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● (0915)

[*English*]

The Chair (Mr. Charles Caccia (Davenport, Lib.)): *Bonjour, tout le monde*. Time is a precious commodity, and therefore it is nice to see members arriving on time and enabling us to start.

Let me make a couple of observations. One is that the committee clerk and the legal adviser and the researchers and I completed late yesterday a review of all 190 amendments. The result of that review is on one page that is being prepared by the clerk and circulated to each one of you this morning. May I have your attention, please.

The sheet that has been circulated this morning is the result of many hours of work intended to facilitate the work of the committee and to anticipate long discussions on duplications or disappointments for members whose motions would not be put because of another motion that would focus on the same line. In an effort to avoid that kind of sometimes unnecessary disappointment, you have a list under the heading "Areas of Conflict". This is where the members who have moved the motions listed on that page could get together next week with either the author of a government motion or the author who is another colleague on this committee to work out a friendly amendment.

All of us, particularly here at the head of the table, would be extremely grateful if some attention could be given to this sheet before we resume on November 19, and if you would use next week for the purpose of finding friendly solutions where there is this kind of conflict of amendments.

I'm sure the clerk will be glad to explain, if necessary, to interested members what the reasons are for a conflict and how a solution could be found.

Do we have any comments to make on this sheet? No? All right; I take it this is reasonably well accepted. Fine.

The next item has to do with our work. Having gone through all the amendments, as I said, it seems to me we could strive to finish before the Christmas recess, maybe. If we sit on Wednesday afternoon, as a rule, we could make it, and we will strive to do that. Perhaps if committee members are available, we might sit one evening in December in order to make it, if we see that it can be done. We will see how the process evolves and how the apparent complexity of some amendments now may dissolve, hopefully, like snow in the sun.

Thirdly, representations have been made to me to start with clause 2, and at the same time representations have been made to me to begin with clause 1, because a discussion on clause 1 would be helpful in clarifying certain points, with the understanding that clause 1, if discussed and partially dealt with, would not be closed for further amendments. So if there is consensus, I would start with clause 1 in order to facilitate the process. I would like to hear whether there is any objection to that.

Mr. Mills.

Mr. Bob Mills (Red Deer, Canadian Alliance): I would just ask that we stand down the CA motions that are in that section. Mr. Lunn will be back next week to carry on with his amendments.

The Chair: He will not be back next week, because we are not sitting.

Mr. Bob Mills: No, not next week; you know what I mean.

The Chair: He will not be back either the following week, and so I had a conversation with him and asked him whether he would be amenable to a colleague of his moving his amendments. He said he would be amenable when we come to that point.

Mr. Bob Mills: Okay, I withdraw my motion.

The Chair: Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras (Rosemont—Petite-Patrie, BQ): Thank you, Mr. Chairman. I would like the clerk's advice on the fact that we're starting with the definitions. Will doing so make our job any easier? I recall that when we studied other bills, specifically the proposed pesticides legislation, if I'm not mistaken, we preferred to set the definitions aside and to focus on the meat of the bill. Would it make our task any easier if we proceeded immediately to consider clause 1?

The Chair: That decision rests with the committee. There are no specific rules about how we should proceed.

[*English*]

The Chair: Madam Redman, then Madam Kraft Sloan.

Mrs. Karen Redman (Kitchener Centre, Lib.): Thank you, Mr. Chair. I would just like to say that from the government's point of view we have reviewed the definitions. I understand Mr. Lunn had some concern about his very first motion. We'd be happy to stand down if movers want to stand them down, but from our point of view there's some relatively significant and quite fruitful discussion that could take place in this definition section.

For that reason, we would suggest we proceed with clause 1, with the understanding that it can remain open as we go through the body of the bill. I think some things may be clarified through the discussion that could take place in the definitions section. We would ask the committee to consider that.

The Chair: Thank you.

Madam Kraft Sloan.

Mrs. Karen Kraft Sloan (York North, Lib.): Thank you, Mr. Chair. I realize there are usually certain methods and approaches that we normally take when we're going through legislation. But sometimes when opportunities arise, and when the legislation before us is different, one has to be a little flexible.

There is a motion that I would be very happy to talk about this morning, Mr. Chair. I think or am hoping that the other committee members would be interested in it as well.

However, I do have another motion that I would like to request—that this clause be stood down.

The Chair: All right. So let us see what emerges in the discussion of clause 1, in the hope that it may produce some positive results.

(On clause 1)

The Chair: With that in mind, we can start with the first motion before us, CA-1, in the name of Mr. Lunn. We have Mr. Mills moving the motion by Mr. Lunn, CA-1. It replaces a certain line with certain words, and then adds a paragraph on litigation.

Could we have some comments, beginning with Madam Redman?

Mrs. Karen Redman: Thank you, Mr. Chair. I'd be happy to give the government's response. I understand that this motion is one that Mr. Lunn wants stood down. I'm happy to have the discussion about it; then if we want to stand the motion down, that would be acceptable.

The Chair: All right, then we will not proceed. I withdraw the motion from Mr. Lunn at this stage. We will stand it.

(Amendment allowed to stand—See *Minutes of Proceedings*)

Mrs. Karen Redman: Would you like me to go ahead with our response to it, Mr. Chair, at this time, or should we wait until we deal with the motion?

The Chair: Well, it would be better if he were present to argue it, unless you would prefer that too.

Mr. Bob Mills: Yes, it might save a lot of time later to have Madam Redman do that. Then we would move very quickly on it.

The Chair: To have it later or to have it now?

Mr. Bob Mills: To have it now.

Mr. Roy Bailey (Souris—Moose Mountain, Canadian Alliance): She could give the reasons.

Mr. Bob Mills: Just give the reasons.

The Chair: Would you like to give the reasons?

Mrs. Karen Redman: I'd be glad to, Mr. Chair.

We don't support this proposed amendment because, although adaptive management—which is really what is outlined in the CA-1 amendment—is an excellent tool for unforeseen or unknown effects, the proposed amendment would create what we consider a loophole, whereby adaptive management could be used as a replacement for environmental assessment.

Mitigation measures might be delayed until after environmental effects occur. We prefer to maintain the focus on the preventative mitigation measures that are integrated in the design of a project. Bill C-9 already includes a reference to adaptive management in clauses that deal with follow-up. In our view that's the appropriate place to put this reference to mitigation measures. Follow-up programs will determine if mitigation measures have indeed worked and whether they have been effective. Adaptive management provides a means to make the necessary adjustments.

I would turn to Mr. Clarke or Mr. Connelly, if they'd like to comment further on how we see this amendment affecting the function of the bill.

● (0920)

Mr. Robert G. Connelly (Vice-President, Policy Development, Canadian Environmental Assessment Agency): Thank you, Mrs. Redman.

Mr. Chairman, perhaps it would be useful to point out how mitigation measures are used under the act, which may help us understand the potential effect of this motion.

Under the Environmental Assessment Act, the environmental impacts are examined and mitigation measures are then identified to reduce these effects. So early in the planning we look at mitigation measures up front to see how we can reduce these potential impacts. Then the determination of the overall significance of that project on the environment is made. This determines whether a project will proceed or perhaps advance to the next stage of the assessment process, which is the Environmental Assessment Panel review process.

While I fully appreciate that this is probably not behind the motion, our concern is that the term “adaptive management” could be misused—in the sense that it would be kind of a blank cheque—if it is put in the definition of mitigation. The determinations of significance would not be made up front. Rather, it opens up the possibility that a decision could be taken that we'll worry about the mitigation measures later because we have a system of adaptive management to follow.

So that is fundamentally our concern. I'm convinced that's not the intent, but that is our concern with that particular proposal.

Thank you, Mr. Chairman.

The Chair: Thank you.

Mr. Herron, please.

Mr. John Herron (Fundy—Royal, PC): Through you, Mr. Chair, to the officials, is it the concept that you think is problematic, or is it the wording in the amendment itself that's problematic?

Mr. Robert Connelly: Mr. Chairman, the concept of adaptive management is a very important and useful concept in the process of environmental assessment. In fact, we have reference to it in the area of follow-up so that, after you've completed an assessment, if you determine that there are some potential impacts that were unpredictable, you can then use a process of adaptive management to correct those problems subsequently.

The concern we have is simply the location of that word, that term, “adaptive management”, in the definition of mitigation.

Mr. John Herron: Wouldn't it make sense, if we go through the problem of actually utilizing the concept in practice, that we actually have a definition of what that concept would be? Wouldn't that make a little bit of sense?

Mr. Robert Connelly: What you're potentially doing is introducing a new process, which I would call adaptive management, in place of environmental assessment as understood in this act, right up front, by virtue of the change in the definition.

The Chair: Mr. Bailey.

Mr. Roy Bailey: Mr. Chair, if I understand what you're saying—and I have a better understanding now, I hope—it is that the mitigation follows certain steps that must be taken first, otherwise you're putting the mitigation in the wrong order. Is that correct?

Mr. Robert Connelly: Yes, Mr. Bailey, I think that is a good way of looking at it. It's important in this process, because it is a planning process, to identify up front what the mitigation measures are, then proceed accordingly, having done your best to predict the effects and having done your best to predict how you can reduce or minimize those effects through mitigation measures. That's the concept of environmental assessment as we know it under this act.

If you introduce the term “adaptive management” early on, it creates the risk that you will put off the early identification mitigation measures till later on, and that allows for a new process to assist down the road. That's our concern fundamentally.

● (0925)

The Chair: Mr. Mills, you have five minutes.

Mr. Bob Mills: Is the reason that industry would want that to kind of lessen the uncertainties that might come up? The whole purpose is to get the investment, is it not? And would we lose the possibility of a development because of not having that?

Mr. Robert Connelly: I think, Mr. Mills, there is also another motion put forward by Mr. Reed that may assist, and this will come about later in the clause-by-clause review. That's a very important motion in the sense that it identifies a means to rely on mitigation measures that might be put in place by another jurisdiction.

This is very important in terms of cooperative environmental assessments that we might undertake with a province. If we work together in a cooperative way, we want to be able to rely on each other's authority to enforce certain mitigation measures.

Mr. Reed has put forward a motion that I believe would deal with that and thereby create greater certainty on that aspect.

I think your point about including the term “adaptive management" in mitigation, as I understand it, is a concern of a certain industrial sector. I think it's fair to say that they saw this put in for greater certainty purposes, so I think your understanding there is correct as well, from what I understand.

The Chair: Thank you.

I'll ask both Mr. Mills and Mr. Bailey to refer the substance of this discussion to Mr. Lunn, who will be in a position to decide whether he wants to proceed or not. At least we have aired this item.

Madam Redman.

Mrs. Karen Redman: Thank you, Mr. Chair.

I want to speak directly to Mr. Mills' last question. Mr. Ian Scott of the Canadian Association of Petroleum Producers gave testimony before this committee on April 23, and I'd like to quickly read you his quote:

> ... I think adaptive management can be a very useful tool in saying this worked, we should do it more often, or it didn't work. I think it's not to replace environmental assessment, but rather to enhance environmental assessment—to see whether what was being proposed actually did work.

Even the petroleum producers' representative is saying there is definitely a place for this, that it's a tool that needs to be in our kit. Our contention is that it should come later rather than earlier.

Thank you.

The Chair: Thank you.

We'll move to Mr. Comartin's motion, NDP-1.

Mr. Comartin.

Mr. Joe Comartin (Windsor—St. Clair, NDP): I'm actually not prepared to deal with this motion this morning, so I ask that this one be stood down. We can bring it up either later—

The Chair: —when we deal with NDP-28 and NDP-57?

Mr. Joe Comartin: Yes. This is obviously a major shift in the way the legislation would be used, so I could tie them together at that time.

The Chair: Fine. That's duly noted.

Thank you.

Then we come to KS-1. This is a new party on the Hill.

Mrs. Karen Kraft Sloan: It's a new movement, as we learned last night.

This is a consequential amendment, and I suggest we discuss it at a later date.

The Chair: I would also like to let the member know that the chair has been advised to consider this motion consequential to KS-8 being considered inadmissible. So when we come to that, there will be an opportunity to make a case.

Mrs. Karen Kraft Sloan: We can certainly have that discussion at a later date.

If there's proportional representation with the new KS party, many of you may want to get on the party list. You can talk to me right after committee.

Some hon. members: Oh, oh!

Mrs. Karen Kraft Sloan: Monsieur Bigras will be my minister for—

The Chair: Federal-provincial relations.

Mrs. Karen Kraft Sloan: Yes.

The Chair: We'll move on to amendment G-1.

Madam Redman.

● (0930)

Mrs. Karen Redman: Thank you, Mr. Chair.

This is a technical change to the English version of the bill only. The proposed amendment replaces the term "obligation" with the term "requirement". This is being done to ensure consistency between the definition of the exclusion list in subsection 2(1) and the corresponding regulation-making authority in paragraph 59(c), which uses the term "requirement".

The Chair: Is that moved?

Mrs. Karen Redman: I so move.

The Chair: The motion has been moved. Are there any questions or comments?

(Amendment agreed to)

Mrs. Karen Kraft Sloan: I just have a point of order, Mr. Chair.

The Chair: Yes.

Mrs. Karen Kraft Sloan: The definitions are all in one particular clause, and when we vote on different amendments that amend different definitions, what is the effect on the clause? Does it still remain open and we don't have any other problems?

The Chair: Yes.

Mrs. Karen Kraft Sloan: Thank you, Mr. Chair.

The Chair: We've come to amendment KS-2. I'll ask Madam Kraft Sloan for an explanation, and then I will ask the officials to comment.

Mrs. Karen Kraft Sloan: Thank you, Mr. Chair.

The intent of this amendment is to delete a crown corporation within the meaning of the Financial Administration Act. Essentially this deletes crown corporations from the exclusion list.

The Chair: Mr. Connelly.

Mr. Robert Connelly: This proposed amendment would change the definition of a federal authority to mean that crown corporations would be considered as federal authorities and would be fully bound under the act, as federal departments are. I just note that for purposes of clarification, Mr. Chairman.

The Chair: That would apply to the Export Development Corporation, for instance.

Mr. Robert Connelly: That might be the one exception, potentially, because it is referenced in another act of Parliament. There is an environmental review process that was established earlier this year, when the Export Development Act was up for revision. In the process of that revision, Parliament included a separate environmental review clause in that, and very explicitly excluded the application of this act in that instance.

The Chair: Madam Redman.

Mrs. Karen Redman: Thank you, Mr. Chair.

One of the problems with the proposed amendment is the fact that it really doesn't recognize some of the unique circumstances of crown corporations, which indeed can be very different one from the other. We can look at the CBC versus the National Capital Commission, so this is dealing with a very broad brush to a very diverse group of entities.

The Canadian Port Authority environmental assessment regulations were brought into force in 1999 and they already provide a practical and effective model for regulating crown-like bodies. As well, the minister has committed to developing further regulations for crown corporations that would take advantage of the improvements in Bill C-9. For that reason, we feel this is too broad an amendment to support.

The Chair: Mr. Mills.

Mr. Bob Mills: While trying to gain favour with the leader of the KS party, after future considerations, obviously, I think that crown corporations should be dealt with all the same. And so we would support this motion.

The Chair: This is certainly a very important motion and the implications are far beyond the short line of the amendment. Are there any further comments?

Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): Mr. Chairman, in addition to the explanations that have been made by the parliamentary secretary, I wonder if I could direct a question to staff.

It seems to be a very compelling argument that there are not two laws for different entities, and the public generally has a right to demand that this principle prevails. So if there is a compelling reason, what would it be, from a staff position, with respect to treating crown corporations differently under the Environmental Assessment Act?

I'm looking for some illustrations of urgency and relevant public interest that would be served in order to guide myself and the committee, I would think.

● (0935)

Mr. Robert Connelly: Thank you, Mr. Tonks.

Perhaps I might explain how crown corporations are treated at the present time under the act and what is proposed in Bill C-9. At the present time, provision is made under the act to bring crown corporations under the act through regulation.

Some crowns are brought under the act as a proponent in some instances because of some other federal regulatory trigger. For example, Atomic Energy of Canada Limited must get a licence to do most of the things they might do within Canada from the Canadian Nuclear Safety Commission, and that will trigger the act. So in some instances they are brought in as a proponent, similar to a proponent in the private sector. So that is, by way of example, how the act functions at the present time.

They are not considered, though, as a federal authority under the act. They are brought in, in some instances, as a proponent much like the private sector is. So that's the first point.

In terms of Bill C-9, what is proposed is some modification to allow a greater variation of the development of regulations so that we can overcome a bit of a problem that has plagued us in the past, which is the notion of one size fits all. In other words, there have been concerns that a regulation perhaps ought to be tailored a little more to fit the unique circumstances of the crowns, and that is a modification that exists in Bill C-9.

I think those are the main points I'd like to raise, Mr. Chairman.

The Chair: Thank you.

Mr. Comartin.

Mr. Joe Comartin: Thank you, Mr. Chairman.

First of all, I want to indicate that we're supportive of the proposed amendment. From listening to Mr. Connelly, I think there has to be any number of cases where a licence doesn't have to be applied for by a crown corporation, where there would be quite a massive impact on the local community that would exempt them.

Mr. Chairman, I'm thinking, for example, of the Windsor area because there are a number of proposals to have a third crossing. Maybe I should get that on the record. That is going to invoke not only this legislation, but how this legislation is going to be made up with the provincial legislation and the state legislation in Michigan, the environmental legislation there, and the federal legislation in the United States.

It's possible this may be some form of a crown corporation in terms of who's going to own and run it from the Canadian side. I don't see how there would be any need for a licence or any other way the legislation would be triggered if in fact they had the exemption as a crown corporation. So I use that as just one example where I'm very concerned that this does not cover that type of situation, that it would allow for it to go ahead in effect without an environmental assessment.

I would think there are any number of other situations in the country where crown corporations would be taking on quite significant development projects that wouldn't get caught by this legislation or in fact would be excluded by the legislation as it's drafted.

The Chair: Thank you.

Mr. Bailey.

Mr. Roy Bailey: Madam Redman, what I see here is that there's a fear of defining federal authority, but as you say, only within the context of this bill. But I see that, as Mr. Comartin said, there may be authorities created that aren't in this bill that would automatically come under it.

This bill is not going to list in any way all the crown corporations, i.e. the CBC, Canada Ports, and so on, but the possibility of coming under this bill, yes, it is there. I don't see a problem with that as long as that phrase is there within the context of this bill. That's it. So by using the words "federal authority" I don't think we want to start listing all of these things and close them off, so why don't we just leave it that way and if they come under the authority they're already there and we don't have to have any special directions at that time?

● (0940)

The Chair: Please comment, Madam Redman.

Mrs. Karen Redman: Thank you, Mr. Chair.

I would ask Heather Smith... I don't know, Mr. Chairman, if we have at a previous date introduced the people from the department, but Heather Smith is our legal counsel…

The Chair: She is well known and very popular in this committee.

Mrs. Karen Redman: I would ask her to comment.

The Chair: Please go ahead, briefly, please.

Ms. Heather Smith (Senior Counsel, Legal Services, Canadian Environmental Assessment Agency): I wanted to clarify as a matter of law what the effect of Karen Kraft Sloan's amendment would be. In striking out these words in the context of the definition of federal authority, it makes all crown corporations automatically federal authorities by virtue of other parts of the description of federal authority that describe them, except that part of the definition currently says they are not federal authorities. What the member's proposing to do is to strike that out so that the definition would read all crown corporations are federal authorities.

The Chair: Are there any further comments?

Yes, Madam Kraft Sloan, Mr. Reed, and Mr. Tonks.

Mrs. Karen Kraft Sloan: Yes, Mr. Chair.

I also wanted to point out to the members that I believe after seven years of the legislation we maybe only have one set of regs for a crown corporation. It does cause some concern that there isn't universal application of environmental assessment for different types of federal organizations or entities. I think it's important to bring crown corporations under the federal Environmental Assessment Act.

One has to have a further examination of the crown core list when we look at Atomic Energy of Canada, the Business Development Bank of Canada, the Canada Lands Company, Canada Mortgage and Housing, and the Export Development Corporation.... There was some concern as to whether they were covered because of a different act of Parliament, but there are some significant crowns that are not given the same universal application of treatment. So I would encourage members to support this motion.

The Chair: Thank you.

Mr. Reed.

Mr. Julian Reed (Halton, Lib.): Thank you, Mr. Chair.

I'm really torn on this one. I've just heard arguments both in favour and very much against. I would refer to the Nuclear Safety Commission that was mentioned a few minutes ago.

The Nuclear Safety Commission this last year authorized the storage of high level nuclear waste on top, on the surface. Who's going to police the Nuclear Safety Commission?

It's a decision and an approval that runs absolutely counter to safety, because the product being stored on the surface is going to be with us long after the casings have decayed. Mind you, we'll all be long gone, but our great-great-grandchildren are going to be around to experience it. So I'm torn there.

The other area of concern has to do with the business of the tower that was brought up. Here you have a situation where the Americans, presumably, will be doing their own environmental assessment of whatever it is and we will be doing our own. How do we bring those two together if we have a blanket section here that simply standardizes every crown corporation or every crown entity?

I'm not sure where I'm going with this issue, but I am very much torn, Mr. Chairman. I think we have to discuss it in more detail.

● (0945)

The Chair: We will leave you in that state of suspended animation because not even Mr. Connelly can help you out of that.

We could conclude briefly with Mr. Herron or Mr. Comartin and then Mr. Savoy.

Do you have any comments, Mr. Savoy, briefly?

Mr. Comartin.

Mr. Joe Comartin: We've heard the reference to the CBC, if I understood Ms. Redman's comments, as an example of why we should exclude them, because they would never be involved in it. However, I have, not in my riding but in my home city, this huge tower that CBC built right beside the river. Quite frankly, I think an environmental assessment, if done today, would have prevented them from doing that. So even the CBC from time to time, because of some of the development work that they do, should be subject to this legislation. I think using them as an example is not a very good one. That tower shouldn't be there for a whole bunch of environmental reasons.

The Chair: Thank you.

Mr. Savoy.

Mr. Andy Savoy (Tobique—Mactaquac, Lib.): Thank you very much, Mr. Chair.

In looking at the counter-argument to this amendment, the government is saying that we have existing legislation with some of the authorities and some of the crown corporations. It's also saying that down the road the minister will develop specific legislation regarding each crown corporation.

I cannot support that approach and I have to support Mrs. Kraft Sloan's amendment, even though I know I'm relegated to the back benches forever with Mrs. Kraft Sloan in terms of the new government. It seems to me the logical approach has to be to support Mrs. Kraft Sloan's amendment in making the crown corporations accountable for their environmental assessments.

The Chair: All right.

Briefly, Mr. Tonks.

Mr. Alan Tonks: Yes, Mr. Chairman.

I'm not sure where this probing is going to go, but in terms of compelling reasons to exempt a crown corporation, I want to use the illustration that Mr. Comartin has introduced in terms of the tunnel.

I'm not suggesting in this question that exemptions to an EA should be a convenience for a crown corporation where there are barriers of an international nature now with respect to two different pieces of legislation, but let's put the scenario forward. We have a very compelling reason for another border crossing with respect to all of the implications that don't need to be pursued, the case being, could there be under the Canadian Environmental Assessment Act an exception with respect to crown corporations in the instance of the inability or the necessity to find a congruity between two acts with respect to the tunnel, in place of a provision that would not allow crown corporations to go ahead in a different manner, other than in specific circumstances?

I'm not making myself clear, I know, but you're going to have to give me the benefit of the doubt on this, because I can see a mechanism that would be invoked where the crown corporation, instead of not being allowed, would have to take certain adaptive measures, if you will, or mitigating measures, or whatever, to find congruity and harmony between an American environmental assessment in order that the assessment could go forward.

So is there an amendment possible to the approach taken to Mrs. Kraft Sloan's amendment that would satisfy the public interest without treating two entities under the law differently, which obviously we should avoid?

● (0950)

The Chair: This is quite a difficult question.

Mr. Connelly, would you like to comment briefly?

Mr. Robert Connelly: Mr. Chairman, your description of the question is probably quite appropriate. It is a tough one.

I might just make a few comments. I'm not sure I can answer your question directly, Mr. Tonks.

In the example used—and I do appreciate that it's just an example—I am quite confident that the particular project of the tunnel will be subject to CEAA, not through any crown corporation aspect but rather because of a number of other triggers under the act—federal funding potentially; potentially the Fisheries Act because of possible impacts on habitat in the river; possibly also the Navigable Waters Protection Act, because of, again, the potential for interference to navigation. So I just want to illustrate that in some instances there are other triggers, if I can use that term. We often use that to bring some of those projects under the act.

However, in all fairness, Mr. Comartin, you did point out that there are likely circumstances where the act would not apply to an undertaking of a crown corporation. I think that is correct, at the same time. So I'd just like to clarify that.

The Chair: Mr. Reed, Madam Redman, Madam Kraft Sloan, and then we can vote.

Mr. Julian Reed: Just to prolong the agony for me here, if in fact the bill stands without this amendment, how could we bring an entity like the Nuclear Safety Commission under scrutiny?

Mr. Robert Connelly: Actually, the Canadian Nuclear Safety Commission does trigger the assessment process in most instances where it licenses projects at the present time. So I think perhaps the example you might be using might be associated with the Bruce nuclear power station in Darlington—

Mr. Julian Reed: And Pickering.

Mr. Robert Connelly: Okay.

CNSC is not a crown corporation, I would point out, so they are a federal authority under the act. They are covered under the act. So any time there would be a proposal for storage of nuclear fuel waste above ground by, let's say, Ontario Power Generation, or whatever the proponent might be, prior to the granting of any licence to allow that to occur by the CNSC, they would have to apply the Canadian Environmental Assessment Act, undertake an environmental assessment, before deciding on whether or not to grant such a licence.

So in summary, the CNSC is actually subject to the act as a federal authority now because they're actually not a crown corporation.

The Chair: Thank you.

Mr. Reed, Madam Kraft Sloan, and then we vote.

Mrs. Karen Kraft Sloan: Mr. Chair, I was just going to request that we go to a vote on this.

The Chair: All right. Madam Kraft Sloan's motion is before us. The motion has been moved.

(Amendment agreed to)

[*Translation*]

The Chair: Mr. Bigras will now present the Bloc Québécois' first amendment.

Mr. Bernard Bigras: Thank you, Mr. Chairman.

We are also proposing an amendment to clause 1, as you can see from the text. Basically, this amendment is in response to representations made by the Cree nation to the committee when it examined Bill C-9. This amendment would exempt the Cree nation from the provisions of the Canadian Environmental Assessment Act in light of the James Bay and Northern Quebec Agreement which already provides for environmental assessments. The Council argued that section 22 of the Agreement which confers a special status upon the Cree nation should apply and that the CEEA does not recognize this special status. Therefore, since the federal government is a signatory of the Convention, accordingly, it should recognize the special status of the Cree nation.

● (0955)

The Chair: Thank you, Mr. Bigras.

Any comments, Mr. Connelly or Ms. Redman?

[*English*]

Mrs. Karen Redman: We do not support this motion. The proposed amendment really appears to weaken the principle of this bill, which is a law and has a general application that is meant to apply right across Canada. None of the land categories created under the James Bay and Northern QuebecAgreement are federal lands within the meaning of the definition in this bill, and the amendment deviates from the principle of a uniform application of the Environmental Assessment Act.

Again, I would remind this committee that Chief Matthew Coon Come of the Assembly of First Nations told the committee when he was here:

> Certainly I would agree that there has to be some kind of national governing policy, because at times we as first nations may want to do certain things that may contravene certain legislation. The province also does the same thing. So you have to have some national standards.

Because of this, we will not support this amendment, because it deviates from the universality of application of the Canadian Environmental Assessment Act.

The Chair: Thank you.

Are there any further comments?

Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras: Thank you, Mr. Chairman.

I might also remind you of what Mr. Saganash said, namely that section 22 called for environmental assessments. Therefore, my question is this: could officials kindly explain to us the scope of section 22 of the agreement in terms of environmental assessments? What does the agreement have to say on the subject? Does it in fact make provision for environmental assessments and are these assessments conducted within the territories covered by the agreement deemed adequate?

[*English*]

Mr. Robert Connelly: Mr. Bigras is correct that under the James Bay and Northern Quebec Agreement there is an environmental assessment process that was set up many years ago when that land claim agreement was enshrined in federal law.

I find it difficult, Mr. Bigras, to comment on the adequacy of the assessments, other than to conclude that they have such a process. What occurs at the present time is that we have certain situations that arise where a project will be subject to the process under the convention and, in addition, will be subject to the Canadian Environmental Assessment Act.

What we do in those circumstances is work out a cooperative review with the regime under the convention, and do it cooperatively, to apply our resources and our knowledge collectively to review the project, and in so doing, we attempt to avoid duplication.

[*Translation*]

Mr. Bernard Bigras: I have one final brief question before I call for the vote, provided there are no further comments.

Could anyone tell me if provincial environmental assessment acts recognize the provisions of the James Bay and Northern Quebec Agreement?

[*English*]

Mr. Robert Connelly: Mr. Bigras, perhaps I could ask a question for clarification. Is your question related to whether or not provincial governments apply their provincial process to projects on those lands?

[*Translation*]

Mr. Bernard Bigras: I'm talking more specifically about Quebec legislation. To the witness's knowledge, does Quebec's environmental legislation recognize the provisions of the James Bay Agreement?

● (1000)

Mr. Robert Connelly: You're probably thinking about the Environment Quality Act, Mr. Bigras. I believe this particular piece of Quebec legislation does not apply within the territory covered by the James Bay Agreement.

Mr. Bernard Bigras: That wasn't my question. Does the Quebec act contain a reference to the James Bay Agreement, or even acknowledge the agreement's existence? I wasn't asking if it was applied. I'm talking about the legislative framework and about the act. Does the Environment Quality Act recognize the Agreement?

Mr. Robert Connelly: I'm not 100 per cent certain, Mr. Bigras, but I do know that the provincial legislation does not apply within the territory in question. Therefore, I can't answer your question with either a yes or a no. I'm not an expert on this particular Quebec act.

Mr. Bernard Bigras: Could Ms. Smith answer the question then? Does the Environment Quality Act recognize the James Bay and Northern Quebec Agreement? Does the legislation acknowledge the Agreement's existence at all?

Ms. Heather Smith: Unfortunately, I can't answer your question either. I'm sorry.

[*English*]

The Chair: Mr. Comartin and Mr. Bailey.

[*Translation*]

Mr. Joe Comartin: On the same subject, should other provincial agreements such as the ones in place in Alberta or Saskatchewan, for example, be recognized as well?

[*English*]

The Chair: That may be a bit too hypothetical a question—

Mr. Joe Comartin: No, Mr. Chair, I'm specifically asking if there are other conventions or agreements that we've made with first nations that should also be caught if we're going to do this. Are there other ones that should be included as well?

Mr. Robert Connelly: Mr. Comartin, Mr. Chairman, many negotiations are occurring throughout Canada with respect to land claims, of course. This situation is evolving considerably throughout the country. The principle that we have put forward as a federal government is that we should look at the application of the Canadian Environmental Assessment Act in those circumstances.

We also recognize that each of the various land claims bodies may well have their own environmental assessment processes that will evolve as well, though, so the principle that we have espoused as a government is that we should work together cooperatively in those instances, sharing our knowledge and our expertise. If we do such an assessment cooperatively, we should be able to avoid duplication of effort. Then, if the federal government has a decision to take and the particular aboriginal group under a claim has a decision to take with respect to a project, they can take those decisions on the basis of the common assessment, presumably.

Mr. Joe Comartin: May I ask a supplemental question, Mr. Chair?

The Chair: We'll hear from Mr. Bailey, and then we'll come back to you.

Mr. Roy Bailey: On this motion made by Mr. Bigras, let's make something clear here. There's no doubt that, within every province, there's some program that is unique to that province. If you want to take a look at the uranium development in Saskatchewan, not only does that fall under this bill, it also falls under any other proposals that the provincial government has. With what we're doing here, then, we can have an exemption.

By the way, the land claims act—this is going on, sometimes within my constituency—is indeed subject to the environmental act and this bill. I think that's part of the land claims deal.

I think we're going off on something that doesn't really belong here. It belongs to the constitutionality between the province and the federal government, and we would never solve that in this committee anyway.

The Chair: Thank you, Mr. Bailey.

Madame Scherrer, Mr. Comartin, and then we'll vote.

[*Translation*]

Ms. Hélène Scherrer (Louis-Hébert, Lib.): Thank you, Mr. Chairman.

I have a question for Mr. Connelly. In cases where both the provisions of the agreement and of the new legislation apply, which will take precedence should a conflict arise? How will this work on a day-to-day basis?

● (1005)

[*English*]

Mr. Robert Connelly: Madame Scherrer, Mr. Chairman, I don't believe we ever get into that difficulty, because in effect what happens is this environmental assessment process provides advice to a decision-maker. Similarly under the James Bay and Northern Quebec Agreement the result of the assessment is used as advice to take a decision. It might be to construct the project and so on. In each case it provides advice. Both apply, and there really would be no provision for one having precedent over the other in this instance.

The Chair: Merci.

Mr. Comartin, do you have another question?

Mr. Joe Comartin: I was inclined, Mr. Chairman, to support this. I'm just worried that by making it as specific as we are, we are then excluding any of the other agreements or conventions.

The Chair: I don't think anyone can give you an ultimate answer to that, but most likely you would not be excluding, because there's nothing spelled out to that effect. I don't think that the fear of exclusion would be one that you should be overly worried about.

Mr. Joe Comartin: I may be wearing my lawyer's hat too strongly here, Mr. Chairman. But the difficulty is we have certain rules of interpretation. By including this one and maybe by just including the two for the Yukon and the Northwest Territories and Nunavut, we may have then precluded this application to any other ones that either exist now or will exist in the future.

The Chair: There's certainly nothing to that effect in print. We have to stop at a certain point with hypothetical assumptions.

Mr. Bigras, Madam Kraft Sloan, and then we vote.

[*Translation*]

Mr. Bernard Bigras: Mr. Chairman, Ms. Scherrer has asked a very timely question, one that is highly complex. I think we need to get an opinion from the Justice Department on the whole issue of land claims and the application of certain agreements and acts. This would allow us to come to a decision with full knowledge of the facts. The two witnesses cannot answer my question and in my opinion, it's important to know the scope of this amendment, and how it would apply.

Therefore, could I suggest the committee seek an opinion from the Justice Department, not just regarding my amendment, but also regarding the proposed legislation and how it would apply to the James Bay Agreement? I think that as parliamentarians, the responsible thing for us to do is gather all of the facts before making a decision.

The Chair: Mr. Bigras, I think you would be better off putting that question to the Justice Minister during Question Period.

Mr. Bernard Bigras: Well, that's a good idea.

[*English*]

The Chair: Madam Kraft Sloan, we will take a vote after your intervention.

Mrs. Karen Kraft Sloan: Actually, Mr. Chair, I was going to suggest that, because it's not common practice to vote on this section of the act so early, even though we did just take a vote, and because there are some questions in people's minds, we should stand this down for now and come back to it. I think it's a very important amendment and it needs further clarification.

The Chair: No, I don't think so. I think we had a sufficient discussion—

Mrs. Karen Kraft Sloan: Did you move it?

[*Translation*]

Mr. Bernard Bigras: I have the right to stand the amendment. At this stage of the process, I can decide to stand the amendment because others have made similar decisions. I don't see why I couldn't do that, when others have been allowed to go this route.

A voice:I agree.

Mr. Bernard Bigras: As the saying goes, what's sauce for the goose is sauce for the gander.

● (1010)

[*English*]

The Chair: It has not been moved; therefore Mr. Bigras can reserve this motion on technical grounds. He can do that, so we'll revisit it at a later date. But from now on I will make sure that whenever we start a discussion the amendment is moved, so that we do not have to repeat debates even if the matter is of such profound significance. I think this goes beyond the scope of this committee.

I will call now amendment G-2. If this amendment is adopted, then I'm informed that amendment KS-2a will be put.

Madam Redman, with Madam Kraft Sloan following.

Mrs. Karen Redman: Thank you, Mr. Chair. I am pleased to move this amendment on behalf of the government. As colleagues read it, I will give a little explanation.

This amendment actually creates a new interpretive clause. We feel it closes a potential loophole created by the Federal Court's Red Hill Creek decision. That was the expressway in Hamilton, about which I'm sure all members will recall having interventions.

The government has always interpreted the phrase “irrevocable decisions” in the act as referring to decisions made by federal authorities. For example, section 11 requires federal authorities to ensure that an environmental assessment is conducted as early as is practical in the planning stage of the project and before “irrevocable decisions” are made.

Because of the Federal Court ruling in the Red Hill Creek expressway decision, proponents argued that they had taken irrevocable decisions, such as arranging finance, and were therefore exempt from the Environmental Assessment Act. The proposed amendment before you clarifies the understanding of what falls within the definition of “project”. It continues to be a project for the purposes of this act until a federal authority—for example, a department or a body regulated under the act, such as a Canadian port authority—takes a decision following an environmental assessment.

In other words, projects that need a federal decision cannot proceed until the requirements of this act have been met. Mr. Chair, we feel this will close the loophole and clarify some of the issues emanating from that court decision.

The Chair: Thank you.

Mrs. Karen Kraft Sloan: I have a point of order, Mr. Chair.

The Chair: Fine, make your point of order.

● (1015)

Mrs. Karen Kraft Sloan: I wanted to see clarification, Mr. Chair, because this amends the same clause of the bill and there is some substantive difference between these two amendments. Generally we have the opportunity to discuss the various amendments before we vote on one that precedes an amendment in the book.

The other point I wanted to make is that both amendments amend clauses of the bill yet to come, and we don't know what those clauses are going to be like until we get to them. As Mr. Comartin pointed out, he requested that his be stood down simply because his amendment affected different aspects of the bill as well in different amendments. I have other amendments in the bill that reference the same subject matter, and I would like this to be stood down for now.

We had a discussion at the beginning of this session where members had said yes, there are certain things they would like to discuss and vote on now and other things they would like to stand down. I had mentioned at that time, Mr. Chair, that I had a motion I was prepared to speak to and vote on today, but another one which I was not. This is the other one that I was not prepared to speak to today, and you agreed with me, Mr. Chair. So I'm requesting that we stand this down for a variety of reasons, as I've already outlined.

The Chair: I don't recall having discussed KS-2a this morning, so this comes as news to me.

It is true that there is a great similarity between G-2 and KS-2a, and in addition there is a substantive conflict between the two. Therefore we have to find a way of discussing both in a parallel fashion before taking a vote.

I'm suggesting that we discuss both, complete the discussion on G-2, then have a discussion on KS-2a, and then proceed with a vote on each one of them. I don't know any other way.

Mrs. Karen Kraft Sloan: Mr. Chair, as we had identified before this rather unorthodox practice of going straight to the definitions clause, we had—

The Chair: It is not unorthodox. There is no rule that says what the sequence should be, but the point was made earlier in the meeting that a discussion of clause 1 would be helpful and therefore we initiated the discussion.

I will now seek guidance here on how to handle amendments G-2 and KS-2a at the same time.

Mrs. Karen Kraft Sloan: Mr. Chair, as I said at the outset, there was an amendment that I was prepared to discuss and vote on as one of my amendments. With respect to the other amendment I had, I was not prepared to do that this morning. The committee agreed to that for members who were not prepared to go ahead with certain amendments, because we were working under the assumption that we would be going to clause 2 and not starting with clause 1.

This is a brand new amendment that has just been put before the committee. It affects other amendments that I have later on in the package, and Mr. Comartin already has—

The Chair: Which one is the brand new motion?

Mrs. Karen Kraft Sloan: Motion KS-2a is a brand new motion and affects other motions that I have in the package. They are linked substantively.

Mr. Comartin has already pointed out, Mr. Chair, that he was able to stand his motion down simply because that motion affected other motions and he wasn't prepared to discuss clause 1 amendments.

As well, Mr. Chair, both the government's motion and my motion refer to clauses of the bill that the committee has not yet had an opportunity to discuss. We may want to see how any amendments to those clauses affect those particular clauses, so for those reasons—and I have identified a number of them—I'm requesting that we stand this down for now and return to it.

The Chair: Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: Thank you, Mr. Chairman.

The problem we're currently having confirms my suspicions, namely that we should have moved on to the gist of the bill before discussing the definitions. It seems that in the past, we have always endeavoured to resolve non-contentious issues first and, if at all possible, set aside any potentially divisive issues, in order to speed up the process. Otherwise, we will never be done with it.

I'm not disputing the need to discuss certain clauses, but when we think one area could be problematic, we should keep an open mind, set it aside and move on to something else on which we can achieve a quick consensus.

I'm firmly convinced that we can agree on a number of clauses without too much discussion. Let's set aside any contentious issues, keep an open mind and show some flexibility. That way, we should be able to wrap up our study of this bill before the holidays.

The Chair: We agree completely with you on this score.

[*English*]

Therefore, I will seek the consent of the committee to set aside discussion on both G-2 and KS-2a until later.

Madam Redman.

Mrs. Karen Redman: That's perfectly agreeable to us, Mr. Chair.

The Chair: Good. Thank you very much.

(Amendment allowed to stand)

(Clause 1 allowed to stand)

(On clause 2)

The Chair: We are now moving to clause 2, beginning with the amendment KS-3. NDP-2, if adopted, would not make it possible to deal with KS-3.

Mrs. Karen Kraft Sloan: Perhaps Mr. Comartin and I could have a discussion of our motions before we make a decision as to which one will be moved first.

Is that agreeable to Mr. Comartin?

Mr. Joe Comartin: That is agreeable.

Mrs. Karen Kraft Sloan: Actually, my motion is KS-3a, as a new motion. It is KS-3a and it would have been given to you this morning.

● (1020)

The Chair: KS-3a replaces KS-3, does it?

Mrs. Karen Kraft Sloan: Yes, it does.

The Chair: When can we expect a resolution of this discussion?

Mrs. Karen Kraft Sloan: Well, Mr. Comartin can start, and then I'll continue.

The Chair: Mr. Comartin, do you want to start?

Mr. Joe Comartin: Thank you, Mr. Chair.

Ms. Kraft Sloan's provision is more extensive than mine, so I will address just the first part of the amendment that we're proposing.

Just so we're clear, this is within the purposes of the legislation. The reason for the amendment is to expand those purposes to include the socio-economic and cultural effects, which are not in the existing legislation or in Ms. Kraft Sloan's amendment. So our amendment would change that.

I think the other significant part of the amendment, Mr. Chair, is in the last two lines, which read: "in order to ensure projects do not cause significant adverse environmental effects".

Mr. Chair, if these words are added and the amendment goes through, they will reasonably or significantly expand the scope of an environmental assessment. It has not been the type of terminology or criteria that have been used up to this point. But it would give the hearing officers who are making decisions in this regard quite significant expanded powers to do the environmental assessments and to take into account adverse environmental effects.

The Chair: So in essence, Mr. Comartin, are you suggesting that proposed amendment KS-3a, paragraph (a), would end with the same words as you have in your amendment?

Mr. Joe Comartin: I'm sorry, Mr. Chair, but I don't have KS-3a.

Oh, I have it now, Mr. Chair, but I haven't seen it before.

The Chair: Could you please look up proposed paragraph 4(1)(a) in the amendment KS-3a. It almost ends with the wording in your amendment, but not exactly so.

So are you suggesting by way of a friendly amendment that KS-3a end with the words in paragraph (a): "in order to ensure projects do not cause significant adverse environmental effects"?

Mr. Joe Comartin: That would be the major difference.

Actually, the second line is different as well, Mr. Chair, in the sense that I set out more detail about the government policy, plans, and programs.

The Chair: So we'll have to find out what Madam Kraft Sloan proposes to do in relation to Mr. Comartin's amendments.

Mrs. Karen Kraft Sloan: Mr. Chair, while I agree there are similarities between our two amendments to proposed subsection 4 (1), there are still some substantive differences. Mine talks also about "careful and precautionary manner" and identifies federal authorities.

So if Mr. Comartin is interested, what I would recommend as a friendly amendment is that we add "the environmental, socio-economic and cultural effects of projects". Perhaps Mr. Comartin can think of how he would like to draft a friendly amendment that adds "the socio-economic and cultural effects of projects" to my proposed amendment.

But members will see that there are substantive differences other than just socio-economic and cultural effects.

May I proceed with that?

● (1025)

The Chair: Yes, if you please.

Mrs. Karen Kraft Sloan: If Mr. Comartin wants to take a few minutes to draft an amendment that draws these things and puts them into mine, that's perfectly fine. He can take the time now to do that. Then I'll explain my amendment, Mr. Chair.

The Chair: We need a new version of proposed paragraph 4(1)(a) in the KS-3a amendment. All right.

Madam Redman.

Mrs. Karen Redman: Thank you, Mr. Chair. I appreciate the cooperative nature of the operation of this committee. However, it seems to me we're crafting fairly major changes, and as I read these two amendments, I find it somewhat puzzling how they're going to reconcile their differences. I suggest we stand them down. They can take time away from this committee to see if they can reach a consensus, and come back. Then we will all have it written before us and be able to give it thoughtful consideration.

We have just seen Ms. Kraft Sloan's amendment this morning, and I don't think that's enough time for any of us to synthesize it.

The Chair: That's a very sensible suggestion.

Mrs. Karen Kraft Sloan: We can stand down amendments NDP-2 and KS-3a. I don't think it will take a lot of time to craft the changes.

The Chair: We can move to

[*Translation*]

the motion moved by Mr. Bigras. You have the floor.

Mr. Bernard Bigras: Thank you, Mr. Chairman.

This amendment calls for increased federal-provincial cooperation. I think we can all agree on this objective, but consideration must always be given to provincial jurisdiction. I know the government party will agree that the environment is one area of shared jurisdiction. We simply want some assurances that the process put in place will be respectful of provincial jurisdictions.

I don't foresee any problems here. It's more of a safety net. I know the government likes the idea of a safety net. Well, we want to see some kind of safety net in the act to ensure that provincial jurisdictions are considered. We're looking for a safety net for the provinces.

[*English*]

The Chair: Merci.

Madam Redman.

Mrs. Karen Redman: Thank you, Mr. Chair.

This comes under the purposes section of the act. One of the purposes is to signal how important cooperation and coordination are between provincial and federal governments when they are required, through their respective legislation, to act on environmental assessment of a project.

What is added by Mr. Bigras' amendment, with due regard to the powers conferred to the provinces, is really not fair. Cooperative assessments are obviously mindful of the jurisdictional differences between the federal government and provinces. It is through the cooperative efforts of both levels of government that Canadians and the environment are actually benefited. So we don't see this as any kind of clarification, and as such, we oppose this amendment.

The Chair: Are there any further comments?

Mr. Bailey.

Mr. Roy Bailey: I agree with Madam Redman.

Let's make it clear. We have three bodies in most cases of jurisdiction: the federal government, the provincial government, and many times the municipal governments. Cooperation is not just a one-way street; cooperation is the link that joins these things together.

The statement we have here involves the building of a dam in the southern part of my constituency. It meets the federal and provincial requirements of the assessment act, but because it goes into the States, another body gets involved. I've nothing against it, and if it's moved forward I would support it. But I think it's rather ambiguous. It's part of the overall act, is it not?

The Chair: It's not supposed to be ambiguous.

Mr. Roy Bailey: That's the point. That's the question I have to ask myself. I don't see the purpose of this amendment. But if the rest want to support it, go ahead.

● (1030)

The Chair: Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: Mr. Chairman, the situation is somewhat paradoxical. Unless the interpretation was wrong, Mr. Bailey claims to support the amendment, but not to understand where it originates. I'm rather surprised to hear Mr. Bailey say that the amendment doesn't make sense in the context of this bill, because this isn't the position his party has traditionally taken. I don't think it's necessarily included. In any event, this amendment reflects a legitimate desire that Quebec' has had since 1992. The government of Robert Bourassa rejected this kind of environmental assessment. Mr. Lincoln knows very well what I'm talking about. The process imposed on Quebec was rejected.

Today, we're prepared to acknowledge that there is federal legislation in place and we're prepared to work within the framework of Bill C-9, and perhaps even throw our support behind the proposed legislation. However, we feel we are entitled to a safety net. All I'm saying is that the process must be mindful of provincial jurisdictions. We're not calling the process into question. We merely want some guarantees. If we can get these guarantees, Mr. Chairman, perhaps we can live with this legislation. Otherwise, as the parliamentary secretary has just said, we might be inclined to question the government's desire to respect areas of provincial jurisdiction. If the government opposes this amendment, it will send a clear message in terms of how this bill should be interpreted. This goes to the very essence of the bill and will confirm Quebec's opposition to the process which dates back to the Bourassa government in 1992.

The Chair: Have you presented your motion?

Mr. Bernard Bigras: I have.

The Chair: Fine. Ms. Scherrer.

Ms. Hélène Scherrer: I fully understand Mr. Bigras and his determined defence of his position. However, the bill aims "to promote cooperation and coordinated action between federal and provincial government". To my mind, this clearly reflects the government's mission and its very clear, specific and laudable objectives. To add " with due regard to the powers conferred to the provinces" reflects a total lack of confidence in the government or its primary objective. I for one have confidence in the government and I am delighted that the bill includes a reference to the aim to promote cooperation between the federal and provincial governments. I agree that the federal government must act with due regard for provincial powers, but I'm fine with the reference to promoting cooperation. I see no need to add "with due regard to the powers conferred to the provinces", because this is already implicit.

The Chair: Go ahead, Ms. Redman.

[*English*]

Mrs. Karen Redman: Thank you, Mr. Chair.

I just wondered if any of our staff had anything they wanted to add before we voted on this amendment.

The Chair: Mr. Connelly, briefly.

Mr. Robert Connelly: Thank you Mr. Chairman.

From our perspective, it's not clear what this phrase would add. We feel that cooperative assessments are indeed mindful—and have to be mindful—of the jurisdictional authorities of both governments. We see the advantage in cooperative assessment, as I mentioned earlier, from the perspective of shared expertise and resources that can be devoted to ensuring there is a high-quality assessment being done. Those are a few points I wanted to add to the discussion.

The Chair: Thank you. We'll put the question now.

[*Translation*]

Mr. Bernard Bigras: Normally, I would have the right to respond.

● (1035)

The Chair: Yes, Mr. Bigras, if you wish.

Mr. Bernard Bigras: Mr. Chairman, Ms. Scherrer maintains that there is no need to specify in the bill that the federal government should show due regard for the powers conferred to the provinces. However, on March 18, 1992, the Quebec National Assembly unanimously passed a motion denouncing the process. Assembly members felt that the process was a blatant violation of provincial powers. If Ms. Scherrer and officials truly believe that this is implicit in the bill, than why not state it explicitly? I have to wonder. It raises some doubt in my mind because they don't want to be too specific when it comes to provincial powers. Given their reluctance to state the obvious, I feel this speaks volumes about the government's desire to show due regard for provincial powers. I value cooperation and believe cooperation is important, but why the reluctance to be explicit?

[*English*]

The Chair: *Merci.* Are you ready for the question?

(Amendment negatived)

The Chair: We have amendment NDP-3.

Mr. Comartin, if NDP-3, your motion, is adopted, I'm told we cannot then deal with CA-2 and G-3. The suggestion that could be made at this point is for the mover of this motion, Mr. Comartin, to speak to Mr. Lunn, if he hasn't already done so, so as to combine their amendments into one.

Mr. Joe Comartin: I have not had the opportunity to do that, Mr. Chair, and obviously, since he is not here today I can't do it at this point. I have no problem standing the three of them down. I will speak to him about it to see if we can reach a consensus.

The Chair: Thank you. We'll stand this motion, as well as CA-2 and G-3.

Mrs. Karen Redman: What is the impact on G-3, you're suggesting?

The Chair: We're standing all three motions, namely the motion in the name of Mr. Comartin, the one in the name of Mr. Lunn, and G-3.

Mrs. Karen Redman: I understand that, Mr. Chair, but I guess I'm asking for clarification. We've suggested Mr. Lunn and Mr. Comartin speak together. Where does that leave the government?

The Chair: The government will be eventually approached in the fullness of time.

Next is amendment PC-1. Mr. Herron.

Mr. John Herron: I would like to withdraw the amendment or have better wording than what was written originally, because I think the wording is confusing as drafted. You see the officials nodding in agreement.

The purpose of it is to ensure that the environmental effects of programs and policies are considered under the act, so that if we had a policy pertaining to the cod fishery or what have you, the environmental effects would be taken into consideration.

In simpler language, and only with indulgence from the chair, I would propose the amendment simply read, "...to ensure that the environmental effects of programs and policies are considered under this act". Right now, we only consider environmental effects on projects or actual physical work. The objective we're pursuing here is to ensure, when we have a public policy initiative brought forth, that we know what that policy is leading us into. It's intentionally trying to—

● (1040)

The Chair: Mr. Herron, for clarity purposes, what you are suggesting is a change in the wording so that your amendment would read, "...to ensure that the environmental effects of programs and policies are considered under this act"?

Mr. John Herron: That's right.

The Chair: Well, we would have to get an opinion from Mr. Connelly on this change.

Mr. Robert Connelly: Mr. Chairman, I apologize. We were just conferring on this. I'm not sure we have the wording that is actually proposed—

The Chair: Mr. Herron, would you like to read it?

Mr. John Herron: It involves the same lines as we had in PC-1 but simply says "to ensure that the environmental effects of programs and policies are considered under this act".

The Chair: I have some difficulties in understanding the implications of the word "considered", because "considered" is a term that has such broad application. You can consider favourably; you can consider negatively. Considering is really a word that doesn't achieve very much.

So I would like to have an explanation as to how Mr. Herron interprets the word "considered" in this context.

Mr. John Herron: Perhaps the word "assessed" may be better, but essentially it means evaluated. Essentially the intent of the amendment would speak to the fact that one of the purposes of the act is to ensure that the impacts and the effects are considered earlier in the process, which saves time with assessments that we might have for projects down the road.

The purpose is to look at government policy more holistically in advance, so that we would know what implications we might have with respect to environmental assessment down the road. Again utilizing the idea of a policy related around the cod fishery, we would know that this policy is evaluated from an environmental perspective.

Are there any comments from the officials?

The Chair: Madam Kraft Sloan, Madam Redman.

Mrs. Karen Kraft Sloan: Mr. Chair, I would like to see clarification around "consider" as well. Perhaps the officials can provide us with that. I think it's a weasel word, but maybe weasel is better than nothing.

The Chair: Madam Redman, Mr. Lincoln.

Mrs. Karen Redman: Thank you, Mr. Chair.

I would ask the officials to comment. But my problem with this motion, even reworded in the more understandable language that Mr. Herron has suggested, is that I would say this is outside of the scope of this review and actually creates an obligation where there are no tools. This is a piece of legislation that is structured on projects and they're introducing programs and policies. I would ask the officials to comment on what this does to this review process.

Mr. Robert Connelly: Thank you, Mr. Chairman.

I would echo the point raised by Mrs. Redman that there are no subsequent provisions elsewhere in the act or in the bill to deliver on this. This is quite a different purpose than that for which the act was established in the first instance. It was set up as a means to deal with projects.

I would point out that the government does follow a cabinet directive on this issue. It has a cabinet directive for policies, plans, and programs. That was revised in 1999. I might point out also that the commissioner on environment and sustainable development has just recently indicated his intention to audit the performance of departments under that directive. So I would expect we will see results of that next fall, once that audit is complete.

It does have, as Mr. Herron has pointed out, a potentially very profound effect on the structure of the act as it is presently worded.

● (1045)

The Chair: I'm very close to declaring this amendment inadmissible, Mr. Herron, but we'll hear Madam Kraft Sloan.

Mrs. Karen Kraft Sloan: Mr. Chair, I just want a clarification on what "consider" really means.

The Chair: That question has been raised but not answered.

Mrs. Karen Kraft Sloan: May I hear what "consider" actually means, Mr. Chair?

Ms. Heather Smith: As a term, the word "consider" to me says "take into account, weigh"; it's just "turn your mind to" something.

The Chair: …[*Editor's Note: Inaudible*] ...amendments, thank you.

We move now to NDP-4. This is the first of many amendments whose thrust is the difference between—we're undertaking here a huge theological discussion—environmental assessment and the assessment of environmental effects. Mr. Comartin, in this motion, is launching this debate.

Perhaps we should start with the agency commenting on what the opinion of the agency is on the difference between environmental assessment process and the assessment of environmental effects.

Mr. Comartin, would you like to take the floor first?

Mr. Joe Comartin: Are you dealing with NDP-6 or NDP-4?

The Chair: It's NDP-4.

Mr. Joe Comartin: I didn't see the theological implications in that one, Mr. Chairman.

The Chair: Well, I'm so glad to hear that.

Mrs. Karen Kraft Sloan: I have a point of order, Mr. Chair.

The Chair: Please present your point of order.

Mrs. Karen Kraft Sloan: Yes, this overlaps with mine, so we'll have to stand this and come up with an agreeable amendment.

The Chair: Let me go to Mr. Connelly first on the general question, whether he can enlighten us on the difference between the two concepts: one, the one proposed—the environmental assessment process—and the other one, the assessment of environmental effects. We will be seized with these alternatives as we proceed into the bill. So a clarification now, or if you're not ready to do it today, then perhaps at a later date, would be helpful.

Mr. Robert Connelly: I could certainly deal with that question now if you wish, Mr. Chairman. I'm not sure it's the same motion necessarily that we're talking about, but we did have this discussion earlier, I think, to some extent, back in June. I wrote the chair a letter dated June 17 on this.

The difference between the two, as has evolved through the interpretation of this act over some time, is that the term "environmental assessment" refers to the process that is followed by federal authorities, whereas "assessment of environmental effects" is a term used for the process that is followed by those subject to regulation under the act, such as CIDA or others. It also refers to a process that might be used by a province, for example, so as to distinguish it simply from that followed by federal authorities.

The Chair: I understand that today there is a motion on this theme of environmental assessment by Mr. Comartin, by Mr. Herron, and by Madam Kraft Sloan. Is that correct?

● (1050)

Mrs. Karen Kraft Sloan: Mr. Chair, as I understand, we were talking about NDP-4 on page 15, which is the next motion. Mr. Comartin and I have both agreed that it overlaps, and we're going to work on something very friendly to deal with that. The next motion is NDP-5, which is on page 16. As I understand it, this deals with setting standards for federal-provincial environmental assessment harmonization issues—not to steal your thunder, Mr. Comartin.

So where exactly are we?

The Chair: There is a commitment by Mr. Comartin and Madam Kraft Sloan and Mr. Herron to work out the friendly amendment. We will then stand this particular—

Mr. John Herron: I would argue that mine's different from their two because it's consequential to the amendment that we passed earlier of Mrs. Kraft Sloan's. Essentially, by deleting the section that I'm proposing in this amendment, what it does is it removes any kind of ambiguity between having crown corporations within the act or not within the act. It eradicates that dual regime that we have.

Mrs. Karen Kraft Sloan: Could you please establish which page we're on?

The Chair: We are still on page 15. We will stand then the motion NDP-4. The motion in the name of Madam Kraft Sloan, which is already stood, we'll stand that once again. We leave NDP-4 and the other motion by Madam Kraft Sloan to be resolved when we come back at the next meeting. We will now deal with NDP-5.

Mr. Comartin, you have the floor.

Mrs. Karen Kraft Sloan: I believe this overlaps.

The Chair: Excuse me, just a moment. This stands alone. It does not overlap. That's why, as I am informed by the legal adviser.

We'll deal with NDP-5 now.

Mr. Comartin.

Mr. Joe Comartin: Thank you, Mr. Chair. I quite frankly was of the same mind as Mrs. Kraft Sloan that there was overlap here, but I agree with you that there in fact is not.

The intent of this amendment, Mr. Speaker—Mr. Chair. I keep wanting to give you that promotion, Mr. Chair. You'd make a great Speaker, just to butter you up a little.

What we want to be very clear about with this amendment, Mr. Chair, is to be sure that the end results of this attempt to coordinate between the provinces and the federal government do not at any time diminish the application of the whole legislation—hopefully, once amended, much stronger than what we have now—so that at the end of the day, the environmental assessment process will be as firm, forceful, extensive, and not be in any way compromised by coordination with the provincial level or any other authorities they may be dealing with. That's the intent of the amendment, that it's very clear that we maximize the use of the environmental assessment legislation.

Thank you, Mr. Chair.

The Chair: I'd like to shed some light—oh, sorry.

Mr. Joe Comartin: No, I'm done. I was just arguing with Mr. Bigras.

The Chair: Could we please seek some clarification from Mr. Connelly as to what we're doing regarding the net impact of this amendment on the proposed bill.

Mr. Robert Connelly: Mr. Chairman, we have some concern about it in the sense that what it might mean is that we might only be able to cooperate if the process met or exceeded the Canadian Environmental Assessment Act. That's the way I read it. We're not sure how we would necessarily be able to determine that with each of the provincial processes, and even if we could, I wonder if that would be desirable.

The process of cooperation we have now with provinces is that we will work together to meet the legal requirements of their process and the legal requirements of ours, so we don't get into a debate or a discussion as to which one is better than the other, frankly. That's the concern I think we have with this particular proposal.

● (1055)

The Chair: I have Madam Kraft Sloan, Mr. Bigras, Monsieur Bailey.

Mrs. Karen Kraft Sloan: Mr. Chair, just to seek clarity on this, if this amendment were to pass, does it not affect my previous amendment, which also has a proposed section (2) under proposed subsection 4(1)? The numbering system would change. Is that correct?

The Chair: I'm told there is no line conflict because this adds after line 31. That is my understanding.

Mrs. Karen Kraft Sloan: Section 4 of the act is renumbered as subsection 4(1) and it's amended by adding the following, which is a (2), and mine also is a (2).

Ms. Susan Baldwin (Procedural Clerk): In that case it's a simple editing process. When the bill is next reprinted, all the clauses, and those subclauses, and the sub-subclauses would have the proper numbering as to how they fit in. It would never be a problem.

Mrs. Karen Kraft Sloan: I just wanted to make sure that was correct.

[*Translation*]

The Chair: Mr. Bigras.

Mr. Bernard Bigras: Mr. Chairman, first of all, I'd like officials to clarify something for me. Then, I would like to comment on the motion.

First off, how does one go about determining if a provincial environmental assessment process, for example, meets or exceeds the requirements of an environmental assessment process conducted pursuant to the act? Who decides if the process conducted exceeds, meets or fails to comply with the act? How does this work? I'm having some difficulty getting my head around this issue. For example, who decides whether the Quebec process exceeds or meets the legislative requirements? Is that the responsibility of the federal government, or of an independent body?

I'd like to know before I comment on the motion.

The Chair: Go ahead, Mr. Connelly.

Mr. Robert Connelly: Thank you, Mr. Chairman and Mr. Bigras.

To answer your question, Mr. Bigras, we encounter the same problems as you do. It's difficult to give you a precise answer. Each process involves a number of similar factors, but it's very difficult, as I see it, to make this type of determination. We prefer not to do that.

Mr. Bernard Bigras: I see.

As far as the motion is concerned, I cannot support it, Mr. Chairman, and my colleague will understand why. The words "cooperation" and "coordinated action" are being watered down because rules are being set out in the text of the motion itself, the implication being that requirements must be met, even exceeded. The word "cooperation" loses some meaning along the way. History has shown that the federal and provincial governments have always had problems when it comes to cooperation, Mr. Chairman. If a Quebec project carried out within the province is assessed according to the environmental assessment criteria of the Bureau d'audiences publiques sur l'environnement, or BAPE, and the finding is that the process does not exceed the requirements of the Canadian legislation, notwithstanding areas of jurisdiction, ultimately does this mean that the federal act would apply within Quebec, even though this province has an environmental assessment process that works well, whereas in other provinces, that's not at all the case? I'd appreciate hearing what the witnesses have to say about this matter.

Have I understood correctly that ultimately, this would mean the federal environmental assessment process would apply if the Quebec process was deemed not to exceed the requirements spelled out in the act?

● (1100)

The Chair: Thank you, Mr. Bigras.

[*English*]

Mr. Bailey, Mr. Mills, Madam Kraft Sloan, Mr. Lincoln, Mr. Herron.

Mr. Roy Bailey: Mr. Chairman, to the mover, I have a little bit of difficulty when the province and the federal government get together and they jointly do an environmental assessment. When the project is finished, what does it mean that it meets the demands and the criteria? What does it mean if it's over that? When I say to exceed something, would you be violating the act in itself? I have difficulty that we have an assessment and we may reach the objective, the objective may be greater and may be harder to attain, but how do you exceed an objective? How do you exceed the assessment?

The Chair: Madam Kraft Sloan, please.

Mrs. Karen Kraft Sloan: Thank you very much, Mr. Chair.

I support the intent of Mr. Comartin's motion, and I think, given the state of environmental management in this country and EA harmonization, and all of that good stuff, there have been levels of concern regarding the delegation of certain authorities by the federal government and the way the federal government may work with the provinces.

Indeed, in other pieces of legislation, we've often talked about what some of the triggers would be. In endangered species, for example, we talked about the safety net triggers, when the federal government would step in.

More than anything, it's important to outline some criteria and some level of expectation. Certainly throughout the harmonization process the government has stated that they're looking at standards that are as good as, if not better than, what the federal government has. So it's not a lowering of standards; it's a raising of standards.

So I feel very strongly that what Mr. Comartin is putting forward is something the Government of Canada has already been on record as supporting, and certainly I was the Parliamentary Secretary to the Minister of the Environment during the process of the harmonization. So I think what Mr. Comartin has articulated in this motion advances the policy of the Government of Canada.

Mr. Bigras, in many respects the Government of Quebec has shown leadership on environmental issues, and in many respects there are a lot of things that we here in Ottawa can learn from the Government of Quebec. So I don't think there's anything for the Government of Quebec to fear about a motion like this.

In regard to Mr. Bailey's concern, if the limbo bar is set at this level, then if you're out there.... The limbo bar is not the right example. If the high jump bar is set at this level, then if you want to win gold, you have to jump over it.

So I guess my concern might be in the exact wording of it, and if anyone has some suggestions as to that, maybe we can have a discussion about that, but I do support the intent of this motion.

The Chair: Thank you.

Mr. Lincoln.

Mr. Clifford Lincoln (Lac-Saint-Louis, Lib.): If I can read Mr. Comartin's mind, I think what he is trying to do is ensure that the standards be at least equivalent, which is a principle enshrined in many laws—in CEPA, certainly. What we want to ensure is that an assessment doesn't fall between two stools and we lose the standards by using the lowest common denominator.

If one province, for example, or the federal government for that matter, has an assessment process that is less stringent in one particular case—and examples could readily come to mind—one law could just insist on a screening, the other one on a panel. What I think we want to ensure by this amendment is that there is at least a high standard, the highest possible standard, whatever that is, whether it's provincial or federal.

I think if Mr. Comartin would agree to stay this so that the wording can be polished up and perhaps referred to standards and criteria and the highest standard or equivalence, I think it would be very worthwhile. We're not castigating a province or the federal government either way, but certainly we want to ensure that this harmonization doesn't mean that the lowest common denominator is followed.

● (1105)

The Chair: Thank you.

Mr. Herron and Madam Redman.

Mr. John Herron: I would say the approach the officials have taken is one we should replicate in what we're trying to do in the overall act itself. If we have a strong environmental assessment process, our act is strong. But the provinces have their own situation where these concerns could be raised.

As long as our act does its job, my view is that it's incumbent on a project to meet the objectives of the federal act and to meet the objectives of the provincial act. Let's just worry about writing our own act and making it a decent one, as opposed to trying to get into this ad hoc arrangement about whose act is stronger versus whose isn't.

So I'm going to vote against this particular amendment.

The Chair: Madam Redman.

Mrs. Karen Redman: Thank you, Mr. Chair.

I would just like to add to Mr. Herron's comments. The government also feels that any project that triggers this act has to be carried out by the regulations of this act, whether in cooperation with a province—and, indeed, an aboriginal group or a foreign government. So the regulations within this act spell out the requirements. As such, this amendment is not needed. In some ways it may even be a bit insulting to the provinces as we go forward with cooperative efforts.

The Chair: Mr. Mills.

Mr. Bob Mills: My comments would go along that same line. It appears to me that what we want to accomplish is lack of duplication and increased cooperation between the provinces. The biggest complaint that you often hear is that one group is doing their thing and the other group is doing another thing. Somewhere down the line they may come together or they may not. It seems to me that this just muddies the water further, and we get into a case where a province could get its back up and the two come head to head, ending up in the courtroom. I really don't believe that would help the environment or anything in this process.

So I find the amendment a little too fuzzy to support in that I don't know exactly what it means. But from a provincial standpoint, I could take it as having a pretty negative implication.

The Chair: Thank you, Mr. Mills.

Mr. Bigras, Mr. Comartin, and then we vote.

[*Translation*]

Mr. Bernard Bigras: I think we need to focus on the important things, Mr. Chairman. For instance, Quebec's legislation already recognizes federal assessments when they are conducted in areas that come under federal jurisdiction. If a project, say a hydroelectric project, could prove potentially threatening to species within a particular territory or in a particular waterway, the Quebec act makes provision for environmental assessments. It's not possible to call for concerted action and cooperation in legislation and at the same time, conclude that only one act, the federal act, ultimately applies.

Could the witnesses answer the following question for me: can the federal government tie federal funding of a project to the findings of an environmental assessment conducted by the project sponsor? Specifically, I'm wondering if, pursuant to the existing act—not the bill now before the committee but the legislation in place—the federal government could demand, if it's funding the project and has reason to think it might not be environmentally sound, that the project promoter conduct an environment assessment and present any findings. Moreover, if the project fails to meet minimal environmental protection standards, could the federal government withhold funding? Could you clarify this for me?

● (1110)

[*English*]

Mr. Robert Connelly: Mr. Chairman, the answer to Mr. Bigras' question is essentially, yes., the government could decide not to fund the project. The principle behind the so-called funding trigger, as we call it, is that the federal government will rely on the completion of an environmental assessment before it decides to fund. So if it does not like the assessment or feels that the impacts are potentially too significant, then it may decide not to provide the funding.

Mr. Chairman, since I have the floor, I might just clarify one other matter that might assist in this discussion. When we cooperate or conduct a cooperative assessment with a province or another jurisdiction, we have to meet the legal requirements of the provincial assessment and of the federal assessment process. So whether one is better than the other becomes irrelevant. The total assessment in fact has to meet both. So in theory, the quality of the assessment is probably improved as a consequence.

I might also add that we have found it is very difficult to try to establish a pan-Canadian standard in environmental assessment, because it is a process that supports decision-making, and it has been set up in each jurisdiction to reflect, in part, the decision-making process that exists in each jurisdiction.

Thank you.

The Chair: Thank you, Mr. Connelly. That was very helpful.

Mr. Comartin.

Mr. Joe Comartin: Mr. Chairman, I'm sure you're going to hate me for this, but I'm going to ask to have this stand down in order to attempt to meet the—

The Chair: Challenges by Mr. Lincoln.

Mr. Joe Comartin: —challenges posed by Mr. Lincoln in particular.

I think he demonstrated some real wisdom in his comments. I would like to see if I could translate that wisdom onto paper and, by that, I'm going to take a shot at satisfying both Ms. Kraft Sloan and Mr. Mills—I'm not sure if I'm ever going to satisfy Mr. Bigras. I'll ask to have it stand down with the intent of trying to actually put in some wording to show we're talking about standards and criteria and not wanting to compromise that, not to move to the lowest common denominator, but to seek the highest.

(Motion allowed to stand)

The Chair: I'm inclined to say the next motion, NDP-6, should be the last one this morning because I have the impression we need a little break.

Mr. Comartin, what would you like to do with NDP-6?

Mr. Joe Comartin: Mr. Chair, this has been a bit of a cause for me in a number of pieces of legislation. I actually got the government to agree to this in another piece of legislation last year.

It is, as I understand, government policy that this type of a clause should be in all legislation. I'm sorry, I didn't bring it today, but I had at one time a list of acts that were passed by this government that contained this clause. It's my understanding this clause is one that is an understanding with the aboriginal communities generally. This will show up in all legislation so there will be no issue at any time when interpreting legislation that the provisions of section 35 of the Constitution Act 1982 will be honoured.

Since we are going through amendments to this legislation, it's appropriate at this time that the legislation be brought up to date in accordance with general government policy. That's the purpose of the amendment.

The Chair: Madam Redman.

Mrs. Karen Redman: Thank you Mr. Chair.

I would take issue that this is not general government policy. I'd also point out to Mr. Comartin that the Environmental Assessment Act is actually a fact-finding process and not a process for determining aboriginal and treaty rights.

Currently during environmental assessment processes aboriginal issues are considered. It focuses on two basic questions. First, will the project have an effect on the health of aboriginal people? Second, will it have an effect on their current use of lands and resources for traditional processes?

I would tell you that aboriginal concerns are taken into account. Adding a non-derogation clause would shift that focus from looking at how aboriginals are impacted to maybe determining aboriginal and treaty rights and, as such, is a distraction from the actual purpose of the bill.

It's clear that legislators would be leaving it up to the courts to determine the specifics of how the environmental assessment process should deal with aboriginal and with aboriginal treaty rights. I'm sure everybody on this committee can recall the Marshall case. In that decision, the Department of Fisheries and Oceans took action to integrate aboriginal people into the east coast fishery. They took into account the need to protect the fishery resource from over-fishing and the importance of the fishery for the non-aboriginal people in communities that have traditionally fished on the east coast. While this action infringed on aboriginal rights in a limited and contained way, it was justified in order to conserve that resource.

I would ask Ms. Smith if she would like to comment on the proposed inclusion of this clause in this bill.

● (1115)

The Chair: Briefly, please.

Ms. Heather Smith: I would just like to reiterate the points that Madam Redman made. There is no government policy to include non-derogation clauses in federal legislation. The protection of aboriginal rights is part of the Constitution of the country, so whether or not a mention is made of it in legislation, all governments are required to respect the Constitution and respect those rights.

The concern here is that in most places where a non-derogation clause has been included in legislation there has been some connection between the subject matter of the legislation and what we identify as aboriginal and treaty rights. It's not clear in the context of the Environmental Assessment Act itself what the connection might be between the aboriginal rights and what is being dealt with in the legislation.

As I think a number of members appreciate, the Environmental Assessment Act interacts with a number of other pieces of legislation. A number of those pieces of legislation that treat environmental assessment have non-derogation clauses in them, but a number do not. The question of whether it's appropriate to put a non-derogation clause into the context of the decision should be made in the context of the specific subject matter, which is the subject of the decision, rather than the process you go through to inform the decision.

The Chair: Thank you.

Monsieur Bigras, brièvement, s'il vous plaît.

[*Translation*]

Mr. Bernard Bigras: Thank you, Mr. Chairman.

I'm disappointed with the position taken by the parliamentary secretary, but I can't accuse him of being inconsistent. Indeed, his position reflects his views on BQ-1. Clearly, the government refuses to acknowledge the special status of the Cree nation where this process is concerned.

In my opinion, the government shouldn't be signing agreements and treaties and, when the time comes to implement their provisions in conjunction with a certain process, in this instance, an environmental process, dismiss our involvement. The Government of Canada signed the James Bay Agreement which, for your information, is a treaty. Section 22 of the agreement described an environmental assessment process. To reject this motion and this amendment is akin to rejecting the existence of these provisions.

I believe the process should be respectful of existing rights, ancestral as well as treaty rights. That's a fundamental consideration, since an agreement is signed by two parties. If the signatories are incapable of upholding the terms of the agreement, then they would be better off going their separate ways.

[*English*]

The Chair: *Merci.*

Mr. Mills, followed by Mr. Lincoln—possibly briefly.

Mr. Bob Mills: Our position would be very clear on this. It is that when it comes to environmental assessment, it would seem all land should be treated as equal. It doesn't really matter where it is.

As was pointed out by the officials, this act interacts with many other acts and works with them. It would seem to me this would be unnecessary. We want the strength of the Environmental Assessment Act to be there, and so it should be the same on federal lands, on all lands whether they're under treaty or not.

● (1120)

The Chair: Thank you.

Mr. Lincoln, please.

Mr. Clifford Lincoln: Perhaps Mr. Mills has given me the confirmation I needed. That's why I think we need this: it's because of what Mr. Mills said. I don't think we can treat aboriginal issues like any others; they're part of the Constitution. I see nothing in there that would prevent us from including that clause.

To say you have to equate it exactly, every step of the way, with the provisions of the Environmental Assessment Act... Certainly the opinion I retain myself from legal people who are well-qualified tells me this wouldn't in any way detract from anything; it would just reinforce a position that has been included in many acts and certainly makes it quite clear that aboriginal and treaty rights are there to be respected. It just reinforces what is already in the Constitution, and I see nothing wrong with that.

If it is wrong here, why is it not wrong in certain other acts that may have ramifications with other legislation as well? I don't see how this detracts from anything and why it couldn't be included just for certainty.

The Chair: Thank you, Mr. Lincoln.

Madam Karetak-Lindell, please.

Ms. Nancy Karetak-Lindell (Nunavut, Lib.): I just wanted to clarify something we went through with the Nunavut Water Board act. It became a very big issue. I don't know if dealing with it piecemeal and dealing with it in every single piece of legislation detracts from the real issue.

I think what we're dealing with right now is that different pieces of legislation have different wordings. I apologize that I didn't check the actual wording some of the land claims groups were having difficulty with. I think in order to pass the Nunavut water act in the last Parliament, we ended up taking it out, because there were difficulties of interpretation on both sides; I believe the Department of Justice also had difficulty with the interpretation. If I'm not mistaken, it ended up being taken out until they come to an agreement as to how the wording should be. I think there might be a bigger issue beyond this.

The Chair: Thank you.

Madam Redman.

Mrs. Karen Redman: Thank you, Mr. Chair.

I just want to address a couple of issues that have been raised. Currently, Justice is undergoing a review of non-derogation clauses, and Ms. Karetak-Lindell referenced the wording as problematic. My understanding is that this is exactly the same wording that has found difficulty in other places in other pieces of legislation.

I would reiterate that aboriginal peoples and their rights are protected under the charter, and that supercedes any other legislation. So by not putting in a non-derogation clause, we are in no way exposing those rights to any increased risk.

I think Monsieur Bigras makes a quantum leap in some of his assumptions. It is the feeling of the government that the Canadian Environmental Assessment Act should be treated equally on all lands within Canada, and that is why we opposed referencing one specific group in his previous motion.

The Chair: Thank you.

Monsieur Bigras, and then Mr. Lincoln.

[*Translation*]

Mr. Bernard Bigras: I'd like to reiterate Mr. Lincoln's arguments which were forceful and meaningful. Why not spell this out clearly in the act? I intend to back this motion, even though it contains a reference to the Constitution of 1982 which Quebec did not sign. I will support the amendment because recognizing the special status of aboriginal communities is more important.

The paradox, however, is that amendment BQ-2 was rejected. It merely called for including the words "with due regard to the powers conferred to the provinces". This motion was rejected, and yet, they intend to support this particular one.

We have to realize one thing: the amendment calling for the addition of the reference "with due regard to the powers conferred to the provinces" was rejected, and here, the concern is for not violating treaties. Nevertheless, I will support this amendment.

● (1125)

[*English*]

The Chair: *Merci, Monsieur Bigras.*

Mr. Lincoln, and then we'll—

Mr. Clifford Lincoln: Could I ask for a clarification? Could you tell us the cases where the House of Commons hadn't included in certain legislation a non-derogation clause? I believe there was a case with a recent piece of legislation, that the Senate insisted on including it before the passage of the bill. Could you clarify that?

I understand there were one or two pieces of legislation where the Senate held up the legislation until a non-derogation clause was included, before passage by the Senate.

Ms. Heather Smith: My understanding is that no agreement was reached on the wording and that the non-derogation clause, this particular wording, was actually removed from the legislation rather than being allowed to go through.

The Chair: Thank you.

A final word, Madam Kraft Sloan.

Mrs. Karen Kraft Sloan: I just want to seek clarification as to whether this is an issue for all aboriginal people or if it's a separate issue for Inuit. I'm not sure that the officials can answer that question, because Madame Karetak-Lindell was referring to the Nunavut water act and the relationships may well be different—and believe me, I'm far from being briefly informed on this issue. But the aboriginal peoples in this country certainly are very different and have different relationships with the federal government as well. So perhaps Heather could answer that question.

The Chair: Would you like to answer that question?

Ms. Heather Smith: My understanding is that it wasn't just the issue in the case of the Nunavut legislation, but in the Marine Conservation Areas Act also, and that it was taken out of that legislation as well. That's my understanding.

Mrs. Karen Kraft Sloan: Was that because it affected the Inuit as well?

Ms. Heather Smith: I don't believe it was particular to the Inuit.

Mrs. Karen Kraft Sloan: Particular, or affected them? Those are two different things.

Ms. Heather Smith: I think the concern is a general one among aboriginal groups. I don't think the concern about the wording of the non-disclosure clause and the potential interpretation of it is particular to the Inuit people.

Mrs. Karen Kraft Sloan: Mr. Comartin, I would like to ask you about the source of this amendment. I'm sure you didn't dream this in the middle of the night.

The Chair: Mr. Comartin has the floor to continue the discussion, and then we'll vote.

Mr. Joe Comartin: There are, in fact, two versions floating around. There's the Department of Justice one and the one from the aboriginal community. This is the one from the aboriginal community.

They don't like the one that Justice has floated. They don't believe it accurately reflects the Supreme Court of Canada decisions, or protects their rights under the Constitution Act of 1982. This is their wording, not Justice's.

Mrs. Karen Kraft Sloan: It may be a wording issue then, as opposed to—

The Chair: Excuse me. Would you like to conclude your intervention?

Mr. Joe Comartin: Perhaps I'll summarize, Mr. Chair.

I must admit I had some real problems with the argument we heard from Ms. Smith, and I think from Ms. Redman, that the Environmental Assessment Act is a process of fact finding. Due process is a pretty fundamental value in this country. If this wording simply protects due process, and for that reason we should pass it, to argue that it's a procedural piece of legislation and shouldn't be included in it is very specious.

It is fundamental. The aboriginal community wants this wording in all the legislation. Justice has taken a very technical argument on it. If it is such a big concern that it doesn't do anything, then the argument is to put it in, because the aboriginal community does not see it that way. They see it as a significant concern and want to be sure their constitutional rights are protected.

On the argument that if we leave it out, it's already protected—and I say this with my lawyer's hat on for a second—not putting it in encourages more litigation. It sends a message to anybody doing the interpretation of this legislation that they have to take into account these rights of the aboriginal communities and first nations.

I thought Mr. Mills might be particularly attracted to this argument for putting this in, given how friendly he is to lawyers generally, and would support this on the very basis that it would discourage litigation rather than encourage it.

Those are all my comments.

● (1130)

The Chair: Thank you.

We'll take the vote now. I think we've had sufficient discussions.

(Amendment negatived)

(Clause 2 allowed to stand)

The Chair: We are advised by our advisers that instead of going to clause 3 we should go to clause 6 when we resume our work, when you come back.

So we will start with clause 6 and the motion on page 28 by Madam Kraft Sloan. When we finish clause 6, we can go back to clause 3. This is recommended in order to proceed in an orderly fashion.

Last word, Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: I just realized that I had submitted amendments to clause 1 to the legislative counsel and these are not to be found in the bundle. May I once again table my amendment regarding the definition of environment?

The Chair: The Clerk informs me that he has found the amendment.

[*English*]

Thank you for your cooperation, assistance, guidance, good advice, and good will. We will resume our work in a few days.

The meeting is adjourned.