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Chair

Mr. Barry Devolin

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• (1530)

[English]

The Chair (Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC)): Welcome, members, to our committee meeting today.

We have a couple of small housekeeping matters. There will be bells at 5:15 and we begin votes at 5:30. We will need to either end our meeting or suspend our meeting at 5:15 to head over to the House today. So for those of you who are on the list of speakers, wherever we are at that time, we will stop.

In a moment we're going to continue—like one of those kids' stories, we're going to pick up where we left off the last time—with clause-by-clause of Bill C-21.

We are still discussing amendment NDP-1 from Ms. Crowder.

As I said at the end of the last meeting, we'll pick up with our list from where we were. I don't know if you have it, but to my recollection, Mr. Russell has the floor, and subsequently Mr. Albrecht and then Mr. Warkentin. I think those were the three names I had on that list.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Mr. Chairman, this is a point of order.

I would seek consent from the committee to withdraw my first amendment. I don't know if that means also withdrawing the challenge to the chair on the ruling on that amendment.

The Chair: I am informed that in order for you to withdraw amendment NDP-1, you would require the unanimous consent of the committee.

Ms. Jean Crowder: I'm aware of that.

The Chair: Is it such? Is it unanimous—

Mr. Rod Bruinooge (Winnipeg South, CPC): Mr. Chair, we need to consider this briefly. Can we call upon your grace to take a minute?

The Chair: Yes, take a minute.

Mr. Rod Bruinooge: I'm not sure if this is a point of order either, but we would like to mention there are pastries and dainties at the back of the room, supplied by my office to provide some Christmas cheer at this meeting.

An hon. member: Hear, hear!

The Chair: For those who need Christmas treats, I will suspend for about two minutes.

• (1530)

(Pause)

• (1535)

The Chair: Could I bring the committee back to order, please.

Ms. Crowder would like to withdraw amendment NDP-1 from the floor. In order to do that, she requires unanimous consent.

Do I have unanimous consent?

An hon. member: No.

Mr. Rod Bruinooge: Mr. Chair, in light of the fact that we've invested two hours of debate into this—which we view as really having been a filibuster, in our opinion—we feel that we might as well at this point simply call the question. It's the easiest way to deal with this amendment.

So I'd recommend to Jean to call the question on this and take a vote on it.

The Chair: It's not up to the member to withdraw the issue. If there's no unanimous consent to withdraw the amendment, the amendment is still on the floor.

If the three people who are on the speakers list say they would like to remove their names from the speaking list and there are no further names, then we will call the question at that point. But Ms. Crowder cannot take this off the floor herself.

At this point I guess we come back to you, Mr. Russell. If you would like to have the floor, it is yours. If not, you can let us know.

Mr. Todd Russell (Labrador, Lib.): Just to be clear, there is no unanimous consent?

The Chair: There is no unanimous consent to withdraw the amendment. As I said, we're into a little bit of Alice in Wonderland now. We could continue talking about something that we know even the proposer doesn't want to amend any more.

As I said, if you'd like to speak to it, you do have that right. But in an effort to move forward, if the three members whose names were on the list agree to withdraw their names from the list, then we will proceed to the vote on this, and we will be able to move on to the second amendment.

Mr. Todd Russell: I'll withdraw my name from the list.

The Chair: Thank you.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Mr. Chair, I'm prepared to withdraw if we have the assurance that we are in fact going to call the question.

The Chair: If Mr. Warkentin withdraws, then we will call the question, and if anyone else jumps in, you can jump in again too. So I would say that you don't need to be concerned.

Mr. Warkentin.

Mr. Chris Warkentin (Peace River, CPC): With the same assurances, I'll withdraw.

The Chair: If there are no others who would like to speak to this, I would like to call the question on NDP-1.

Mr. Rod Bruinooge: Mr. Chair, could we get a recorded vote on this as well?

The Chair: Yes.

(Amendment agreed to: yeas 7; nays 3 [See *Minutes of Proceedings*])

•(1540)

The Chair: Mr. Bruinooge.

Mr. Rod Bruinooge: I brought forward a motion within the 48 hours' notice conditions and I was wondering if we might be able to deal with that motion now, as it obviously is timely in relation to our discussion for the passage of this bill.

The Chair: Yes, we can consider your motion, Mr. Bruinooge.

I believe that the members have this. Mr. Bruinooge is suggesting—you can read it yourselves—that the meeting be extended this evening.

Do you have any comments that you want to make on the motion?

Mr. Rod Bruinooge: I would just like to say that this is an essential bill, and that's why we're here, as elected members of Parliament—to ensure that bills such as this get passed. As we approach the Christmas season, in light of the last two hours of debate that we had, we need to extend time in order to pass Bill C-21.

This was the reason for my motion and hopefully we will get the opportunity to see it passed.

The Chair: I would just point out to the committee members that given that we have votes this evening, if we were to continue the committee meeting into the evening, we would suspend when the bells start at 5:15 and then we would return 15 minutes after the completion of the final vote this evening. That's an unspecified time, obviously.

Does anyone else have a comment?

Ms. Neville.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you, Mr. Chair.

We will not be supporting this motion. I find this a very offensive motion, in fact. Mr. Bruinooge bills this as an essential bill. It is an important issue we're dealing with, the repeal of section 67. I don't think anybody around this table would dispute the importance of repealing section 67. But this bill could have been brought forward in a different manner. This bill could have been brought forward by this government in a process and in a manner that would have brought outside—and considered the concerns—of those affected by it.

Mr. Chair, this morning you and I and Ms. Crowder attended the signing of the Tsawwassen Treaty, and we heard about the importance of working together, how the bill came about with give and take between the very gifted chief of the Tsawwassen First Nation and the provincial and federal negotiators, and about the goodwill of the provincial and federal governments making it happen. This could have been the case with the repeal of section 67 of the Human Rights Act.

What we have had here, Mr. Chair, is an attempt to stifle dissent in the community against section 67. What we have had are gentlemen who think they know best how aboriginal women should be looked after and how they should be addressed. The views of the women, the views of the communities, and the views of the leadership have been totally disregarded. We've had 20 different presentations here in front of this committee call for consultation, given the many issues around this bill, and we've been caught up in an ideological zeal to rush the bill through without the full consideration of the communities it will affect.

We could almost be there now. We could almost be there if the consultations had taken place in an appropriate manner; if the communication had taken place in an appropriate manner; if the minister had chosen to redraft the bill in a way that would bring in some of the concerns; if an impact study had been done, so we would know what impact it would have on first nations communities. But for whatever reason, the government has chosen to bring this piece of legislation forward, to stifle discussion, to stifle opinions, to say "We know best".

I guess what concerns me most, particularly after listening to some members opposite last week, is that I'm not even sure the repeal of section 67 is designed to provide human rights for individuals in first nations communities. I'm not sure it isn't a backward way to disassemble the Indian Act as we know it. We have heard that from some of the presenters before. Some of the language we've heard across the way earlier in the week, to my mind, confirms it.

So I would have great difficulty with another attempt to thwart discussion, to thwart an ability to deal with this bill in a fulsome manner.

As I said earlier, the government is responsible for this issue not moving forward in a more expeditious way. If the consultations had taken place, consultations with the leadership, consultations with the communities, and consultations with the women who would have been affected.... We heard eloquently from NWAC about the need for consultation; but no, the government knows best. It's their way or the highway.

I would say to you, Mr. Chair, that we would like to see section 67 of the Human Rights Act repealed. Everybody from my party wants to see section 67 repealed.

They think they know better. They think they know what we think.

I am telling you that this is what we would like to see done, but we would like to see it done in a manner that is appropriate, that is consultative, that is courteous, and that is respectful—and respect seems to be a big thing that's missing from that side as it relates to first nations communities

• (1545)

And I may have more to say.

The Chair: Thank you.

Before I go to Ms. Crowder, I want to point out to the committee that with the passage of NDP-1, we are now actually dealing with a bill that is fundamentally different from the one we were talking about a few minutes ago. Bill C-21 is no longer a bill whose purpose is to repeal section 67. It is being replaced. With clause 1 replaced in this bill, we are now talking about a replacement of section 67 as opposed to a repeal of it.

Again, I may ask the indulgence of the committee on an ongoing basis today as we go forward in terms of the rules, because even some of the amendments that we are going to continue to work our way through are incongruous with the bill as it now stands, as amended.

So with the successful adoption of NDP-1, what we have done is replace the old clause 1 with a new clause 1, and thus a new section 67. I think we all may need to wrap our heads around that new reality, that this is in fact what we're talking about now.

I have Ms. Crowder and then Mr. Bruinooge.

Ms. Jean Crowder: Thanks, Mr. Chair. There are a couple of points I'd like to make. I too will not be supporting Mr. Bruinooge's motion.

Under the normal course of events, I think committees take the time required to consider a matter that's before them, particularly a matter that is so fundamental to how communities will operate. And to suggest that an arbitrary time limit needs to be placed for reasons that are not clear makes one wonder what the agenda truly is.

Certainly the New Democrats support the repeal of section 67. We've heard from a number of witnesses from across the country, from other parties, that they support the repeal of section 67. But people are rightfully concerned about the potential impact.

A number of times at this committee we've talked about the former Bill C-31 from 1985 and the continued consequences that have rolled out from that bill. In fact, as a result of that decision in British Columbia, we've seen a recent B.C. Supreme Court decision on Sharon McIvor that had to do with women's rights in the community and membership and subsequent government actions. So I am not clear on why we would agree to limit debate on this matter.

We know that the government will come to the table in the spirit of cooperation when it suits them. On Bill C-30, the minister, when he was making that announcement, said: The diligence, collaboration and shared insight demonstrated by the task force were instrumental factors in bringing this legislation to life. These qualities also serve as a vivid example of the productive and collaborative attitude that we must all share to ensure the success of a new approach to resolve specific claims.

If I may, I will quote National Chief Phil Fontaine, who said: The AFN is very pleased with the process that was followed in the development of this legislation. It is apparent that when there is a political will, we can always find ways to resolve our differences.

I think the spirit of cooperation and collaboration that was used in Bill C-30 would serve us well under Bill C-21. I would suggest that with that same kind of spirit and will we could fairly quickly resolve

our differences around Bill C-21 if people would come to the table with that collaborative process.

My last point is that although my proposed amendment has passed, my understanding of the reason it was ruled out of order initially by the chair was based on advice from legislative counsel. I guess my question to the legislative clerk, through the chair, would be this.

If this amendment proceeds and is reported back to the House in its current form, what is the likelihood of it being ruled out of order on the floor by the Speaker? And if that's the case, what happens to any subsequent amendments proposed at this committee?

• (1550)

The Chair: Thank you, Ms. Crowder.

I'll answer your last question first. As you say, when you brought forward this amendment at the last meeting, I ruled it was inadmissible because it went beyond the scope of the bill. That was on the advice of the legislative clerk and others. I made that point at that time, and the committee in its wisdom chose to override that decision. That's why it was on the floor.

It is my understanding that if Bill C-21 goes to the floor of the House of Commons, and if a member challenges on the basis of the chair's ruling, the Speaker will then rule as to the admissibility of amendment one, NDP-1. The procedural and legislative experts who will be advising the Speaker are the same people who advised me that it was inadmissible.

So there are two things. First of all, to answer your question, I suspect that the advice the Speaker of the House receives will be the same as the advice I received, given the facts haven't changed and if the advisors are the same people.

As you know, neither the chair of the committee nor the Speaker of the House are necessarily bound by the advice they receive. Ultimately, it is the decision of the chair of the committee or the Speaker of the House. So I don't think we can necessarily presume what the Speaker will do.

Therefore, to consider what the ramifications might be if the Speaker of the House were to overturn that ruling is a great question. I just don't think it's possible to answer it. I point out, with all due respect to my colleagues on the committee, that it was as a result of a majority of members of the committee that we have gone down this road, when the decision was made to overturn the ruling of the chair.

Before I go to Mr. Bruinooge, I just want to clarify once again... because I think this is important, and I'm hearing it in the language again.

If you look at Bill C-21, clause 1 is very short. In the bill as proposed, it says that section 67 of the Canadian Human Rights Act is repealed—period. That is the entire clause.

NDP-1 says that section 67 is replaced by what follows in the amendment.

So we have essentially changed the basic nature of this bill, from one that repeals section 67 to one that takes the current section 67 and replaces it with another one.

Given that the committee in its wisdom chose to overturn the ruling of the chair in terms of the admissibility of NDP-1, and subsequently, given that the majority of members of the committee in their wisdom chose to vote in favour of NDP-1, for the balance of these hearings we must proceed on the basis of what has been decided so far—namely, that we are replacing clause 1 with NDP-1.

As I said earlier, we had this conversation this morning, when I spoke with the legislative clerk, that if this passes it ripples through the following amendments that are going to be brought forward. So the nature of the discussion we are going to have about some of the upcoming amendments will be quite different from what it would have been if this had not been adopted by the committee.

Mr. Bruinooge.

• (1555)

Mr. Rod Bruinooge: Thank you, Mr. Chair.

I just want to address a few of the positions put forward by both Ms. Crowder and Madam Neville.

In relation to Madam Neville, she referred to the word “ideology”. I prefer “philosophy”. And yes, philosophically, I do have very strong positions on this bill. That's why I have been advocating so strongly for our position.

I sleep quite easily at night, and I'm sure she does as well, but nonetheless we have different opinions.

Madam Crowder asked what good reason we had to call for a limitation to this debate. But I think going through the evening isn't necessarily a limitation. There are multiple hours tonight hopefully to take care of this.

The reason I put this motion forward is because of the fact that it seems, just based on much of the rhetoric heard in our chambers that we reside in here in Ottawa, that various political parties are suggesting that there's going to be an election in the very short term, as soon as we arrive back.

I'd very much like to see this passed and hopefully sent to the Senate. Perhaps there's a way that we could maybe repeal section 67 before the next election.

That is my goal, and that is why we asked for a limitation of time. Of course, we might not be here next Thursday, which is the next scheduled time to debate this. On Tuesday we have another scheduled meeting on behalf of Mr. Lévesque.

So that is the reason I put forward this motion. Hopefully it will pass, but based on what I've heard, I don't imagine it's going to. Nonetheless, I think my reasons are valid.

The Chair: Further on Mr. Bruinooge's motion, I have Mr. Albrecht, Mr. Warkentin and Monsieur Lévesque.

Mr. Harold Albrecht: Thank you, Mr. Chair.

I just wanted to comment on the statement that Ms. Crowder made earlier when she said that the NDP supports the repeal of section 67.

Mr. Chair, you've already clarified that the action we've taken effectively takes that argument out of our hands right now because we're dealing with a bill that has been replaced.

I think it is incumbent upon us to move expeditiously on this issue. We know it has been 30 years that this issue has been a temporary measure, that section 67 has been there, and it's time that we act on it.

The other point is with regard to delaying this. I want to go back to a statement that Ms. Crowder made in our last meeting, where she indicated that the Canadian Human Rights Commission had actually asked us to include an interpretive clause.

I know that I'm going to have to tie this together to the current motion, but it relates to delay.

What in fact was said at that meeting—I'll quote directly from the meeting in April 2007—was the following:

While many agree on the need for an interpretative provision there are differences on how this should be achieved. Some have suggested that an interpretative provision be added to Bill C-44. In our special report on section 67, A Matter of Rights, the Commission recommends that an interpretative provision be developed post repeal in dialogue with First Nations, to allow for needed dialogue, analysis, and consideration to take place without unduly delaying repeal.

The point that I want to make very clear is that she was very concerned, because at the end of that sentence she says that this should take place “without unduly delaying repeal”. Again we're coming back to the matter of delay.

She went on to say, further down, that having this interpretive clause included in section 67 might actually indirectly reinstate the very effects that the repeal is intended to relieve.

So on two counts, we have obvious reasons to move ahead in terms of making this decision. I think it's incumbent upon us to sit late tonight and get this matter resolved as quickly as possible.

• (1600)

The Chair: Thank you.

Mr. Warkentin.

Mr. Chris Warkentin: Further to the submission that was brought forward by the Canadian Human Rights Commission, in the implementation of an interpretative provision, of which...and Ms. Crowder is correct, they did recommend.... But they specifically said, under the implementation of this, “Therefore, the Commission recommends a two-step process. First, repeal section 67 immediately.”

As far as I'm concerned, if we were to follow the recommendation, as Ms. Crowder has suggested we do, tonight would be in line with the recommendation of “immediately”. Then they go on to the second process that should be initiated.

There are very specific recommendations. I know there has been a lot of talk about what the Canadian Human Rights Commission...and we may debate whether an interpretive clause is necessary or not, but if we use them as an argument, they specifically spelled out that the repeal should happen immediately.

The Chair: Thank you.

Monsieur Lévesque.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Thank you, Mr. Chair.

I am going to show our colours right away, just as we have done previously. The Bloc Québécois is here with the goal of representing the interests of all Quebecers, whether they be First Nations or not.

The Assembly of First Nations of Quebec and Labrador has come out strongly against Bill C-21 which reproduces Bill C-44 word for word. Discussions on Bill C-44 had been suspended in order to allow the government to consult First Nations. All stakeholders asked for this, except one. Ten months were allowed. Instead of holding the consultations, the government called together the committee again in an attempt to break that motion that has been confirmed not once, but twice.

Now they come to us with Bill C-21. Even if the government were to do a complete about-face tomorrow and offer all of Canada to the First Nations, we would say no, because First Nations have not been consulted. Under section 35 of the Human Rights Commission, there is a commitment to consult First Nations.

When the Human Rights Act was put into effect, a section was included requiring consultation with people. This is also why section 67 has been put on hold as First Nations wait to be consulted before the act is changed completely, which has never been done.

For this reason, the Bloc will be voting against.

[*English*]

The Chair: Thank you, Mr. Lévesque.

Ms. Crowder is next.

Again, I remind members of the committee that Bill C-21, as now amended, does not contemplate the abolition of section 67. We're beyond that now. We're not talking about a bill that says it is going to repeal section 67. What we are now talking about is a bill in which section 67 is replaced with the body of NDP-1. That is a significant difference. I think we all need to reorient.

We can have the question when those who are on the list have spoken. At this point I have Ms. Crowder and Ms. Karetak-Lindell.

Ms. Crowder.

Ms. Jean Crowder: Thanks, Mr. Chair.

Since my colleagues opposite raised the issue about the immediate repeal and an interpretative clause, I think it's predicated on whether people feel that there's bargaining in good faith. Given our experience on this committee, it's difficult to feel that if we were to agree to go ahead with the bill as it stands without the amendment—and I know we're beyond that—that the steps that were outlined in the Canadian Human Rights Commission would actually be put in place.

We've had two motions at this committee that in the past have called for consultation, which the government has chosen to ignore. We now have the government attempting to again limit debate on this tonight. They called us back in the middle of the summer after the committee had clearly signalled that they wanted a consultative process that the government didn't implement.

I can only speak for myself, but that's why we feel it's important that the bill includes the elements that offer some form of protection to the collective and individual rights that first nations came to the committee with and spoke so eloquently about. I find it very difficult to support the motion that says we will sit tonight and finish the business when we haven't had some of those pieces of information that the majority of the committee previously asked for.

I want to reiterate my position that I won't be supporting this motion.

•(1605)

The Chair: Thank you, Ms. Crowder.

I'm not suggesting whether we should or should not support Mr. Bruinooge's motion. All I'm saying is that, if we did, and if this was finished tonight, what would be finished tonight would be this bill in the currently amended form, which does not repeal section 67. I think that we've crossed that bridge.

Again, this is not to suggest a course of action to anybody, but for those who adamantly support NDP-1, in some ways you would think they would be the ones most in a hurry to get this finished, because now the bill reflects what they actually want.

Anyway, I leave it to the committee members to decide whether they will support Mr. Bruinooge or not.

Ms. Karetak-Lindell.

Ms. Nancy Karetak-Lindell (Nunavut, Lib.): Thank you.

I have more of a procedural question. I'm looking at the motion by Mr. Rod Bruinooge in relation to the committee stage of Bill C-21, and as you just reminded us, it is now a very different-looking Bill C-21. But he knew that would be the case before he put this motion through, so you can't really blame the opposition at this point, because he knew he was outnumbered.

I want to go back to procedure, and I want a clarification. I came in a few minutes late, so I apologize. You had just suspended to review something. My understanding is that Ms. Crowder wanted unanimous consent to withdraw her amendment NDP-1. Am I correct?

The Chair: That is correct. That was her request when we started.

Ms. Nancy Karetak-Lindell: Okay. My understanding is that every member on this side—and there are seven of us—had no objection.

The Chair: We did not have a recorded vote. There were people who said no—

Ms. Nancy Karetak-Lindell: No, but you asked for unanimous consent.

The Chair: And we didn't get it.

Ms. Nancy Karetak-Lindell: So somebody must have said no.

The Chair: That's correct.

Ms. Nancy Karetak-Lindell: *We* didn't, so I'm asking, who said no?

An hon. member: We did.

The Chair: Well, I heard somebody say no. There was no request at that time for a recorded vote.

Ms. Nancy Karetak-Lindell: Rod Bruinooge said, "We did", which answers my question.

So now I'm really confused, because he's the one who's been fighting NDP-1 all this time. But now he didn't give unanimous consent when the mover wanted to withdraw the motion.

I'm having a really hard time understanding.

The Chair: I'm not in a position to explain the strategies or the tactics of anybody who's sitting at this table—

Ms. Nancy Karetak-Lindell: No, I'm just asking procedural questions.

The Chair: Procedurally it is my understanding, or I was advised by the legislative clerk, that in order for NDP-1 to be withdrawn, it would require unanimous consent. There was no unanimous consent. I heard somebody say no. There was no request for a recorded vote. I don't know how many people were unwilling to give unanimous consent or who they were.

Subsequent to that, we called the question. Those members who were on the list stood aside and everyone agreed that the question would come forward. There was a recorded vote, and at that time NDP-1 passed.

To my knowledge, there's no procedural problem with what happened. If members of the committee, as I say, question each other's decisions, that's an open question. But procedurally, the offer to withdraw did not receive unanimous consent. The question was put forward, all members of the committee voted, and the motion was passed. That is where we stand.

At this point, we are supposed to be discussing only Mr. Bruinooge's notice of motion in terms of extending hearings. I've heard from several members around the table. As you all know, you all have the right to speak ad nauseam on this issue, but we could also just call the question.

You can speak; I'm just saying we're speaking on Mr. Bruinooge's motion. Unless you have further questions on procedure, I think how we've landed here, while unusual, is appropriate.

• (1610)

Ms. Nancy Karetak-Lindell: I am speaking on procedure.

Mr. Bruinooge just admitted that he said no to unanimous consent. I want that on the record.

The Chair: It's on the record.

Ms. Nancy Karetak-Lindell: Mr. Bruinooge said no to unanimous consent. If he had not said no, we wouldn't have voted on NDP-1.

The Chair: Well, we don't know that, because we don't know whether there might have been other committee members who said no.

Ms. Nancy Karetak-Lindell: Can I finish?

The Chair: Yes.

Ms. Nancy Karetak-Lindell: I'm having a really difficult time here. As much as Mr. Bruinooge has said that he wanted to continue discussing Bill C-21 and he did not support NDP-1, now he's on record as saying that he didn't want it withdrawn, which would have been the end of NDP-1, most likely—

Mr. Chris Warkentin: On a point of clarification, if all members had voted against the motion, would it have passed?

The Chair: No, I—

Order.

Mr. Chris Warkentin: So the member currently, I think, is looking for just a clarification as to how she could have had it removed. If she had, along with her members—

Ms. Nancy Karetak-Lindell: I know what I'm trying to say. You don't have to say it for me.

The Chair: Ms. Karetak-Lindell, you're correct in that if unanimous consent had been given, it would have been withdrawn. That would have been the end of it.

There's a second way that it could have been disposed of, and that is, when the vote was called, if a majority of committee members who were voting had voted against it.

So there were two ways that this could have been disposed of.

Ms. Nancy Karetak-Lindell: But I have sat on that side, and been in minority government. I just want to say that if an opposition member wanted to withdraw an amendment, I would have accepted it and given her flowers afterwards.

Some hon. members: Oh, oh!

Ms. Nancy Karetak-Lindell: So for them to then go to the next step and try to accuse us of changing Bill C-21 is not fair, because they had their chance to get amendment NDP-1 done and dealt with. I didn't see anyone on our side saying no to unanimous consent. That's the point I wanted to make.

For him to then go to this motion to consider the new Bill C-21 is, I think, bad judgment on his part.

That's all I wanted to say.

The Chair: All right, thank you.

I'd just point out that the notice of motion from Mr. Bruinooge was put forward well before Ms. Crowder made the offer to withdraw. So this wasn't something that arose after.

Ms. Nancy Karetak-Lindell: Procedurally, though, he could have withdrawn it once he saw that it was now a different Bill C-21.

So I just want to make those points, because I don't want people across the way accusing us of changing Bill C-21 and then continuing to debate it. They had a great opportunity and they blew it. As Anita was saying before, they keep blowing opportunities to get a piece of legislation that people support because they worked with the government to get legislation that they feel they're part of.

I've said before—I've said it to Mr. Prentice, and I'll keep saying it to every minister of Indian Affairs—that you cannot keep making legislation that affects a group of people that doesn't involve the people whose lives are going to be affected. Going back to the words that Anita used, you can't think you know best to make laws about people when you haven't walked in those shoes and you don't involve the people whose lives are going to be affected.

• (1615)

The Chair: Thank you.

I have Mr. Bruinooge next, and then Mr. Albrecht.

Mr. Rod Bruinooge: I was simply going to call for the question again. Clearly the opposition members have suggested where they stand on this motion.

The Chair: Mr. Albrecht.

Mr. Harold Albrecht: Call the question.

The Chair: Ms. Neville.

Hon. Anita Neville: I have a question, Mr. Chair, and it's really a process question.

You're right, the passage of amendment NDP-1 fundamentally changes the bill.

There are two things. I wonder whether the legislative clerk can in fact give us advice in terms of subsequent motions, how they would play into the bill. As well, should this bill go forward to the House in its amended fashion, and should it be ruled out of order by the Speaker, what then happens? Is it referred back to committee? What is the process? What is the procedure?

The Chair: You've asked a couple of questions.

In terms of the fact that amendment NDP-1 has significantly changed Bill C-21, the question of admissibility or even relevance of subsequent amendments is a question that I have asked the legislative clerk, because obviously he has provided me with advice on the basis of Bill C-21 as it was, not Bill C-21 as it now is.

I'm in a bit of a catch-22 here. I can't really discuss other amendments until they're actually on the floor. But it is my understanding that the issue of admissibility of an amendment is based on the essential character of the bill as it was proposed, not as it has been amended. So the advice that I have received in terms of the admissibility of some of the other potential amendments will not change as a result of the change to the adoption of amendment NDP-1. That is the first thing.

As to the second question, regardless of what else happens subsequently with the other amendments, when this bill gets reported back to the House, if at that time it is challenged and if at that time the Speaker decides to uphold the ruling of the chair, which is that amendment NDP-1 is in fact inadmissible, then it is my understanding that amendment NDP-1 is reversed, is taken out of the bill,

and the bill does not come back to committee but then goes forward to be dealt with by the House in that form.

Hon. Anita Neville: May I ask a further question, then?

You have received advice on the admissibility of the other amendments that have been brought forward. Is that correct?

The Chair: That's correct.

Hon. Anita Neville: Are you prepared to share that advice with us at this time?

The Chair: It's my understanding that the members of the committee who have put forward amendments have the right to ask the legislative clerk whether he or she feels that their amendment is in order or not. That advice has been provided to me on all of them, but I remind the committee that I'm not required to abide by that advice, and that, in fact, you could imagine a situation where the clerk advises me that something is inadmissible but the chair disagrees and actually allows it to go forward, or the reverse could also happen.

So as I said, if whoever has put the amendment forward wishes to ask the clerk whether in his opinion it's admissible or not, he will give that to you, but that doesn't necessarily mean that's the way I will rule.

• (1620)

Hon. Anita Neville: The information that we will need now is whether the subsequent amendments that are put forward are admissible within the context of amendment NDP-1 having been passed.

The Chair: I am told that the advice that was provided by the legislative clerk will not change on the subsequent amendments on the basis of what has already happened, but that does not necessarily mean that the chair cannot change.

Hon. Anita Neville: I'm just trying to absorb this.

What you're saying is that the clerk may have given you advice but you may choose not to take his advice.

The Chair: That's the first point, yes.

The second point is that when one amendment passes, I have asked the clerk whether his advice may change in terms of admissibility as a consequence of that, and he has told me, no, his advice will not change, because his advice is based on the original bill and he does not give advice on the basis of the admissibility of a subsequent amendment due to the adoption of a previous amendment.

That was what I was whispering to him about a few minutes ago, trying to get that clarified, although you can easily imagine a situation where it would be relevant information.

Hon. Anita Neville: Yes.

Thank you. I just have to think.

The Chair: Again, I'll just remind members, and then I'll go to Ms. Crowder, that those are all good and relevant questions, but we've gone a little afield from Mr. Bruinooge's motion.

Ms. Crowder.

Ms. Jean Crowder: Thanks, Mr. Chair.

You can't pull them apart—that's the problem with it now—because the amendment....

I was quite surprised to see that the Conservatives did not support the withdrawal of my amendment—

Mr. Rod Bruinooge: No, we didn't support the amendment.

Ms. Jean Crowder: You did not provide consent for me to withdraw the amendment. Right?

So we now are in a position where we have an amendment that has passed that....

I would suggest that what we probably need to do at this point is suspend so that we can review the amendments in light of the amendment that passed, because there may be further amendments that are required. There may be amendments that we have submitted that we are going to need to get advice on that no longer fit within the amendment that was passed.

I'm not sure how we can proceed, given what we have in front of us at this point in time, without some further advice and guidance.

The Chair: I have two comments.

First, in terms of process, as the chair I can only presume that all members of the committee are acting in good faith whenever they make a decision or vote on something.

In this case I could be referring to the decision at our last meeting to overturn the chair's ruling, or I could be referring to the member seeking unanimous consent to withdraw the motion, or I could be referring to the vote that was actually taken on NDP-1. I must proceed on that basis, that people are acting in good faith.

In terms of what this means, I think there are a couple of things. I would suggest to members of the committee that you do have enough information to vote on Mr. Bruinooge's motion. I think that once that is dealt with one way or the other, then the question becomes whether the committee members who previously put motions forward want to actually move them. As you know, even though we have the package of proposed amendments, they're not actually in play until the proponent actually moves them and puts them on the floor and there would be some discussion.

I know that some of the amendments that have been put forward deal with other parts of the bill and we may in fact be able to deal with those. So I'm certainly not willing to suspend this meeting before we deal with Mr. Bruinooge's motion because I don't think it's necessary after the fact. We're 45 minutes from being finished here.

At that point, I guess we'll see whether any of the members who have put forward amendments are comfortable putting them forward. They don't necessarily have to be in the order with which they were assembled by the staff, and we'll try to get through as much as we can. I suspect that we won't get through it all today and that there will be ample time for all members to consider the consequences of the decisions that have been made today and what's the best way to proceed.

Are there any other...?

Ms. Crowder.

●(1625)

Ms. Jean Crowder: I would like to make a comment about your comment about good faith. I certainly want to assure my colleagues that the amendments that I put forward were absolutely put forward in good faith.

My request to challenge the ruling of the chair at our previous meeting was based exactly on the kinds of things that you talked about today, that the chair, he or she, can actually not take the advice of the legislative clerk and determine that something is admissible, even though the advice has been that it is not. We know that there is a fallibility around the decision-making process.

After the debate that we had on Tuesday and with some subsequent information that I received, that's why in good faith I came back to the committee today to request withdrawal of my amendment, because after hearing the conversation and comments, I felt that there were other amendments that were far more appropriate than the one I had put forward.

However, with the lack of unanimous consent to withdraw the motion, we were then put in the position that we had to vote on it. Since I do think that there is merit in the motion, the amendment that I originally put forward, I could do nothing but support it.

I believe we are in a bit of a pickle, though, because—you're right—we don't have to consider these other amendments, but now that this one has passed, I would suggest that there is other work we need to do in light of this first amendment that has been passed.

The Chair: I will respond to that briefly, and then hopefully we can move on.

I hope that members will recall that at the beginning of the last meeting, before we started our clause-by-clause, I gave a quick explanation of how, as the chair, I was going to proceed in terms of my management style for clause-by-clause.

I said at that time that I had sought advice from several sources on the admissibility of some of the amendments that were put forward. On some of them I received an almost unanimous opinion on one side or the other, and on others I received mixed opinions. That's why I said at that time that my approach would be that if I was convinced that the amendment was admissible, I would permit it. If I had either been convinced that it was inadmissible or had been given strong arguments and was undecided, then I would consider it inadmissible, recognizing that the committee has the right and the opportunity to overturn that and to proceed anyway.

That was the way I had approached NDP-1, and that's the way I'll continue to deal with this. In terms of going forward, I still believe that if we can deal with Mr. Bruinooge's motion, then rather than taking a categorical position that there are none of these other amendments that we can talk about in light of this until we have had time to digest the actions that have been taken by the committee, I would like to make an effort to go forward. If we get to the point where the committee agrees that we need to suspend because we can't go forward, then we'll deal with that at that time, but I don't want to presume this before we start that process.

Mr. Russell.

●(1630)

Mr. Todd Russell: Thank you, Mr. Chair.

By the way, I must commend you on your chairmanship thus far. Through some very complex issues, you have been clear certainly to me, and that is certainly appreciated. I thank you for that.

I am voting against this particular motion that Mr. Bruinooge is putting forward.

That might come as a shock to those on the opposite side of the committee table. I would just calm down a little if it hits you too hard. Take it gently, take it gently.

I certainly am going to vote against this particular motion. Basically it's a motion for closure, and there's a presumption in that particular motion that the committee is not diligently doing its work and moving forward in a methodical, thoughtful way. Therefore, certainly I would not be supportive of this particular motion. We're doing what we're supposed to do as a committee, and we will continue to do what we're supposed to do as a committee, which is to seriously consider legislation that comes before us and to propose amendments where we see fit and to debate those amendments, and if there is a question on a particular amendment, then we vote one way or the other.

I would also make the comment that this particular motion, like so much of what the Conservative government has done thus far on this bill, is to propose a way forward that is going to be met with opposition. They're designing the process, in my view, even through this motion, that would see this particular bill fail. In fact, they have done this in terms of the first tabling of the bill without any consultation with any first nations leadership or any first nations organizations on the drafting of the bill, without the involvement or input of the people who are going to be most affected by it.

Then when the committee—by the vote of the committee, which should have been respected—said, “Listen, we have all summer, now with the break in June, for you to consult with aboriginal people, to listen to the voice of aboriginal people, and to give that voice expression in terms of the legislation”....

Remember, this is not something totally foreign. The government had just recently decided to consult on Bill C-30, the specific claims act.

So why has the government chosen in this particular instance not to consult, not to collaborate, in the drafting of this legislation, but has chosen to collaborate on another piece of legislation when they knew the obstacle was there already? They knew the obstacle was there back in June, May—let's go back to April, March. If you go back in time, it was there. But what happened? We even prorogued. Legislation went out. They came back with virtually the same bloody bill, understanding that these obstacles were still there.

So in terms of the motion, they're designing the motion for it to fail. They're designing the process to fail. It is only for some political gamesmanship. That's exactly what's happening here.

I do question at times, and I think rightfully so, the motive behind the approach that the government is taking in terms of whether they really want to see the bill repealed at all, or whether they're just

putting it forward as some symbolic move that they know will never happen because they're designing the process to fail.

I would say that for those reasons we will continue our work as a committee in the way that we have carried it out for the last number of weeks and months on this particular piece of legislation, and I would vote against the motion that Mr. Bruinooge has put forward.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Russell, and thank you for the kind words. I hope they're not premature.

At this point I have no other speakers on the list, so I would like to call the question on Mr. Bruinooge's motion.

●(1635)

Mr. Rod Bruinooge: Can we have a recorded vote?

The Chair: Yes.

(Motion negatived: nays 7; yeas 4)

The Chair: We are back on clause 1.

Shall clause 1 carry as amended?

Mr. Rod Bruinooge: Yes, on division—

Hon. Anita Neville: Mr. Chair, could we have a two-minute break at this point, please?

The Chair: Yes, you can.

I'll suspend for two minutes.

●(1635)

_____ (Pause) _____

●(1645)

The Chair: I would ask members to go back to their seats. I have some information for you.

As some of you may have noticed, clause 1 is the essence of this bill, so our next step in the process is to ask if clause 1 shall carry as amended. Okay? That's the vote I'm going to take care of in a minute. But I just want to explain what the options are, as we have some advice to offer in terms of what the subsequent options might be.

Obviously, if the committee chooses to vote in favour of clause 1 as amended, then clause 1 will be as amended, and we will proceed to other amendments in the manner we were speaking of a few minutes ago. If clause 1 as amended is defeated, then there will be no clause 1 at all in what we report back to the House, as clause 1 will have been eliminated. While some of you might say that doesn't make any sense substantively, that's the way that it works procedurally. At that point, the government may seek to restore clause 1 in its original form, not in the amended form.

If you want a decision tree, the committee is about to vote on clause 1 as amended; and if clause 1 as amended carries, then NDP-1 replaces clause 1 of the bill, as it was presented to us, and we would carry forward with all of the complications that would entail. If clause 1 as amended is actually defeated and does not carry, then the bill we are discussing will not have a clause 1. At clause 1 the bill will just say that clause 1 has been deleted, which will bring its own set of complications in terms of how we deal with subsequent amendments. But that's what will happen.

If, in the second case, the committee decides to overturn clause 1, and this goes back to the House without clause 1, then at that point the government does have the opportunity to bring forward, or attempt to restore, clause 1 as originally written, and it would be voted on. But I would point out that would be the initial version, not the amended version. A motion to restore clause 1 in its original form would be both debatable and amendable in the House; so conceivably, at that point, the House could choose to pass it or to amend it.

Ms. Neville was first, and then Mr. Russell.

•(1650)

Hon. Anita Neville: You just answered my question.

The Chair: Okay.

Mr. Russell.

Mr. Todd Russell: In the eventuality there's a motion to bring clause 1 back and it's debatable and votable in the House, does it then go back to the committee, or does it stay in the House?

The Chair: It stays in the House.

Mr. Todd Russell: As a further question, there are other amendments here that talk about clause 1; but if the above eventuality takes place, then the other amendments would basically be useless, because there would be no clause 1 to amend.

Is that right?

The Chair: I'm not sure "useless" is the right word—"disconnected", certainly.

Mr. Todd Russell: As I see it, there are some other amendments that talk about clause 1, right? There are other amendments dealing with clause 1, but if this vote happened, and clause 1 as amended did not pass, would clause 1 already have been deleted at that particular point?

The Chair: If, in the vote we're about to take, clause 1 as amended does not carry, then from that point forward we will be considering a bill that does not have a clause 1; it will just say, clause 1 is deleted.

Now, I don't want to go too far down the road of hypotheticals, because each step has several options and it quickly becomes a very large tree of options. I guess that's not to say one of the other amendments we are about to consider might in itself reintroduce some meaning back into the bill—if that makes any sense.

Ms. Karetak-Lindell, and then Ms. Keeper.

Ms. Nancy Karetak-Lindell: I guess it's more hypothetical, but I wanted to know, if we are able to do amendments in the House, are those then bound by the same rules—they cannot be substantive

amendments and would be subject to being the same types of amendments that are allowed in committee?

The Chair: Yes, it's my understanding that the rules are the same. I guess the only difference would be that if the House considered an amendment and there was a question of admissibility, the Speaker would rule on that at that time and it would immediately be dealt with.

Part of our problem is that we have to go through five steps to find out whether what we did on the first step is admissible or not, whereas when this is in the House, if there's an issue with admissibility, the Speaker is the arbiter of that. So if the Speaker rules it inadmissible, it is. I don't think the House can vote to overturn the ruling of the Speaker. The Speaker's ruling would be final, and then you could proceed with subsequent discussion.

Ms. Keeper.

Ms. Tina Keeper (Churchill, Lib.): Thank you, Mr. Chair. You are doing an excellent job.

If he does rule, would the subsequent discussion then take place back at committee?

The Chair: No.

Ms. Tina Keeper: No, it would take place in the House. Would that be on the bill in its entirety?

•(1655)

The Chair: It's my understanding that the bill has been referred to committee, the committee will go through its process, and when the bill is returned to the House, the House will deal with it. But it will not, in any case, be returned to the committee.

Ms. Tina Keeper: But in the case that the amended clause is defeated, then we have no clause, right?

The Chair: Correct, no clause 1.

Ms. Tina Keeper: Then the government could possibly seek to restore clause 1, right?

The Chair: Correct.

Ms. Tina Keeper: And then, if it did so, it would come back to this committee?

The Chair: No.

Ms. Tina Keeper: No. That's the point at which it would be in the House.

The Chair: It would be in the House, but it would be...sorry.

If this committee votes to delete clause 1 and it goes back to the House, and the government chooses to reintroduce clause 1 as it was originally stated, that would lead to a debate in the House, where there is debate and the opportunity to amend it. Okay?

Ms. Tina Keeper: The bill?

The Chair: Yes, to amend the bill at that point. At that point it could reintroduce amendment NDP-1, it could put anything in there at that time. I mean, people can bring forward amendments in the House in the same way that members of this committee can bring forward amendments.

The critical difference at that point would be that if there was a question of admissibility—

Ms. Tina Keeper: The Speaker would rule on all of those amendments.

The Chair: —the Speaker would be able to rule on it. And if it was inadmissible, then it would just be inadmissible, and they would carry on from there. We wouldn't get into this situation that this committee possibly is going to find itself in, that we would be discussing subsequent amendments, not sure whether the first amendment that has been made is actually in order or not.

Ms. Tina Keeper: Thank you.

The Chair: Sorry, I'm losing track here.

Mr. Bruinooge.

Mr. Rod Bruinooge: I understand the predicament we're in. However, I think this can be quickly settled by a vote. So again, I would ask that we get the chance to go further with some of the other debate that we have. We've already voted down my motion to extend hours. I'd prefer to have the opportunity at least to get into amendment NDP-2, to begin that debate today, as we have only one more day before Christmas to work on Bill C-21.

I would just ask members to call the question on this.

The Chair: Ms. Crowder.

Ms. Jean Crowder: I'll defer to Mr. Russell.

The Chair: Actually, sorry, Ms. Neville was next on the list.

Hon. Anita Neville: Mr. Chair, I'm having a really hard time voting on clause 1 without understanding the implications of subsequent amendments that are put should clause 1 pass, fail, whatever.

I don't know whether it is appropriate to ask either Ms. Hurley or the legislative clerk or whomever that, before we do this kind of vote, we understand the implications of subsequent amendments that have been put forward by the government, by any other party here, on an amended clause 1.

The Chair: I can respond to that.

I totally understand what you're asking. My answer is that I cannot presume which of the amendments that have been placed before us will actually be moved by the committee member who brought them forward, and whether some of them will be moved or not. The second layer in this decision tree is that some of those motions may be ruled inadmissible, and if they are ruled as inadmissible, they may drop away, or if the committee again decides to challenge the ruling

of the chair and overturn that ruling, then we'll have a second go-round of this.

We're discussing something that may in fact be inadmissible in the first place. There are 14 amendments, and we're still dealing with the first one. I believe it's impossible to try to identify what is going to happen two or three steps down the road, because there are so many options at each step.

Hon. Anita Neville: Can I continue?

You have been very fair and forthright, and I do thank you.

I feel like right now we're driving with our eyes closed, and I don't like doing that. What we're doing here is important—it's important for everybody—and I think it's important that we have some kind of understanding.

I respect what you're saying, and perhaps this is not the place to do it. Perhaps what's needed is an informal meeting, either as a group with the legislative clerk or individually with the legislative clerk and you, to try to sort our way through it.

I think we've made some errors along the way already. In a mood of...I was going to use the word "reconciliation", but I'm not sure that's the right one. In an effort of cooperation to try to move this forward, respecting the fact that we have very profound differences on this bill in terms of the process—not the substantive, but the process—I would like to suggest that perhaps we adjourn at this point and reconvene an informal meeting or...however, I leave it to your discretion in consultation.

That way we know what we're doing. I don't like driving with my eyes closed.

• (1700)

The Chair: Could I have one moment, please?

I have been advised that while I have called the question on clause 1, that would not preclude someone from making a motion of adjournment at this point. That motion is not debatable. It would require a majority but not an unanimous vote in favour of.

Ms. Neville has moved a motion of adjournment.

(Motion agreed to)

The Chair: The meeting is adjourned.

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