Your committee, which was authorized to examine the subject matter of those elements contained in Divisions 3, 4, 6, 7 and 10 of Part 4 of Bill C-86, A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures, has, pursuant to the motion adopted by the Senate on November 7, 2018, examined the said subject matter and now reports as follows.

The committee held meetings on November 20, 21, 22 and 29, 2018, during which it heard from the officials from federal departments and agencies, as well as representatives from the financial services sector, consumer groups, and experts in intellectual property and corporate law. Numerous written submissions were also received on the topics examined by the committee.

DIVISION 3 OF PART 4

Division 3 of Part 4 amends *Trust and Loan Companies Act,* the *Bank Act,* the *Insurance Companies Act,* the *Canada Deposit Insurance Corporation Act* and the *Office of the Superintendent of Financial Institutions Act*. It contains three subdivisions.

Subdivision A

If enacted, part 4, Division 3, Subdivision A of the bill would establish an exemption for financial institutions to obtain approval from the Superintendent of Financial Institutions (the Superintendent) for certain investments.

The department explained that financial institutions are required to seek Superintendent approval for substantial investments in certain entities that may expose them to market or credit risk but that the proposed amendments would exempt them in cases when the value of the proposed investments relative to the value of the acquiring institution is below a materiality threshold.

Subdivision A would also allow financial institutions to indefinitely hold a substantial investment in the Canadian Business Growth Fund. The department explained that financial institutions are generally prohibited from acquiring substantial investments in commercial, non-financial entities and that the proposed amendments would provide an exception, with several restrictions.

Finally, Subdivision A would enable consumers to consent to the provision of information electronically.

Subdivision B

The department also noted that Subdivision B would clarify rules for extended deposit insurance coverage following the amalgamation of two or more Canada Deposit Insurance Corporation (CDIC) members or the establishment of a federal credit union. It also would ensure that the CDIC can claim full payment of insured deposits made to depositors by specifying that the liquidator of a member institution may not apply the law of set-off or compensation to a claim related to insured deposits.

Finally, borrowing by the CDIC for purposes of section 60.2 of the *Financial Administration Act*, which deals with actions that the federal government may take “to promote the stability or maintain the efficiency of the financial system in Canada,” would be exempted from its borrowing limit. According to the CDIC, these amendments would allow it to protect financial stability by having access to timely and

sufficient funds to support financial stability in extraordinary circumstances such as the failure of several smaller members at once or the resolution of a systemically important bank. It also explained that, since it recuperates costs and losses through premiums to its members, the cost of bank failures would be paid for by the banking industry.

Subdivision C

The department explained further that Subdivision C would allow legally financial institutions that provide legally privileged information to the Office of the Superintendent of Financial Institutions (OSFI) to retain legal privilege with respect to that information. OSFI specified that between 2015 and 2016, 13 out of 31 transactions that came to OSFI for approval would have fallen below the threshold and would not have required approval.

The Canadian Bankers' association supports the proposed amendments, stating that they balance the need for protection of privileged information with supporting a transparent and cooperative relationship between banks and OSFI.

Committee Observations

With respect to Division 3 of Part 4, Subdivision B, the committee is concerned with the transparency of potential borrowing by the Canada Deposit Insurance Corporation for purposes of section 60.2 of the Financial Administration Act. The committee is of the view that, given the exemption from the borrowing limit, additional transparency is required. The committee proposes that a requirement be added such that any lending under section 60.2 of the Financial Administration Act be immediately reported and published.

DIVISION 4 OF PART 4

Division 4 of Part 4 would amend the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to remove the ability for persons to withdraw the importation or exportation of unreported currency or monetary instruments exceeding $10,000. According to the department, this amendment would close a gap in the legislation that could allow persons to avoid confiscation of their currency by not proceeding to cross the border with it, which is inconsistent with how the cross-border movement of goods is treated under law.

DIVISION 6 OF PART 4

Division 6 of Part 4 amends the *Canada Business Corporations Act* (CBCA) to require federally incorporated private corporations to maintain a list of their beneficial owners. Beneficial owners would be those individuals that have, directly or indirectly, at least 25% of total share ownership or voting rights in the corporation.

Innovation, Science and Economic Development Canada said that knowing who owns or controls companies in Canada can help combat international tax evasion and avoidance, money laundering and other criminal activities that exploit corporate vehicles. It noted that the CBCA covers about 10% of Canadian corporations, which amounts to about 400,000 corporations, with the vast majority being private corporations; the remainder of the 4 million Canadian corporations are incorporated provincially

or territorially. It explained that corporations would store beneficial ownership information in their corporate books and the information would be available to authorized investigative authorities. Regarding the potential burden on businesses, it emphasized that most small and medium-sized businesses incorporated under the CBCA have very simple share structures and thus collecting this information should not be difficult.

The department pointed out that Division 6 contains the first beneficial ownership provisions in Canada and that the provinces and territories have agreed to pursue amendments to their own corporate statutes by summer 2019, with British Columbia having made some progress on this issue. It clarified that the federal, provincial and territorial governments would implement changes in two stages: the first stage would have corporations gather information on their beneficial owners and the second phase would determine who would be able to access the information. With respect to the United Kingdom's beneficial ownership registry, the department noted that while the registry is public, it does not require corporations to identify the natural person who is ultimately in control, while the CBCA amendments would require this information.

Transparency International Canada, an anti-corruption organization, welcomed the amendments in Division 6 but recommended further changes. Firstly, it suggested that there needs to be better systems to verify information on beneficial ownership, such as having beneficial owners sign affidavits attesting to their identity. A second amendment would have shareholders respond to corporate requests for information more quickly. A third amendment would clarify that law enforcement agencies, authorized reporting entities and public agencies would have access to the beneficial ownership information. The last suggested amendment would introduce a conviction on indictment with a fine up to $500,000 for filing false information. It also mentioned possibly lowering the beneficial ownership percentage to 10%. In its view, the information on beneficial ownership should be maintained in a pan-Canadian registry that would be available to the public, and thus accessible to organizations such as itself and investigative journalists.

Mora Johnson, a lawyer, was also supportive of the proposed amendments. Some comments she had included questioning new section 21.3(2) in clause 183, which would only allow shareholders and creditors access to the corporation's beneficial ownership information. In her view, other entities that should have access include federal and provincial election officials; consumer protection agencies; procurement officers in governments, colleges or hospitals; and other Canadian businesses. She also suggested that offences should not be restricted to just directors and officers of the corporation.

Committee Observations

The committee supports the measures described in Division 6. As information on beneficial ownership will likely become one of the main tools used by law enforcement agencies to combat money laundering and terrorist financing, the *Canada Business Corporations Act* amendments are an important first step towards establishing a beneficial ownership registry at both the federal and provincial/territorial levels of government.

However, the committee believes that there should be greater transparency of the beneficial ownership information that would be collected by private corporations. The committee suggests that access to the information should be provided to those entities suggested by the witnesses, with the expectation that the information will eventually become part of a pan-Canadian public registry.

DIVISION 7 OF PART 4

Innovation, Science and Economic Development Canada stated that the purpose of the amendments proposed in Division 7 are to ensure that small and large innovators have equal access to the strategic use of intellectual property(IP) rights in global markets, and the amendments represent the legislative pillar of Canada's first national Intellectual Property Strategy.

Some witnesses had general comments about Division 7 as a whole. Professor Teresa Scassa of the University of Ottawa said that as Division 7 is part of an omnibus bill, there is no time to debate issues that are of greater magnitude, such as digital innovation, but perhaps it is a place to fix some IP-related problems. All witnesses agreed that, despite some areas of dissent in the IP sector, the changes proposed in Division 7 are mostly necessary and should proceed as part of Bill C-86. However, the Intellectual Property Institute of Canada, the profession association for patent agents, trade-mark agents and lawyers, indicated that Subdivisions A, B, C, F, G and H would benefit from further discussions with IP professionals and industry.

Subdivision A

Subdivision A of Division 7 of Part 4 proposes several amendments to the *Patent Act*.

The Intellectual Property Institute of Canada expressed its concerns with clause 200, a transitional provision, as it would make any changes proposed in new sections 52.1, 53.1 and 55.3 applicable to current litigation, active patent applications and existing patents. It also spoke about clause 194, which expands the prior use exemption, saying that the amendment could interfere with the exclusive rights of a patent holder, as a prior user could pass on their exemption rights to another entity. With regard to the admission of patent examination documentation as evidence, in its view, any admissions contained in that documentation are likely to be revealed in court anyways, so the amendment would not make much difference practically. It noted that it would provide a written submission detailing its proposed amendments.

Professor Richard Gold of McGill University said that he supports the largely housekeeping changes to the *Patent Act.* In particular, he welcomed the changes proposed for patents contained in standards, the codification of the common law research exemption, and the minimum requirements for patent demand letters. He agrees with clause 191, which would allow the court to admit patent examination documentation as evidence, but suggested that further amendments be made. These suggestions included allowing oral statements to be admitted as evidence and extending the use of patent examination documentation as evidence to the determination of the utility of an invention. He pointed out that the amendments in Subdivision A would align Canada's patent law with those of the United States, and provide a check to the trend in Canadian courts of favouring patent holders. In his view, these documents are publicly available in other countries and this amendment proposes a necessary evidentiary rule, not a substantive change of law.

In contrast, the Canadian Intellectual Property Council, which is part of the Canadian Chamber of Commerce, did not express support for clause 191. It said that there are four problems with the provision: it would alter years of Supreme Court of Canada precedent on patent claims construction; it would create legal uncertainty for patentees as judicial interpretations could be based on documentation other than the patent claims; the transitional provisions could result in patent examination documentation

being applied retroactively; and, the provision is unduly broad as it could introduce the patent application history of other related patents that are not being disputed. It recommended removing clause 191 from the bill.

Professor Michael Geist from the University of Ottawa welcomed the minimum requirements for patent demand letters, stating that they should discourage the sending of deceptive letters and allow a right for a recipient of a letter to pursue damages or an injunction at Federal Court. He pointed out that some of the patent reforms will require regulations, which will add years of delay before these provisions are in force.

Subdivision B

Subdivision B of Division 7 of Part 4 proposes several amendments to the *Trade-marks Act.*

Innovation, Science and Economic Development Canada said that the amendments are intended to ensure that rightful users of trade-marks can access the system and combat those actors that squat on a trade-mark and fill the registry with thousands of trade-marks that they do not intend to use.

While the Intellectual Property Institute of Canada expressed support for the changes proposed in Division B regarding use of a trade-mark, it recommended that it would be better to just require the applicant to show trade-mark use at the time of registration of that trade-mark.

Professor Teresa Scassa of the University of Ottawa spoke about clauses 215 and 216, which deal with official marks that are registered by public authorities. She supports the changes proposed that would allow the invalidation of official marks used by an entity that is not a public authority or no longer exists, but would suggest that public notice of the invalidity of the official mark should be mandatory. She also recommends that official marks be invalidated if they have not been used in the past three years, in a similar process as set out in section 45 of the *Trade-mark Act,* which addresses unused registered trade-marks.

The Canadian Intellectual Property Council also indicated its support for changes in Subdivision B, as many of these provisions address long-standing problems. It noted that clause 225, which adds “bad faith” as a ground to invalidate and to oppose the registration of a trade-mark, is unclear as how to show the trade-mark was used and whether its use with one or more, but not all, goods or services is sufficient.

Subdivision C

Subdivision C of Division 7 of Part 4 addresses the “notice and notice system” established under sections 41.25 and 41.26 of the *Copyright Act* that is intended to discourage online copyright infringement. Subdivision C would prohibit a notice of claimed infringement from containing an offer to settle or a demand for payment. These notices are sent to the subscriber’s Internet service provider, who is then obliged to forward it on to the account that is allegedly infringing copyright.

Professor Michael Geist of the University of Ottawa stated that almost immediately after the notice and notice system was established in 2012, anti-piracy companies sent out hundreds of thousands of notices of claimed infringement which set out demands for payment. Subdivision C would restore the original

intent of the system, which was to provide a mechanism for rights holders to raise concerns and create a role for telecom companies or internet service providers to address these issues. He recommended that there should be penalties for sending abusive notices and standards to assist internet service providers in identifying those notices that are compliant with the law. He also remarked on the absence of provisions related to artificial intelligence copyright issues, which were mentioned in Budget 2018.

Subdivision D

Subdivision D of Division 7 of Part 4 would enact the College of Patent Agents and Trade-mark Agents Act. The College would be responsible for regulating patent agents and trade-mark agents with respect to professional and ethical standards. Innovation, Science and Economic Development Canada indicated that the proposed changes would shift the regulation of these agents from the Commissioner of Patents and Registrar of Trade-marks to the College, so as to improve governance of these agents and remove any disciplinary powers from the Canadian Intellectual Property Office.

The department officials said that the College was developed by examining the best practices of other self-regulating professions, and that checks and balances on the operations of the College would include restrictions with respect to who can be on the board of directors and the filing of an annual report. With regard to the cost of establishing the College, they indicated that the College will be self-funded through fees it collects from its members.

The Intellectual Property Institute of Canada expressed its support for the proposed legislation and indicated that it has been advocating for a self-regulatory governance body for agents for 23 years. In its view, the need for a College is not based on complaints from the public, but because of an incomplete regulatory framework, particularly the lack of a mandatory code of conduct, continuing education requirements or discipline process for agents. It explained that the College is based on the United Kingdom’s model and is a hybrid between self-regulation and government regulation, as most positions on the board would be appointed by the minister responsible for the College. It suggested that there should be amendments to new sections 70 and 71 found in clause 247, so that the term “legal counsel” refers only to lawyers qualified to practise as patent or trade-mark agents. As well, new section 33 in clause 247 should be amended so that the code of professional conduct is incorporated by reference in the regulations but allowed to exist outside of the regulations, such as in a bylaw. It made additional suggestions for amendments in its written submission.

Committee Observations

The committee has concerns, in general, about competing federal and provincial regulatory regimes, which might occur with the College introduced in Subdivision D and provincial/territorial law societies.

Subdivision E

Subdivision E of Division 7 of Part 4 would amend the *Bankruptcy and Insolvency Act* and the *Companies’ Creditors Arrangement Act* to ensure that insolvency and restructuring of an owner of IP does not affect a third party’s right to the ongoing use of IP that was conferred by an agreement between the owner of the IP and the third party.

Professor Richard Gold of McGill University noted that the changes proposed would put Canadians on equal footing with Americans with respect to the use of IP licences upon the bankruptcy of IP licensors.

Subdivision F

Subdivision F of Division 7 of Part 4 would amend the *Access to Information Act,* the *Privacy Act* and the *Pest Control Products Act* so that information considered privileged under the *Patent Act* and the *Trade-marks Act* is not required to be disclosed under these three statutes. No witnesses provided comments on this subdivision.

Subdivision G

Subdivision G of Division 7 of Part 4 would amend the *National Research Council Act* to give the National Research Council the authority to manage all forms of intellectual property that it develops and improve management of the real property it holds. The NRC noted that the amendments would broaden the ability of the NRC to assign its intellectual property to a specific company and that currently, it does not have the authority to dispose of all forms of its own intellectual property, such as copyright.

Subdivision H

Subdivision H of Division 7 of Part 4 would amend the *Copyright Act* with respect to the Copyright Board to improve the timeliness, predictability and clarity of Board proceedings. In November 2016, the committee conducted its own study of the Board and released a report entitled Copyright Board: A Rationale For Urgent Review that discussed many of the pressing concerns about the mandate, practices and resources of the Board.

Innovation, Science and Economic Development Canada indicated that delays would be reduced at the Board through provisions that would establish an overriding mandate and decision-making criteria for the Board, require tariffs to be filed earlier and be held valid for longer periods, introduce a regulatory power to set decisions-making deadlines and allow collective societies and users of copyrighted material to enter into direct agreements. It also highlighted that the Board's budget will be increased by 30 per cent and that there have been new appointments to the Board.

Canadian Heritage noted that, currently, the Board's decisions can be applied retroactively, and this lack of clarity about tariffs is a disincentive for an artist or company to invest in Canada's cultural and creative marketplace. It said that the changes intend to reduce delays at the Board would help artists.

The Copyright Board of Canada welcomed the changes proposed in Subdivision H and said that they reflect the general views of the Board. In its view, the proposal to set in law the public interest as a part of the Board's mandate would bring more clarity and predictability to the Board's decision-making authority. Regarding the changes that would allow collective societies to negotiate direct agreements, the Board agrees with this amendment but noted that it would be difficult to predict its effect on the Board's overall workload. It expressed support for the introduction of case management to the Board's processes, as well as the increase in its budget. It mentioned that it had been trying to move forward with its own reforms for several years, but was asked to wait and work in collaboration with the departments.

The Board, as well as Professor Jeremy de Beer of the University of Ottawa, asked the committee to carefully consider the changes in clause 295 that propose to amend section 66.91 of the Act. They asked that the clause be studied to ensure that the scope of the Governor-in-council regulatory power is not overreaching and protects the Board's ability to regulate its decision-making processes. The Board noted that while it supports the objective of these changes to set time parameters, they could have an effect on the independence on the Board because, firstly, it is impractical for cabinet members or department officials to determine appropriate time periods in the Board's processes and, secondly, an administrative tribunal must have control over its own processes and not be subject to political decisions. Professor de Beer recommended that clause 295 be deleted.

Regarding its workload, the Board indicated that it is involved in about 50 tariffs a year, while the U.S. Copyright Royalty Tribunal certifies about five tariffs. This number of tariffs was supported by Professor de Beer's previous study on the copyright-tariff setting process in Canada. In contrast, Howard Knopf, an IP lawyer, indicated that his own calculations found the Board certifies fewer than five tariffs a year and that the Board takes years to approve uncontested tariffs. In his view, the Board does not have a problem with resources and has too little to do.

Professor de Beer mentioned that he previously was the Board's legal counsel and has advised it in the past on potential policy reforms. In his view, the problems of the Board were the result of legislative changes that added to the Board's workload but were not implemented properly. He indicated that he strongly supported the increase in Board resources and the procedural reforms that would implement case management. However, he cautioned that reducing the number of matters that come before the Board, such as through direct agreements, could result in small and medium-sized businesses becoming vulnerable to potential abuses of market power by certain collective societies. Mr. Knopf also expressed concern that collective societies would have "unchecked monopoly power" over other organizations wishing to broadcast music.

Mr. Chisick, a copyright lawyer, also expressed support for the proposed changes. In particular, he agreed with the proposal to allow direct agreements to be made with collective societies, given that the majority of the work of the Board is devoted to tariffs proposed by these societies. He also noted that the changes to the Board's processes should reverse the trend of retroactive tariff-setting. He expressed concern for new section 73.3 found in clause 296, which prohibits a collective society from enforcing its rights on a user who has paid or offered to pay royalties under an approved tariff. He said that the prohibition would be extended to a person who offers to pay royalties under a tariff that has not been approved, which unfortunately could result in a user being able to use copyright-protected material for years without paying for it. He asked that this new section be deleted.

Harold Knopf did not support examining these changes in a budget bill. He was discouraged by the provisions that streamlined timelines, stating that they would not make a difference given that it often takes years before a hearing can take place before the Board and another few years before a decision is rendered. He stressed that the regulation-making power to specify timelines is not new, has never been used, and would not affect the Board's autonomy. He suggested that the bill impose necessary deadlines, which has been done for other tribunals and federal courts. He commented on the absence in the bill of provisions related to public participation at the Board in a similar manner as at the Canadian Radio-television and Telecommunications Commission. He also noted that the question of whether copyright board tariffs are mandatory for users has not yet been settled by the courts.

Professor de Beer, Mr. Chisick and Mr. Knopf all drew attention to new section 66.501 set out in clause 292. They believe that new section 66.501(d), which allows the Board to consider "any other criterion that the Board considers appropriate," would create problems, such as introducing new requirements for parties appearing before the Board that could involve expensive expert evidence, allowing the Board to discard evidence for other criteria, and that it would take years for the courts to determine how this new section should be interpreted. Professor de Beer asked that the clause be deleted, while Mr. Chisick suggested that this provision be reconsidered or that regulations be implemented quickly to provide guidance.

Furthermore, with regard to the new section 66.501(b), which codifies "the public interest" as part of the Board's mandate, Mr. Knopf thought that requiring consideration of the public interest could be in conflict with a competitive market. In contrast, Mr. Chisick and Professor de Beer indicated that public interest was already a consideration the Board takes in all of its decisions.

The Intellectual Property Institute of Canada expressed its support for the changes to the Copyright Board. However, it had some concerns with new section 69 in clause 296, which would provide that a collective society be able to withdraw a tariff. It suggested a technical amendment to clarify that the intent of new section 69 is to expand, not limit, the ability of a collective to amend its tariff.

Committee Observations

With respect to Subdivision H of Division 7, the committee is concerned about the discrepancy in the data about the number of decisions that the Copyright Board is involved in or the number of tariffs that it certifies annually that were cited by the Copyright Board, Professor de Beer and Mr. Knopf.

In addition, the committee questions why the federal government is attempting to enact regulations that would dictate the Copyright Board's decision-making processes, as this would clearly affect the Board's independence. The committee suggests that clause 295, which proposes to amend section 66.91 of the *Copyright Act,* be further examined to assess the witnesses' concerns regarding the scope of the Governor-in-Council's power to set procedural deadlines for the Copyright Board.

Lastly, to ensure that these amendments are having the intended effect on the Copyright Board's practices, the committee proposes that this matter be reviewed in two years by the Minister of Innovation, Science and Economic Development.

DIVISION 10 OF PART 4

Part 4, Division 10 of the bill amends sections of the *Bank Act* related to the protection of customers and the public with respect to corporate governance, responsible business conduct including new whistleblowing provisions, disclosure and transparency, and redress. It also amends the *Financial Consumer Agency of Canada Act* (FCACA) to grant additional powers to that agency.

According to the Department of Finance, Division 10 is a proposal that would both consolidate existing consumer protection legislation and regulatory provisions and add new measures intended to address issues identified in two recent reports from the Financial Consumer Agency of Canada (FCAC). The issues identified in the reports related to bank sales practices and the supervision of financial consumer

protection. According to the department, the proposals were viewed by stakeholders as significantly improving protections for bank customers.

The department emphasized that Division 10 does not contain an exclusive assertion of federal jurisdiction and is not intended to affect the provinces' ability to regulate in the area of consumer protection or the rights of consumers under provincial legislation, which was a concern that was expressed in relation to a similar framework that was proposed, and then removed, in the second 2016 budget implementation act.

In highlighting the new elements of Division 10, the department drew attention to three elements. Firstly, the department spoke about proposed measures related to strengthening banks' internal consumer protection processes and practices. These measures would include the requirement that banks designate a committee of their board of directors to oversee consumer protection and report to the FCAC, have policies and procedures to ensure products and services offered to a person are "suitable," and remuneration practices that do not interfere with consumer protection procedures. The Department of Finance clarified that these measures apply only to banking products such as credit cards, lines of credit and mortgages and do not include a "best interest" test, such as is used by securities regulators; rather, it would be up to each institution to implement consumer protections.

Secondly, the department spoke about proposed measures that would provide new "tools" for the FCAC to promote compliance with consumer protection legislation. These measures would include providing the commissioner with the power to order restitution for consumers for non-compliance, an increase in the maximum penalty that can be imposed for breaches of legal obligations under the framework, and the publication of the name of the bank subject to a penalty.

Thirdly, the department discussed other consumer protection measures. These measures would include protections from misleading information and undue pressure, a prohibition on using the term ombudsman to describe banks' internal complaint handling processes and requirements for the record keeping, reporting and publishing of complaints and their decisions.

According to the FCAC, if enacted, Division 10 would enhance its ability to supervise and enforce compliance and better integrate financial literacy within its mandate.

In commenting on the proposed increase in the maximum penalties for a violation of the *Bank Act*, the FCAC stated that the maximum penalty has only been imposed once for a financial institution but that the name of the institution was not published. According to the department, the combination of the requirement to publish the name of the bank subject to the penalty and the increase in the maximum penalty is expected to act as significant deterrents for banks to contravene consumer protection regulation.

Witnesses agreed that the provisions in the bill aimed at strengthening the FCAC signify an important step towards establishing the FCAC as a true market conduct regulator. In particular, the Ombudsman for Banking Services and Investments identified the ability of the FCAC to issue directions and to conduct special audits as measures that would improve its ability to protect consumers.

The department also clarified that there are currently no requirements in the legislation for banks to have a whistleblower program nor are there explicit protections for whistleblowers in the *Bank Act*, although

there is a prohibition on certain forms of retaliation for whistleblowing in the *Criminal Code of Canada*. However, the Canadian Bankers' Association noted that banks do have internal policies with respect to whistleblowing. According to the department, putting requirements in the *Bank Act* would facilitate administration and increase awareness among bank employees.

In discussing external complaints bodies, the department explained that, currently, the *Bank Act,* allows for two models. Under the first model, the Minister of Finance could designate a single external complaints body and require financial institutions to use it. Under the second model, the competitive model currently in use, multiple external complaints bodies are approved and financial institutions may choose which to be a member of.

The Ombudsman for Banking Services and Investments argued that the second model ignores international best practices. According to her, the competitive model has an inherent conflict of interest as ombudsmen services must compete for bank business, and may therefore make rulings in favour of banks, rather than consumers, which may undermine public confidence in the financial services sector. The only way to remove this conflict of interest, she argued, is to amend Division 10 in order to remove the competitive model from the legislation.

The Public Interest Advocacy Centre agreed that a single external complaints body is preferable to the competitive system but supported the measures that would increase transparency of these bodies such as the reporting and publication requirements. It argued that the Minister of Finance will have more information on which to base a potential decision to revoke an external complain body's status.

The Ombudsman from ADR Chambers contended that the framework that currently exists requires the external complaints bodies to be independent, timely and transparent. This includes being impartial and independent of parties involved in the complaints. The Canadian Bankers Association supports the continuation of the competitive model.

The department explained that it is aware that some stakeholders do not feel that the current competitive model best serves customers and stated that it is an area that it "should next focus [its] attention on."

In discussing the requirement for external complaints bodies to publish the details of their recommendations, the Ombudsman from ADR Chambers, stated that it would prefer to reserve the ability to exercise its "go public" power for cases in which recommendations are not followed. She was also concerned that complainants may read summaries of cases similar to their own and be dissuaded from pursuing their complaints if the outcome was not favourable. She also requested that consideration be given to allowing complainants from opting out of publication in order to protect their privacy. The Ombudsman for Banking Services and Investments, on the other hand, welcomed the increased transparency but noted that the details of implementation will need to be carefully considered. The Canadian Bankers' Association also agreed that increased transparency would be positive but also agreed that concerns for customers' privacy should be addressed.

The Ombudsman from ADR Chambers felt that the clause that requires the external complaints body to maintain a "reputation" for operating with good character and integrity is somewhat ambiguous and should be removed.

Overall, the Public Interest Advocacy Centre remarked that Division 10 is a much stronger consumer protection framework than that proposed in the 2016 second budget implementation bill by consolidating legislation and regulation in one section.

Committee Observations

The committee feels that the requirement that banks designate a committee of their board of directors to oversee consumer protection and report to the Financial Consumer Agency of Canada is unnecessary. The committee recommends that Division 10 be amended to require that the entire board of directors report to the Financial Consumer Agency of Canada and that the requirement to form a separate committee be removed.

With respect to the issue of the competitive model for external complaints bodies and the department's comments that it might study the matter, the committee insists that the department consider it and make a decision as soon as possible, taking into consideration the consumer's perspective.

LIST OF OBSERVATIONS

1. With respect to Division 3 of Part 4, Subdivision B, the committee is concerned with the transparency of potential borrowing by the Canada Deposit Insurance Corporation for purposes of section 60.2 of the Financial Administration Act. The committee is of the view that, given the exemption from the borrowing limit, additional transparency is required. The committee proposes that a requirement be added such that any lending under section 60.2 of the Financial Administration Act be immediately reported and published.

2. The committee supports the measures described in Division 6. As information on beneficial ownership will likely become one of the main tools used by law enforcement agencies to combat money laundering and terrorist financing, the *Canada Business Corporations Act* amendments are an important first step towards establishing a beneficial ownership registry at both the federal and provincial/territorial levels of government.

   However, the committee believes that there should be greater transparency of the beneficial ownership information that would be collected by private corporations. The committee suggests that access to the information should be provided to those entities suggested by the witnesses, with the expectation that the information will eventually become part of a pan-Canadian public registry.

3. The committee has concerns, in general, about competing federal and provincial regulatory regimes, which might occur with the College introduced in Subdivision D and provincial/territorial law societies.

4. With respect to Subdivision H of Division 7, the committee is concerned about the discrepancy in the data about the number of decisions that the Copyright Board is involved in or the number of tariffs that it certifies annually that were cited by the Copyright Board, Professor de Beer and Mr. Knopf.

In addition, the committee questions why the federal government is attempting to enact regulations that would dictate the Copyright Board's decision-making processes, as this would clearly affect the Board's independence. The committee suggests that clause 295, which proposes to amend section 66.91 of the *Copyright Act,* be further examined to assess the witnesses' concerns regarding the scope of the Governor-in-Council's power to set procedural deadlines for the Copyright Board.

Lastly, to ensure that these amendments are having the intended effect on the Copyright Board's practices, the committee proposes that this matter be reviewed in two years by the Minister of Innovation, Science and Economic Development.

5. The committee feels that the requirement that banks designate a committee of their board of directors to oversee consumer protection and report to the Financial Consumer Agency of Canada is unnecessary. The committee recommends that Division 10 be amended to require that the entire board of directors report to the Financial Consumer Agency of Canada and that the requirement to form a separate committee be removed.

   With respect to the issue of the competitive model for external complaints bodies and the department's comments that it might study the matter, the committee insists that the department consider it and make a decision as soon as possible, taking into consideration the consumer's perspective.