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Chair

Mr. Paul Steckle

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● (1530)

[*English*]

The Chair (Mr. Paul Steckle (Huron—Bruce, Lib.)): Order. Today we want to continue our deliberations on Bill C-27.

Before I get into the clause-by-clause measures, you have in front of you, in your materials today, a ruling in terms of the last clause we dealt with, clause 34. This was an NDP amendment. I'm now going to read to you the ruling.

Hon. Wayne Easter (Malpeque, Lib.): Mr. Chairman, we didn't get that material.

The Chair: You haven't got that material? Who has it, just me?

Oh well, the chair has privilege.

Voices: Oh, oh!

Mr. Gerry Ritz (Battlefords—Lloydminster, CPC): Not for long; enjoy it.

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

The Chair: With regard to amendment NDP-12, on page 50 in your book, we talked about a royal recommendation. We felt there may be some need to go for a royal recommendation because of the requirement of money.

I'm going to read you the ruling:

> Amendment NDP-12 proposes that an owner or a person may apply for compensation in cases where the owner or person incurs expense as a result of the exercise of Agency powers, and is later found not to have committed an offence.
>
> During the debate on this amendment, the government expressed the view that this amendment entails the expenditure of public funds for the increased workload contemplated by this amendment, as well as for funds to provide compensation. As a result, they claimed, the amendment requires a Royal Recommendation.
>
> If this were the case, the amendment would be inadmissible. According to page 655 of Marleau & Montpetit:
>
> > An amendment must not offend the financial initiative of the Crown. An amendment is therefore inadmissible if it imposes a charge on the Public Treasury...
>
> and page 711
>
> > ...the charge imposed...must be “new and distinct”; in other words, not covered elsewhere by some more general authorization.
>
> I have reviewed the matter and arrived at the following conclusions.
>
> With regard to increasing the Tribunal's workload and operating expenses, I would observe that this type of public expenditure would properly be dealt with in the Agency's annual Estimates. As Mr. McCombs explained:
>
> > 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 are not high at this point in time. That would create a workload increase for that tribunal.
>
> The amendment would require spending for additional operating funds to cover an increased level of activity. This is a matter for the Estimates, rather than an expenditure requiring a Royal Recommendation.
>
> In relation to the matter of providing funds for compensation, the Chair admits that this is more complicated. At first glance, it may appear that the amendment requires new spending for a distinct purpose. As the Committee was informed, 93 claims have been resolved since 1999. The amendment seeks only to provide an alternate method to determine whether compensation ought to be paid. Therefore, the provision of compensation could not be called a new and distinct type of expenditure for which a Royal Recommendation would be required.
>
> In conclusion, I believe there is sufficient argument to permit amendment NDP-12 to go forward as an admissible amendment.

That is the ruling, and there will be no discussion on it.

If you want to discuss the clause, we can carry on. The clause is open for further discussion. The amendment was moved, so if there is any discussion further to what we talked about the other day....

Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): I'm ready to push it forward.

The Chair: Okay.

I'll put the question....

Yes, Mr. Easter.

Hon. Wayne Easter: Mr. Chair, I do believe we have a dilemma here. Are we discussing—

● (1535)

The Chair: Are you challenging the ruling?

Hon. Wayne Easter: There's no way I can challenge your ruling, although I do disagree with it. I'm not challenging the ruling. I thought you were going to the question on the NDP amendment. You're not?

The Chair: I'm sorry?

Hon. Wayne Easter: I thought you were going to the question on the NDP amendment.

The Chair: That's what I'm seeking. I want to have the amendment moved and approved. What I'm asking—

Hon. Wayne Easter: Mr. Chair, you're not suggesting, as chair, that you would favour it being approved. I thought the chair was to be neutral.

The Chair: I'm simply giving the ruling. I asked for discussion, and there was no discussion forthcoming. There will be no discussion on the ruling, but there can be discussion on the amendment.

Hon. Wayne Easter: That's fine, Mr. Chair. I'm on the amendment.

The Chair: Okay.

Hon. Wayne Easter: I think this is quite a complicated area. I agree with some of the intent where it's looking at injury compensation, and so on, but I think on the basic principle, the legislation comes forward from the minister. He has certainly indicated to his colleagues, in bringing it forward to this committee, that it would be revenue neutral. If this amendment is to carry, it will really not be revenue neutral.

I suggest we raise a number of questions on the point to see what the committee really wants to get at here—if we can do it in a way that is revenue neutral and meets the minister's commitment to his cabinet colleagues that this bill, in coming forward, will be revenue neutral. We have to try to get to that point and make it continue to be revenue neutral, and at the same time see if we can address what the committee or what the NDP motion wants to address by what he's trying to get at here—see if there's another way of doing it.

The Chair: Mr. Angus.

Mr. Charlie Angus: We discussed this at length at our last meeting on this, and it was put forward that it wasn't revenue neutral and we needed an opinion on it. We got the opinion back, so I don't think there's anything further to discuss.

The Chair: My question to this committee is, how can we ascertain that everything in this bill is going to be absolutely revenue neutral? I think we're getting into hair splitting here, and we're going to be in some difficulty if we want to make it absolutely certain that there will be no revenue expenditure.... There will always be those kinds of expenditures.

I suggest, if I may, we ask for the amendment to carry or to fail, and I'm going to call for the vote. I think we have to move forward.

Hon. Wayne Easter: Look, I don't see the haste. We've got some time to deal with this appropriately. If we push this through and the government has to withdraw the bill, in effect we won't have accomplished anything.

I'm telling you here that the minister has said to his cabinet colleagues that this has to be revenue neutral. Yes, there will be amendments that may cost a little bit and some that may take it away, and there is some flexibility. But when you're dealing with a recommendation such as this that could, in effect, cost hundreds of thousands or millions of dollars, that sure as hell is not revenue neutral.

You're the chair, and if you want to vote on it that's fine. But I'm asking if there are other ways of trying to accommodate what the NDP wants here in terms of policy questions, without the recommendation as it's worded there.

The Chair: I'm listening.

Mr. Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): This is revenue neutral as long as the agency doesn't overstep its bounds. Clearly, if they've gone after somebody and the person is found to be innocent.... If they're guilty, there's no cost to the government. This only applies in the situation where somebody is found to have not committed an offence. I think it's a reasonable amendment and we should just move ahead with it. Wayne doesn't have any other suggestions.

● (1540)

The Chair: Mr. Ritz.

Mr. Gerry Ritz: Any piece of legislation, to be balanced, has to have checks and balances built into it. Just because the minister has promised his buddies this is revenue neutral is no reason at all to have producers or someone who's wrongfully convicted suffer.

I think it's an excellent amendment, and we need more of that type of check and balance throughout this legislation. I would more than happily support this amendment.

The Chair: I'm going to call the question and we'll see where it goes, because we have to move on.

Given that I'm not seeing any other alternative to what's on the table, shall the amendment of clause 34 carry?

[*Translation*]

Ms. Denise Poirier-Rivard (Châteauguay—Saint-Constant, BQ): On division.

[*English*]

The Chair: It's just on the amendment at this time.

[*Translation*]

Ms. Denise Poirier-Rivard: Yes.

[*English*]

The Chair: Does everyone understand? I'm calling for the amendment to be approved or to fail. I'm asking for those who wish to support the amendment on clause 34, which is NDP-12.

Mr. Charlie Angus: Sorry, can we have two minutes so Roger can be brought up to speed, because this is an important vote? For us, this is the major vote of this whole bill. He's just come in. They need to be—

The Chair: I respect the fact that we should all be up to speed, but I think we have a starting time, and sooner or later some of us are not going to be here on time.

I'm asking for the last time who is in favour of amendment NDP-12.

[*Translation*]

Ms. Denise Poirier-Rivard: We abstain.

[*English*]

The Chair: Is the Bloc abstaining?

Hon. Wayne Easter: Mr. Chair, there are four hands in favour.

[*Translation*]

Ms. Denise Poirier-Rivard: Yes.

[*English*]

The Chair: The vote is tied. I have to vote against it. It's my prerogative as a chair to do that. That's the way I have to vote. It has nothing to do with supporting the government. It's simply that I can't move in a direction where we basically haven't been. Sorry about that.

(Amendment negatived)

(Clause 34 agreed to on division)

(On clause 35—*Duration of detention*)

The Chair: We have amendment G-9, which is on page 51. It's a government amendment.

Mr. Easter, do you move the amendment?

Hon. Wayne Easter: Yes, I do.

The Chair: Do you want to speak to it?

Hon. Wayne Easter: It's pretty simple, Mr. Chair. It replaces subsection 45(3) of the Health of Animals Act and subsection 32(3) of the Plant Protection Act, as those provisions are being repealed.

The Chair: Is there any other commentary on amendment G-9 to clause 35?

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

(Clause 35 as amended agreed to on division)

(On clause 36—*Owner unidentified or thing unclaimed*)

The Chair: There are no amendments on clause 36. Is there anything on clause 36?

Yes, Mr. Anderson.

Mr. David Anderson: I'm just wondering if the witnesses can explain whether 30 days is an adequate time period. Things happen pretty quickly. You get two sets of letters going in the mail. You can pass a month pretty easily without people being identified or being able to identify themselves.

The Chair: Does anyone want to respond?

Ms. Stolarik or Mr. McCombs.

Ms. Kristine Stolarik (Executive Director, Liaison, Preparedness and Policy Coordination, Canadian Food Inspection Agency): You're asking about the 30-day question?

Mr. David Anderson: In paragraph 36(1)(a) it says if they can't find the owner after 30 days it can be forfeited, but down below it talks about 30 days after the seizure ends. I'm just wondering if in paragraph 36(1)(a) 30 days is too narrow a timeframe.

● (1545)

Ms. Kristine Stolarik: Thirty days is basically the standard amount of time that's available in the other pieces of legislation, so we just drew from what was existing there. Basically, the clock starts from the date the letter goes out, and then 30 days after to see if we can find.... But I do believe there are circumstances where we extend that if we can't locate them.

(Clause 36 agreed to on division)

(On clause 37—*Conviction for offence*)

The Chair: Are there no amendments to clause 37?

Ms. Ur.

Mrs. Rose-Marie Ur (Lambton—Kent—Middlesex, Lib.): Maybe the witnesses can answer this question. It says, "the Minister may direct at the expense of the owner or person having the possession, care or control of it at the time of its seizure".

Is there anything in the regulations that you're aware of that's disposed of at the least cost possible to the person? Someone could do whatever, and the producer would have no ability to have input as to the disposal costs.

Ms. Kristine Stolarik: In the regulations.

Mr. Mark McCombs (Head and General Counsel, Legal Services, Canadian Food Inspection Agency): Not in the regulations, to my knowledge.

Mrs. Rose-Marie Ur: So how do we know that's cost-effective?

Mr. Mark McCombs: Normally the disposal is done to eliminate the good in particular. So if it's a food stuff that we want to ensure that no one is going to consume, it would be destroyed in that manner.

Some of the diseased animals would be destroyed by burning, incineration—whatever method is most effective. In some cases, incineration may not be the most cost-effective, but it is the most effective for the prevention of the spread of disease.

The Chair: Is there anything further on that?

Mrs. Rose-Marie Ur: That's fine.

The Chair: Okay.

(Clause 37 agreed to on division)

(On clause 38—*Forfeiture*)

The Chair: Are there any comments on clause 38?

Mr. David Anderson: Hold on.

The Chair: Yes, Roger.

[*Translation*]

Mr. Roger Gaudet (Montcalm, BQ): I apologize, Mr. Chairman, but I arrived late. Has a definition of the word "thing" been provided?

Ms. Kristine Stolarik: Yes.

[*English*]

Did you want us to talk about "thing"?

[*Translation*]

Mr. Roger Gaudet: Last time around, everyone was talking about the word "thing".

Ms. Kristine Stolarik: That's true.

Mr. Roger Gaudet: Could I have the definition? I'm capable of reading it for myself.

Ms. Kristine Stolarik: I'll begin in English, and then switch from one language to the other.

[*English*]

On the definition of “thing”, we basically did some research on that. If you read “thing” with the intent of the clause, it's defined within the parameters of that particular clause. For example, if I go back historically—and this is where “thing” first appeared—to the Health of Animals Act and the Plant Protection Act back in the early nineties, we only had the ability to stop the animal or the plant. We weren't able to control the virus, such as perhaps an FMD, or the bugs that could be on the plant. So they added the word “thing” to that so you could not only stop the animal but any other thing associated with that animal. It could have been the bedding the animal was in. It could have been the cage or the crate the animal was in. The same with a plant. It could have been the plant, the container it was in, because we don't regulate the container, or the picnic table the bugs are on—I don't regulate picnic tables—but the “thing” would be the larva.

That's where that “thing” came into the agriculture legislation back in the early nineties. It has since been used in our other pieces of legislation as well. For example, in the Meat Inspection Act, it's “meat product or other thing”, because sometimes we have to not only look at the meat but perhaps the knife or the cutting board, which is a thing that goes with that regulated product.

● (1550)

The Chair: Okay.

Ms. Kristine Stolarik: You have to take it in the context of the regulated product and other thing that could be associated with that product within the confines of agency-related acts. If we didn't, if it's not defined, I guess the dictionary definition is used, which is quite specific on what a thing is.

[*Translation*]

The dictionary gives a definition of “thing”.

[*English*]

Once again, if we did have a definition, I believe it would limit the meaning of what the term could do for the CFIA. It could hinder us on performing some of the duties.

That's the history of where “thing” came into our legislation. It was to deal with things that were vectors for viruses or pests.

[*Translation*]

I don't know if that answers your question, but that's a quick overview of the use of this word.

[*English*]

The Chair: Does that answer the question for all of us? We have stayed a number of clauses because we didn't have the definition, but it's been given now. This may be helpful as we go down and return back to some of these clauses. Okay?

(Clauses 38 and 39 agreed to on division)

(On clause 40—*False or misleading statements)*

The Chair: Now we go to government amendment G-10 on page 52.

Mr. Easter, would you move the amendment?

Hon. Wayne Easter: Yes, I would, Mr. Chair. The NDP has an amendment as well, and I think both these amendments do the same thing.

With regard to the government amendment, there were concerns raised by the committee by both members and witnesses regarding the inclusion of intent in this section.

The Chair: Is that clause 40?

Hon. Wayne Easter: Yes, we'd amend clause 40 to address the persons who intentionally provide false or misleading information to an inspector in an attempt to deceive the inspector.

I would move an amendment that would read, “No person shall, with intent to deceive”—

The Chair: If we approve this amendment, then the other would be negatived.

Hon. Wayne Easter: You'd have to check with Mr. Angus.

The Chair: Does this meet the criteria you wanted in your amendment, Mr. Angus?

Mr. Charlie Angus: I don't know if we aren't splitting legal hairs here. I thought “knowingly” gave a bit more latitude to the inspectors. It may be more difficult to have to prove an intent to deceive. But I'll leave this question to our legal team.

The Chair: Could my people at the table help?

Mr. McCombs, please.

Mr. Mark McCombs: “Intent to deceive” is more appropriate, given that we're dealing with a regulatory statute.

The Chair: Are you satisfied, Mr. Angus?

Mr. Charlie Angus: Yes.

(Amendment agreed to)

(Clause 40 as amended agreed to on division)

(Clauses 41 to 43 inclusive agreed to on division)

(On clause 44—*Costs for inspections, etc.*)

The Chair: On clause 44 we have, on page 54, amendment NDP-13. They are both put by the NDP. There are two of them. They are very similar. We can't have both, so I'll leave it to you, Mr. Angus, to move one or the other. Which one would you like?

Mr. Charlie Angus: I'm sorry, I thought we had only put in one.

The Chair: Well, I can't help you there.

Mr. Charlie Angus: I'll go with amendment NDP-13 on page 54.

The Chair: We're doing amendment number 13. Do you want to move that one?

Mr. Charlie Angus: Yes. The issue here and in clause 45 is whether this bill is going to provide checks and balances. For us, this is an example of where we can provide checks and balances.

The Chair: Okay. We'll do this one first. Is there anything you want to add?

Mr. Easter.

● (1555)

Hon. Wayne Easter: We're opposed to it at the moment, Mr. Chair. Could Charlie explain it a little more?

The Chair: Mr. Angus?

Hon. Wayne Easter: This is line 32, page 21.

Mr. Charlie Angus: It is basically saying that if anybody is liable for costs they should be liable for costs if they're guilty of a breach of any of the acts. If they're not guilty, they shouldn't be liable. They shouldn't have to pay for everything that CFIA expects them to pay for.

The Chair: We have heard Mr. Angus.

Mr. Fitzpatrick.

Mr. Brian Fitzpatrick (Prince Albert, CPC): I looked at that section. It jumped out at me right off the bat. If they came in and it was a very expensive recovery procedure and the person was not guilty of anything, it seems fundamentally wrong that you could just, carte blanche, impose the costs on that person. If the state comes barging onto my property and I didn't do anything wrong, why should I bear the cost? There is a need for a safeguard here.

The Chair: I'm going to defer to the table for some guidance.

Mr. Mark McCombs: This provision protects the Crown from liability for costs, loss, or damages where the person is required to take action under the act. If you didn't have this provision, the Crown would be liable for storage of products and would have to pay these costs while we wait for the individual to present the appropriate documentation. If we detain a particular product, and the individual says he doesn't have the appropriate documentation and it will take six months to get it, then who's paying for the storage costs? This covers that case: where the individual is required to take certain action, they're responsible for the cost.

Mr. Brian Fitzpatrick: You're emphasizing protecting the government when they see something. I'm just referring to the innocent citizen, where the state comes marching onto their property and carries out some search and seizure procedure and the person has done nothing wrong. If I'm understanding you correctly, sir, you're saying it's quite all right to let them bear the cost of this seizure. I don't follow that logic.

Mr. Mark McCombs: No, this is protecting the taxpayer from liability where the individual—

Mr. Brian Fitzpatrick: Innocent people should be protected against this, I would say, sir.

The Chair: Mr. Easter.

Hon. Wayne Easter: I do think there's a misunderstanding here.

I think what is being put forward by the witnesses.... And the government does oppose the amendment. The section does currently exist in the Health of Animals Act and the Plant Protection Act.

But take the case or example Mr. McCombs mentioned, where you do have reason to believe.... You set aside the goods, you ask the individual for documentation, and if the documentation is very long in coming, because their books are not up to date or whatever, you would find the CFIA or the Crown liable for that individual's tardiness in terms of their not having their information together needed to protect the health of the food supply.

I understand where you're coming from too, that there has to be protection so that you don't use the powers of an inspection agency to go in and basically raid an operation for unsubstantiated reasons. But at the same time, you've got to protect the Crown against those individuals who don't have all the documentation, etc., they should have in place.

The Chair: I'm going to Ms. Stolarik and then to Mr. Eyking.

Ms. Kristine Stolarik: I'll just give you an example of how we use this under the Health of Animals Act. This happens quite often, where individuals or companies import a product; it hits the border and is found to be diseased and non-compliant. The company then abandons the product and doesn't want anything to do with it. Because there is a significant risk to the resource base, or animal base, or plant base, or whatever, we then basically have to take the necessary actions to have that product treated and destroyed appropriately.

So this clause here would allow us to recover the cost of that treatment and disposal from the person who originally wanted to import the product that was non-compliant with agency-related acts. That's what this is in here for.

It happens quite a lot.

● (1600)

The Chair: Mr. Eyking.

Hon. Mark Eyking (Sydney—Victoria, Lib.): I'll give you an example. Let's say you're a carrot grower in southern Quebec and you're bringing in carrots from California and Florida in the off season and repacking and selling them. The CFIA decides to hold the carrots that are coming in because they think there might be something wrong with them. So those carrots are held on a tractor-trailer for a couple of days, or whatever, and it's costing the grower money. If they find out there's no residue on the carrots, are you saying the grower should have to pay for that truck running there when this is happening?

That would be the example, wouldn't it?

Ms. Kristine Stolarik: No, I don't think that's what I'm saying.

Hon. Mark Eyking: Would that be an example?

Ms. Kristine Stolarik: First of all, they'd have to have reasonable grounds to hold and test the carrots. Usually, there's a time limit for which they can hold perishable products, like a two-hour timeframe in which they hold and test them, and then they release the shipment.

The Chair: Mr. Fitzpatrick, Mr. Miller, and then Mr. Anderson.

Mr. Brian Fitzpatrick: I just want to address the point, because when I read the clause, I do not see a safeguard for that person. That's what bothers me.

In the examples being used, you're talking about people who aren't acting in good faith. Most of our farmers will act in good faith, so it just seems to me that this is a blank cheque.

I guess a question I'd have for the officials here is, have you checked this out with the Justice lawyers, because the charter says everyone is entitled to due process and so on?

I find this whole clause rather disturbing.

Ms. Kristine Stolarik: It already—

Mr. Brian Fitzpatrick: There isn't a mechanism in there to protect an innocent citizen acting in good faith from having a whole bunch of costs imposed on them.

Ms. Kristine Stolarik: These provisions already exist in the Health of Animals Act and Plant Protection Act, and I believe the Seeds Act is the other one.

Mr. Brian Fitzpatrick: That doesn't necessarily make it right.

Ms. Kristine Stolarik: It was checked out, and I'll turn to counsel here to verify that.

Mr. Brian Fitzpatrick: I find it dangerous.

Mr. Mark McCombs: It still requires a process to go through for recovery.

The Chair: Mr. Miller.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Thank you, Mr. Chairman.

I have a follow-up further to this. Ms. Stolarik, you used the example of at the border only. Does this exclude anything that may happen on a farm, or is this specific to a border issue?

Ms. Kristine Stolarik: That's where it's used most often because that's where the situations...but if you read it—

Mr. Larry Miller: That's not my question.

Ms. Kristine Stolarik: I know. I'm going to answer your question if you'll allow me.

If you go to paragraph 44(1)(a), it tells you, “the inspection, treatment, testing, analysis or examination of a place or thing, or the quarantine, holding, storage, removal, disposal or return of a thing, required or authorized by or under any Agency-related Act”.

Mr. Larry Miller: That was my point. I didn't presume that it did, but going back to Mr. Eyking's comments about...and you didn't really answer. What about the case, and I'll use the load of carrots that he used, where it gets held up for two days, they suspect something is wrong, but it is proved that there was nothing wrong? What guarantees are in place to protect that farmer so he doesn't incur the cost of everything, including the loss of that market, because obviously they're not going to be any good after that time?

Ms. Kristine Stolarik: But if you read the clause again, the clause is very specific to the recovery of costs for inspections. It's a recovery of our cost, not the cost to the producer.

Mr. Larry Miller: I know. That's the problem here, though. Show me or tell me where I can find the safeguards on the other side of the fence.

Somebody can walk into this room and shoot somebody. Until they have a trial they're presumed innocent. This is in reverse. You're guilty before you start and you have to prove you're innocent after.

Ms. Kristine Stolarik: But we had other provisions going back, and I know it's been a while since we've been through those provisions. The re-inspection provision is one. That's a safeguard. It's an additional layer of—

Mr. Larry Miller: With all due respect, I haven't seen anything yet that satisfies me that the producer is protected to the same degree the government wants to be protected.

The Chair: Mr. Anderson.

Mr. David Anderson: I just want to make a couple of points. One is to address what Wayne said, that if government can't get the documentation.... In previous sections we've given them every power to obtain documentation, evidence, anything they want. So they've got just about unlimited powers to obtain that if they choose to do that.

I think Mark's example is a good one. You talked about being non-compliant at the border. Those are people who would be convicted of an offence and, according to what we've already passed, would be paying the bills on that. This goes farther than inspection. It's talking about treatment, testing, analysis, examination, quarantine, holding, storage, removal, disposal, including return. So in fact those carrots could be held up, the expense could be experienced, the person's going to have to pay it, and they may have to pay for the return of the object as well.

I think Charlie's amendment is a reasonable one, and it should almost go further than that. But it should only apply to people who have been convicted under an offence.

● (1605)

The Chair: Mr. Gaudet, and then Mr. Angus.

[*Translation*]

Mr. Roger Gaudet: I have a simple question concerning the carrots mentioned by Mr. Eyking. You've not answered Mr. Eyking's question about the carrots.

Suppose the load of carrots is detained for one week and the producer who is awaiting the shipment refuses to take delivery of the carrots after the week has passed. Who pays for the carrots if the market is lost? If the carrots were supposed to go on sale on Friday and the producer no longer wants them because he won't take delivery of them until the following Thursday, then who pays for this produce?

It's all well and good to protect the Agency, but it's equally important to protect the producer, the industry and all other stakeholders.

Mr. Mark McCombs: As I mentioned to you the other day, the grower can file a claim with the Agency — with me — for damages incurred as a result of our actions.

Mr. Roger Gaudet: What happens if the producer refuses to take delivery of the load of carrots, as Mr. Eyking mentioned? The market is lost, but you've detained the shipment for a full week. The producer is likely to tell you to pay for the carrots yourself. There are costs, all the paperwork, and so on. It's never-ending. Either the producer or the industry will have to pick up the tab. Which will it be? Or once again, will consumers be left to foot the bill?

That was my question. You protect the Agency, but you neglect to protect the other stakeholders.

[*English*]

Mr. Charlie Angus: Thank you.

I know we're on clause 44, but to me, clauses 44 and 45 cannot be separated in terms of the overall intent of this bill, because the examples we are seeing and all seem very reasonable. We would trust that 99.9% of the time our CFIA people are out in the field and they're being very reasonable, and the only thing holding them up is people who don't have their paperwork together or people who are stalling. But when you look at what this bill is stating in clause 45, which is basically attached to clause 44, it's a "get out of jail free card" for anything CFIA does under any circumstances. It says, "Neither Her Majesty in right of Canada nor the Agency is liable for any loss, damage or costs...resulting from a person being required to do anything to comply...". So there's absolutely no check or balance in this. There's nothing that guarantees people are going to be protected.

There's got to be at least something in there to say that CFIA inspectors will have an obligation to make sure that when they go in to see something, they're not going to take everything on the guy's farm because maybe the carrots he brought in on the truck got near his sheep so they're going to confiscate the whole kit and caboodle. We don't know.... This is just too large, too vague, and there are no restrictions on this whatsoever.

The Chair: Mr. Easter.

Hon. Wayne Easter: I guess I'm looking for clarification from either Mr. Angus or the committee.

Listening to the discussion, I'm wondering if going around the table people are thinking there may be compensation to the producer for the carrots there's a problem with, to use that example. This section is specifically dealing with the costs and liabilities to the agency. Is that not correct? I just wonder if we're mixing up the two.

The Chair: As your chair, I've been listening to the discussion from both sides. I'm sensing consensus that there's a real concern that someone is being left out of the equation. Government is protecting itself and the agency is protecting itself, but the person who has the load of carrots—if you want to use that illustration—is sort of left holding everything.

I think Mr. Angus is trying to play into this notion that once you've been found guilty you should take responsibility for that issue, but until that happens.... But I guess there's also the other side. What do you do with that load of carrots until someone proves you guilty? In the case of guilt or....

Mr. Charlie Angus: But the issue is, what if someone is found innocent and they're still liable for all the costs that have been incurred?

The Chair: That's the other side of it. I think we need some help in working through this one, because obviously, unless we can have this one resolved, in fairness to all Canadians who are affected by CFIA, we're going to have a bill that is not going to do what we intend it to do.

Ms. Ur.

● (1610)

Mrs. Rose-Marie Ur: Mr. McCombs has said that the option is there for the producer to go to court or whatever, but here again it's a cost to the producer that he shouldn't have if he is innocent. I think we had a situation when BSE broke out. We had containers of meat over across the way, and the individual who shipped that did not want to pick it up because of the cost factor.

I can see how it can work both ways, when that particular packer didn't want to pick up the beef and they said they wouldn't accept any more until that container left the port. But I want to ensure the producer doesn't bear the cost again after they are proven to be innocent.

The Chair: In the case of that container of meat, they would argue there was nothing wrong with the meat but they were simply caught in a situation where something happened in transit back home that may have caused a company to change its policy. We have all of these kinds of scenarios.

Ms. Stolarik.

Ms. Kristine Stolarik: I guess I just want to refocus this whole provision. I know that a number of witnesses who have appeared before SCAAF have testified they are concerned that the CFIA is absolving itself of all liability for its actions. But if you read this, that is not what the act does.

In these two provisions of the act, Her Majesty is absolved of only two specific liabilities. One is liability for actions taken and costs incurred by a regulated party in order for them to comply. So once again, going back to the person who's not complying with an act and leaves their stuff, we have to pick up the tab to destroy it, dispose of it, get rid of it. That's the first one.

The second one is liability for loss or damage or costs resulting from the taking or disposition of samples. So if you have a bag of fertilizer and we are called upon to inspect it because you want to ship it somewhere, we go in, open up your bag, and take a sample. That bag is no longer ours either.

So those are the two examples of how I'm trying to scope this out and make a distinction for you on what these provisions are doing, because it's definitely not absolving the CFIA from all the liability for all its actions. As Mr. McCombs has mentioned, people have other mechanisms and options: the alternate dispute resolution, ex gratia payments, the courts, and different compliance measures.

The Chair: We're going to have a long debate on this one, and I want to hear everyone.

Mr. Charlie Angus: We're working our way through this.

The Chair: Mr. Angus, you're next.

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

The Chair: I have a list here, and it's getting longer by the moment.

Mr. Charlie Angus: As I'm hearing this, I'm realizing that, again, it's because of the lack of clarity at this point. Certainly if CFIA comes in, does an inspection on a bag of feed, and asks the producer to pay for it, and the producer's found innocent, well, that's the cost of doing business. That's a reasonable cost. But there's not a reasonable cost to someone who's put out of business.

So I would actually offer to withdraw my amendment, resubmit a previous amendment, NDP-12, which is much clearer, and make it number three:

> Where the owner of a regulated product or the person having the possession, care or control of a regulated product has incurred any expense as a result of the exercise of the Agency's powers under this section and 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 for compensation in the prescribed manner to the Review Tribunal continued by subsection 4.1(1) of the Canada Agricultural Products Act.

The Chair: Mr. Angus—

Mr. Charlie Angus: I'd like to reintroduce it, because I think it's very clear. What it does at this point is give a clear indication of how he could go about it.

So this would bring clarity to it.

The Chair: We can't have two amendments on the table at one time.

Mr. Charlie Angus: So I'd withdraw one and bring this forward.

The Chair: You're withdrawing amendment 13. You want to reintroduce amendment 12.

I'm seeking from the committee unanimous support for Mr. Angus to do that, because we've already dealt with that one.

Mr. Miller.

● (1615)

Mr. Larry Miller: On a point of order, Mr. Chair, I'm not sure about the exact procedure, but my understanding was that you needed three-quarters, not unanimous. Am I wrong in that?

The Chair: It has to be unanimous.

Mr. Larry Miller: It has to be unanimous? Okay. My mistake.

The Chair: I want to be fair. I'm not trying to....

Yes, Mr. Easter.

Hon. Wayne Easter: What section did you pull out of amendment 12, Charlie?

Mr. Chair, I know what Mr. Angus is withdrawing, but I'm not certain what he's reinserting.

The Chair: Clause 34.

Mr. Charlie Angus: I just put it in there under “Costs and Liability”. I think that explains it.

Hon. Wayne Easter: Which NDP amendment, though?

Mr. Charlie Angus: NDP-12; I'd reintroduce it there. I think it's a clear road map and would get us through this debate.

The Chair: Would that take care of clause 45 as well? It would take care of clauses 44 and 45?

Mr. Charlie Angus: Yes, clauses 44 and 45.

The Chair: Now, you're going back to clause 34, is that correct?

Mr. Charlie Angus: I would introduce it as new clause 44.3—

Mr. Gerry Ritz: It was defeated going into clause 34. He's saying we would reinstate it in clauses 44 and 45, as an amendment to clauses 44 and 45.

The Chair: Okay. So it's been defeated in clause 34.

Mr. Gerry Ritz: Don't go back to clause 34.

Mr. Charlie Angus: We're not going back. I'm saying I'd introduce it here and drop my two amendments.

The Chair: You would introduce a new part to clauses 44 and 45.

Mr. Charlie Angus: Right.

The Chair: In both clauses?

Mr. Charlie Angus: I think it would cover for clause 45.

The Chair: If you did clause 44 it would be okay for clause 45.

Mr. Charlie Angus: Yes.

The Chair: Okay.

Ms. Stolarik.

Ms. Kristine Stolarik: Just as a reminder, though, Mr. Angus, your clause, as you drafted it, would have to be changed, because right now it only relates to products seized.

Mr. Charlie Angus: Yes.

Ms. Kristine Stolarik: I guess I'm wondering if we should have maybe a bit more discussion about the intent. The wording of your clause right now would require a person to be charged with an offence. Is that what you want? Because it could take years—two years, three years—before they see even one penny of compensation.

I just want to understand, in my mind, the intent, and what exactly is it that you want. With this here, it could be three years or four years before they see any compensation.

Mr. Charlie Angus: Well, I imagine that would be the case anyway. If someone is not found guilty, if someone's just left in limbo, I imagine they're going to have to go through a long-term process. They'd have to prove their innocence before CFIA would cough up any money anyway.

I'm saying if they're found not guilty, and it has cost them a great deal, they can go to a tribunal and settle it there. This does not give the bill an obligation to pay out, on a per-cost basis, for whatever infraction has occurred. It's saying that it gives these people the opportunity in law to go to have their case heard.

The Chair: I'm going to seek some guidance from the witnesses.

This is an area that needs to be cleaned up, and we can't go on; we could talk about it all afternoon. Is there something you can do between now and the next meeting in terms of bringing back some language that would give us some assurance that those parties are not left holding...and being subject to costs that in many cases would be beyond their ability to pay, and in some cases simply put them out of business?

By dealing with amendments today, when we're really not sure, we're going to waste a lot of time. Maybe we could do some constructive work, move on, and have you people come back with some help and guidance. And that's not putting Mr. Angus' amendment off the table.

So can we do that? Is there a way we can do that? Or is it something we're going to have to do here? If it's something we have to do here, let's do it now.

Mr. Larry Miller: I'm in favour of that, but there's something I'm still not sure our witnesses are clear on. It's not so much that we have a problem with what's in here. It's what's not in here but is needed to protect the producers. It's that simple.

The Chair: Could there be a reciprocal clause to protect the other party? We're giving clear protection to the government and its agency, but it's unclear what we're doing for the constituency.

Mr. McCombs.

Mr. Mark McCombs: The clause is for compliance. Her Majesty is not liable for compliance costs incurred by the individual, producers, or the commercial shipper. If you're doing the reverse, then what does that say? I'm not clear about what the intent would be.

● (1620)

The Chair: It's one-sided. Suppose there was an error committed by the CFIA. How does this bill deal with it?

Mr. Mark McCombs: As I've said a number of times in response to the same question, this is one of the few departments of government that has a dispute resolution process to deal with claims against the Crown. The process is simple—it's a matter of making a claim against the Crown to the agency. In the situation Mr. Angus is alluding to, where the agency is liable, we've paid 93 of 95 claims. We have paid claims within three weeks, four months, that type of thing. They're expeditious, once there's agreement on the actual costs. But you're correct, Mr. Chair: it's not in the legislation.

Mr. Gerry Ritz: If it's that easy and you're so good at settling cases, I don't understand why it's a problem to put it in the legislation. This was a concern voiced by the individuals and groups that came before us. They want to see that check and balance. They want some recourse under the law. They don't want to have to go bankrupt suing you. They don't want to go to some tribunal, which takes time. They want to be assured that they have a bit of a club over the inspector from CFIA on a day-by-day, case-by-case basis. If it's not a problem settling 93 out of 95 claims, and you do it in such an expeditious way, why is it a problem putting it in the legislation? I think it has to be there.

The Chair: Mr. McCombs, if it isn't a problem, let's say so and move forward.

Mr. Mark McCombs: It requires a clause in the legislation to deal with alternate dispute resolution, which is the process the agency is involved in. But then it comes back to the question that you've ruled on with respect to compensation and extra cost.

Mr. Gerry Ritz: Fine.

Hon. Mark Eyking: Mr. Chairman, you've said that this is a very important piece of this whole report. At the end of the day, CFIA has a mandate and a job to do—to protect Canada's food supply. We all agree on that. The problem is, should the farmer or producer be paying for it? That's the essence of this.

If somebody comes on your property and tells you to hold up on a load of carrots, and the truck driver you're paying is there for two days, and there's nothing wrong with the carrots, why should you have to pay for it? That's what it all boils down to. They're doing their job for the safety of the consumers of Canada, but that farmer should not be paying for it. You can get into all the different wording, but that's where we're going.

The Chair: Mr. Drouin.

[*Translation*]

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

I was wondering about something, and you can correct me if I'm wrong about this.

Getting back to this amendment, it was negatived because it failed to receive unanimous consent. We're discussing things at some length and perhaps this amendment will be rejected as well, thereby making my point totally irrelevant. As I see it, we should wait to see what kind of proposal the Agency can come up with and end these discussions, given the lack of unanimous consent. I think that would be the appropriate course of action for us to follow.

[*English*]

The Chair: Well, your supplements are well received, but I need some assurance from my table officers that we can come back with something.

Can we do that for our next meeting?

Ms. Kristine Stolarik: Yes. Actually, I was handed some proposed wording that—

Hon. Wayne Easter: Kristine, rather than get into the proposed wording right now.... I think we understand the concerns.

I wonder, Mr. Chair, if we could stand it and come back with proposed wording tomorrow, so that we can think about this in the legal sense and what the financial implications are, and how we get around those as well.

The Chair: With your concurrence, we'll then stand clause 44.

The amendment NDP-13, on page 54, is still on the table.

(Clause 44 allowed to stand)

● (1625)

Mr. David Anderson: Mr. Chair, you'd better do the same with clause 45, because you're going to have a—

Mr. Brian Fitzpatrick: There's a bigger problem with clause 45.

The Chair: They're together; we'll do them both.

Mr. Brian Fitzpatrick: That's the carrot clause.... No right to recover.

(Clause 45 allowed to stand)

The Chair: Yes, Ms. Stolarik.

Ms. Kristine Stolarik: I need some clarification from the committee for when we're working on this tomorrow or tonight. Is this just related to producers or is it to all regulated stakeholders, including the multinational corporations?

Mr. Gerry Ritz: Anybody.

Ms. Kristine Stolarik: Anybody, okay. I'm just clarifying that, because you keep referring to producers, which I wanted to clarify.

Mr. Gerry Ritz: I know.

Ms. Kristine Stolarik: Okay. Thank you.

Mr. David Anderson: Mr. Chair, I think the witnesses and the government need to understand that this is going to have a very difficult time passing, if they're not going to listen on a couple of these issues—and this is one of them.

The Chair: Yes, we understand that.

(On clause 46—*Disposition of Samples*)

The Chair: There is an NDP amendment to that, amendment 13.3 on page 57.

Mr. Charlie Angus: I so move.

The Chair: Are there any comments or clarifications that you want to make?

Mr. Charlie Angus: I think it's fairly straightforward.

The Chair: Does anybody else have a question?

Mr. Easter.

Hon. Wayne Easter: Mr. Chair, I'll ask the witnesses to come in here, but what clause 46 does not do is it does not absolve CFIA from any or all liabilities for its actions. In Bill C-27, the government is absolved from only two specific liabilities: liability for actions taken and costs incurred by a regulated party in order to comply—and those are not actions by the CFIA—and liability for "loss, damage or costs resulting from the taking or disposition of samples", per subclause 46(2). Those statements on non-liability are also found in the current Plant Protection Act and the current Health of Animals Act.

I'd ask the witnesses to expand on that further.

Ms. Kristine Stolarik: I actually think they're tied in with the other two clauses we just talked about, if we're talking about the liability issues. That's exactly it. I had given the example where we would take a sample, let's say, from a bag of fertilizer, for which we would basically not be liable for the cost to the person wanting to move his product.

Mr. Mark McCombs: Or liable for having to take a sample from a fish stick to be able to test it.

Ms. Kristine Stolarik: To open up the box.

Mr. Mark McCombs: To open the box.

That's what clause 46 does. It's a sample of the product, so if you had to take a potato from a truck to test it, then you're not liable for paying for the potato.

The Chair: Mr. Anderson.

Mr. David Anderson: Realistically, I don't think anybody's going to go after the CFIA for a fish stick or a potato. The protection here is for if they do not excise due diligence in a major way when taking samples. Again, it says "Her Majesty" and "Agency" are not liable.

We may be changing clause 45, but between clauses 44, 45, and 46, by the time we're done here, there is no liability for the CFIA. I think this amendment is reasonable.

The Chair: Okay, on the amendment.

(Amendment agreed to on division)

(Clause 46 as amended agreed to on division)

(On clause 47—*General*)

The Chair: Now we move to clause 47 and G-11, the government amendment on page 58.

Mr. Easter.

Hon. Wayne Easter: I'd like to move it. It's just a matter of consistency within the bill, Mr. Chair. It's just housekeeping.

● (1630)

The Chair: Are there any other comments?

Yes, Mr. Anderson.

Mr. David Anderson: I have a couple of questions.

What does it mean when clause 47 is subject to clause 48, and clause 48 is much the same? Does that put it under subsection 20(1) or 20(2)? I'm just wondering why it says "subject to section 48".

After that, I would like you to just take a bit of time, for those of us who aren't lawyers, to tell me the difference between an indictment and a summary conviction with regard to these acts, what they would involve.

But first, why is it subject to section 48?

The Chair: Mr. Easter first, and then Ms. Stolarik.

Mr. David Anderson: Subclause 47(1) starts off by saying "Subject to section 48".

A voice: Yes, but he's trying to do his amendment.

Mr. David Anderson: Oh, okay.

Hon. Wayne Easter: Yes, we're on the amendment first, is what I'm saying, David, and that's just the "he or she". It's just consistency within the bill. We can get to those other points in a minute.

Mr. David Anderson: Okay.

The Chair: Ms. Stolarik or Mr. McCombs, did you have something to say on the indictment question?

Mr. Mark McCombs: I can explain the "subject to". Clause 47 sets out the normal offences. These are the normal penalties. Then clause 48 is the override for the tampering. So the tampering penalties are much higher, because of the consequences of tampering, over the general authorities.

Regarding a summary conviction versus indictment, the summary conviction has a limitation period of six months; the indictment does not. Normally, in terms of indictment, when you indict somebody it's for the most serious types of offences. It's rarely used by a regulatory agency, but it's there for the grievous situations where individuals are actually harmed.

Mr. David Anderson: I'm just wondering, then, who makes the choice between summary and indictment? Is that the agency's decision?

Mr. Mark McCombs: The Attorney General of Canada.

Mr. David Anderson: Okay. I may have to come back to that.

Mr. Mark McCombs: It's a prosecutorial decision, and it has to meet the Government of Canada's prosecution policy in terms of what type of offence has been committed.

Mr. David Anderson: So within the act there's no distinction between summary and indictable offences? That would rely on the Attorney General's operating outside of the CFIA?

Mr. Mark McCombs: These are the general offences for the legislation, yes.

The Chair: Shall the amendment carry?

(Amendment agreed to on division)

The Chair: On clause 47—

Mr. David Anderson: Mr. Chair, before we continue, I had a question about that.

The Chair: Okay, Mr. Easter, do you want to comment on the question Mr. Anderson had?

Hon. Wayne Easter: No, I think that was answered by Mr. McCombs.

Mr. David Anderson: Before we pass clause 47, I just wanted to ask about summary convictions. Is that $100,000 in the one year typical of penalties for summary convictions, or is that higher than normal?

Mr. Mark McCombs: No, that's the normal penalty.

(Clause 47 as amended agreed to on division [See *Minutes of Proceedings*])

(On clause 48—*Tampering with regulated products*)

The Chair: Now we move to clause 48.

Mr. Brian Fitzpatrick: Can I speak on—

The Chair: Oh, we've carried that.

Mr. Brian Fitzpatrick: No, I mean the next one. It's the same—

The Chair: Do you want to speak to clause 48?

Mr. Brian Fitzpatrick: Yes, I want to speak to it.

I think if you read the court cases on summary conviction decisions by the Supreme Court of Canada you'll see they're talking about minor offences. If you're going to impose criminal-type sanctions on summary conviction things, if the fine or the penalty is very onerous or serious, then it turns it from a minor into a major. I would say a $250,000 fine is not something you would normally associate with a summary conviction. That's a serious fine.

I'm just curious, looking at these sections. I don't share your enthusiasm that knowledgeable legal people have reviewed these things. I have really serious concerns about how these things would hold up if you ever got into a court of law, because this isn't some authoritarian state we live in. This is a free society.

Mr. Mark McCombs: What you have to remember is—

Mr. Brian Fitzpatrick: It's supposed to be.

Mr. Mark McCombs: What you have to remember is it is at the court's discretion to.... This is not the CFIA imposing a $250,000 fine.

Mr. Brian Fitzpatrick: But I think the court has been quite clear that when you impose very serious fines or penalties on somebody, that is no longer a summary conviction matter and you've got a whole different kettle of fish. You say it's a discretionary matter, but if it's $250,000, I don't think there are very many people here who would take that as a minor fine. It's not like a traffic fine or going through a stop sign or stuff like that. Those are what the court usually thinks of as summary matters.

● (1635)

Mr. Mark McCombs: A court conviction for going through a stop sign is provincial, and provincial levels are much lower.

Mr. Brian Fitzpatrick: I'll just leave it at that. I think some of these sections are poorly drafted and they are not well thought out.

The Chair: Mr. Eyking.

Hon. Mark Eyking: Would this apply to a product that's under detention? If a producer had a product under detention and he did something with that product while it was under detention—it says "Tampering with regulated products"—could he be fined that much?

Mr. Mark McCombs: It's pretty much his own product?

Hon. Mark Eyking: Yes, but it's a regulated product.

Mr. Mark McCombs: Yes, but this is for somebody who is tampering with a particular good, like injecting something with cyanide.

Hon. Mark Eyking: It has nothing to do with your own product—moving it—or when it's under regulation?

Ms. Kristine Stolarik: No, this is intent to injure.

Mr. Mark McCombs: And this requires a court to determine that the person has committed an offence and has actually tampered with the product.

The Chair: Anything else? I guess not.

(Clause 48 agreed to on division)

(On clause 49—*Contravention of regulations*)

Mr. Gerry Ritz: I have a couple of questions on this one.

The Chair: Okay, you're on.

Mr. Gerry Ritz: Is this particular clause coming out of acts that are already under the CFIA, or is this "contravention of regulations" something new? We're on clause 49, right?

It says:

> Every person who contravenes any provision of the regulations commits an offence and is liable on summary conviction to a fine of not more than $50,000 or to imprisonment for a term of not more than six months or to both.

Is that in place now or are we adding something brand new here?

Mr. Mark McCombs: It's a new provision for the contravention of regulations.

Mr. Gerry Ritz: Okay.

Again, does it come down to the court to decide the parameters of any particular case? Or have you got something in mind that's not spelled out here?

Mr. Mark McCombs: It requires a court to determine if a person has contravened the regulations.

Mr. Gerry Ritz: Okay, and again—

Mr. Mark McCombs: It's a summary conviction matter. The fine is a maximum of $50,000.

Mr. Gerry Ritz: Right.

Mr. Mark McCombs: And this is consistent with the bulk of federal legislation. It's been brought up to date.

Mr. Gerry Ritz: Okay. My concern then.... It's brand new and so on. There's nothing in here that speaks to recourse or to an appeal mechanism or anything like that.

Mr. Mark McCombs: But you've got an appeal mechanism. If you're charged with a violation of the regulations you go before a provincial court. You then have an appeal mechanism to a superior court, to the court of appeal, to the Supreme Court of Canada.

Mr. Gerry Ritz: But again, we're getting into a situation where you have to go to court again and again and again, and you know, Mr. McCombs, lawyers aren't cheap. Time is of the essence in a lot of this. Again, you need checks and balances.

Mr. Mark McCombs: The checks and balances are for you not to violate the regulations and be in the situation where you're before the court.

Mr. Gerry Ritz: Yes, but if it comes down to a court case situation—

Mr. Mark McCombs: A compliant producer will not ever be contravening the regulations.

Mr. Gerry Ritz: Unless he's charged with something he didn't do and it's a wrongful charge. That can happen.

Mr. Mark McCombs: Well, if it's a wrongful charge, then there are a number of checks and balances in the system. We have a competent inspection force that is trained in how to inspect and determine products. Every charge that comes out of the agency is reviewed by legal officers and is then presented to the Attorney General's representative. It then has to meet the criteria for the charges, and then the charges are laid.

So there is a series of checks and balances that precedes the laying of the charge, and then it's up to a competent court to determine whether the individual has committed the offence.

The Chair: Okay?

Yes, Mr. Angus. On clause 49?

Mr. Charlie Angus: No, not on this clause, but I would just like this on the record. I think I object to a statement saying that if somebody didn't do anything wrong, they wouldn't be in trouble. To me, that is a presumption of guilt, and if you used that in any other legal activity—in policing or anything else—there would be an outcry. I think the suggestion, if I heard you correctly, is that with the checks and balances, people who don't do anything wrong have nothing to worry about. That's the way I read it.

Mr. Mark McCombs: That's not what I said.

Mr. Charlie Angus: That's the way I interpreted it.

The Chair: Ms. Ur.

Mrs. Rose-Marie Ur: You had indicated to my colleague across the way that this was a new clause. What necessitated implementing clause 49?

Ms. Kristine Stolarik: Because we're introducing new regulations in this piece of legislation as well, so we didn't have any legislative authority to do anything with the regulations to basically do anything to people who contravene the regulations. We are introducing new regulation-making authorities, and we'll be seeing them, I guess, as we move along in this process. That's the reason we had to introduce a new provision, to support the new regulation-making authorities.

● (1640)

Mr. Mark McCombs: Otherwise you create regulations without penalties.

The Chair: Thank you.

Mr. Anderson first, and then Mr. Fitzpatrick.

Mr. David Anderson: I have a couple of questions here, and they're tied in to the development through clauses 49, 50, and 51. Basically in clauses 50 and 51 you're starting to say that people are guilty of offences, even if they have not been prosecuted, if they participate in the commission of an offence.

I'm starting to get concerned because in both those clauses you're saying people are guilty—whether they've been prosecuted or not—unless they can basically demonstrate that they're not guilty, and then we come back to these penalties in here that are, to my mind, onerous.

[*Translation*]

Hon. Claude Drouin: Mr. Chairman, can we dispense with clause 49 before moving on to clauses 50 and 51? Let's finish up with clause 49 and then Mr. Anderson can talk about clauses 50 and 51.

[*English*]

The Chair: We're on clause 49.

Mr. Anderson is on clause 49, I hope. If he's not, then obviously Mr. Drouin has a point of order.

Mr. David Anderson: Yes, I am on clause 49. What I'm doing is talking about clauses 50 and 51 and how they relate back to clause 49, because once we pass clause 49, we can't do anything about it, right?

So these two clauses that come later talk about people being guilty of offences that they have not been prosecuted for. We're already talking about the penalties they're going to have to pay for that.

Secondly, I'm not so sure that I wasn't misled a few minutes ago when I was told that $100,000 in one year is a typical penalty for a summary conviction, because we've got three different levels of summary conviction here. I'm wondering who has decided this, how the different levels that you've got have been chosen.

I think I'm actually coming more to Mr. Fitzpatrick's side on this in saying that there doesn't seem to be any consistency here, and I'm not sure the courts are going to accept that either.

The Chair: Mr. McCombs.

Mr. Mark McCombs: Mr. Chair, I'm going to ask Ms. Dudley, who's the lead counsel on this, to respond.

The Chair: Ms. Dudley, just stay at the table a minute. We don't have a problem with you staying.

Ms. Jane Dudley (Legal Counsel, Canadian Food Inspection Agency): Thank you, Mr. Chair.

When the bill was originally drafted, we looked at the provisions we had. I think it was a mistake to say that the $50,000 penalty for a summary conviction offence didn't exist before. It does in some other sets of regulations, in the CAP Act, anyway. A number of them already have a $50,000 fine for breaching regulations.

At the time we drafted this, we went to the criminal law policy section of the Department of Justice, and they had a sentencing reform team at the time as well. Both of those groups looked at the penalties that we had to make sure they were consistent with what is in other federal legislation, including the Criminal Code.

The Chair: Okay.

Mr. Fitzpatrick.

Mr. Brian Fitzpatrick: I'm looking for a point of clarification too. I'm not a criminal law expert, but I did practise it a little bit in my time. Generally speaking, if the penalties are pretty serious for wrongdoing, the court presumes that the Crown must not only prove the non-compliance; it must prove a guilty mind, that the person had the specific intent to commit the offence or not to comply with the regulation or had some knowledge of it, that there was an act of mind involved. To say that you didn't know and it was an accident and so on is no defence on a strict liability offence, but it certainly is on a serious offence with serious consequences like the fines we're talking about in here.

Are there provisions in your act so that if you're going to prosecute somebody you have to prove the specific intent, the mental aspect of the charge, beyond a reasonable doubt?

Ms. Jane Dudley: These are strict liability offences, and the defence of due diligence is available, but a court will make the finding as to whether or not a person is guilty of the offence and will decide what the fine will be. The maximum is $50,000. Rarely is the maximum fine imposed. Giving the maximum is for repeat offenders.

Mr. Brian Fitzpatrick: But it still comes back to my point. If the person did exercise due diligence, that person is basically not a guilty person, and all of these things about non-recovery of damages, the ability of the Crown to impose all the costs of recovery and so on, are just plain wrong.

I think there's something that cries out for some major overhaul in all of these sections. I think they're very defective and problematic, and you're really going to find your problems when you try to enforce them because I think a good lawyer will have a heyday with this stuff. It's very poorly drafted legislation.

● (1645)

The Chair: Madam Rivard.

[*Translation*]

Ms. Denise Poirier-Rivard: I'm not following you very well. Are we on clause 49, 50 or 51? Which is it?

[*English*]

The Chair: It's clause 49.

[*Translation*]

Ms. Denise Poirier-Rivard: Thank you.

[*English*]

The Chair: Okay, we've heard clause 49.

[*Translation*]

Ms. Denise Poirier-Rivard: I'm more than a little confused.

[*English*]

The Chair: Do you have a question?

[*Translation*]

Ms. Denise Poirier-Rivard: No, it's all right.

[*English*]

The Chair: One more question, Mr. Anderson, and then we'll call the question.

Mr. David Anderson: In clause 49 you can be convicted of contravening the regulations whether you knew you were doing it or not. Is that correct? We had this discussion earlier, that it doesn't include whether it's done knowingly or unknowingly. You just have to contravene a regulation, and whether you know it exists or not, that—

Mr. Mark McCombs: Clause 49—and I spoke to this the other day—is a strict liability offence, and therefore a due diligence defence is available, but it does not require *actus reus* and *mens rea*, as Mr. Fitzpatrick was alluding to.

The Chair: Shall clause 49 carry on division?

Are you voting against?

[*Translation*]

Ms. Denise Poirier-Rivard: No, I wish to abstain.

[*English*]

The Chair: I voted in favour.

(Clause 49 agreed to on division)

(On clause 50—*Offences by corporate officers, etc.*)

The Chair: Clause 50 has no amendments.

Mr. Fitzpatrick.

Mr. Brian Fitzpatrick: It looks like the only defence an individual has is due diligence, but it seems to me this section says the director or the people in the corporation actually have to have the knowledge to direct, authorize, or assent, so you're really speaking about *mens rea* for the corporate entities. For a corporate farm as opposed to an individual farm it doesn't apply; they have the full defence of *mens rea*. The one in clause 49, which is just the individual one, is a strict liability defence. To me, this whole area is problematic right from the word go. I can't believe it. It says clearly "assents" or "directs". That means you have to have a knowledge-able mind in doing it, and if the corporate guy says he didn't know, then he has an absolute defence.

The Chair: Mr. Miller.

Mr. Larry Miller: Basically, I'd like a little more definition. It says "If a person, other than an individual". Is not every person an individual?

Mr. Mark McCombs: No.

Mr. Larry Miller: It doesn't spell that out very clearly.

Mr. Mark McCombs: The term "person", when used in legislation, unless it's defined otherwise, includes corporations. For law purposes, a person includes a corporation, so this is directed at corporate officers.

Mr. Brian Fitzpatrick: He runs the corporation.

Mr. Mark McCombs: The president of a particular corporation who directed—and we've had these—individuals to change tags on their best before date so they could sell expired product would be liable in this situation to prosecution for the offence that was committed by his employees. The owner says, look, we have a truckload of stuff outside and it has all expired dates; go change the tags or erase the tags, and we can then reticket them and resell them. In that case that individual would then be responsible.

The CBC did a story on this about two years ago, I believe, on the specific situation.

● (1650)

The Chair: Mr. Drouin.

[*Translation*]

Hon. Claude Drouin: I'm sorry, Mr. Chairman, but I'd like to speak to this amendment, because this is an important point.

The argument is being made that charges should not be laid against directors of corporations because they were unaware of certain actions. On the contrary, it's important that charges be laid, otherwise, corporations will get away with things. The legislation and regulations governing the Canadian Food Inspection Agency were enacted to protect producers and consumers. Unscrupulous persons — we know there are not many people like this, but it only takes one or two bad apples—must not be allowed to profit from loopholes in our legislation and regulations and get away scot- free. That would merely open the door to wrongful actions and harm consumers and producers. On the contrary, we must act clearly and move forward in order to protect our producers.

[*English*]

Mr. Brian Fitzpatrick: Mr. Chairman, can I just clarify the point because I raised it?

The Chair: Right.

Mr. Brian Fitzpatrick: My point is if you're an individual and you're charged with non-compliance here, what was in your mind or what excuse you make is irrelevant because it's a strict liability offence. All I'm saying is if you look at the wording in clause 50, if a person happened to be a corporate farm, he can use those arguments. He can say he didn't know; his mind was not behind this act; it just happened; he did not knowingly do that. His lawyer has a defence under clause 50. Under the other ones where we're just talking about individuals, they don't have that defence. I'm just saying that seems to be rather inconsistent.

The Chair: Mr. Miller, you weren't quite finished, and I apologize.

Mr. Larry Miller: I'm not sitting here trying to create any way to protect corporations. If they're guilty, then they need to.... What I'm saying is that I do not think this wording really says what you're trying to do. I'm not against smacking a corporation if it needs it, but that isn't what I was getting at. It's just that the way this is worded makes no sense to me.

The Chair: Mr. Angus.

Mr. Charlie Angus: I want some clarity, because with respect to the example of your shift boss telling you to go and change the tags, that's an obvious connection between culpability and the chain of guilt. If in the feed operation, or while creating feed, major problems occur and the owner of the feed mill says, "Gee, I didn't know, fire Bob, because he's my wife's brother in the first place and I never trusted him", it's the question of due diligence. Could you explain to us how due diligence would be applied? We need to ensure they can't just drop it off on the guy on the shop floor. There has to be an obligation on the owner of the plant to ensure that safe products are happening. How does due diligence play out in terms of your inspections?

Mr. Mark McCombs: In this particular provision it says that the person representing the corporation "who directs, authorizes, assents to, acquiesces in or participates in the commission of the offence" is responsible.

Mr. Charlie Angus: Acquiesce?

Mr. Mark McCombs: Well, he knows it's going on. And we've had those cases. Certain activities have been going on and it's to their benefit to let it go on. What they do is they let the activity go on, and when it's brought to their attention that it's in violation of the agency regulations, what you alluded to as happening, happens—Bob's no longer working there.

Mr. Charlie Angus: How does the obligation of due diligence...?

Mr. Mark McCombs: What would then happen is the agency would continue the investigation and Bob would come to the agency. Nine times out of ten Bob would be in the agency's office saying, "Yes, I did it, but he knew all about it; he was happy to take the benefit of it, and I'll show you all the documents to go with it." That's the normal process.

The Chair: Okay, from Bob to Mr. Anderson.

Mr. David Anderson: I would like you to respond to what Mr. Fitzpatrick said, that this gives different levels of protection—a higher level of protection to the corporate citizen than it does to individuals.

Secondly, I'd like to know how you see this working. At the end of clause 50 it says that this person is "liable on conviction". I'm wondering who's convicting them because it says "whether or not the person has been prosecuted". Are you implying that the CFIA can convict them and then they can apply the penalties set out in the preceding clause without going to court? You told Mr. Ritz earlier that they would be in court. How do you see that working?

Mr. Mark McCombs: CFIA has no authority to impose an offence provision or a fine. We'll state that at the outset. I'll let Ms. Dudley explain the provision with respect to the last part.

● (1655)

Ms. Jane Dudley: This is the situation of the corporation being responsible for its employees. In tort law it's called vicarious liability. It's the person who commits the offence, and if that person isn't convicted of the offence, the corporation that directed the person to commit the offence may still be liable. It could be that the person who committed the actual offence has a defence because he or she was ordered by the employer to commit the offence.

Mr. Mark McCombs: So in other words, Bob is found not guilty, but the corporation could be found guilty because the offence was committed.

Mr. David Anderson: What I'm asking is, how then are they found guilty? You're saying that Bob is found innocent, but the corporation can be considered guilty. What is the process by which they come to be considered guilty when you say "whether or not they've been prosecuted"?

Mr. Mark McCombs: In the process, charges would be laid against the corporation. Charges would be stayed against Bob, and Bob would not be responsible for the offence—if it came to that. In the normal process, the corporation would be charged because somebody would testify against the corporation that they were responsible for the offence and Bob was ordered to change the tags.

There's still a court process in all of these.

Mr. David Anderson: On the last person—the word that's used there—is that still talking about the corporate person or Bob? Why is "whether or not they've been prosecuted" in there? You said there still needs to be a court proceeding.

Which person is the last person? Is it the corporation?

Mr. Mark McCombs: If I recall, when you charge a corporation you also charge the individual who is the director of the corporation. So you would charge Joe Smith, president of company X, and the prosecution would be laid against Joe Smith, directing mind of company X. The conviction would be registered against company X, not Joe Smith. If you wanted Joe Smith to be convicted, you would lay charges against Joe Smith as an individual in his personal capacity, and not against Joe Smith, the president of company X.

Does that answer the question?

Mr. David Anderson: So you're using "person" in two different senses there.

The Chair: Is there any more to add to Mr. Anderson's question?

Mr. Gaudet.

Mr. David Anderson: There's a second question that was a response to Mr. Fitzpatrick's intervention. Does the corporation in clause 50 have more protection than the individual in clause 49?

Mr. Mark McCombs: I assume Mr. Fitzpatrick was alluding to the due diligence mentioned in clause 50. Due diligence is applicable as a defence in clause 49 as well; it just isn't mentioned in there. Because it's a strict liability offence, the offence therefore has a due diligence defence. It could also have mistake of fact, mistake of law—there's a series of them that courts have determined are available to individuals who are charged with strict liability offences.

The Chair: Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: Like my colleague Mr. Drouin, I too would like to know why corporations cannot be prosecuted?

I've served on corporate boards in the past. In cases like this, companies are insured against potentially bad decisions made by their directors. You're planning to lay charges only against one person in particular. If that person is found to be innocent, then you will focus on laying charges against the company. Something is fishy here. You should be laying charges against the company in the first place. If an employee hasn't done his job, then the company can fire him. It is not up to you to decide if that person is guilty or not. You must decide whether or not the company is at fault.

[*English*]

Mr. Mark McCombs: It would all depend on the situation, who gets charged and who gets convicted.

[*Translation*]

It all depends on the situation.

Mr. Roger Gaudet: For example, if Joe Smith works for me and I order him to handle a product in a certain way, why should he be the one to...

Hon. Claude Drouin: The company is the party that should be prosecuted. If the company ordered Joe Smith to do something, it must bear the responsibility. That's the gist of this provision.

Mr. Roger Gaudet: In that case, that answers my question.

● (1700)

[*English*]

The Chair: Mr. Ritz.

Mr. Gerry Ritz: Poor Bob. I don't want to put a fly in the ointment here, but if Bob's a disgruntled employee, then what do you do? What recourse does the company have? They're facing criminal prosecution and it's really not substantiated. How do you get out from under that without going through the court system and all the expense that's incurred?

Mr. Mark McCombs: A lot depends on the individual circumstances in the investigation.

Mr. Gerry Ritz: Case by case—

Mr. Mark McCombs: Many complaints with respect to food handling and food complaints come from disgruntled employees.

Mr. Gerry Ritz: Right.

Mr. Mark McCombs: They're not all prosecuted in terms of that.

The agency receives a complaint from a disgruntled employee and turns it over to an inspector, who then conducts an inspection to verify that what is alleged to have happened has happened. If it can be shown—and the agency has to do this through their inspection powers—that the company is the one that directed it, then the company would be prosecuted.

Does that answer your question?

The Chair: Mr. Fitzpatrick.

Mr. Brian Fitzpatrick: I'm just going to use an example that doesn't fall in your area, but it's sort of relevant. A company like 7-Eleven sells cigarettes. The company has a training program to keep employees from selling cigarettes to people who aren't eligible to buy them. But every once in a while, an employee doesn't comply with all the rules and they break the law. In that situation, all 7-Eleven has to do is admit that the act took place, that the law was broken, while denying that the company authorized, assented to, or acquiesced in the breaking of the law. They're off the hook.

That's my point when you're talking about individuals. When you charge them individually, they cannot use any of those defences. You're not applying the same standard to the corporation as you're applying to the individual. That's my point on the whole issue. The individual can't use those defences.

Sure, they can say, “Yes, I realize there's non-compliance here, but I didn't mean it to happen. I didn't direct it; it just happened. I'm sorry it happened.” But that's no excuse. As you said, it's strict liability. The corporation, however, can use those arguments.

Mr. Mark McCombs: If it's an accident, and they used appropriate care, it's due diligence.

Mr. Brian Fitzpatrick: Well, I'm not so sure on that.

Mr. Mark McCombs: The Supreme Court of Canada's decisions on due diligence are fairly clear.

Mr. Brian Fitzpatrick: Well, it's....

Hon. Wayne Easter: Just because you don't agree with them doesn't make them wrong.

Mr. Brian Fitzpatrick: I didn't expect you'd be defending the corporate interests on this.

Hon. Wayne Easter: I just love the corporations.

Mr. Brian Fitzpatrick: Multinationals, all of you.

The Chair: Mr. Angus, have you got something to add?

Mr. Charlie Angus: I was wondering if this was covered under some of the previous amendments, where we talked about people who “knowingly” or “with intent to deceive”. You're showing whether a corporation or an individual intentionally set out to deceive. We've already established that.

The Chair: Has there been establishment in your mind?

Mr. Mark McCombs: I think the amendments on intent to deceive cover the situations we were talking about.

The Chair: Mr. Easter, last question. I want to call the question.

Hon. Wayne Easter: It's not a question, Mr. Chair. On clause 50, the witnesses have given examples that have been applied in the past and have protected individuals who a company may have told to do the dirty deed. So I would suggest we've had a good discussion. Let's move on to clause 51.

Mr. Larry Miller: Could we entertain a friendly amendment that I believe would be acceptable to everybody? Where it says “other than an individual”, I'd like to propose “other than an individual acting on their own” or “acting on their own accord”, one or the other. It just spells that “individual” out a little bit.

The Chair: You have to write the subamendment. We need to know exactly what it's going to be.

Mr. Larry Miller: When they're friendly subamendments, I don't believe you have to.

The Chair: Well, we're friendly and we accept friendly subamendments, but we want to be clear that we don't misinterpret it.

● (1705)

Mr. Larry Miller: It may seem minor, but I would propose we stay that.

The Chair: Mr. Easter, you've moved that amendment. Has someone written it? We don't have it.

Hon. Wayne Easter: Mr. Chair, I don't know if you're allowing the subamendment. Are you? I know Larry's a friendly guy, but I don't consider it friendly.

The Chair: It's probably not. In my prerogative as chair, and as a friendly neighbour, I'm going to overrule it. I'm going to call the question on clause 50.

Mr. David Anderson: Mr. Chair, I want to ask one more question.

The Chair: Oh, please....

Mr. David Anderson: I don't think I'm understanding this clearly. Wayne said something about holding corporations responsible. In reading this, it seems that the individuals are the ones being held responsible. It says that if a corporation commits an offence, any of the officers who participate are guilty of the offence and liable on conviction. It's talking about the individuals. Where does the responsibility transfer to the company in that clause?

Hon. Wayne Easter: Mr. McCombs explained that earlier. It says “other than an individual”.

Go ahead.

Mr. Mark McCombs: Actually, the French in particular is much clearer because in French there is a difference between a corporation as a person and a corporation as an individual.

In French, you would say:

[*Translation*]

> 50. En cas de perpétration par une personne — à l'exclusion d' une personne physique — [...]

[*English*]

It's the exclusion of a physical person.

I think because of the difference in the legal situation with the civil code, it's clearer in French. It's clear in English as long as you know that the person being referred to is the corporation.

The Chair: Let's go to clause 50. Shall it carry?

(Clause 50 agreed to on division)

(Clause 51 agreed to on division)

(On clause 52—*Venue*)

The Chair: Shall clause 52 carry on division?

Mr. David Anderson: Could you slow down?

Mr. Brian Fitzpatrick: I just got here, Mr. Chair.

The Chair: You've been here too long.

Mr. Charlie Angus: Where have you been all our lives? We've been waiting for you to come.

The Chair: Does anyone have any comments on clause 52?

Yes, Mr. Anderson.

Mr. David Anderson: I would like to know how this is going to work out, with Mark's load of carrots or whatever. It says it "may be instituted, heard and determined". I want to know how far that goes in terms of penalities that are being imposed on people and what this means.

Mr. Mark McCombs: I can probably answer that.

All this does is establish where the court trial will be held. Essentially, if we're talking about the carrot situation, where they were taken from Regina, Saskatchewan, transported to Ottawa, some of the shipment was sold in Ottawa, and the rest of the shipment was sold in Shediac, New Brunswick, the offence is determined that the carrots are in violation. We have now three choices where we could prosecute: where the shipment originated; where the shipment was first sold; and where the shipment was sold the second time. Rather than that, we've said that we allow this to be instituted in one of those places.

Normally the practice is to determine where the offence is being committed and where the inspection is occurring. But if you don't have this type of provision, then the individual will apply for a change of jurisdiction, a change of venue. If the individual is charged in New Brunswick, he will try to have it switched to Saskatchewan or Ontario. We're then in a never-ending battle over which one is the appropriate change of venue. This only establishes where we can lay the charges.

Mr. David Anderson: Okay. To follow up on that, this doesn't give the agency specific authority to institute that. It could be seen to be giving the choice of the three places.

Mr. Mark McCombs: It allows the prosecution to determine where charges should be laid.

The Chair: Okay.

Mr. Eyking, do you have something to add to this?

Hon. Mark Eyking: Does this only pertain to major offences or minor offences?

● (1710)

Mr. Mark McCombs: It applies to all offences under the act.

Hon. Wayne Easter: It's already done.

The Chair: Shall clause 52 carry on division?

(Clause 52 agreed to on division)

(On clause 53—*Limitation period*)

The Chair: Yes, Mr. Ritz.

Mr. Gerry Ritz: You're looking at two years in abeyance while proceedings go on. The other one, in the case of the Seeds Act, is for three years. Is that already in those acts, or are you changing it to two and three years? Why is there a difference?

Mr. Mark McCombs: The current provision for two years is in the agency's acts, such as CAP and CPLA. That's the standard.

Mr. Gerry Ritz: Okay.

Mr. Mark McCombs: The three-year provision is new. The three-year limitation period is required so that it will be sufficiently long enough to grow a plant from seed to determine the seed variety.

Mr. Gerry Ritz: We do it a lot quicker than that.

Ms. Kristine Stolarik: Yes, it's for the seed variety.

Mr. Mark McCombs: It's for the seed variety to be determined. That's what the seed inspectors tell me.

Mr. Gerry Ritz: Three years?

Ms. Kristine Stolarik: It's already in the Seeds Act. We're only carrying it over, but yes, it is from the time you plant the seed to the —

Mr. Gerry Ritz: It's from the time you plant the seed until you harvest it, and then what? It doesn't take three years.

Ms. Kristine Stolarik: It's for the seed variety.

Hon. Wayne Easter: If you're starting with nuclear stock or a leaf sample it wouldn't take that long.

Mr. Gerry Ritz: That's the clarification I'm looking for.

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

Mr. Brian Fitzpatrick: I'll ask a question, even though this does not apply here. On the issue of animal protein feed for cattle with BSE and so on, if I understand the Alberta example, there may have been a Minnesota corporate entity that was selling protein feed into our country. I guess the question would be whether this was knowingly or unknowingly, but there was a ban on that feed and they were selling it. That would have been back in 1997 or 1998. If I understand your section correctly, they're off the hook for any charges from your department.

Mr. Mark McCombs: The prosecution would have to take it from the time the subject matter arose, which would be the time that—

Mr. Brian Fitzpatrick: It was 1997 or 1996.

Mr. Mark McCombs: The subject matter of the proceedings would be the violation that had been determined. If you were not going to use the summary conviction authority, you would have to proceed with an indictment, because the limitation period doesn't exist.

Mr. Brian Fitzpatrick: So they'd be smiling with this provision.

I just ask the question.

Hon. Wayne Easter: Mr. McCombs, Mr. Fitzpatrick said they'd be smiling with this provision. I don't think that's correct, is it? Are they off the hook?

Mr. Brian Fitzpatrick: There is a two-year limitation.

Mr. Mark McCombs: There's a two-year limitation for summary conviction, but not for indictable—for the seeds.

Mr. Brian Fitzpatrick: What is it for indictable?

Mr. Mark McCombs: There is no limitation period for indictable.

Mr. Brian Fitzpatrick: Okay, that's a good point, Mr. Easter. I'm glad you brought that to my attention.

Hon. Wayne Easter: It gives me great pleasure.

The Chair: Mr. Anderson, would you ask for clarification on the point you're making, because there may be reason why we shouldn't entertain that?

Mr. David Anderson: I'm going to suggest—and I can do it now or later—that we change the time period from two years and three years to one year, for a couple of reasons.

First, it specifically says here that it's after the time when the subject matter of the proceedings arose, whatever the definition of that is.

Second, with misrepresentation of a variety name or a purity of a variety, you can step into that process at any time if somebody is misrepresenting. It doesn't have to be from the beginning of when the seed was developed. Again, this is to protect consumers who are sitting out there basically at the mercy of the government, who can come in up to two years later, seize something, hold it forever, and they don't have to initiate proceedings. People go broke because of this. The chairman would like you to comment on why that's not a good idea.

Mr. Mark McCombs: Let me just explain to you what this provision is replacing. Under some current CFIA legislation there is a provision that says you have two years after the minister becomes aware of the offence. Current legislation says that all that has to happen is that an offence be detected, the minister be advised the offence has been detected, and then the limitation period starts from that point, and that could be 1952. If we become aware of the offence and the minister is then advised of that, the minister then has to advise the Crown prosecutor that he's become aware, and the limitation period would then start from that point. So a two-year clear time period that starts from the date the subject matter arose replaces a provision that goes way back.

● (1715)

Mr. David Anderson: You're saying previously they could have gone any time. Now, what do you mean by "when the subject matter of the proceedings arose"? Are you talking about media, or are you talking about when the government became aware of it?

Mr. Mark McCombs: When the offence occurred.

Hon. Wayne Easter: This is really progressive, David.

Mr. David Anderson: I guess I would still like to make the amendment say one year. If the government in that growing cycle hasn't become aware.... I don't believe that "when the subject matter of the proceedings arose" means when the event took place. It's obviously when it became public, when there was some subject matter somewhere that became public and was discussed. Otherwise, you could say two years after the time the offence took place, if you wanted to be clear. If you're going to say that, say that, but that's not what this says. I would like to change it to one year.

The Chair: Is there any reason why an amendment like that shouldn't be entertained?

Mr. Mark McCombs: Most complicated prosecutions will take longer than one year to complete the investigation. It all depends on how many of the powers the agency has and how they use them as to whether it can be completed sooner. If the trace-backs have to happen into foreign countries, where we have to trace back imported product into countries of other jurisdiction, it will take much longer than a year to do. Effectively, a one-year limitation period would eliminate our ability to prosecute for a number of the imported products.

The Chair: Mr. Easter.

Hon. Wayne Easter: The key point, Mr. Chair, is the preparation time and doing it right. I don't think these timeframes in here have any real implications for the industry. As Mr. McCombs said earlier, this does change quite substantially the amount of time you can look back, and they have thought through very clearly the amount of time needed. As I said on potatoes, even on the three years there, you could be looking at a year and a half just in terms of development from the nuclear seed.

Mr. David Anderson: Actually, Wayne, you're wrong there, because it's talking about summary conviction, and as it was pointed out earlier, indictable convictions have no timeframe on them. You were talking about summary convictions being basically minor events, or whatever. That's a good reason to put the restriction on it, so if people are going to be charged with summary offences, there is—

A voice: It's not open-ended.

Mr. David Anderson: Yes, so it's not open-ended, and so those smaller producers who are going to be caught in this have some definite timeframe that's going to work for them as well.

Mr. Mark McCombs: Unfortunately, if that's the case, then the only alternative for a prosecution would not be to ignore the offence but to proceed on indictment.

Mr. David Anderson: Well, after a year it would be. If you've taken over a year, you're probably dealing, as you said, with a major issue that would likely be.... Supposedly, if you've taken that much time and energy to go into it, if there's a real offence, it's probably indictable.

The Chair: Okay. I'm going to read the amendment so that we understand.

In subclause 53(1), amend “two years” to “one year”, and in subclause 53(2), amend “three years” to “one year”.

This has been moved by Mr. Anderson. This is what's on the table.

Hon. Wayne Easter: Mr. Chair, we're strongly opposed. I think in fact you limit the ability of the agency to do the proper investigation in a timely fashion, and therefore you could be, out of haste, putting in place convictions that you wouldn't necessarily need to because you had to risk on the side of haste.

The Chair: I'm going to put the question to the table.

[*Translation*]

Ms. Denise Poirier-Rivard: I'm sorry, but I didn't get that.

[*English*]

The Chair: This is on the amendment.

(Amendment negatived)

(Clause 53 agreed to on division)

● (1720)

The Chair: I think we're going to stop it there because Mr. Miller has one matter he wants to bring before the committee before we go.

You can collect your thoughts for a moment, but I think we will adjourn this part of our meeting at this point for the purposes of debate on the bill.

Mr. Miller.

Mr. Larry Miller: Thank you, Mr. Chairman. I spoke to you briefly about this beforehand.

The issue I'm going to bring up—and, Mr. Easter, I'm going to ask that you be aware of this too, and maybe you already are—is an issue that's very important, and this committee may have to act on it. Now, it's just starting to happen in Ontario, I understand, from talking to Mr. Anderson and some others, and it happened earlier in other provinces. Producers in Ontario are starting to get letters now on the advance payment they got in 2003. That money was sent out with the understanding that it was to help out on the BSE issue.

I have an example I had on Friday of an individual who basically is just about broke. He's at retirement age, and the BSE thing is the thing that's done it to him. He's going to get out with the shirt on his back. He paid income tax on the money he got in 2003 and went through all that, and now they're telling him that unless he enters the CAIS program, which he does not want to do, because obviously he's retiring, he has to pay the money back immediately.

I'm totally opposed to the money even having to be paid back, because even though it was written in there that it was an advance payment, producers didn't understand that. They thought this was help for the BSE problem, and all of a sudden it isn't.

I've had two more calls, one yesterday and one today, on this very issue. In fact, I had another one, Rose-Marie, from your riding, and this guy got $47,000—

Mrs. Rose-Marie Ur: I'm glad you're looking after my people.

Mr. Larry Miller: Well, he happens to be a friend of mine and he called me yesterday to wonder.... He will probably be calling you.

Mrs. Rose-Marie Ur: I will wait.

Mr. Larry Miller: Anyway, it's the same thing. He paid the income tax on that one, and he wanted to know if I could do anything more about it.

I think there are a lot of farmers out there who are not going to have the ability to pay this money back. I think we have to be prepared to do something about it.

The Chair: Do you want to make a comment, Mr. Easter?

Hon. Wayne Easter: Well, no, other than that we will check it out, Mr. Chairman.

I wonder, Larry, if you can give me the names and we'll get it checked out and see if we can have an answer early in the week.

The Chair: I must say, I have a number of them from my riding as well.

Hon. Wayne Easter: If we have one or two examples, Mr. Chair, then we can work from that and see if there's anything that can be done overall.

The Chair: Okay, let's leave it at that and see if we can get this done.

Mr. Larry Miller: That's fine with me.

The Chair: To the witnesses at the table, I understand there is some difficulty for you to be here next week. Is that correct? Are there any days at all when you could be here next week, or is it not at all?

Ms. Kristine Stolarik: Friday is the day that—

Some hon. members: No.

The Chair: So you're not available next week.

Ms. Kristine Stolarik: We're in Yukon.

The Chair: So there won't be any Bill C-27 meetings next week.

Mrs. Rose-Marie Ur: Can we not travel there?

The Chair: Anyway, we will be meeting tomorrow. The meeting tomorrow is at 3:30 p.m.

The Thursday meeting is scheduled to start at three o'clock, to accommodate a number of members who have to be gone earlier. If this is a problem, I'm prepared—I'm going to stay back—if you'd rather start at 3:30 p.m. Is three o'clock okay?

Hon. Wayne Easter: Three o'clock is great.

The Chair: Okay. It's two hours tomorrow. It's tough, I know, but we're trying to get through this.

Mr. Gerry Ritz: Is there any way we could meet Thursday morning instead of Thursday afternoon? Are there no rooms available?

The Chair: No, we tried.

Mr. Gerry Ritz: Okay.

The Chair: If you could have some clarification on that matter for tomorrow, it would help us as we go forward.

Ms. Kristine Stolarik: Yes.

The Chair: Anyway, thanks very much for your indulgence today, and we'll see you tomorrow.

The meeting is adjourned.

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