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Chair

Mr. Massimo Pacetti

Standing Committee on Finance

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● (1535)

[*English*]

The Chair (Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.)): Let's get started, because we may be here for a long time or a short time.

[*Translation*]

I propose that we start immediately.

We have on the agenda Bill C-273. We had decided last Tuesday, at the steering committee meeting, that we would do a report rather than clause by clause study of the bill.

Did everyone receive a copy of the report? Do you have any comment in this regard? This is what we will dealing with now.

Mr. Yvan Loubier (Saint-Hyacinthe—Bagot, BQ): As I have already mentioned to you, the word "volontaire", in the French version, is wrong. The word "bénévole" should be used instead.

The Chair: You are talking about the French version, Mr. Loubier?

Mr. Yvan Loubier: That's right. That change should be made throughout your report.

The Chair: Okay. Are there any other comments?

Mr. McKay.

[*English*]

Hon. John McKay (Parliamentary Secretary to the Minister of Finance): I think everyone's received a copy of your report by now. I spoke to Mr. Cuzner last night and he and Mr. Casson think this is fine the way it is, with one exception. That is the phrase, "of the lack of clarity". They would prefer it to read, "Therefore, in light of the above-noted details of the proposal, be it resolved". They just want the phrase "of the lack of clarity" deleted. Other than that, both Mr. Cuzner and Mr. Casson seem to be content with the committee's report.

The Chair: That's on page 2.

Hon. John McKay: Page 2 at the bottom.

[*Translation*]

The Chair: So how will we say that in French?

[*English*]

I'll do it in English. The second to last paragraph, "Therefore, in light of the above-noted details of the proposal in Bill C-273, be it resolved that this committee, pursuant...". So nothing changes except that we take out the words, "of the lack of clarity".

[*Translation*]

So the French version will read: "Considérant les détails susnotés de la [...]".

Ms. Boivin.

● (1540)

Ms. Françoise Boivin (Gatineau, Lib.): We could say: "Considérant les détails susnotés de la proposition faite dans le projet de loi C-273, il est convenu...".

[*English*]

The Chair: Okay.

Are there any other comments?

Mr. Charlie Penson (Peace River, CPC): It would start, "Therefore, in light of the above-noted details"; is that how it's going to read now?

The Chair: Yes, that's right.

Mr. Charlie Penson: And Mr. McKay spoke to Mr. Cuzner, who also spoke to Mr. Casson?

Hon. John McKay: That's what he indicated to me, that Mr. Casson and Mr. Cuzner—

Mr. Charlie Penson: Because in the meeting of June 28, I understand they were both here in support of this bill. I haven't had a chance to talk to Mr. Casson yet, but Mr. Cuzner has indicated he has spoken to him.

Hon. John McKay: That's directly from Rodger.

Mr. Charlie Penson: Our understanding is that Mr. Casson has not been talked to about it.

Hon. John McKay: Really?

Mr. Charlie Penson: We just called his office.

Hon. John McKay: We'd better put this down, then, because I don't want to be leading the committee or anything of that nature.

Mr. Charlie Penson: The problem, Mr. Chairman, is that this bill has had several lives already. The latest one is Mr. Cuzner's, I suppose.

The Chair: This is not the point anyway, because it's Mr. Cuzner's bill, and this report is about the concerns the committee had the last day of the session prior to the summer recess.

An hon. member: It's not on the report—

The Chair: Please, please, let me finish.

Everyone received the minutes. This is the summary of the concerns that the whole committee from all sides and both witnesses, including Mr. Cuzner and Mr. Casson, had on June 28, 2005. This is a summary of the issues the committee had.

Mr. Epp, I think you were there as well, and we actually put one of your points in there. They're all summarized in here.

Mr. Charlie Penson: That may be, Mr. Chairman, but that is not the only way to proceed. This is only one method of proceeding on this bill. I guess it comes down to whether Mr. Cuzner is fine with it—he's the sponsor of the bill—and if Mr. McKay has spoken to him and he has no problem with it, then I think we can proceed in this manner.

The Chair: I spoke to Rodger as well. Okay.

If there are no other changes, I will table this report next week.

Some hon. members: Agreed.

The Chair: Good, that's accepted. Thank you.

Just to clarify, the report that everybody has copies of is only a draft. You shouldn't have it with the logo.

[*Translation*]

This is just a draft, it is not final, even though it is on letterhead.

[*English*]

Mr. Charlie Penson: May I comment on that?

I would suggest, then, if this is the procedure we're going to use, that we indicate that the sponsor of the bill, Mr. Cuzner, has been notified and is aware and approves our proceeding in this manner. As such, this method is acceptable to us, under those terms, if that's what he's agreed to.

The Chair: This is not Mr. Cuzner's report. This is the committee's report. We say that: "Whereas the committee is generally supportive of the intent of the bill...".

Mr. Charlie Penson: I understand that, Mr. Chairman, but our approval or our consent to go ahead under this manner would hinge on Mr. Cuzner's being informed, as Mr. McKay has indicated to us, and being supportive of the procedure in the way that's been indicated in our draft report.

If that's not the case, we will not vote for this procedure.

[*Translation*]

Mr. Yvan Loubier: Mr. Chair, you are right about this. It is a committee report. We have heard the sponsor of the bill and it is up to us to make up our own judgment. The report that you will submit reflects all the issues that we have raised throughout our analysis of this bill. I've never seen anything like this in 12 years. It is the first time that we contact the sponsor of a bill to ask for his opinion on the report that we are tabling. It is our assessment. It is the committee's assessment and that is how this works. I do not see any other way of proceeding.

[*English*]

The Chair: Mr. McKay.

Hon. John McKay: Mr. Loubier's right. We certainly don't need Mr. Cuzner's consent, or Mr. Casson's, or whatever. I've provided that information simply as, if you will, gratuitous information. I think the summary of the report as you drafted it, chair, is reflective of our concerns and is worthy of support.

● (1545)

The Chair: Thank you.

Mr. Charlie Penson: If that's the case, Mr. Chair, we will not support it. We want to vote the bill up or down on its own merit.

The Chair: Go ahead, Ms. Minna.

Hon. Maria Minna (Beaches—East York, Lib.): I want to clarify, because I'm not quite sure of Mr. Penson's concern.

Just to clarify, are you asking, Mr. Penson, whether or not Mr. Cuzner is aware of the process and is comfortable with it and in fact accepts this process that the committee has adopted? Is that what you're asking? It seems to me he has.

Mr. Charlie Penson: The chairman has already ruled that this is of no consequence.

Hon. Maria Minna: But my understanding is that he also informed the committee at the very outset that Mr. Cuzner had approved of this process and in fact had suggested an amendment to the wording and was comfortable with this process. That's why the amendment was done.

Mr. Charlie Penson: Well, to be clear, this is only one method of proceeding. We can proceed to voting the bill up or down today. I don't think, unless we've had a chance to speak to the sponsors of the bill, that we would proceed in this manner, because...and the chair has indicated that's not going to be the case.

The Chair: I thought we had an agreement on Tuesday.

We're going to push this to Tuesday, after everybody's had an opportunity, and then we'll decide on Tuesday, because the bill has to be reported on Wednesday.

Is that okay?

An hon. member: Hang on, here. Mr. Chairman....

Mr. Charlie Penson: Mr. Chairman, while we're waiting for the other side to consult, if I recall the planning meeting, I think Mr. McKay was polling all of us as to how we would vote on this bill. There was already an indication through Mr. McKay that.... I'd have to consult with our party members, but I would be surprised if we would vote to proceed in this manner, that we would want to vote the bill up or down.

I know he may have had different results from different groups, but that was the indication I gave him—

The Chair: No, on Tuesday the indication that we had finally agreed on, that we were going to report—

Mr. Charlie Penson: The clerk was charged with finding out what methods were possible on this bill, if we could report it back in a manner of saying that we have concerns or not. He's done that, so we know that it's possible, but it's not the only method.

The Chair: No, it's not the only method, but this is why I didn't want to spend time. This is the method we had decided on. If we have to have a special meeting for this, we will.

Hon. Maria Minna: We put it forward already. Let's vote.

The Chair: Okay, you're comfortable voting on this tabling of the report. Sorry, I misunderstood.

All in favour of tabling the report as is, except for the minor modifications we discussed?

Mr. Charlie Penson: I want a recorded vote, Mr. Chair.

(Motion agreed to: yeas 6; nays 2)

The Chair: So we're going to approve tabling the document next week in the House. Thank you.

We will go on to the next item on the orders of the day. We have a motion by Mr. McKay.

Can you speak to this?

Hon. John McKay: Yes, I can, Mr. Chair.

The Chair: Let me read it into the record. It's a short motion.

It's a motion that was sent November 15: “That this Committee has reviewed the qualifications of Dr. Donald Shaver for reappointment as Chair of the Canada Development Investment Corporation and the Committee waives further consideration of this nomination.”

Hon. John McKay: Dr. Shaver has more than two decades of experience at the Canada Development Investment Corporation. I assume that all of you have his resumé. He's a director and has been chair since 1995. He's very well versed in the activities of the company. In fact, some have described him as indispensable. He's the source of the corporate memory of the company and is very able. He has overseen the divestiture of CDIC's holdings and continues to manage and oversee the current holdings. The board did not consider any other candidates for his reappointment, and there's consensus of the board that he should be reappointed.

We have, as a committee, the right to interview Dr. Shaver, and my motion speaks to whether we want to exercise that right. In my view, we should exercise the right when there are things we should be concerned about. In this particular case, this seems to be a pretty obvious appointment and should enjoy the support of all members.

● (1550)

The Chair: Okay, could we go directly to the vote?

Mr. Charlie Penson: I have a comment, Mr. Chair.

Mr. Chairman, Mr. Shaver may be qualified for this, but it's a principle of this committee that we have the ability to call these people to our committee and interview them. I requested that last week. I know Mr. McKay asked that we opt to not do that, that we waive it, but we want to continue this process of having the right to be able to call these appointees, or the people who are going to be appointed to these boards, and therefore we do not support the motion that Mr. McKay brought forward. I'd like to bring Mr. Shaver to committee and ask some questions.

The Chair: Okay, thank you.

From what I understand, Mr. McKay, this is a motion for just Mr. Shaver. We're not waiving all further appointments, correct?

Hon. John McKay: This is simply with respect to Mr. Shaver, that's all.

The Chair: Thank you.

Are there any other comments on the motion? Can we go directly to the vote? It is a recorded vote.

(Motion agreed to: yeas 6; nays 4)

The Chair: Thank you, colleagues. That's very efficient. At least now we can spend some time on the bill.

On the next item, Mr. McKay, you're appearing as a witness for Bill C-57.

We're here pursuant to the order of reference of Thursday, October 6, 2005, Bill C-57, An Act to amend certain Acts in relation to the financial institutions.

Mr. McKay, welcome.

We also have Mr. Gerry Salembier, welcome; Ms. Ryan, welcome; Ms. Attwood, welcome.

Do you have an opening statement for us, Mr. McKay?

Hon. John McKay: I have an opening statement, Mr. Chair, but I've been encouraged by my colleagues not to give it. I know I have such a riveting speaking style that I can't imagine people waiving this great opportunity to hear the profound words of John McKay.

I propose to go about it a little bit differently. I'll seek consensus among colleagues that rather than going clause-by-clause, we deal with the three issues that came up in committee and have a discussion about those three issues. If we arrive at some consensus, then we'll move to clause-by-clause.

The first issue had to do with the concerns of the actuaries. We take the position that they are right. We will propose an amendment to reflect the concerns of the actuaries. Is there any concern about that before I move to the next one?

● (1555)

The Chair: Mr. McKay, can you indicate which amendment that is, because we received five amendments. Perhaps you could indicate that for us, so we can go back and forth quickly and not get lost in the shuffle of paperwork. I understand it's G-3.

Hon. John McKay: I don't even have those. Can I get a copy from the clerk?

The Chair: Come on, this is finance. We should be good with numbers.

Hon. John McKay: Exactly; it's G-3, G-4, and G-5. The other two are rather modest. I won't speak to those right now.

The second issue is with modified proportionate liability as opposed to joint and several liability. You had representations from the accounting profession that they wish to move to a regime whereby you would have modified proportionate liability if in fact you were found negligent in the audit of a financial institution. Currently it is a joint and several liability, which means effectively that you are 100% liable for the damage award if in fact you're found negligent pursuant to an audit or pursuant to a lawsuit.

Our position on this matter is that this is a shift of liability away from the audit profession effectively to the depositor. If you will, Chair, imagine with me a classic lawsuit where there's a finding of negligence on the part of directors, on the part of management, and on the part of the auditors. The auditors wish to limit their exposure to that negligence award. Meanwhile, if there's a shortfall, of course, the depositor, who is the most innocent of all, is the person who ends up paying.

The argument is that the depositor has CDIC insurance. Well, effectively that is the spreading of depositor liability. If Ms. Ambrose belongs to institution X and Mr. Loubier belongs to institution Y, and Mr. Loubier's institution goes into bankruptcy and the auditor is found liable, if it's on a modified proportionate liability, then Ms. Ambrose will indirectly end up paying for the financial difficulties of Mr. Loubier's institution.

We're quite resistant on this particular point. I thought we could at least have a conversation among ourselves with the officials here.

Just before I turn the floor over to colleagues, maybe Mr. Salembier or others would like to further describe the issue as we see it.

Mr. Gerry Salembier (Director, Financial Sector Policy Branch, Department of Finance): I think Mr. McKay has done a fine job of describing the issue with a real life example. It comes down to the fact that a regime of modified proportionate liability creates the possibility of losses that are unrecoverable from the group of individuals who have been found liable. That's a situation we think, in the context of financial institutions, should be treated differently from the way it is for Canadian corporations generally, because of the existence of a deposit insurance system, essentially.

The Chair: We have some questions.

Mr. Penson.

Mr. Charlie Penson: Mr. Salembier and Mr. McKay.... Mr. McKay, you heard the arguments from the chartered accountants here the other day. I understand what you're saying, but it seems to me this is still a difficult area.

The courts in this case will have found that the auditing firm has some percentage of liability here. It may be 95%, 100%, or 5%. Once the courts have found that there is a proportionate liability that the auditing firm was responsible for, it seems to me that speaks volumes about how the award should be determined. If the court has said yes, there's a liability, but the auditing firm was only 5% responsible, how is it that it would seem fair they would have to pay 100% of the damages—if they had the ability to do that? In some cases those firms may not have the ability to do it. Even though you've said they have to pay 100% of the damages with 5% of the liability, it may break that company, and the shareholder or depositor may not recover that money in any case if the auditing firm doesn't have enough to cover it.

● (1600)

Hon. John McKay: You hit the nail on the head in some respects. The question is how you apportion liability among those who are liable, among those who have been found negligent. If there's a shortfall, should you therefore shift that liability over to those who are truly innocent?

I understand the accountants who say, I'm only 10% liable for this award. But the depositor who will end up eating this has absolutely nothing to do with the default in the institution. So you're not in a happy choice here. You either ring-fence your liability award among those who are actual participants in the institution or you expand your ring of those who pay for the damage to include those who have had absolutely nothing to do with the liability.

Mr. Charlie Penson: I understand that, Mr. McKay, but I'm wondering how that comes out in fairness, in law. They've been found to be only 5% responsible in the case we're using as an example, but end up paying 100% of the damages. In that case—in many cases—it may break the auditing company. And what about the second part of it? What if, in the process, it breaks the auditing company, and there still isn't enough money to cover depositors?

Hon. John McKay: Well, then you'd keep getting this cascading effect. Presumably if the accounting company went bankrupt—Arthur Andersen is the classic example of probably the world's largest accounting firm going under—you have that effect cascading to the insurance liability of that accounting corporation. You then would cascade down to the partners in the company and liquidate the assets. Then you would cascade down.... In the case of a financial institution, you end up cascading down to those who are the depositors.

Mr. Charlie Penson: Maybe that's the way we proceed, but it seems to me this issue isn't going away. We have to revisit it at some point in the future.

Hon. John McKay: I don't disagree with you, and maybe there is a better public policy response in the case of financial institutions. Certainly in 2001 there was a response on the part of the government whereby modified proportionate liability was applicable to other corporations, but the significant difference between other corporations and financial institutions is the depositor, and the depositor should be protected, I would argue, almost at all costs.

Mr. Charlie Penson: That is how it proceeded, Mr. McKay, but you will recall that prior to the changes in 2001, the auditors of small companies had the same concern before changes were made to the proportional liability, so it was recognized for the cooperatives and for the small business corporations. Maybe there's a difference here, but it seems to me that if the courts have already given out the percentages in liability,I don't think you should be able to go beyond that.

The Chair: Next are Mr. Loubier and Ms. Minna.

[*Translation*]

Mr. Yvan Loubier: Mr. McKay, when Mr. Dancey talked to us about the situation in the United States, he specifically said that there was a proportional liability system. I do not recall him saying anything about it having been modified.

If such a system is applied elsewhere, I imagine that it would be possible to establish responsibility levels. Why should we be reticent to do so? I must admit, however, that this issue is not clear to me either.

● (1605)

[*English*]

Hon. John McKay: I do remember that he talked about a modified proportionate liability system in the States, and certainly our other corporations would parallel that. I'm assuming that he said it also had to do with financial institutions. I know that Mr. Salembier and others have talked and thought about this a little bit more than I have, and they may have an observation to offer with respect to Mr. Dancey's testimony.

[*Translation*]

Mr. Gerry Salembier: The modified proportional liability system has been put in place in a very limited number of cases. Some U.S. States have established a system of this kind, but it is the exception rather than the rule. It is even more exceptional in the case of financial institutions. This situation is the same throughout the world.

Mr. Yvan Loubier: The Canadian Bankers Association had asked that subsection 204(2) of the Bank Act as proposed by clause 41 of Bill C-57 be withdrawn. You have not followed their recommendation. In that case, the issue was about the confidential aspect of their activities.

Is this because you were not concerned by this issue or because confidentiality was not threatened? I asked the same question to insurers. They did not share the bankers' concerns.

[*English*]

Hon. John McKay: Just to maintain some sort of organization on the conversation, because I do want to respond to your question, are there any other questions on modified proportionate liability? So we've exhausted that, as far as that's concerned? Okay.

Mr. Charlie Penson: Mr. Chairman, I think there was a question there about the 39 U.S. states that have some form of professional—

Hon. John McKay: Mr. Salembier responded to that.

Mr. Charlie Penson: But I understood from the gentleman who presented this to us that it was for financial institutions in the United States, and the U.K. was also considering such a move. Is that not correct?

Mr. Gerry Salembier: No, that's not correct, according to our information.

In some U.S. states, there has been proportional liability adopted in very narrow circumstances. For example, in one case it's a circumstance where the plaintiff has himself contributed to the negligence; then a regime of proportional liability is adopted in one particular U.S. state. In other situations—in securities law—it's applicable, but only in the secondary market instances.

But generally speaking, when you're talking about financial institutions, it is not the case that there is any trend around the world towards this. In fact, it's very much the exception rather than the rule.

The Chair: I'm going to leave this a little bit open, just so we can address it, because there are not that many issues. As long as everybody's comfortable with the issues—

Hon. John McKay: All I was trying to do is maintain some order in the conversation.

The Chair: That's right. It's just that Judy wants to speak, and Maria.

Judy, what issue is it?

Ms. Judy Wasylycia-Leis (Winnipeg North, NDP): It's on this one, modified proportionate liability.

Maybe I missed this—I came in a bit late—but in the presentation to our committee, the chartered accountants kept referring to the Senate banking committee and suggested that it had studied this thoroughly and made recommendations for reform in this area. Was there a basis for proceeding at this point in this legislation with proportionate liability, based on the Senate recommendations?

Hon. John McKay: They have studied it and they did drive the issue with respect to corporations, so we have a modified proportional liability regime with respect to non-financial corporations. Our argument with the Senate and with others is that you effectively are shifting the liability away from those who have some ability to meet the financial obligations to those who have no chance whatsoever, i.e., the depositors.

The auditor is in a unique position in our financial system. That's the person on whom we all rely—the regulators rely, the depositors rely, the management relies, the directors rely, the shareholders rely. I could even work up an argument as to why modified proportional liability should almost never be considered, because, if you will, in the system the auditor is the last person standing before the catastrophe and has the responsibility to have spotted that weakness in the financial company.

● (1610)

Ms. Judy Wasylycia-Leis: That's even if, theoretically, it should have been spotted before. What you're saying, John, is that someone along the way should have perhaps picked up on the catastrophe or the problems leading up to that point, the auditor being the last point person to bear.... The last person standing should handle this whole liability?

Hon. John McKay: Well, he shouldn't be relieved of the whole liability. Obviously, when there's a finding of liability among a series of defendants, there's a whole bunch of counterclaims within the lawsuit whereby they all say, “You did it”, “You did it”, “You did it”. Then there's an argument as to how they sort it out among themselves. That really has nothing to do with us.

Mr. Loubier raised that issue. Probably the best way to handle this one, I think, is.... You heard Mr. Law's—very articulate, I thought—presentation as to why we should delete proposed paragraph 204(1)(c), and there was essentially not a lot of evidence to the contrary.

Maybe, Mr. Salembier, you and your colleagues could respond to the committee in an evidential way.

Mr. Gerry Salembier: I'll give it a try. Let me start by describing what the purpose of this provision is generally.

Generally speaking, in corporate governance, whether for financial institutions or anyone else, it is not a good idea to have members of a board of directors in a position of conflict. Normally speaking, a director who finds himself in a position of conflict has two avenues open to him. One is to resolve the conflict somehow, and two is to remove himself from the board.

The financial institution statutes, the bill we're proposing here today, provides a third approach, a safe harbour if you will, that allows a director to be in a position of conflict, remain a director on the board, but only so long as the conflict is disclosed to shareholders, because it is shareholders who have the responsibility at the end of the day to elect directors to the board. That's a governance function that is very important.

So in the interest of good governance, this disclosure provision, this safe harbour, is provided. It's a balancing act between making sure, on the one hand, there's an adequate pool of directors available to corporations, to financial institutions, and on the other hand, making sure that any conflicts those directors might have are made known to the shareholders who have the particular responsibility for the governance of the corporation to vote on whether directors should or should not be members of the board.

The issue the bankers have raised pertains, I believe, to the fact that they at root have the view that this particular corporate governance obligation should not apply to banks. The obligation to disclose conflicts of this sort to shareholders, they believe, should not apply to banks. We take the view that corporate governance is quite important in banks and that this obligation should apply to banks much as it does to other Canadian corporations.

They've raised concerns about the practical application. They've raised concerns about what happens when you actually do disclose this sort of information. They've suggested that disclosures of this sort might inadvertently bring with them to shareholders information on other affairs of the corporation. Now, Canadian corporations generally have been living with this very requirement for four years. They manage the very problem that the bankers pointed out by structuring these disclosures in such a fashion that when the disclosure of the conflict is made to shareholders, it is only that piece of information that is disclosed to shareholders.

It's done by something called a general notice. So what is disclosed to shareholders is a general notice of the conflict position of a director. That general notice is something that can be done at the beginning of a board meeting and it's a separate piece of the documentation that can then be disclosed to shareholders, so that the shareholders can execute their duty.

There was a concern raised by the bankers that this would constitute tipping under securities laws. Well, any shareholders who find themselves in receipt of such information by virtue of their special status as shareholders—they're entitled to this information—would themselves be subject to the tipping rules under securities law. So that, frankly, we don't see as a concern. If it were a concern, Canadian corporations across the land would have found that this is a very difficult system under which to live, and they've been living under it for four years with no problems in corporate Canada generally.

● (1615)

The Chair: Mr. Penson, do you have a question?

Mr. Charlie Penson: Yes, when Mr. Law was raising this issue, it seemed to me there were two things. There was not just the fact that they had a conflict, but it was the extent of the conflict. I'd like to explore that a little bit further. In what form does that take place?

Also, when the shareholder is able to access the minutes of the meeting and find out that a director had a conflict, what's the timing involved? Can they find out the next day, for example, that the director had a conflict, or is there a withholding period of three months? How does that work?

Mr. Gerry Salembier: I'll speak to the issue of the nature of what has to be disclosed. I'll hope that one of my colleagues has an answer to your question on the timing.

The nature of what it is that has to be disclosed is only that portion of the minutes that pertains to a conflict that would have to be disclosed. That is why Canadian corporations generally tend to structure the minutes of board meetings in such a way that this general notice part contains all of the conflict information. It is information that can be fairly general in nature. It doesn't have to include specifics like customer information and the nature of a particular transaction or anything like that. The general notice is called that because it's fairly general in nature. It just has to provide the shareholder with information to the effect that this director is in a position of conflict.

Mr. Charlie Penson: But would the shareholder in that case...?

Mr. Law's concern was that a sophisticated shareholder would be able to use that information to benefit himself or his company or whatever by accessing it in a way that would be harmful to the bank.

Mr. Gerry Salembier: If the shareholder used it, for example, in the execution of trades—

Mr. Charlie Penson: You're saying it's illegal to do that.

Mr. Gerry Salembier: —he would be subject to the tipping regime generally. He would be considered, in effect, an insider.

Mr. Charlie Penson: But if there was a delay in timing on when that information could be released, it would tend to offset the advantage there anyway, wouldn't it? So maybe the timing issue is something that's important.

Ms. Eleanor Ryan (Chief, Structural Issues, Financial Sector Policy Branch, Financial Institutes Division, Department of Finance): The legislation does not set precise rules as to exactly when it has to be done. It is the general principle that it be available during normal business hours. The bank, or for that matter any business corporation, has the flexibility to put in place a framework that allows them to make it available, and it would reflect the individual circumstances of the company and bank. But they have to make it available during normal business hours. We don't get into precisely when.

Mr. Charlie Penson: No, I'm not talking about what business hours they make it available in. I'm talking about whether there's a delay after that directors' meeting of the bank if one of the directors has a conflict of interest, and when the information would be disclosed to the shareholders. Would it be put online immediately, or would there be a month's delay before it was put online? That's the question.

Hon. John McKay: His issue is the timing, because the timing could be critical to the benefit of the information. Is there a practice around that, or does the legislation even speak to it?

Ms. Eleanor Ryan: The legislation doesn't speak to that. It's generally understood that it's as soon as possible.

The Chair: Thank you.

Mr. Holland.

Mr. Mark Holland (Ajax—Pickering, Lib.): Just very quickly on that point, if "as soon as possible" is not expressly put into the legislation.... Essentially I had all my concerns answered, but I think Mr. Penson raises a good point, in that if there isn't an expressed period—even if it says "as soon as possible", or within a certain timeframe—what would hold the company back from saying *mañana, mañana* and essentially continuing to put this off? If there is no timeframe, they can say, "Yes, we'll get it to you", and put it off for months on end.

Is it not of benefit to have some kind of timeframe in which this information should be disclosed?

● (1620)

Hon. John McKay: Ironically, the more stale-dated the time, the more protected everybody is, I suppose.

But what is the practice with respect to current corporations?

Ms. Eleanor Ryan: Our experience has been that the institutions and business corporations are good citizens and understand their obligations and live up to them. If a shareholder requests this information, based on our experience to date they live up to their obligations under these kinds of—

Mr. Mark Holland: I would agree that most are going to fulfill this and it wouldn't be an issue. But for the instance where there is a company that decides it doesn't want to be a good corporate citizen and provide this in a timely fashion, would it not make sense to put some kind of outside perimeter that this needs to be provided by, or simply to put into the legislation "as soon as possible", so that if there is somebody who isn't a good corporate citizen, there are some guidelines that someone seeking that information could have as to when they could expect the information reasonably and fairly?

Hon. John McKay: I suppose one of the remedies for a shareholder, if this exists in the bill and the disclosure is not timely, is that then they have a basis on which to launch a lawsuit, I suppose, compelling the disclosure. Absent this, they'd have no rights.

Mr. Mark Holland: No, I'm not disagreeing with its being there. I think that case has been made, and I agree with it.

I'm just wondering this. If I'm a shareholder and want to get this information, and the first thing I ask the corporation is how soon I am going to get it, and the corporation says, "Well, we'll see", and then I say maybe I'll turn to the legislation to find out what kind of timeframe they're operating in, and it's silent to that, then as a shareholder I'm going to be frustrated. I'll keep calling back to the company, and if the company isn't operating in a spirit of cooperation and decides they're going to take an exorbitant amount of time.... I'm wondering if it may be of benefit to put in some kind of timeframe—or at least the wording, "as soon as possible"—such that there is some direction there in the event that you have a company that isn't a good corporate citizen, and such that if you're a shareholder trying to legitimately get that information, you have some sense yourself of when you should be able to expect that information reasonably.

Ms. Rhoda Attwood (General Counsel, Law Branch, Department of Finance): We're not aware of any situations under this Canada Business Corporations Act—and the provisions here are identical to the ones under that act—where there's been a problem of access or timing.

Hon. John McKay: And you've had four years of experience.

Mr. Mark Holland: I just foresee that there could be, and I'm trying to understand the reason not to put some kind of parameter on it. What would be the reason not to do it?

Mr. Gerry Salembier: I have just a couple of points to add, maybe, on this. This is the kind of thing—the good corporate citizenship behaviour—where market pressures come to bear. If shareholders find that requests for this kind of information to which they're entitled under the law are not being responded to in a timely fashion, that tends to get around. It gets around to shareholders big and small and it tends to be the kind of behaviour that's not supportable in the long term.

Or if it is being exercised, it sends a bit of a market signal in itself that, wait a minute, somebody is hiding something here.

There is one potential technical difficulty. If we were to put a specific timeframe on this disclosure obligation, but it's not specifically made on other disclosure obligations, then it might carry with it the inference that while this one has to be made "as soon as possible", the other ones we can get to in our own good time. You wouldn't want to put a special timeframe around this disclosure obligation without taking into account what that might mean for the disclosure obligations generally.

But I think it's probably not necessary on this one, just because you should expect that large shareholders in particular who find this information is not being made available on a timely basis will act on that, and it will not reward the company to behave in that way.

Hon. John McKay: And I suppose the final fall-back is that this is a reviewable piece of legislation every five years, and if in fact your concern proves to be something that shareholders find grievous, then I suppose that would be brought to the attention of the department.

Mr. Mark Holland: Well, I'll leave up to other members of committee whether it's a concern they share or don't share.

The Chair: Thank you, Mr. Holland.

Ms. Boivin.

[*Translation*]

Ms. Françoise Boivin: I had understood almost everything until you came into this debate. Subsection 204(2) as proposed in this bill would read:

> (2) The shareholders of the bank may examine... during the usual business hours of the bank.

However, the existing section 202 of the act says that when the director is in conflict, he or she must disclose...

If both provisions are consistent, I presume that in section 202, it is meant that the shareholder must disclose as soon as he is made aware of the conflict, and in the proposed subsection 204(2), it says:

> (2) The shareholders of the bank may examine the portions of any minutes of meetings... during the usual business hours of the bank.

Personally, this seems to me to be a false debate. However, I may have missed something. I would like your guidance on this issue.

● (1625)

[*English*]

Hon. John McKay: The disclosures are during the banking hours. The shareholder goes to the bank and says, I want this information. That's during working hours. But the disclosure itself takes place at the board meeting. Am I responsive to that? I think that's what generally you were asking.

Ms. Françoise Boivin: Yes, but I still say I don't see any problem of delays or anything. It's a continuum. It's *un actionnaire*, a shareholder, who comes just before his meeting and divulges. Proposed section 202 is very clear about when he has to do it. I assume that if he doesn't, he puts himself in breach of some kind and could be pursued, I'm sure. And proposed section 204 will tell us that then the other shareholder can go...and we have to make this available.

I don't get the whole debate here.

[*Translation*]

Mr. Gerry Salembier: I believe that you are right, madam. The director must make the disclosure immediately after being apprised of the fact. In case of conflict, it must be disclosed within a reasonable time. After having done so, the shareholder can access this information during the usual business hours.

Ms. Françoise Boivin: This is what the people must understand. Where it says “may examine”, there is no mention of receiving anything. They can go on the premises and check whether the person has indeed disclosed that fact. So the way I understand this provision is that if a shareholder is aware that Pierre is in a conflict, he can go to the bank and examine the document to check whether Pierre has made the disclosure.

Thank you.

[*English*]

The Chair: Just as a technical question, how would a shareholder normally request this type of information? Somebody living in Toronto can go to a bank's head office, but somebody living somewhere else would have difficulty just showing up during office hours.

This is just a technical question.

Hon. John McKay: It may be that some of the electronic changes allow us to make the request—

The Chair: I would imagine it's done by a written—

Hon. John McKay: I just want to check that before I give it as an answer.

The Chair: But this information is not public information, because it's only accessible to shareholders, I believe.

Hon. John McKay: Yes.

Mr. Gerry Salembier: Yes.

Mr. Charlie Penson: You would have to have some sort of code to access it online. Would it be electronic?

Mr. Gerry Salembier: I don't know the answer to that offhand, but this is not information that is becoming public by means of this disclosure. It is information that is being given to shareholders in their capacity as shareholders.

The Chair: It's requested by the shareholder. So he has to make a formal request in writing, and then the bank will have to reply, or whatever the institution is.

Are there any other questions?

Thank you, Mr. Salembier.

Yes, Judy.

Ms. Judy Wasylycia-Leis: Perhaps I arrived too late to do this... the recommendation for a change by the life and health association.

A voice: [*Inaudible—Editor*]

The Chair: Okay.

[*Translation*]

We will go directly to clause by clause study of the bill. There is no amendment before clause 196.

Mr. Loubier.

Mr. Yvan Loubier: Could I propose that we proceed by groupings, if there is no problem?

The Chair: Yes.

So there is no amendment before clause 196.

(Clauses 1 to 195 inclusive agreed to)

[*English*]

(On clause 196)

[*Translation*]

The Chair: We will now deal with the first amendment.

[*English*]

Mr. McKay.

Hon. John McKay: This appears just to be a cleaning up of the French and the English so that there is some consistency there.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 196 as amended agreed to)

(Clauses 197 to 241 inclusive agreed to)

(On clause 242)

● (1630)

The Chair: Now we're at technical amendment G-2.

Hon. John McKay: Again it concerns consistency between English and French.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 242 as amended agreed to)

[*Translation*]

The Chair: On clause 243, there is no amendment.

(Clause 243 agreed to)

The Chair: I do not know why this one is not part of a group. I believe it is because it is part of another clause.

[*English*]

(On clause 244)

Mr. McKay, G-3, I think, is your amendment.

Hon. John McKay: Amendment G-3 is the critical one that was asked for by the actuaries, and the critical phrase is "with generally accepted actuarial practice". That's the point they were driving at.

I was advised yesterday that this is consistent, in fact I think word for word, with what they asked for.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: We have already accepted amendment G-3, but if we accept amendments G-4 and G-5 , we don't have to vote on them again.

If you want to, address them right away, Mr. McKay.

Hon. John McKay: They are identical in every respect.

The Chair: Shall the amendments, G-4 and G-5, carry?

(Amendments agreed to [See *Minutes of Proceedings*])

(Clause 244 as amended agreed to)

[*Translation*]

Mr. Massimo Pacetti: The Chair: We will deal with clauses 245 to 295.

(Clauses 245 to 295 inclusive agreed to)

[*English*]

The Chair: Then clause 296 has amendment G-4, which has amended it.

(Clause 296 as amended agreed to)

The Chair: We are now on clause 297, which has been amended by G-5.

(Clause 297 as amended agreed to)

[*Translation*]

The Chair: We will now proceed with clauses 298 to 453.

(Clauses 298 to 453 inclusive agreed to)

The Chair: Shall the schedule carry?

Some hon. members: Agreed.

(The schedule is carried)

The Chair: Shall the title carry?

Some hon. members: Agreed.

(The title is carried)

[*English*]

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Thank you, officials. Thank you, members. Thank you, colleagues.

Hon. John McKay: I'd like to say I did way better this time than I did with Bill C-48.

The Chair: This meeting is adjourned.

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