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Chair

Mr. Laurie Hawn

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● (1220)

[*Translation*]

The Chair (Mr. Laurie Hawn (Edmonton Centre, CPC)): Ladies and gentlemen, we have a quorum.

[*English*]

Welcome to meeting 23 of the special Legislative Committee on Bill C-30. For those who haven't been in this room before, welcome to what's been called the war room, because this is where the war cabinet sat during the Second World War. After today's meeting, I'm sure it will be called the peace cooperation and collaboration room.

We will pick up from where we left off. Before we do that, I want to acknowledge that there's a group of young people in the room who've presented a card to the committee for its good work, for its hard work thus far, and I will present it to the committee officially but not until the committee is finished, which won't be today. It will be tomorrow or the next day, or whenever.

Thank you to the young people at the back of the room for their commitment.

That probably wasn't politically correct, but I've never been accused of that.

Anyway, we will start with BQ-14, at clause 27. It was moved yesterday by Monsieur Bigras.

(On clause 27)

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): I just have a housekeeping item. I know this room has a lot of history and it's deep and important, but the space is.... I know we have a few future meetings. Let's not meet here again.

The Chair: No. This is a one-off because of our schedule. The caucus rooms obviously were full up and couldn't be configured in 10 minutes. But it's a point taken.

I guess while we're on the schedule, I should cover the fact that of course we're here until question period. We're here till 2 p.m. or slightly before, and we'll be back at one of our customary locations, room 37-C, at 3:30. Then we'll have votes. And then we'll be back until the committee has decided it's had enough.

So getting back to business, we are at clause 27, and BQ-14, which was moved by Monsieur Bigras.

Perhaps you could reintroduce that, Monsieur Bigras, for clarity.

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): I will not table the amendment again nor provide any explanations. Since the amendments we passed yesterday related to the Green Investment Bank of Canada, amendments BQ-14 and BQ-15 do not seem to be as relevant today with the creation of the bank.

Taking into account the creation of this independent institution, it is clear that the management of permits will not be the responsibly of the minister anymore, as stated in clause at 27 of the Bill, but of that institution.

Therefore, I am ready to withdraw amendments BQ-14 and BQ-15.

[*English*]

The Chair: So we will withdraw BQ-14 and just not proceed with BQ-15. *C'est ça?*

[*Translation*]

Mr. Bernard Bigras: I withdraw amendments BQ-14 and BQ-15.

[*English*]

The Chair: Okay, officially BQ-14 is withdrawn and BQ-15 will not be proposed.

(Clause 27 agreed to)

(On clause 28)

The Chair: The one amendment I see there is BQ-16, which is on page 49.

[*Translation*]

Mr. Bigras, you have the floor.

Mr. Bernard Bigras: I withdraw amendment BQ-16.

[*English*]

The Chair: So now we will call clause 28.

Mr. David McGuinty (Ottawa South, Lib.): Sorry, but may I ask a question?

The Chair: Yes.

Mr. David McGuinty: For the sake of folks who are following, I'm wondering if, perhaps through you, Mr. Chair, either the officials or the government members can give us a better idea of how this environmental damage fund is supposed to work. Will the funds be dedicated for one purpose or another, or will they be disbursed? Will they be general revenue funds?

I may have missed something in the section itself, but give me some insight, Mr. Chair. How will the money be spent? How much do they anticipate collecting?

I think there was a provision in the budget to increase environmental enforcement, which is a good thing in the wake of the experience in different provinces across the country with having seen the fallout effects of cutting, for example, environmental enforcement, water inspections, and so on. Those of us from Ontario certainly recall that.

Maybe the officials or the members from the government could explain to us, Mr. Chair.

The Chair: Mr. Moffet, could you offer some insight?

Mr. John Moffet (Acting Director General, Legislation and Regulatory Affairs, Environmental Stewardship Branch, Department of the Environment): Sure.

The environmental damages fund is a discrete fund within the national accounts. The fund was established to allow for the collection of money and the disbursement of money to support environmental projects, a wide range of projects that could include reparation, that could include funding conservation groups.

It's not money that is part of the consolidated general revenue fund, that could go to the departments to shore up departmental resources; I think that was part of your question. It's not for that. It's actually to be disbursed for public use, for various environmental purposes.

So it is not established through this bill. It is a pre-established fund.

Mr. David McGuinty: It must be implicit in clause 28, then, because I just reread it and it doesn't speak at all about how this money shall be spent. It says there will be "an account in the accounts of Canada". It doesn't say at all how the money would be disbursed.

Are we to infer from this paragraph, proposed section 277.1, that this money could not accrue to the Receiver General for general expenses, for health care, roads, infrastructure, bridges?

Mr. John Moffet: This bill does not establish the account. The account is already established.

● (1225)

Mr. David McGuinty: Right.

Mr. John Moffet: As for the expenditures that the fund can support, those terms are established under the FAA.

Mr. David McGuinty: Again, we imply here that this money will be earmarked specifically for environmental purposes, but should we not say so?

Mr. John Moffet: That's already stipulated in the FAA.

Mr. David McGuinty: For this specific account?

Mr. John Moffet: For this fund, yes.

Mr. David McGuinty: Thank you very much.

Mr. Michel Arès (Counsel, Legal Services, Department of the Environment): Mr. McGuinty, perhaps I can add something here.

When the previous Parliament amended the Migratory Birds Convention Act and CEPA, in the so-called birds oiled at sea bill, or BOAS, this provision, or a provision that was extremely similarly worded, was added to the Migratory Birds Convention Act. This will bring CEPA to where that Migratory Birds Convention Act is exactly. It doesn't do more and doesn't do less.

As John said, the fund itself is already created. It's not the provision's purpose to be a creating instrument.

Mr. David McGuinty: Thank you.

The Chair: Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): But to my understanding—I might have missed something here, since we are having lunch right now—this fund is to be used for remediation purposes for the environment, is it not?

Mr. John Moffet: It can be used in a proactive or remedial way. In other words, it can be used for conservation purposes, for example, as well as for mediation. But it's strictly for environmental purposes, and it's for non-governmental use.

So to address your first question, what's in the fund would not go into our coffers to hire, for example, more enforcement personnel. It would be strictly limited to environmental uses.

The Chair: Everybody happy?

Mr. Cullen.

Mr. Nathan Cullen: As I recall, the birds at sea portion that happened in the last Parliament was amended at report stage to include a minimum fine. Did that pass through the Senate as well? Does the bill that exists right now have a minimum mandatory fine for intentional bilge dumping, oil dumping?

Mr. Michel Arès: I can't answer that just from memory, I'm afraid.

Mr. Nathan Cullen: Okay. We'll do some research on this. It's important to know just how it's been used.

Secondly, have any fines been applied through this? And if the fines have been applied, do we know how much? How much has been disbursed? Have we used it, up to this point? I know we have the mechanism.

Mr. Michel Arès: I'm afraid I can't tell you whether there have been any new prosecutions under that new law.

Mr. Nathan Cullen: Could you find out and get back to the committee?

The Chair: Mr. Jean.

Mr. Brian Jean: From memory, Mr. Cullen, it was the Conservative Party—in fact, this particular member—that doubled the fines in that particular act during the environment committee's last sittings. I'm not sure what's taken place, but I do remember specifically that we proposed an amendment, passed unanimously, to double the fines. That was a Conservative motion, but again, I'm not sure exactly what took place.

Mr. Nathan Cullen: I remember moving it at report stage with the Speaker, and it went through.

Mr. Brian Jean: My understanding is it was adopted at the Senate.

Mr. John Moffet: Mr. Chair, fines have been levied under the Migratory Birds Convention Act and paid into this fund, and we will confirm the amount for this afternoon's meeting.

The Chair: Okay, thank you.

Can we move on with this clause, then? I suggest that this is not necessarily relevant. It's an existing mechanism.

(Clauses 28 and 29 agreed to)

(On clause 30)

The Chair: I see no amendments to clause 30.

Mr. Godfrey.

Hon. John Godfrey (Don Valley West, Lib.): I may be wrong on this, but it seems to me the only reason this amendment was there was to include sections that would have been created in the government's original version of clause 18 in Bill C-30. The government's version didn't pass, because of our amendment L-21.1, so the references no longer make sense, as they refer to the government's version of the story; therefore, because of the changes to clause 18, we would vote against this.

● (1230)

The Chair: I'll ask Mr. Moffet for some comments on that with respect to the relevancy of this clause, as it's in there now, in relation to Mr. Godfrey's comments.

Mr. John Moffet: Yes, I think essentially Mr. Godfrey is suggesting that the clause now references clauses that no longer exist, and he's right.

The Chair: Is there any further debate on it? Shall clause 30 carry?

An hon. member: On division.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Just to be clear from what we've heard from Mr. Moffet, if this clause is referring back to a piece of the bill that is no longer there, why would we simply not vote against and remove it, just for clarity's sake? Maybe the parliamentary secretary can clarify, but why not delete a clause if it refers to something that no longer exists?

His suggestion was to go on division. I'm just trying to understand tactics. We're going to face this a number of times as we go through, so—

Mr. Brian Jean: Just vote against or for it, or abstain—three options. If a vote has been called, I think those are the only options we have, Mr. Cullen, with respect to it. I don't think it's just a situation where we take it....

If it's not appropriate, then deal with it accordingly.

The Chair: Yes. Mr. Cullen's point is I think valid. You can vote for or against it, unless there's some debate.

An hon. member: You've called the question, have you not?

The Chair: Yes.

Mr. Brian Jean: What's the process? I don't think we can deviate from that process.

The Chair: All those in favour of clause 30, please so signify.

(Clause 30 negatived on division)

(Clause 31 agreed to)

(On clause 32)

The Chair: Moving on to clause 32, with respect to this clause, amendment NDP-25 was overtaken by events, so that one would be withdrawn, and we have amendment L-24.

Hon. John Godfrey: Amendment L-24, which is in the name of Mr. McGuinty, needs a friendly amendment because of the amendment to L-21.1, the big thing we did yesterday. What it simply means is that the location of the regulations-making power was shifted from what was proposed subsection 103.07(6) to a proposed paragraph 103.07(2)(b).

What we're simply trying to do through the friendly amendment is reconcile what we did yesterday. It has met with the approval of those who can do the counting.

The Chair: Are you saying that as a statement or as a question?

Hon. John Godfrey: It was on the table, moved. I'm making a friendly amendment to it, to do that thing we decided not to do in committee of the whole yesterday, which was to try to reconcile the numbers.

The Chair: Yes, and I assume the mover accepts this as a friendly amendment.

Is there any debate?

Mr. Jean, you appear to have a question.

Mr. Brian Jean: If I do, it will be just because I've been overruled in the past when I've tried to do my amendments to our own amendment. My understanding is we can't. I don't want to be in a procedural rut, but I'm just learning in this process. It's been three years now, and I'd like to make sure I get it right so that I'm not overruled in the future.

Can, indeed, a friendly amendment be made by the amender to an amendment that is proposed?

● (1235)

The Chair: I'm advised, and it makes perfect sense to me, as it normally does, that the amendments here are proposed amendments. They're not actually amendments until they're moved. When an amendment is moved, it can be modified appropriately in the process of moving it.

Is there any further debate on that?

All those in favour of amendment L-24 as moved—with the friendly amendment?

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

(Clause 32 as amended agreed to)

Mr. John Moffet: Mr. Chairman, would it be possible to confirm the wording, just for those of us trying to keep track?

The Chair: To my understanding, it's that Bill C-30, in clause 32, be amended by replacing line 29 on page 28 with the following:

subsection 93(1), subsection 103.05(2) or paragraph 103.07(2)(b) or section 118 or

So clause 32 has carried as amended.

Mr. Mark Warawa (Langley, CPC): I don't believe you called for "those opposed". If you did, then I raised my hand, but I don't know whether you recognized it.

The Chair: There were two; it was seven to two.

Mr. Mark Warawa: I just wanted to make sure it was recognized. Thank you.

The Chair: I call clause 33.

We have the same situation with amendment NDP-26 as with NDP-25, so amendment NDP-26 would be withdrawn.

The next amendment would be amendment L-25.

Mr. Godfrey.

(On clause 33)

Hon. John Godfrey: It's simply a consequential amendment, following with everything we've done. So it says "subsection 93(1) or section 118".

The Chair: So there's no change.

Hon. John Godfrey: Yes, it's required as a result of L-21.1.

The Chair: Is there any debate on that?

Again, it's just consequential numbering.

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

(Clause 33 as amended agreed to)

The Chair: Now we have a new clause 33.1. We're in the same situation with amendment NDP-28.

Mr. Nathan Cullen: We won't be moving.

The Chair: NDP-28 is withdrawn, so clause 33.1 is withdrawn.

NDP-27 and NDP-28 are withdrawn, yes.

I'll call clause 34, and there are three amendments there.

NDP-29 once again is in the same quote and is withdrawn or not moved.

On L-26, first of all.

Mr. Godfrey.

(On clause 34)

● (1240)

Hon. John Godfrey: One more time, Mr. Chair. It is a consequential amendment because it refers to sections. It would have been created in the government's original version of clause 18 in Bill C-30, so the references don't make sense. This amendment and the next one—and we'll get to that—change those references to point to equivalent pieces in the amended clause 18 that resulted from L-21.1. What we're doing with L-26 is consequential.

The Chair: Yes, I understand.

The numbering that is still your....

Hon. John Godfrey: That is right.

It's:

93(1) or section 140, 167, 177 or

The Chair: Okay.

Any debate on L-26?

(Amendment agreed to)

The Chair: L-27, Mr. Godfrey.

Hon. John Godfrey: One more time. It is simply a consequential amendment. It now reads:

93(1) or section 167, 177 or 326

as again required by L-21.1.

The Chair: Any debate?

I will allow it, because we're moving so fast. Go ahead, Mr. Moffet.

Mr. John Moffet: My understanding was that the Liberal amendments to clause 18 created additional regulatory authorities. I'm wondering if this clause should be extended to those new authorities as well.

Hon. John Godfrey: Can you give us some examples of where that might be, or what we'd have to refer to, to make this more complete?

Mr. John Moffet: I could give you an example, but I don't think I could do so comprehensively in the....

Hon. John Godfrey: Mr. Chair, rather than trying to fish around right now, why don't we stand this one until we better understand? We very much appreciate anything that will make this more consistent.

The Chair: I had not finished calling the vote, so that was closed.

L-27 and clause 34 are stood. Is that agreed?

Some hon. members: Agreed.

(Clause 34 allowed to stand)

The Chair: I will call clause 35.

Mr. Godfrey.

(On clause 35)

Hon. John Godfrey: Our objection here is that this adds new regulations for greenhouse gases and CACs to a list of other CEPA regulations, this time pertaining to an exemption from the Statutory Instruments Act, and it's redundant. This change would only be necessary if the committee opted to regulate GHGs and CACs separately from other toxins. But we on this side do not wish to do so; therefore, we are against this clause.

The Chair: Do we have any amendments? Further debate?

I'll call the question.

(Clause 35 negatived)

The Chair: Because there may be questions, folks, let's make sure that hands are up or down, as you really intend.

(On clause 36)

The Chair: Mr. Cullen, NDP-30, I believe, is in the same category.

Mr. Nathan Cullen: It is in the same category, Chair.

The Chair: Amendment NDP-30 is not moved.

On amendment L-28, Mr. McGuinty.

Mr. David McGuinty: This has not been moved, Mr. Chair?

The Chair: No.

Mr. David McGuinty: I move the amendment as written.

Hon. John Godfrey: I would like to add a friendly amendment to reconcile, one more time, the numbering, because it refers to sections that would have been created in the government's original version of clause 18. So we need to change our amendment L-28.

What we need to do, as things now read, is to change what reads "103.07(6) or (7)" to "103.07(2)(b)".

● (1245)

The Chair: Okay. I will just read amendment L-28 again.

It now says that Bill C-30, in clause 36, be amended by replacing line 18 on page 30 with the following: "103.05(2), 103.07(2)(b)".

Is there any debate?

(Amendment agreed to)

(Clause 36 as amended agreed to)

(Clause 37 agreed to)

(On clause 38)

The Chair: We will now move on to clause 38.

Mr. Cullen.

Mr. Nathan Cullen: I think some debate on this is important, Chair.

We have grave concerns about clauses 38 all the way through 41. When this act was released back in November, and through December, we had great caution, and then subsequently we heard from a number of witnesses about the impacts of repealing schedule 1 in the act. I wouldn't mind hearing from Mr. Moffet on this as well, and I suspect other members of Parliament around the table... particularly those who are involved in the CEPA review right now, on the importance of schedule 1 and the importance of being able to define greenhouse gases under this schedule, because schedule 1 allows the government to do a certain number of things. It calls upon the government to do a certain number of things.

One of the primary concerns with this—and we appreciate what the government is attempting to do—is that it opens up, as some witnesses have told us, the potential for litigation, that the issue around CEPA and around schedule 1 has been brought to the Supreme Court. One of the justices in part of that ruling has since retired and indicated to this committee that reopening that debate opens up the chance for potential further litigation. This is not to suggest that most companies and industries dealing with the law would seek litigation, but there are always actors unwilling to do the right thing or to change some of their practices, and as such they will press for litigation knowing that these things, particularly when you need to go to the Supreme Court level, will take a number of years. During that time, essentially nothing will happen, because the law is under review and being appealed to the court.

While the government may have had some noble intentions in this, we believe, and we heard from witnesses as well, this would be the wrong course of action. So we will be voting strongly against this and would appeal to other members of the committee to do the same, and not, through trying to do something positive, unleash something that could be very detrimental even if it was unintended.

The Chair: Thank you.

Mr. Jean.

Mr. Brian Jean: I'm just curious. First of all, are you worried about the constitutionality of the section, or whether or not people should have the right to due legal process? You talked about dragging it out in the courts. Are you worried about people having the right to have due legal process, or are you more concerned with the constitutionality? I think the legal process people in this country should be respected and should continue to be able to have that, notwithstanding that it may drag out, unfortunate as it may be in the circumstances.

I did have a question on the constitutionality of the section, and I directed it to the department. I would suggest that we should hear from them in that regard, because I had the same concern.

● (1250)

Mr. Nathan Cullen: To answer that portion of the question about whether I am worried about lawyers suing the government, no. I'm sure they will continue to do so whether this committee passes this section or doesn't pass this section.

We're not looking to curb anyone's constitutional right to litigate. I'm sure the bad-acting companies in this country that choose that course of action rather than cleaning up their mess will choose to continue to do that. But what we've seen here is a potential for unintended consequences.

Mr. Brian Jean: Let's hear from the department official.

The Chair: I'd be pleased to ask him that, Mr. Jean.

Mr. Moffet.

Mr. John Moffet: The intention of this amendment, of course, is part and parcel of the government's overall approach. That was to create a separate clean air part, in order to allow for the scientific identification, assessment, monitoring, and regulation, ultimately and if necessary, of air pollutants and greenhouse gases. In so doing, the government has created two separate categories of substances—namely, air pollutants and greenhouses gases—whereas in the current CEPA we have one category of substances called "toxic" substances.

Mr. Cullen is correct, in the sense that the processes for identifying, assessing, labelling, and regulating toxic substances under part 5 of CEPA were upheld in the Supreme Court of Canada in the Hydro-Québec case.

Before it was amended, the clean air part in Bill C-30 was constructed so as to mirror those same processes as closely as possible—the sequence of steps in part 5 that the Supreme Court relied so strongly on in upholding part 5. In other words, it was our view that the same finding would apply to part 5.1 as has already applied to part 5.

More generally—and I'm here not providing a legal opinion, I'm here as a representative of the Department of the Environment—if there is any environmental issue that is within the federal government's jurisdiction as one that is of national or international concern and it is not constrained to a local issue, surely it is air pollution and greenhouse gases, which, by definition, cross political jurisdictions.

The final point I would make is that any bill brought forward by the government is thoroughly reviewed by the Department of Justice. We're not privy to release the opinions of Justice, but I can assure you that this question was carefully considered.

The Chair: Mr. McGuinty.

Mr. David McGuinty: Thank you.

We are on clause 38.

Like some of Mr. Cullen's comments, clauses 38 to 41 are major government amendments to take greenhouse gases and air pollutants out of CEPA. Due to the changes we've already made to clause 18 through Liberal amendment L-21.1, we think it no longer makes sense to remove GHGs and air pollutants from the schedule 1 toxics list.

We've been concerned from the beginning that clauses 38 to 40 remove criteria air pollutants and greenhouse gases from schedule 1 of CEPA—to repeat myself—and place these substances into two new categories, air pollutants and greenhouse gases. Effectively, Mr. Chair, these clauses create a parallel set of authorities, with tools that are currently in CEPA with respect to toxic substances.

We think this double listing will create some ambiguity. There has been litigation—we've just had a small discussion about Hydro-Québec, for example—to raise the profile of this ambiguity. We need to keep this quite unambiguous.

We think the government's original Bill C-30 provisions would simply have reproduced regulatory authorities that the federal government already has in relation to these substances. We've said that since the beginning of the Bill C-30 process. These have been found to meet the definition of “toxic substances” under section 64 of CEPA, and those substances are already listed on CEPA's schedule 1.

So as Mr. Jean just asked, we believe that if they had gone through, they would have raised a serious question about what the constitutional basis for the exercise of federal regulatory authority in relation to these substances actually is. For those reasons alone, and because of the fact that we believe we really need to make this whole question unambiguous, as opposed to ambiguous, we are opposed to clause 38.

● (1255)

The Chair: Mr. Warawa.

Mr. Mark Warawa: Thank you, Chair.

Mr. Moffet provided some comments that I was going to make, but I want to correct some comments made by Mr. McGuinty.

He said that the clause would take greenhouse gas emissions and pollutants out of CEPA. That's not correct. In fact, it would be a clean air part of CEPA to manage greenhouse gases and pollutants.

With the changes that have been made by the Liberals through amendment L-21.1, it isn't possible to have it as a stand-alone section, and it has now been made ineffective.

If it had been part of the Clean Air Act part of CEPA, it would have been a very effective way of managing and dealing with greenhouse gases and pollution. It's not possible now with the changes that have been made.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: We'll certainly take the government at its word as to what it was attempting to do.

It seems two options have been made available here. There's one option of creating this new section in the act and trying to control greenhouse gas emissions that way, or there's the option that exists and is available to the government right now, which uses the current toxic list and has greenhouse gases listed under that.

The problem with the first option of creating this new piece is that even witnesses who were opposed to greenhouse gases being on the toxic list, when asked and pressed on whether or not it opened up the question of potential litigation and muddying of the waters, said yes, it would.

Why open up the chance of action being taken when the option that exists right now for leaving the greenhouse gases where they are is an option that allows government to use the tools that are now being placed into Bill C-30 to greater effect? If the tool is available, functions, and has been tested all the way to the Supreme Court, it seems to me it's an excellent tool.

Through the amendments, we have now placed targets and options for governments to use different vehicles going forward. To muddy the waters, as clause 38 does, and create this new section...even witnesses who are opposed to the current situation said there is a potential to open up questions. We've heard from the justice who sat on the court and tested this the first time around, and he urged us not to do it. It seems to be pretty compelling evidence.

While I'll still take the government at its word as to the intention of what it was doing—and they'll vote how they will—I would suggest that the option available right now, as the act exists, allows government to use the tools we've now placed in Bill C-30 to greater effect and gives the government every regulatory power they need. It's also been tested.

To open up a new section, as witnesses told us, even those who might be in favour of opening a new section, opens up the possibility of further litigation.

If we take Mr. Moffet's opinion, although he can't give details, the spectre was raised. There's an option and a potential course there for those companies that are most regressive. Why open up the option for the lowest common denominator industries that might not be interested in cleaning up their act?

I've heard the opinions, but my position on this hasn't shifted.

The Chair: Mr. Jean.

Mr. Brian Jean: Mr. Chair, I only want to confirm that I heard somewhat different testimony from the department the last time I asked this question, but I did ask this question. I raised it at committee several times, and we heard from different witnesses on different points of view on this, not only on the one point, as Mr. Cullen has alluded to.

But after indeed talking to the department, I even went so far as to do some additional research, and I'm quite satisfied with the constitutionality of it. Notwithstanding that, how you vote is definitely up to you.

But on the other side, I thought I heard an offer from Mr. McGuinty about wanting to make sure this act was not ambiguous. I'm indeed wondering whether or not his proposal is to go back three or four days and start over again on this slash-and-burn dog's breakfast that we have today in this act. Is that what he was suggesting?

● (1300)

The Chair: Mr. McGuinty.

Mr. Brian Jean: I'm only wondering, because it's a little bit of an insult.

Mr. David McGuinty: I don't think that deserves a reply, Mr. Chair.

The Chair: I think the answer is no, Mr. Jean.

Mr. Brian Jean: Thank you, Mr. Chair.

The Chair: Mr. Warawa.

Mr. Mark Warawa: I have two quick closing comments, Chair.

What we would like to see as Canadians is a cleaner environment, reduced greenhouse gas emissions, and reduced pollution levels. Mr. McGuinty and Mr. Cullen have both suggested it could be done under CEPA as we have it now. The government believes no, that CEPA needed to be strengthened.

The question that is left unanswered, then, is this. If CEPA would have been able to accomplish that, in the opinion of the Liberals, why wasn't it done?

We believe clearly that CEPA needs to be strengthened. This would have done that, but then continuing this debate and Mr. Cullen's argument, I would suggest it's irrational when it's actually.... As Mr. Jean pointed out, we've taken away the tools, we've taken away the Clean Air Act, and now they want to argue about whether the Clean Air Act was achievable.

Once you've gutted the Clean Air Act part, I think there's no point in continuing the debate.

The Chair: Mr. Watson.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

Actually, further to Mr. Warawa's comments, we can take it back even further. I'm reading from a document called *Creating Opportunity*, the so-called Liberal plan for Canada. On page 70, they even had a short-term target. I'm surprised it never saw the light of day, but it was to cut CO_2 emissions by 20%, from 1988 levels, by the year 2005.

If they had ever wanted to even keep that short-term target, they had the CEPA tools that they say are sufficient to do the job. They had them for six years and didn't utilize them, Mr. Chair—35% above the Kyoto target emissions, well above what they said they were going to do way back in 1993.

The argument that the current CEPA tools are sufficient enough I think only further exposes just how little inaction the previous Liberal government took on this particular issue. It suggests to us that we did need a tailored approach that was integrated to deal with not only greenhouse gas emissions—we saw a marked increase under the Liberals—but also to deal with pollution prevention, air pollution, and indoor air quality.

Mr. Chair, I think the route the opposition has taken here at committee certainly is not the right course.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: It's a very quick point and then I imagine we can get to the vote.

I would encourage my colleagues, as tempting as it is to bring forward political documents and promises made and why failures have happened in the past.... And believe me, I understand how tempting that is.

Mr. Jeff Watson: Page 72.

Mr. Nathan Cullen: Thank you. I'll have that reference for later in the campaign, I'm sure, but right now we're not in the campaign.

An hon. member: It's in the Library of Parliament.

Mr. Nathan Cullen: Is it? Good.

An hon. member: A collector's item.

Mr. Nathan Cullen: A collector's item, indeed.

The point of the effort today, though, and I think this is instructive for us as we go ahead with further debate, is to argue on the merits of the options available, as opposed to argue on who failed Canadians on the environment and when, because that's just a slippery slope for us to go.

The options represented on this particular amendment right here, on clause 38, as to whether it's better to trade a new section—which greenhouse gases would be controlled through there—or to use the section that exists right now.... We all heard evidence from different witnesses; there was a variance of views. We formulated our opinions on that. Let's just base our votes on that.

I encourage committee members to resist as much as possible... and to just deal with the merits of the argument.

The Chair: Mr. Moffet, you have some input, and then perhaps we can get to the vote.

● (1305)

Mr. John Moffet: I want to remind members, respectfully, that in fact this provision is independent of the creation of a clean air part or not. All this provision is doing is taking these substances off the list of toxic substances. It's doing so in conjunction with other provisions, which have not yet been voted on, which were stood at the beginning of the discussion of the bill, that would redefine those substances as air pollutants and as greenhouse gases.

The provisions that were reported yesterday, L-20, L-21.1, and L-19, do use those words. So essentially all you're doing is taking substances that have already gone through the process—set out in part 5—and have been classified as needing risk management of some kind...and today they're classified as toxic substances. Were this to proceed in the future, they would be called air pollutants or greenhouse gases. That can be done as part of setting up a clean air part or completely independent of a clean air part. Essentially all you're doing here is renaming them as air pollutants and greenhouse gases.

The Chair: Mr. Jean, you had a point?

Mr. Brian Jean: Very quickly, I have to ask this question and to follow up on Mr. Watson's comment.

The leader of the opposition now was the Minister of Environment for some time, and you had all these tools that you say are adequate today. Why didn't you get it done? Why didn't your party get it done when you were in government?

It's a valid question. If these tools were sufficient then, and you had all these targets, why didn't you get it done?

An hon. member: That's not fair.

The Chair: Mr. Jean, it is not necessary to answer that question. It's a matter of argument at this point, and we do need to move on. Thank you very much.

If there's no further debate, I suggest we move to the vote.

(Clause 38 negatived)

(On clause 39)

The Chair: Seeing no amendments to clause 39, and obviously there is a similarity to the previous discussion on clause 38, shall we move straight to the question?

Mr. McGuinty.

Mr. David McGuinty: Once again, it's a major government amendment to take greenhouse gas and air pollutants out of CEPA. For example, it deletes several criteria air contaminants, Mr. Chair, like gaseous ammonia, ozone, nitric oxide, nitrogen dioxide, sulphur dioxide, and volatile organic compounds from CEPA, schedule 1. As a result, we are against clause 39.

The Chair: Okay. Is there any further debate?

Mr. Warawa.

Mr. Mark Warawa: It's fine. You can call the question.

The Chair: Okay.

(Clause 39 negatived)

(On clause 40)

The Chair: Are there any amendments to clause 40?

Mr. Godfrey.

Hon. John Godfrey: Obviously, just to be consistent, this deals with the six Kyoto greenhouse gases, which it proposes to delete from schedule 1, and we're against that.

The Chair: Is there any further debate?

(Clause 40 negatived)

(On clause 41)

The Chair: Mr. McGuinty.

● (1310)

Mr. David McGuinty: Again, this is another in a series of amendments that the government put forward to take greenhouse gases and air pollutants out of CEPA. It adds a new schedule 3.1 to CEPA, which lists excluded volatile organic compounds. We're against it.

In addition, the government's changes no longer make any sense due to the changes to clause 18 of Bill C-30, as amended over the last several meetings.

The Chair: Is there any further debate?

(Clause 41 negatived)

The Chair: We are moving to a new clause 41.1. We are now into part 2.

I believe the officials are.... Are you going to reshuffle? Are you happy with your current official configuration?

A voice: [*Inaudible—Editor*]

Mr. Mark Warawa: Mr. Chair, can we please have a five-minute break?

The Chair: We're changing to part 2, amendments to the Energy Efficiency Act.

Mr. John Moffet: Mr. Chair, before you do that, the officials aren't here; they will be here for the 3:30 session. This is my responsibility. I told them they probably wouldn't be needed for this time because I had assumed you were going to go back and do the provisions that you had deferred, the definitions and so on that have nothing to do with the Energy Efficiency Act—in other words, complete CEPA as a whole.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Mr. Chair, we're both ways on this debate. Do we go back and clean up the pieces first that we did through CEPA, or do we then move on to an entirely new topic?

The Chair: Normally when clauses are stood they're stood until the end of the bill, but that again is within the purview of the committee to change.

Mr. Nathan Cullen: If we have the officials, then maybe we should move on.

The Chair: Mr. Warawa.

Mr. Mark Warawa: Mr. Chair, could I then ask that we have a five-minute break and come back?

The Chair: Let's do that. Let's suspend for five minutes and sort it out.

● _____ (Pause) _____ ●

● (1320)

The Chair: Let's reconvene. I will say, because of question period, there are some people here doing SO 31s. We will be breaking at ten to two, *deux heures moins dix*.

Mr. Cullen has a short comment.

Mr. Nathan Cullen: This is a comment on the discussion of choices.

Maybe we can get a bit of the conversation stopped.

Mr. Nathan Cullen: The two choices before the committee are to press ahead with some of the energy efficiency options and some of the other parts of the bill. We think there might be some saliency in making sure we clean up the CEPA amendments. I don't suspect it will take that long, and given—did you say we have 30 minutes or so left, Chair, before people have to go?

The Chair: Quiet in the back, please.

The Chair: A little less than 30.

Mr. Nathan Cullen: A little less than 30. It might be the most efficient way of doing things, to complete one and then move to the second section, but I'm open to other arguments.

The Chair: Mr. Godfrey.

Hon. John Godfrey: We can go either way. Whatever seems most efficient.

The Chair: We have the officials here for NRCan.

Mr. Warawa.

Mr. Mark Warawa: Chair, if you stand down an amendment, the tradition is you deal with it at the end. We have officials, and I believe if we want to move through this quickly and deal with part 2 now, that could be dealt with very quickly. I'm of the opinion that as we go back and deal with the topics that have been stood down, that is going to take a lot more time. So to deal with it efficiently, and respecting tradition, I think we should now step to part 2.

The Chair: Do we have general agreement on that? Okay. We'll ask the officials to make the appropriate swap.

● _____ (Pause) _____ ●

● (1325)

The Chair: Okay, let's get back in session. I want to welcome Ms. Buckley and Ms. MacKenzie to the committee.

We are on new clause 41.1. and amendment L-29.

Mr. McGuinty.

Mr. David McGuinty: Thank you very much, Mr. Chair. I would refer all members to the original draft of the Energy Efficiency Act. The version I have, 1992, chapter 36, was assented to on June 23, 1992.

The preamble of that act struck us as weak. Time has moved on. We've learned so much more, so we have written up some perhaps stronger language around energy efficiency and the efficient use of energy in all sectors of the Canadian economy. If we look at the wording in the preamble to the existing Energy Efficiency Act as drafted, it simply says, “An Act respecting the energy efficiency of energy-using products and the use of alternative energy sources”.

We'd like to replace most of that wording with simply “Whereas the Government of Canada is committed to ensuring sustained improvement”—sustained improvement—“in the efficient use of energy in all sectors of the Canadian economy”. We think that's a stronger indication of the overall thrust of the act, moving forward and improving on a consistent basis. So through Bill C-30, Mr. Chair, we are not only injecting words like “national carbon budget” and “sectoral carbon budget” and “carbon deficits”, but now we're also putting at the front end of this act much more proactive language about going forward and having Canada commit to driving up energy efficiency. It speaks to important things like eco-efficiency and so on.

So the wording is there. It's evident. I would just ask members to compare what was, what is now, and what might be, if this amendment should pass.

The Chair: Thank you.

Mr. Warawa.

Mr. Mark Warawa: Thank you, Chair. We have no issues with the amendment and would accept L-29.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Chair, I'm just grasping, as we read through this section, to try to get a sense of this, from maybe the parliamentary secretary or an official, I'm not sure which, because there are a number of amendments that we've brought into this, and I'm seeking to understand the government's intention in a lot of these pieces. As we go through, there are some general statements, but not enough that is specific.

When crafting this section, perhaps the parliamentary secretary can illuminate us, pun intended, or enlighten—thank you, Mr. Watson, that's much better—particularly around speed and process, that there are energy efficiency changes being made in manufactured products, products being imported, but we're still seeking deadlines and timelines for when. So I'd like just an overview before we get to....

This is no disrespect to the amendment being moved by Mr. McGuinty.

The Chair: Is there any further debate?

I'll call the question on amendment L-29.

(Amendment agreed to)

(On clause 42)

The Chair: I see no amendments to clause 42.

Mr. Godfrey.

Hon. John Godfrey: This is simply to ask clarification of the new officials. Welcome.

My understanding of this is that it seems to be a refinement of classes of energy-using products. I just want to make sure I understand this, and I'd like to hear a little bit of the rationale. It seems like a good thing, but as I understand it, it says there are three classes. One is based on common energy-consuming characteristics, the way in which they use the energy. The second category is the use of the products. Then I guess the third category is—and maybe here you can explain a bit—the conditions under which the products are normally used. So those are characteristics, use, and conditions.

Could you just explain why we're doing this, and perhaps just amplify a little bit what that means?

● (1330)

Ms. Carol Buckley (Director General, Office of Energy Efficiency, Department of Natural Resources): Sure thing.

The way the act is currently drafted, we have the authority to regulate energy-using products per se, just as it is. This amendment broadens our capacity to regulate products that affect energy use but may not be energy-using products in and of themselves.

The example is electronic thermostats, which don't use energy, or an appreciable amount of energy, but they have a tremendous impact on calibrating an electrically heated house efficiently. You can save 10% or 12% if you have an electronic thermostat and you're calibrating your heat down at night. We'd like to regulate the most efficient electronic thermostats, because they can help homeowners save money in their electrically heated homes, but the current act, as written, will not allow us to regulate electronic thermostats because they're not defined in the current act.

Another example is a piece within commercial dishwashers that distributes the water, the spray valve. It doesn't use any energy, but if you use a particular technology, you can have tremendous savings within that area of technology. So this broadens the act to allow us to get at more products that affect energy use, not just energy-using products themselves.

I want to give you one more example, because it deals with another aspect of this amendment. We want the authority to regulate classes of related products. So if you think of the proliferation of consumer electronics in all our homes these days, we would like to be able to regulate their standby power as a class. It would be more efficient than regulating each and every product in maybe a class of 10 different products individually. We would be more efficient to put those into one regulatory process and do them as a class. This wording simply allows us to do that.

Hon. John Godfrey: That makes perfect sense.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: There have been many questions about the interface with government policy and the effect on the economy. Do we have any understanding of the economic impacts, or how many of these products...? We heard from some witnesses just how few....

We tried to get witnesses from the manufacturing sector to come forward to the committee. I recall as we were building that witness list how difficult it was to find any because so many of them had moved overseas or across the border.

Did the department go through any kind of assessment of these types of classes of products that you seek to regulate and change? What percentage are made in Canada, and if so, what is the impact? Is there increased pricing? Is it more difficult for them to operate their businesses under this type of policy? I'm trying to understand if an economic assessment was done.

Ms. Carol Buckley: We're proposing to regulate 20 new products and strengthen the regulations for 10 products we are already regulating. We're certainly open to regulating any other products that come up where it makes a lot of sense. So we have a strong intention to do a lot of regulation.

Through the regulatory process we consult with the manufacturers, distributors, users, and other jurisdictions, both domestically and outside of our borders, on any particular regulation. During the course of that consultation we do both technical and financial analyses as to what the financial impact will be on manufacturers and importers in Canada.

I don't have an answer about what percent of the manufacturers of the slate of 30 new regulations are Canadian. No doubt we could get that for you with some estimates. But during the course of a regulation we do a very good job at looking at the cost-benefit analysis from the manufacturer's perspective and the user's perspective. It's just part of the process.

● (1335)

Mr. Nathan Cullen: Sometimes we hear about these things after the fact, when a manufacturer wakes up one morning, sees it in the paper, and has concerns. So just to be explicit, you talked about 20 new products and 10 existing ones. Are any of these made in Canada?

Ms. Carol Buckley: Certainly some are made here. I just can't match up which ones and what percent would be made here.

Mr. Nathan Cullen: That's fine. But in the consultations you had, you felt well-assured that there weren't concerns from them that this was going to add a measure of cost to business.

Ms. Carol Buckley: We're announcing the intent to regulate these things. We are not at the end of our regulatory process, so we'll be doing them in phases over a number of years. I believe I supplied to this committee the list of products I'm mentioning here.

We have a timetable to regulate these products, and we will post the products that will be regulated in a consultative phase. Then we will gazette them so that all manufacturers will get due notice and an opportunity to comment and discuss the impact.

Mr. Nathan Cullen: You said you presented this list to the committee?

Ms. Carol Buckley: When I was last at the committee to speak—the exact date escapes me—there was a question about what products we were planning to regulate. Within a day or two I supplied a list of the products we were planning to regulate.

Mr. Nathan Cullen: This is not to disparage the consultations you had, but we as members of Parliament often hear from manufacturers that they were never told; it never happened.

Ms. Carol Buckley: It's a very open process. We are very up-front well in advance within all the prescribed requirements of doing a regulation, because we want manufacturers to be aware of it and to let us know their views.

Mr. Nathan Cullen: My last question is on what's become known colloquially as "vulture electronics", or the drawing off of energy by certain products in the standby mode. Does this part of the change to the Energy Efficiency Act affect that? Is that somewhere else, or are we affecting it at all? Education on this in the general public has grown recently.

Ms. Carol Buckley: The previous question on the changes to the definition of what the scope of the Energy Efficiency Act would cover will allow us to regulate standby or off-use electricity use more efficiently. In other words, we'll do a whole class of these standby products together in one fell swoop. So it's important to be able to do them as a bunch. That's why we were asking for the change in wording. We don't require that amendment in order to be able to regulate the standby power characteristics of products.

Mr. Nathan Cullen: I want to be clear that as this act sits right now...you said, "as it was amended"?

Ms. Carol Buckley: Without the amendments we can still regulate standby power; with the amendments we can do it more effectively, by bundling up like products—

Mr. Nathan Cullen: And calling them a class?

Ms. Carol Buckley: —consumer products, and working on them class by class.

Mr. Nathan Cullen: Okay.

The Chair: Is there any other debate on clause 42, or queries?

(Clause 42 agreed to)

(On clause 43)

The Chair: I see no amendments on clause 43.

Mr. Cullen.

Mr. Nathan Cullen: This is a question, not an amendment at this point.

We talked to one importer who spoke—this was not at the committee, but in a more private conversation—about changes we make to our regulations that could be deemed to limit the importation of products, particularly from the United States or Mexico. Always the spectre of NAFTA gets raised, in terms of whether Canada is putting up a false barrier. I think through the experience of trying to get Canadian manufacturers to the committee and realizing just how few there are and how many of our products are now being imported from south of the border or overseas....

What did the department—and I'm not sure whether this is to the parliamentary secretary or to you—do to verify what legal challenges could be brought?

The thing we don't want to do is put in a regulation that someone can challenge at a NAFTA court, or WTO, or wherever they would take it, while trying to do something good, which is to improve the efficiency of products. More importantly, do we have experience in doing that and know that we can get away with it?

I don't know who, of the parliamentary secretary or the officials—

The Chair: Who's best to answer that question?

Ms. Buckley.

● (1340)

Ms. Carol Buckley: We do a careful analysis with the aid of the Department of Justice of all such trade-related issues. We would know going into developing any amendments, and we know from having implemented the Energy Efficiency Act these many years, that we have no issues on that score. In other words, it doesn't come up and surprise us that we introduce a difficulty with NAFTA and so forth. There are very real reasons behind our regulating for energy efficiency, and we don't experience challenges.

Brenda, did you want to add?

Mrs. Brenda MacKenzie (Legal Counsel, Department of Justice): We are talking about clause 43, which isn't a regulation-making power. It does not alter the requirements on the import of products from the United States.

Mr. Nathan Cullen: That's what I read it as. What essentially has it done?

Mrs. Brenda MacKenzie: It's only the underlying part.

If we turn back to it, the existing act actually prevents the stockpiling of inferior products in a province. Right now as it reads, it says, just as it does here:

> No dealer shall, for the purpose of sale or lease, ship an energy-using product from the province in which it was manufactured to another province

This bill simply says "from one province to another province".

Ms. Carol Buckley: There's currently a loophole in the Energy Efficiency Act that allows an organization to import a piece of equipment and to then ship it to another province without meeting the standard.

Mr. Nathan Cullen: Is the standard not set on a national...?

Ms. Carol Buckley: Well, the Government of Canada, in the current Energy Efficiency Act, has regulatory power over the production and shipment or the importation and sale. We don't have power over the production and sale within a province; that's a provincial jurisdiction.

So within the way our current authorities reside there is an opportunity, as Brenda MacKenzie has said, for a company to import a product and to ship it to another province and not meet a standard. We're simply trying to close that loophole and not allow any federal-jurisdiction-related shipments to contravene the Energy Efficiency Act.

We're not trying to interfere with provincial jurisdiction, which is producing and selling within a province; that's not our jurisdiction.

I'm sorry. It's complicated.

Mr. Nathan Cullen: I don't want to belabour this, Chair—

The Chair: Please.

Mr. Nathan Cullen: —but I still am quite.... Well, perhaps the parliamentary secretary knows the answers to some of these questions.

If this loophole existed, first of all, can he...?

Oh, he has his hand in the air, so let's hear what he has to say.

The Chair: Mr. Jean, be short, please.

Mr. Brian Jean: Certainly. I've responded a couple of times on issues similar to this. I know that Justice Canada does the best job it possibly can. Anybody can sue anybody for any reason, whether it's substantiated or not, or whether there are loopholes. Justice Canada has officials and lawyers who go through these documents continuously to try to ensure they close as many as possible, because nobody wants to be sued.

Mr. Nathan Cullen: Perhaps he hasn't been following my train of questioning. What has been raised is the notion of this stockpiling, which has nothing to do with my original assertion about NAFTA, and the department officials are nodding.

The question is—and this is important, and I want to understand it—is it the case right now that Ontario can import a certain number of products that are below national standards? No. They can manufacture products that are below and then ship them inter-provincially, thereby avoiding the national standard. No?

Mrs. Brenda MacKenzie: No.

Mr. Nathan Cullen: What loophole is being closed, then?

Mrs. Brenda MacKenzie: There are two questions here.

First of all, there are no NAFTA implications—

● (1345)

Mr. Nathan Cullen: Thank you. I'm comfortable with that; I appreciate the parliamentary secretary's comments.

Mrs. Brenda MacKenzie: As the unamended act reads now, there are two points at which a product is caught. It is caught at the point that it is imported into Canada, and that has not changed. It is also caught only for a product that is, let's say, for example, manufactured in Ontario at the point it crosses a provincial boundary. That's in the existing act.

The amendment merely says that at any point that a product crosses a boundary that the federal government is able to regulate, that product must be compliant—that is, no substandard products can be shipped between provinces or imported into Canada. This does not have NAFTA implications, basically because it imposes no stricter requirements on, say, an American manufacturer than on an Ontario manufacturer. There would be no NAFTA implications.

Mr. Nathan Cullen: Thank you. That's appreciated.

The Chair: Is there any further debate on clause 43? I'll call the question.

(Clause 43 agreed to)

(On clause 44)

The Chair: I see no amendments to clause 44.

Go ahead, Mr. Cullen.

Mr. Nathan Cullen: I have a small question. In this proposed section it says, "A dealer is not required to provide prescribed information in respect of the energy efficiency". For clarification, why are these exemptions placed into it? If we want to have the greatest amount of information about an energy efficient product provided to the government prior to importation or manufacture, why allow these exemptions? It's referring to proposed subsection 5 (1). Is it self-referential? Does it go back to its own...?

Ms. Carol Buckley: I believe it goes on to say that it's if "the information has previously been provided".

Mr. Nathan Cullen: That is the only exemption we're making available—otherwise, it's all products?

Ms. Carol Buckley: This in fact strengthens the information we get.

Mr. Nathan Cullen: What is it right now?

Ms. Carol Buckley: It's not necessarily in this clause, and I don't want to jump ahead, but what we're doing here is making sure of all the information we require. I believe what's underlined is what's new. This is just an additional piece of information.

Mrs. Brenda MacKenzie: The additional wording allows the government to collect information about imports—as opposed to the existing act, which is restricted to products when they come across the border—and information about the general energy efficiency of a particular kind of product. This will make it possible for the government to verify that products are indeed compliant. You'll know what's coming in, or you have the capacity now to ask for information about what is coming into the country.

Mr. Nathan Cullen: Is that mandatory under this provision, and not an option? I just want to understand what we're doing.

Ms. Carol Buckley: The only exemption is if you provided it previously. We don't want to burden the manufacturers with duplicate reporting.

The Chair: Is there any further debate on clause 44?

(Clause 44 agreed to)

(Clause 45 agreed to)

(On clause 46)

The Chair: Clause 46 has an amendment that will probably generate some discussion. We will adjourn at this point until 3:30 in room 237C.

The meeting is adjourned.

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