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Chair

Mr. Paul Steckle

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● (1540)

[*English*]

The Chair (Mr. Paul Steckle (Huron—Bruce, Lib.)): Ladies and gentlemen, we want to begin our meeting.

Quite a number of new amendments are before the committee on Bill C-27. While the staff are processing them so that they're available to all of us, I would ask for a motion to stand all the amendments that precede clause 16, the point at which we had arrived on Tuesday.

If I could have a motion, it will be so moved.

Mr. Gerry Ritz (Battlefords—Lloydminster, CPC): Sorry, what do you mean by "stand"?

The Chair: We will stand all amendments that are prior to clause 16, and we will go back to those later. We can proceed onward from clause 17 today, rather than going all over the place.

Mr. Gerry Ritz: As long as we come back to them.

The Chair: We'll come back to them. Is that okay?

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Have they all been set aside, Mr. Chair?

The Chair: They're all set aside. They are all standing.

Some hon. members: Agreed.

(On clause 17—*Export of regulated product*)

The Chair: There are no amendments before the committee on clause 17, as it currently stands.

Yes, Mr. Ritz.

Mr. Gerry Ritz: On the wording again, Mr. Chairman, I have a real concern with clauses 17, 18, and 19 and subclauses 20(1), 20(2), and 20(3), and so on, when we do not insert the word "knowingly", as in "no person shall knowingly sell a regulated product".

We had this discussion before, and we were vetoed at that point, but I really have to be on the record and say that it has to be in there. The rule of law in Canada is a presumption of innocence. Without that word, that presumption is not there.

I had some discussion with legal counsel in that regard. They claim that if you say "no person shall export", you could be challenged on that. We don't want to see that happen with this bill. If we're going to strengthen the bill, then "knowingly" has to be implemented in those clauses and subclauses.

The Chair: Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): We had this discussion the other day, Mr. Chair, and it was referred to the legal people.

The Chair: Could we have some guidance from Mr. McCombs, please?

Mr. Mark McCombs (Head and General Counsel, Legal Services, Canadian Food Inspection Agency): Under the rule of law in Canada and the court decisions that have established the types of offences...as I mentioned the other day, a 1978 decision of the Supreme Court of Canada in Sault Ste. Marie established three types of offences.

True criminal offences contain the words "willingly", "knowingly", and "intentionally".

Then it establishes the public welfare offences, which are the regulatory offences we're talking about here. These are ones where doing the act against the law creates the offence, but it also permits the use of the due diligence defence. For example, you can say that, yes, you did break this particular provision, but you used due diligence in doing it. Then the court would say that since you have a due diligence offence, they'll accept that. The act then is put aside and the guilt is thrown out. That's the strict liability.

The third one is the absolute liability, where there are no excuses for doing the act. There are no absolute liability offences in this legislation. The particular provisions you're pointing to are what would be considered regulatory offences or public welfare offences.

Mr. Gerry Ritz: In the way that this is laid out, it also could form the basis for criminal charges, when you start talking about licensing, registration, toxic substances, and so on. You can't really say it's not about criminality and it's strictly a public welfare situation because it can lead to criminal charges being laid.

Mr. Mark McCombs: Well, if criminal charges were being laid, they wouldn't be laid under this legislation. They would be laid under the Criminal Code.

The Chair: Yes, Mr. Anderson.

Mr. David Anderson: I'm interested in the difference in the language, for example, between clauses 17 and 19. Clause 17 says that "no person shall export a regulated product". Clause 19 talks about "no person shall possess a regulated product that the person knows or should know". They've left that out of some of the clauses by saying they shouldn't be doing it, and then they throw it back into the other clauses by saying they know or should know.

I'd like to know what the difference is there. I'm more comfortable with clause 17 than I am with clause 19.

The Chair: Do you have any clarification there, Mr. McCombs?

Mr. Mark McCombs: Clause 19 is a possession offence. That's the purpose of having the "knowing" provision in there, as opposed to the other one, which is the export offence.

Mr. David Anderson: Okay, so what's the difference? You have possession of it either way. You're exporting something you possess. Why would you not have them export something they know or...? I guess one's a negative and one's a positive.

Mr. Mark McCombs: I'm not sure of the question.

Mr. David Anderson: In clause 17 you're basically saying no person shall export a regulated product unless it's been exported in accordance.... There's no knowing or unknowing; it just has to be done in accordance with the requirements. Down below you've got that they know or should know it does not meet the requirements. One is written in a positive way and one is written in a negative way. Is that why there's a difference there?

Why doesn't it just say, "No person shall possess a regulated product that does not meet the requirements established by or under the agency-related acts"?

The Chair: Mr. McCombs, if you want to bring your assistant to the table, we don't have a problem with that.

Mr. Mark McCombs: Okay. That would probably be the easiest thing.

The honourable member's question involves a little more detail. This is Jane Dudley. She's the lead counsel on the bill.

Ms. Jane Dudley (Legal Counsel, Canadian Food Inspection Agency): When we were drafting clause 17, we assumed that a person who was exporting a product would be responsible for what he or she was exporting and would take steps to ensure that the product was being exported in compliance with the law. So there's a certain responsibility on the exporter, whereas a person who acquires possession of something wouldn't have the same knowledge or the same responsibility for making sure it was in compliance with the law.

● (1545)

Mr. David Anderson: My concern is that you're talking about them not having the same knowledge, and then you're holding them accountable for not having that knowledge in clause 19.

Ms. Jane Dudley: In clause 19 it says if the person knows or should know that it's an illegal product. That's for the Crown to establish.

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik (Executive Director, Liaison, Preparedness and Policy Coordination, Canadian Food Inspection Agency): Maybe from the policy side I can give you examples of the two. Clause 17 is the provision...the export requirements we have in our standards. If an individual or company wants to export abroad, there are certain requirements to get an export certificate from the agency.

On clause 19, the possession one, I can give you an example of a prohibited product. Let's say pufferfish are prohibited entry into Canada. They are toxic and we don't allow them. If someone possesses them, they know or should know they're prohibited, because we don't allow pufferfish to enter into Canada.

There's another example I can give you, since I had the national import file and worked in various airports. There are people who drug parrots and stuff them into blueprint tubes. These people know they have parrots drugged and stuffed in there. That's the difference we're talking about. They do know or should know that they're not allowed to bring parrots in drugged and stuffed into blueprint tubes. Or grapevines taped to their body—when you ask them if they have any plants to declare and you see the grapevines coming out of the person's body.

Those are real examples I'm giving you to show the difference. One is to support the export certification program we have. People have to think that there are requirements they have to meet in order to export their products, and that goes on their export certification. Then on the possession side of things, people should know that they're not allowed to drug animals, hide them in their suitcases, and then say, "Oh, how did that get in there?"

The Chair: I think we've had a pretty good debate on this one. The concern was justifiably raised, but I think we've had reasonable responses to our concerns, and at some time we must move on.

Mr. David Anderson: All we want is to continue—

The Chair: I understand that. I don't want to continue just for the sake of continuing. There has to be a good reason for continuing.

Mr. Gerry Ritz: I understand that, but with a lot of the witnesses who appeared before us, this was one of the stumbling blocks in this prospective bill.

The Chair: But should we assume that the witnesses would have known the language and what that meant in law? I don't. I'm not a lawyer, and I don't think any of our witnesses were lawyers.

Mr. Gerry Ritz: I understand that. But you have to remember we're making law here.

The Chair: Mr. Easter.

Hon. Wayne Easter: The key point is a lot of this language currently exists, and the authorities currently exist in various pieces of legislation. If the regulatory agency is going to do its job in terms of protecting our farming community from the ability to do business elsewhere, then they have to be able to do these kinds of things. Individuals have the responsibility to know if they're going to be in business in order to do business.

I maintain that if you start monkeying around with the wording there, you will restrict the ability of the agency to do its job, and at the end of the day you'll restrict the ability of farmers and exporters to do business.

The Chair: Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet (Montcalm, BQ): I'd like to mention one thing. Clause 17 reads as follows:

> No person shall export a regulated product unless the product is exported in accordance with the requirements established by or under this Act.

Clause 18, on the other hand, reads as follows:

No person shall sell a regulated product that does not meet the requirements...[...]

Clauses 17 and 18 go hand in hand. If a product is imported illegally, then it cannot be sold. Earlier, Madam gave the example of a person who arrives in the country by airplane with a product that does not meet the requirements. Therefore, when I read clause 19 in tandem with clauses 17 and 18, it is quite clear to me.

Thank you.

[*English*]

The Chair: Would you respond to that question—I'm not sure it was a question.

Ms. Kristine Stolarik: No, it was just a point of clarity.

[*Translation*]

Thank you. It's clear to me.

[*English*]

The Chair: You accept his value judgment on that. Okay.

Mr. Bezan hasn't been in here yet.

● (1550)

Mr. James Bezan (Selkirk—Interlake, CPC): When you start looking at this, it's all about restrictions and prohibitions from clause 15 on—everything is just "shall not, shall not, shall not". But then we get to clause 19. Why is it worded differently? If it's just a matter of consistency within this section of prohibitions, why in clause 19 does it then say "the person knows or should know does not meet the requirements", when we haven't said that previously in this section of prohibitions?

The Chair: The answer was given a few minutes ago about the possession aspect of it. It talks about possession. Possession is different from exporting or importing.

Mr. James Bezan: But if you're exporting and importing, you have possession of them. Somebody is going to hold title on it.

The Chair: Do you want to respond to that, Jane?

Ms. Jane Dudley: If you're in possession of something that's illegally imported, you're in violation of the possession offence, but if you're the one who has imported it, you're in violation of both the importing offence and the possession offence. It's unlikely you would be charged with both, but you can be violating more than one provision at the same time. Possession of something isn't necessarily blameworthy behaviour. You might have no reason to know that something was illegally imported. Since you're not blameworthy, we want to be able to say you know or should know. If you don't know and there's no reason for you to know, then you're not guilty of any offence.

The Chair: Yes, Ms. Stolarik.

Ms. Kristine Stolarik: With travellers and the card you fill out, your B311, asking if you brought back any agriculture products, some people just don't know what they are. So they wouldn't be guilty. They legitimately don't know. You do a search—oh my goodness, you have this apple or whatever.

The Chair: This is a very important aspect of this bill, there's no doubt about it. I'm as concerned about these matters as anyone around this table, but I think we need to move on.

Shall clauses 17 and 18 carry?

Madame Poirier-Rivard.

[*Translation*]

Ms. Denise Poirier-Rivard (Châteauguay—Saint-Constant, BQ): I have to admit that we do not disagree with you totally, but that we will oppose these clauses when the question is called today. I will voice our opposition as we vote on each particular clause. Let me explain our position to you. Since our proposed amendment was rejected, the Bloc Québécois is concerned that the CFIA will override the agreement signed in 1998. That's why we plan to vote against these clauses today.

[*English*]

The Chair: Do you want that carried on division?

[*Translation*]

Ms. Denise Poirier-Rivard: Yes.

[*English*]

The Chair: Okay.

(Clause 17 agreed to on division)

The Chair: And clause 18 as well, do you have the same concern there, Madame Rivard?

[*Translation*]

Ms. Denise Poirier-Rivard: Yes.

Mr. Roger Gaudet: On division.

[*English*]

The Chair: Okay.

(Clause 18 agreed to on division)

The Chair: Shall clause 19 carry on division?

Mr. David Anderson: Mr. Chair, I have an amendment to make.

The Chair: Okay.

(On clause 19—*Possession of regulated products*)

Mr. David Anderson: I would like to remove the words "a person knows or should know" and go to "No person shall possess a regulated product that does not meet the requirements established by or under the Agency-related acts", and that's it.

The Chair: Let me go to my legal people.

Mr. Mark McCombs: That's fine. It's fairly onerous on the person possessing, but....

Mrs. Rose-Marie Ur (Lambton—Kent—Middlesex, Lib.): It makes it worse.

Mr. Mark McCombs: It's a tougher violation, but it's up to the committee.

The Chair: It's up to you, but if you want a more onerous liability, then that's the way to go, according to what we're hearing at the table.

Mr. David Anderson: Okay. Well, they're saying that. I don't agree with that.

The Chair: No, but we're not—

Mr. David Anderson: I think insisting that people should know something they don't know, and being held liable for it, is more onerous than just saying they should not possess something.

The Chair: That may be our interpretation, but it may not be the interpretation in a court of law.

Would you agree that in a court of law Mr. Anderson's argument would not hold?

● (1555)

Mr. Mark McCombs: Yes. By removing those words, what effectively you've done is removed another defence for the individual, because there was the knowing defence, knows or should know, and then all that's left is the due diligence defence.

The Chair: I just want to be sure we don't do something that we would not want to do.

Mr. David Anderson: Well, Mr. Chair, we just did in the past for the last two clauses. Anyone who wants to export or sell regulated products is not protected by this then. We've set more onerous provisions on clauses 17—

The Chair: We're talking about—

Mr. David Anderson: —and 18, on exporting and selling, than we are on possessing.

The Chair: But you're not listening to the possession aspect.

Mr. David Anderson: I understand the argument that's been made, but we are putting different levels—

The Chair: Well, if you put that on—

Mr. David Anderson: —of onus on people, whether they're possessing, selling, or exporting.

The Chair: I'm going to put the onus on the committee.

You've put that on the table as an amendment. You want those words removed.

Does everyone understand what the amendment is?

Could you read the amendment?

Mr. David Anderson: It would read: "No person shall possess a regulated product that does not meet the requirements established by or under Agency-related acts".

The Chair: The chair accepts your amendment.

The chair now puts the question to the committee. Do you want to accept the amendment?

(Amendment negatived)

The Chair: Can we carry clause 19 without amendment?

Mr. James Bezan: I'm just concerned here that we're putting forward a motion that reads like part of the Criminal Code, like we're talking about possession of drugs. This is pretty overbearing, in my opinion. If there's something that is so illegal about possessing some of this stuff, then maybe it should be in the Criminal Code and not in this act.

The Chair: Mr. Easter.

Hon. Wayne Easter: I think you're turning its on its tail. What the legal people have said is that with the wording that's in clause 19 now, another defence opens up—a person who really couldn't know can use this in their defence—whereas if you don't have that in there, all you've got is due diligence and you've got less defence. I think what you're trying to do is give a person who is caught in possession of something, if they didn't know, a way out. But if you take that clause out, then what you've really done is taken away their defence. It's the opposite of the way you're looking at it.

Mr. Gerry Ritz: A point of clarification.

The Chair: Yes, Mr. Ritz.

Mr. Gerry Ritz: If you folks can give me an idea, when we're talking about regulated products, how often is that list added to or subtracted from? How long does it take to actually...? Pufferfish are on the list as of today. When do people start being charged? Is it gazetted? How do you let that information out?

Ms. Kristine Stolarik: When we do have a list of banned substances or products, it does go through the gazette process. We have to prescribe that in regulation, and then it goes through the gazette process. There are bulletins that go out, and customs people are aware. There are signs at the airport, and that sort of thing. So there is a process.

Mr. Gerry Ritz: I understand that the customs people and the signs at the airport are there when you're coming back, but they are not telling you, "Don't do this" on the way out. That's part of the problem. And not a lot of travellers read the gazette to really know what's going on.

Ms. Kristine Stolarik: But there is—

Mr. Gerry Ritz: I'm asking about the timeframe before.... If pufferfish show up on the list today and I bring one in tomorrow, I can say, "Whoa, wait a minute, you just put that on the list. How do I know?"

Ms. Kristine Stolarik: It wouldn't become official until it actually was gazetted and became regulation.

Mr. Gerry Ritz: And that is a timeframe of...?

Ms. Kristine Stolarik: It could be 12 to 18 months. It depends on how severe it is.

Mr. Gerry Ritz: Okay.

Ms. Kristine Stolarik: We can fast-track something, make it three months, and then get the notice out. But we do update the travellers' brochures quite often, and people do get them coming in and out.

Mr. Gerry Ritz: How often is your list of regulated products changed? Is the list expanding to the point where it's pages and pages? Are we talking three or four items?

Ms. Kristine Stolarik: Right now it's three or four items at most.

Mr. Mark McCombs: In reference to the Fish Inspection Act, I think we've only added two banned products since 1997.

The Chair: I'm calling the question on clause 19.

(Clause 19 agreed to on division)

(On clause 20—*Tampering with regulated products*)

The Chair: There are no amendments standing at the moment.

Shall clause 20 carry on division?

Mr. David Anderson: I'm just wondering about the implications of paragraph 20(1)(b). It talks about people tampering with a regulated product that they know is not injurious, while causing other people to believe that it is. There are some special interest groups who have attempted similar things. Is this something to which this provision might apply?

● (1600)

Mr. Mark McCombs: Yes, this would apply to someone who makes up a story to damage someone else.

(Clause 20 agreed to on division)

(On clause 21—*Safe water*)

The Chair: We have two amendments on clause 21. They are Mr. Angus's amendments and we don't have anyone here to move them. In fairness, I don't think we should.

Mr. Gerry Ritz: On a point of clarification, nobody disagrees with this.

Water is provincial; it's public health. Have you had discussions with the provinces? Are they okay with this intrusion into their jurisdiction?

Also, when you refer to preparing food with water that is not safe, what stage of food production are we talking about? Suppose I wash the cow's udders with water that isn't safe and the milk spigots are attached. Can you go back that far, or does this extend only to when I wash out the holding tank? At what point does this come into play?

Ms. Kristine Stolarik: This refers to the manufacturing side of things. We already have this in regard to meat inspection and fish in processing plants. They have to have the water tested to make sure it's safe. We'd like to extend this to other manufacturers of food—vegetables, fruits, that sort of thing—to ensure that these operations are safe too.

Mr. Gerry Ritz: There are a lot of roadside vegetable stands that move a lot of product.

Mr. Mark McCombs: Most of the provinces have legislation covering this already. B.C.'s Health Act requires potable water to operate a food premise. There's the Saskatchewan Public Health Act, the Ontario Safe Drinking Water Act, and others.

Mr. James Bezan: This is provincial jurisdiction.

The Chair: We have two amendments put forward by Mr. Angus. We can have someone else move them, because we have them in our portfolio.

Mr. Gerry Ritz: Where is 10.2?

The Chair: It's in the new handout—NDP 10.2.

Mr. Gerry Ritz: I'll move that one.

The Chair: Any discussion? Basically, we're changing a word. Does this create any problem, the word "knowingly"? Maybe our people at the back don't have those—

Hon. Wayne Easter: They do not have the handout.

The Chair: Yes, Mr. Drouin.

[*Translation*]

Mr. Claude Drouin (Beauce, Lib.): Thank you, Mr. Chairman.

I'd like to draw the committee's attention to the following. I realize it's only a word, but all producers are concerned about safe water. However, we mustn't go around protecting someone who knowingly uses water that is not safe and then later claims that he did not know it was unsafe. We're giving ammunition to producers who could endanger people's lives and harm the agricultural industry as a whole.

I don't think we need to include the word "knowingly" in this clause. People must obey the law and not take any chances. Rules like this always benefit the exceptions. Therefore, I think we should just forget about this particular amendment.

[*English*]

The Chair: Mr. Drouin, if you look at 10.2 you'll find that the word "knowingly" is used. It could replace the word "consciously".

Are there any other comments on this? Does this present a problem for the legal people?

[*Translation*]

Ms. Denise Poirier-Rivard: Yes.

[*English*]

The Chair: Ms. Rivard.

[*Translation*]

Ms. Denise Poirier-Rivard: Processing plants are required to submit water samples regularly. Therefore, it's virtually impossible for someone to use unsafe water to prepare food. Water samples are tested, so I don't see any point in...

Hon. Claude Drouin: Any point in what?

Ms. Denise Poirier-Rivard: Any point in adding this word.

[*English*]

The Chair: From our legal people, is there a problem?

Mr. Mark McCombs: Yes. We're back into the same problem we had before. If you have a Walkerton-type situation, if you have to prove intent and you can't prove intent, notwithstanding what happened as a result of the activity, the individual would be let off.

● (1605)

The Chair: Exonerated, because the arguments have been made in such a fashion that the judge or jury would be convinced that the person did not know, even though there was intent, even though they would perjure themselves....

Mr. David Anderson: I guess I'm concerned, because what we've just heard now, what we seem to be saying, is that if there isn't intent, the person should be held responsible anyway.

The Chair: Yes.

Mr. David Anderson: I mean, if knowing...and that's what this argument has been. Well, that's what was just said.

You said you have to argue intent. If you can't prove intent, the person is let off. And that is actually what we've been arguing for the past three days. That is what the situation should be—people should not have to be held accountable unless intent is proven.

Mr. Mark McCombs: There's a second...in all regulatory offences, unless it's specifically excluded by legislation, the due diligence defence is available, which means the individual takes all reasonable care in doing the activity. He meets the requirements. He's doing it safely. So an individual preparing food would take care in getting water from a potable source as opposed to from the river directly.

If they do it properly and they do it with all care, they will get off on the regulatory offence because they exercised due diligence. That's why there are three levels of offences in Canada—criminal, the public welfare offence, and the absolute liability offence, in which there are no excuses.

Mr. David Anderson: Well, the reality is most people can't compete with the government trying to prove due diligence. Unless you put the onus on the government, people are going to be squashed. And we see examples of that in our riding all the time; they cannot compete with the government. So to put the onus on them to prove due diligence means they're going to lose. That happens regularly, and I think everybody here could tell stories about that.

The Chair: I'm not the lawyer, but....

Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: Mr. McCombs, I'd like you to explain to me the meaning of the words “prepare a food”. Most agricultural operations use river water on their strawberry, cucumber or vegetable crops growing in the fields. We have no guarantee that this water is clean. Hence, my asking you to explain the meaning of “prepare a food with water that not safe water”.

Ms. Denise Poirier-Rivard: Fields are now irrigated.

Mr. Roger Gaudet: But the water used is still river water. Where do you think it comes from? I can guarantee that it is not well water.

Ms. Denise Poirier-Rivard: Market garden operations have wells.

Mr. Roger Gaudet: They have irrigation ponds from which they draw their water.

Ms. Denise Poirier-Rivard: Not in my region. Fields are irrigated.

[*English*]

The Chair: Do you have a response to that, Ms. Dudley?

Ms. Jane Dudley: Yes, “prepare” is a defined term in the legislation. I think people might have read it. It includes to treat, mill, grow, harvest, slaughter, process, store, package, handle, assemble, grade, code, or label a regulated product, as well as to convey one for preparation. It's pretty encompassing. It includes a lot of the activities used in making a regulated product and making it available for the market.

Mr. Mark McCombs: Obviously, something doesn't become food until it's ready to be eaten. If we're growing something, the activity of growing is not preparation of the food itself—if that answers the question.

[*Translation*]

Mr. Roger Gaudet: That was the point I was trying to make.

[*English*]

The Chair: I know we have this concern, but I think at some point we have to determine that either the language that's been given is the right one or we are of greater minds than the ones who have written this.

Mr. David Anderson: I have a question on what was just said.

The Chair: Yes.

Mr. David Anderson: Did you say that preparation does not include growing? It does in your definition.

Mr. Mark McCombs: Yes, it does.

Mr. David Anderson: It does in your definition, in your answer to Mr. Gaudet.

Mr. Mark McCombs: No, but in terms of what he was speaking of, the food product being prepared using safe water; that's what I thought we were talking about.

Mr. David Anderson: The word “prepare” is used, and your definition includes growing, whether your process—

Mr. Mark McCombs: But are we talking about using safe water to prepare a food to eat, or are we talking about growing in terms of preparing a regular product for sale?

Mr. David Anderson: Your definition includes everything from the time it's planted until it's processed and consumed.

Mr. Mark McCombs: If you read subclause 21(1), it says “No person shall prepare a food with water that is not safe water”, and then we have to use the word “prepare” in the context of the activity. So you couldn't say “No person shall grow a food with water that is not safe water” in terms of—

Mr. David Anderson: Actually, we do that. We irrigate.

Mr. Mark McCombs: But in Canada, when we do irrigate, we have to look back then at the definition of safe water in subclause 21 (2).

● (1610)

Mr. David Anderson: We have to look at your definition of “prepare”.

A voice: My goodness, there's a can of worms.

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik: I just want to clarify this. You have to remember that when we're using the broad terms like “agricultural or aquatic commodity” or “regulated product”, it's the drop list of all the 14 commodities we regulate.

The term “prepare” encompasses all the activities of all these multiple commodities. So to grow, in the definition of prepare, relates to planting a seed, not to food. Food is actually at the stage where it is going for preparation or manufacture, if you go back to the definition of food in the Food and Drugs Act.

Mr. David Anderson: You don't understand farming, apparently, because your definition includes words like “treat”. We use water all the time in sprays that we put on. You're saying “prepare a food”, but you can't, in my mind, exclude part of your definition because you don't want to use it in that context.

All these things, treating, growing, harvesting—the growing and the treating in particular—use water. Some of it's applied and some of it's put in chemicals. You can't exclude it from that definition, whether you think it means preparing in a restaurant or not.

The Chair: Mr. Bezan.

Mr. James Bezan: We should think about irrigation on some of our vegetable crops. I know in Manitoba we have a lot of guys who are irrigating from the Assiniboine River, and if there's a pollution problem in the Assiniboine River all of a sudden because of something a municipality did—or something else the farmers didn't know about—and the irrigation went onto a vegetable that's going to be picked in the next couple of days, all of a sudden these guys are liable.

Mr. Gerry Ritz: If the city of Winnipeg has a spill—

Mr. James Bezan: The Assiniboine River runs through Winnipeg, and it's happened many a time.

The Chair: Mr. Easter.

Hon. Wayne Easter: I'll just refer to the wording of the thing, Mr. Chair. It says "No person shall prepare a food" , and food, in here, has the same meaning as in section 2 of the Food and Drugs Act.

Can you tell us what that is, please?

Mr. Mark McCombs: Yes.

Hon. Wayne Easter: We're not talking about crops that we're irrigating on land here. Let's be a little bit realistic.

Mr. James Bezan: But it can be misinterpreted, and as a farmer, Wayne, I don't—

Hon. Wayne Easter: There seems to be a view of the intent of this that there's going to be a witch hunt to go out there and charge every farmer. That's not the intent of this legislation. The intent of the legislation is to have safe food in this country—

Mr. Gerry Ritz: We all understand that.

Hon. Wayne Easter: —and in fact in having safe food, to do a service to the farm community so that they have sales for that product.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: We understand that, Mr. Easter.

I see the definition of "food" here in Bill C-27 is "has the same meaning as in section 2 of the Food and Drugs Act", and then I go down a few more words to the definition of "prepare", and it includes "to treat, mill, grow, harvest, slaughter, process, store". We're arguing semantics here. I understand that.

Hon. Wayne Easter: That's right, yes, but we're saying to prepare a food—

Mr. Gerry Ritz: There's no way we want any portion of the farm gate at risk here through anything that we don't do properly.

The Chair: Ms. Stolarik, please.

Ms. Kristine Stolarik: "Prepare" includes that broad list of activities, which may or may not apply to food as we use it.

The definition of "food" as it is defined in the Food and Drugs Act follows:

> "food" includes any article manufactured, sold or represented for use as food or drink for human beings, chewing gum, and any ingredient that may be mixed with food for any purpose

The Chair: The growing of the product is not part of that.

Mr. James Bezan: Yes, it is, as defined in the "prepare" section of this bill.

The Chair: We're either not communicating very well or we're not understanding what you're saying.

Mr. James Bezan: No. I think we have a conflict going here between one act and the other proposed act.

Mr. Mark McCombs: It's a mere drafting technique to use a global definition with a number of elements in it. It's a standard drafting technique. Otherwise we would have legislation that was four-feet deep, because in every section—

Mr. James Bezan: You mean we don't? I thought it was taller than the CN Tower.

Voices: Oh, oh!

Mr. Mark McCombs: That's why I don't like the Income Tax Act.

What you have here is a drafting technique. You use the word "prepare", and the definition from prepare as appropriate. There are certain words, in the definition of prepare, that will not apply in particular provisions.

Ms. Kristine Stolarik: You can't slaughter a food, for example.

Mr. Mark McCombs: You can slaughter an animal, but you can't slaughter a food.

Mr. James Bezan: But at times you do have food coming straight off the farm, food that is ready to consume coming right out of the farm gate. We have to cover that off.

In terms of the current definition of food, how has it been interpreted in the past by the court?

● (1615)

Hon. Wayne Easter: In terms of your worry here, James, if this said "prepare a crop", we would have reason to worry, but this says "prepare a food".

I mean, is it the same as what's in current legislation?

Mr. James Bezan: But isn't a crop sometimes a food? You can buy it right off the roadside, if you want, or right out of the field. The U-pick strawberry crops let you pick the strawberries right there. It's food.

The Chair: But you wash them first.

Mr. James Bezan: Not necessarily.

The Chair: Mr. Menzies.

Mr. Ted Menzies (Macleod, CPC): I have great concern with this. Yes, there are vegetable crops of all sorts. Near me there are soft green peas harvested for canning peas. A tenderometer is used in the harvester, and the peas are irrigated up to within five minutes of when the harvester goes through. That's food.

So tell me when the product becomes a food. I'm very concerned about that. If you extrapolate this far enough back, I can't go over my field with my sprayer with water in it, and a chemical to treat the crop, because that water is polluted.

The Chair: Let's go to Mr. Eyking. He's a firsthand cropper.

Mr. Ted Menzies: He's a chicken farmer.

Voices: Oh, oh!

The Chair: He does that too.

Mr. Eyking.

Hon. Mark Eyking (Sydney—Victoria, Lib.): Mr. Chairman, I'm a vegetable farmer, and you know, sometimes these rules are for the benefit of the industry. I think some farmers have to be accountable. For instance, if they decide to use an irrigation pond and they have their cattle in there and what not, somehow they have to know that they're accountable for what they do and what they put on their crops. If the water is dirty, they've got to be accountable. They've got to test and treat the water.

Sometimes you think you're protecting the farmer with less regulation, but you might be hurting the industry by letting people get off with bad practices. Sometimes you've got to think of what you're doing. So I would like to see a little more heavy-handedness sometimes with some of the producers on their practices, because they could harm the industry.

The Chair: Madam Rivard.

[*Translation*]

Ms. Denise Poirier-Rivard: I'm curious as to whether vegetables are washed when they arrive at the processing plant. Vegetables are not processed immediately. Are they washed first?

Ms. Kristine Stolarik: Yes, they are washed.

Ms. Denise Poirier-Rivard: Thank you.

[*English*]

The Chair: They are definitely washed. I have a big plant in my area, and the peas, the corn, all of it goes through a huge wash process, and the water is all clearly treated.

Yes, Mr. Anderson.

Mr. David Anderson: I would like to have a little clarity on subsection 21(2):

> For the purposes of subsection (1), "safe water" means water that does not affect the safety of any food with which it comes into contact.

I find that to be a little circular. If it's safe water, it doesn't affect the safety; if it affects the safety, it's not safe water.

What's your definition there of safety? And I'm just wondering why you used that instead of something related to the protection of health in the product.

Ms. Jane Dudley: The goal is to make sure that the food, the end product, is safe. If there's water used at some point during the processing that won't make the food, when it's ready to be eaten, unsafe, then it's excluded from this provision. It's the end product we're looking at, and that's why the definition is phrased the way it is.

The Chair: Okay, I think we've had sufficient discussion on this matter.

Shall amendment 10.2 carry on division?

Hon. Wayne Easter: Please hold on, Mr. Chair.

You're talking about putting "knowingly" in there?

A voice: Right.

Hon. Wayne Easter: Okay.

The Chair: That's the question; it's the amendment.

Who's supporting this amendment?

Who's opposed?

Mr. Gerry Ritz: Whoa, let's go back to supporting.

The Chair: Yes, I have that. Who's opposed to this amendment?

(Amendment negatived)

The Chair: Moving to NDP amendment 10.3, we need to have someone move that one as well. Can we have someone move that amendment? Does someone from the government side want to move that amendment?

Okay. We have no mover for the amendment. We have to stand it.

No, we don't have to do anything with it.

● (1620)

Hon. Wayne Easter: If it's not moved, it's gone.

The Chair: If it's not moved, it's gone.

(Clause 21 agreed to on division)

(On clause 22—*Dangerous activities*)

The Chair: Then we have another amendment, 10.4, on clause 22, put forward by the.... We need someone to move that one if we want the amendment on the table.

Mr. David Anderson: Mr. Chair, are you talking about clause 22?

The Chair: Yes, clause 22, and we have an amendment, 10-4.

Mr. David Anderson: I'm concerned about subclause 22(2).

The Chair: Well, we have no one moving the amendment. The amendment is off the table then.

What are your concerns with regard to 22?

Mr. Gerry Ritz: Now we're talking about activity, and again I realize it's in.... Are we still talking about activity in the preparing of food?

A voice: Well, they say "growing".

Mr. Gerry Ritz: I know that. Now we get into 22(2) and we're back into the same argument. You're back into growing, raising, culturing, multiplying, and processing, and then you finally get into the processing, preparing, and so on, which speaks to the food side of it. But you have again gone back to questioning sound farming practices.

Ms. Kristine Stolarik: No. Can I clarify this whole provision? "Dangerous activity" prohibits the person from engaging in activities involving animal pathogens or other disease agents, toxic substances, or veterinary biologics. So we're talking here about anthrax, we're talking about Ebola, we're talking about foot-and-mouth disease vaccines, we're talking about plum pox virus. Those are the dangerous activities or substances.

Now some of these you can grow, some of these you can cultivate. You can be a little, mad scientist growing some cultures. What we have now is a permit system to allow these dangerous goods to come in. But that's all it is, a permit. I allow a scientist to bring in his little test tubes and say, "Here you go, Mr. Scientist, here's your permit. Go away."

We have nothing right now that basically controls the use, the containment, or the disposition of those toxic substances.

So this is a provision that would allow us to licence these people to bring in some of these things or to issue a licence knowing that they are, let's say, cultivating or growing some form of fungus they're experimenting with.

Mr. Gerry Ritz: Authority. We're not talking—

Mr. Mark McCombs: It's a tracking authority.

Ms. Kristine Stolarik: It is.

Mr. Mark McCombs: Right now, you can bring these dangerous products into the country on a permit system, but there is no mechanism under the legislation to track it, to follow it.

Mr. Gerry Ritz: Okay.

Mr. Mark McCombs: So it comes in and the scientist has a permit to bring it in, but you have to then locate it, and this will allow the activity to be followed.

Mr. Gerry Ritz: Okay. We're talking about a lot more tracking and bureaucracy and paper work and permits and so on, are we not?

Mr. Mark McCombs: We're talking about that because we're talking about animal pathogens.

Mr. Gerry Ritz: I could bring this up at the end of the whole discussion here, whenever we get to the end of this bill, but I think probably somebody needs to start putting together a dollar figure on what all this extra is going to cost.

Ms. Kristine Stolarik: Yes.

Mr. Gerry Ritz: I would like to see that number.

Ms. Kristine Stolarik: We could, yes.

Mr. Gerry Ritz: What you're doing now, what it costs, what you're adding, and the extra cost that's going to be involved.

Ms. Kristine Stolarik: We already have people who issue permits, so the people are already there. They will be doing a little bit more following up, tracking, and basically ensuring that these things are taken care of.

Mr. Gerry Ritz: Well, it's like the gun registry; I can never get through on the phone.

Mr. James Bezan: I have a question.

The Chair: Mr. Bezan.

Mr. James Bezan: What is a pest under part D as defined in section 3 of the Plant Protection Act ?

Ms. Kristine Stolarik: A pest? Those are your bugs, your Asian longhorned beetles, your brown spruce longhorned beetles, your emerald ash borers.

Mr. James Bezan: That is defined and regulated, but what if all of a sudden we decide to make leafy spurge a pest and I have a bunch of it growing in my backyard?

Ms. Kristine Stolarik: We're going to give you the definition right here. We're pulling it for you.

The Chair: Okay, let's listen to this.

Ms. Kristine Stolarik: It's very small print.

Mr. Mark McCombs: Section 3 of the Plant Protection Act says:

> "pest" means any thing that is injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants, and includes any plant prescribed as a pest;

So as Kris Stolarik has mentioned, we're talking about the bugs. We're talking about the fungus that can destroy plants. We're talking about sudden oak death. We're talking about plum pox virus. We're talking about those things that can destroy the agricultural crops.

● (1625)

The Chair: Mr. Anderson.

Mr. David Anderson: I have a couple of questions. One is, does this section extend the CFIA's authority any further than it already has?

Mr. Mark McCombs: In terms of the definition of "pest", or this section?

Mr. David Anderson: No, this section, just in terms of its ability to regulate and control activity mentioned here.

Mr. Mark McCombs: As Ms. Stolarik mentioned, we do have the authority to issue permits now. This extends the activity in terms of being able to follow the pathogen and the toxic substance after it enters Canada.

Some of this is overlap, because in terms of where these particular goods go, we do inspect those particular labs in many cases.

Mr. David Anderson: Some of this happens outside of labs. You're talking about bugs and being able to dispose of them. I assume that means things like chemical spraying and those sorts of things.

So you're saying that you are extending your control or your ability to monitor, with this piece of legislation, over what you've had in the past.

Mr. Mark McCombs: Yes—

Mr. David Anderson: Okay.

Mr. Mark McCombs: —because that activity right now is open, and there are not adequate controls on the pathogens, the toxic substances, to allow us to track.

The Chair: Okay. We've heard the arguments.

(Clause 22 agreed to on division)

The Chair: Clause 23 has no amendments. Shall clause 23 carry on division?

Some hon. members: Whoa!

The Chair: Let's get with the program here.

Mr. Gerry Ritz: We're waiting for the translation, Mr. Chair.

Mr. Ted Menzies: The program is to ask if anybody wants to comment on it, I would think.

The Chair: I'm expecting people like yourself to indicate that you would want to comment.

(On clause 23—*Injunctions*)

Mr. Gerry Ritz: We did.

Mr. Ted Menzies: I was trying to, Mr. Chairman.

I first of all have to ask, what country was this drafted in?

Mr. Mark McCombs: Clause 23?

Mr. Ted Menzies: Yes.

Mr. Mark McCombs: It was drafted in Canada. This is a provision that—

Mr. Ted Menzies: My God, whatever happened to "guilty before proven innocent", or whichever—

Hon. Wayne Easter: Well, that's the way you guys are in the House.

Mr. Ted Menzies: Excuse me, that was a little bit uncalled for, Mr. Easter.

Hon. Wayne Easter: That's in fact the truth.

Mr. Ted Menzies: I have to question. To me, you're proven guilty with this, whether you're—

[*Translation*]

Ms. Denise Poirier-Rivard: A portion is missing.

[*English*]

Mr. Ted Menzies: Are we reading the same thing?

Mr. Mark McCombs: Are you reading the injunction authority?

Mr. Ted Menzies: This says "Injunctions," clause 23. Am I not on the right one?

Mr. Mark McCombs: Yes.

Mr. Ted Menzies: It says, "may apply to the Federal Court"—

A voice: Whether or not there has been a prosecution—

Mr. James Bezan: You're persecuting him. That's what you're doing.

The Chair: Okay, one person at a time here, please.

Mr. Ted Menzies: Can you explain to me what is the reason for—

Mr. Mark McCombs: This authority currently exists in the CFIA's act. The only change to this provision is that they add the words "or permanent". That's the only addition. As well, it is applying to the Federal Court, as opposed to any superior court.

Mr. Ted Menzies: So if my neighbour decided he didn't like me and suggested that I was handling food or a crop improperly and suggested that CFIA place an injunction against my farm, you wouldn't have to prove that I was doing anything wrong?

Mr. Mark McCombs: If your neighbour had a complaint against you, he could apply for an injunction against you without involving the agency. He can do that right now. This is a civil authority. Effectively, what this authority does is allow the agency to apply to a court, as opposed to the Attorney General of Canada.

Mr. Ted Menzies: I guess that begs the question, what on earth have we been allowing this sort of legislation to be in place for to date?

The Chair: I guess if it's such a terrible piece of legislation.... I'm not suggesting it's good, but if it has been so terrible, how many people have been affected by this, and have they been coming to us? Nobody has come to me.

Ms. Stolarik.

Ms. Kristine Stolarik: Can I give you an example of where we could have used this in a previous case?

Back in the winter of 2002 we had the importation of jelly cups, the little candies that caused a choking hazard to children—and actually one child died. We had the authority to do only an interim injunction, so we had to continually go back to the courts to stop this product from entering Canada. If we had had the permanent injunction authority, it would have stopped and the product would have never, ever come into the country. So that is one example where we thought, on the enforcement side—and that's where it would be used, on the enforcement side—when there's actually something really bad happening, we would use this.

Mark, I don't know if you have another example.

● (1630)

Mr. Mark McCombs: There are significant controls on this authority. As the members well know, the courts don't permit injunctions every day unless they meet all the criteria for injunctions. In effect, all this provision does is allow the agency to take the application to the court. It's up to the court to decide whether they allow the injunction.

The Chair: Mr. Ritz is first.

Mr. Gerry Ritz: You're telling us the existing situation is that all of this is there, other than permanent injunction. You can apply for an interim injunction—

Mr. Mark McCombs: Yes.

Mr. Gerry Ritz: —and again there's no date on that as to what "interim" really means.

Is there any appeals process?

Mr. Mark McCombs: The Federal Court of Appeal.

Mr. Gerry Ritz: Okay. Now, let me give you an example. You talked about the one, and I've got one in my riding, actually in a couple of places. There was the CWD situation with elk, four and five years ago already. We still have land that is held under a temporary injunction, not to be used for anything at all, and we cannot find anyone to somehow take that heavy foot off. There's no sound science out there that says the ground is contaminated. It's been cleaned, it's been cleared, it's been handled, and so on, and yet it is still held under an injunction.

Mr. Mark McCombs: If it's under an injunction, then the individual who is affected by the injunction has the ability to apply to the court to have it released.

Mr. Gerry Ritz: And that costs—

Mr. Mark McCombs: I'm not aware of the situation, so—

Mr. Gerry Ritz: No, but I'm just giving you an example of where this can go nuts and you cannot get out from under it.

Mr. Mark McCombs: That's why the courts have a control on the injunction. A court can take a couple of measures. A court can introduce what's called an interim interim injunction, which is a preliminary preliminary injunction. It's called an interim interim, yes, it is; it's called that. They will then move to an interim injunction, but an interim injunction can never become permanent, so your situation—

Mr. Gerry Ritz: But there's no sunset to it, unless you get the appeals court to overrule it.

Mr. Mark McCombs: There's a sunset to an interim. An interim injunction cannot extend forever.

Mr. Gerry Ritz: Well, they are.

Mr. Mark McCombs: It's interim to that court application only.

Mr. Gerry Ritz: Okay.

The Chair: Ms. Stolarik, go ahead, please.

Ms. Kristine Stolarik: I just wanted to ask the member whether it is an injunction or a control area designated under the Health of Animals Act, because that would be different.

Mr. Gerry Ritz: Now you've got me. Basically, they're one and the same. Again, there's no sound science for doing what we're doing.

All I'm concerned with is if something does go sideways on this, the only appeal then is through the courts. You cannot go back to the minister and say, “Whoa, have a look at this. There's a problem here.” The only appeal at this point is through the courts.

Mr. Mark McCombs: An injunction is only available from a court—

Mr. Gerry Ritz: I understand that.

Mr. Mark McCombs: —and it can only be appealed through a court. An order made by the minister can be reviewed by the minister for him or her, as the case may be, to review that situation and change the order.

Mr. Gerry Ritz: So there are definite set-in-stone parameters that you can issue either under an interim or a permanent injunction, and they're very defined—

Ms. Kristine Stolarik: They're very strict.

Mr. Mark McCombs: Very, very strict. Over the past 10 years, the courts have moved to tighten them up even farther; they're much stricter than they were 10 years go.

The Chair: Mr. Bezan, go ahead, please.

Mr. James Bezan: Is there a process, though? If they go to the Federal Court wanting an injunction, does it first go interim, or can they go immediately to a permanent injunction?

Mr. Mark McCombs: If your neighbour, for example, didn't like what you were doing with your groundwater and you were flowing across into his property, he would apply to a court for an interim injunction, which is to stop you immediately from releasing your groundwater, which is destroying your crops, for example—

Ms. Kristine Stolarik: But you don't need the CFIA.

Mr. Mark McCombs: And there's no requirement for the CFIA to be involved in that at all. The individual would apply for an interim injunction. They would then come back to the court. If the court decided to issue the interim injunction, the court would then make a decision whether it wanted to make it permanent, which would mean you would never, ever be able to release groundwater again.

Mr. James Bezan: So in the situation where we've got a food inspector out there who has a pet peeve or decides to take a malicious action against a processing plant, he can walk in, decide he's going to file an injunction against this individual—

Mr. Mark McCombs: He can't.

Mr. James Bezan: Well, he could apply to the court—

Mr. Mark McCombs: No, he can't, because the process in the agency is not permitted to do that. The agency, by legislation, has to act through the Department of Justice, and the Attorney General and the Minister of Justice control that process. An inspector has no ability on their own motion to go to the Federal Court. The agency would have to make that application, in concert with the Department of Justice, through the Attorney General, to apply to the court. The agency can't act without the Attorney General.

● (1635)

The Chair: Mr. Anderson.

Mr. David Anderson: First of all, it's only accurate to a certain point, because the entire next section talks about the powers that an inspector has. If he chooses to go after people, their lives are going to be hell.

We can go through that next.

Secondly, you mentioned jelly cups. I wanted to ask this. Are you saying that the only provision you had to stop the importation of unsafe products was through a temporary injunction?

Mr. Mark McCombs: The problem with the jelly cups in particular was not the food content. It was the shape. The shape of a food is not regulated under the Food and Drugs Act. The shape of the jelly cup was such that it would create a plug in a child's mouth when it entered the throat and would then suffocate the child.

Mr. David Anderson: How many more examples do you have of that happening? You have one extreme example. You then want us to make a permanent change in order to deal with one exceptional circumstance that occurred in the past.

Mr. Mark McCombs: Well, as far as I'm concerned, it's one death too many.

Mr. David Anderson: Sure, one death is one death, but it's typically taking an extreme—

The Chair: We're not going to get into numbers. The case has been made, whether it's one or 100.

Mr. David Anderson: He can make the case, but I'm talking about something else here. We're talking about one death or one incident. You're trying to convince us that we should be allowed to put permanent injunctions in legislation across Canada because of one situation. I'm arguing that I don't think that's necessary. Your temporary injunctions worked when you started applying them. Isn't that right? They kept the food out. They did the job. I don't think you need any more power than you already have.

The second question is this. Why do you limit yourself to Federal Court now? Are you required to do that?

Mr. Mark McCombs: It was a policy decision to go to Federal Court.

Mr. David Anderson: Why?

Mr. Mark McCombs: It was in order to allow the agency to go to Federal Court. Federal Court was the most familiar with the federal legislation.

Mr. David Anderson: Do you find yourself more successful in federal courts than in provincial courts?

Mr. Mark McCombs: No, I can't say that. The track records are the same.

The Chair: We go to Mr. Bezan for the last question.

Mr. James Bezan: I'm concerned because the wording here says that the agency may apply for an injunction, but you're talking about individuals applying against neighbours. Originally, you were talking about releasing groundwater in farming operations.

Mr. Mark McCombs: No, I was referring to an example that you had made in terms of going to the agency. Individuals have the right to apply for an injunction on their own behalf, without having the agency.

As a corporate body, the agency needs this provision in order to apply to the court on its own behalf for an injunction. It's a court requirement. You have to be a corporate entity to apply.

The Chair: The debate can end on clause 23. Does clause 23 carry?

(Clause 23 agreed to)

(On clause 24—*Designation of methods and equipment*)

The Chair: Is there anything on clause 24?

Mr. Ritz.

Mr. Gerry Ritz: I have a couple of questions on clause 24.

"The President may designate methods and equipment to be used by", and so on. Are there parameters on that or are you making this up as you go along?

I'm hearkening back to the avian flu crisis, when we did a fact-finding mission and a report. Designating methods and equipment there was a complete and utter failure. It went sideways like you would not believe. Sound science didn't enter into it at all. Best practices were not followed. How do we redefine that a little more than what you actually have in here?

Ms. Kristine Stolarik: This provision is in here because we have a lot of people working in labs who need special equipment, special microscopes, special testing kits, or whatever.

We also have inspectors out in the field who perhaps now need hand-held devices. I think some of the folks have seen these. They have a type of little Palm Pilot where they can enter the findings right away and send it to the central database.

This provision is to do exactly that. It's to designate equipment and methods that are newer and that are basically not part of our normal tool kit now. Technology changes very quickly, especially on the laboratory side. We are always getting new types of scanners and new types of machines. That's the intent of this.

● (1640)

The Chair: Mr. Bezan.

Mr. James Bezan: I'd like to propose an amendment to this section. I'd like it to read: "The Minister may designate reasonable methods and equipment to be used by inspectors", etc.

The Chair: Does the word "reasonable" create a problem for anybody?

Mr. James Bezan: And not "The President", but "The Minister".

The Chair: Does that change the application of the term "President" throughout the act?

Mr. James Bezan: Or "acceptable".

I'll tell you why I put it in there. Right now we're talking about designating methods, which might be investing in equipment that may not have been proven yet. It might be leading-edge stuff. Say you decided to bring in some automated inspection in a food processing facility, in a packing plant—cameras or whatever—and they hadn't necessarily been accepted throughout the industry.

We want to have something in here, a little bit of balance, to check—

The Chair: But "President" or "Minister" would be—

Mr. James Bezan: No, "The Minister". I think it has to come back to somebody with some accountability.

The Chair: Yes, but when we put CFIA in charge to make a judgment, it won't be the minister who makes that judgment; it will be the head of the CFIA who makes that decision.

Hon. Wayne Easter: If you look at the headline here, Mr. Chair, you're talking about inspections. We are talking about the agency. The minister is ultimately accountable for the agency. We've said that throughout.

The number of transactions that go on with CFIA in the run of the year are in the tens of thousands. You create an impossible chore for the minister if we put in legislation the request you're asking for.

The Chair: That part I would not—

Mr. James Bezan: But "acceptable methods" is something that I think is in there.

There might be stuff out there that's leading-edge that hasn't been proven in the industry yet, and I think we need to have a balance with that.

The Chair: You said "acceptable" and you said "reasonable". Which one is it?

Mr. James Bezan: Whichever word works better.

The Chair: Mr. Bezan, do you want to read that?

Mr. James Bezan: "The President may designate accepted methods and equipment".

Mr. Mark McCombs: "Accepted" or "acceptable"?

Mr. James Bezan: I think "accepted" is probably better.

Mr. Mark McCombs: But then you'll have to decide who accepts. Are we talking about an ISO standard? Are we talking about an OIE standard? Are we talking about a trade agreement standard, USDA accepted?

Mr. James Bezan: I'm thinking it should be from an international standpoint.

Right now you're just talking about designating methods. Right now you can throw anything you want in there without having anybody approve the methodology or the equipment. I think we have to have that—

Mr. Mark McCombs: In this section, the president is ultimately accountable for determining the methods and equipment that the inspectors use day to day or that are required for a particular trade agreement. If Uruguay wants a particular lab test put in place, and the method is something that has to be put in so that we can sell seed potatoes to Uruguay, then it would have to be decided by the president.

If it was put as "accepted methods", and accepted by, let's say, Codex, and Codex had not accepted that method of testing but Uruguay had, it would then prohibit the president from designating a method. Therefore, the market in Uruguay would be lost.

So that's the danger of putting in "accepted" without defining who accepts.

The Chair: I think we're getting into some dangerous areas here if we go down that road, because what the president does is designate methods. It's not designated methods; he is designating methods. He's making the determination.

Mr. James Bezan: That's what worries me. What if he is having a bad day?

The Chair: We all have good days and bad days.

Anyhow, I would suggest that we move on to accepting this—

Hon. Wayne Easter: Is there an amendment here or is there not?

James, did you bring forward an amendment or not?

The Chair: Do you want to let your amendment stand or do you want to withdraw it?

Mr. James Bezan: I'll withdraw it.

The Chair: Let's vote on clause 24.

(Clause 24 agreed to)

(On clause 25—*Powers of inspection*)

● (1645)

The Chair: We're taking the government amendment first, G-6 on page 25 in your book of amendments.

[*Translation*]

Ms. Denise Poirier-Rivard: Our amendment involves line 8 on page 13.

[*English*]

Hon. Wayne Easter: It's page 8.

Do you want me to read it, Mr. Chair?

The Chair: Can you move it first?

Hon. Wayne Easter: Yes, I will.

The amendment is that Bill C-27, in clause 25, be amended by deleting lines 38 and 39 on page 12—

Hon. Claude Drouin: Pages 34 and 35 in French.

Hon. Wayne Easter: —and adding after line 5 on page 14 the following:

> *Restricting or prohibiting movement*
>
> (4) An inspector may restrict or prohibit the movement of, or hold, a regulated product in order to determine whether the regulated product meets the requirements established by or under the Agency-related Acts.
>
> *Notice*
>
> (5) The inspector shall communicate the restriction, prohibition or hold by notice sent to, or served on, the owner or person having the possession, care or control of the regulated product.
>
> *Cancellation*
>
> (6) If the inspector determines that the regulated product meets the requirements established by or under the Agency-related Acts, the inspector shall without delay cancel the restriction, prohibition or hold.
>
> *Notice of cancellation*
>
> (7) The inspector shall communicate the cancellation by notice sent to, or served on, the person to or on whom the notice under subsection (5) was sent or served.

That's it.

The Chair: Yes, Mr. Ritz.

Mr. Gerry Ritz: We've basically taken out paragraph 25(1)(e) and then added in four more points under paragraph 25(3), if I understand it correctly.

The concern I have is if the product that is seized and held has a best-before date that expires while this goes on, and then he's given a slip that says, "Oh, by the way, it was okay", who pays? We have nothing in there that talks about liability or compensation.

Hon. Wayne Easter: If I could just give the rationale first, then I would like to get Kristine to come in and explain further.

What it does, really, is establish a separate provision with respect to an inspector's powers on prohibiting movement, etc. It allows an inspector to restrict or prohibit movement, yes, but it allows a proper determination through testing or analysis of the product and whether the product meets the standards and requirements set out in the various acts. Once that's determined, that the product meets those requirements, the inspector will release the product.

There are several questions raised by witnesses, and I think it meets that test.

Mr. Gerry Ritz: Mr. Easter, that still does not speak to my question.

If that product has a best-before date, and it expires during this testing phase while it's being held, if then they come back and say, "Oh, by the way, it's okay", who gets compensation? Is there any available? And is there any liability for that almost false arrest? I'll use that terminology. It's not, but....

Mr. Mark McCombs: The agency has an extensive dispute resolution section. The dispute resolution section reports to me in the agency. Any individual who has a claim against the agency merely writes to the minister, the president, or the head of our dispute resolution section indicating they have a claim against the agency. We then meet with the individual and put them to the test in terms of providing us with the information. In the event that we determine the agency was liable and should not have held the product, then we would appropriately settle the dispute and pay compensation.

● (1650)

Mr. Gerry Ritz: That's fine. I would like it said in this amendment, then, as subsection (8), that this is available. I mean, you're talking about the cancellation by notice, so then actually put this right at that point.

Mr. Mark McCombs: A compensation system?

Mr. Gerry Ritz: No, just that there is a dispute system available.

Mr. Mark McCombs: We would have to draft appropriate wording.

Mr. Gerry Ritz: That's fine. I would be happy to wait until the next meeting to see that. But I think it has to go in at that point to let people know it is available.

The Chair: Madame Rivard first, then Mr. Anderson.

[*Translation*]

Ms. Denise Poirier-Rivard: I want to be certain that I understand this. Explain to me why you're deleting paragraph 25(1)(d).

Ms. Kristine Stolarik: We're not deleting paragraph 25(1)(d). We're proposing to delete paragraph 25(1)(e) and to add in two or three additional safeguards. We'll come back to clause 25 later, but for now, this paragraph would be deleted.

Ms. Denise Poirier-Rivard: I see.

[*English*]

The Chair: Yes.

[*Translation*]

Ms. Denise Poirier-Rivard: It wasn't clear to me.

[*English*]

The Chair: Is that clear for you, Madame Poirier-Rivard?

[*Translation*]

Ms. Denise Poirier-Rivard: Yes.

[*English*]

The Chair: Mr. Anderson.

Mr. David Anderson: Gerry partially addressed a couple of the concerns I had, but I'm just wondering if Mr. Easter would consider an amendment somewhere between subclause 25(5) and subclause 25(6). There is no timeline except on subclause 25(6), where it says "without delay". I guess in subclause 25(5) I would like to see, "The inspector shall without delay communicate the restriction, prohibition or hold by notice", and then have a section added in there to the effect that the inspector should determine without delay whether the product meets the requirements or not.

They can communicate the restriction, but nothing may happen for a long time. I think this would go some way toward addressing people's concerns that they're going to sit in limbo. I guess this would put the onus on the agency to work quickly. If they didn't, I assume they'd be held liable.

The Chair: Can we have some language drafted there in accommodation of one of the three—

Hon. Wayne Easter: Yes—on this without delay.

Ms. Kristine Stolarik: I think we're going to have to look at it, sort of put it into context, and try to scope it in. Perhaps we can have this brought back.

The Chair: Let's stand this clause. We have other amendments to it. We'll stand amendment G-6 until we have the proper wording done.

(Amendment allowed to stand)

The Chair: Now we'll move to BQ-5 on page 27.

Do you want to move that one, Madame Poirier-Rivard or Mr. Gaudet?

[*Translation*]

Ms. Denise Poirier-Rivard: Yes.

[*English*]

The Chair: Do you want to speak to it?

[*Translation*]

Ms. Denise Poirier-Rivard: Yes.

I'd like the words "a reasonable number" to be included each time the act provides for the taking of samples.

[*English*]

The Chair: Are there any questions on this?

Hon. Wayne Easter: We have no problem with that.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: I just have a whole concern with "thing". I mean, that's pretty broad. It covers everything from here to the moon and back. How do you define that? You'd probably get a pretty good chuckle in court if you started entering "things" as evidence. You know, it says "document or thing" throughout the exercise here. It's pretty broad.

The Chair: Let's hear from our legal people.

Mr. McCombs.

Mr. Mark McCombs: Ms. Dudley will answer that.

Ms. Jane Dudley: The use of the word "thing" is a very common drafting technique. The "thing" referred to in the provision has to be related to everything else in that provision. If there's a list of, say, plant pests, "thing" cannot cover an animal disease. It has to fit in and be related. That's statutory construction—

Mr. Gerry Ritz: Several witnesses—I remember Bob Friesen, with the Canadian Federation of Agriculture, and one of the processors—really pointed that out, and said this whole encapsulation of "or thing" was beyond belief. They wanted better terminology. Is that possible? I understand it's a drafting technique, but can we get beyond that and actually do a little better to ease their concern?

● (1655)

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik: Just as an example, the reference to "thing" comes out of our Plant Protection Act. If you're bringing in nursery stock, the pallet it comes on is a "thing". We don't only inspect the plants; we want to make sure the pallets coming in, as that "thing", don't have any Asian longhorned beetles, brown spruce beetles, emerald ash borers, and those sorts of things. A lot of the wood pallets or packaging these products come in are what the "thing" would be. A lot of things also come in crates with straw. That's another carrier of pests. But that basically came out of the Plant Protection Act.

Mr. Gerry Ritz: You can get a scorpion in a crate of bananas, as we see every once in a while, and a scorpion is a "thing".

Ms. Kristine Stolarik: Or it's an "animal".

Mark, did you want to add something?

Mr. Mark McCombs: If it would help, we could use the terminology "related thing".

Mr. Gerry Ritz: Okay, that would be better.

Ms. Kristine Stolarik: Because you associate them.

Mr. Gerry Ritz: That would be better, certainly.

The Chair: Would that meet with your approval, Madame Rivard, a "related thing", just to make it more palatable?

Mr. Anderson, go ahead, please.

[*Translation*]

Ms. Denise Poirier-Rivard: Yes, that's fine with me.

[*English*]

Mr. David Anderson: I guess I have a second suggestion there. In paragraphs (b) and (c), you use "anything referred to in paragraph (a)", and then you go away from that in (f) and (i), I guess it is. But that may be a second option.

Mr. Gerry Ritz: So leave that as an amendment, Mr. Chair?

The Chair: Yes, we already have an amended word change. Have you anything else to add to it?

Mr. Gerry Ritz: No, I just wanted a little better definition of "thing", and "related thing" is fine. I can live with that.

The Chair: Okay, can we live with that word amended?

[*Translation*]

Ms. Denise Poirier-Rivard: Yes.

[*English*]

The Chair: Okay, then it's been amended.

(Subamendment agreed to)

The Chair: We'll move now to the Bloc amendment, BQ-6, on page 28. Do we have a mover for that amendment?

Madame Rivard, do you want to move that amendment? Do you want to elaborate on it? Do you want to give us your comments on it?

[*Translation*]

Ms. Denise Poirier-Rivard: Yes. The purpose of the amendment is to ensure that no person has access to information obtained on site, to confidential information of a personal or commercial nature, except for inspectors carrying out their job.

[*English*]

The Chair: Okay.

Mr. Easter.

Hon. Wayne Easter: The government will oppose that amendment, Mr. Chair, because it could override the requirements set out in the Access to Information Act and Privacy Act, but I'll ask legal counsel to expand on that further.

The Chair: Ms. Dudley, or whoever, go ahead, please.

Mr. Mark McCombs: Yes, it will override paragraphs 8(a) to (m) of the Privacy Act.

The Chair: Okay. We have Mr. Gaudet. Do you want to comment on that?

[*Translation*]

Mr. Roger Gaudet: Let me read the amendment to you again:

> (4) No information obtained by an inspector or officer under this section may be transmitted to another person except for the purposes of a prosecution under this Act.

[*English*]

The Chair: Could we have Mr. Eyking, and then Madame Rivard?

Hon. Mark Eyking: I have just one question. So the information the inspector has must stay within CFIA. What if it's a national health issue, or a problem? Does that mean this information cannot be transferred to another department?

Mr. Gerry Ritz: It's under prosecution, so then it would be available.

Hon. Mark Eyking: Is that a problem?

Mr. Mark McCombs: It would only be available under that amendment for prosecution, so you'd have to start a prosecution. So you couldn't release the information to a health agency and take action. You'd have to start a prosecution process. You'd have to lay charges in order to have the process released. What the amendment does is it self-contains it within the prosecution process, and it wouldn't allow it to be released to another agency for the purposes of health matters. Also, this would affect our cattle identification system, I believe, and recalls and emergencies.

● (1700)

The Chair: Okay.

We have an option here. It's your amendment. Do you want us to vote on it? There seem to be some fairly serious problems with this amendment if you follow through with it, in terms of other laws we have. Should we withdraw that amendment?

[*Translation*]

Ms. Denise Poirier-Rivard: I have a question. Does the Access to Information Act already provide this kind of protection?

[*English*]

Hon. Wayne Easter: The Privacy Act would protect it, as I understand it.

Mr. Mark McCombs: The Privacy Act protects the personal information, and personal information does extend to, for example, a producer in his own right who has a certain number of cattle. A lot of that information about his activities and his sales is already protected as personal information.

[*Translation*]

Ms. Denise Poirier-Rivard: Is there a particular provision in that act to which we could refer?

[*English*]

Mr. Mark McCombs: To override?

Ms. Kristine Stolarik: That means the same thing.

The Chair: I have to go to Mr. Ritz first.

Mr. Gerry Ritz: I have a point on this. Where we've seen this be a problem.... If we confine this to departmental or interdepartmental memos and things back and forth, then you wouldn't have to start a prosecution. We're just saying it's going to be protected while it's within the department. The whole problem we had with the tainted samples of feed, with protein that turned out not to be protein, created a firestorm out there for a little while. That wouldn't have happened if there was an interdepartmental freeze on things.

Maybe I'm not explaining that properly, but I'm trying to come at it from a different way, so that we actually have this security of information and privacy of information until you go forward with prosecution. So interdepartmental, within the CFIA kingdom, it wouldn't be accessible to access to information until....

Mr. Mark McCombs: There are a number of exchanges of information that go on for the normal purpose of administration legislation. CBSA is an exception. Information obtained by CFIA inspectors is often exchanged to CBSA for border matters.

Mr. Gerry Ritz: That's interdepartmental.

The Chair: Mr. Easter.

Hon. Wayne Easter: As I understand it, the concern from the Bloc—actually, I think, from everyone here—is whether currently there is the ability in law somehow for a person who has, say, a special maple syrup recipe or whatever, to make sure that information is protected. Is it protected adequately under current law? I think we understand that we don't want to go so far as to have a recall of a grocery product on a shelf. On a grocery product, you have to be able to release that information in order to protect the public. So you don't want to narrow it down too much, but the key is whether commercial information is protected. Is it under the Privacy Act or not?

Mr. Mark McCombs: Commercial information is protected for an individual. It's protected under the Privacy Act for a company. It's protected under Access to Information legislation. It's also protected in common law by the tort of confidentiality, meaning that if you're receiving confidential information, you're required to keep it confidential unless there's an exception to it that allows you to release it.

One of the normal exceptions in common law is to release the information for the purpose of enforcement.

Mr. Gerry Ritz: Yes.

The Chair: Okay. We've heard pretty good arguments. Are you prepared to...?

[*Translation*]

Ms. Denise Poirier-Rivard: We'll withdraw the amendment.

[*English*]

The Chair: Do you want to withdraw it?

[*Translation*]

Ms. Denise Poirier-Rivard: I do.

Mr. Roger Gaudet: The amendment is withdrawn.

[*English*]

The Chair: Okay.

(Amendment withdrawn)

The Chair: In that case we have another one. On page 28 we have one that just came in. I haven't seen it either. It's on page 28.1, CPC-4.

Mr. Bezan, do you want to move this one?

Mr. James Bezan: I will.

The Chair: Do you want to speak to it?

Mr. James Bezan: Yes, I call it my “comfort clause”, to make sure that Wayne's super-inspectors have the proper education and training—

● (1705)

Hon. Wayne Easter: Just hold on a second.

Mr. James Bezan: —before they come in and do the inspections.

Mr. David Anderson: Just approve it. You're okay.

The Chair: Does everyone have this? This is new material.

Mr. Gerry Ritz: This is the “Easter” clause.

The Chair: This is well thought out. It took a long time to get here, so it's well thought out.

Mr. David Anderson: You should see what's coming, Mr. Chair.

Mr. Gerry Ritz: It's the way we do it.

The Chair: It's on page 28.1. Okay, you have....

Mr. James Bezan: From some of the witnesses and some of the phone calls I've received in my office, there's a concern to make sure—I trust the agency would have done this anyway—it is in the act that they receive the proper training before they do the inspections.

The Chair: Is there any problem from the people in the legal department? No problem?

Mr. James Bezan: Oh, and there is a second “and” that doesn't need to be in there.

The Chair: Don't make too many caveats here now.

Mr. Gerry Ritz: It should read "and training necessary", not "training and necessary".

Mr. James Bezan: It's just "training necessary".

The Chair: What's the modification of the language here, the intent of the amendment?

Do we have support for the amendment?

Hon. Wayne Easter: There may be some legal issues.

Mr. Mark McCombs: The only issue is that the onus in this case is on the inspector to get the training, not on the agency to provide it. I'm not sure if that was your intention.

Mr. James Bezan: This is what legal counsel came up with, but I would say, "the Agency shall not allow an inspector to carry out an inspection". Is that the way it should read then?

Mr. Gerry Ritz: Or "no inspector will be tasked to carry out an inspection".

Hon. Wayne Easter: I think the point, James, from legal counsel is whether this is at the right place in the bill, which I think is what you're really—

Mr. James Bezan: Well, it's carried under inspections, and that's the section of the bill we're in.

Hon. Wayne Easter: The agency itself has to be responsible for the training of inspectors.

Mr. Mark McCombs: This in particular puts the individual onus on the employee to go and get the training as opposed to the agency.

Mr. James Bezan: So what we'll be saying is "education and training".

Mr. Mark McCombs: If you were going to do that, you would have to draft it along the lines of "the Agency shall provide adequate training", etc.

Let me make a comment before we go to the redrafting. For the purposes of liability, if the agency failed to do this, it would be found liable in a court for sending out inspectors who were inadequately trained, and the situations you've raised in terms of liability would result in the agency having to pay compensation for activities where they sent out untrained inspectors or incompetent inspectors.

The Chair: That's there now.

Mr. Mark McCombs: That's normal practice.

Mr. Gerry Ritz: So for avian influenza, if some of the inspectors weren't quite up to par, somebody could sue? They didn't know that.

Mr. Mark McCombs: In terms of crown liability, under the way the crown liability legislation works, the Government of Canada can only be found liable for the activities of its employees. It's a vicarious liability, meaning that if you have incompetent employees, the person can sue and find the crown liable as a result.

Mr. James Bezan: Would you suggest then that it should read, "The Agency shall train all inspectors, and no inspector shall carry out an inspection unless he or she has received the specific education and training"?

Hon. Wayne Easter: Mr. Chair, we know the intent here. Could we stand this down and make sure it's inserted in the right place in the bill and deals with the agency, and make a commitment to come back.

The Chair: Okay, sure. They'll come back.

Mr. David Anderson: Mr. Chair, may I make a suggestion?

The Chair: We'll stand this clause because of the amendment CPC-4.

Mr. David Anderson: One suggestion that might help is that perhaps this clause can stay as is—I mean we're standing it down—but also put a clause in elsewhere about the agency taking responsibility for the training of their inspectors. That would transfer the responsibility to them.

Mr. James Bezan: It gives us that comfort.

The Chair: We're going to stand that clause for now and come back to it.

(Clause 25 allowed to stand)

The Chair: We'll move to clause 26. There are no amendments there. Are there any questions?

Mr. David Anderson: I want to ask some questions about clause 25.

The Chair: Oh no, 25?

Mr. David Anderson: We're still on it, right?

● (1710)

The Chair: We stood that.

Mr. David Anderson: You just finished the amendments on it.

Mr. Gerry Ritz: We stood the amendments.

The Chair: We stood the amendments. Do you want to go further on it?

Mr. David Anderson: I have some questions about the inspection powers. We've dealt with amendments; we haven't dealt with the clause, right?

The Chair: Just for you we'll open it up.

(On clause 25—*Powers of inspection*)

Mr. David Anderson: Thank you. I knew you'd be generous, Mr. Chair.

The Chair: As always.

Mr. David Anderson: As always.

I've seen this in bills before, and I had the same concern then as I do now, and that is that I think these powers go beyond what they need. I'm just wondering, in paragraph 25(1)(a), talking about conveyance, are these basically the same powers the police have? In terms of conveyance, do these go beyond police powers or not?

Ms. Kristine Stolarik: They're not peace officers.

Mr. David Anderson: I know they're not peace officers, but the powers are fairly similar to what policemen can do. I guess I'm looking at "conveyance"—"enter any place, including a conveyance". I'm not sure the police officers actually have the ability to do that without my permission.

Hon. Wayne Easter: The key point, Mr. Anderson, regardless of whether the police have the same, lesser, or greater powers, is whether CFIA can in effect to do its job if you don't have paragraph (a) in there. The key point here—let's focus on what the issue really is—is the ability of the agency to do the inspections to protect the industry.

Mr. David Anderson: Your main concern is the agency. My main concern is my producers, Wayne.

Hon. Wayne Easter: No, my main—

Mr. David Anderson: I'm going to follow up on this, because it's not—

Hon. Wayne Easter: My main concern is that the agency be able to do its job to ensure that the world knows we have a safe food supply and that they operate in the interests of producers. That's my concern.

Mr. David Anderson: Actually, my main concern is that they don't come stomping all over producers in my part of the world, which they have done in the past.

I want to follow up on this, because clause 27 talks specifically about a dwelling, which I assume is protected to some extent, and I assume it means people's houses. I'm just wondering what protection people have in any other location from inspectors. I'm thinking that lots of people have shops, they have offices, and whatever outbuildings. There are no restrictions here at all on inspectors going onto the property and going through those buildings, other than that clause 27 restricts them as to a dwelling place. Is that correct?

Mr. Mark McCombs: The trespass legislation protects the individual, but these authorities are for the purposes of inspection of regulated products.

Mr. David Anderson: At least in clause 3, we weren't able to agree what regulated products were all about anyway, and we're going to come back to that.

Can you tell me a little bit about the trespass regulations, if somebody decides they're coming onto my farm to check out chemicals that are in my shop?

Mr. Mark McCombs: Here's the problem. If you have an egg station on your property and need your eggs graded, and the agency does not have the ability to enter the property, then your eggs will not be graded and you will not get to sell your eggs.

Mr. David Anderson: Do you believe they should be able to enter my property without permission?

Mr. Mark McCombs: If you want to sell a regulated product, and you want to meet international requirements in order to be able to export your product, the other countries require certain types and standards to do that.

Mr. David Anderson: That type and standard would include your coming to me and asking if we can set up a schedule for inspection on the property, not saying, "I'm going to come whenever I want and do whatever I want on your property."

This is not making me feel any better about this.

Ms. Kristine Stolarik: I'd just bring you back to the preamble in subclause 25(1):

> An inspector or officer, in order to administer or enforce an Agency-related Act, has the authority to conduct an inspection, including, for the purpose of the inspection

Concerning paragraph 25(1)(a), which you just mentioned, we already have this authority in CAPA, meat, fish, health of animals, plant protection. It's not a new authority; we're not giving ourselves new powers. We already have these powers in five of our acts. The acts we don't have them in are our older acts, with seeds and fertilizers. These are not new powers or authorities; we already have them in five of the eight acts that were mentioned here.

Mr. David Anderson: In some areas they are new; in some areas they are not. You've actually added new provisions as well: paragraphs 25(1)(g), (h), and (k) are all new provisions. So it's not as though these exist in all the acts you have.

Ms. Kristine Stolarik: They are new, probably, because they exist in one or two acts.

I'm not sure whether it would help people, but we have a chart, which we developed in doing this, that basically lists all our acts and puts an X across where we have authority now, where we don't, and what provisions they are. That will give you a good snapshot of basically what we already have out there and where we have the gaps. That's what it shows you, the gaps in the different acts where we don't actually have that authority.

● (1715)

Mr. David Anderson: I understand what your job is here, but ours is not to approve every power you've had in the past in every area of our lives.

The Chair: I might suggest that we have a copy produced for every member of the committee going forward, so that at least there's some time for us to evaluate that.

Mr. Ritz.

Mr. David Anderson: I have another question.

Mr. Gerry Ritz: Great, go ahead. That's fine.

Mr. David Anderson: I'm just wondering whether paragraph 25 (1)(c) is basically a provision that requires people to incriminate themselves. Is that correct?

Mr. Mark McCombs: No, it's a provision to require an individual to present something that has to be inspected to meet regulatory requirements.

Mr. David Anderson: But they are required to present anything that's asked of them from the inspector that he thinks is necessary to conduct the inspection.

Mr. Mark McCombs: With respect to the regulated product. So if I'm—

Mr. David Anderson: Well, as I said, we haven't agreed on regulated products or what licences are all about yet either, right?

Mr. Mark McCombs: We can safely say that a regulated product will include a cow, and that it is going to include vegetables. If the inspector needs to be able to inspect a truckload of potatoes, then he needs somebody to pull the tarp back and allow him to get on and look at the potatoes that need to be inspected. That's essentially what this does.

Mr. David Anderson: But that's far beyond asking somebody if you can inspect something. That's insisting that they provide you with anything you ask that has to do with the inspection. It's not just permission to inspect a load or to take a look at an animal. And if you go further, it could cover going into people's homes, going through their computer systems.

Mr. Mark McCombs: You can't go into people's homes. It's a dwelling.

Mr. David Anderson: You can't?

Ms. Kristine Stolarik: Under 27(2)(c), you'll see a special provision for dwellings.

Mr. Mark McCombs: Clause 27 prohibits it.

Mr. David Anderson: Can you go into my office without a warrant?

Mr. Mark McCombs: Each of the provisions operates differently, according to what the products are. If we were seeking to inspect a truckload of potatoes, we wouldn't go into an office. But if we need records with respect to the truckload of potatoes to verify compliance, then the entry is permitted.

Mr. David Anderson: You do not need a warrant to do that.

It's interesting. I've been told that you can't stop jelly cups coming across the border, but you can walk into my place, demand absolutely anything you want, and I'm required to provide it. It seems to me that the system is out of balance.

Mr. Mark McCombs: When an individual decides to be part of a regulated industry—and the courts have endorsed this— they are consenting to the requirements of the industry.

Remember, we in Canada need a lot of these inspection powers to show other countries that we have an appropriate inspection regime. Without these powers, other countries will say, “Canada does not have the appropriate inspection authorities and we're not satisfied that goods coming out of Canada will meet our requirements”. The gaps we're talking about filling will allow us to say to countries like the United States, “Canada has an adequate inspection system, it's equivalent to yours, and you should let us export our products to your country”. If you take away these authorities and if the Americans come and say, “Do you have the ability to inspect records of products coming to our country?”, and we say, “No, we don't”, the Americans will say, “Fine, without that power we won't trade with you”.

Mr. David Anderson: I'm not convinced that the expansion of your powers is required strictly to deal with international trade issues. I think they're much more self-serving.

Mr. Mark McCombs: They're not.

The Chair: You shouldn't be assumptive here, Dave.

Mr. David Anderson: We're going on past behaviour.

The Chair: That's wrong. It's not fair.

Mr. David Anderson: Don't talk about unfairness. We can go on past behaviour and what's happened to our producers. We're talking about expanding powers.

The Chair: We all know what our record is in trade also.

Mr. David Anderson: Well, it's your government, Mr. Chair.

The Chair: We need to be reasonable about the things we're asking for. If we're getting reasonable responses back, let's have reasonable questions.

Mr. David Anderson: These people are here to defend the legislation.

The Chair: That's what they're doing.

Mr. David Anderson: It's our responsibility to try to protect producers, and that's what we're trying to do.

Mr. Mark McCombs: We're trying to protect producers as well. We're trying to protect their markets. We're also trying to protect good producers from bad ones who are releasing into the marketplace products that are dangerous to the animal, plant, and resource base.

Mr. David Anderson: The majority of my producers do not need your supervision—though some of them may.

● (1720)

Mr. Gerry Ritz: What about the fact that they have the right of “no trespass” as a defence? There's an inspector doing something and they're supposed to have the right of “no trespass”.

Mr. Mark McCombs: Trespassing is under provincial authority. If you have your property, there's trespassing legislation in place in most provinces. The ability to trespass is not something we've given ourselves in this particular legislation.

Mr. Gerry Ritz: I have an example from the Charlottetown *Guardian*, on April 19. A gentleman there refused access to CFIA. It was more to do with the compensation side, but he was actually taken to court. He was going to put up no trespassing signs and call the police if they attempted to carry out the investigations on this land. He was taken to court, fined $2,500, and placed on a month's probation, with orders to write a letter of apology to the CFIA. So this right of “no trespass” doesn't work.

Mr. Mark McCombs: I don't have the article in front of me, so I'm not sure what he was charged with.

Mr. Gerry Ritz: I have no idea either.

Mr. Mark McCombs: The courts found him guilty. He was charged with a particular offence, which could have been obstruction of an inspection.

Mr. Gerry Ritz: It was access to the fields. He was looking for compensation, and there was none. I'm just putting that on the record.

In 25(1)(h) we see, “direct that operations in relation to the preparation of a regulated product be stopped”. Does this entail shutting down a line or a complete plant, if it's deemed necessary?

Mr. Mark McCombs: That one is designed to stop a line in particular.

Mr. Gerry Ritz: Okay, but it could actually shut down a whole plant. I mean, if that line stops, and it's the first one going into the plant, of course all the rest are going to shut down as soon as there's no product.

Mr. Mark McCombs: It's possible, yes.

Mr. Gerry Ritz: All right. Is there a dispute settlement as well for that if it's unfounded? I'm thinking of a disgruntled employee who says, hey, this is what's going on and, you know....

Mr. Mark McCombs: Stopping the line would happen during the inspection activity. If there's a complaint with respect to the line stoppages or the failure to inspect or any of those, we receive them in the CFIA, always. We deal with them on a liability assessment basis, and we then make a determination whether the agency acted improperly. If we did, then the practice of the agency is to pay compensation to those individuals who were—

Mr. Gerry Ritz: Is this totally done in-house, or do you go outside of the agency itself? Are you policing yourself, or do you have a dispute mechanism outside of the agency?

Mr. Mark McCombs: I have a director of dispute resolution working for me who has over 25 years of experience in—

Mr. Gerry Ritz: No, I'm not questioning his experience; I'm just asking if this is all done totally in-house.

We saw the avian report that CFIA came forward with in its *Lessons Learned Review*. There were 122 submissions, but none of them were from the farmers who were affected. So I have some concerns.

When you're looking at your own track record, is it objective, or is it seen...you know, what's the perception?

Mr. Mark McCombs: The mechanism is fairly straightforward. If you feel the agency acted improperly, the complaint goes to the president, the minister, myself, and a senior official. That complaint then is assessed by the programs branch involved, the operations branch, legal services. Those of us in legal services provide advice with respect to liability.

I'm Department of Justice, and we provide advice with respect to liability. If liability is determined, meaning the agency acted negligently or inappropriately, we would pay compensation. In the event that we take the view that the agency acted properly, the individual certainly has the right, then, to make a court application and sue the Government of Canada.

Mr. Gerry Ritz: Has that happened?

Mr. Mark McCombs: Many times.

Mr. Gerry Ritz: And what have the findings been—or are these all actions before the courts that we can't ask about? What have the internal findings been? Has the CFIA ever found itself at fault?

Mr. Mark McCombs: We've paid settlements in a number of cases, yes.

Mr. Gerry Ritz: How much?

Mr. Mark McCombs: It was $3 million, actually.

Mr. Gerry Ritz: Over how long?

Ms. Kristine Stolarik: I have since January 1999. I did a bit of research on that. Over 90 cases to date since 1999 have gone through the ADR, dispute resolution, and over $3 million has been paid out. There's also another provision—

Mr. Gerry Ritz: But how many of those 90 won? How many shared the $3 million?

Mr. Mark McCombs: There were 90 cases, and it was $3 million total paid out.

Mr. Gerry Ritz: Yes, I know, but there were 90 claims. How many of them actually won?

Mr. Mark McCombs: I don't understand.

Mr. Gerry Ritz: Well, you had 90 claims. Not every one of them won and shared the $3 million.

Mr. Mark McCombs: Those are the 90 that won, the ones that we found—

Mr. Gerry Ritz: Okay, but how many were there in total?

● (1725)

Ms. Kristine Stolarik: We resolved over 90 claims. Settlements have resulted in the payment of over $3 million to industries, farmers, citizens—and I don't have the specifics on how many have won. I could get that for you.

The Chair: We've got to adjourn this meeting very shortly.

Mr. Gerry Ritz: Mr. Chairman, just hang on one minute. I didn't get my question asked.

I wanted to know, since 1999—you're giving me those stats—was the total of claims 90, or were there 2,000?

Ms. Kristine Stolarik: No.

Mr. Mark McCombs: There were more than 90.

Mr. Gerry Ritz: Okay, that's what I want. Out of the total number, 90 have had a settlement of roughly $3 million. That's it. Thank you.

Hon. Wayne Easter: Just on the case Mr. Ritz brought up out of *The Guardian*, Mr. Chair, that really makes the point that Mark was making earlier in terms of the need to have those authorities. That was a case about PVYn. I'll just use it as an example, and I think it's difficult that a farmer was fined. In fact, he's a constituent of mine.

But the fact of the matter is, when we had PVYn, we were shut out of every province in Canada and out of the United States. And for that individual to spread manure on his fields, his vehicles had to be disinfected going and coming, and he wasn't abiding by the regulations. Sad but true.

If CFIA hadn't taken the action it took, we could find ourselves shut out of the market again. So that makes the point in terms of the need for the authority the agency has. It's one of the difficulties in the industry, but you've got to protect the health of the industry as a whole.

Mr. Gerry Ritz: But it also makes the argument for compensation, Wayne, at the same time. That's the other side of that coin.

The Chair: Okay. We've reached the end of our time. We stood clause 25 once and then we opened it up again. Shall we stand it again?

Mr. Gerry Ritz: Well, we still need the wording to finish off on that one amendment, so it has to stand, at this point.

(Clause 25 allowed to stand)

The Chair: At this time I'm going to adjourn the meeting. We'll see you here next week.

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