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Chair

Mr. Leon Benoit

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● (0905)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good morning, everyone. We're here today, as you all know, to continue clause-by-clause of Bill C-5, An Act respecting civil liability and compensation for damage in case of a nuclear incident.

We have with us the officials, the same as the last meeting, Brenda MacKenzie, David McCauley, and Jacques Hénault. We will continue by resuming debate on clause 8.

Is there any further debate on clause 8 before we go to the vote on that clause?

I'll just give you a few seconds to take a look at that again and remind yourselves.

I'll call the vote on clauses 8 to 11.

(Clauses 8 to 11 inclusive agreed to)

(On clause 12—*No recourse*)

The Chair: Yes, Mr. Ouellet.

[*Translation*]

Mr. Christian Ouellet (Brome—Missisquoi, BQ): Mr. Chair, in clause 12, it says *Editorial note: technical difficulties* and "accident nucléaire" without saying what an "incident nucléaire" is. "Accident nucléaire" is defined at the beginning, but "incident nucléaire" is not defined anywhere.

[*English*]

The Chair: Could you please repeat that, Mr. Ouellet? The interpreter didn't catch it. Right into the microphone, please.

[*Translation*]

Mr. Christian Ouellet: Sure. In clause 12, mention is made of an "incident nucléaire", but everywhere else the words "accident nucléaire" are used. The "accident nucléaire" is defined at the start of the bill, but "incident" is not. We do not know what an "incident nucléaire" is.

[*English*]

The Chair: You've heard the comment. Would anyone at the table like to comment on that?

Ms. MacKenzie.

Ms. Brenda MacKenzie (Senior Counsel, Environment Canada, Department of Justice Canada): Yes, the English term "nuclear incident" is in French *"accident nucléaire"*. The drafters inform me that the term *"incident nucléaire" décrit un événement qui n'est pas aussi grave qu'un accident. On a donc choisi le mot "accident".*

[*Translation*]

Mr. Christian Ouellet: The word "incident" has been removed, it no longer exists.

Ms. Brenda MacKenzie: "Incident nucléaire" no longer exists in the French text.

Mr. Christian Ouellet: OK, thank you.

Ms. Brenda MacKenzie: It is "accident nucléaire".

[*English*]

The Chair: Mr. Ouellet, you've heard the explanation. Are you satisfied with that?

Are there any further comments on clause 12?

(Clauses 12 and 13 agreed to)

(On clause 14—*Psychological trauma*)

The Chair: Mr. Bevington.

Mr. Dennis Bevington (Western Arctic, NDP): On line 19, I'd like to replace the word "may" with "shall".

The Chair: Could we get that again, please, Mr. Bevington?

Mr. Dennis Bevington: Yes. On page 5, line 19, I'd like to replace "may" with "shall". It would be, "Psychological trauma suffered by a person shall be compensated".

The Chair: Mr. Bevington has moved an amendment.

Are there any comments from the officials on that?

● (0910)

Ms. Brenda MacKenzie: Generally, throughout clauses 13 to 20, the word "may" has been chosen. That is the choice of words throughout.

The Chair: Mr. Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Mr. Chair, I need a bit more information on what the difference is going to be with that. I think "may be compensated" leaves it open. I don't know what the implications are of the requirement to compensate; I'm sure they're fairly severe. If it were to say "shall", what does that require?

In terms of "may", it's pretty clear that if something happens, there may or may not be compensation, but to say "shall" means you have to. What does it mean in terms of determining what the damage is?

The Chair: I understand. I was hoping the officials would talk about that.

Mr. Dave McCauley (Acting Director, Uranium and Radioactive Waste Division, Department of Natural Resources): Our view is that there really is not much difference between the use of the term “may” or “shall” in the clause.

Ms. Brenda MacKenzie: Just to clarify, the word “may” is used because one would have to prove causation, that in fact the psychological damage resulted as a result of other loss. So “may” is used in the sense that it would have to be proved to the court that the facts existed.

The Chair: Okay.

We have a list here. Madame DeBellefeuille is next.

[*Translation*]

Mrs. Claude DeBellefeuille (Beauharnois—Salaberry, BQ): Mr. Chair, in the French text, the condition is first and foremost defined by the word "découle". I see it as more specific than the word "may" in English. So I would like to know which of the two is correct. In French, it says "if it results from" and then the conditions are listed. It is not "can" or "may", it really is "results from". In French, that seems quite clear.

I understand Mr. Bevington's question. I do not speak English, but I would be very interested to know which version is correct.

[*English*]

Ms. Brenda MacKenzie: Legally, the two versions are identical, and they were compared. The effect of the English and French versions is the same. But it is correct. As you say, it simply says that

[*Translation*]

"s'il découle de telle ou de telle situation, le préjudice est indemnisable."

[*English*]

In English, the fact that it “may” be compensated legally amounts to the same thing. The two versions have been compared, and they are identical. The sense is that if a succession of facts is proven, if the chain of causality is established, then this injury is to be compensated.

The Chair: Are you saying, Ms. MacKenzie, that taken with the rest of the language in the rest of the bill the “may be compensated” means they will be compensated?

Ms. Brenda MacKenzie: Correct. It means they will be compensated if these facts are proven.

The Chair: I have a list on this: Mr. Boshcoff, Mr. Bevington, Mr. Trost, Mr. St. Amand, and Mr. Alghabra. And then we'll see if we have need as we go on.

Mr. Boshcoff.

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): I believe the question is actually kind of fundamental. As Mr. Anderson alluded to, the onus of proof with the word “shall” means essentially that people are paid, and then it's up to, essentially, the government to confirm what the degree of loss was, as opposed to the normal situation of onus of proof, which would show that not only do you have to determine if there was a compensable loss, but the degree of the damage as well. Would you say that first?

The word “shall” confirms that there's going to be, one would say, an automatic payout, as opposed to determining the onus of proof that there was a compensable loss.

● (0915)

Ms. Brenda MacKenzie: Linguistically, it doesn't come out exactly the same in French, but the reason “may” was chosen in English is because we say that no loss is compensable except in accordance with the act. So then we come along in clauses 13 to 20 and say these things “may” be compensable. It is “may” in the grammatical sense, “may” in the sense that they are allowed to be compensated, which, unless it was stated in clauses 13 to 20, they could not be.

Mr. Ken Boshcoff: Right, which is why I believe that is the correct word, because all those factors have to come into play. If you use the word “shall”, it means that it's an automatic payout—basically, that the cheques are being written.

I'm also going to question, *en français, le mot « est »*, as opposed to “may”, which means indemnifiable, as opposed to “may be compensated”.

Ms. Brenda MacKenzie: Linguistically, the two versions come down to the same thing. It means that it is permitted for these types of damage to be compensated, and in both versions, obviously, the chain of causation would have to be proven. So linguistically it comes to the same thing.

Mr. Ken Boshcoff: Thank you very much.

The Chair: Could I just try it this way?

Could you point to any other legislation where these terms are used like this? Is it a very common thing in other legislation, and if so, would you happen to know of any specific legislation where these two terms in English and French are used?

Ms. Brenda MacKenzie: Certainly, and I could provide the committee with that information.

The Chair: Okay. That's helpful.

We still have a list.

Mr. Bevington.

Mr. Dennis Bevington: Thank you, Mr. Chair.

I'd like to speak to the issue of “shall” and “may”, because “may” is another point of decision. Within the body of the statement we have psychological trauma, which has to be approved or confirmed. Then we have, “may be compensated if it results from”.

Already you have a number of very clear conditions for the approval of compensation, and “may” is an additional point of law once you go through the conditions that are already within this particular section in proving the damage done. Here you have to prove the damage done, and then you “may” be compensated. We think it should be prove the damage done and you “shall” be compensated.

The Chair: Have you anything further to add, Ms. MacKenzie?

Ms. Brenda MacKenzie: I would just simply say that the words were carefully chosen by the drafters. The word “may” was chosen again in the sense that it “may” be compensated. Unless we had said so right here, there would be no possibility of compensation. It allows the compensation; it permits.

The Chair: Mr. Trost.

Mr. Bradley Trost (Saskatoon—Humboldt, CPC): I'm trying to understand where Mr. Bevington is coming from. If he's making the change in English, my first question is what his change is going to be in French. If I understand Ms. MacKenzie correctly, it's identical now in English and French as far as the meaning “to convey” is concerned. If we're going to make a change in the meaning in English, we're going to have to make a change in the meaning in French.

So my first question to Mr. Bevington is, what change in meaning does he want to make in French? What's his rewording in French? If he's changing it in English, he has to change the meaning in French.

My second question is, has he consulted with a lawyer? Does he have a legal opinion to base what he's pushing for on? Without a legal opinion on this from some lawyer, this is just cosmetic, and I'm not sure quite what the point is at that point.

● (0920)

The Chair: Okay. We've heard Mr. Trost.

Mr. St. Amand.

Mr. Lloyd St. Amand (Brant, Lib.): Thank you, Mr. Chair.

I agree with Ms. MacKenzie that “may” is the correct word. The word “shall”, of course, would make the compensation mandatory; the word “may” makes it permissive.

Most statutes with which I'm familiar certainly utilize the word “may” much more frequently than the word “shall”. It simply opens significantly the door of compensation for those who have suffered psychological trauma.

If Mr. Bevington's concern is that “may” is going to somehow dilute considerably the prospect of compensation, in my view he need not worry about that.

The Chair: Okay. Let's go to the question. We've heard the comments, and there's no one else on the list.

(Amendment negatived)

(Clauses 14 to 16 inclusive agreed to)

(On clause 17—*Environmental damage*)

The Chair: Is there any discussion?

Yes, Mr. Bevington.

Mr. Dennis Bevington: I would like to delete “if the measures were ordered by an authority acting under federal or provincial legislation relating to environmental protection”. Just delete that part of the statement.

The Chair: Mr. Bevington, you're saying to end clause 17 with “compensated”, on the fourth line?

Mr. Dennis Bevington: Yes, that's correct.

The Chair: You've heard the proposed amendment to clause 17.

Is there any response from the officials?

Mr. Dave McCauley: Yes. The concern about leaving the clause open-ended was that some could put forward any kind of proposal to remediate environmental damage when perhaps it was a question of degrees and might be something that a competent authority, such as a ministry of the environment, the Canadian Nuclear Safety Commission, etc., would not require. Remediation measures would not be significant, and that's why this provision was added into the clause.

The Chair: Are there any further comments on the proposed amendment?

Mr. Bevington.

Mr. Dennis Bevington: Once again, we feel this closes down the opportunities for compensation. As this act is designed to protect citizens from incidents, we think this amendment would open it up to a point where it gives greater protection to the citizens in the country.

● (0925)

The Chair: We'll go to Mr. St. Amand.

Mr. Lloyd St. Amand: My concern, and perhaps the officials can alleviate the concern, is the potential time lag. If measures have to be taken immediately by an individual or a corporation prior to any authority sanctioning the measures, and if the measures are appropriate, then from my reading of it, as it's now phrased, the individual could not be compensated because the remedial measures would not have been authorized or sanctioned by an authority.

The Chair: Do we have any comments from the officials?

Go ahead, Mr. McCauley.

Mr. Dave McCauley: If there was damage to property, certainly, that damage would be compensated for. We're talking about damage to the environment here, for example, perhaps to provincial or national parks, and so on. Our view was that it would be left to a competent authority to determine the extent of the damage and whether that damage had to be mitigated or remediated.

The Chair: We'll go to Mr. Harris.

Mr. Richard Harris (Cariboo—Prince George, CPC): Actually, that's the explanation I was going to be looking for. It's very clear that it is the authorities, as described, that would best be able to determine the extent of the remediation needed to comply with environmental and other safety rules. Is that correct?

Mr. Dave McCauley: That's correct.

The Chair: Thank you, Mr. Harris.

Are we ready for the question on Mr. Bevington's proposed amendment?

(Amendment negatived)

(Clauses 17 to 20 inclusive agreed to)

(On clause 21—*Limit of operator's liability*)

The Chair: We do have at least one amendment to clause 21, I believe.

Go ahead, Mr. Bevington.

Mr. Dennis Bevington: Thank you, Mr. Chair.

The Chair: On a point of order, Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): Can I get a clarification, or could the committee get a clarification, should it require it? I think the committee should be aware of what the procedural issues are here. Are we procedurally in order making additions to these clauses? I just don't know whether the Speaker had ruled at some point that if the committee reports out and there's an addition to an item, the terms of reference would preclude the committee from making that recommendation. Could we get clarification on that?

The Chair: On what, specifically, do you want clarification?

Mr. Alan Tonks: I want it on the bulk amount. If, for example, the committee decided that $650 million wasn't the indemnification that was appropriate—say we said it had to be $2 billion—first of all, can we do that? And second, what are the implications for some of the clauses if we increase indemnification, either personal or institutional?

The Chair: That's a good question, Mr. Tonks. I just want to confer here.

Mr. Tonks, before we get into this discussion, we haven't had a motion to amend. It hasn't been made yet. Can we have the motion before the committee? If the New Democrat member, Mr. Bevington, wishes to move it, then we'll have the discussion on it.

Go ahead, Mr. Bevington.

● (0930)

Mr. Dennis Bevington: Yes, I'll go ahead and move that Bill C-5 in clause 21 be amended by adding, after line 39 on page 6, the following:

> (1.1) If an operator fails to prove that a nuclear incident was not caused by the operator's negligence, the liability limit referred to subsection (1) is increased to three times that amount.

The Chair: I have had a discussion with the clerk on this. She is of the opinion, and I agree with it, that because this could involve an increase in spending where a royal recommendation is involved—it would alter the amounts—this motion is out of order.

Mr. Bevington.

Mr. Dennis Bevington: If I could just speak to that, the crown is not under any obligation for expenditures here. This is increasing the liability on the company. There's no requirement for royal recommendation on this particular item. I'd like an explanation.

The Chair: I've made a ruling on this. Do we really want to get into a discussion on the ruling?

Mr. David Anderson: Mr. Chair, I have a point of order.

The Chair: On a point of order, Mr. Anderson.

Mr. David Anderson: I'd like to point out that the chair's rulings are not debatable. You can challenge the chair or not, but they're not debatable, as I understand it.

The Chair: Yes, and I have made a ruling on this, Mr. Bevington. I believe that in fact your statement isn't necessarily correct, that there could be an added liability on government as well.

Mr. Tonks.

Mr. Alan Tonks: Could you just explain why you're declaring it out of order? I don't mean to be argumentative; I just would like clarification on that.

The Chair: Okay.

Bill C-5 limits the financial liability of a nuclear installation's operator to $650 million. The amendment proposes to increase this threshold in cases where an operator fails to prove that a nuclear incident was not caused by the operator's negligence.

The rule against offending the financial initiative of the crown applies. And here I note that the bill is accompanied by a royal recommendation that provides for "the appropriation of public revenue under the circumstances, in the manner and for the purposes set out".

This is expressed in Marleau and Montpetit on page 655: "An amendment is therefore inadmissible if it imposes a charge on the Public Treasury, or if it exceeds the objects or purposes or relaxes the conditions and qualifications as expressed in the Royal Recommendation."

It's clear that in proposing to introduce an additional financial liability limit the amendment is altering the terms and conditions of the royal recommendation. Therefore, I find that the amendment infringes on the financial initiative of the crown, and on that basis I must rule it inadmissible.

Mr. Alan Tonks: Well, certainly—

● (0935)

The Chair: We won't get into debate on that.

Mr. Alan Tonks: Mr. Chair, I have a point of clarification.

We obviously vote. You have a very valid recommendation, and we'll probably have to support that; that's the process. But witnesses illustrated that there was a backstop on the government's part, that they were going out to private insurance—they had 21 insurers—and that whatever the liability was, the established $650 million or whatever, they would take that to the private market. That's the assumption we're going on.

That recommendation implies to me, and I think to the committee, that the government is responsible for whatever the amount is. We were never able to establish that—at least not in my mind—because they kept saying they were going out to the private insurance companies, that there's a pool of insurers.

So I'm not sure. I'm going to support your position. I don't think you have any choice. But I think there's a misunderstanding, or whoever assembled that opinion is doing it on the basis of different premises. The premise here is that the government is liable for $650 million, and therefore the royal recommendation stands. My understanding was that this is a little bit of a hybrid in that they are actually going out to the private insurance market. I think that is...not erroneous, but inconclusive in terms of what actually exists.

Thank you for the opportunity just to say that, because that's the confusion I've had all along.

The Chair: I was taking that as a point of order.

Is there any further discussion on clause 21?

Yes, Mr. Alghabra.

Mr. Omar Alghabra (Mississauga—Erindale, Lib.): Thank you, Mr. Chair.

I agree with you, Mr. Tonks.

But before we take this further, I want to hear from the officials, for further clarification on how the number $650 million.... I know it was brought up earlier in their previous testimony, but we heard from witnesses who said that in the United States it was close to $9 billion, or billions of dollars. So I would like the officials to help the committee understand how that number was derived, what the international standards are, and perhaps respond to some of the concerns.

I know some of the witnesses had an anti-nuclear agenda and a different motivation. But I hope they can help us understand the number and how to get there.

The Chair: Mr. McCauley.

Mr. Dave McCauley: Certainly. The $650 million was based on a number of factors. You mentioned "international experience", and we looked at the current amounts in the international conventions that govern this area, notably the Paris Convention and the Vienna Convention. Both of those conventions require 300 million SDRs, and I think the equivalent today is around $500 million. So that was one of our considerations.

Another consideration was the existence of insurance to cover the liability. When we went to the insurers, they indicated roughly $850 million worth of capacity would be available. But they were concerned that catastrophic events throughout the world—hurricanes, etc.—could have downward pressure on that amount. So we felt the $650 million amount would be more appropriate.

Thirdly, the Senate committee studied this issue and came back with a proposal that the amount be increased to $600 million, which they equated to an international figure.

Finally, we looked at the risk of a worst-case design-basis incident. We relied on a study that was undertaken by the Canadian Nuclear Safety Commission, which indicated that for a worst-case design-basis incident, the extent of damages would vary between roughly $1 million and $100 million, based on the parameters.

So taking all those factors into consideration, we suggested the $650 million, and we consulted extensively with the operators on that amount and in time they were generally supportive of that amount.

● (0940)

Mr. Omar Alghabra: What is it in the United States?

Mr. Dave McCauley: The United States liability amount is made up of two tiers. The first tier is the insurance tier, under which operators are required to carry...I believe it's roughly $300 million Canadian, so an insurance tier similar to the $650 million we would require. It's roughly $300 million Canadian.

Then above that tier is an industry-pooling mechanism, under which each operator is required to carry $100 million of financial security for each reactor they own. When you look at the American situation whereby I believe they have 111 nuclear reactors, when you pool all those amounts, you come up with that very large liability amount of roughly $9 billion.

Mr. Omar Alghabra: There is no liability cap?

Mr. Dave McCauley: Oh yes, there is.

Mr. Omar Alghabra: What is it?

Mr. Dave McCauley: It's $9 billion. It's the individual operators, $300 million, plus the benefit of the industry pool, which, when accumulated, brings the total available compensation to roughly $9 billion.

Mr. Omar Alghabra: The pooling implies that any time a new nuclear reactor is added, the pooling will become bigger. Does that mean the cap changes, adjusts, depending...?

Mr. Dave McCauley: That's right. The cap would go up, and when reactors are taken out of service, the cap would go down.

Mr. Omar Alghabra: They don't have an absolute legislative cap, then, except the insurance requirement per operator. Is that accurate?

Mr. Dave McCauley: Yes, I would say that's accurate. Each individual operator has a fixed amount that they are responsible to secure financially. That amount is based on insurance and an additional tier for their individual reactor.

Mr. Omar Alghabra: Right. Thank you.

Thank you, Mr. Chair.

The Chair: Next on the list is Mr. Boshcoff, followed by Mr. Bevington.

Mr. Ken Boshcoff: Thank you very much.

When was this Bill C-5 actually drafted, physically? Was it over the summer or springtime? I know you've been fine-tuning it and continuing to work on it, but I mean the essence of the draft.

Mr. Dave McCauley: I believe it was last summer. It was first introduced as Bill C-63, I believe, in June, and it has been reintroduced as Bill C-5.

Mr. Ken Boshcoff: The reason I ask, Mr. Chairman, is that the insurance market has changed dramatically in the last 18 months. We are now in what is known as a soft market condition; the capacity of the industry to absorb either quantum or reduced premiums, or even the interest of reinsurers for this.... When you see all our own insurance dropping 30%, 50%, 60%, to me, it means that in terms of a contemporary examination of this bill, the conditions by which you set the $650 million or the $850 million have changed.

First I'll let you address that.

Mr. Dave McCauley: In our discussions, the insurers have not expressed that our $650 million proposal is out of line today and that they would be able to provide that capacity to us.

Mr. Ken Boshcoff: Sorry. The short version of it would be that because there's more capacity, theoretically they should be able to raise the minimum level to $1 billion without very much change in premium—in fact, a reduction in premium.

Mr. Dave McCauley: I don't know.... I think that's arguable. They indicated to us at the outset that roughly $850 million was available. I know a number of European countries now seeking to insure over $1 billion of private insurance are finding it very difficult to do so. In fact, they aren't able to bring their legislation into force because of this fact.

● (0945)

Mr. Ken Boshcoff: Again, that's why I asked you the question. I believe it would have been very difficult to get it 12 or 16 months ago, but now, with the rates being slashed all over North America, I'm wondering if this has changed to reflect that. When was the last time you examined this, in view of the change in market conditions for both reinsurance and the primary coverage?

Mr. Dave McCauley: I believe it would have been the last time we had discussions with the insurers, which would have been probably over the spring of this year.

Mr. Ken Boshcoff: Then I will go to this question. When you determine what a maximum catastrophe is, the most recent benchmark I can think of, notwithstanding the California fires, would be Katrina in New Orleans. There were some deaths, of course, but the majority of the $1 billion loss was defined by property loss. If we compare a nuclear catastrophe to flood or hurricane damage, I would think that in the case of a flood or a hurricane, one community or a smaller region would be affected. If you use $650 million as a benchmark for a nuclear catastrophe and more than $1 billion for a hurricane.... I would think that to some extent a nuclear catastrophe would cause far more widespread damage.

Can you tell me what you are using as a benchmark catastrophe? Was it those studies that have been done by...?

Mr. Dave McCauley: Yes, that's what we did. Basically we looked at the international comparisons, etc., the insurance capacity. Then we asked how this relates to a foreseeable incident that might take place at a Canadian reactor.

We discounted the fact of a Chernobyl-type incident, because our reactors are much different than those. We looked at what would be foreseeable. On that basis we looked at a worst-case, design-based incident, where there would be a controlled release of radionuclides and a precautionary evacuation.

Mr. Ken Boshcoff: Thank you.

Mr. Chair, if subclause 21(1) is defeated, seeing as it can't be amended, would it defer automatically to subclause 21(2), where the Governor in Council increases the amount? And could this committee, by recommendation, suggest an increase to $850 million or $1 billion?

Mr. David Anderson: Is it subclause 21(1) or proposed subclause 21(1.1), which Mr. Bevington set forward?

The Chair: There is no amendment on the floor. He's asking if subclause 21(1) were removed what the impact would be. There is reference in subclause 21(2) to subclause 21(1), and it's the same in subclause 21(3) as well.

Are there any comments on that, Ms. MacKenzie or Mr. McCauley? Do you have any help on that? If subclause 21(1) were removed by an amendment, subclauses 21(2) and (3) would obviously have to be amended. Could you explain what the impact of that would be?

● (0950)

Ms. Brenda MacKenzie: The bill is drafted so that subclause 21 (1) is the linchpin; that is, there are numerous provisions that refer to the amount in 21(1).

Subclause 21(2) allows you to increase the amount by regulation. So in further references to subclause 21(1), which you see in subclauses 23(1), 24(3), 26(1), every time the reference is to subclause 24(1), it means $650 million, or such greater amount as is prescribed by regulation. I should clarify: the power to regulate is actually a power to increase the amount in the act. If you make the regulation the $650 million figure, you'll see in the electronic version of the bill that it actually increases.

Since there are references throughout the bill, and in calculations of reinsurance and so forth—for instance, if you go to the tribunal section, subclause 62(1), it is the linchpin there—it would require considerable redrafting if we simply remove subclause 21(1).

Mr. Ken Boshcoff: If we pass this at $650 million and the bill passes Parliament, then this committee could recommend that the Governor in Council seek additional limits based on changing market conditions in the insurance industry. Would that be a process that would ensure we could flow this through, and would it have the intention of this group to identify a higher limit should it become available? Is that a process that is reasonable and democratic?

The Chair: Mr. Boshcoff, that may be a question more for me and the clerks.

Mr. Ken Boshcoff: Okay.

The Chair: We've been discussing this. The $650 million limit seems to be the principle of the bill. It would be inadmissible to make an amendment that changes the fundamental principle of the bill, I would think. I'd certainly have to have a close look at that. The whole bill hinges on this. I'm not making any kind of a ruling; I'm making some hypothetical comments here. But that's the way it appears to me right now.

Now, we have a list, and whether it's on this or not.... I'll assume these are all actually on this because we're dealing with this clause.

Mr. Bevington.

Mr. Dennis Bevington: I just want to question the witnesses a little bit about what I understood was the case here. There's a tribunal that's going to be established, and within that tribunal the liability can be expressed to the company up to $650 million. What happens to additional expenses over that $650 million in the unlikely case that they occur? Does that return to the crown?

Mr. Dave McCauley: The situation is that once the tribunal is established, the operator's liability is limited at $650 million, or whatever amount that $650 million is increased to in subsequent five-year reviews by the minister.

Mr. Dennis Bevington: Then over that amount...?

Mr. Dave McCauley: Should Parliament decide to appropriate additional funds over that amount, then they would be appropriated.

Mr. Dennis Bevington: So by increasing the amount in subsection 21(1), the liability to the crown then decreases. The likelihood of the crown and the taxpayers of this country being on the line actually decreases.

Mr. Dave McCauley: No. Certainly for an incident that was in excess of $650 million it would, but the government does bear some of the liability for whatever amount is set there. So even at $650 million, there is federal money involved in compensation.

● (0955)

Mr. Dennis Bevington: What federal money would that be? Could you clarify that for me?

Mr. Dave McCauley: The legislation provides that the minister may enter into a reinsurance agreement with the insurers, under which some of the risks would be borne by the federal government. So if you increase the liability amount, then you are also increasing that liability of the government.

Mr. Dennis Bevington: So under this act, if there is a nuclear accident of a sufficient degree that it requires large compensation, can the government rescue the operator in terms of insurance costs in the future? Is that what I'm hearing from you?

Mr. Dave McCauley: I'm not following your question.

Mr. Dennis Bevington: You've explained that the government will then be involved in the reinsurance of a plant after there's a major accident.

Mr. Dave McCauley: Yes. The situation is that there is an insurance policy for the operator, and there are two elements of the insurance policy: coverage A and coverage B. The total liability is $650 million. Coverage A risks would be borne by the insurance company and coverage B risks would be borne by the federal government. These are risks that the insurers are unwilling to cover.

For example, we have suggested latent injuries to 30 years should be included in the bill. The insurers will only provide 10 years of coverage. So rather than have victims not be covered for those kinds of damages, the federal government would pick up the amounts between 10 years and 30 years.

Mr. Dennis Bevington: So within that $650 million liability, the federal government could quite easily be one of the major contributors to any kind of settlement that would come under that.

Mr. Dave McCauley: They could have some liability.

The Chair: Mr. Bevington, I'm not the expert on this, obviously, but if you look at clause 27 and then you go right up to clauses 60 and 61, you see the flow of funds. That's all part of why I made the ruling I did, on the advice of the clerk. It's how the funds flow as well.

Is there anything further, Mr. Bevington, or should we go to the next speaker?

We have a list on the clause still. There is no motion. I ruled it out of order.

Is there anything else?

Then I'll go to the next speaker, Mr. St. Amand, and I have four others on the list as well.

Mr. Lloyd St. Amand: Thank you, Mr. Chair. I'll try to be brief.

As I understand it, under the current legislation there is no provision for an increase commensurate with the consumer price index. Is that the case?

Mr. Dave McCauley: That's correct.

Mr. Lloyd St. Amand: And the $75 million figure has been static for how long now?

Mr. Dave McCauley: Roughly, 40 years...30 years, excuse me.

Mr. Lloyd St. Amand: So although at first glance this seems to be a considerable bumping up of the coverage, frankly, $75 million 40 years ago is probably not too much different from $650 million today.

Mr. Dave McCauley: We looked at inflation, and if it was just an inflationary increase it would be somewhere around $250 million to $300 million, actually.

Mr. Lloyd St. Amand: All right. So it's not really going from $75 million to $650 million; it's really simply doubling the current coverage in real dollar terms?

Mr. Dave McCauley: Yes.

Mr. Lloyd St. Amand: You can sense we're feeling a little disquiet about the $650 million ceiling, and maybe you could make us feel less uneasy about it.

When I think of the thousands of people who could potentially be adversely affected by a nuclear incident, and when we consider the heads of damage under which they will be compensated—bodily injury, property damage, economic loss, psychological trauma—boy, a very modest amount would potentially be payable to each claimant. That's my one concern.

Secondly, when we're talking about other countries and the insurance coverages available in other countries, are we talking apples and apples or apples and oranges? By that I mean is the coverage limited to, for instance, bodily injury and property damage, or are they in other countries also insured for psychological trauma and economic loss?

● (1000)

Mr. Dave McCauley: On the first issue, our view is that we were looking at foreseeable incidents. In establishing the $650 million limit we weren't looking at a catastrophic loss because we did not believe that would be an appropriate parameter to determine an operator's insurance, the worst-case catastrophic loss, similar to Chernobyl. We did not anticipate that we would set the operator's liability. We looked at something that could be foreseeable, in terms of evacuations, etc. In fact, we found, after looking at the Magellan study, that the $650 million was well placed, far in excess of what that study had found.

Mr. Lloyd St. Amand: This is my phrasing, not yours. So minor incidents are reflected in this bill and major incidents are not reflected in this bill?

Mr. Dave McCauley: I would say catastrophic losses are not. They're all addressed by this bill, but if one could contemplate that there could be a catastrophic loss, then we would be moving into the second part of the bill, the tribunal. There would have to be a determination of what the total cost is, and Parliament would have to decide whether it was to appropriate additional funds.

Mr. Lloyd St. Amand: All right. And the second question was the insurance available in other countries, what heads of damage are covered?

Mr. Dave McCauley: All of the developed countries would use a similar definition of nuclear damage. For some time it was static, and they were looking at property damage and injury, but since 1997 there's been an evolution. Now countries are moving to a more comprehensive list of damages.

Mr. Lloyd St. Amand: That is that economic loss and psychological trauma are being compensated.

Mr. Dave McCauley: Yes.

The Chair: We now go to Madame DeBellefeuille.

[*Translation*]

Mrs. Claude DeBellefeuille: Thank you, Mr. Chair. A number of people around this table seem to be uneasy about the limit of $650 million. Among our witnesses was the mayor of Port Hope, who represented all the municipalities with nuclear facilities nearby.They also feel that $650 million is not enough to compensate for the damage caused by a nuclear incident.

The mayor of Port Hope painted a picture for us when she talked about all the municipal infrastructures, contaminated water, devalued property, the loss of tourism and so on. The damages made quite the list. I think that, if we want to be fair, we should accept that the total could be more than $650 million. The bill looks like it is drafted to accommodate the financial means of the insurers rather than to deal with the harm an incident could cause. That is my feeling, and I think it is shared by my colleagues.

You say that, in Europe at the moment, the coverage is somewhere around a billion dollars, but their act cannot go into effect because the insurance companies cannot come up with a billion dollars in coverage. What happens in Europe now? What amount of coverage is legally required?

Mr. Dave McCauley: The amount of insurance in European countries today is 300 million SDRs, or about $500 million Canadian dollars. Countries now want to increase that to a billion dollars, but it is not possible. They are looking for other ways to get the financial security. They cannot ratify conventions about this. They want to, but it is not possible. So they are looking for other ways to guarantee the security they need.

● (1005)

Mrs. Claude DeBellefeuille: Great.

[*English*]

The Chair: Thank you.

Mr. Tonks.

Mr. Alan Tonks: I'm fine.

The Chair: Okay.

Monsieur Ouellet.

[*Translation*]

Mr. Christian Ouellet: Thank you, Mr. Chair. A little earlier, you quite rightly said that this $650 million amount is the principle on which this bill is based.

Mr. McCauley, you said that it was based on the fact that a CANDU reactor could never have such as serious accident as Chernobyl and that, for a CANDU, $650 million is enough. But we know very well that this bill opens the door to international interests who want to come to operate our nuclear power stations. Last Saturday's paper had an article about the French company Areva getting ready to take a 20% interest in a Canadian company, in Canada. They are on their way. Will future nuclear power stations that are not CANDU have enough coverage with $650 million?

Mr. Dave McCauley: It is difficult to comment on that. My comments about the CANDU were based on a 1990 study done by Mr. Kenneth Hare. That study dealt with regulatory mechanisms in Chernobyl that were not the same as those in Canada. A similar accident could not happen in Canada. We would have to talk to a nuclear technology expert to find out more about other kinds of power stations. If it was western technology, I would say that $650 will probably be enough.

Mr. Christian Ouellet: I have another question, Mr. Chair.

Companies refuse to put up a billion dollars, but they will put up $650 million. Mr. McCauley, will you concede that the difference between those two amounts is not huge? Is this not because they feel that the nuclear risk is too high? It is not that they cannot find the billion dollars, perhaps they just do not see the risk worth going bankrupt for.

Mr. Dave McCauley: No. In my opinion, it is because the insurers do not have the capacity to write a policy for two billion dollars. It is not a matter of risk. The insurance companies do not want to put all their capacity in the nuclear industry. That capacity is not unlimited, so they decide to use it in other areas.

[*English*]

The Chair: Merci.

Mr. Harris.

Mr. Richard Harris: Thank you, Mr. Chair, Mr. McCauley, and colleagues.

Let me see if I have this clear. This $650 million is not an arbitrary number that has been arrived at. I would assume it is based on a number of factors, and the most important would probably be the amount of risk the insurance companies were prepared to apportion to the nuclear industry in this case. They're not just insuring nuclear plants, but they're spread over a lot of different types of insurance.

I would think, at this time, that the $650 million is where the insurance companies are prepared to go, and based on the risk assessment that would have been done, the government is satisfied that it would justify the $650 million in coverage.

In reference to Mr. Bevington's concern, should a catastrophic or a larger accident occur, the private insurance companies would be liable for payment of up to $650 million, and if there were an accountable further amount of moneys needed, then Parliament could appropriate those funds to cover that balance, to the extent that it was willing to do that.

Have I got it straight so far?

● (1010)

Mr. Dave McCauley: Exactly, yes.

Mr. Richard Harris: You gave the example of the European facilities, which I think have a $500 million private insurance cap. There was a number you mentioned of $1 billion, but apparently $500 million is the level the private insurance companies would be liable for.

Mr. Dave McCauley: That's right. There are international conventions to which the European countries belong, and to get into the conventions they have to have domestic coverage of at least $500 million Canadian—roughly, as an estimate

Mr. Richard Harris: And in response to a question that may come from my colleagues, if the wish of the committee is that we all agree to raise that to $1 billion from private insurance companies, it's just not that simple. First of all, you have to find somebody who is going to carry that $1 billion insurance. So while we may want to have it, the market out there dictates the amount of coverage you can get. So whether we want $1 billion or not, you still have to find somebody who is going to take that risk. At this time, $650 million seems to be the comfort zone between the actual insurers and the government. So that's where we stand.

The Chair: Thank you, Mr. Harris.

Mr. Bevington.

Mr. Dennis Bevington: Thank you, Chair.

The debate is interesting, because of course it points to what we really have to do here, which is to establish what the cost of the nuclear industry is. To me that's one of the prime issues involved with this bill, to put the nuclear industry in a context with other energy sources. And we're not—

Mr. Richard Harris: On a point of order, Mr. Chair, I know where Mr. Bevington is going, and I know his concerns about the nuclear industry in general, but this bill deals specifically with the Nuclear Liability Act or provision. I'm sure we'll have other opportunities to voice our approval or disapproval about nuclear energy. If we could stick to the bill, it would be great; we'll get through it.

The Chair: Thank you, Mr. Harris.

I was noting that, and I was hoping Mr. Bevington would get to a discussion on clause 21 very quickly.

Mr. Dennis Bevington: Well, Mr. Chair, and to the witnesses, clause 21 is a showpiece in this bill in terms of it saying that the limit should be raised from $75 million, which it is today, to $650 million. I think my point is in order, in terms of our dealing with what should be the limit.

When we look at the nature of liability, when we look at other countries, we have the example of Germany, where there's unlimited liability cast towards the nuclear industry. How do they work within their insurance providers to have that situation in place?

● (1015)

The Chair: Mr. McCauley.

Mr. Dave McCauley: In Germany, the first tier is covered by traditional insurance, and then in the second tier, you're correct, they have this unlimited liability. It's basically based on the assets of the operator. These are very large energy companies, and the scheme is that in the event of an incident those assets would be at risk to compensate victims.

Mr. Dennis Bevington: So the governing ideology is there, that if you want to play in the nuclear game, you had better have the assets to cover the liability and the risk you may engender. That must be the operating philosophy of that particular country.

When we had evidence presented to us about the CANDU reactors and the nature of the CANDU reactors, we were told there were new versions of the CANDU reactor coming forward. Of course, among the issues with the CANDUs over many years has been the great amount of redundancy in the safety systems that led to extreme maintenance costs, shutdowns of plants for lengths of time to allow them to get through the systems in order to fix the ones closer to the source. That's the nature of the CANDU reactor. So it's not a very profitable system, and its safety provisions are extremely high. So I am concerned as well with the potential for that situation to change. We're not necessarily, in this bill, limiting....

When we talk about Chernobyl and catastrophic conditions, if anything like Chernobyl happened in North America today, after people understand the nature of nuclear contamination, I don't think any insurance would cover that. I don't think we could put a limit there. It would have to be unlimited.

My experience with nuclear cleanups is Cosmos 954, which, although it happened over mostly uninhabited country, still cost of fair bit of money to clean up. My community was over 300 miles away from where the object burned up in the atmosphere, and we're talking about a nuclear reactor the size of a thermos bottle.

So when we talk about the costs of cleanup, in the accelerating world of environmental consideration, in the nature of the industry and the liability, all these questions, we look to the future and say, “Is this sufficient?” I'd say that's where a lot of the concern here comes from.

We have a bill here that's going to open the door for things that I'm sure in Belarus were never considered as compensatory items. I don't understand how we can really limit as much as we have and be fair to people in the future, who may make claims for things that can cost an enormous amount of money. As my Liberal colleague pointed out, we may find out under this $650 million that each individual would be severely limited in the amount they could claim.

The Chair: Thank you, Mr. Bevington.

Madame DeBellefeuille.

[*Translation*]

Mrs. Claude DeBellefeuille: Thank you, Mr. Chair.

Mr. McCauley, to help us understand the bill, let us make up a story. Let us imagine that, in 10 years, reactors are built near tar sands projects. A serious accident happens. The reactors are attacked, and the act now needs to be applied.

Everything needed to extract tar sand costs billions of dollars in infrastructure, facilities and equipment. If an accident happened, the insurance policy would not protect the operator's nuclear facilities. If the power plants and the reactors were demolished, it would not be compensable, but there would be damage to the rest of the area.

Under this bill, could the Government of Canada provide compensation for the oil companies' infrastructures?

● (1020)

Mr. Christian Ouellet: If it costs more than $650 million.

Mrs. Claude DeBellefeuille: Well, if there are damages in an oil field, for sure it will cost more than $650 million because the equipment is very costly, very expensive.

What would happen if there were a serious nuclear incident in reactors near oil sands projects?

Mr. Dave McCauley: It would be the same as an incident anywhere in Canada, whether it was in a factory near Toronto, or in Alberta in a ...

Mrs. Claude DeBellefeuille: The oil companies could claim...

Mr. Dave McCauley: If an incident happened, and the $650 million amount were exceeded, the government would set up a tribunal to determine compensation. However, the government would also have to report to Parliament which would decide if additional funds were needed to compensate the victims.

Mrs. Claude DeBellefeuille: That could be the oil companies, the companies working in...

Mr. Dave McCauley: All the victims.

But the specific facility, the power station, for example, is not covered. The costs of damages would not be covered.

[*English*]

The Chair: Thank you, Mr. McCauley.

I think we're finished the list on clause 21.

(Clause 21 agreed to)

(On clause 22—*Review by the Minister*)

The Chair: Mr. Tonks.

Mr. Alan Tonks: I have a question with respect to the role of the tribunal. Is it anticipated in subclause 22(2) that the tribunal would have any role whatsoever in making recommendations to the government, based on experience, during the process of the implementation of this bill?

Mr. Dave McCauley: No, the tribunal comes into force only in the event of a serious accident if it's considered to be in the public interest to establish the tribunal. In the situation described in clause 22, when it would be the minister making a decision on whether to recommend that the liability amount be increased, the tribunal probably would not exist at that time. This is a five-year review that the minister has to carry out.

Mr. Alan Tonks: I see.

Thank you.

The Chair: Thank you, Mr. Tonks.

Mr. Bevington.

Mr. Dennis Bevington: I was looking at a deletion here. Delete “on a regular basis, and at least once”, between “21(1)” and “every five years”.

The Chair: So in subclause 22(1) you would delete everything in the second line after the number 21(1)?

Mr. Dennis Bevington: It would be everything between “21(1)” and “every five years”.

The Chair: Okay.

Mr. Dennis Bevington: You'd delete “on a regular basis, and at least once”. So it would end up being “every five years”.

The Chair: Very good.

Does everyone understand? We're taking out the words in subclause 22(1) starting in the second line, “on a regular basis, and at least once”. Those are the words we would be removing.

● (1025)

Mr. Omar Alghabra: I'm sorry, I just want to clarify that.

The Chair: In subclause 22(1), Mr. Bevington's proposed amendment would remove all the words “on a regular basis, and at least once”. Those words would be removed.

Mr. Omar Alghabra: So it would be every five years. What would the clause say?

The Chair: It would say, “The Minister shall review the limit of liability, referred to in subsection 21(1), every five years.”

Mr. Omar Alghabra: But in fact that reduces the number of reviews.

The Chair: That's the proposal.

Mr. Harris, go ahead.

Mr. Richard Harris: I'm surprised, actually, at Mr. Bevington's suggestion, because on the one hand he has concern that possibly we should be watching this and paying more attention to it and being concerned about the safety. This would limit us to looking at it only every five years, notwithstanding the fact that it might be the opinion of the authorities that we should have a look at it in a particular case two years from now or three years or four years. I don't understand your reasoning behind this.

I think “at least once every five years” gives the government authorities the option to look at it on a more frequent basis than that, and I think that's kind of good.

The Chair: Madame DeBellefeuille.

[*Translation*]

Mrs. Claude DeBellefeuille: Let me try to understand. In the French version of the bill, it says that that cannot take more than five years to do, and that it may be done prior. That is reassuring to know.

I am not understanding correctly. The French says "au moins tous les cinq ans", which means that the minister could change the amount after two years. If it says "à tous les cinq ans", the minister is limited.

I do not understand. I was pleased to see that the limit of liability could be reviewed, every year even.

[*English*]

Mr. Richard Harris: Excellent.

A voice: Exactly.

The Chair: Mr. Anderson, you are on the list.

Mr. David Anderson: I would make the same point, and I'll leave it at that. It seems strange to me that we would limit it to every five years. Mr. Boshcoff made a good point about the insurance conditions changing and being able to provide better conditions. Certainly I think it leaves the Governor in Council able to deal with that if we leave it the way it is now.

The Chair: Shall we go to the vote?

Mr. Bevington, do you have a final comment?

Mr. Dennis Bevington: I would just like to clarify my position on this. Sometimes we're not always so difficult to deal with in terms of the industry base. This gives surety to everyone that this is the process we're going to follow. It also puts weight on parliamentarians to ensure that when you do review it, you put it to a point where it would be appropriate for the next five years. I don't think any industry can feel comfortable with the liability limit constantly being changed through this process. If we can't set a liability limit for five years, where are we falling off in our work? I'd say this puts the onus on parliamentarians to ensure that every five years they set a limit that is rational and reasonable and that can carry forward.

The Chair: Good recovery.

Mr. Richard Harris: I still don't know where Mr. Bevington is going on it, but I'm kind of comforted that any changes to limit liability wouldn't be made in an arbitrary fashion. There would certainly have to be good justification, good reason, to do such a thing. I see nothing wrong with having the option of more frequent reviews.

The Chair: We've heard the discussion.

(Amendment negatived)

(Clause 22 agreed to)

(On clause 23—*Obligation of operator*)

● (1030)

The Chair: Mr. Bevington.

Mr. Dennis Bevington: I have an amendment. I would insert the phrase, “or for each reactor, if in the case of a nuclear installation that generates electricity” between the words “nuclear material” and “financial security”.

The Chair: The clerk will read that back with the proposed amendment included.

Mr. Dennis Bevington: Do you want me to read it again?

The Chair: Go ahead. Read the whole clause with your proposed amendment in it, slowly, so that the translation can catch it.

Mr. Dennis Bevington: The amendment would read:

> An operator shall maintain, for each of the operator’s nuclear installations that contains nuclear material, or for each reactor, if in the case of a nuclear installation that generates electricity, financial security in the amount referred to in subsection 21(1)

The Chair: Does everybody have that?

Mr. Omar Alghabra: I don't understand his logic. What's his logic?

The Chair: We'll allow him to speak to it, as long as you understand what the proposed amendment is.

Mr. David Anderson: Mr. Chair, could he read it one more time?

The Chair: I'll have the clerk read it with the proposed amendment in there.

Yes, Madame.

[*Translation*]

Mrs. Claude DeBellefeuille: Does the clerk know where she is going to put the proposed amendment? I cannot find the right place.

[*English*]

The Chair: We're going to take a minute to discuss this, because we'll have to make sure we get that correct. I understand your concern.

We're having these amendments brought before us now without translation, so the best we can do is read this one again slowly and count on the interpreter's translation.

Ms. Joann Garbig (Procedural Clerk): This is subclause 23(1). It would read:

> An operator shall maintain, for each of the operator’s nuclear installations that contains nuclear material, or for each reactor, if in the case of a nuclear installation that generates electricity, financial security in the amount referred to in subsection 21(1)

Then it would continue.

The Chair: Mr. Bevington, go ahead and speak to your amendment.

Mr. Dennis Bevington: There are multiple reactor installations in Canada. This clarifies that financial security applies to each reactor within an installation.

The Chair: Mr. Alghabra.

Mr. Omar Alghabra: I want to ask Mr. Bevington if he sees the fact that any installation containing nuclear material.... Does that not include nuclear reactors?

The Chair: We can't, of course, ask other members of the committee questions.

Mr. Omar Alghabra: What's the difference between what he's proposing and what's already on the books?

The Chair: Maybe you can ask that of the witnesses.

Mr. Anderson, on a point of order.

Mr. David Anderson: I think it's perfectly reasonable to ask the member to clarify his amendment so we understand it. I have the same question.

Mr. Omar Alghabra: If I'm going to vote on it, I need to know what.... I'm addressing it through the chair to Mr. Bevington.

The Chair: Mr. Bevington can choose to answer, and he didn't indicate that he was prepared to.

Mr. Bevington, go ahead.

Mr. Dennis Bevington: Sure, no problem.

It's simply a matter that a number of nuclear installations have multiple reactors, so the $650 million liability would apply to each reactor rather than to the nuclear installation. And we have, quite clearly, a number of installations that have more than one reactor.

● (1035)

The Chair: I think the intent is clear now.

Mr. Alghabra, anything else?

Mr. Omar Alghabra: Yes, it's clear now.

The Chair: Shall we go to the vote on the amendment?

Mr. St. Amand.

Mr. Lloyd St. Amand: I would just like to ask the staff who are present what their view is of that, and then how commonplace it is in the industry, or is it nuclear installations that are insured?

The Chair: Mr. McCauley.

Mr. Dave McCauley: Under the existing legislation, the Nuclear Liability Act, in the case of certain multiple reactor facilities, those multiple reactor facilities are designated as a single installation because they all make use of one vacuum building, so they operate as an entire station. And in the event of an incident, the radionuclides would be contained in the single vacuum building.

It's for this reason, for example, that at the Darlington plant in Clarington the four-station unit is considered to be one installation. Similarly, at Pickering those multi-unit reactors, if they share one vacuum building, are considered to operate as a unit and would be considered as one installation.

Mr. Lloyd St. Amand: That's the current legislation and the current situation. Worldwide, is that the standard as well?

Mr. Dave McCauley: I don't know.

The Chair: Thank you.

Mr. Hénault.

Mr. Jacques Hénault (Analyst, Nuclear Liability and Emergency Preparedness, Department of Natural Resources): Yes, this applies, for example, in the United States. What they call a nuclear installation would apply. There would be several reactors, but one policy would apply to that particular site. And I believe the same thing occurs in Europe where there are multiple reactors.

The Chair: Thank you.

Anything else, Mr. St. Amand?

Mr. Anderson.

Mr. David Anderson: We would be opposing this because we think the legislation does cover the nuclear installations as it should. That's all I have to say.

The Chair: Thank you, Mr. Anderson.

Mr. Bevington, do you have a final comment?

Mr. Dennis Bevington: It was our understanding that in the United States the liability applies to each reactor. I'd just like a clarification on that, to make sure we're covered here in terms of the information.

The Chair: Can any of the witnesses answer that?

Mr. Jacques Hénault: I'll answer this.

Before, David McCauley mentioned the two-tier system in the United States where each operator has an insurance policy for the installation. With respect to the secondary tier, that is a retrospective premium that's collected from each reactor. So in fact you have an installation that carries $300 million of insurance, but in the event of an accident that would surpass that $300 million, then each reactor would be assessed. So one installation might have three or four reactors.

Mr. Dennis Bevington: So we're correct.

The Chair: Monsieur Ouellet.

[*Translation*]

Mr. Christian Ouellet: Mr. Chair, it seems to me that, with matters as complicated as these, we are like a group of sorcerers' apprentices. If a reactor blew up, we do not know what effect it would have on other reactors. We know nothing about it, but here we are passing a bill on liability. No one can tell us if a damaged reactor is going to cause others to blow up, and I am not just talking about the CANDU reactor, but other kinds of facilities that are going to be built around the world.

I appreciate what Mr. McCauley has just said. But the fact remains that the United States has more reactors and, of course, more money. They have $9 billion to cover incidents, whereas our $650 million covers maybe one reactor, maybe four. There seems to be something illogical about that.

I find Mr. Bevington's point very interesting, but the fact remains that we do not have answers to our questions. I do not see how the people on the other side can say that, if it is written like it is, it must be fine. I do not see things like that. I would like someone to give me an intelligent answer before I have to decide.

[*English*]

The Chair: Is there any further comment from witnesses?

● (1040)

Ms. Brenda MacKenzie: I would just like to draw your attention to the bill. When a nuclear installation is defined, and if there is damage to that operator's nuclear installation, the compensation goes to victims and not to the operator. So you have to be concerned that if you split your installation into four, that means that damage from one operator's reactor to another of the operator's reactors, if it's not in the same installation, could be compensated under the act. The whole point of the act is to preserve money for victims.

The Chair: Thank you.

We will go to the question on Mr. Bevington's amendment.

(Amendment negatived)

(Clause 23 agreed to)

(On clause 24—*Insurance*)

The Chair: There is a Bloc amendment.

Madame DeBellefeuille.

[*Translation*]

Mrs. Claude DeBellefeuille: Mr. Chair, I would like to ask for the cooperation of my colleagues around the table.

The Bloc Québécois has tabled two amendments: one to subsection 24(3) and one to subsection 24(1).

[*English*]

The Chair: We're looking at all of clause 24 now.

[*Translation*]

Mrs. Claude DeBellefeuille: Could we first deal with subsection 24(3) and keep the consideration of subsection 24(1) until later. There is a link, a cause and effect in play here.

[*English*]

The Chair: Yes, I understand.

Is there any objection to going to the Bloc amendment on subclause 24(3) first? It's amendment BQ-3, which is a proposed amendment to subclause 24(3).

Go ahead, please, Madame.

[*Translation*]

Mrs. Claude DeBellefeuille: I think that everyone has received a copy of the wording. It deals with withdrawing the subsection that limits the percentage of the alternate financial security. We paid careful attention to the witnesses who appeared on this matter.They told us repeatedly that it would be better for them to have some flexibility in being able to negotiate premiums and insurance. We also know that the minister reserves the right to examine the financial security provided by the operators. Because he has that right, I think that it would be in our interests, particularly when nuclear power plants are operated by a crown corporation, to allow more flexibility in the provision of alternate security.

For example, the witnesses from the Canadian Nuclear Association explained clearly that, with the 50% limit, costs could rise, including the costs to customers, who, it turns out, are also taxpayers. We are referring here to operators that are crown corporations, like Hydro-Québec, New Brunswick Power, and so on. All operators are members of the Canadian Nuclear Association. People from that association told us what the impact of this subsection would be. We think that it would be better for Quebeckers and Canadians as a whole if the operators has more flexibility in negotiating and researching these alternate securities.

So we are proposing that the subsection be removed so that operators have more room to manoeuvre. Since the minister has the authority to examine the securities, we think that he has the tools to make sure the operators fulfill the requirements.

[*English*]

The Chair: Merci.

Are there any further comments?

Keep in mind that there is a Bloc amendment that has been brought forward to subclause 24(2) as well.

We're dealing now with amendment BQ-3, which is to remove subclause 24(3).

Mr. Anderson.

● (1045)

Mr. David Anderson: As a quick comment, I don't know how long people want to spend on this, but I think our Liberal colleagues pointed out the other day that they felt that 50% was reasonable. I think we feel it is as well. Fifty percent is a reasonable percentage of flexibility here. In fact, I'd say it gives some pretty fair flexibility.

It should also be noted that another percentage can be fixed by regulation should the minister make the decision that this is the case.

I think this gives good flexibility, good opportunity for the operators to find some different means and methods of insuring themselves, and I think it's responsible.

The Chair: Are there any other comments on this amendment?

Mr. Alghabra.

Mr. Omar Alghabra: Maybe we could give the officials a chance to respond to that amendment, if they have any comments on it.

What would be the implication of deleting that clause?

The Chair: Mr. McCauley.

Mr. Dave McCauley: The implication would be, as the member has suggested, that in fact there would be no limit. There would be no requirement for operators to carry a tier of insurance. They could self-insure or use a provincial guarantee or other alternative financial security to address the required amount.

The reason we included the 50% limit was that we felt, first of all, that this was independent. This was a separate fund that could be called upon in the event of an incident and would be quite separate from the operators or quite separate from government. It would be a fund that would be concrete.

We also felt that insurers brought with them claims, administration capabilities, that perhaps an operator would have to go out and contract for. As well, we looked at the experience in other countries, where other countries all include a tier of insurance in their liability regime.

We introduced this flexibility to address the concerns of operators that we should provide some flexibility and have an alternative to insurance. We chose the 50% for the reasons I've indicated.

I should add that there is a further provision in the legislation that allows that amount to be changed by regulation. The 50% can be changed by regulation. It can be either increased or decreased.

The Chair: Okay. Is there any further comment, or should we go to the vote?

Madame DeBellefeuille.

[*Translation*]

Mrs. Claude DeBellefeuille: We are asking for this subsection to be removed because we feel that its intent is for our insurers to keep their monopoly. We want to make sure that the market is not kept exclusively for insurers who specialize in the nuclear industry, like the witnesses we heard from. Removing the subsection opens the market so that operators can negotiate their securities and are not forced to choose from the 50%.

I think that this subsection is a backhanded way of closing the market and making sure that the business goes to a small number of insurers who have been picked by the government. That situation seems a bit murky to us.

● (1050)

Mr. Dave McCauley: I understand the situation. That is why we decided to include this provision in the bill because the operators said that there was a monopoly in the insurance industry.

However, the monopoly exists because up to now, no other insurer has sought a share of the business of insuring nuclear operators. Others can offer to provide insurance.

Up to now, only NIAC has decided to provide that insurance. That is why there is more or less an insurance monopoly.

Mrs. Claude DeBellefeuille: Because they have been the only ones interested, you are keeping 50% of the market for them.

Mr. Dave McCauley: Yes. However, if another insurer asked for government support to insure operators tomorrow, the minister would examine the situation and decide if it is possible. There are no obstacles for other insurers. It is just that, up to now, only one insurer has decided to provide insurance. The market is not closed to others.

Mrs. Claude DeBellefeuille: If the insurance market were open, if we did not perpetuate the monopoly, do you not think that the operators could negotiate the costs of premiums and get better prices?

Mr. Dave McCauley: Yes, I do. If there were more competition in the industry, premiums would perhaps go down and there would be other forms of insurance and financial securities. That would cause premiums to go down, because if there were a number of insurers, there would be more competition.

Mrs. Claude DeBellefeuille: If I understand correctly, the government proposes to let NIAC keep cornering the market with this subsection.

Mr. Dave McCauley: No, not NIAC. The insurance industry. Up to now, NIAC has cornered the market, but other companies can offer operators their services.

[*English*]

The Chair: Mr. Harris.

Mr. Richard Harris: Thank you.

Madame DeBellefeuille, eliminating this clause would mean that the operators, the facilities, could choose to simply self-insure against any accident. In that case, if there were to be a significant amount of damage in an accident that could in fact cost up to $650 million and if the facility, rather than paying insurance premiums, had opted to simply self-insure, it could in fact financially destroy the facility if they became liable for $500 million to $600 million in compensation, and then we would have two problems: we'd not only have an accident, but we'd also have a nuclear facility that was bankrupt. In that case, an attempt to reactivate the facility would impose a huge cost on the consumers of that form of power.

That's certainly the major downside to eliminating that clause. The other thing, Madame DeBellefeuille, is that of course we would all like to see a huge lineup of companies wanting to insure the nuclear facility, but the fact is that apart from NIAC and the insurance companies that are already there, the other line is empty. There's no one else in that line wanting to get into the business of insuring nuclear facilities. Otherwise I'm sure NIAC and the insurers that are there would love to have them, in order to spread the risk out a little more than it is.

Eliminating so that others could come into the insuring business simply wouldn't bring a horde of people, believe me. It's not likely to bring any; if there were others out there, they would be there now. Nothing precludes them from making application to become part of the NIAC group or other insurance.

Is that correct?

● (1055)

Mr. Dave McCauley: That's correct.

The Chair: Thank you.

Mr. Alghabra is next.

Mr. Omar Alghabra: Thank you, Mr. Chair.

I want to get back to a question that I started asking on Thursday when we started doing the clause-by-clause study at the beginning. You started touching upon it, Mr. McCauley. It was about how insurance works for this industry.

I'm trying to understand what NIAC really is. When they were here, they said they're just an association of insurance companies that insure nuclear reactors. On the other hand, in their description of who they are, they said they're the only insurer. So are they the insurer, or are they just an association of insurance companies that provide the insurance? Is it self-regulating? Who regulates NIAC or its members? How does one become a member of NIAC?

To be honest with you, all these questions are still unanswered in my mind. I'm just trying to understand the industry and see if there are issues of the market's own dynamics or whether there are some regulations that are restricting the industry.

I know it's quite a broad question, but that's how much I need to really understand about this business.

The Chair: Who would like to answer that?

Go ahead, Mr. McCauley.

Mr. Dave McCauley: Sure. I'll do my best.

NIAC represents a number of Canadian private insurers. They, along with the British insurers and the American nuclear insurance company, have joined together to become approved insurers under the Nuclear Liability Act. They have brought their capacities together, those three pools—the American pool, the British pool, and the Canadian pool—and have brought their money to the table in order to provide the insurance to Canadian operators under the Nuclear Liability Act.

NIAC is the organization that represents those pools in any discussions we have. They have been approved by the minister under the Nuclear Liability Act to provide that insurance.

Mr. Omar Alghabra: But they're not the underwriters, are they? Technically they're not the insurers, are they? Aren't the insurers the 21 members that NIAC has?

Mr. Dave McCauley : That's right. The companies that are members of NIAC and the other pools that are involved are the actual underwriters.

Mr. Omar Alghabra: NIAC is approved, but they're not really the insurers. That is where the disconnect is for me.

Mr. Dave McCauley: NIAC represents these insurance companies.

Mr. Omar Alghabra: As a collective, not as individual companies—is that correct?

Mr. Dave McCauley: That's correct.

Mr. Omar Alghabra: Then we still end up with the individual companies providing the insurance and not the collective.

Mr. Dave McCauley: We have an agreement with NIAC to provide the insurance. As NIAC comes to the table, they're bringing all of these insurance companies.

Mr. Omar Alghabra: I'll go back to my question. The insurer is the individual company that is a member of NIAC, not the collective.

● (1100)

The Chair: This will be the final question and then we'll come back to this on Thursday.

Go ahead, Mr. McCauley.

Mr. Dave McCauley: Each of the insurance companies has a percentage of the $75 million that they are insuring.

The Chair: We are out of time. We have another committee waiting. We'll come back Thursday and continue with the Bloc amendment and with the rest of the clause-by-clause.

The meeting is adjourned.

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