies that the Canada Revenue Agency and the courts may increase or adjust an amount included in an assessment that is under objection or appeal at any time, provided that the total amount of the assessment does not increase. This measure is similar to a measure that is included in part 1 of the Income Tax Act because it originated in the Income Tax Act, and it's made under the GST legislation to ensure greater consistency across administrative provisions throughout the tax act, the federal tax statutes.

I will take just a few seconds here just to say that this last measure that I explained, the administrative measure, is the only amendment that is included in part 3 of this bill. Part 3 includes amendments to the Excise Act 2001. That's a different piece of legislation that deals with excise tax on alcohol and tobacco. Again, this amendment is made to ensure greater consistency in administrative provisions across federal tax statutes.

[Translation]

That concludes my presentation.

Thank you.

[English]

The Chair: Thank you very much, Mr Mercille.

You're telling us we can be efficient and do part 2 and part 3 together. We like that.

Are there any questions to start?

Mr. Albas, I have one if you don't

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

Thank you for your presentation.

I'd like us to talk a little bit about the control of corporations. This is again going back to amendments with respect to the test for determining whether two corporations or a partnership and a corporation can be considered closely related.

Can you give me an example in which this might occur?

• (1700)

Mr. Pierre Mercille: The intent behind that “closely related” test is to identify when you have a group of corporations that essentially act as one entity because the overall control of everything is under the same person, essentially.

These rules were working well and still work well, but given the fact that there are more and more complex corporate structures and types of shares put forward by corporations, there are a few scenarios that went to the CRA to ask whether, in certain situations, the closely related test was met when technically, according to the old working of the legislation, it could have been met but it was not the intent.

To give you an example, you could have a corporation that holds 90% or more of the value and number of shares that have only one vote, and the other 10% of shares have 100 votes associated with them. Essentially a person asked CRA whether the corporation that holds the 90% of single-vote shares would be closely related to another corporation.

That's not the intent, because even if that person held 90% of the value of the corporation, they don't really control the corporation, so they are not acting as one person when the group is making decisions.

Mr. Dan Albas: The question I would have, and I believe the Canadian Tax Foundation did a paper on it, is that there are some concerns.... Let's say that you have three sisters on the Prairies. One runs a John Deere dealership, another has a gas station, and the other is a farmer. Now, you could say that their interactions among each other, because they're all closely related, would somehow change

under this, and perhaps that change might also change how they are related to taxation. That's what I remember as the gist of it from the report.

Have you heard any of this?

Mr. Pierre Mercille: I have not heard about the three sisters in Alberta, but—

The Chair: It's just an example.

Mr. Pierre Mercille: —what I want to point out is that this “closely related” test is specific to the GST. It's not like the “related” test in income tax, whereby your brothers and sisters are “related”. We're talking here about 90% ownership of the value of the shares that have full voting control. This is the way it's described, and it's very specific to the GST.

In your example, there are three persons, but if you tell me that one sister owns 90% of the shares of the business of her other two sisters, then the group would be closely related, because essentially all of the important decisions would be made by only one sister, because she controls all the decisions of the three corporations. That would be a closely related group. However, if they are just three sisters who own shares of their own corporation, they're not closely related and they are not subject to this, as before—

Mr. Dan Albas: Okay, so as long as they're completely separate corporations and whatnot, and their operations are....

Let's go to your example, in which one sister does have control. What would be the tax fallout with that? Would she not be eligible for certain tax treatment; or would she be subject to a different process?

Mr. Pierre Mercille: I assume that in this fictitious example the person was qualifying under the closely related test before and will not qualify now. In that case, there are three different relieving rules that exist under the act that will not be available.

There is one rule that allows a group of financial institutions to treat some intercompany supplies as financial service, and financial service is not subject to tax under the GST. That relief would not be available. The most common one is that intercompany supplies of a closely related group can be made for a consideration deemed to be nil—so for zero cost—and so there is no tax within those supplies.

This is just a cash flow relief, because those companies, to be operating under that test, need to be exclusively in commercial activity, so if they pay tax they can claim it back as an ITC.

Mr. Dan Albas: I'm going to ask a few questions that our analysts have put together. Thanks to them for putting these together.

How many closely related corporations provided services to each other in the 2015 taxation year? Do you have any kind of...?

• (1705)

Mr. Pierre Mercille: No, I don't think we have that information.

Mr. Dan Albas: Okay.

How would the proposed measures affect the tax treatment of services among corporations that are controlled by one individual rather than a single...?

This is services, not just goods.

Mr. Pierre Mercille: The services are relieved also. The supply is deemed to be made for—

Mr. Dan Albas: Okay, so it's—

Mr. Pierre Mercille: —some consideration. If one person controls everything and has 100% of the shares and all of the votes, this doesn't affect that situation.

Mr. Dan Albas: Okay. Thank you.

The Chair: Thank you, Dan.

Look, there's a business near home called The Five Sisters, so we have two up on you—and they sell lavender, so you'd be really enthused.

Some hon. members: Oh, oh!

The Chair: Who is going first, Ms. O'Connell or Mr. Ouellette?

Go ahead, Ms. O'Connell.

Ms. Jennifer O'Connell: Thank you.

I want to make sure I'm in the right section. I'm looking for the Canada Disability Savings Act.

Mr. Pierre Mercille: It's not in this part.

Ms. Jennifer O'Connell: Okay, it's the next one.

The Chair: It's in part 4.

Ms. Jennifer O'Connell: Then I'll wait.

The Chair: Mr. Ouellette, did you have a question?

Mr. Robert-Falcon Ouellette: I have only if it's on the CCB.

The Chair: No, that's not in this part either.

Mr. Mercille, I think that concludes your presentation. Thank you very much.

That deals with parts 2 and 3.

We'll call up those who are dealing with all seven divisions of part 4 all together. We'll go through these one by one.

We shall suspend for a couple of minutes while we bring up the next 10 or 12 witnesses.

• (1705)

(Pause)

• (1705)

The Chair: Could we come to order? Where are the members, so that we can finish, if we can?

I know there's not enough room for everyone, so we'll hold back on divisions 6 and 7 for the moment.

I understand that Ms. Ryan has to be at another meeting fairly soon, and Ms. Venne also.

We'll deal with division 1 of part 4 first, which concerns the Employment Insurance Act, to get that out of the way so that Ms. Ryan can leave.

The floor is yours.

• (1710)

Ms. Annette Ryan (Director General, Employment Insurance Policy, Department of Employment and Social Development): Thank you very much, Mr. Chair.

My name is Annette Ryan. I'm director general of employment insurance policy at Employment and Social Development Canada. I'm joined by Janique Venne, who is director of our regular benefits policy, also at ESDC.

Let me answer the honourable member's question from the last round of questions before treating this measure. I would simply say that there has been no change to the family supplement portion of employment insurance. It remains as it always has been, and the name change has no policy import for that section of the EI program.

To turn to the legislative proposal, I would start, Mr. Chair, by saying that the proposal is not a change of policy or program operations in any way. The measure is a limited technical legislative proposal that's intended to strengthen the initial regulatory implementation of one of the government's main Budget 2016 EI commitments.

Starting from that description, that the measure is essentially technical, I'll describe it further. The measure speaks to the definition of what is not “suitable employment” within the Employment Insurance Act. The act has had a long-standing provision that creates an obligation for our claimants to actively look for and be willing to accept suitable work.

This concept of what is suitable work, and more specifically “not suitable employment”, was included in the Employment Insurance Act prior to 2013. Considerable jurisprudence was established through time to inform how this concept should be interpreted by Service Canada agents, workers, and employers.

In Budget 2012, new measures were introduced under the rubric of connecting Canadians with available jobs. Under this initiative, provisions specifying what is “not suitable employment” in the EI Act were repealed, and the question of what is suitable and not suitable employment was established fully in regulation at that time.

The EI regulations were amended to prescribe specific criteria on these fronts. They spoke to what the claimant is expected to search for and accept through the duration of their claim, based on the claimant category to which they belong. These criteria, established in regulation in 2013, introduced different treatments for different EI claimants, depending on their work history, while the criteria relating to daily commuting time to and from work and those types of measures were also then specified in regulation.

Moving ahead to Budget 2016, the government set forth an initiative to simplify job search responsibilities for EI claimants and reversed the criteria adopted in regulation in 2013. At the time, we made those changes fully in regulation, to be in effect by July 3, 2016.

Specifically, criteria relating to the length of commuting time, offered earnings, and the type of work were repealed and replaced by provisions specifying what is “not suitable employment” as set out in the EI Act prior to 2013. Essentially, we went back entirely to the previous text that had been in place prior to 2013, but we placed it in regulations, whereas prior to 2013 that text had been in legislation.

Other policy changes were made, effective July 3, 2016. References to such claimant categories as long-tenured workers, frequent claimants, and occasional claimants as tied to their job search responsibilities were removed from the criteria determining what constitutes “suitable employment”.

The question was essentially subsequently raised within the regulatory process as to whether the specific concept of “not suitable employment” would be better established in legislation, as had been the case prior to 2013, rather than in regulation.

Essentially, limited technical amendments are proposed today to legislate the provisions related to the definition of what is not suitable in the EI Act. Provisions related to the criteria for determining what constitutes “suitable employment” will remain in the regulations.

•(1715)

If I may make an editorial statement, let me say that the measures that will remain in the regulations are essentially new measures that are favourable to EI claimants, whereas the measure of what is “not suitable employment” reconstitutes entirely the legislative fabric in place prior to that time, which essentially adjudicated claims that the worker might want to press.

Essentially, the proposal to adopt the provision in legislation is intended to align even more fully and directly with past jurisprudence. It does not alter the policy intent of what was adopted in July 2016 in any way.

I will conclude there, Mr. Chair.

I'm happy to take questions.

The Chair: We will go to questions.

This commentary is not directed at you, Ms. Ryan, but it seems to me that this is a part of the Budget Implementation Act that should really be directed towards another committee that deals with EI. I'm just saying that.

We committed not to do an omnibus bill, so I hope the minister gets this message. This seems to me to be part of an omnibus bill. We said that last year. It's not a comment to any of you officials here, but we committed that there wouldn't be omnibus bills, and I see several sections in here that are really not strictly directed to a finance committee's responsibility. There are other committees that deal with EI and know this field a lot better than we do, so we're put in a little bit of a difficult position. I say that as chair of this committee.

In any event, we'll go to questions.

Who wants to start?

Go ahead, Mr. Ouellette.

Mr. Robert-Falcon Ouellette: Thank you very much.

I'd like to finish up our conversation of a little bit earlier.

In the various types of “earnings” definition, does the Canada child benefit or the child tax benefit count as earnings?

Ms. Annette Ryan: Count as earnings for the purposes of...?

Mr. Robert-Falcon Ouellette: Of someone's receiving EI.

Ms. Annette Ryan: I'm quite confident, sir, that it does not, and if that is in any way incorrect, I'll get back to the chair directly.

Mr. Robert-Falcon Ouellette: Thank you very much.

The Chair: Thank you.

Mr. Albas is next, and then Mr. Caron.

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

This is just a question of process, because you've been very clear with your feelings on this.

As a committee, we have every opportunity to ask other committees to review certain pieces of legislation for their comment. Is that something that the committee wants to entertain?

The Chair: Yes, I think we can.... We'll go through this session today, and there may be sections of this sent to other committees. I'm not sure of the process either.

Guy may know. Go ahead, Mr. Caron.

[*Translation*]

Mr. Guy Caron: Thank you, Mr. Chair.

This was done in the past, but there were always limitations ensuring that the provisions were not addressed satisfactorily. Mr. Chair, I agree with you that it should have been sent to the Standing Committee on Human Resources. That said, it is up to us, and I have a question about the definition of “reasonable interval”, which seems a bit arbitrary to me. We are saying that, after a reasonable interval, the available job, which could be in another field or have less favourable conditions, might once again become suitable.

Who decides the length of the reasonable interval?

Is it a rigid provision that doesn't take into consideration particular circumstances?

In my region, for instance, seasonal employment is an important part of the economy. Eliminating the suitable employment distinction created serious problems. If we impose this definition of reasonable interval, which doesn't consider regional realities, we will somehow end up in the same situation as before. I'm concerned about the arbitrary nature of this notion of reasonable interval.

Ms. Annette Ryan: Mr. Caron, your question touches on the general logic of this measure and the changes from 2013 and 2016. It is logical to determine whether it is preferable to clarify these definitions in the context of regulations or an act, or even on the basis of the case law.

In this case, we have implemented the government's platform very faithfully in order to reverse changes that were made in 2013. The tendency is to revert to case law, as a basis, to clarify these definitions.

That said, I will continue in English and consult my notes in order to give you a more specific answer to your question.

• (1720)

[English]

The reasonable interval refers to the period starting when a claimant has become unemployed to the time that subsequent employment was offered to the claimant. This is only for employment to be considered suitable when it falls outside a claimant's usual occupation or at a lower wage scale.

A reasonable interval is not a fixed period, and it varies according to the circumstances. Case law has provided some guidance in determining a reasonable interval through the circumstances of each particular case, with factors including an active job search, consideration of reduction in salary, drastic change in occupation, shortage of work, but as a general rule, case law has held that essentially two to three months is a reasonable period of time before a claimant needs to be more flexible and less restrictive in determining a suitable employment.

[Translation]

To conclude, it's a case-by-case approach.

Mr. Guy Caron: What happens, for example, in the case of a fisher in the Gaspé who is working but can't work for certain periods that may last four to six months? After two or three months, is it possible that if he refuses a job that is not in the fishing industry because it isn't in his line of work, he will be considered to have refused suitable employment? It isn't very different from what we had previously with the reality of seasonal workers. If someone has seasonal work or a job for seven months of the year, that person can very easily be forced from his or her field. I didn't understand that it was as clear as that.

Ms. Annette Ryan: I understand your question, sir, but we are still trying to ensure that the system is balanced. We also have to satisfy employers who have a shortage of labour in a particular region. If people receive employment insurance benefits and there are vacancies in their region, the idea is to require them to consider the available jobs. This aspect of the system has been around for a long time. It was not established in 2013, for example.

Mr. Guy Caron: Based on what you're saying, unsuitable employment may become suitable two or three months after job separation.

Ms. Annette Ryan: It's important to take into account the relationship with the work the person just did, but that's the principle.

Mr. Guy Caron: Another term that I find arbitrary because there is no definition connected to it is "good employers".

Ms. Annette Ryan: Absolutely. I've noticed that too.

Mr. Guy Caron: What is the definition of a good employer?

Ms. Annette Ryan: An employer is considered "good" until proven otherwise. I will go back to my notes to be more specific.

[English]

The term "good employer" has never been defined. Unless there are clear indications to the contrary, the employer is presumed to be a good employer, but conditions exist to give guidance on this. If there are serious allegations indicating that an employer is not a good

employer, the commission shall conduct fact-finding, and the considerations that may be in play are whether the employer has high turnover, numerous grievances filed, rates of earnings that are much lower than paid elsewhere in the area, dilapidated premises, or general dissatisfaction in the place of work. Determining these facts will result in a decision on a case-by-case basis of whether the employer is or is not a good employer.

[Translation]

Mr. Guy Caron: Thank you.

[English]

The Chair: Thank you, Mr. Caron.

Mr. Albas is next.

• (1725)

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

While I totally agree with you that probably the committee is not the best forum for it, obviously, since you're here, Ms. Ryan—and I appreciate that you've brought a number of your working associates with you here—I want to make the best use of time for the taxpayer so that I can say to people that we're doing our work.

I want to touch upon the point at which Mr. Caron left off. I sat on the Standing Joint Committee for the Scrutiny of Regulations for a period of time. I'm not sure whether I accidentally kicked my whip's dog or what, but I was gifted enough to be on that committee for quite a while.

One of the conversations it would have is that oftentimes regulations are put in place to provide better protections for individuals, so that we have less discretion by....

I have to say, I find our public servants here in Ottawa, and I'm sure right across this great country, Mr. Chair, to be very capable. In fact, I was of the opinion that when you hire someone qualified and you pay them well, you should give them as much discretion as you can, because we want them to be able to apply good judgment, but at that committee regulations were put forward to make sure that there are not inequities inadvertently done by doing one-offs. When you say we're pulling away regulations and are allowing old rules to take their place that aren't as clear, I wonder whether there is more capacity for someone who is not as well trained....

For example, I know that our demographics in the public service are changing and that many people are retiring. Do you feel that there is a greater chance that there could actually be more arbitrary decisions that thus end up being brought to the tribunal?

It's a pretty loaded question.

Ms. Annette Ryan: There are a series of excellent questions embedded in that question. Let me start with the idea of discretion being provided from regulations.

Essentially what this measure would propose to do is to take text from the regulations that were established in July 2016 and place it in legislation rather than in regulation, to give the greater certainty of line of sight to the will of Parliament to these measures than would be in place via regulation.

I'm speaking from the policy intent. I'm not a lawyer, and I would hesitate to get further into the mechanics or theory, but I would offer this as very much the intent: to align more fully not just with the legislation, but also with the jurisprudence that was established prior to 2013, when this specific text existed in legislation.

That's my response to the first half of your question.

In response to the question of whether there is sufficient knowledge, experience, and so on to adjudicate these cases on a case-by-case basis, essentially I would offer that this jurisprudence has been established over a number of years and that the desire to maintain the line of sight to jurisprudence and give greater certainty to new people as they enter the system and so on is very much our intent. I feel that all appropriate measures are being taken to make sure that new staff are appropriately trained to replace retiring staff.

Mr. Dan Albas: Okay.

In a power relationship in which someone is applying for the first time and is in a period of distress, doesn't know the system, and suddenly is faced with someone who knows the rules—or at least they would trust would know the rules—it would be important to know that the rules established by Parliament are being followed.

I appreciate your answers and your presence today. Thank you.

The Chair: Mr. Caron, you had another question.

[*Translation*]

Mr. Guy Caron: Going back to the definition of reasonable interval, I apologize if I missed the answer, but did the concept exist before the 2012-2013 changes?

Ms. Annette Ryan: Absolutely. In July 2016, we went back to the definition in the regulations. What we are proposing is to put that exact definition in the bill.

Mr. Guy Caron: Was the definition in the act in 2011?

• (1730)

Ms. Annette Ryan: It was in the act, but it was replaced with more specific definitions. We went back to the definition before 2013 and will include it in the amendment.

Mr. Guy Caron: Thank you.

[*English*]

The Chair: Are there no further questions on this area?

Just so that I'm clear on what I said earlier, my point of view is that some of these issues related to employment insurance that could go to another committee really should be in a separate bill, even if it's a small one, which gets the proper discussion before another committee at which the minister responsible for that act has to appear. That's where I come down on this.

I think the finance department got into a bad habit of doing omnibus bills in the past. It has improved, but the Budget Implementation Act shouldn't be a catch-all for everything else or

a way to slip things through the system. That's where I'm coming from, just so you know.

Thank you very much, Ms. Ryan. I know you need to depart.

It is 5:30. If we're going to continue—we have a vote, and the bell is at 5:45—we'd need unanimous consent to continue. Maybe we could get this cleared off our deck if we could deal with these portions tonight.

Go ahead, Mr. Albas.

Mr. Dan Albas: Mr. Chair, you've raised some very good points here. I think that perhaps we should send this section to the HUMA committee for consultation.

The Chair: I'm not sure of the procedure. We'll come back to it next meeting. There is a procedure by which this may in fact go to another committee to study it.

Do you know? I forget.

The Clerk of the Committee (Mr. Philippe Grenier-Michaud): In the past, when the finance committee was dealing with the budget implementation bill, it would, during the course of its study, write to other committees to invite them to study the subject matter of specific clauses related to their mandate and submit to the finance committee proposed amendments, to be deemed moved during the clause-by-clause study of the bill at the finance committee.

Since the clause-by-clause study is planned for the 28th, that would leave only next week for other standing committees to take a look at those clauses. The schedule might be tight, but if the committee wants to propose a motion to invite other committees to take a look at specific clauses and to submit proposals for amendments or give their opinion on them, that's at the discretion of this committee.

Mr. Dan Albas: I can make the motion, then, if you would find it in order.

The Chair: What did you say, Raj?

Mr. Raj Grewal (Brampton East, Lib.): Do we have to give 48 hours' notice for the motion?

The Chair: No, not in this case. You could move a motion that the chair write the committee on this section and ask whether they want to review it and give their response back to us. I think that's what the clerk is saying. That's normal procedure.

Ms. Ryan, you can go. I know you are really tight for time. You don't need to sit through this discussion.

The Clerk: This motion is debatable, and we'll have to vote on it.

The Chair: Yes. What would the specific wording of the motion have to be?

The Clerk: A suggestion might be, “That the Standing Committee on Finance invite”—then insert the name of the committee—“to review...” specific clauses in Bill C-29 “and submit proposals for amendments to” those specific clauses, with a deadline to submit them prior to the clause-by-clause examination on the 28th, “and that those proposed amendments be deemed moved during the clause-by-clause study of the bill.”

Ms. Jennifer O’Connell: As a point of order, Mr. Chair, don’t you require unanimous consent to go past 5:30 p.m., which we’ve already done? Wouldn’t that be in order first?

The Chair: Well, we asked for that, and there was....

Ms. Jennifer O’Connell: I’m sorry; I didn’t hear you ask for that.

The Chair: Maybe I didn’t ask for unanimous consent.

Mr. Dan Albas: Actually, we saw that initiated from a nod from that side.

The Chair: Well, no, I didn’t ask. If we want to, I would need unanimous consent to go beyond 5:30, if we went to 6 p.m.

I’m told now that I don’t need unanimous consent to continue. We definitely need unanimous consent when the bells ring.

Are you moving a motion, then, that the chair write the committee asking them if they want to review this employment insurance section?

•(1735)

The Clerk: Can you specify the committee and what part you want to...?

Mr. Dan Albas: Yes, it’s the HUMA committee.

The Chair: Okay.

Mr. Dan Albas: They can write back with amendments.

The Chair: That is so moved.

Is there any discussion?

The Clerk: On what clauses...?

Mr. Dan Albas: It’s the clauses we were just reviewing, specifically the EI clauses.

The Chair: Is there any discussion?

Mr. Dan Albas: I’ll keep it very brief, because we have votes.

The chair, our elected leader, has made a suggestion. I agree that we should at least invite them.

The Chair: All right. The question is on the motion

(Motion negatived [See *Minutes of Proceedings*])

The Chair: It’s lost.

Okay, we’ll deal with it at this committee. Those are the difficulties of life.

We’ll turn to part 4, division 2.

Go ahead, Ms. Martel.

Ms. Nathalie Martel (Director, Old Age Security Policy, Department of Employment and Social Development): I’m Nathalie Martel, director of old age security policy at Employment and Social Development Canada. I’ll be quick.

Division 2 of part 4 amends the Old Age Security Act to allow more low-income couples to receive higher benefits when they must live apart for reasons beyond their control.

Allow me to explain.

Senior couples who must live apart for reasons beyond their control—for example, when one spouse must live in a nursing home—face higher costs of living and are most at risk of living in poverty.

In the case of low-income couples, when both spouses receive the guaranteed income supplement and must live apart for reasons beyond their control, the legislation already allows the guaranteed income supplement to be paid at the higher single rate based on their individual incomes rather than on the combined income of the spouses. This generates higher benefits.

However, for other low-income couples, when one spouse receives the guaranteed income supplement and the other spouse receives the allowance, the act is silent and thus does not permit the same advantage.

By the way, the allowance is provided to low-income individuals aged 60 to 64 whose spouse or partner receives the guaranteed income supplement.

I will continue in French.

[*Translation*]

The amendment proposes extending the same right to couples in which one member is receiving the guaranteed income supplement and the other is receiving the benefit. We estimate that about 750 couples will benefit from this change, for an annual cost of \$2.6 million. The change will enter into effect on January 1, 2017.

[*English*]

The Chair: Are there any questions?

I believe Mr. Sorbara has some.

Mr. Francesco Sorbara: I do have questions.

Thank you, Ms. Martel, for those comments.

It seems to me this this change in OAS is deemed for low-income seniors but also seniors when one may be in a nursing home and one is at home.

Ms. Nathalie Martel: Exactly. The provision already exists when both spouses are 65 and over and both receive the guaranteed income supplement. There is a provision already in the Old Age Security Act that allows the benefits to be calculated at the single rate based on their own income, which generates higher GIS benefits, but as you mention, in the case of couples when one spouse is younger and between the age of 60 to 64 and thus entitled to the allowance, the same provision doesn’t exist. The amendment wants to just mirror the provision that already exists for these other couples.

Mr. Francesco Sorbara: Okay.

Do we have anything to quantify what investment this measure is going to take and how many individuals it will assist?

Ms. Nathalie Martel: We estimate that maybe 750 couples would benefit from the amendment, for a total cost of \$2.6 million per year. It means, on average, about \$3,500 per couple.

• (1740)

Mr. Francesco Sorbara: So it's quite a significant measure for a number of couples who actually really need it.

Ms. Nathalie Martel: Absolutely.

The Chair: Are there any further questions?

Let's turn to division 3, the Canadian Education Savings Act.

Ms. Kerr and Ms. Nagy, go ahead.

Ms. Jessica Kerr (Director General, Canada Education Savings Program, Department of Employment and Social Development): Canadians use RESPs, registered education savings plans, to save for the post-secondary education of their children. The RESP savings grow tax-free until the child is enrolled in a post-secondary education institution and can pay for part-time or full-time studies.

The Government of Canada administers two education savings incentives linked to RESPs.

There is the Canada education savings grant, which consists of a 20% grant on the first \$2,500 in annual contributions and an additional grant amount of 10% or 20% for low- and middle-income families.

Then we have the Canada learning bond, which is available for children in low-income families who were born after 2004. It's a maximum of \$2,000, with no personal contributions required.

Until June 2016, the CLB was payable for a beneficiary who receives the national child benefit supplement, the NCBS. The NCBS was based in part on the number of qualified children in a family and the adjusted family income. With the introduction of the CCB, the Canada child benefit, which replaced, among other benefits, the NCBS, an amendment to the eligibility requirement for the CLB is required.

The new eligibility requirements are very similar to those of the NCBS. More specifically, the new eligibility requirement is based also on the number of children in a qualified family as well as on the adjusted family income.

In support of this change, the Canada Education Savings Act is being amended to include the replacement of the term "child tax benefit" with "Canada child benefit".

The Chair: You're going a little fast. Can you slow down a wee bit?

Ms. Jessica Kerr: I could slow down, definitely.

The changes that are being proposed are to amend the Canada Education Savings Act to replace the term "child tax benefit" with "Canada child benefit", as well as to change the definition of the primary caregiver, as well as to change the definition of national child benefit supplement and to incorporate the formula that was initially in the Income Tax Act for the NCBS into this other act. There is also a transitional measure for this benefit year until the formula comes into effect in 2017.

The Chair: That is the explanation. Are there any questions?

Before we go to you, Robert, let me say that I understand those dealing with division 5 have a problem of time. If we get through this fairly quickly, we'll go to you next.

Go ahead, Mr. Ouellette.

Mr. Robert-Falcon Ouellette: I was just wondering how many families will be affected by the change.

Ms. Jessica Kerr: It's essentially exactly the status quo, as we have it now. There should not be any significant changes at all.

Mr. Robert-Falcon Ouellette: Thank you very much.

The Chair: Thank you.

We'll go to division 5.

Mr. Campbell, Ms. Ryan, and Mr. Girard, if you could, give us the explanation, and then we'll see where we go.

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

This is a large part of the act, so I had a rather lengthy statement. I will cut it down in the interests of time.

I'm going to cover part 4, division 5 of Bill C-29, which includes proposed amendments to the Bank Act with respect to the federal financial consumer protection framework for banking, covering clauses 117 to 135 of the bill, on pages 179 to 226.

The proposed amendments modernize and enhance the consumer provisions of the Bank Act. These amendments fall into four main categories: first, consolidating and modernizing the framework under a single part or chapter of the act; second, introducing guiding principles to help banks and consumers interpret the legislation; third, implementing targeted enhancements to strengthen specific consumer provisions; and fourth and finally, affirming exclusive federal jurisdiction over consumer protection rules for banks and banking.

I will now quickly cover each of the four categories of the amendments.

The first category is consolidating and modernizing the act. The existing provisions are currently spread across the Bank Act and two dozen regulations. Existing legislative and regulatory requirements are consolidated into a new part of the act. The intent is to combine provisions together, make the rules easier to understand, and demonstrate the comprehensive nature of the framework.

This will also allow for more consistent treatment across various banking products and services. Modernizing the framework would also allow the provisions to be more flexible and better able to accommodate future changes in the sector, such as the shift to a digital economy. For example, the rules would cover disclosure through paper as well as verbal, electronic, and mobile channels to keep up with changing industry and consumer preferences.

The second category is the introduction of new guiding principles. Consumers and stakeholders have long signalled the need to make the provisions easier to follow and to communicate. The five code-like principles align or map to each of the five elements of the legislation as structured. They are as follows.

First, basic banking services should be accessible. Second, disclosure should enable an institution's customers and the public to make informed financial decisions. Third, a bank's customers and the public should be treated fairly. Fourth, complaints processes should be impartial, transparent, and responsive. Fifth, a bank should act responsibly, considering its customers and the public as well as the efficiency of its business operations.

The third category consists of specific amendments to strengthen consumer protection in banking. These elements are categorized along the lines of access, business practices, disclosure, complaints, and accountability. I will cover only the new specific revisions, in the interests of time.

The new enhancements strengthen the rules by allowing consumers to choose from a more flexible list of personal identification documents regarding opening of accounts. Two pieces of identification will be required to open an account or to cash a government cheque. The new provisions will make it easier for Canadians to open basic deposit accounts, cash cheques, and use more available identification documents.

There are existing rules around business practices. There are several that I won't go into at length, but the new enhancements strengthen these by, for example, expanding the provision to capture undue pressure; clearly prohibiting banks from applying such pressure or coercing a person for any purpose; specifying that advertisements must be accurate, clear, and not misleading; and adding new cancellation periods for a wider range of products and services.

For example, cancellation periods would now apply to all deposits in savings accounts and, with a few exceptions, credit products. By and large, if consumers obtained a product in person or through a website, they would have three business days to cancel free of charge. For products obtained via telephone or mail, that cancellation period is 14 business days now.

Regarding disclosure, the new enhancements make disclosure more flexible and more consistent across a range of products and services. For example, the use of summary information boxes, which consumers have found useful, will be broadened across more bank products and services, such as deposit and savings accounts. Summary information boxes highlight key information about a product for customers in language they can understand to help them make choices that are right for them.

• (1745)

Regarding complaints handling, the existing consumer provisions set out a dedicated complaints handling system that is timely, efficient, and free for customers. The new enhancements would strengthen this by requiring banks and external complaints bodies to report on the nature of consumer complaints.

Enhanced reporting on complaints would provide greater transparency to the public and policy makers on consumers'

concerns, becoming more important as this complex industry evolves. In turn, banks would have an even stronger incentive to focus and address those areas that would generate complaints. Banks and external complaint bodies now have to report on the number of complaints, and in the future they will have to expand that to deal with the nature of complaints as well.

Regarding corporate governance and accountability, new enhancements are proposed in these areas. A board of directors would be required to oversee a bank's operational procedures, put in place by management, to comply with all consumer provisions of the act. Banks would also have to report on what they do to address the challenges faced by vulnerable Canadians: consumers facing accessibility, linguistic, or literacy challenges.

Fourth and finally, Mr. Chair, is the category of amendments. In the affirmation, the Bank Act sets out a comprehensive and exclusive regime in relation to banks' dealings with customers and the public. These amendments are proposed to clarify the scope of federal jurisdiction. Amendments to the preamble to the act are to ensure consistency with the new part, a new purpose clause states the objective of exclusive federal regulation, and a new paramountcy clause expresses the intent that the new part be paramount to provincial consumer protection laws and regulations.

Together these proposed amendments will provide that the Bank Act is the exclusive set of rules that protects consumers when they deal with their banks. This is intended for consumers to have clear, comprehensive, and uniform protections when dealing with their banks, no matter where they live, work, or travel in the country.

An exclusive federal regime would be intended to avoid the overlap of federal and provincial laws, which can be confusing and not in the consumer's interest. It would create clear rules that Canadians can follow and to which the government can hold banks accountable.

I'm done.

• (1750)

The Chair: Oh, you're done? Okay. The bells are ringing.

It is a 30-minute bell. We need unanimous consent if you want to stay for an additional 15 minutes to question this group.

Are we okay with that?

Some hon. members: Agreed.

The Chair: Okay, we have unanimous consent.

Who wants to go first?

Mr. Sorbara is first, and then Mr. Ouellette.

Mr. Francesco Sorbara: I'll try to make this as quick as possible.

How will the Financial Consumer Agency of Canada interact with other existing regulatory bodies that we have in Canada, including OSFI?

Mr. Glenn Campbell: The Financial Consumer Agency of Canada is the dedicated federal regulator charged with ensuring compliance with all of the consumer provisions that are included, both in the existing provisions of the act and in the new provisions. However, the FCAC works closely with the prudential regulator—OSFI, the Office of the Superintendent of Financial Institutions—and they work collaboratively on elements that may overlap.

The Chair: Is that it?

Mr. Francesco Sorbara: I'm done.

The Chair: Mr. Ouellette is next.

Mr. Robert-Falcon Ouellette: Thank you very much, Mr. Chair.

Could you tell me a little bit about the no-cost or low-cost accounts? There was already a 2014 commitment by the banks to enhance those. Why would you put this regulation in there, if they haven't done it?

Mr. Glenn Campbell: Actually, it's a very good question. The provision was in regulation; now it is being put into legislation, just to confirm it.

Perhaps Ms. Ryan wants to provide details.

Ms. Eleanor Ryan (Senior Chief, Financial Institutions Division, Financial Sector Policy Branch, Department of Finance): Yes, indeed.

As you said, the banks did make a commitment to offer both low-cost and no-cost accounts. Putting it in the legislation just confirms that this is an important requirement. The government could, if it should wish in future, write regulations actually putting into regulations those low-cost and no-cost accounts. Right now it's simply an affirmation of the importance of that objective, and secondly a regulation-making authority.

Mr. Robert-Falcon Ouellette: I have one very short final question.

I'm a little concerned about the expiry dates on prepaid or preloaded non-promotional products, or actually about the imposing of maintenance fees on prepaid or preloaded non-promotional products unless the product is reloadable—meaning that people can still charge a maintenance fee. On almost all the cards—you're talking, for instance, about Toys “R” Us cards or things like that—they'll still be able to charge a fee every year of \$5, and eventually kids don't have their birthday money anymore.

Ms. Eleanor Ryan: Perhaps I could address that.

First of all, this would apply only to prepaid cards that are offered by institutions, so in the case of Toys “R” Us those are cards that are covered by provincial authority. Nevertheless, the point you're making is equally valid still.

The legislation ensures that a prepaid card would not be subject to maintenance fees during the first year. Most consumers buy prepaid cards to use them right away, or perhaps over a period of months, and they would be protected by this bill by not having maintenance fees during the first year.

Second, going back to your point on expiry, it ensures the funds in prepaid cards issued by institutions do not expire.

Mr. Robert-Falcon Ouellette: My quick problem with that is you always forget you have these cards. They end up in your wallet for a year or two years, and then you think you would actually like to use it, but if you go there and there are all these maintenance fees, you might not have very much money left on the card, so I would encourage the department to rethink that regulation in the long term.

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

● (1755)

Mr. Dan Albas: Thank you, Mr. Chair, and thank you to our witnesses here today for the work they do for Canadians.

In regard to this conversation, going back to Summerland Credit Union, one of the staff mentioned this point. I raised it with Minister Flaherty, who at the time looked at it and then eventually came back and took action with regulations and so on.

Maybe, Ms. Ryan, you can lend some clarification on this subject. Parliament has already delegated the authority to the Minister of Finance. The Minister of Finance used his delegation power at the time to put in the regulations.

I do know that one thing regulations offer is flexibility if there are changes or circumstances that allow for it to be changed, so when we go back now and put it back into the actual law, that cements it much more and reduces the flexibility of the bureaucracy or the minister to be able to respond.

What I see from what you said is there's not going to be that much difference that Canadians will notice. Second, to me it actually takes away the flexibility of the Minister of Finance to be able to clarify things in a timely basis.

Can you confirm whether or not that's the case?

Ms. Eleanor Ryan: You are absolutely correct that there are, indeed, currently regulations on prepaid cards. What this provision does is move the key standard—the requirement that cards not expire—from the regulations into the legislation. There continues to be authority within the act to fine-tune requirements. There is a comprehensive regulation-making authority in section 627.96. Where there is a need to fine-tune it, the government does still have the authority to do that.

The advantage of this approach is it ensures that consumers can actually see the key standards in the legislation that protect them.

Mr. Dan Albas: Okay, but whether someone looks at a regulatory piece of information or a statute, both have the force of law behind them. Is that not correct? Most people will go on a website, and they will want to see just the basic outlines of what they can expect. CRTC does this all the time. For the anti-spam legislation, we don't expect people to be able to comprehend the myriad of regulations under those regulations, because it's quite considerable.

I don't see the added value. To me, it actually removes the flexibility of the minister. Maybe that's a good thing, Mr. Chair.

Now I'll go to the preamble.

Mr. Campbell, you mentioned there were going to be additions to the preamble of the Bank Act.

Mr. Glenn Campbell: There are three types of amendments that are being made to move forward on the exclusivity provisions in the bill. There's a minor amendment to the preamble. There's an addition to the purpose clause about the intent of what the provisions are meant to cover. Then we are adding a paramountcy clause, as I mentioned in my opening remarks. There are minor changes to each of those that we call "the 3P approach" for implementing the exclusivity provisions in the Bank Act.

Mr. Dan Albas: Usually preambles are not included in the final legislation, so what is the utility?

Mr. Glenn Campbell: The preamble in this case already exists in the act, and it basically just provides more clarity on the intent of the act.

Mr. Dan Albas: Will the judiciary recognize a preamble in a piece of legislation for the purpose of clarifying the case if someone brings it to a court of law?

Mr. Glenn Campbell: I think the key provision here is the paramountcy provision, which is an enforceable provision in the legislation. I think the purpose clause, and in turn the preamble, provide more clarity. Not being a lawyer, I can't speak for the Department of Justice on that issue before the courts, but that is the intent. It is that a preamble and a purpose clause provide clarity, and then the paramountcy clause is the specific provision that really matters in this case.

Mr. Dan Albas: I appreciate your expertise, both of you. Thank you.

The Chair: Thank you very much.

Go ahead, Mr. Caron.

Mr. Guy Caron: First, I have a quick question. Would this apply to credit unions that would be federally regulated?

Mr. Glenn Campbell: Yes, it would.

Mr. Guy Caron: *Merci.*

The other question I have is once again about the lack of clarity or the arbitrary nature of certain definitions.

Reading this, I can see that it would require the bank to make available low-cost or no-cost options, without really defining what that means. "No cost" is pretty clear, but what does "low cost" mean? It's not clear.

The other notion that I can't really find a clear definition on is that it provides for limits on the length of time that the bank can hold funds deposited by cheque, but once again it doesn't say how much or for how long.

• (1800)

Mr. Glenn Campbell: If I may answer, this goes back to the question that the previous member had. For a number of provisions that were previously in regulations, the main tenet was brought into legislation to provide a comprehensive view of all the consumer protections for Canadians. There are still regulations required, and in

turn guidance that will come from the regulator, given the continuous changing nature, to the point the member made earlier.

This is an area that needs specific guidance, either in regulations or with the regulator, to make more specific what those terms mean. We will consult with the industry in that regard. It is difficult to put these specific provisions in the legislation for the very reason we just talked about at the committee.

Mr. Guy Caron: Were they clearly defined in the regulations previously? Are we going to keep the same terms in the regulations that we will be following?

Ms. Eleanor Ryan: The times for dealing with the holding of funds were set indeed, and there is an intention to set those amounts. The legislation sets the number of days that the funds can be held. They must be released, for instance, within four days, but the amount of the cheque would be prescribed.

The Chair: Thank you all.

Are you...? Oh, sorry; go ahead.

[*Translation*]

Mr. Jean-François Girard (Chief, Financial Institutions Division, Financial Sector Policy Branch, Department of Finance): You mentioned a definition of low-cost accounts compared to no-cost accounts. Currently, as Ms. Ryan explained a few minutes ago, this is subject to an agreement under which financial institutions are committed to providing accounts.

When we say "no-fee", it's free, and "low-fee" is \$4. The bill gives the government the authority to establish regulations that could replace the existing voluntary agreement.

There is no proposal to define the specific features of a low-cost account because it is currently defined under this agreement. However, if the government decided to adopt regulations, it would replace this agreement, and the specific costs could be defined in the regulations.

[*English*]

The Chair: Thank you, all three, and we are sorry for holding you a little late.

Mr. van Raalte, on division 4, the Canada Disability Savings Act, the floor is yours.

Mr. James Van Raalte (Director General, Office for Disability Issues, Department of Employment and Social Development): Thank you, Mr. Chair.

Division 4 proposes consequential amendments to the Canada Disability Savings Act as a result of the introduction of the Canada child benefit in Budget 2016.

Eligibility for the low-income Canada disability savings bond was originally pegged to the family income threshold of the former Canada child tax benefit, which is currently set at \$26,364. The amendment will now peg that family income threshold against the new Canada child benefit at \$30,000.

As a result, in 2017 it is estimated that approximately 14,700 registered disability savings plan beneficiaries will benefit from this change, with an average increase in Canada disability savings bond payments of \$87 in that year, for an increase in statutory payments of \$1.28 million.

The Chair: Are there any questions on division 4?

Go ahead, Ms. O'Connell.

Ms. Jennifer O'Connell: Thank you.

Your explanation answered some of my questions. Essentially, the changes as I read them are just the change in terminology from "child tax benefit" to "Canada child benefit" and then in that calculation formula, that increase.

Are you aware whether this would have any implications on provincial disability tax credits? Is it completely separate?

Mr. James Van Raalte: No, it would not, Mr. Chair.

Ms. Jennifer O'Connell: Thank you.

• (1805)

The Chair: Thank you.

Are there no other questions?

Thank you very much, Mr. van Raalte.

Division 6 concerns the Royal Canadian Mint Act.

Mr. Moreau and Mr. Joshua, go ahead.

[Translation]

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

Budget 2016 proposed adjustments to the Royal Canadian Mint Act. Amendments to the act are proposed to facilitate effective and efficient operation of the Royal Canadian Mint. The following are the proposed amendments.

First, clause 136 amends the Royal Canadian Mint Act to restore the ability of the Mint to anticipate a profit from the provision of goods and services to the Government of Canada and its agents. This includes the sale of Canadian coins to the Department of Finance for resale to financial institutions. By restoring the capacity of corporations, the corporation will benefit from its transactions with the government and its agents. This change will foster innovation and improve processes, and lead to lower costs to the government as a whole.

Next, clause 137 amends the Royal Canadian Mint Act by clarifying in section 4 the specific types of incidental activities that the Mint may undertake. As currently worded, section 4 refers to four general activities relating to coins and metals, which may leave room for interpretation. The proposed amendments to section 4 clarify the activities that the Royal Canadian Mint may undertake and includes activities such as marketing, consulting, storage services and exchange-traded receipts for precious metals associated with the gold and silver reserves of the Royal Canadian Mint. These amendments will help to clarify the corporation's mandate and will

help to minimize the operational and reputational risks to the corporation and the Government of Canada.

Furthermore, clause 138 amends the Royal Canadian Mint Act by adding provisions to ensure that \$350 coins minted between 1999 and 2006 have legal tender status. This clarification stems from the fact that the Royal Canadian Mint Act, as it existed between 1999 and 2006, did not include references to \$350 coins.

Lastly, clause 139 amends the Royal Canadian Mint Act by removing the requirement that the Mint's directors must have experience in the field of precious metal fabrication or production. This will help significantly broaden the pool of candidates available for appointments to the board of directors. Collectively, these amendments will encourage and facilitate effective and efficient operation of the Royal Canadian Mint.

My colleague and I will be pleased to answer your questions.

[English]

The Chair: We will remind the witnesses to speak more slowly for the interpreters.

Are there any questions here?

Mr. Ouellette, it had better be quick. We only have—

Mr. Robert-Falcon Ouellette: These are very short questions.

It's great to hear that they're getting the \$350 coins back from sitting in the vault and spending them. Does this mean that the Canadian mint will now be able to accept gold and sell gold? What you said was "trade in financial services and products relating to gold, silver, and other metals".

Mr. Nicolas Moreau: The Royal Canadian Mint is already selling and buying gold. It's only that we're clarifying the fact that they are allowed to do it by precisely writing it into the legislation. It's not there now.

Mr. Robert-Falcon Ouellette: Yes. I was always under the impression that the mint could sell gold but couldn't buy gold from individual people who might have gold coins that were printed by the Canadian mint but who couldn't sell them back to the Canadian mint.

Mr. Nicolas Moreau: That's right. Basically, they're not buying gold from individuals right now.

Mr. Robert-Falcon Ouellette: Will they now be allowed to buy gold from individuals?

Mr. Nicolas Moreau: No, they won't be allowed to buy gold from individuals. They're only going to continue to buy gold in order to produce coins.

Mr. Robert-Falcon Ouellette: We still have to go through the gold traders in order to get to the Canadian mint?

Mr. Nicolas Moreau: Exactly.

Mr. Robert-Falcon Ouellette: Okay. It makes the system less than efficient.

Thank you.

The Chair: Thank you, all.

Mr. Wu, we're going to have to have you at the start of another meeting. I apologize for that.

We are down to the wire in terms of a vote, so the meeting is adjourned.

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