



House of Commons
CANADA

Standing Committee on Agriculture and Agri- Food

AGRI • NUMBER 043 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, May 19, 2005

—
Chair

Mr. Paul Steckle

All parliamentary publications are available on the
"Parliamentary Internet Parlementaire" at the following address:

<http://www.parl.gc.ca>

Standing Committee on Agriculture and Agri-Food

Thursday, May 19, 2005

• (1535)

[English]

The Chair (Mr. Paul Steckle (Huron—Bruce, Lib.)): The chair will call the meeting to order.

There are just a few things I want to say before we begin, and one motion we might want to consider before we go on.

There are two members of our committee who are celebrating birthdays today. I think it would be in order for us to recognize them duly. Madame Rivard is celebrating a birthday—I think she's 39—and Mr. Bezan is celebrating a birthday. He doesn't look any more than 59, does he?

Some hon. members: Hear, hear!

The Chair: That's the first order of business.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Mr. Chairman, just on that, Mr. Bezan already got his cake and card this morning. I have a card here that I'm going to pass around for Ms. Rivard. I just happened to find out at noon that she was having a birthday, so if I could pass it around, everybody could sign it and she'll get it.

The Chair: Now, we determined that basically, because of the uncertainties of what tomorrow might bring and where we might be next week and the week following, we should at this time, in the event that things don't allow us to come back in the format we're in in this 38th Parliament, reconsider the motion we made earlier this year about consideration of what the auditors are doing. A future committee could and should at some time be asked to review and give consideration to continuing the work that's begun. That's what we're really doing in this motion.

I'm asking first of all for your concurrence to deal with this motion, given that we didn't have 48 hours' notice and wouldn't have had 48 hours' notice to do this. Is there agreement to that? We would agree that we should concur with this motion, to allow it to stand? Okay.

Are there any questions?

Mr. James Bezan (Selkirk—Interlake, CPC): I have a question on that motion.

How does the work happen in the event that we are—

The Chair: If there should be an election call?

Mr. James Bezan: Yes, should there be an election call.

The Chair: Five days after the election call, the work would cease, but that work could be picked up by a future committee, and the work should go on, in my opinion.

Mr. James Bezan: And do we have any updated report about what stage they're at and how things are progressing?

The Chair: I don't. Perhaps J.D. has something on that.

Obviously it would be very preliminary, I would think.

Mr. Jean-Denis Fréchette (Committee Researcher): Normally the consultants would do a status report in early June to this committee. For the moment, they have begun their visit to the packers.

The Chair: Okay.

Thank you very much for your concurrence in that matter.

That's the only other matter of business I have.

Yes, Mr. Gaudet?

[Translation]

Mr. Roger Gaudet (Montcalm, BQ): Bill C-40 was adopted on third reading. Has it also been passed in the Senate? Is everything finished then?

[English]

The Chair: Bill C-40 is finished.

[Translation]

Mr. Roger Gaudet: Fine then. Thank you.

[English]

The Chair: We will continue our clause-by-clause study of Bill C-27. We had stood clause 25, if you want to just get caught up as to where we were.

We're now moving to clause 26.

Yes, Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): On Bill C-40, just to be absolutely clear, Paul, it's passed the Senate, but the Governor General has to sign off on it tomorrow.

The Chair: But so far as our work is concerned, it's finished.

Hon. Wayne Easter: For our work, it's finished, and it's through the Senate, but the Governor General has to sign off on it tomorrow.

The Chair: Okay.

There are no amendments on clause 26.

(Clause 26 agreed to)

(On clause 27)—*warrant to inspect dwelling-place*

The Chair: Clause 27 has no amendments as well. Shall we carry clause 27?

Yes, Mr. Bezan.

Mr. James Bezan: Just so I get it clear, we're saying an inspector or an officer may enter a dwelling place—so we're talking about a house—oh, may not enter, without the consent of a warrant? So they have to have a warrant to enter a house. Okay.

Mrs. Rose-Marie Ur (Lambton—Kent—Middlesex, Lib.): “Not” is the important word.

The Chair: Yes, Mr. Miller.

Mr. Larry Miller: I wish I had seen this sooner, but should this not include all the buildings on a...?

That's my only concern here. I guess it's probably too late for an amendment, but all I was thinking is that in the case of a farm it should cover all the buildings there instead of just a dwelling place, because as we know, all agricultural operations are certainly more than the residence.

The Chair: Mr. McCombs, do you want to comment on that?

Mr. Mark McCombs (Head and General Counsel, Legal Services, Canadian Food Inspection Agency): The clause is designed to deal with dwelling places because the courts have done a distinction between dwelling houses where people actually live and office space, barns, etc.

The clause is to deal with charter concerns about entry without warrants into dwelling properties, because of individual rights.

Mr. James Bezan: I have a neighbour who has a small food processing facility, an on-farm type of food processing facility. He also runs a commercial garage on the same premise and has his house. So the inspectors can't go into his house, but they can go all through his garage?

• (1540)

Mr. Mark McCombs: The inspectors inspecting for food?

Mr. James Bezan: Yes.

Mr. Mark McCombs: There is no reason for them to be in the garage. If he's running a sausage-making facility out of his garage along with his car repair business, then there's a reason to go in the garage, but there wouldn't be any reason and it wouldn't be relevant for them to go in and they shouldn't be going in.

Mr. James Bezan: But there's no restriction on it.

Mr. Mark McCombs: The legislation allows us to conduct an inspection, and inspection has to be within the parameters of our legislation. We don't inspect cars, so as a result—

The Chair: I think that clears that.

(Clause 27 agreed to on division)

The Chair: Yes, Madame Poirier-Rivard.

[Translation]

Ms. Denise Poirier-Rivard (Châteauguay—Saint-Constant, BQ): We, the Members of the Bloc Québécois, plan to vote against these clauses.

[English]

The Chair: You want them all done on division?

[Translation]

Ms. Denise Poirier-Rivard: Yes.

[English]

The Chair: Does that meet with everyone's approval? Okay.

On clause 28, we have an NDP amendment. If you look in your amendment numbers, you'll find on page 42, the—

Mr. James Bezan: Oh, wait. We've done clause 27? I'm only on subclause (1). We never got to subclause (2).

The Chair: I'm sorry.

Mr. Larry Miller: Mr. Chairman, Ms. Poirier-Rivard was asking for division. I didn't realize you were voting on it, because I'm opposed to it too, in the order that it is, or at least I want to be recorded as such if that's how the vote goes.

The Chair: Let's go on, and before we have final approval, we'll note this one. Let's move on.

Mr. James Bezan: Yes, I have a problem with it on subclause (2).

The Chair: We're going to clause 28. We'll note this one and we'll have to come back.

On clause 28, the NDP amendment, do you want to move that one, Mr. Angus?

Mr. Charlie Angus (Timmins—James Bay, NDP): Yes. I'm sorry. I'm just getting caught up here.

Mr. James Bezan: Are we going back to clause 27 or what?

Mr. Charlie Angus: Yes, I thought we were still.... Have we clarified clause 27 yet?

The Chair: Okay, we can do one of two things. We can either come back to it or we can do it right now if we have concurrence of the committee to come back to it right now.

Do you want to rescind the vote we have just taken? Is there agreement to rescind the vote and deal with this matter now, or come back to it?

Hon. Wayne Easter: We might as well do it now.

The Chair: All right, we'll do it now. I think there's agreement to do it right now.

Mr. James Bezan: Okay, thank you. I appreciate that, Mr. Chair.

The concern I have is that in subclause 27(2) we're talking about the conditions for issuing a warrant and “authorizing an inspector, an officer or a peace officer named in the warrant” to go in. It's just that they're going to give the judge an oath, and on that oath—whether he's right or wrong—he's going to say he needs to get into these facilities and this is the oath and the judge is going to issue the warrant. I think there needs to be some fact to back up an oath.

The Chair: Yes, Mr. Easter.

Hon. Wayne Easter: Mr. Chair, in these kinds of matters you're dealing with pretty responsible people in terms of inspectors and in terms of the training and everything else. It's the same as if it were a police officer. You have to have some latitude and take their word if there are suspicions there.

If you don't have the authority to enter, how can you ensure that you indeed are protecting the system as CFIA is supposed to do. You have to have the authority to do certain things. You can't give three days warning if you're suspicious that an operation isn't operating the way it should. You need to be able to enter and confirm or deny your suspicions. Nobody is going in with guns blazing, if that's what they're thinking.

Mr. Gerry Ritz (Battlefords—Lloydminster, CPC): The problem I have with that, Mr. Chairman, is we're talking about a dwelling place here. We're not talking about plants. We're not talking about grow-ops or anything. We're talking a dwelling place, and that's where the concern rises.

I have examples in my own riding of elk farmers who have had the door of their residence kicked in when they weren't home. Officers went in and seized the computer because the information they were given off the computer two or three days ago wasn't felt to be enough, so they literally kicked the door down when nobody was home and went in and took the whole physical computer system. So I have a concern when I say that this starts to justify those types of actions.

• (1545)

The Chair: Mr. McCombs, Ms. Stolarik, does anyone want to comment?

Mr. Mark McCombs: I'm not aware of any CFIA officials kicking down doors.

Mr. Gerry Ritz: It will be the 91st complaint you've had that will cost you another \$1 million. It's under court review right now.

The Chair: Mr. Eyking.

Hon. Mark Eyking (Sydney—Victoria, Lib.): Mr. Chair, the opposition is almost acting like these guys are right out of their minds and are going around and kicking doors down.

You might have a facility in someone's basement. They might be making jam or whatever. There could be a substance getting in their product. People could be sick out there, and they have to put a stop to it. You have to give them some latitude to be able to go in there, if they're producing food or they have food products, for the safety of people.

The Chair: Mr. Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Mr. Chair, that isn't what this is dealing with at all. If they have evidence that there's somebody making tainted jam, what we're saying is we suggest that the inspector should have to take a peace officer with them when they're going into a dwelling. If at some point in there we can make the amendment, I'd like to make that.

It actually carries through in subclause 27(4), so we'll probably have this discussion again, because on even less evidence, we're basically saying justices can give out telewarrants without any more evidence than that. I think it's important that if they're going into dwelling places, there should be a peace officer with them. We've given latitude in other areas here to go and do the job they need to do in those public facilities and businesses.

The Chair: Mr. McCombs, do you want to speak to this?

Mr. Mark McCombs: It's standard practice for the CFIA, if they're executing a warrant, to take a peace officer with them.

Mr. David Anderson: Mr. Chair, that's a good point, then. Let's put it in legislation that this is what they will do. We'll legislate the practice. If no one has any objection to that, then it isn't that big a change.

The Chair: Can you give us some guidance on that, Mr. McCombs?

Mr. Mark McCombs: Perhaps I can ask for clarification from the honourable member in terms of whether it is his intention, then, to compel peace officers to assist the agency.

Mr. David Anderson: To compel peace officers.... That's their job, to go with them if there's a warrant.

Mr. Mark McCombs: It isn't if they don't work for the federal government.

Mr. David Anderson: So you're saying you'll send in—

Mr. Mark McCombs: Let me give you an example.

If we're in the province of Ontario and we're executing a warrant in Pickering, for example, it would be the Pickering police force that would be asked to assist. They would normally be asked to assist, but for manpower reasons they may say, "We don't have the people to assist you, and we don't view this as important."

Mr. David Anderson: I would suggest that if a judge or justice said it's important enough to execute a search warrant in somebody's house, it should require a peace officer to attend. Hence, you're also including that in subclause 27(5) later, when you talk about the use of force. You're compelling them to take a police officer with them if they're going to use force. So I don't think it's a big stretch to say we're going to compel—

Mr. Mark McCombs: I'm not disagreeing with you. My only question is, did you want it so that the peace officer is required to assist?

Mr. David Anderson: I would say that the inspector is required to have a peace officer with him or her when executing a warrant on a dwelling.

Mr. Mark McCombs: My only concern is with respect to if they go to get a peace officer, and because of whatever is going on in the local area, the peace officers say, "We're too busy. We're dealing with this. We're dealing with that. We'll get to you in two or three days."

Mr. David Anderson: Does that happen?

Mr. Mark McCombs: In larger centres, yes.

Mr. David Anderson: I think that's a red herring.

Mr. Charlie Angus: Thank you, Mr. Chair.

I think we're trying to micromanage in the field, and I don't think that's something that works very well in legislation.

The concern here is making sure that people are protected from overzealous actions. I think we have to address that in the kinds of appeal mechanisms we're going to put forward in this bill, but to compel a peace officer to be with a CFIA officer after he's obtained a warrant....

I know in my rural areas, our police officers are overworked. We have hundreds and hundreds of square miles of land to cover. Some days, it would take three or four days for a police officer to think it was worth his while, given all the other stuff he's dealing with. The chance to deal with an emergency could have passed, to get that evidence. I think we would unnecessarily be tying people's hands.

They're going through a warrant process. There are the standard rules of law. I think that's enough.

The Chair: Okay.

Mr. Bezan.

Mr. James Bezan: Well, we are talking about a person's home. We're talking about people and where they live. If there's an issue with the way they're processing food, the CFIA has the power to end that practice in the processing facility. If it takes some time to put the warrant together properly and bring in a peace officer to do it, to make sure that we're following the Criminal Code to the utmost, then we make sure that they're with them when they enter the home. We're talking about people's personal property here.

• (1550)

The Chair: My question would be, mainly, you've given an illustration of someone kicking in a door. What would have happened had there been a peace officer with them? Would the end result have been any different? Would the door still have been kicked in?

Mr. Gerry Ritz: I don't care if there's a police officer with them or not, Mr. Chairman. The problem was the way this was executed. If we start to vindicate that type of action in the legislation, that scares the hell out of me.

I want to see due diligence done. I don't want to see anybody get away with putting out bad jam—for God's sake, that would be terrible—but we're talking about a dwelling here. We're not talking about a plant; we're not talking about a physical structure, barn or whatever. We're talking about their house.

The Chair: Mr. Easter.

Hon. Wayne Easter: Mr. Chair, first of all, this is already in all the acts that we're incorporating at the moment. It already is there, so it has been in place in subclause 27(2).

On the points by members opposite, I think subclauses 27(1) and (2), and adding in subclause 29(2), give you the assurance that the entry into dwellings will only be under the conditions. It protects what you seem to be concerned about. First of all, subclause 27(1) says they may not enter unless they have consent or the authority of the warrant. Subclause 27(2) lays out the conditions of what that warrant may be—conditions for entry, in order to exercise the powers of inspection, or there are reasonable grounds to believe that their entry will be refused or has been refused. I think it's putting in place the protection so there isn't kicking down of doors, as Mr. Ritz has said. If that has happened, then it shouldn't have happened, and there is means to get at that through the court system.

Subclause 29(2), which relates to the point they raised on a peace officer, says:

A peace officer shall provide any assistance that an inspector, analyst or officer may request for the purpose of enforcing an Agency-related Act.

So it could tie back to the concern that I think James had earlier.

I think it's already in legislation. It's there. It's just bringing it into this legislation as it has been, and it is there really more to protect dwelling places and property and individuals than to just allow rampant entry.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: Since Mr. Easter brought up clause 29, I'm looking at that, and we see that the person shall give "all reasonable assistance to enable each of them to exercise their powers and carry out their duties". Fine, but in doing that you could be incriminating yourself. Are we going to allow them time to call a lawyer and have a lawyer present? These people can be facing some pretty horrendous fines and jail time under what's being outlined further on in this bill. You still have a right to a lawyer and have a lawyer present, and it might take two or three hours for a lawyer to get there.

The Chair: I understand what you're driving at, but aren't we fearmongering to a degree that is...? You guys can make all kinds of cases for this here—

Mr. Gerry Ritz: Well, we are. This is real life. This has really happened.

The Chair: This is not something that's been happening every day, obviously. This has been in practice for some time.

Mr. David Anderson: Mr. Chair, there are 20 people who are still in court over events that happened 10 years ago. In some of those cases, people were raided in the middle of the night, and it was by government inspectors and police working together.

Wayne says this is in place. That doesn't guarantee that there's any more protection than people have had up till now.

The Chair: But would it be any different if you went and proceeded with having a peace officer—

Mr. David Anderson: For one thing, you can hold police officers accountable. It's just about impossible to hold a government department accountable, because the people they're raiding don't have enough money to be able to fight them.

The Chair: Mr. McCombs, please, can you help us? Is there some way we can get through this impasse?

Mr. Mark McCombs: We checked to see how many search warrants had been executed by the agency since 1997. We have eleven. As for inspection decisions, inspection actions, we have, what, 2.5 million to 3 million a year of inspection decisions being made. We've only had to execute eleven search warrants, and they weren't in dwellings.

Mr. David Anderson: First, you don't have to execute search warrants. You can go where you want without them.

Mr. Mark McCombs: But I thought we were talking about search warrants at the moment.

• (1555)

Mr. David Anderson: Why would you object to having to include a peace officer on them if you've done eleven in, what, five years?

Mr. Mark McCombs: Because there's not always a peace officer available to attend. These are all standard requirements. They've been vetted by the charter lawyers to ensure that they're constitutionally sound, that they're valid in accordance with the charter. I'd be concerned about changing certain provisions in here without having the opportunity to look at them again vis-à-vis the charter.

Mr. David Anderson: Your job is to defend the CFIA's powers.

The Chair: Mr. Angus.

Mr. Charlie Angus: I think we'll be going through this line by line on each of these. To me this seems like obstruction. It seems to me we're deliberately trying to tie the powers when we're talking about food safety. If there's an illegal meat wagon going around the neighbourhoods selling to people, and somebody gets sick, the CFIA will have to move, and they will move at a house, because probably that's where part of the operation is taking place. If that has to take place, they need the powers. These are powers that exist.

I think we're going to end up going through this line by line, so I just say, let's put it to a vote.

The Chair: I'm going to have to ask Mr. Miller to have the last word, and then we're going to call the question.

Mr. Larry Miller: It's probably fair to say that the cases Gerry... Some of the ones I'm not familiar with probably sound like extreme cases, but you've got to remember that in provincial agencies, government agencies, and what have you—I'll use the MOE in Ontario, for example—these guys are out there. Some of these guys are overzealous wannabe cops. It happens, and there has to be some kind of protection. Is the peace officer route the way to go? I don't know, but there has to be some protection, because these guys are out there.

The Chair: Okay, I'm calling the question.

(Clause 27 agreed to on division)

(On clause 28—*Certificate to be produced*)

The Chair: On clause 28, Mr. Angus, do you want to move your amendment NDP-10.5?

Mr. Charlie Angus: Yes, I'd like to move it. I think it's fairly straightforward. I think it's just taking out “on request”—

The Chair: It's on page 42.

Mr. Charlie Angus:—so that they would, in exercising their acts, show their certificate of designation.

I think that would be fairly straightforward.

Mr. Gerry Ritz: You're just removing “on request”?

The Chair: Is there any comment on that? If not....

Hon. Wayne Easter: Are there any implications to this? Could I ask Kristine or Mark? I haven't had time, really, to look at this.

Ms. Kristine Stolarik (Executive Director, Liaison, Preparedness and Policy Coordination, Canadian Food Inspection Agency): I guess the only implication would be for inspectors. They may have perhaps been located in a specific establishment for the last ten years, but every day they're going to be required to show their certificates and claim themselves.

That's about the only thing I can think of, Mark, unless you had something else.

Mr. Mark McCombs: It will probably just require them to wear badges around their necks, that's all.

The Chair: I'll call the question.

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

(Clause 28 as amended agreed to on division)

(On clause 29—*Duty to assist*)

The Chair: Now we'll move to clause 29. This is amendment G-7 on page 43 of your book. It's a government amendment.

Mr. Easter, do you want to move that amendment?

Hon. Wayne Easter: Yes, I will.

The Chair: Is there anything that you want to say on that?

Hon. Wayne Easter: Hold on. I'm still finding where we are, Mr. Chair.

The Chair: It's page 43, amendment G-7. We're at clause 29.

Hon. Wayne Easter: I think it's pretty self-explanatory, Mr. Chair.

The Chair: Okay.

Mr. Anderson.

Mr. David Anderson: We've come across this before, but I'd like a definition of what the legislation considers to be “reasonable” when you're talking about forcing every person in the place to give all “reasonable” assistance to the inspector.

• (1600)

The Chair: That's not on the amendment, though, is it? Let's deal with the amendment, and then we'll talk to the other part of it.

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

The Chair: Now, you had a further comment, Mr. Anderson, on the other part of it.

Mr. David Anderson: Sure; if they would answer the question, that would be.... What's your legal definition of “reasonable”? All “reasonable” assistance—what does that entail?

Mr. Mark McCombs: It would just be the normal dictionary definition. In terms of this, it would be opening the conveyance. It would be opening any locks. That would be the normal procedure.

Mr. David Anderson: So they have to give them whatever they want.

Mr. Mark McCombs: Whatever would give the inspector the access to the appropriate documentation.

Mr. David Anderson: This goes before documentation.

Mr. Mark McCombs: It's “to exercise their powers and carry out their duties and functions”, so if, for example, you were entering a slaughterhouse through the gate, and the gate was locked, you would ask them to open the gate.

Mr. David Anderson: At what point can people say no, that's beyond reasonable? Is there no limit?

Mr. Mark McCombs: If they said to you, take an axe and break open the lock—don't use your key, break open the lock with an axe—that wouldn't be reasonable.

Mr. David Anderson: If you come into my office and demand whatever you want out of my computer, I have no grounds for saying that's unreasonable?

Mr. Mark McCombs: They should be asking for information with respect to the product in the investigation they're conducting. They shouldn't be asking for your Christmas card list or anything like that.

Mr. David Anderson: Actually...whatever. I guess they shouldn't be.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: I have a concern with the start of subclause 29 (1). It says, "every person found in the place, shall".

There are times when there are visitors, guests, whatever. Can we say "relative person", or "qualified person", or something?

Mr. Mark McCombs: The purpose of it is to have the people who are there assist the officer, as opposed to trying to block the officer from accessing the computer, for example.

Mr. Larry Miller: Mr. Chairman, I have one comment on the very same thing.

The Chair: I'm going to go to Mr. Angus. I'll come back to you, Mr. Miller.

Mr. Charlie Angus: To me it's fairly straightforward. The fact that every person in the place.... If I'm in an illegal slaughter plant and I've just filled my car up with chickens, and even though I don't work at the plant they ask me some questions, I think I'd be implicated in it. Even though I didn't work at the plant, I happened to be there picking up my carload or truckload. They might be asking me questions or want to see. I think you'd be caught up in an investigation. If you're there, you're there.

Mr. Larry Miller: Excuse me, Mr. Chair, this is along the same lines. I can give an example of how I think the words "every qualified person" should read. If you use a killing plant, for example, and they walk in, and the inspector says to one of the people who actually work in the slaughter part of it, "I want you in here and I want you to open up this computer", obviously that person isn't qualified and doesn't even have access to it. All I suggest is that it would solve that part of it.

It's the same thing vice versa: you don't want a person who's in the administrative part being asked to come out and be told, "I want you to start up and run that saw for me", or whatever. I don't see how adding the word "qualified" could jeopardize the bill.

Mr. Mark McCombs: "Qualified" to do what?

I don't disagree with you—

Mr. Larry Miller: Basically to assist inspectors in getting the information they want.

Mr. Mark McCombs: —with respect to whatever it is they're asking for. For example, if they ask you to start the machinery, it would be a person qualified to operate the machinery. But what if

they walked in and said, "I'd like you to turn on the light. Can you find me the lights?"

Mr. Larry Miller: I think anybody in the building would be qualified for that.

Mr. Mark McCombs: Well, that would be.... My only concern is, if you put "qualified" there, you're going to have to define it.

The Chair: There are multiple tasks, so you'd have a really difficult time there.

I think the point is made, but it may be difficult to do it and give definition to the word "qualified".

Mr. Angus, very quickly.

Mr. Charlie Angus: Very quickly, I think "qualified" goes back to "reasonable". If you ask someone to operate a machine they weren't qualified to deal with, they could refuse; it wouldn't be reasonable because of a safety issue. I think "qualified" and "reasonable" at that point cancel each other out. I don't think you need to specifically put in "qualified".

The Chair: In any case, you would have unions and you would have job descriptions that would disqualify you in the first place from doing certain things.

Shall clause 29 as amended carry?

• (1605)

Mr. David Anderson: Is that the first clause, or both of them? I have a question on the second clause. Are you doing all of clause 29?

The Chair: I'm doing clause 29, yes.

Mr. David Anderson: I'd like to talk about subclause (2). We've been talking about subclause (1).

The Chair: Okay, you want to talk about it some more.

Mr. David Anderson: Yes. I'm going to ask a question, because earlier we heard that the reason to support subclause 27(2) was that we shouldn't be forcing peace officers to be compelled to do anything, and here we're turning around and saying they "shall" be there and they "shall provide"....

If you put the inspector basically over top of the peace officer rather than, as we were trying to do in the other place, put the inspector under the authority of the peace officer, I'm wondering why. Once again I think the agency is going far further than they need to go to assert their authority.

The Chair: Mr. McCombs...Ms. Stolarik.

Ms. Kristine Stolarik: I guess the powers of inspectors are subject to limitations set by the president, and for this reason there will be instances in which a peace officer is required to enforce the agency act.

We have a couple of recent examples. We were enforcing some issues on maple syrup; our inspectors were greeted by producers with guns, so we had to go and acquire peace officers to assist in that instance. The second one was during plum pox, when we were trying to eradicate some of the disease from the trees and what not. Pit bulls and different types of dogs were sicced on the inspectors. In that instance, that's when we would seek the assistance from the peace officers.

Mr. David Anderson: Basically, I think it reinforces our point that in order to do these types of inspections and searches, they should be required to take peace officers with them.

The Chair: Mr. Eyking.

Hon. Mark Eyking: Mr. Chair, I don't know if this is permissible, but there was a concern by Mr. Anderson about people getting into personal information when dealing with an inspection of a product. I don't know if we can do it now, but what about in paragraph 29(1)(b), where it says, "provide any information relevant to the administration or enforcement of an Agency-related act..."? Can we put in there "provide any information relevant to the products in question"? Then somebody cannot get in there and get in all a person's personal.... If you have to, you have to get the information from a disk dealing only with maybe a recipe or something, instead of getting into the whole personal....

You know, if you had a computer and one of your disks had your recipe, and people were getting sick—well, here's the disk on the recipe, but if some officer was a little, you know.... Would that be a good spot to put "product in question"?

I don't know if you understand where I'm at. I'm in paragraph 29(1)(b).

The Chair: What are you referring to? I'm sorry; I was interrupted here and got caught in the middle of your...messaging.

Hon. Mark Eyking: There's a concern. There is a history of a few cases in which people have been inspecting, trying to get information on a product in question. They've been getting too much into an individual's personal information.

If we had a part in there saying, "provide any information relevant to the product in question", so they can only ask for information on the production of the product, instead of trying to get.... Would it be suitable to have that somewhere in there?

The Chair: Mr. McCombs, before we have any more intervention, let's get your take on that.

Mr. Mark McCombs: The only concern with respect to that would be to determine what your definition is—to know if you're restricting it to a product, as opposed to an animal.

Hon. Mark Eyking: But you know what the intent is?

Mr. Mark McCombs: I understand the intent. It's a question of drafting it in a way that makes sure you're capturing all the things inspected by the agency.

The Chair: May I just ask a question? We had talked about the term "thing". Would this be a place where the word "thing", rather than "product", could apply?

Hon. Mark Eyking: It would be the "thing" in question—not "product" in question, "thing" in question.

The Chair: I don't know. Would it be reasonable to assume we might be able to use that term? Would you like some time to think about that?

Ms. Kristine Stolarik: I guess if we're allowed, we would like to take the opportunity to think about the "thing" and to think about regulated product. We want to make sure it captures everything we intended it to.

•(1610)

Mr. Mark McCombs: One additional comment to Madam Stolarik was to remember that we're not just looking for information under the product per se. We may be looking for information on the activities leading to the production of the product, in order to determine where the product got botulism, how it happened—that type of thing.

The Chair: So that word "thing" might work better there.

Mr. Angus.

Mr. Charlie Angus: Mr. Chair, my concern here would be whether we are putting the cart before the horse. If you were taking someone's hard drive because they were involved in an illegal activity, but there may be also illegal marketing, they could say to take this little A disk regarding the making of the product itself, but also say you can't look at anything else—if you're gathering evidence, you're going to need to know what the picture is.

The issue is whether you can use other evidence that you've collected. I believe this is another legal matter. I'm not a lawyer, but it would seem to me the same as when you stop someone in the RIDE program—if they find other things in the car, they can't turn around and say we didn't get you for that, but we're going to get you for this.

I think there is legal protection under the law. Isn't this what we're worried about—that they will find other things on your hard drive that are completely unrelated to food, that they can say we didn't nab you on that, but we're going to nab you for the illegal gambling network you're running and we're going to turn that over to the police? That would be my concern—how you use the other.

The Chair: We have all kinds of hypothetical scenarios here.

Mr. Bezan, for the last part, and then I think we're going to refer it—

Mr. James Bezan: I like what Mr. Eyking has been saying, because it does allow us to start looking at future powers and future programs. As we move toward HACCP and more on-farm inspections and things like that, I think this provides the balance that we need to make sure, especially as we go to on-farm.

We always want to think just about that packing plant and that processor, but this also has the same powers and the same strengths when we take it down to the farm gate. So if we can balance that off and protect that farm family, we're further ahead.

The Chair: As your chair, I'm going to recommend that we stand this clause until some language can be found and we try an accommodation here. Does everybody agree to stand that clause? Okay.

(Clause 29 allowed to stand)

Hon. Wayne Easter: Is that subclause 29(2)?

The Chair: It is the whole of clause 29.

Hon. Wayne Easter: I want to make a comment on subclause 29 (2), Mr. Chair.

I think Mr. Anderson's point was basically implying that the CFIA inspectors have authority over peace officers. That's not the case. The Canadian Food Inspection Agency inspector has his or her terms of reference and responsibilities clearly laid out, as does a peace officer in terms of what he or she can or can't do. It's not a matter of one being able to order the other one around; it's a matter of both being required, in certain instances, to do a job. I just want to make that clear.

The Chair: Okay, is there anything more? We've already stood this clause, so we're going to be coming back to it.

Mr. David Anderson: I just want to respond to Wayne. It says they "shall provide". So I would say that gives the inspector the authority to request.

The second thing, which Mr. Ritz just kind of blurted out here, is that this whole issue in clauses 27 and 29 is one of safety for people, too. If you send an inspector enough times into people's homes, at some point they're going to pay a price that they likely won't pay if there's a peace officer along with them.

The Chair: We stood clause 29. We'll move to clause 30.

(On clause 30—*Removal of unlawful imports*)

The Chair: Are there any comments on clause 30? We have no amendments.

Mr. Gerry Ritz: Yes, we do, new clause 30.1. Wayne has been busy. It's a new clause. They've added to it.

The Chair: I'm sorry. It has been added.

We can carry clause 30 and then go to new clause 30.1.

Mr. Gerry Ritz: Does this go back in and change some of what's in the first part of clause 30, or just strictly add to it?

The Chair: It's an addition.

An hon. member: I have no problem with clause 30.

The Chair: So is clause 30 carried on division?

An hon. member: No. We have a question on clause 30.

The Chair: What is the question?

An hon. member: The question is on subclause 30(3).

• (1615)

Mr. David Anderson: Well, I have a question on subclause 30(2) first, and then if Mr. Ritz wants to deal with subclause 30(3), that's fine.

I would like to hear our witnesses explain what the appeal process is if subclause 30(2) is applied to anyone who's bringing in a regulated product. What is the specific appeal process that they have available to them?

Ms. Kristine Stolarik: That would be the new clause that we're proposing, new clause 30.1.

Mr. David Anderson: Okay, we'll read through it here eventually, but what are you suggesting? Clause 30 basically gives the authority to the CFIA to do what they want with what they determine to be unlawful imports. Appeal has been a big issue for a lot of people here. Just what are you suggesting, then, in new clause 30.1?

Ms. Kristine Stolarik: This is basically the requirement that the agency would have to send a notice to a person specifying a period within which the imported product must be removed from Canada. This is dealing with illegally imported products or products that have been deemed to have been found in non-compliance with agency-related acts.

Mr. David Anderson: Okay, and on the second question, I see new clause 30.1 deals with that, but—

The Chair: We're not on clause 30.1.

Mr. David Anderson: Well, actually, they're referring us to clause 30.1, because they're saying the answer to my question—

The Chair: You're confusing me, because I thought we had agreed that clause 30 was to carry on division, and now we're moving to new clause 30.1, in which your question would have applied.

Mr. David Anderson: My question was in clause 30.2 originally.

The Chair: Then you're even further ahead of us.

Mr. Gerry Ritz: No.

A voice: He means subclause 30(2).

The Chair: Okay, I'm sorry.

A voice: We're from the government. We're here to help.

The Chair: Well, I appreciate your help. I need a lot of help.

I apologize.

Mr. David Anderson: That's fine.

What grounds for compensation are there in the legislation, then? The appeal process has now been put in place, which is a big improvement, but what avenue for compensation do people have?

Mr. Mark McCombs: The process would be a judicial review application and a civil suit.

Mr. David Anderson: Okay, I don't think we'll find that satisfactory.

Mr. Mark McCombs: There's no compensation authority in the agency's legislation.

Mr. David Anderson: There's none anywhere in the bill, right? That has been a huge concern as well.

Thank you.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: I'd make one short point on subclause 30(3):

A person to whom a notice is directed shall comply with the order.

Do you have a chance to seek a legal opinion, or talk to your lawyer, or anything like that? Do you have a timeframe, and does everyone vary?

Mr. Mark McCombs: There's a normal timeframe put in. It depends on what the product is.

Ms. Kristine Stolarik: There's a 90-day limitation—

Mr. Mark McCombs: There's a 90-day limitation period, as Kris has just pointed out to me.

Mr. Gerry Ritz: You have 90 days to comply with the order, but you want my product and I'm paying the storage.

Mr. Mark McCombs: Sorry, I missed the last part.

Mr. Gerry Ritz: So you're saying I have 90 days to comply with the order.

Ms. Kristine Stolarik: I'm just reading it here.

They could either consent to its forfeiture or disposal or allow the 90-day limitation period to lapse, at which point it's automatically forfeited to the crown on disposal.

Mr. Gerry Ritz: Okay, so when you give me the order, the clock is ticking on the 90 days, and if I get back to you...

If I take it to my lawyer, and so on, then I can—

Mr. Mark McCombs: The normal practice would be, if you disagree with the order—and we've gone through the process that we'll talk about in a few minutes—you would go to see your lawyer and say, "I have this order; what should I do?"

Your lawyer would then give you advice, and if you determined the advice is to go to court, you would ask for a judicial review of the decision to issue the order. The courts would then adjudicate on your claim that everything was made improperly, and a decision would be made. The agency would take no action during that time period unless they have permission from the court.

Mr. Gerry Ritz: The 90-day time clock runs out.

Mr. Mark McCombs: Well, no, the court is going to adjudicate. You're going to ask for a judicial review application before the 90 days runs, or I would hope you would.

(Clause 30 agreed to on division)

The Chair: Now we'll go to new clause 30.1. We have two versions. How's that?

A voice: I think we only have one.

The Chair: We have amendment G-8 and amendment G-8.1. Are these dealing with the same particular but two different versions of the amendment?

• (1620)

Hon. Wayne Easter: Amendment G-8.1 is the one we would table, Mr. Chair.

The Chair: You would table amendment G-8.1. Amendment G-8 would be off the table?

A voice: Are you withdrawing amendment G-8?

Hon. Wayne Easter: Well, it's the same—

The Chair: We're not dealing with it, so it's taken off.

Hon. Wayne Easter: Amendment G-8.1 is the one we should be dealing with. Just withdraw amendment G-8.

The Chair: Okay, so you've moved amendment G-8.1.

Hon. Wayne Easter: I'm moving amendment G-8.1. Do you want it read or not?

The Chair: I think everybody has it. It's on page 46.

Hon. Wayne Easter: It's page 46 in our book. I can explain the rationale behind it, or do you want me to read it?

The Chair: Just a quick rationale.

Hon. Wayne Easter: The original intent for creating the CFIA was to establish an arm's-length regulatory enforcement agency that was responsible for taking appropriate enforcement action. During committee hearings, both witnesses and committee members have raised concerns about the perceived or otherwise increase in inspection powers and authorities. They suggested a need for the inclusion of a review mechanism related to inspector powers.

What this amendment does, Mr. Chair, is it establishes the requirements for re-inspection where a person disagrees with an inspector's decision that the regulated product is not in compliance with the requirements of the act. Until the re-inspection is completed, the restrictions imposed as a result of the initial inspection would remain in place. That's the intent of the amendment.

Regardless, as is currently the case, recourse for individuals or businesses could be sought through either senior agency management or the Federal Court if there were disagreement after the re-inspection.

What the government is trying to do with the amendment is to cover the concerns raised by witnesses and committee members on the potential re-inspection.

The Chair: Mr. Ritz has a comment.

Mr. Gerry Ritz: I have a couple of quick points on this. We're headed in the right direction here. In new subclause 30.1(2) it says "within the prescribed time". Will that vary as per each notice, or is there something...?

Mr. Mark McCombs: "Prescribed" in the legislation means prescribed by regulation, so regulation will be created to prescribe the timeframe.

Mr. Gerry Ritz: And we don't have one now?

Mr. Mark McCombs: No. But let me just answer that.

We would prescribe a time that would be reasonable for the product we were dealing with. So if we're dealing with pineapples, then we're going to do it within the time period of perishable products and the inspections are going to have to be done very expeditiously to meet the criteria.

Mr. Gerry Ritz: Good. That's fine.

The other question I have is on all of the exceptions to an appeal. Who is that decided by? Is it the initial "inspector who believes on reasonable grounds"? If he orders that the product is to be removed and so on, is he the one—the initial inspector—who puts in that order for it to be removed, and then there is no appeal?

Mr. Mark McCombs: You mean, if we're talking about subclause 30(1), "Removal of unlawful imports"?

Mr. Gerry Ritz: New subclause 30.1(2).

Mr. Mark McCombs: You're talking about 30.1(2).

Mr. Gerry Ritz: Yes, 30.1(2)(a).

Mr. Mark McCombs: Okay. Let's use paragraph (a) as an example. What would happen is—

Mr. Gerry Ritz: Or paragraph (b) or (c)—any of them.

Mr. Mark McCombs: —you would have an inspection occur.

Mr. Gerry Ritz: Okay. Under subclause (1), “An inspector who believes on reasonable grounds”—that's the guy or the girl, whatever...

Mr. Mark McCombs: Yes.

Mr. Gerry Ritz: Okay.

Mr. Mark McCombs: They would make the inspection and determine the product was unlawful, and clause 30 would kick into that, which would then provide you your remedy that we just spoke about, in terms of the Federal Court remedy.

Mr. Gerry Ritz: Except there is no appeal or court remedy if this original inspector has ordered it removed, ordered it seized, and all that.

Mr. Mark McCombs: You still have a remedy. You don't have a re-inspection authority under new clause 30.1, but you still have recourse. In all decisions made by government officials, the Canadian public always has the opportunity for recourse to the courts. Every decision made by a government official can be reviewed by the courts.

The Chair: Yes, Mr. Anderson.

Mr. David Anderson: Mr. Chair, this is impossible. To say that if the CFIA oversteps its bounds, people have to go to the courts to get any kind of satisfaction.... This isn't an appeal process. That word “except” should be taken out of there. It does everything. It says we'll have an appeal process, and then if you go through the exceptions, nothing's left. The product has been ordered to be removed.

So anything that's been thrown out of the country can't appeal. The product's been seized under clause 31. Read clause 31. It includes everything.

Paragraph 30.1(2)(c), “the product has been ordered to be recalled”, well, that maybe.... You don't have any appeal process if your product has been recalled. You don't have any appeal process if your product's an animal or any kind of animal product. You don't have an appeal process if the product is a plant. What do you have an appeal process for?

• (1625)

The Chair: Yes, Ms. Stolarik.

Ms. Kristine Stolarik: To clarify, the exceptions there are for the items that would be basically food safety issues, animal and plant diseases. Most of the complaints on re-inspections deal with quality issues—the grades, the labelling, container sizes, packages, the integrity. Those are the types of things that would be subject to this re-inspection provision. Those are the types of complaints that we do have. Those are the types of things that are held up at the border—a load of lettuce, cans with the wrong labels. That's the type of

provision we're trying to put in here to basically allow for re-inspection on those products.

Mr. David Anderson: If those are the products you want to restrict, then you should say that, but these seven exceptions cover far more than that; they cover everything. When you go into clause 31, it says “...may seize any regulated product or other thing”. That includes everything. Then you don't have an appeal process for anything outside of every “other thing”.

The Chair: I think Mr. Gaudet was in first.

[Translation]

Mr. Roger Gaudet: For example, suppose my colleagues produce cheese and her business is visited by an inspector who says her cheese is not good, for whatever reason. The inspector could then decide to order her premises shut down. If she had her business thoroughly cleaned, could she immediately request that the inspector return and re-inspect her product? Could she, as early as the following morning, ask another inspector to do another inspection to determine if her business meets all of the requirements?

Ms. Kristine Stolarik: A second inspection would indeed have to be done, to determine the changes that would need to be made to meet the requirements. The inspector would then have to return the next day and re-inspect the premises.

Mr. Roger Gaudet: In fact, it's possible that it was merely an isolated problem. Plant operations should not have to be shut down for days at a time.

Ms. Kristine Stolarik: That's why the clause sets out a time frame.

Mr. Roger Gaudet: You've answered my question. Thank you.

[English]

The Chair: Okay.

Mr. Easter, did you want back in again?

Hon. Wayne Easter: Yes, I did. I'm sorry, Mr. Chair.

I think maybe we'd better have Kristine or Mark go through each of these areas of exceptions, because in the points David is raising, I think—with due respect, David—he's seeing things in the wrong light here.

The exceptions are not for quality reasons. If it's seized, it's because of an offence. If it's removed, it's for health and safety reasons and should be removed. You need those exceptions in, because of different violations. But if we could ask Kristine and Mark to explain each of those exceptions from (a) to (e), and why they are there, you'll see that they are necessary there, if I may suggest that, Mr. Chair.

The Chair: Can we have an explanation of those points?

Mr. Mark McCombs: In subclause 30.1(2), in paragraph (a) are the products that are unlawful, the ones we just talked about that are being ordered removed because they have been illegally imported into Canada. Generally, we're talking about smuggled products, products that are not permitted in Canada and are against Canadian law to have here. That's the reason it was an exception to the reinspection authority.

•(1630)

The Chair: Do you want to go through the others?

Mr. Mark McCombs: Concerning products seized, when we seize a product there's a procedure—and we'll get to it when we talk about seized products—for how we deal with seizures, and then we're into a court process. Once you kick into the seizure process, you kick into a court process. That was why we left that one out.

“The product has been ordered to be recalled”: the minister under the Food Inspection Act has authority to issue a mandatory recall authority, and the minister can only do that when the product in question poses a risk to the public or to an animal or plant. The recall authority is a separate authority, and the reinspection.... We're talking now of a reinspection of a product the minister has already decided is subject to a mandatory recall order, so now we have the cart before the horse.

The next one is with respect to animal products, animal by-products, and veterinary biologics. It was because of the nature of the product we're talking about that we determined to exclude that one. We're talking about animals in Canada; we're talking about diseased animals generally.

The last one is the plants, and it's similar to the animals: we're talking about plant pests.

Does that help?

The Chair: Mr. Anderson.

Mr. David Anderson: It helps, but it implies that in the whole section, the CFIA is not going to make a mistake, so because we don't make a mistake, we can order things out of the country without any reinspection. Because we don't make a mistake when we see something, you're not allowed to ask for reinspection. Because the minister couldn't possibly make a mistake when he recalls something, you're not allowed to ask for reinspection—and it doesn't talk about animal and plant disease, although that may be what you mean, but it talks about any animal, any product.

Clause 31, again, talks about “any regulated product or other thing”. Wayne, it goes far beyond any kind of reasonable appeal process here. It isn't here, and I don't think industry is going to accept this.

Hon. Wayne Easter: Mr. Chair, I think industry will accept it, because it does relate to most of those areas where reinspection requirements would be asked for. Especially on the seizure of a product or something that is being recalled, you do need to be able to move quickly, because you have to err on the side of caution. There is the recourse to the courts in that case.

If you're going to protect the integrity of our food quality system, our animal health system, and plant health system, you do need those exceptions. I really think that, and I think you'll find it will be in the quality cases that most of the reinspections will occur.

The Chair: I think we've had good discussion. I think what we need to know—

Mr. Ritz, this is the last question.

Mr. Gerry Ritz: This is just one final point. It does pertain to clause 31. I can go back to the blues if we want.... I know numbers of

people from the industry—this goes ahead to clause 31—and they really want to define “thing”. That came out from a number of different people—“other thing” and “is a thing”, and all that.

I understand from a drafting perspective where it has to be done, but that was the stumbling block for most of the industry groups coming before us. They want to see a tighter definition, and I don't know how you do it. I'm at a loss as well, but that was the major concern—the broadness of it. It's limitless.

The Chair: Is there any comment you would have on that particular matter, the word “thing”, and the concern that's expressed? You're going on into new clause 31.

Mr. Gerry Ritz: Well, it's because it does pertain. I mean, quoting from it as to how this works and—

The Chair: We need to move on into clause 31, but we need to deal with new clause 30.1 first, before we do that.

Is there any comment you would have on that, Mr. McCombs or Ms. Stolarik?

Ms. Kristine Stolarik: I'm just checking with our lawyers.

Mr. Gerry Ritz: I'm getting into a few others, Mr. Chair, because it does fall in under paragraph 30.1(2)(b) under the appeals. They're saying the products have been seized under clause 31, and clause 31 lists every “thing” under the universe. Then you have no access to appeal. That was the concern industry had.

Hon. Wayne Easter: Mr. Chair, I think there is a proposed definition of “thing” in what we stood earlier. I haven't found it yet, but—

The Chair: I know, but I'm wondering whether that is different from this here, or whether we're waiting for the definition to be defined, and then it would apply in this case as well.

Mr. Gerry Ritz: Would it apply to every clause in which “other thing” or “thing” shows up, then?

•(1635)

Mr. Mark McCombs: Yes, that would be the intention.

Mr. Gerry Ritz: Okay, I would love to see that definition.

The Chair: In that case, what we can do is move this one, because if we find agreement on that word in the other areas, then it will apply to this.

Mr. Gerry Ritz: Exactly. Fine, thank you.

The Chair: So let's have the amendment. Does the amendment carry on division?

(Amendment agreed to on division)

(On clause 31—*Power to seize*)

The Chair: Now we're moving on to clause 31, and there are no amendments here. Are there any comments on clause 31?

Mr. Gerry Ritz: None other than on that definition, Mr. Chair—I'm not prepared to see this clause go ahead until we have that definition on the word.

The Chair: Well, we'll have it. We can do this, and it will be affected by the definition we finally approve.

Mr. Gerry Ritz: Will we stand this until we have the definition we like?

The Chair: Stand it.... We can approve it, but the word “thing” would then affect what we would do in this particular case.

Mr. Gerry Ritz: But if we don't like the definition, what—

The Chair: If it isn't approved, then nothing is approved. It has to be approved at some point. We will find common agreement at some point to move forward, but we can't stand everything. We have to move forward and we have to have something happen so that we can apply something, broadly.

Can we see clause 31 carried on division?

Mr. Charlie Angus: Mr. Chairman, I don't want to keep the kettle of worms open, but I'm wondering if it really does make much of a difference if we strike “thing” at that point, because it's a related product. To me, what it would be is fairly straightforward, and I don't know if we need an extra catch-all on there.

The Chair: But the effect of what we do when we give that other definition is going to apply here in this case.

Madame Poirier-Rivard, and then we're going to call for the....

[*Translation*]

Ms. Denise Poirier-Rivard: I'm curious as to whether you often use the word “thing” when drafting legislative clauses? Is this a common practice?

Ms. Kristine Stolarik: Yes. I'm looking at counsel and I believe they're indicating to me that this is very common.

[*English*]

The Chair: I knew that, because we had talked about it considerably at another meeting.

(Clause 31 agreed to on division)

(On clause 32—*Searches*)

The Chair: Now we go to clause 32. On page 48, you will find an amendment, which is NDP-10.6. Do you want to move that one, Mr. Angus?

Mr. Charlie Angus: Yes. Again, I think this just provides a certain amount of protection for people, and it clarifies the circumstances under which you would get a warrant.

The Chair: Are there any comments on that?

Mr. Easter.

Hon. Wayne Easter: We would oppose this, and I'll have to ask Kristine or Mark to explain it further. The court, rather than a definition in legislation, really determines what circumstances exist. In most legislation, it's left to the court to decide what those conditions may be, but I'd ask Kristine or Mark to explain that a little more elaborately than I can.

Mr. Mark McCombs: There's a substantial body of case law on exigent circumstances. Piles and piles of cases have defined exigent circumstances. Sorry, I don't have those cases with me.

If we change the definition here, it will affect other agency legislation as well, because exigent circumstances are relied on in the Criminal Code and all throughout federal legislation. It's been well defined by the courts. I'm sorry; I don't have it with me.

The Chair: Mr. Angus.

Mr. Charlie Angus: For those of us who are more commonly used to dealing with the prices of cattle, can you at least give a clear definition of what that is? Sure, I trust you, but I don't really feel all that comfortable just saying that there's a whole lot of case law saying that word covers it. I don't really know what it covers, so I don't really feel comfortable. I'd like to know what it is.

The Chair: Mr. McCombs.

Mr. Mark McCombs: Mr. Chairman, I can undertake to bring that case law the next time we are a witness.

The Chair: What we need to do is stand that amendment.

Mr. Charlie Angus: If we get it clarified that....

The Chair: Shall we stand the amendment until we have clarification?

(Amendment allowed to stand)

The Chair: We have another amendment. It is NDP-11, on page 49. Mr. Angus, would you move that amendment?

Hon. Wayne Easter: I find this one is the same, Mr. Chair.

• (1640)

The Chair: Do you want to stand that one as well?

Hon. Wayne Easter: I think that's the same, Charlie. It deals with exigent circumstances too.

The Chair: We can deal with this. We can pass it. If it applies to the other one, then we need to stand both.

Hon. Wayne Easter: I think you should stand both.

The Chair: Okay, we'll stand that.

(On clause 33—*Notice of reason for seizure*)

The Chair: We move to clause 33. I believe there are no amendments.

Mr. Gerry Ritz: We're getting rid of “other thing”.

The Chair: We are on clause 33.

Mr. James Bezan: “An inspector or officer who seizes a regulated product or other thing...”, and then “other thing” appears again in clause 34. It's all about dispositions of things. You've got things seized now—

The Chair: A lot of things will be impacted by the way we define it.

Mr. James Bezan: What things are you talking about?

Mr. Gerry Ritz: It's a moot point.

The Chair: Until we have definition of that word, we cannot.... We can accept the clause, other than that. It's okay.

Mr. Gerry Ritz: Well, that is the clause.

The Chair: I know.

Mr. Gerry Ritz: This is the whole section.

The Chair: Then when we do the others, we can have a whole lot of clauses in there.

Shall we, on division, approve this clause?

Mr. Miller.

Mr. Larry Miller: Mr. Chairman, there are so many things—

The Chair: I know there are. There are a whole lot of things around this table.

Mr. Larry Miller: No pun intended.

So much depends on that one word that I can describe. It only takes a second to pass it, so let's find out the definition and then deal with it.

The Chair: But we haven't got the definition. That's what we're—

Mr. Larry Miller: I know, so let's leave the dang thing.

The Chair: Let's leave the thing—well, we can approve this thing, and by virtue of having a definition given approval around this table, it will automatically give approval to that down the road.

Mr. Larry Miller: I can't believe that with all the lawyers we have down here, we can't come up with a better word. It's almost childish.

Hon. Wayne Easter: No, it's not, Mr. Chair; it's not childish. There are all kinds of diseases, issues, things that happen in plants and animals that we don't know exist, probably. You can't define everything in advance, and that's why the words are, to a certain extent, a catch-all—so that the agency does have the power to move on these issues when they have to.

You have to have that, Larry. We don't know what will occur two years down the road.

The Chair: I would encourage us to please understand. We're not trying to railroad here, but...we can stand all this and we'll have another debate. Let's deal with one debate and then cover a broad multitude of clauses. That's what I'm trying to do now.

I would ask for concurrence on division on clause 33.

Mr. Gerry Ritz: On that point, Mr. Chair, are you saying we will have the definition of “thing”, and this will all be copacetic, before we go back to the House with this bill?

The Chair: Absolutely. Absolutely.

Mr. Gerry Ritz: When are you planning on having this bill before the House?

The Chair: At the rate we're going, it won't be for two more years.

Hon. Wayne Easter: And as soon as some things get done around here.

The Chair: It's a fine thing, and we got further, but we're not doing that today. Please, let's understand—we're not doing that today. It's for another day. We'll have lots of opportunity.

Mr. Larry Miller: Is the definition going to be at the next meeting, then?

The Chair: That's right.

Can we carry on division?

(Clause 33 agreed to on division)

(On clause 34—*Disposition of things seized*)

The Chair: We move to clause 34. This is on page 50 of your amendments.

Mr. Angus, please.

Mr. Charlie Angus: Hold on; I thought clause 34 was being—

The Chair: That was clause 33; now we're on to clause 34.

Mr. Charlie Angus: I can't keep up with you, Mr. Chair. You're just moving ahead on us.

Just give me 30 seconds here.

The Chair: I can't keep up either.

Mr. Charlie Angus: This is coming to the crux of one of our big concerns, which is where you stand with a review tribunal and where you stand with ability to be compensated if you are unfairly targeted—just putting that into legislation.

The Chair: Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair.

The government doesn't support this recommendation. The government's proposed amendment to clause 25 would, we believe, address this concern by creating a mechanism whereby the product could be held, or its movement restricted or prohibited, to provide the opportunity to determine if the product is in compliance. That is point number one.

In addition, the government's proposed amendment to include a reinspection authority would allow a person who is not satisfied with the initial inspection result to request a reinspection. That was the amendment we just did.

In essence, what this NDP amendment 12 does is create an extra layer.... Our amendment creates an extra layer of assurance that verifies the product is non-compliant, and therefore seizure is the next appropriate step.

I believe, as well, that this amendment would require a royal recommendation to the bill in order to be accommodated. I'll have to ask the witnesses to explain better what royal recommendation means. Who wants to take a crack at it? Kristine or Mark?

• (1645)

Ms. Kristine Stolarik: Basically this bill was put through as a revenue-neutral bill. We would basically not have additional costs incurred. Having the compensation provisions in here would require us to go back and get the required authority.

The Chair: We have Mr. Angus again.

Mr. Charlie Angus: This has been a fairly controversial bill. Our party is willing to accept giving the CFIA the powers they need to do their job, but if, at the end of the day, there's not a clear protection for people who get unfairly picked up in the sweep and their finances are severely impacted, then we'd have very serious questions about going any further in supporting this bill.

If this is meant to be revenue neutral, it's not revenue neutral for someone when you stop their shipment, and then it gets cleared, but the shipment is ruined. There has to be some kind of protection, so I would push very hard to have this stand right now.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: I would have to reiterate that. It's a deal-breaker for us, as well. I don't understand why there cannot be.... You're saying there can be no compensatory package hooked into Bill C-27 at all, at any stage?

Ms. Kristine Stolarik: It's not deemed as compensation. We have other pieces of legislation that deal with compensation—our Health of Animals Act, our Plant Protection Act....

Mr. Gerry Ritz: We've said, and Mr. Easter has quoted, that this is already in these other acts; we're just putting it into this all-encompassing piece of legislation. Why would you not then agree to the same thing for compensation? If it's already in these other parts and pieces that you already manage and apply, why can you not then have an overarching compensatory package in Bill C-27?

Mr. Mark McCombs: The other two pieces of legislation actually do direct a source of funds for compensation. They come directly out of the CRF. Both the plant protection and the health of animals legislation allow the minister to order compensation from the consolidated revenue fund.

This bill was designed to be revenue neutral, meaning the CFIA would reallocate resources to cover any new powers and change the way they did it. It wasn't designed to take on a new compensation fund, nor is there a source of funds for the review tribunal that would have a review workload, as well as the funds to provide for compensation.

Mr. Gerry Ritz: I understand. You're saying there are only compensation packages in the health of animals and plant legislation, but now you've also got fisheries and a whole bunch of other acts underneath you as well—so there's no access to any compensation under those other acts that will be under you now?

Mr. Mark McCombs: There never was.

Mr. Gerry Ritz: I understand that, but isn't this the time to put them in? We can't go back and do it in any other way.

Ms. Kristine Stolarik: We should remember, too, that the compensations issued under the Plant Protection Act and the Health of Animals Act are for items that have been ordered destroyed—diseased or destroyed—so it's very narrow.

Mr. Gerry Ritz: I understand that. I'm not trying to cherry-pick what you'll use it for and what you won't, but it has to be in here for the industry. They also made these claims; they have said they've got to be assured that if there is a wrongful destruction of whatever property or the age stamp becomes bad or something, compensation will be available to them.

That's been a lot of the concern. There is the potato farmer in Mr. Easter's riding, the ash trees in southern Ontario, the elk herds—I could go on and on. Some of them were covered and some of them weren't; for producers to be safeguarded, it has to be there.

•(1650)

The Chair: We'll go to Mr. Eyking, and then to Mrs. Ur, and then to Mr. Easter.

Hon. Mark Eyking: I want to ask for clarity here.

I'm just asking for an example. Suppose you're a greenhouse grower in Leamington, and you're ready to ship a bunch of tomatoes to Michigan, and somebody from CFIA wants to inspect your tomatoes—they assume you have pesticide or what not—and that greenhouse grower has \$40,000 worth of tomatoes, and one of your people says we have to hold the whole works.

So, first of all, he has \$40,000 worth of ripening tomatoes on hold somewhere. He also has a customer on the other end, and for some reason the tomatoes all of a sudden come back after two days. It happens to be on a Friday, and the thing doesn't come back until Tuesday. He loses those tomatoes. He's just lost a customer in Michigan, and all of a sudden you're telling me this grower is just... out of luck?

Mr. Mark McCombs: I'm not saying that.

He can go to court. He can apply to the agency's dispute resolution services for a resolution of the claim he has against the agency. We have—

Hon. Mark Eyking: Why would he have to go to court, if your inspector knows that he made a mistake?

Mr. Mark McCombs: He doesn't have to go to court. In the normal process, claims against the Food Inspection Agency are directed to the president or to the head of legal services for the purposes of determining the results of a claim. We have had 95 claims since we set up the dispute resolution services in 1999. We have resolved 93 of the 95; only two of those have gone to court.

We have more litigation than that, obviously, but with the process we put in place to deal with cases in which the agency did not do the appropriate thing, we have settled those cases.

The Chair: Okay.

Next is Mrs. Ur.

Mrs. Rose-Marie Ur: Thank you for that.

I'm just following up on what Mark said, because that was my question. You're suggesting it's up to the farmer, the primary producer, to go through a court system. Then you said it wasn't through a court system, so I'm a little troubled there.

The time to resolve—what is the length of time to resolve? Here again, it's the time factor, the cost factor, for the primary producer.

Mr. Mark McCombs: We have had...in a situation such as that, if the inspector had acted inappropriately and for whatever reason had decided to hold the produce, and the produce was destroyed, and it turns out that he should not have held the produce, then the producer would make a claim to the agency. The agency would look at the claim, and we would enter into an alternative dispute resolution process in which that claim would be mediated. We would determine whether liability was going to ensue to the agency, and the case would be settled. That's what we've done in 93 of 95 cases we've had.

The alternative to that, if he disagrees...and two of those cases did disagree; they went to court.

Mrs. Rose-Marie Ur: Here again, the alternative dispute resolution and all the rest of it is time just ticking away on the calendar. We in the industry don't have time to—

Mr. Mark McCombs: We're now talking about produce that's already been destroyed. That's the example I was using.

Mrs. Rose-Marie Ur: Yes, but they could be back at your door saying the next shipment could be the same.

Mr. Mark McCombs: Yes, but now what we're talking about... Now the committee has introduced a reinspection process that will kick in to deal with the honourable member's scenario.

Mrs. Rose-Marie Ur: I'd feel more comfortable if there were something there to ensure we could compensate these individuals in a timely fashion.

Mr. Mark McCombs: Let me just speak to the amendment, just per se, and what it does say. It says it goes to the review tribunal, which is a quasi-judicial tribunal that does the administrative monetary penalties for the agricultural portfolio. The process for that compensation would require a trial of some nature.

Now, I'm not sure what the honourable member had in mind when he talked about the prescribed manner, but the tribunal has, in its current process, two separate systems: a written submission system and an oral hearing process. The volume of cases before that tribunal is not high at this point in time, but that would create a workload increase for the tribunal. In my view, it would not be fast.

•(1655)

Mrs. Rose-Marie Ur: Exactly. Not only did that person lose \$40,000 worth of product for which he isn't going to be compensated, but also the market at the other end...

Trust me—with the way systems are out there, if you have a good market, you're not about to lose even one order. I've been in the business with marketing vegetables. You can't afford to, because there's someone waiting in the back to take your spot. So this is a real concern for me.

The Chair: I'm going to get to you people in a moment. I just want to point out the amendment says "...the owner or person is not found to have committed an offence under this Act or an Agency-related Act, the owner or person may apply...".

Does this have any relevance in terms of the royal recommendation? In many ways, it would appear to be an admissible amendment because it says "may". It doesn't say "must" or "that would be" resolved in compensation, but "may" apply. Does this, in your opinion, Mr. McCombs, have any bearing on the way we address this particular amendment?

Mr. Mark McCombs: This particular amendment provides a new duty or authority for the review tribunal that it doesn't have within its legislation, so automatically, by the tribunal having to accept these applications, a workload is created.

The Chair: In the particular case, would it require royal recommendation, because anything we do in an appeal process is...?

Mr. Mark McCombs: In my view, Mr. Chair, it would, because the tribunal is being given a new job for which it doesn't have resources.

The Chair: Mr. Angus, you wanted to...

Mr. Charlie Angus: On this thing about being an extra cost, the fact is that if somebody loses their livelihood, there's nothing in this legislation to even address that. There's nothing to say we could go to our normal disputes route—it's not even in here. It doesn't even show people that they even have an avenue.

I think we're saying that if you have to go to the review tribunal, it's going to cost. Well, damn right it's going to cost, because you just

cost somebody.... It could've cost their income; it could've cost them their business.

I could've put in that they should receive full compensation for any of their losses. We haven't said that. We're saying that if they've been found not guilty, if this was a mistake, there's got to be something in this legislation, given the powers that exist in this act—the powers to seize, to do what needs to be done. If these people are innocent, there's got to be something very clear, specified in legislation, that gives them that guarantee—and I haven't seen it anywhere else in this legislation.

The Chair: We'll have two more questioners, and then because of circumstances today, I've been asked to adjourn this meeting at five o'clock.

Mr. Bezan, you're on, and then Mr. Easter. Then there will be adjournment.

We'll seek some direction as we come back. We won't conclude this particular clause today.

Mr. Bezan.

Mr. James Bezan: I agree with this amendment that's being proposed. This is about doing what's right for producers and processors, and this is going to go a long way in making sure that we have a great relationship between CFIA, their inspectors, and the industry.

If it costs some extra money, big deal. This is about making sure that everybody gets along great and everybody knows that they're going to be taken care of properly and that this is what's going to work well for everybody.

One of the law cases that you guys are facing is coming out of my riding, and that still isn't resolved. I talk to this individual on an ongoing basis. We just don't need to have that type of bad blood out there. I'd rather be able to see something resolved quickly.

When it does come through the court system, it's going to probably end up costing a lot more, a lot more in legal fees and everything else, but the quicker we can settle these disputes the better.

The Chair: Mr. Easter, you have the last word today.

Hon. Wayne Easter: One point of clarification that they want to be absolutely sure on is that this bill does not affect the Health of Animals Act or the Plant Protection Act in terms of the compensation that's already there.

I think we'll have to have a look at this and see what we can rework. We all know that to get into the legal system it's going to cost you as much as you're going to gain, so you don't want to get into that system unless it's a huge matter.

So we'll have to have a look at it and see what the options are.

The Chair: I think we need to attempt to find some accommodation in this area. This is one that's important for all sides of this committee, this table. So I would encourage the people at the table today to come forward with what you might find is the accommodation, certainly on the amendments that we've been seeking in terms of the definition. We can work with those by committee.

Thank you very much. We will see you in a week.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.