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# Standing Committee on Agriculture and Agri- Food

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**Chair**

**Mr. Paul Steckle**

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## Standing Committee on Agriculture and Agri-Food

Wednesday, June 1, 2005

• (1530)

[English]

**The Chair (Mr. Paul Steckle (Huron—Bruce, Lib.)):** I call this meeting to order.

Before we get into the clause-by-clause aspect of this afternoon's meeting, I just want to apprise the committee of the work I see ahead over the next two weeks.

Tomorrow, of course, we will meet at three o'clock on the same matter. Next week, the officials here today and our legal people won't be available so we won't be doing Bill C-27. Next Tuesday we propose to meet with the departmental officials over CAIS. That has to do with some of the matters we talked about late yesterday afternoon. On Thursday next week we propose to deal with Ms. Rivard's motion on regionalization of agriculture health practices with CFIA officials. That will be next Thursday's matter on the agenda.

The following week, on Tuesday, June 14, we propose to go back to Bill C-27. Because the officials can't be with us next week, they have offered us the opportunity to have a meeting, and they are willing to attend for the entire day.

I guess what I seek from you is concurrence for doing that so we can get through this bill. What hours do you want to meet, and how long do you want to work? This is on June 14, proposing to move to PMRA on June 16.

Rose-Marie.

**Mrs. Rose-Marie Ur (Lambton—Kent—Middlesex, Lib.):** June 14 may be a late day in the House with votes later on, so I think you have to take that into consideration.

**The Chair:** I see this as a day when we would start in the morning and go through the afternoon. What working hours would you like?

[Translation]

**Ms. Denise Poirier-Rivard (Châteauguay—Saint-Constant, BQ):** Does the 14th fall on a Tuesday?

[English]

**The Chair:** If we have a working lunch we can go right through, if not, the chair is ready to entertain some sort of suggestion. I'll make a ruling, but I'd rather take it from you people.

Mr. Ritz.

**Mr. Gerry Ritz (Battlefords—Lloydminster, CPC):** I can't do it on Tuesday, Mr. Chairman; I'm on House duty as duty day whip.

**The Chair:** Can you find a replacement to help you do that?

**Mr. Gerry Ritz:** I can't tell you that right now.

**The Chair:** Well, we're going to have a meeting.

Mr. Angus.

**Mr. Charlie Angus (Timmins—James Bay, NDP):** I have other committees that day, but I think we have to do this. I say let's start at ten o'clock and go through, take a break for question period, and get this thing wrapped up. We'll do what we have to do on our end.

• (1535)

**The Chair:** Do you want to start at ten, or are you prepared to start earlier than that?

**Mr. Charlie Angus:** Sure.

**Ms. Denise Poirier-Rivard:** Ten.

**The Chair:** Do you want a working lunch?

**Some hon. members:** Yes.

**The Chair:** So it will be a working lunch. We'll go through until 2 o'clock, reconvene at 3:30, and go until 5:30. On Thursday, June 16, we will do the PMRA.

Thank you very much.

I had considered going back and revisiting a bit of the work of yesterday, but I think we should all have an opportunity to review this. I'm going to give everyone an opportunity to look at a new clause that will deal with the matters we had yesterday on resolution of complaints. You will find that some time this afternoon. You don't have the copies yet, but you will be receiving them very shortly.

**Mr. Gerry Ritz:** That's to address clauses 44 and 45.

**The Chair:** That's right.

We will deal with that at tomorrow's meeting.

**Mr. Gerry Ritz:** So we're standing it.

**The Chair:** Yes.

(On clause 54—*Admissibility of evidence*)

**The Chair:** We will continue where we left off as of yesterday on clause 54. There are no amendments. We will entertain any sort of questioning. If there is none, we will entertain a motion to carry that on division, if that's your wish.

Mr. Ritz.

**Mr. Gerry Ritz:** I have one question on subclause 54(2). I wrote this down quite a while ago, so I'm trying to refresh my memory here.

Where it says “any document that is made by the Minister or President”, is that specifically new to this bill, or does it come out of existing acts?

**Ms. Kristine Stolarik (Executive Director, Liaison, Preparedness and Policy Coordination, Canadian Food Inspection Agency):** We already have this provision in our Canada Agricultural Products Act, Fertilizers Act, Food and Drugs Act, Health of Animals Act, Plant Protection Act, and Meat Inspection Act.

**Mr. Gerry Ritz:** So there's nothing in clause 54 that is new and pertinent to Bill C-27. It's all in existing acts, and it's just a compilation.

**Ms. Kristine Stolarik:** That's right, it's consolidation.

**Mr. Gerry Ritz:** Okay.

(Clause 54 agreed to on division)

**The Chair:** We now have amendment NDP-14 on pages 59 and 60, to add a new clause.

**Mr. Gerry Ritz:** We haven't passed anything yet.

**The Chair:** It's the amendment. We're doing the amendment to add a new clause 54.1.

Any discussion?

You would have to move that first, Mr. Angus.

**Mr. Charlie Angus:** I so move.

**Mr. David Anderson (Cypress Hills—Grasslands, CPC):** Just for verification, what did you just pass on division? Nothing?

**The Chair:** I passed clause 54.

**Mr. David Anderson:** Now we're amending clause 54?

**Mr. Gerry Ritz:** No, he's adding new clause 54.1.

**The Chair:** It's clause 54.1, and it's a new clause, and it's been moved. Any discussion?

**Hon. Wayne Easter (Parliamentary Secretary to the Minister of Agriculture and Agri-Food (Rural Development)):** Yes, Mr. Chair, in a moment.

**Mr. Charlie Angus:** Wayne, give me a break.

**Hon. Wayne Easter:** This amendment is on what page, Mr. Chair?

**The Chair:** It is on page 59.

**Hon. Wayne Easter:** All right. We don't support the motion, Mr. Chair.

You're shocked?

**The Chair:** Would you give us the reason why?

**Hon. Wayne Easter:** Yes, I will give you very good reasoning why we don't, Mr. Chair.

First of all, it would result in procedures, rules, and guidelines becoming regulations, basically decreasing the agency's flexibility to revise or amend such documents to ensure their timeliness, their currentness, and their effectiveness. It would require the CFIA to establish a process for procedures, rules, and guidelines similar to that for regulations. It would also result in additional costs to the CFIA, costs associated with publications in the *Canada Gazette*, etc.

Where we're trying to go forward as a government with the smart regulation strategy and reduce regulations and paper burden, it would in fact go in the opposite direction. The CFIA currently makes public its inspection manuals and procedures—for example, the meat hygiene manual of procedures and protocol, the fish, seafood, and production visual inspection protocol, and I could go on with quite a list. All those documents in terms of the overall management, basically the procedures and protocols, can be found on the CFIA website.

So I think the bottom line is it ties the CFIA in timeliness and its ability to do its job, and overburdens us with regulations.

● (1540)

**The Chair:** Okay.

Mr. Ritz.

**Mr. Gerry Ritz:** I take exception to some of that. I don't understand why rules guiding a ministry or a ministry component would have any way of slowing down their operation. They'd have a certain set of guidelines to operate within. Why would that interfere with regulations or timeliness of operations?

I think it's a good amendment. It gives us a set of protocols that we understand the CFIA is going to operate under, and if they start to get outside those protocols we can question it. I think this transparency is a good addition.

**Hon. Wayne Easter:** Can I argue that point, Mr. Chair?

The fact of the matter is, the transparency is there on the CFIA website if people want to look. The operating manuals and how they should proceed are in fact there. If you get into basically a quasi-regulatory process, where you have to go through consultations when you're operating, I think the prime example is in some of these almost-emergencies that you get into, like avian influenza, where if you get into an 18-month consultation process, then it makes no sense. I think you're tying the hands of the CFIA and its ability to do a job, increasing costs, when that information is readily available through the manuals and procedures that are there now.

**The Chair:** Okay, Mr. Angus first.

**Mr. Charlie Angus:** Thank you.

Having heard Mr. Easter, I'm much more positive about this amendment than I was before, for three reasons. One, being a student of Orwell, I always worry when someone says “smart regulations”. I guess I've got to be on record as doubting that.

Secondly, again, it comes down to the issue of cost. It costs CFIA money to actually put this up for people to see the rules they have to play with. That draws really serious concerns from me because it seems we're weighing this bill continually in favour of CFIA, and they don't want to have to spend any money explaining what the playing field is.

Thirdly, I guess what I question is that the whole point of this bill is to give CFIA the tools to respond in every possible circumstance—and we're more than willing to give them the tools—but then when it comes to actually putting up those tools to show people the rules, we're saying that will tie their hands, because they can't be flexible enough to change the rules if they want to.

I think we, on the committee, have been willing to go very far in terms of really giving CFIA the mandate they need to play the game, but I think it's also incumbent upon us to make the rules of that game easily accessible. And I don't think we're talking about endless consultations here. We're saying the procedures and guidelines should be developed. They should be up there for everybody to see, and then that will be an equal playing field.

**The Chair:** Could we have Mr. Ritz? And then I want to go to my witnesses.

**Mr. Gerry Ritz:** Thank you, Mr. Chair.

I don't buy Mr. Easter's argument that it would slow us down in emergency situations. We have a full slate of emergency contingencies back here in the bill and under the other acts. In fact, in our concurrence motion on the avian flu, we are asking for just that very thing: a "hit the ground running" type of group that goes in there on an emergency situation and has the authority and the responsibility to act. We're not taking that away from the CFIA. We're actually going to build on that.

So I don't buy the argument that we'd have to publish everything and it would hold us down for 18 months in an emergency. That's not true.

**The Chair:** Okay, I'm going to have my people at the table respond.

Mr. McCombs, please.

**Mr. Mark McCombs (Head and General Counsel, Legal Services, Canadian Food Inspection Agency):** The amendment effectively makes those rules or guidelines in proposed subsection (3) a statutory instrument. Therefore, it's a regulation that requires it to go through the consultation process and the gazette. A regulation normally takes 18 months to make it through the process. Also, if you bring in all your manual procedures under that, any amendment to the manual procedures would require 18 months. So industry and, on a number of occasions, producers have asked for changes to procedures and guidelines, which the agency can make quickly because doing so requires a decision by the president and the minister. If it's enshrined in regulations, you can add 18 months to that process. There are a number of situations where, if we had had an 18-month process to change a guideline for an inspector, we would have lost an export market.

**The Chair:** Mr. Ritz, go ahead, please.

• (1545)

**Mr. Gerry Ritz:** But again I make the point that in an emergency situation all of this goes by the board, and we do have rules and regulations....

You're saying this would supersede our emergency preparedness, then?

**Mr. Mark McCombs:** Yes.

**Mr. Gerry Ritz:** I don't necessarily buy that. I don't understand why we can't have the best of both.

**The Chair:** I think we have to be very cognizant in what we do here. Most of us aren't legal people and we have to seek some direction and guidance. We all want what's best—

**Mr. Gerry Ritz:** I understand that.

**The Chair:** —but let's not put ourselves in the position of doing something we might regret down the road.

**Mr. Gerry Ritz:** I certainly understand that, Mr. Chairman, and I don't want to hamper producers' getting the best operation, as quickly as possible, in an emergency situation, but I don't understand why we couldn't standardize. That's basically what this amendment I think seeks to do, to have any major changes go through this process so that they can be transparent. No one wants to take away the CFIA's effectiveness in an emergency. I don't understand why we can't have a parallel system, or why one would have to supersede the other.

**The Chair:** Could we have Mr. Easter first, and then go back to Mr. McCombs?

**Hon. Wayne Easter:** Mr. Chair, just to re-emphasize the point: the fact of the matter is that everything we're asking here is already on the CFIA website. We have—

**Mr. Gerry Ritz:** Why is there a problem?

**Hon. Wayne Easter:** Well, because what you're asking them to do is to go through a regulatory process. Mr. McCombs has outlined the restrictions on that and has shown how it makes it more difficult to act in a timely fashion. So they are already there on the website. As a parliamentary committee, if we have a problem with the procedures of CFIA, or with one of the changes made, we can call CFIA, the president or the minister, to talk about those. I don't think you need to go through this complicated process when it's already available on the website and it gives some flexibility to the system. After all, the minister is ultimately accountable, as is the president.

**The Chair:** Ms. Rivard.

[*Translation*]

**Ms. Denise Poirier-Rivard:** Could we not come up with wording that ensure fairness as well as efficiency? Isn't there some solution?

**Ms. Kristine Stolarik:** In order to achieve both fairness and efficiency, I believe it says that we need to hold consultations and be transparent, not necessarily publish the material in the Canada Gazette. I think that would be the most efficient and the quickest course of action for everyone. Currently, there is a consultation policy in place with a view to formulating policies and procedures within the Agency. We follow this policy when it comes to designing our manuals and tools. Paragraph 54.1(3) of the proposed amendment stipulates that rules, procedures and guidelines must be published in the Canada Gazette. That's what will take the longest in the case of manuals and procedures and in cases where changes are warranted in an emergency situation.

[English]

**Mr. Mark McCombs:** I should also mention that the subsequent clause we're going to get to, clause 57, "Incorporation by Reference", is designed to take all those processes and speed them up in terms of the regulatory process. So the intent of the legislation was to enhance and speed up the regulatory process to ensure that markets are not being lost by producers because of the longer process.

On the concern Madam Stolarik just talked about in terms of the gazetting, it makes it a statutory instrument. It then becomes a regulation, which has to go through the gazette process. Subsequently, it's referred to the Standing Joint Committee on the Scrutiny of Regulations, who then comment with respect to process. Each one of those guidelines' decisions would have to go through that process, which means they would have to get drafted, consulted with, redrafted by the Justice lawyers, and then reviewed by the jurilinguists, the editors, and then finally get to a *Canada Gazette* and then subsequent review by the Standing Joint Committee on the Scrutiny of Regulations.

**The Chair:** Mr. Ritz.

**Mr. Gerry Ritz:** If Charlie would indulge me, I think we could probably work some of this through with a friendly amendment.

In 54.1(1), if we went to line 4 or 5 there, you could either say "in carrying out their day-to-day" or "normal duties". Then we have a guideline for day-to-day things that doesn't interfere with emergencies or things that are needed to be done quickly, but at least we would have some coast to coast to coast normalcy in what the CFIA is expected to do and what we can expect of them. Does that sound reasonable, Charlie?

**Mr. Charlie Angus:** Yes. My concern here is that I want something—

**Mr. Gerry Ritz:** Yes, in the day-to-day running of...

**Mr. Charlie Angus:** Just hearing no from CFIA and saying, well, it's a problem, it ties our hands.... If you can give us something that is workable, that our people are going to have a little bit more trust in that this will work, that's fine, but if it's a yes or no, then I'm going to have to hold my line.

**The Chair:** Let's look at that small friendly amendment. Does that change the whole issue? It shouldn't, but I'm not the lawyer.

•(1550)

**Mr. Mark McCombs:** As long as proposed subsection 54.1(3) remains and the gazetting process remains, you're still in a statutory instrument process.

The other issue with respect to that is, what is meant by "procedures, rules or guidelines" in terms of the process? Does that say that inspectors all shall enter at 7:30 in the morning and leave at 3:30 in the afternoon?

**The Chair:** It's just a part of this.

**Mr. Mark McCombs:** In terms of process, if you look at the meat inspection manual, the meat hygiene manual, there are a number of rules with respect to wash-up time, how washing occurs, etc. Those would all be considered rules, procedures, and guidelines.

My final comment, before Mr. Angus speaks again, is that under the CFIA Act, the minister is not responsible for the inspectors, but the president is.

**The Chair:** Mr. Angus first, and then Mr. Easter. I think we need to give some very serious thought before we approve this particular amendment, but let's have Mr. Angus first and then Mr. Easter.

**Mr. Charlie Angus:** Again, I'm more than willing to work on this amendment, but when I hear that if we publish any kind of procedure, we have to publish how many times they can go to the washroom on a shift, to me, we're being bogged down in saying we'll have to go into the minutia, and I don't think that's the point of this. I don't think anybody would expect a reasonable publishing of procedures and guidelines would go to that extreme.

**Ms. Kristine Stolarik:** I just want to put on the record that if you look at some of the procedures and guidelines that we do have, they go to that very, very minute detail—hairnets, washing your hands, and after you've touched—

**Mr. Charlie Angus:** So you already have that.

**Mr. Mark McCombs:** It's already in the manuals.

**Mr. Charlie Angus:** So you can publish it.

**Mr. Mark McCombs:** We have.

**The Chair:** Are you finished, Mr. Angus?

**Mr. Charlie Angus:** I'm finished, yes.

**Hon. Wayne Easter:** Mr. Chair, if people look at the website they will.... What I can't understand here is why this process.... I am quite honestly more likely to go and look at CFIA's website than I am to look at the *Canada Gazette*. If I want to look at the rules and procedures...I think your average person out there is going to go to the website before they go and look at the *Canada Gazette*.

I can't see the point of moving what you really do now through all these procedures and documents that are on the CFIA website and moving them into a regulatory regime. I think if you have problems with some of those procedures we can deal with it as a standing committee.

**The Chair:** Mr. Ritz, and then Ms. Rivard.

**Mr. Gerry Ritz:** I have just a short point, then, in order to cover this off. Can we get a commitment in the legislation for the CFIA to continue putting this on the website and to put up any changes as quickly as possible on the website? Can we get that in the legislation?

**Mr. Mark McCombs:** That's not a problem.

**Ms. Kristine Stolarik:** That we can live with.

**The Chair:** Ms. Rivard, and then back to Mr. Angus.

I'm going to give Mr. Angus the last word as a committee member, and then I'm going to go back to the table for a confirmation. Perhaps we can then make the decision we need to make on this motion.

[Translation]

**Ms. Denise Poirier-Rivard:** I'm trying to get a good grasp of the issue, Mr. Chairman. Will the website serve as a substitute for the *Canada Gazette*? Is that the intention here?

[English]

**The Chair:** No.

[Translation]

**Ms. Kristine Stolarik:** The public will consult the website for information on procedures and manuals. We will continue to publish regulations in the *Canada Gazette*.

[English]

**The Chair:** Mr. Angus, last word.

**Mr. Charlie Angus:** I would accept being updated regularly on the Internet, but this also needs to be available to the public. If they want to write to the CFIA to get it, they can get it. That would be enough. If that wording was in there, we'd be fine with it.

**The Chair:** The assurances have been given from the officers here.

There are two things we can do. We can defeat it, or you can withdraw the amendment.

**Mr. Charlie Angus:** If I withdraw it, will we bring it back with new wording?

**The Chair:** We won't bring it back unless someone brings another amendment. This amendment, for all intents and purposes, would be gone. We can vote on it, but I would....

Yes, Mr. Ritz.

**Mr. Gerry Ritz:** But we are putting in the legislation, at some point, the commitment from the CFIA to keep the website up to date, posted with procedures, rules, all those types of things?

**The Chair:** We won't do it in this particular aspect.

**Mr. Gerry Ritz:** There's a commitment that we're going to have it somewhere in the legislation.

**The Chair:** It will be there. Remind us.

It's up to Mr. Angus now.

Do you want to withdraw the amendment?

• (1555)

**Hon. Wayne Easter:** We're given that commitment, Mr. Chair, that we'll try to find wording that will really come through.

**The Chair:** We have to dispose of this amendment in one of two ways.

**Mr. Charlie Angus:** I will withdraw it, but I want to know that when we come back I'm going to see it in another form.

(Amendment withdrawn)

**The Chair:** You will. Remind us, if anyone should dare forget.

The amendment has been withdrawn. We move to clause 55, G-12 on page 61, which is a government amendment.

Mr. Easter.

**Mr. Charlie Angus:** So moved, Mr. Chair.

What it really does is add the words "with any modifications that the circumstances require". What it does is recognize the CFIA's implementation of the administrative monetary penalties program as an alternative to prosecution in court. That was talked about

yesterday, I believe. It gives legislative authority to the review tribunal as a quasi-judicial body to exercise the powers of the court with respect to violations under the listed agrifoods act.

This proposed amendment allows flexibility for the review tribunal to exercise the powers under subclause 35(4), which allows for a person to apply to the review tribunal for the return of the seized product for a violation under the act; and under clause 37, which allows the review tribunal to order the seized thing to be disposed of and therefore to adjust it to the circumstances before the review tribunal.

That's the purpose, if you understand all that legal language.

**The Chair:** Yes, Mr. Anderson.

**Mr. David Anderson:** Mr. Chair, I understand, if I'm correct here, that this review tribunal is falling under the Canadian agricultural products act. We have no more information on this than that statement. Is that correct?

We've talked about it a few times, but we haven't seen what it's about and what its powers are. I guess I'm a little hesitant about giving it more power when I don't know what it is as it stands now. Do you have the information on that tribunal? We're going to be talking about it later as well.

**Mr. Mark McCombs:** It's a review tribunal. The role of the review tribunal is to review decisions—essentially, the tickets given by the Food Inspection Agency currently under the Health of Animals Act and the Plant Protection Act. The tribunal can review decisions in one of two ways, either by a paper review or an oral hearing. With respect to that, this provision allows the person who has goods that have been seized for violation to apply to the tribunal to get them back. Clause 37 allows the tribunal to order the seized thing to be disposed of.

**Mr. David Anderson:** I'm going to have to go back and find out a lot more information about its power, how it's appointed, and those kinds of things.

You're talking about giving it the power to make any modifications circumstances require. You're suggesting the tribunal itself will have the power to make those modifications, so it basically has unlimited power in terms of—

**Mr. Mark McCombs:** No.

**Mr. David Anderson:** Who's going to make the modifications? The minister, the president, the tribunal—

**Mr. Mark McCombs:** No, it's a wording issue only. In subclause 55(2) you'll see the last few words are "with any modifications that the circumstances require". This is a drafting change. Sections 35 and 37 deal with court powers, and essentially what this does is to have the tribunal replace it.

Go ahead, Ms. Dudley.

**Ms. Jane Dudley (Legal Counsel, Canadian Food Inspection Agency):** This is to allow the tribunal to exercise the same sorts of powers a court may exercise under the circumstances. Where somebody is given a notice of violation under the AMPS regime rather than being charged under one of the other statutes, they can elect to go before this tribunal to contest the penalty that's been imposed. This gives the tribunal powers similar to those of a court.

**Mr. Mark McCombs:** The review tribunal is a quasi-judicial tribunal, currently with a chair and a vice-chair. They're appointed by Governor in Council. They are a court of record in administrative law principle, which means they are the highest level of administrative tribunal. They're bound as quasi-judicial decision-makers, which means they follow administrative fairness and natural justice.

**Mr. David Anderson:** They have the powers of a court.

**Mr. Mark McCombs:** Yes.

**Mr. David Anderson:** They're appointed by the government, which is also responsible for the legislation. I guess I don't find that to be a balance that's going to necessarily protect producers. That's been an ongoing theme through this legislation, that we've had a concern about producers being protected, so I still have some concerns.

•(1600)

**The Chair:** Yes, Mr. McCombs.

**Mr. Mark McCombs:** Perhaps, Mr. Chair, I can just clarify. If, for example, it was decided not to have the tribunal with those authorities, then there'd be no way to have the goods released, except by a judicial review mechanism.

**Mr. David Anderson:** You can't be saying that unless they go to the tribunal, there's no way to reverse that decision.

**Mr. Mark McCombs:** Well, the purpose of going to the tribunal is to contest the decision. If the individual wants to contest the decision and have the ticket overruled, then he has to go to the tribunal with that; otherwise, the goods are going to get disposed of.

**Mr. David Anderson:** Well, then I think it's important that we take a really serious look at the tribunal, the power it has, and whether we're going to be able to support it in its present structure or not. I think we'll be bringing forth an amendment that deals with that.

**The Chair:** Yes, Mr. Angus.

**Mr. Charlie Angus:** I just have one question, and then we can move on through subclause 55(1). The issue of the review tribunal was at the heart of clause 34—which was turned down—which was that this was where people could apply if they had a problem. What I'd like to know is, is the review tribunal handling CFIA cases now?

**Mr. Mark McCombs:** Yes.

**Mr. Charlie Angus:** So they are already set up to do that. We said that for compensation we would send it to the review tribunal—which was turned down, but it might be back—and they are already handling CFIA complaints. That's the method.

**Mr. Mark McCombs:** Yes. It handles CFIA and PMRA complaints.

**The Chair:** Okay, let's put the question on amendment G-12.

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

(Clause 55 as amended agreed to on division)

**The Chair:** Now we go to new clause 55.1. That's an NDP amendment on page 62.

Do you want to move that one, Mr. Angus?

**Mr. Charlie Angus:** I move it forward, yes indeed.

**The Chair:** Do you want to speak to it first?

**Mr. Charlie Angus:** Well, again, it's a continuing attempt to make sure there are checks and balances in the system. We're asking that people should be able, if there's a question of law, to take it to a Federal Court within a 30-day period.

**The Chair:** Mr. Easter.

**Hon. Wayne Easter:** Well, the government doesn't support the motion, Mr. Chair, because they can do that now. They can appeal to the Federal Court without this amendment in here. That right is in section 18.1 of the Federal Courts Act, which sets out the requirements and the process for applying for a judicial review.

As I understand it, other federal legislation doesn't contain provisions that reference the Federal Court, but they all rely on the Federal Courts Act. It's your right as a citizen to appeal to the Federal Court. This would make this legislation inconsistent with requirements that are set out in that Federal Courts Act. You already have that right without inserting this clause, as I understand it. Correct?

**The Chair:** Mr. McCombs.

**Mr. Mark McCombs:** The mechanism is a judicial review mechanism. This creates a different method. It's an appeal, which would be limited only to what's in the appeal section.

**The Chair:** Mr. Angus.

**Mr. Charlie Angus:** I guess if the right exists already there shouldn't be a problem putting it in, because what we're seeing throughout this legislation is numerous elements where the act is giving liability-proof powers to the CFIA. These are major police powers, major search and seizure powers. So I feel that this is again something where, if that right exists already, it's not stated anywhere in the act that a person has that right. In fact, in clauses 44 and 45, "Neither Her Majesty in right of Canada nor the Agency is liable for any loss, damage" or anything else whatsoever, period, end of story. This at least says that if they have a problem, if they feel that they've been wronged, they do have that right to go to the court. I think it should be explicitly in there.

**The Chair:** Mr. McCombs, please.

**Mr. Mark McCombs:** I'll read, for the benefit of the committee, section 18.1 of the Federal Courts Act: 18.1(1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

(2) An application for judicial review in respect of a decision or an order of a federal board—

A federal board includes a body or persons exercising or purporting to exercise jurisdiction or powers under an act of Parliament, essentially present in any of the inspectors. The person may make an application, and it's required to be made within 30 days after the time the decision or order was first communicated by the federal board, commission, or other tribunal to the parties. So there's a 30-day time limit from the date of the decision, which then follows the process.

The judicial review authority in the Federal Court Act is much broader than the proposed amendment. So, effectively, the appeal mechanism would limit the judicial review authority. They would come into conflict with each other.

• (1605)

**The Chair:** Okay, as I understand it, there is really no need for this. Is that correct? This is already covered off.

**Hon. Wayne Easter:** Mr. Chair, I wonder if Mark could explain again the conflict. We already have the authority under the Federal Courts Act to appeal, and we would be inconsistent with other legislation if we put this amendment in. But Charlie's point is, if it's already there, then why not reinsert it? Can you explain what the conflict would be and how this would basically try to superimpose on the Federal Courts Act a different appeal process?

**Mr. Mark McCombs:** Essentially, the judicial review process under the Federal Courts Act is quite broad, and it reflects a number of matters beyond a question of law or a question of jurisdiction. It goes into the common law principles, administrative fairness, issues of constitutional jurisdiction, issues with respect to any manner of decision-making or rule-making. It's very, very broad, and the courts have been very liberal in terms of what they accept as judicial review.

If you put in a provision like this, it essentially establishes an appeal process, which then will kick into the Federal Courts Act and will run up against problems and procedures, because there's no procedure being set. If we were doing this as a whole in terms of this, in terms of the legislation, we would need, effectively, amendments to the Federal Courts Act to be able to accept the appeal powers.

**The Chair:** Mr. Angus.

**Mr. Charlie Angus:** Well, I guess I have to say that as we still haven't settled clause 45, which is outstanding in terms of basically ensuring that the Crown is free from any liability for anything it does whatsoever under any circumstances, which is how I read it—it's a get out of jail free card—it should still be in there.

**The Chair:** Would there be, in your opinion, some consolation if we stood this proposed clause until we've dealt with clauses 43 and 44, or clauses 44 and 45?

**Mr. Charlie Angus:** Yes, I can live with that.

**The Chair:** Then let's stand this particular clause until we've dealt with those others.

(Amendment allowed to stand)

**The Chair:** We have a new amendment today that has been brought forward by Ms. Finley but is being introduced by Mr. Ritz.

I would ask that you move this one.

**Mr. Gerry Ritz:** Okay, I'll certainly do that, Mr. Chair.

**The Chair:** This is the new clause 55.1.

**Mr. Gerry Ritz:** Well, it would actually have to be clause 55.2, if we go to 55.1 here—

**The Chair:** Yes.

**Mr. Gerry Ritz:** —but we can make those changes later.

**Mr. David Anderson:** It says 62.1 on the sheet.

**Mr. Gerry Ritz:** It's 62.1 on the bottom of the sheet; CPC-4.2 at the top corner of the sheet.

This basically sets up an adjudication tribunal to hear appeals on wrongful actions by the CFIA or the affiliates. I'm not sure if we would want it under the review tribunal. We have it in here as new clause 55.1. It would also fit, I suppose, under clauses 44 and 45, if we wanted to lump all of that. I mean, we're looking for an appeal process. Do we attach Charlie's amendment, which we just stood? In my estimation it would fit in either instance. It sets the standards for a tribunal to hear appeals on wrongful action. I know that's missing out of this right now, and there's a lot of discussion. The experts at the table were going to come up with something that we'd put into clauses 44 and 45.

If this could be worked into those, fine, we're happy with that. If not, we would put it in under clause 55.1.

**The Chair:** Mr. Easter first, and then we'll go to the table.

**Hon. Wayne Easter:** Yes, Mr. Chair, I can see proposing pretty minor amendments at the table, but this is a pretty major amendment, and I would suggest that until we have time to go through and think about it clearly, think about the legal implications, it be held over for another day.

• (1610)

**The Chair:** I could do that, but first of all, just on a quick glance at it, would the royal recommendation be required on this one? In that case, it would be inadmissible.

**Mr. Mark McCombs:** New subclause 55.1(7) requires the tribunal to be paid.

**The Chair:** In that case, if this is clearly...a royal recommendation is required. There wasn't on the other one yesterday.

**Mr. Gerry Ritz:** Oh, okay. Well, I would ask that you search that out and make that ruling, then.

**The Chair:** Is this absolute? You're absolutely certain?

**Ms. Kristine Stolarik:** Yes, we'd have to review it. It was provided to us just five minutes ago.

**The Chair:** I think if you look in new subclause 55.1(7), you will find that's probably the clause we'd put it in—

**Mr. Mark McCombs:** It requires new money.

**Ms. Kristine Stolarik:** Payment.

**The Chair:** Let's try to find accommodation on clauses 44 and 45. In that case—

**Mr. Gerry Ritz:** We're happy to do that.

**The Chair:** Do you want to withdraw it, then?

**Mr. Gerry Ritz:** No, I'll let it stand and let them work it into what they're going to put forward.

**The Chair:** Well, I've ruled it inadmissible based on the information I have from my officer, so I'm going to take it off the table.

Okay, we move then to—

**Mr. Gerry Ritz:** Mr. Chair, there's no appeal on that?

**The Chair:** No, there's no appeal on that.

**Mr. Charlie Angus:** Mr. Chair—

**The Chair:** Well, I suppose you can appeal it, but the matter is.... I guess you can seek another opinion in terms of admissibility.

**Mr. David Anderson:** I will. I guess I fail to understand why you would make that ruling immediately after Wayne's asked that it be sent to the legal people. You've decided—maybe you're a lawyer, whatever—that's how it's going to be here.

**The Chair:** No, I'm not a lawyer, but I used the counsel.

**Mr. David Anderson:** But at least it should be considered, and there are—however many—twenty other clauses here that can fit in there, and we may be able to work it.

**Mr. Gerry Ritz:** If new subclause 55.1(7) is a problem, take it out.

**Mr. David Anderson:** If (7) is a problem, we'll try to work with that, but that shouldn't rule out the entire amendment.

**The Chair:** Okay. I've ruled on this particular case. If you want to bring this back with some amendments, you can do that.

**Mr. Gerry Ritz:** Okay. Thank you.

**The Chair:** Yes, Mr. Angus.

**Mr. Charlie Angus:** I wanted to speak to that in terms of, I think, the larger issue of where we're going with this bill. I think we're really trying to expedite this bill, but one of the issues that is coming up—besides the issue of fair compensation that we've been talking about in the area of checks and balances—is on what form any kind of review panel is going to take. I think we are going to have to address that before this bill is done. We're going to have to have something that has a little bit of meat on the bone, so this is one possibility. My clause 34 amendment had the review tribunal look at it. We don't really know what the review tribunal does.

The other element that's going to come up in our next amendment is the advisory committee that was put together that deals with CFIA, which hasn't sat, as far as I can tell, in a long time; it's sort of sitting out there in name only. We're going to have to put some flesh on at least a tribunal, an advisory committee—something—before this bill is done. So however we do that, whether we have to stay a few amendments until we can come up with something, I think that's something we have to do. We're going to have to have something we can take back.

I'm not trying to stall anything here, but these are issues that are coming up, and they're coming up in future amendments, so we're going to have to put our heads around it.

**The Chair:** We are now moving to clause 56, and we have a great number of amendments here. Given that we have stood a number of clauses previous to this, which will have an impact on some of the amendments here, I would ask that the committee consider standing this full clause 56 until we have a chance to go back and look at some of the others so that what we do here has some impact.

Would that be a fair way of handling this, Ms. Stolarik?

**Ms. Kristine Stolarik:** Yes, it would. These are the regulation-making authorities. A lot of them tie back to some of the provisions that we have stayed, like the licensing and some of the other key ones. It would probably be better if we move forward and then come back after.

**The Chair:** We'll come back and do the others.

Mr. Anderson.

**Mr. David Anderson:** There's a vast expansion of powers here. There are 13 or 14 new provisions being brought into this. It would be good for you to come with a good explanation, especially for each of those new clauses. We're going to be asking for that. It gives some warning ahead of time.

**Ms. Kristine Stolarik:** That's a fair point. We're ready.

**The Chair:** We'll move on to new subclause 56.1. There's an NDP amendment there on page 69.

• (1615)

**Mr. Gerry Ritz:** What happened to 15.1 on page 63?

**The Chair:** We're staying all of those in that clause.

We're going to amendment NDP-18 on page 69.

Mr. Angus, would you move that one?

**Mr. Charlie Angus:** Yes, I move it.

**The Chair:** Do you want to speak to that one?

**Mr. Charlie Angus:** I don't know if we're reiterating what we went through in the last one. I'd like advice from the witnesses on amendment NDP-18.

**The Chair:** Do you want to comment on the amendment NDP-18?

**Ms. Kristine Stolarik:** It goes back to clause 56 and what we were already discussing on that one.

**Mr. Charlie Angus:** Okay, we'll look at language again.

**The Chair:** Do you want to stand it as well?

**Mr. Charlie Angus:** I'll stand it. It will be part of what we bring back regarding publishing and making available the information.

(Amendment allowed to stand)

**The Chair:** Then there's another one.

**Mr. David Anderson:** Can I ask a question related to that?

Apart from the amendment, is there any opportunity for interested persons to make representations to the Governor in Council with respect to the formation of regulations?

**Mr. Mark McCombs:** Yes, the *Canada Gazette* Part 1 gets published and then there's a time period. The time period depends on the type of regulation.

What's the normal time period, Kristine?

**Ms. Kristine Stolarik:** It depends if it has international implications. It could range anywhere from 15 days to 90 days, if there are international obligations.

**Mr. David Anderson:** Thank you.

**Ms. Kristine Stolarik:** We're also subjected to the federal regulatory policy. It contains a consultation provision, to be used prior to developing the regulations.

**The Chair:** Because they're all tied together, I wonder if we shouldn't be standing all of proposed clause 56.1.

**Ms. Kristine Stolarik:** I think so.

**The Chair:** Stand them all and we'll come back to them later.

(On Clause 57—*Incorporation by reference of externally produced material*)

**The Chair:** We'll go on to clause 57. There are no amendments on the table.

Are there any questions?

**Mr. Gerry Ritz:** A point of clarification, Mr. Chair.

**We're all concerned about this costing money. Under subclause 57(2),** A regulation may incorporate by reference material that the Agency reproduces or translates from material produced by a person or body other than the Agency.

There could be a charge for doing that. Under the new copyright laws and everything else that we're going to be seeing here in the next little while, there could be a charge trigger.

**Mr. Mark McCombs:** The process would be that you're required in the *Canada Gazette* to publish the regulation and have everything incorporated by reference. Like fertilizer compendium, for example—you're not required to publish the compendium in the *Canada Gazette*. You wouldn't have to publish 1,000 pages of the compendium.

**Mr. Gerry Ritz:** All right.

**Mr. Mark McCombs:** Regulatory policy requires that those documents being incorporated are readily available to the public in both official languages.

**The Chair:** Okay.

(Clause 57 agreed to on division)

(On clause 58—*Defence*)

**The Chair:** Moving to clause 58, again, no tabled amendments.

**Mr. Gerry Ritz:** I have a point of clarification on paragraph 58(a). It says “the incorporated material was reasonably accessible to the person”. How do you define “reasonably accessible?” If you are talking about the *Canada Gazette*, that's not going to do it.

**Mr. Mark McCombs:** Normally, it would be available from the website, an industry association, the inspector himself, or CFIA offices. For example, if we had it only on a website that was inaccessible, then you wouldn't be able to use it. That would all have to be reviewed before we would ever lay a charge.

**Mr. David Anderson:** But one of your outs is that it can be put in the *Canada Gazette*. It's an “or” there, not an “and”, after (b). If it's put there, then you're covered, but the person may not be, then.

**Mr. Mark McCombs:** It's because the *Canada Gazette* is deemed by Parliament to be available.

• (1620)

**Mr. Gerry Ritz:** We sit around Saturday nights on the patio reading the *Canada Gazette*

**Mr. Mark McCombs:** Me too.

**The Chair:** Okay.

(Clause 58 agreed to on division)

**The Chair:** On clause 59, there are no tabled amendments.

(Clause 59 agreed to on division)

**The Chair:** For clause 60, are there no amendments?

(On clause 60—*Exemption from Statutory Instruments Act*)

**Mr. Charlie Angus:** I'm sorry—

**The Chair:** Yes?

**Mr. Charlie Angus:** I wasn't quite sure of the point of 60.1.

**The Chair:** We're not there yet.

**Mr. Charlie Angus:** Are we not on clause 60?

**Mr. Gerry Ritz:** Yes.

**The Chair:** Oh, I'm sorry. Were we?

**Mr. Gerry Ritz:** We're on clause 60. We're galloping here.

**Hon. Wayne Easter:** We're on clause 60, subclauses 60(1) and 60(2), Mr. Chair, but we're not to new clause 60.1 yet.

**The Chair:** No, no, we're just—

**Mr. Charlie Angus:** “An order under subsection 12(1) or section 13 is exempt from the application of sections 3, 5 and 11 of the Statutory Instruments Act...”

**The Chair:** Okay, we're at subclause 60(1), and that is the—

**Mr. Mark McCombs:** These are the emergency provisions that were referred to.

**Mr. Charlie Angus:** Okay, so the purpose of it is to exempt from the—

**The Chair:** We're just on clause 60. We'll get to that 60.1 in a moment.

**Mrs. Rose-Marie Ur:** He is there. He's okay.

**The Chair:** Everything's okay?

**Mr. Charlie Angus:** There are some days I'm not, but I know I am today.

**The Chair:** Well, we're all here today. We're all here, today.

**Mr. Mark McCombs:** I think the honourable member....

I've given him a point of clarification.

**Mr. Charlie Angus:** Okay, thank you.

**The Chair:** Carried.... No, we can't do that one.

Yes, we can, we can carry that one.

**Mr. David Anderson:** Mr. Chairman.

**The Chair:** Yes, Mr. Anderson.

**Mr. David Anderson:** What is it that ensures that this is only used in emergency situations? I would be happier with this if there were something in there about emergency situations.

Subclause 12(1) and clause 13 deal with more than emergency situations, isn't that right?

**Mr. Mark McCombs:** Clause 12 allows the minister to make a temporary order where "the Minister considers that immediate action is required to deal with a significant risk, direct or indirect, to public health or safety, the environment or animal or plant health", and clause 13 deals with disasters.

**Mr. David Anderson:** If it exempts them from statutory instruments, and it must be published, what does the exemption give? What's the procedure in the other areas where they're not exempt? What needs to happen, and what does this stop here?

**Mr. Mark McCombs:** It's the normal process, which is the review, the drafting, making the consultation process comply completely with the federal regulatory policy, the gazetting, and then the time period for people to give feedback, and then the second or final publication of the regulation.

**Mr. David Anderson:** Okay.

**The Chair:** Is it okay?

(Clause 60 agreed to on division)

**The Chair:** Now we move to new clause 60.1, the first one being on page 71.

**Hon. Wayne Easter:** That is the Dairy Terms Act that I think we want to have some time to talk about. I wonder if you could stand that for another day. We have a proposed amendment under the Canadian Agricultural Products Act—Rose-Marie has—but it would come under new clause 65.1.

**The Chair:** Okay.

**Hon. Wayne Easter:** I wonder if you could just stay it until we get—

**The Chair:** We'll stand it.

Yes, Mr. Angus.

**Mr. Charlie Angus:** My concern is I had a bunch of dairy amendments that we removed for this one. I'd like to be definitely in the loop on any—

**The Chair:** Yes, we'll get it back on the table, Mr. Angus. We're as anxious as you are to get it on there.

We've stood that amendment. Now we go to the other one on clause 60.1, which is one brought forward...by the Conservative Party?

**Mr. Gerry Ritz:** Yes.

**The Chair:** It's on pages 72 and 73. It's CPC-5, another amendment proposing a new clause 60.1.

Mr. Anderson, do you want to move that one?

**Mr. David Anderson:** I would be glad to move it, Mr. Chair.

**The Chair:** Do you want to speak to it?

**Mr. David Anderson:** I'll just say quickly that this is the oversight we think is needed over the act, so we've brought this forward to give some opportunity for oversight on the agency.

• (1625)

**The Chair:** Are there any comments? Mr. Easter is first.

**Hon. Wayne Easter:** Yes, Mr. Chair, I have quite a number of comments, actually, so you'll have to indulge me.

It's certainly not supportive, but there's.... I'll ask Mr. McCombs and Ms. Stolarik to come in on this. There are really several legal issues with this motion. First, it's not clear for what purpose the committee would be reviewing the administration of the act. Second, the Minister of Health already has a review function set out in subsection 11(4) of the CFIA Act, which states that the Minister of Health is responsible for "...assessing the effectiveness of the Agency's activities related to food safety."

Third, the Auditor General of Canada regularly conducts audits of the CFIA's activities. Fourth, the proposed subclause 60.1(2) would allow the committee by order to issue to the agency directives with respect to the enforcement of the act. There are several issues with that provision.

An order is a statutory instrument for the purposes of the Statutory Instruments Act. Clause 60 in Bill C-27 specifically exempts orders made under Bill C-27 from the applications of sections 3, 5, and 11 of the Statutory Instruments Act, but requires that they be published in the *Canada Gazette* within 23 days after they're made.

The proposed motion does not exempt this order from the applications of those particular sections. Therefore, it would be considered a regulation, which would require consultation, pre-publication, etc., in line with points we made earlier.

The authority of the committee to issue directives to the agency with respect to the enforcement of the bill would be in conflict with subsection 4(1) of the CFIA Act, which states that the Minister of Agriculture and Agri-Food "...is responsible for and has the overall direction of the Agency."

This motion would allow the committee to supplant the authority of the minister and override decisions that he or she makes with respect to the operations of the agency. Mr. Chair, in our parliamentary system, the minister's ultimately responsible.

The motion's also binding on the agency and not the minister, who is responsible for and has overall direction for the agency. This would result in a conflict between the directives given by the committee and those given by the minister.

The authority of the committee to issue directives to the agency with respect to the enforcement of the bill would also be in conflict with the Department of Justice Act, as it would purport to give to the committee control over the conduct of prosecutions. Paragraph 4(b) of that act states that the Minister of Justice is basically in charge of that.

Furthermore, in his or her role as Attorney General of Canada, the Minister of Justice has the "...regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada".

Prosecutors for the federal crown are required to follow the prosecution policy of the Attorney General, which sets out the criteria that must be met in order for the Department of Justice to lay charges. One important criterion is the public-interest criterion. If obtaining a conviction on a particular matter would not be in the public interest, charges would not be laid.

The more serious concern is that this could create a situation for political interference in prosecutions and enforcement actions taken by the agency. Political interference could well lead to acquittal, even if guilt is established beyond a reasonable doubt, or the more likely scenario in which the Crown would withdraw the charges.

I don't know how many here recall—but I do—the tunagate issue. In this case a minister did get involved; it was obviously seen that the minister shouldn't have become involved, and as a result the minister had to resign.

• (1630)

Mr. Chair, for all those reasons—I took some time to explain it, but I felt it had to be explained and on the record—we oppose that particular amendment.

**The Chair:** Mr. Angus.

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

I guess the intent of this would go back to our need for a tribunal or an advisory committee or something. But I would question, first off, bringing forward a motion where it's any committee that has something to do with agriculture. That leaves it wide open. It leaves it open to serious political interference, and I guess it raises the question of jurisdiction. Can members of Parliament have binding authority over what is basically a policing operation?

The powers of the CFIA are to.... We've granted them wide use of powers, and to have a parliamentary committee be able to have binding rules that could go from year to year....and it might not be just agriculture; it could be the Standing Committee on the Status of Women, because there are lots of women in agriculture. It could be the health committee.

So I think we would be way out there on thin ice. I don't know if there's any kind of legal jurisdiction for members of Parliament to even make this claim.

**The Chair:** Okay. I think we understand the gravity of this amendment.

**Mr. David Anderson:** And I'm glad we do, Mr. Chair. That's the point of it.

**The Chair:** I think this would have serious ramifications, if passed.

I mean, you're certainly allowed to speak to it, but I think we've heard enough that we should understand that passing this amendment would not be what we would want to be doing.

**Mr. David Anderson:** Well, you may not have it as what you would want to do, Mr. Chair.

**The Chair:** No, but we have—

**Mr. David Anderson:** What I would like is to actually be given a chance to respond.

**The Chair:** You haven't asked to respond.

**Mr. David Anderson:** Obviously, Wayne hasn't come to me about this until right now.

**The Chair:** If you want to respond, please do so.

**Mr. David Anderson:** Actually, I would like some time to respond. I'd like to be able to take some time, go through the points he's made, and come back to the committee with an explanation of what we think the consequences of this amendment would be. So I'm asking that it be tabled.

I'm not prepared right now to back off from it, because clearly we've heard from industry and we've heard from across the country that people want some oversight on this agency. And we do not have that.

Wayne can talk about political interference, but people's lives have also been destroyed because there has been no oversight of some of the CFIA's actions in the past. If they're not prepared to come with some sort of an oversight agency, or some way that the industry and producers are going to be able to have some oversight, then we're going to have a fight on our hands.

I like this; it may not be what's going to pass here, but we need something.

**The Chair:** Yes, Mr. Eyking.

**Hon. Mark Eyking (Sydney—Victoria, Lib.):** I can see where the opposition is coming from on this.

You know, the Auditor General does a report on many functions of the government. What if an independent report were done every so many years on the actions of the CFIA?

**The Chair:** From my understanding of the Auditor General's work, the Auditor General can report at any time on any agency of government. A committee can ask them to do that. We don't have to have it in this piece of legislation for that to happen.

**Hon. Mark Eyking:** But I think what they're asking for is something on a continuous basis, where a body, someone, is looking at...and not just because they're maybe heavy-handed sometimes; if things are changing in world food production or whatever, then maybe some checks and balances should be in place.

Is that where you're coming from?

**Mr. David Anderson:** The point is that this does give this committee the authority to review the matters relating to this agency and to make binding changes. I'm not hiding that. I'm not saying that's not what we're trying to do. I don't have a problem with it. I didn't expect that the government would come and say it's a good idea. The lawyers, the witnesses, are responsible for protecting the CFIA. That's what their job is. I'm not expecting that they're going to come and say—as we have seen throughout the past three weeks—that their goal is not to give producers a larger say in—

**The Chair:** But you cannot give to a committee powers that are binding, that supercede those of the minister.

**Mr. David Anderson:** Well, then, let's work an amendment.

**The Chair:** Okay.

**Mr. David Anderson:** We can certainly give the committee the authority to make changes and oversee the agency.

**The Chair:** Mr. Easter.

**Hon. Wayne Easter:** I do think it's unfair for Mr. Anderson to basically say the witnesses are putting...or however he put it, with the CFIA. The job of the witnesses here, and the legal counsel, is to ensure that we put forward legislation that operates within the laws of the land, at the direction of the minister. I mean, this legislation is certainly from the minister.

Mr. Chair, we're looking at other things as well. There's the secondary inspection, which we've already talked about. There's the advisory body, which we've yet to get to. We're trying to look at some kind of an appeal function. So I think we've done a number of things.

I had originally raised my hand here with regard to what either Mr. Ritz or Mr. Anderson talked about, that people's lives had been destroyed by the CFIA. There was an example put forward some time ago in which the CFIA was stated—on the record, by Mr. Ritz—as going onto a farm and kicking down the door.

• (1635)

**Mr. Gerry Ritz:** Mr. Chair.

**Hon. Wayne Easter:** I would like to read into the record what the judge in that case said, because the information Mr. Ritz put before this committee is blatantly false. Can I do that?

**The Chair:** Yes, you can read that into the record. Absolutely. It's on the record.

**Hon. Wayne Easter:** What I have here is a court decision regarding the individual, Mr. Alsager. Mr. Ritz claimed the CFIA kicked in Mr. Alsager's door when he wasn't home and took his computer. The court summarized its view of the search warrant, and the decision is on page 8, lines 32 to 36. I quote: The warrant was necessary due to the hostility and lack of cooperation by Mr. Alsager. The information in support of the warrant seems more than sufficient and the warrant appears to have been executed within its terms. As well, the inspectors were careful not to search in unreasonable places and not to leave the house in a mess after their search.

On page 10 of the decision, in lines 8-12, the court also says:

Inspectors were more than reasonable with Mr. Alsager. They were, in fact, helpful and polite, even in the face of his unwarranted accusations and behaviour. They are to be commended for not falling into the trap of returning his bitterness and anger. Instead, they were steadfast in their professionalism and courtesy.

Alsager is also involved in *Hewitt et al v. CFIA et al.* That's the statement claim by elk farmers.

Those are the facts in the case from the court. So I just think it should be put in the record because that statement made earlier was wrong.

**The Chair:** Mr. Angus is first, then Mr. Anderson.

**Mr. Charlie Angus:** Thank you.

Again, we are looking at some sort of body. We are putting forward an amendment of suggestions on how to put that advisory committee that did exist back on track.

I really think we have to vote on this and vote it down, because it is really trying to establish a precedent that would allow for some

very dangerous political interference by members of Parliament over a policing body. I don't think there's any variation on this particular amendment that will work.

**The Chair:** Okay.

Mr. Anderson.

**Mr. David Anderson:** I find it interesting that Charlie has twice used the term “policing body” when referring to the CFIA. Actually, to make the point again, if that is the case we need the checks and balances in there.

I guess I'm going to ask that we table this. If somebody wants to come with some other suggestions, I'm willing to entertain them. If the committee chooses to vote on it today, that's up to them.

Second, when I talked about the witnesses I was not making a moral judgment. I was just saying they're employed by CFIA. It's their responsibility to defend that position, and that's what they've been doing.

Third, Wayne, we haven't done anything yet. We have nothing yet on appeal, compensation, or oversight. You're talking about it; we have none of those things. There's hesitancy to take these other amendments off until we get something with some content. You don't have it yet.

**Hon. Wayne Easter:** We'll state some sections, we'll be back—

**Mr. David Anderson:** Well, we've been at this for a while. We're getting to the end, but we don't have any of those things yet.

**The Chair:** Mr. Drouin.

[*Translation*]

**Mr. Claude Drouin (Beauce, Lib.):** I think we've discussed this issue long enough, Mr. Chairman. We've heard arguments from both sides. All that remains at this time is for us to vote.

[*English*]

**The Chair:** Are we ready for the question? Those in favour of amendment CPC-5—

• (1640)

**Mr. Gerry Ritz:** I thought we were tabling this until David had a chance to respond to...

**The Chair:** There's been a question asked.

**Mr. David Anderson:** I asked earlier if I could table it. That wasn't dealt with. I understand that a tabling motion has no discussion. It has to be tabled when it's asked. Is that correct?

In the rules of order, if you have a request to table a motion it has to be done.

**The Chair:** I didn't deal with that because if you are asking to stand it you need unanimous consent. That's why I've been asking for unanimous consent to stand clauses. I can ask that first, if you'd rather I do that.

**Mr. David Anderson:** Sure.

**The Chair:** Do you want to stand that clause? I don't have unanimous consent.

(Amendment negated) [*See Minutes of Proceedings*]

**The Chair:** On clause 61, there are no amendments.

(Clause 61 agreed to)

**The Chair:** On clause 62 there are no tabled amendments.

**Mr. Gerry Ritz:** I have just one question, Mr. Chair. How is this different from what has been in place? Under clause 62, the Agriculture and Agri-Food Administrative Monetary Penalties Act, is there any change from what has been in existence?

**Ms. Jane Dudley:** All it is doing is clarifying the definition of “person”. The Agriculture and Agri-food Administrative Monetary Penalties Act is limited to an individual or a corporation. To be consistent with the rest of the legislation we have expanded the definition of “person” to include a cooperative, an association, an organization, and a partnership, as well as an individual and a corporation.

This is also more consistent, I think, with Quebec legislation.

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

(Clause 62 agreed to on division)

**The Chair:** There are no tabled amendments on clause 63.

(Clauses 63 and 64 agreed to on division)

**The Chair:** On clause 65, again there are no amendments tabled.

(Clause 65 agreed to on division)

**Mrs. Rose-Marie Ur:** I have a proposed amendment that the table officers handed around. It is a proposed amendment to the Canada Agricultural Products Act on dairy ingredients. It would be new clause 65.1.

**The Chair:** We wanted to have some time given to it.

**Hon. Wayne Easter:** But I think, Mr. Chair, we need to table it if we could, so people have time to think about it.

**Mrs. Rose-Marie Ur:** I am just tabling it for your review.

**The Chair:** Mark it as new clause 65.1.

**Mrs. Rose-Marie Ur:** Yes.

**The Chair:** I am told, Mr. Easter, that the wording we have, while it may be in the context and order we want, is not drafted in such a way that it is in the form of an amendment. It has to be done again before we can do that.

**Hon. Wayne Easter:** You're correct in that, Mr. Chair.

**The Chair:** So if we can have that done overnight, we can have it brought forward tomorrow.

Do we have unanimous consent to table that so we can keep everything in order?

**Mrs. Rose-Marie Ur:** But it will be redrafted. Thank you.

**Some hon. members:** Agreed.

(On clause 66)

**The Chair:** Now we are on clause 66.

We have a government amendment G-13.1 on page 74.

**Hon. Wayne Easter:** Yes, Mr. Chair.

**The Chair:** Do you want to move that first?

**Hon. Wayne Easter:** Yes, I will move that.

It is pretty straightforward. It repeals section 20 of the Canada Agricultural Products Act, as section 24 of the proposed Canadian Food Inspection Agency Enforcement Act provides the same authority. Therefore, section 19 would be redundant.

• (1645)

**Mr. David Anderson:** Could you give us the content of section 19? We don't have it here.

**Mr. Mark McCombs:** I could read it:

(1) The President of the Canadian Food Inspection Agency may designate inspectors, analysts and graders under section 13 of the Canadian Food Inspection Agency Act for the purposes of this Act.

(2) Inspectors shall be given certificates in a form established by the President of the Agency attesting to their designation and, on entering any place under this Act, an inspector shall show the certificate to the person in charge of the place on request.

(3) [Repealed, 1997, c. 6, s. 39]

(4) No person shall obstruct or hinder, or make any false or misleading statement either orally or in writing to an inspector, analyst or grader who is carrying out duties or functions under this Act or the regulations.

(5) Except as authorized by an inspector, no person shall remove, alter or interfere in any way with a thing seized or detained under this Act or the regulations.

**Mr. David Anderson:** What is to replace that?

**Hon. Wayne Easter:** It is section 20 in this.

**Mr. David Anderson:** Thank you.

**The Chair:** Yes, Gerry.

**Mr. Gerry Ritz:** We had an amendment—I think Charlie brought it forward—that you had to have a certificate and show it. Did we pass that?

**Mr. Charlie Angus:** It passed.

**Mr. Gerry Ritz:** Okay, so this is redundant for sure then.

**The Chair:** Okay, we're clear on that.

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

(Clause 66 as amended agreed to)

(On clause 67)

**The Chair:** Clause 67 has no tabled amendments.

Yes, Mr. Anderson.

**Mr. David Anderson:** I'm sorry to do this, but I'd like to know the content of sections 21 to 30. I don't know if you want to read it all or just give us the details.

**Mr. Mark McCombs:** Is that section 21?

**Mr. David Anderson:** Well, it's sections 21 to 30, right?

**Mr. Mark McCombs:** Do you want me to read all of sections 21 through 30?

**Mr. David Anderson:** How long is it? What does it involve?

**Ms. Kristine Stolarik:** It is on the powers of inspectors.

**Mr. David Anderson:** And what is replacing it?

**Mr. Mark McCombs:** You might want to go for coffee.

**Mr. Gerry Ritz:** You're repealing sections 21 to 30. What replaces them?

**Mr. Mark McCombs:** I understand these provisions will be in the copy of the bill, the first reading version, page 2(a)—rather than me reading it.

**Mr. Gerry Ritz:** Okay.

**Mr. David Anderson:** Okay, but what replaces that?

**Mr. Mark McCombs:** Clause 25.

**The Chair:** Mr. Miller.

**Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC):** Yes, there are a number of these, Mr. Chairman, that are to be repealed. I just wonder if we could have copies of them to show the part that is replaced, so for clause 24, say, we can go back to see what's replaced. It would be nice to be able to reference back.

**The Chair:** Yes, I know. I don't know about you, but I'm having a hard time keeping up with my reading already.

**Mr. Larry Miller:** I am too, but it's still nice to....

**The Chair:** I think that was Mr. Anderson's point.

**Mr. Gerry Ritz:** If we just knew what you're repealing and what's replacing it, then we can go back and see it: here are clauses 24 and 25 in the bill, and they're replacing sections 21 to 30.

**Mr. Mark McCombs:** Mr. Chair, it's in the back of the book.

**The Chair:** I'm told that it's already in this book here. It's all in here.

**Mr. Gerry Ritz:** Yes.

**Mr. Larry Miller:** But there's nothing to reference back to it, is there? For example, until we asked Mr. Easter, we didn't know that clause 24 replaced 66. We still don't know.

**The Chair:** I guess if you read everything you would find that, but I haven't found it either.

**Mr. Gerry Ritz:** I take it from the witnesses that sections 21 to 30 are replaced by clauses 24 and 25 of the proposed act, so it would be helpful to know that if we're taking out sections 21 to 30 of the old act, they will be replaced...and then we can, at our leisure, go back and see what it is now. That's all.

**Mr. Mark McCombs:** It's not just clause 25. Section 21 is replaced by clause 25, and then other sections are replaced by other provisions.

**Mr. Gerry Ritz:** Okay, so it would be too hard to go back and spot them all out.

**Ms. Kristine Stolarik:** You can flip back and forth.

**The Chair:** That would be helpful for those who have the time to do it.

**Mr. Mark McCombs:** I can probably tell you, if you want, just about that part.

**Mr. Gerry Ritz:** Just tell Larry. He's the only one who wants it.

• (1650)

**The Chair:** Larry wants some reading for tonight.

**Mr. Mark McCombs:** Mr. Miller, powers of inspection from section 21 of the CAP Act are in clause 25 of the bill.

The requirement for a person to provide an inspector with assistance that is in subsection 21(3) of the CAP Act is in paragraphs 29(1)(a) and 29(1)(b) of the bill.

The authority to enter a dwelling place to conduct inspection, section 22 of the CAP Act, is in clause 27 of the bill. In addition, clause 27 allows the use of telewarrants.

The requirement for a peace officer to provide assistance for enforcing an agency-related act, subsection 22(4) of the CAP Act, is provided for in subclause 29(2) of the bill.

The authority to seize a product, section 23 of the CAP Act, is provided for in clause 31 of the bill, and the intention is included in the seizure.

The authority to obtain a search warrant and conduct a search under the authority of the warrant, which is section 24 of the CAP Act, is now provided for by clause 32 in the bill.

The authority to store or remove seized products or dispose of perishable products, section 25 of the CAP Act, is now provided for in clause 34 of the bill.

The authority for a court to return a seized thing on the deposit of a security, section 26 of the CAP Act, is provided for in subclause 35 (6) of the bill.

The duration of detention, section 27 of the CAP Act, is provided for in clause 35 of the bill.

Do you want me to continue, Mr. Chair?

**The Chair:** It's up to Mr. Ritz. You're at his mercy.

**Mr. Gerry Ritz:** On that point, it's great to have the numbers, but it would be very helpful if we could have a bit of a synopsis as to the expansion of powers that we're going to see in the new act, as opposed to what we're just deleting out here. What changes in powers will there be? Can you tell us that?

**Ms. Kristine Stolarik:** That's in the chart. We have that inspection chart we had provided the committee.

**Mr. Gerry Ritz:** It was months ago.

**Mr. Mark McCombs:** At the first, front-end meeting.

**Ms. Kristine Stolarik:** It was at the first or second meeting, with what's new, what's existing.

**Mr. Gerry Ritz:** Okay.

**Ms. Kristine Stolarik:** That's where you'll see it.

**Mr. Gerry Ritz:** So that covers this off.

**Mr. Mark McCombs:** Yes.

**Mr. Gerry Ritz:** So if we stand this for the time being and have a look at that overnight, we could come back and say yes, this is all fine. You're okay with that?

**The Chair:** Do we have unanimous support here to stand that overnight?

**Mr. David Anderson:** Through to clause 71.

**Mr. Gerry Ritz:** Everything was deleted, so we can have a quick look and see what's changed.

**The Chair:** Okay, we stand down to clause 71.

(Clauses 67 to 71 inclusive allowed to stand)

**Mr. David Anderson:** Mr. Chair, somebody murmured that it was in the back of the book. It is, if we want to take a look at it.

**The Chair:** Yes, and I haven't seen it either.

**Mr. Gerry Ritz:** We have that chart. I remember seeing that.

**Ms. Kristine Stolarik:** The chart is in the back of the—

**The Chair:** We will be having those other pieces of information you see distributed in a moment.

**Mr. Gerry Ritz:** Okay, good.

**The Chair:** Okay, now we move to clause 71.1 on page 75. On pages 75, 76, 77, you will find amendment NDP-20.

Mr. Angus, would you please comment?

**Mr. Charlie Angus:** I think what we were attempting with this motion was again to address this issue of having an oversight body, something that can provide some security to different producer groups and so on across Canada. There was an advisory committee set up. It's been moribund. I understand it had 12 members. So we think that's probably a good way to go, because it had existed.

We really wanted to ensure that committee members were not all appointed by a minister, and that at least half of them would come forward from some of the major groups. That is our suggestion, and we can tinker with it, but we need to find a way forward for it. Such a committee would take on the role of what we've been trying to establish as an outside body that somehow deals with CFIA. So that's what we'd be putting forward.

**The Chair:** Yes, Mr. Ritz?

**Mr. Gerry Ritz:** Mr. Chairman, I think this is another thing that would require a royal recommendation. I don't know how we...

Isn't that right?

**Mr. Charlie Angus:** No. They're already existing, right?

**Mr. Gerry Ritz:** They're not going to do it for free.

**Hon. Wayne Easter:** No.

**The Chair:** Yes, Mr. Easter?

**Hon. Wayne Easter:** Mr. Chair, I think we do have a lot of concerns with the amendment that is here. I do understand Mr. Angus' point in terms of wanting an advisory committee that works. The minister is certainly committed to having an advisory committee that works, and I think he would offer, if necessary, to come in to explain how he sees an advisory committee working.

I will go through our concerns, but as well I would make a commitment on behalf of the minister to come up with an advisory committee system that could meet the satisfaction, I hope, of the committee.

First, there are several concerns—just so you know what they are. First of all, the organizations that are listed don't fully represent all programs, commodities, etc. There's no representation from public health, fish, feed, fertilizers, etc. I don't think you could ever get to that point. You'd need an advisory committee that would be huge.

The members of an advisory board are there to provide advice based on their knowledge and experience, not to represent their individual organizations. So that represents the organization side.

On point two, where the standing committee shall assess all candidates, etc., under section 10 of the current CFIA Act, it does allow for the minister to appoint the members of the advisory board. Amending that provision and having us assess the candidates as a committee would circumvent the minister's ability to establish an advisory board that's representative of all the programs, commodities, and industries that the agency is responsible for regulating. It would really put the standing committee in the position of supplanting the authority of the minister in overriding some of those decisions.

The next two points on the amendment.... It's much the same. Section 10 allows the minister to determine the mandate, the scope, and responsibilities of the advisory board with no limitations set out in legislation. Amending this provision to include specific responsibilities of the advisory board would again, I think, circumvent the minister's ability to establish the broad mandate. I suppose you need to consider whether or not we want to do that.

Mr. Chair, the bottom line is that I think we're all at this committee in favour of an advisory committee that is in fact an advisory committee and has the ability to advise and oversee to a certain extent. I think we want to get there, but I don't believe this amendment gets there.

So I guess what I'm saying, Mr. Chair, is if it could be stood and—

• (1655)

**The Chair:** I'm just wondering. Are we clear here? I've just been given some information here. We already have an existing advisory board.

**Hon. Wayne Easter:** That's what I'm saying.

**The Chair:** Are we aware of that?

**Some hon. members:** Yes.

**The Chair:** So we're all aware of that.

So basically what you're doing, Mr. Angus, is you're spelling out who you think should be on that board.

**Mr. Charlie Angus:** What I'm trying to do with this.... I recognize that not all the areas of interest are there, but our concern is that this advisory board has existed at the minister's whim, and it basically doesn't exist. It's been moribund.

We're willing to horse-trade on this. There are a lot of things that have been brought forward by this bill, but this advisory committee has disappeared off the map. We want to have it in the legislation that this advisory board will be there and that it has a mandate. We want to ensure that these people are being brought forward, based on their experience. I don't think we're undermining the minister here because we've been pushing for it. I think we've put it at this committee that any appointments are going to be always made on the basis of their merit.

I'm willing to stay this if the government can come back with something that is—

**The Chair:** Yes, Ms. Ur.

**Mrs. Rose-Marie Ur:** What if the minister were given a timeframe to have this body struck and moving?

**Mr. Charlie Angus:** We could look at that, but we want to make sure the advisory committee is back up and running, it's got a mandate, it's not going to just disappear—you know, that three months after a majority government comes in it will never be heard from again—and that that is part of this bill.

**Mr. Gerry Ritz:** The way Mr. Easter spoke, he's thinking of incorporating an advisory board somehow into this legislation.

**Hon. Wayne Easter:** There already is an advisory board in the legislation, but I think what—

• (1700)

**Mr. Gerry Ritz:** Are they operating or are they defunct right now?

**Hon. Wayne Easter:** No, they're not. I think the minister has said that's been a shortcoming. He wants to see an advisory committee that in fact is mandated, is appointed, and is working. I believe he may have said before the committee, or maybe it was just to me, that there certainly is concern that the advisory committee that was supposed to be working hasn't been for a number of years, and we need to ensure that it is. I think that's a commitment from the minister.

**The Chair:** Ms. Stolarik.

**Ms. Kristine Stolarik:** For the committee's sake, if you want more background information on that minister's advisory board, having been the past secretary from 1997 to 2000, I can bring back a bit of the history, who was on it, and what they did. If that would be helpful—

**Mr. Gerry Ritz:** Yes, please.

**The Chair:** Mr. Angus has asked to stand this until we have some further direction.

**Mr. Charlie Angus:** I'm willing to stand it, but are you guys going to be coming back with something we can look at?

**The Chair:** Yes, we'll have something dealing with this matter in the next day or so.

Mr. Anderson.

**Mr. David Anderson:** I have a question then. Will you be here later when we come back to this, or is this an appropriate time to have you give an explanation?

Obviously, the committee basically failed, because it wound down and had no role of any substance, apparently, or it would have kept going.

**Ms. Kristine Stolarik:** They did some interesting things.

**Mr. David Anderson:** Okay, but it disappeared.

**Ms. Kristine Stolarik:** It had a three-year mandate. It was created in 1997 and it expired in 2000, and I guess just.... I don't want to get into it. We had three different ministers within that timeframe, and no one ever really got around to reappointing.

There were various things they did do. They did have terms of reference. I can bring that in or give people more explanation if it would be helpful, because they did work on Bill C-80 and they did provide some advice on legislation.

**Mr. Gerry Ritz:** Okay, I was going to ask that.

**Ms. Kristine Stolarik:** They helped with providing input on annual reports and corporate business plans.

**Mr. David Anderson:** Is the reason it ceased functioning because no one was appointed after the three years? Is that what you were saying?

**Ms. Kristine Stolarik:** Yes, that's correct. It was a three-year appointment.

**Mr. David Anderson:** So we need to make sure there's some way, whether it's staggered terms or whatever, that if it's going to be appointed this committee would be functional and useful.

**The Chair:** Mr. Ritz.

**Mr. Gerry Ritz:** Speaking to that, you had some input on Bill C-80, which was the precursor to this bill. Have you got minutes of meetings and recommendations that you made at the time that might help us now? Could we have a look at those?

**Ms. Kristine Stolarik:** From the minister's advisory board?

**Mr. Gerry Ritz:** Yes, on Bill C-80.

**Ms. Kristine Stolarik:** Yes. We could probably dig them out for you.

**Mr. Gerry Ritz:** It probably would have been very helpful to have that board in place for Bill C-27. We didn't have that, but I'm wondering if we can go back and review what you put forward for Bill C-80. That might be very helpful.

**Ms. Kristine Stolarik:** The board actually really liked Bill C-80, so we can—

**Hon. Wayne Easter:** I just have a question before you commit yourself. Are the minutes available to the public or only to the minister? I think you had better check that out first. I don't know.

**Mr. Gerry Ritz:** That particular minister is gone, so he's not here to say no.

**Hon. Wayne Easter:** No, but I don't want you to make a commitment and then can't—

**Ms. Kristine Stolarik:** We'll check into that, and if I can I will release....

**The Chair:** I am going to ask for unanimous consent to stand this clause, with the assurances given by the parliamentary secretary that they will come back with something that will bring accommodation to this matter.

**Some hon. members:** Agreed.

(Amendment allowed to stand)

**The Chair:** Okay, now we will go to the next one under new clause 71.1, G-13.2, on page 78. It would be moved by Mr. Easter, I would hope.

**Hon. Wayne Easter:** I don't know whether you want to deal with it now, Mr. Chair.

What we're trying to do with this is basically come at Mr. Angus' point. I would move it. What it says is that "the Chairperson shall, within three months after the end of each year, submit to the Minister a report of the activities of the advisory board". It is moving in some direction to what Mr. Angus' point was and I think is what we all wanted. It's a requirement for the advisory board to report annually to the minister.

**The Chair:** We can stand this one till we have the other part of it, the earlier part of it, done.

**Hon. Wayne Easter:** We can.

**Mr. Charlie Angus:** They'll go together.

**The Chair:** They go together. I see.

(Amendment allowed to stand)

(On clause 72)

**The Chair:** Now we go to clause 72. That's on page 79, NDP-21.

Mr. Angus, do you want to move that one?

**Mr. Charlie Angus:** Yes, I'll move it. I can't remember why, though, to tell you the truth.

**A voice:** Oh, oh!

**Mr. Charlie Angus:** I had to make that confession.

• (1705)

**The Chair:** That's all right.

**Mr. Larry Miller:** Do you ever feel that maybe you don't know what you're talking about?

**Mr. Charlie Angus:** Yes, every now and then.

**The Chair:** We're checking this.

Yes, Mr. Easter, you have it all down.

**Hon. Wayne Easter:** This is unique. We're all...

**Mr. Gerry Ritz:** Interested.

**Hon. Wayne Easter:** It just adds a requirement for the advisory board. We're supporting the motion, is what I'm saying, Mr. Chairman. It's just housekeeping in nature.

**The Chair:** Both of these?

**Mr. Charlie Angus:** I can't remember which house I was cleaning.

**The Chair:** We need to stand these as well until we've dealt with 20. All right?

**Mr. Gerry Ritz:** We'll take 79 and 80.

**The Chair:** Yes, we'll do those. Pages 79 and 80 are amendments, rather.

**Mr. Gerry Ritz:** Who's keeping score?

**The Chair:** We are. That's why we're sometimes behind. It's like tallying the votes in the House. It takes a while to get recorded.

(Clause 72 allowed to stand)

(On clause 73)

**The Chair:** Now we're at clause 73. I'm sorry for taking so long here.

Government amendment 13.4 on page 80.1—Mr. Easter, would you move this?

**Hon. Wayne Easter:** I would, and this is really in kindness to the—

**The Chair:** We're on page 80.1.

**Mr. David Anderson:** Was this handed out the other day?

**The Chair:** Yes. Some may have just gotten it. I put mine in the book yesterday.

**Hon. Wayne Easter:** It's clause 73 you're talking about, right?

**The Chair:** Clause 73, that's right.

**Hon. Wayne Easter:** I would move it. It's related to enforcement officers where you add in "The President may designate any qualified person or class of qualified persons..."

It addresses the issue raised by the Conservative CPC-4. After further analysis, the Department of Justice drafters determined that amending section 13 of the CFIA act would be the most appropriate location to do that. It's important to note the use of the term "qualified" is consistent with the wording used in other federal legislation—as an example, the proposed Quarantine Act. So it really relates to the Conservative Party's—

**Mr. Gerry Ritz:** It changes "concern".

**The Chair:** It brings the language together.

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

**Mr. David Anderson:** I have a question about it. Is this a change? You're talking about veterinary inspectors. Where else was I looking? Is that something new, or are you just bringing that in for clarification?

**Mr. Mark McCombs:** It's a new provision in the CFIA Act, but there's a similar provision in the CAP Act and all the other acts.

**Ms. Kristine Stolarik:** Yes, the CAP, feed, bird, fish, health of animals, meat, plant, seeds, and....

**Mr. David Anderson:** What I'm asking is, is veterinary inspector a new created position?

**Mr. Mark McCombs:** No, it's in the Health of Animals Act.

**Mr. David Anderson:** All right.

(Clause 73 as amended agreed to on division)

(On clause 74)

**The Chair:** We go to clause 74. There are no tabled amendments.

Yes, Mr. Ritz.

**Mr. Gerry Ritz:** I have a point of clarification on that. Since the avian flu in B.C., they've upgraded a laboratory. I understand Alberta's doing the same. Then the CFIA would give them accreditation? Is that what this clause speaks to then?

**Ms. Kristine Stolarik:** This one here, as I understand it—and I'll turn to legal—just gives the explicit authority for the agency to operate labs and facilities, and otherwise engage labs or facilities. It's to make that very explicit. It's my understanding it's silent right now in our legislation.

**Mr. Gerry Ritz:** Right. So what I'm saying is they would make use of that lab because it's at that standard, and go to work there rather than having to ship the material. In the case in Abbotsford, it had to be shipped to Winnipeg, or Ottawa, or wherever. Now they could make use of that provincial lab?

**Ms. Kristine Stolarik:** Yes. I see “approve or accredit”. Yes.

**Mr. Gerry Ritz:** All right.

**The Chair:** Is there anything else on that?

(Clause 74 agreed to on division)

(On clause 75)

**The Chair:** There are no amendments. Is there any commentary?

**Mr. Gerry Ritz:** What does section 18 speak to?

**Mr. Mark McCombs:** Section 18 is replaced by clause 23 of the bill. It's the injunction authority.

(Clause 75 agreed to on division)

(On clause 76)

• (1710)

**The Chair:** On clause 76 we go to government amendment G-14 on page 81.

**Hon. Wayne Easter:** I would so move, Mr. Chair.

We've had some of these previously. It's really just housekeeping and making the bill consistent, with “his or her”.

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

**The Chair:** Is there anything further?

**Mr. Gerry Ritz:** I had a question on clause 76 and proposed subsections 19(1.1) and 19(1.2). We're saying the minister may now specify a period, but in other pages past here we talked about 30 days. Is there a reason why we're not using the 30-day timeframe as opposed to where he's now going to specify a period?

**Mr. Mark McCombs:** We're now talking about a recalled product. It may not be a good thing to keep a recalled product 30 days.

**The Chair:** Yes, Mr. Angus.

**Mr. Charlie Angus:** Is that a situation where you'd be calling for an immediate recall, as opposed to...? That's why you'd want—

**Mr. Mark McCombs:** Essentially, section 19 deals with mandatory recall, but in this case we're talking about voluntary recall as well as mandatory. It's about a product that poses a risk to public health. The point is, you give the person notice and then tell them how to dispose of it.

**The Chair:** Mr. Anderson, quickly.

**Mr. David Anderson:** The point here is that it doesn't necessarily pose a risk. It's that if the minister believes there is some problem, then he can order somebody to pay for the cost of disposal of that. I'm concerned about that, again, because it doesn't talk about having

to get the evidence that proves it was a risk to public health. It just says that if he believes it is and decides, then I may be stuck with the expense.

We've had this discussion before, and I just don't agree with that. I think there has to be more than the minister's belief on reasonable grounds. There has to be some process where the person is—if you want to call it—convicted of breaking a rule or a guideline in order for them to have to pay the expense of that.

**The Chair:** Is there any response on that concern, Mr. McCombs?

**Mr. Mark McCombs:** We go through an elaborate process before we even go to the minister to propose that a product be recalled, and in the circumstances where we do propose that something be recalled, it's the minister's decision whether it poses a risk or not. There is an opportunity for an individual who disagrees with the minister's decision to go through the process, and we do consult with the individuals affected, except in cases where we cannot locate them, which we had in one case.

The normal process for recalled products is based on a risk assessment conducted by Health Canada and on laboratory testing in most cases, and the process is elaborate in terms of enabling the minister to make a decision. There have not been a lot of recall orders made, and in terms of court challenges to recall orders, I believe we have had one.

**Mr. David Anderson:** If the agency was wrong in its belief, did it ever voluntarily pay the person back? We're back to that load of carrots from yesterday. If the minister believes there is some problem with it, the load is held up and the load is wasted. Basically, it says here the minister can say it's the producer's responsibility to pay the cost.

**Mr. Mark McCombs:** In the current process there is no authority to dispose, so what happens under the current system is the product is ordered to a place and it just sits.

**Mr. David Anderson:** So this is new, then.

**Mr. Mark McCombs:** This is a new provision in terms of the disposal.

**Mr. David Anderson:** It's also a new provision in the fact that the producer will have to pay the cost of disposal.

**Mr. Mark McCombs:** For most of the recalled product that happens, it's repeat recalls. In terms of the individuals who are involved in recalls, it's normally a repeat process.

The process for review of this is a judicial review application to a court, or in the one case that's currently before the courts, there is a lawsuit involved.

• (1715)

**Ms. Kristine Stolarik:** As well, most of the recalls are on imported products.

**Mr. David Anderson:** What do you mean by “repeat recalls”—the same person bringing in the same product?

**Mr. Mark McCombs:** It's the same person bringing in the same product or the same person bringing in a different product with the same problem. Most of the products involved in recalls are recalled for allergens.

**Mr. David Anderson:** Okay, but the point is, if it poses a risk to health, none of us has an objection to the person paying the cost of disposal.

**Mr. Mark McCombs:** Yes.

**Mr. David Anderson:** Some of us, I guess a few of us, have an objection to the person paying the cost of disposal if it doesn't pose a risk and it has been shown not to, and there is no provision to protect that person.

**Mr. Mark McCombs:** If it doesn't pose a risk, it would not be presented to the minister for a recall. It couldn't. It couldn't go through the process, because each of the recalled products goes through the health assessment process. They also receive legal advice as to whether it meets the criteria for posing a risk. If the legal advice to the minister says this does not pose a risk, it doesn't even get to the minister.

**The Chair:** Okay.

Mr. Ritz.

**Mr. Gerry Ritz:** Just as a point on what you were talking about there, Mark, you're saying in regard to the recall provisions that it's generally the same folks again and again and again.

**Mr. Mark McCombs:** Yes.

**Mr. Gerry Ritz:** Are there not licensing and bonding requirements in there that could be curtailed so that—

**Mr. Mark McCombs:** It's in this bill.

**Mr. Gerry Ritz:** That's what I was wondering.

So then you just pull the licence and you don't have that problem any more.

**Mr. Mark McCombs:** If we had importers licensed, that would be the way to do it. That's why we put this in this bill.

**The Chair:** Mr. Angus, very quickly, and then we need to move on.

**Mr. Charlie Angus:** I think there are a couple of quick things. One is that we are still hammering out, in our other clauses, people's right to compensation if something happens.

On the issue of a recall, I might be mixing my terms up here, but my understanding of a recall is that you'd have to be making a risk assessment on something that could potentially pose harm. So you'd have to be pulling that off. It's not the same as going in and shutting down an operation. You're ordering a recall for a specific purpose.

I couldn't imagine that being done on a whim. You'd have to be taking some serious precautions.

**Mr. Mark McCombs:** There's a very extensive process to recalls internally to the agency. As well, normally what happens on a recall is that lawyers for the individual get involved with lawyers for the CFIA. There's an extensive process before we get to a recall.

**The Chair:** We have to move on.

**Mr. David Anderson:** Mr. Chair, there's a question involving content here. Proposed subsection 19(2)—it goes proposed subsections 19(1.1) and 19(1.2), and then proposed subsection 19(2)—refers back to proposed subsection 19(1) or proposed subsection 19(1.1). Do you know what subsection 19(1) is? We have only proposed subsection 19(1.1) at the beginning of our....

**Mr. Gerry Ritz:** It's at the top of page 34.

**Mr. David Anderson:** What's subsection 19(1)?

**Mr. Mark McCombs:** I can read it to you:

Where the Minister believes on reasonable grounds that a product regulated under an Act or provision that the Agency enforces or administers by virtue of section 11 poses a risk to public, animal or plant health, the Minister may, by notice served on any person selling, marketing or distributing the product, order that the product be recalled or sent to a place designated by the Minister.

**Mr. David Anderson:** All right.

These fines are fairly low compared to some of the other ones you set. I'm wondering why, what distinction is made. This seems to me to come close to a tampering provision.

**Mr. Mark McCombs:** Just remember that this is only with respect to the recall order. The violation itself would be subject to another prosecution process.

**Mr. Gerry Ritz:** So one triggers the other.

**Mr. Mark McCombs:** One would trigger the other.

**The Chair:** Okay, I'm going to ask the question.

(Clause 76 as amended agreed to on division)

(On clause 77)

**The Chair:** We'll go now to clause 77. Shall we pass this one?

**Mr. Gerry Ritz:** Whoa. Has an unexpended balance ever happened? This is basically supply, cashflow for the agency—right?—whether it's the main estimates, and then supplementary estimates A or B, or whatever. So if there's a leftover, it's turned back into the general revenues.

**Mr. Mark McCombs:** I can explain as I know it.

**Mr. Gerry Ritz:** Give it your best shot.

**Mr. Mark McCombs:** I'm a lawyer; I'm not the finance guy.

**Ms. Kristine Stolarik:** He's not the bean-counter.

**Mr. Gerry Ritz:** You could charge to do it, then.

**Mr. Mark McCombs:** This provision is something the Treasury Board asks for.

**Mr. Gerry Ritz:** Okay.

**Mr. Mark McCombs:** It allows for formal authority for multi-year lapsing. It's similar to something the Parks Canada Act has. It formalizes administrative agreements presently in place between CFIA and TBS. Treasury Board allows for this. There was a concern that this should be more formalized in the legislation, similar to the way the Parks Canada Act operates. It does allow for the rollover.

• (1720)

**Mr. Gerry Ritz:** Or rollback. The leftover money goes back to Treasury Board.

**Ms. Kristine Stolarik:** No, it goes back to the agency.

**Mr. Gerry Ritz:** Okay.

**Ms. Kristine Stolarik:** So you can carry over if, let's say, you get tied funding for BSE. We get \$10 million in January—

**Mr. Gerry Ritz:** Right.

**Ms. Kristine Stolarik:** —and we can only spend \$4 million up until March. We then have the provision to—

**Mr. Gerry Ritz:** The program continues so the cashflow continues.

**Mr. Mark McCombs:** Yes, because much of the funding comes for hiring of staff. The process for hiring public servants is much more extensive than what could be happening within a week.

**Mr. Gerry Ritz:** Okay.

**Mr. David Anderson:** This is actually one of the reasons why it gets harder and harder to figure out what the government is doing with the money—

**Mr. Gerry Ritz:** Exactly.

**Mr. David Anderson:** —because you're right: there are provisions for rollover.

I want to ask what the last phrase, “at the end of any longer period that may be specified in the Act”, refers to. Does that have to be in the act now, or is that something that can be changed later? The specification in the act is one year or the end of the next fiscal year.

**Mr. Mark McCombs:** It refers back to an act of Parliament.

**Mr. David Anderson:** It says “the” act.

**Mr. Mark McCombs:** Yes, it talks about “money spent appropriated by an Act of Parliament”, so whatever act of Parliament did the appropriation, and then it can be rolled over the fiscal year, or longer if there's another act that says it can be longer.

**Mr. Gerry Ritz:** The APF is five years.

**Mr. Mark McCombs:** Yes.

**Ms. Kristine Stolarik:** I think it's the Financial Administration Act, though, that dictates.

**Mr. Gerry Ritz:** Look how well that went.

**Mr. David Anderson:** Wayne grins like crazy, but this is terrible for public accountability.

**Mr. Gerry Ritz:** It is.

**Mr. David Anderson:** And I'm sure the government's doing it everywhere.

**The Chair:** Okay, we've had good debate.

(Clause 77 agreed to on division)

**Mr. Gerry Ritz:** It is agreed to with reservation.

(On clause 78)

**The Chair:** On clause 78, is there any debate? If not, shall clause 78 carry on division?

**Mr. David Anderson:** No, not yet.

**The Chair:** Let's get on to clause 78.

**Mr. David Anderson:** Hold on. We're looking at what they replaced. I have a question: What happened to the Commissioner of Competition? Where did he go?

**Mr. Mark McCombs:** Ms. Dudley could probably explain to you the purpose of the commissioner.

**Ms. Jane Dudley:** It's a housekeeping amendment for Industry Canada. They asked for that because there was a conflict in their own legislation. They asked to clarify the roles of the commissioner and the minister.

**Mr. Mark McCombs:** In 1999 an order in council transferred, through the Public Service Rearrangement Transfer of Duties Act, the authority for consumer packaging labelling, which had been split between the Minister of Agriculture and Agri-Food and the Minister of Industry. That authority all flowed to the Minister of Agriculture and Agri-Food for food only. Life cycle change, etc., are still with the other minister.

**Mr. David Anderson:** I think I'm reading the right clause back here, but it talks about the Governor in Council appointing someone known as the Commissioner of Competition.

**Mr. Mark McCombs:** The Commissioner of Competition....

**Mr. David Anderson:** What is that position?

**Mr. Mark McCombs:** Clause 78 refers to paragraph 7(1)(b) of the Competition Act.

**Mr. David Anderson:** If you look back to page 7a, where all these clauses are, it talks about a Commissioner of Competition who's responsible for this. I'm just wondering what that is.

**Mr. Mark McCombs:** The Competition Act currently reads that the Commissioner of Competition is responsible for the Consumer Packaging and Labelling Act. It was never changed at the time it should have been changed. So effectively this removes the Commissioner of Competition from responsibility with respect to food. It then flows to the Minister of Agriculture, where it currently is anyway. It's completely a housekeeping measure.

**Mr. David Anderson:** It just hasn't been enacted.

**Mr. Mark McCombs:** The Competition Act was not fixed when it should have been.

**Ms. Kristine Stolarik:** It should have been done in 1999 and just never was.

**Mr. David Anderson:** Okay.

(Clause 78 agreed to on division)

**Hon. Wayne Easter:** If you improve the Competition Act....

**The Chair:** Let's make clause 79 our last one for today.

•(1725)

**Mr. Mark McCombs:** It's a companion to the previous one.

(Clause 79 agreed to on division)

**The Chair:** Thank you very much, ladies and gentlemen.

Tomorrow afternoon at three o'clock we will be meeting here, and we will have some of the material in question today brought back for—

**Mr. Gerry Ritz:** Are we here again tomorrow?

**The Chair:** Yes, at three o'clock.

Note the change in time for tomorrow.

**Hon. Wayne Easter:** Is that in this room?

**The Chair:** I don't know yet, but we'll get direction on that.

The meeting stands adjourned.

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