House of Commons
CANADA

Standing Committee on Natural Resources

RNNR • NUMBER 043 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Monday, November 30, 2009

Chair

Mr. Leon Benoit

Standing Committee on Natural Resources

Monday, November 30, 2009

● (1530)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good afternoon, everyone.

Welcome back again, to our witnesses from the last two committee meetings.

We are starting today with our clause-by-clause consideration of Bill C-20.

(On clause 17—*Environmental damage*)

The Chair: Is there any debate on clause 17?

Yes, on a point of order, Mr. Regan.

Hon. Geoff Regan (Halifax West, Lib.): Before we go on, you'll recall that we passed a motion to hear from the minister before we rise, and obviously preferably before the date on which the estimates are deemed to be returned to the House. I wonder if there is any information on that. Have we had a response from the minister?

The Chair: Yes, I'll have the clerk comment on that. I haven't heard of any response yet.

The Clerk of the Committee (Mrs. Carol Chafe): The request has been put in to the minister's office. They're waiting to see if they can get her schedule cleared.

The Chair: Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Directly to Mr. Anderson, because I know he oftentimes is the liaison for the minister, at the last meeting it was in discussion to see if the minister had time available. It's been another four days. Has there been any update in terms of the minister's availability?

The Chair: Mr. Anderson, do you want to respond to that?

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Sure.

I think the expectation was that when we saw the end of this bill, we would deal with that seriously. So far it doesn't look like there will be an end to the bill, so I guess we'll continue working on it.

Mr. Nathan Cullen: Just so I can understand what Mr. Anderson is saying, is it the suggestion that when Bill C-20 passes, the minister is planning to be at the next committee meeting following that? I just want to make sure I understood what he said.

The Chair: Well, I don't think that's what he said, Mr. Cullen.

Mr. Nathan Cullen: Oh, maybe I misunderstood.

The Chair: I think what he said was pretty clear.

Mr. Nathan Cullen: Was it?

The Chair: So the request has gone to the minister and the minister's office is trying to make this work and is considering this. And when the office responds, then we'll know.

Let's get on to clause 17. Is there any discussion on clause 17?

Mr. Cullen.

Mr. Nathan Cullen: May I have just a moment to read it through, Chair?

I have a question, Chair.

The Chair: A question, Mr. Cullen.

Mr. Nathan Cullen: Through you to our witnesses, with respect to the determination of what will constitute remedial measures, in clause 17 we're talking about damage to the environment. Clause 17 reads:

> Reasonable costs of remedial measures taken to repair, reduce or mitigate environmental damage caused by a nuclear incident may be compensated

—and it goes on.

We've had some conversations about contamination of soils and water. Later on I believe we'll talk about other damages. But if I were to just take those two scenarios to start with, because those sit within the provincial jurisdiction, does that then mean the provinces would determine the level of damage caused or the extent of damage? Is there something in this act or within the federal powers that says the federal government will come forward and determine the extent of it and the provinces will sit to the side in a more observational role?

The Chair: Mr. McCauley, go ahead.

Mr. Dave McCauley (Director, Uranium and Radioactive Waste Division, Electricity Resources Branch, Department of Natural Resources): Thank you.

It would be up to the competent authority. It could be a federal authority or a provincial authority, depending on the particular issue. If it were radiation contamination, it is the Canadian Nuclear Safety Commission that would order a cleanup, for example.

Mr. Nathan Cullen: But to my specific questions around water contamination—all water testing sits within provincial mandate and authority—I want to just check whether, in the event of a nuclear accident, those authorities are overridden by the investigators from the various departments that determine damage.

What I'm trying to foresee is whether there is a potential created within clause 17 to create, in a sense, a territorial concern as to who gets to say what the actual damage of a leak was on a body of water. If the point source is here and the provinces make a claim that it affected an entire watershed system, and the feds say no, it's just contained within that river system.... Again, I'm trying to find analogies to describe the clause.

Who has ultimate say as to what the damage is? Is it the province or is it the feds?

● (1535)

Mr. Dave McCauley: The provision provides for whichever authority is determined to be the competent authority in the situation. So it doesn't define, for example, that a particular type of damage would be the responsibility of a province or the federal government. It leaves it open to whoever is the competent authority to order remediation, etc.

Mr. Nathan Cullen: That's my question, then. If an accident happens, I would have assumed that in a bill that is dealing with potential liabilities and insurance claims, the definition of those competent authorities would be referenced in another act or it would be set forth in this act.

When an accident happens, in any kind of accident, and I would imagine in a nuclear accident in particular, the initial hours are most critical. You don't want any jurisdictional battles going on as to who gets to say what gets priority or what has actually been damaged. I can't find any reference in the act that says this is the process we are going to use to define "competent authority" or that we're referencing another statute.

Mr. Dave McCauley: Those authorities would be defined in other pieces of legislation that identify who has the responsibility in the event of an emergency. What this legislation says is that if a victim is to come forward with a claim for damages, that this is one of the heads of damage that would be compensable. So if the victim were able to say, "Yes, I undertook a cleanup because I was ordered to by a competent authority", that is what the victim would have to show to the court or to the tribunal, and then it would be compensated.

Mr. Nathan Cullen: This is what I am trying to understand.

The Chair: Ms. MacKenzie, did you want to respond to that as well, or was the answer—

Ms. Brenda MacKenzie (Senior Legislative Counsel, Advisory and Development Services Section, Department of Justice): Yes, the answer was thorough, thank you.

The Chair: It was given. That's the information you were going to give.

Go ahead, Mr. Cullen.

Mr. Nathan Cullen: Thank you, Chair.

This is what I'm trying to get at. I'm trying to follow the sequences that clause 17 would describe in the event of a nuclear incident. An accident happens. Which act is it, just for our own sake, in terms of where the competent authorities are defined? Or is there a whole suite and series of acts?

What we've known in emergency response is that we have eventually gotten good at it when all the lines are clearly delineated up front and you don't have to make it up as you go.

Ms. MacKenzie.

Ms. Brenda MacKenzie: The purpose of this provision is to ensure that whatever the affected province or the federal level has determined to be appropriate legislation relating to environmental protection, that is the trigger. So we haven't defined it here because we've not limited it in that way.

The actual amount of damage, of course, and a determination of what is compensable is under the federal legislation. What we have here in clause 17 is a trigger that would allow a person to claim compensation, and that trigger would be legislation passed by a province or passed by the federal level under which measures are ordered by an authority identified in that legislation.

Mr. Nathan Cullen: Okay, that's helpful. The reason I'm trying to understand this is that in certain aspects of law, this whole bill is taking a special case. These types of limited liabilities don't happen with other industries. In terms of environmental damage, there's no special case given to nuclear in the event of an accident. The only special aspect of it is the liability limit that gets hit, which brings me to my next question.

We talked previously in clause 16—I used the word "triage", I don't think you did—in terms of not allowing folks within the industry to seek compensation. The government wanted more compensation to be available to victims outside the facility. We got into the discussion as to whether workers could be compensated. Is there any level of priority given between the environment and other aspects of compensation in terms of economics? You said that the government's intention in the $650 million limit was to get the most money they could out into the hands of those most immediately affected by health, psychological...and income. We're now talking about the environment. Do they all sit on the same tiered level and the government has to wade its way through to find the $650 million most appropriately given over?

Mr. Dave McCauley: There is provision elsewhere in the legislation for damages to be prioritized, but without that it would be for a court to determine compensation. So there's no defined priority here.

● (1540)

Mr. Nathan Cullen: You said that something later in the act starts to seek to do that, or is it in the hands of the court? I want to be clear as to which that is.

Mr. Dave McCauley: Later in the legislation there is the possibility to identify priorities.

The Chair: Ms. MacKenzie, go ahead.

Ms. Brenda MacKenzie: That is absolutely correct, but just to clarify, that's in the event that a nuclear claims tribunal is established. Then if all claims are going through a nuclear claims tribunal, there is a possibility to make regulations setting priorities, but that will work only if you have all the claims being funnelled through one body.

Mr. Nathan Cullen: You mean at a tribunal itself.

Ms. Brenda MacKenzie: I mean at a nuclear claims tribunal.

Mr. Nathan Cullen: In the case of clause 17, if a tribunal were created, the tribunal could set priorities. It could say, we're going to put environment third; we're going to put all health matters and concerns first, economic losses second, and then we'll get to environmental cleanup damages.

Just so I have this right, this is paying compensation to folks who have already gone forward and done cleanup? You referenced earlier, Mr. McCauley, people getting compensated for the cleanup that they had done. I'm paraphrasing what you said. Is that what clause 17 deals with?

Mr. Dave McCauley: That's right.

Mr. Nathan Cullen: Clause 17 can't be applied in such a way that a province or...I'm trying to think of what other authority might be doing a cleanup, but maybe you folks have considered that, on the environmental side. A province has come forward and said it estimated the further cleanup to be such-and-such over so many years. Does clause 17 also capture forward going, or is it only what has already been done that can be compensated for?

The Chair: Go ahead, Ms. MacKenzie.

Ms. Brenda MacKenzie: When I read this, it speaks about "Reasonable costs...taken to repair, reduce or mitigate". Let me just look at the French: "*des mesures prises pour atténuer ou réparer les dommages*". The provision would require a certain amount of objective proof, and the objective facts are that a federal or provincial authority acting under legislation would have actually ordered measures to be taken. Then you would have to show what the reasonable costs of the remedial measures that were taken were.

Mr. Nathan Cullen: Just to be clear on the point, clause 17 applies only to work already done.

Mr. Dave McCauley: It would seem that way.

Mr. Nathan Cullen: Okay, then with the nature of a nuclear contamination incident on soils or in water or on the environment in general, the length of time around cleanup could be quite extensive, if previous experience is a teacher. If not in clause 17, is there a measure within the bill that deals with environmental cleanup? I'm imagining that in either a court or a tribunal, perhaps that happens within a year or two years and a province or a cleanup agency comes forward and says "We've done $1 million or $100 million so far, but we haven't fixed it yet. We're still remediating. We estimate another $100 million to come." If clause 17 deals only with the costs that have already been incurred, and you can't go to court twice on the same matter—or could you? I'm trying to imagine what the act would say if we had what would be a 20-year process but we wanted to get remediation money out the door to the folks who had already spent money. That has to be somewhat timely, I would imagine. I don't think the act imagines that timing. That is for courts and the tribunal. But what happens to cleanups after the court and tribunal decisions?

Mr. Dave McCauley: As claims are brought forward to the tribunal or to the court, they will be dealt with, and if it is a tribunal and if they have established priorities, then they will be dealt with from that perspective.

Mr. Nathan Cullen: Ms. MacKenzie.

Ms. Brenda MacKenzie: In addition to that, it would be a new claim if you had to do something else to remediate the environment at a later date. That would be a new claim. It would be a different claim.

● (1545)

Mr. Nathan Cullen: Maybe this is part of my lack of understanding in terms of the tribunal process. How long do these things last? Can they be put in abeyance and then restarted, or do they have to be struck again?

What I am trying to understand is this. You don't want anyone involved in the cleanup process after a nuclear accident to have any concerns that they are not going to be remediated in a timely manner. That's not what you want a municipality or a province to be concerned with in those immediate days and then the days to follow.

I would imagine a tribunal has a fixed time. Does it go forever until the job is done?

Mr. Dave McCauley: There is no fixed time for the tribunal. Once the tribunal is established, there's no limit on the time for dealing with the compensation.

Mr. Nathan Cullen: In clause 17, on the environmental contamination time after an accident.... I'm sorry, I'm trying to understand this.

A tribunal will exist until the cleanup is done and all the claims have been filed. It seems inordinately expensive to keep a tribunal going, potentially, for one claimant. If it happens in Ontario, then the Province of Ontario is the principal claimant for environmental damage, I would imagine. I'm trying to imagine the scenario. Suppose they estimate that it's going to take 50 years. It seems a strange process to say that if it's going to take 50 years, and the only way to compensate you is if the tribunal exists, then we're going to keep the tribunal running until you've finished cleaning the environment.

Mr. Dave McCauley: There are time limits elsewhere in the legislation that limit the period over which you may bring claims.

Mr. Nathan Cullen: Again, back to clause 17, some of the cleanup processes could take many years. If clause 17 is eventually limited later on in the act, is that what we mean by "reasonable"? Does "reasonable" have something to do with the timeline as much as it has to do with the size of compensation?

It seems a bit misleading. Clause 17 says that the government will allow this limited liability act to compensate people who do the cleanup. That leaves some assurance that the environment will be cleaned. Then later on in the act it says that it will only be for a couple of years or that we're going to limit the length of the thing. It seems to be not a false assurance, but.... Do you follow my meaning?

Mr. Dave McCauley: I don't see it as a false assurance. When the cleanup is done, the victim can bring forward a claim to either the court or the tribunal. But there is a limit on the time period, so it's important for the cleanup to proceed without delay.

Mr. Nathan Cullen: It's not so much the concern with clause 17 and when the cleanup is initiated as much as it is about how long the cleanup takes. For example, nuclear facilities that have been decommissioned around the world need to have their initial cleanup estimates. They bring in the best scientists and they say that to attempt to remediate this section of an old reactor site, let's say, will take about this much money. As they go through the process, they find out that it takes more money and takes much longer, because this stuff is complicated. It's the most toxic thing we can possibly deal with, I think. I'm not a scientist, but it seems pretty toxic.

What is the time limit on when there can no longer be compensation sought for environmental damages?

Mr. Dave McCauley: It's covered in a later provision. It's three years after there's recognition that there is contamination or damage.

Mr. Nathan Cullen: Okay, so that's helpful. I don't want to get into the length and nature of that time limit and whether it's suitable, although a three-year limit raises some concerns for me. Is it reasonable to say that all environmental damage has to be assessed and put in place and paid for within three years? If that is reasonable to the department, from which study or research do you get that? The number must have been chosen from somewhere. To say three years is the limit for an environmental cleanup operation and for compensation for economic loss, health, and psychological....

● (1550)

Mr. Dave McCauley: Ms. MacKenzie has just pointed out to me that it's three years from the date on which you recognize that there is an issue. It is ultimately 10 years from the day the incident occurred.

Mr. Nathan Cullen: It is 10 years from the moment of a nuclear accident itself.

There's an extra clause, again, that I'm not getting into but that I think is pertinent to the discussion on environmental damage. It is three years after it is identified, and anything beyond that won't be compensated. Is that right? It's excluded.

Mr. Dave McCauley: For environmental damage, the limit is 10 years. The absolute limit is 10 years. You must bring forward a claim within three years of the date on which you recognized that there was contamination, which in the event of an incident you would expect would happen quite quickly.

Mr. Nathan Cullen: I would imagine very much so. The number of initial claims would happen as the dust settled, so to speak, after an incident.

My concern is that if a province finds that three and a half years down the road there's another point of contamination they didn't identify originally, is that exempted under clause 17 if it comes up 10 and a half years later?

Mr. Dave McCauley: If it came forward 10 and a half years after the incident, then it would be excluded, but it is very unlikely that they would not identify the damage earlier than that.

Mr. Nathan Cullen: We have an amendment to this section, as well. I'm assuming it's legalistic language, but what is "reasonable costs" based on? Where does the term come from? Who determines it? Is it the tribunal? Is it the court?

Mr. Dave McCauley: It is the court that determines it. This is common language in the international conventions in this area as well as in domestic legislation addressing environmental damage.

Mr. Nathan Cullen: How much freedom does the court or tribunal have in determining what "reasonable" is? Is it a great latitude? I'm imagining that somebody comes in front of a judge or at a tribunal and says, "I cleaned up this body of water. I did it immediately; I wasn't sanctioned by the province", and the judge says, "Well, that's unreasonable because it wasn't sanctioned by the province". Is that an example of how someone may not get compensated for cleanup after a nuclear incident?

The Chair: Ms. MacKenzie, could you speak towards the microphone, and maybe a little closer, so the interpreters can hear you clearly? Thank you.

Ms. Brenda MacKenzie: Okay.

"Reasonable" is a legal concept, and it's well understood at law. That's what courts do; they adjudicate reasonable claims. It does give them quite a bit of latitude to decide what is reasonable and what is not in the circumstances. The objective, of course, is to avoid having a court think it has to compensate any claim, no matter how frivolous or minor. It's looking for reasonable costs, reasonable activities, and the trigger of being objectively ordered by somebody to do it.

Mr. Nathan Cullen: In terms of the competent authority question and the speed with which things can be administered, for instance, in Ontario they have a special investigations unit for the police when an incident happens, a designated authority that comes in immediately, and the roles are known. Who does the environmental assessment of damage in a nuclear incident under clause 17?

Mr. Dave McCauley: It could be any number of organizations that are competent to assess whether there has been contamination.

Mr. Nathan Cullen: That term "any number" concerns me. There's a potential for confusion. I want to know who's running the show to determine the environmental impact once an incident happens. Who is the relevant authority, as decided by Bill C-20?

Mr. Dave McCauley: It's not Bill C-20 that will determine that; it will be a court, when it's presented with the claim for damages. In your example, if the individual is not told to decontaminate the property, then there would be no compensation for that decontamination.

● (1555)

Mr. Nathan Cullen: And "told by" means the province?

Mr. Dave McCauley: The competent authority, be that the federal authority or the competent provincial authority.

Mr. Nathan Cullen: I won't cast aspersions, but is there not a way then to limit your costs, as a government, by not issuing as many cleanup orders as otherwise would be done? It seems like it's the fox watching the henhouse a bit. If the only way to have a cleanup happen.... Say the federal government deems it to be a worthwhile cleanup. That's the only way you can be compensated under the act. Is that correct?

Mr. Dave McCauley: For environmental damage—

Mr. Nathan Cullen: I'm talking about clause 17, environmental damage.

Mr. Dave McCauley: For environmental damage, the cleanup or the measure would have to be ordered by a competent authority under federal or provincial legislation.

Mr. Nathan Cullen: Again, I'm imagining a potential dispute between a homeowner...or a dispute between a province and the feds. The province may say they want to clean it up, but the feds may say they're the regulatory authority on that issue and don't deem it to be worthy of cleanup.

Can they also say what extent of cleanup is applied? There are all sorts of different levels of thoroughness of cleanup.

Mr. Dave McCauley: In the case of a homeowner, it would be property damage. Going forward, they would say that their property was damaged, but they would have to prove there was damage to their property in order to obtain compensation.

Mr. Nathan Cullen: Then clause 17 applies only in the case of crown lands. Is that what we're discussing?

Mr. Dave McCauley: This is something broader than just property damage.

Mr. Nathan Cullen: If someone has a farm with an affected river that goes through their land and they deem it to have affected the soil on their land, if they seek compensation or to have a cleanup happen, are they now under the clause 16, which we've dealt with already, or are they under clause 17?

Mr. Dave McCauley: If their property was damaged, they would have a claim under the previous provision, under clause 13.

Mr. Nathan Cullen: What environment are we talking about, then? Is it not privately owned? Is that the idea?

Mr. Dave McCauley: That's correct. If you were talking about public lands—and you used the example before of Lake Ontario—it would be ponds, lakes, etc., that might not be owned.

Mr. Nathan Cullen: This is helpful.

So we're talking about crown lands and not those privately held in terms of environmental damage in clause 17. We're also talking about bodies of water that are not privately held. Those are the two main areas of the environment. It's not the atmosphere?

Ms. Brenda MacKenzie: The environment includes the atmosphere under federal legislation. The environment is air, water, and soil under the Canadian Environmental Protection Act, which might be one of the sources of an order to clean up something. The environment is recognized to be air, land, water, and soil.

Mr. Nathan Cullen: I'm sorry, would CEAA apply under something like clause 17? Would CEAA be a reference point? That seems unusual, because CEAA doesn't apply in other ways in the nuclear industry.

Ms. Brenda MacKenzie: I was speaking of the definition of "environment" found in the Canadian Environmental Protection Act. Under the Canadian Environmental Protection Act, cleanup orders can be issued.

Mr. Nathan Cullen: Is that under this act?

Ms. Brenda MacKenzie: No, under the Canadian Environmental Protection Act they might say to clean something up.

Mr. Nathan Cullen: Then Bill C-20 comes in and deals with the actual—

Ms. Brenda MacKenzie: Then Bill C-20 says, you've made an order under CEPA to clean this up; therefore, it's compensable under this. This is compensation legislation.

Mr. Nathan Cullen: I have a question about reference again.

We had some cross-border issues when we were talking about the economic compensation. When the department looked at the equivalent under environmental cleanup within the U.S. jurisdiction, what did we find?

Mr. Dave McCauley: If there's an incident in the United States affecting Canada, then Canadian victims would be able to make a claim against the American operator.

Mr. Nathan Cullen: And is that vice versa?

Mr. Dave McCauley: That's correct. We have a reciprocal arrangement with the United States, and it's under that reciprocal arrangement that an American victim would be able to seek compensation under our legislation.

● (1600)

Mr. Nathan Cullen: Where is that reciprocal arrangement, just so we can reference it later on?

Mr. Dave McCauley: It's a regulation....

Ms. Brenda MacKenzie: I think it's under section 64.

Mr. Dave McCauley: Do you want the existing order?

Mr. Nathan Cullen: Yes, because we talked about this before. We have this agreement, but does it sit as a statute of law? Does it sit as just a regulation that both governments have passed at some point in the past?

Mr. Dave McCauley: It's a rule or regulation.

Ms. Brenda MacKenzie: It is a regulation and it is available under the statutes of Canada. I can get that for you.

Mr. Nathan Cullen: In terms of the breadth and definition of what we've defined as environmental damage under Bill C-20and the comparison legislation in the U.S., did the department spend any time looking at what the U.S. had drawn up for this measure?

Mr. Dave McCauley: This wording is analogous to wording in international conventions in this area. As to the U.S. legislation in particular, we have likely seen that, but I don't know at this time exactly what that legislation provides for.

Mr. Nathan Cullen: You have referenced conventions rather than U.S. law in your response. Am I right that we don't reference U.S. legislative authority as much as we reference international conventions when designing something like clause 17?

Mr. Dave McCauley: Most domestic legislation in this area falls out of international conventions. So the differences are largely on the margins. Most of the legislation is similar to the international conventions.

Mr. Nathan Cullen: I want to get to the lakes. We have standing agreements with the U.S. We have the Great Lakes Water Quality Agreement. I think it's over 100 years old now. What cost estimates did the department do on clause 17? What studies did we reference regarding what a cleanup of Lake Ontario would look like under clause 17?

Mr. Dave McCauley: We did not do any studies under clause 17. The purpose of 17 is to define what a compensable head of damage would be in relation to the environment.

Mr. Nathan Cullen: Sure. The reason I ask is that you suggest that the government will cover reasonable costs in clause 17, but you don't know what those costs might be. Does the government not leave itself open to conflict with the courts? The public reads this and thinks all reasonable costs will be covered. When the public finds out the government didn't do any studies to determine what those costs might be in the event of a nuclear accident near Lake Ontario, is there not an opportunity for a judge to say that the entire limit-setting authority under this act contravenes itself in clause 17?

Ms. MacKenzie looks a little confused, so I want to be clear. You've said that the government will compensate reasonable costs for environmental damage. I've asked if you have gone out and studied what the costs might be. The government has said no, but it has set a limit further on in the act on what the total costs would be for everything. I don't understand how you can make the claim that you will compensate reasonable costs if, since you never looked at it, you don't know what the reasonable costs could be.

Ms. Brenda MacKenzie: Clause 17 refers to the reasonableness of doing work ordered by a competent authority. It means you didn't pad your account. This concept of reasonableness is linked to the actual work undertaken. We're not talking about what's reasonable within the context of a particular total liability limit; we're talking about reasonable costs of the work that you've been ordered to do. If you were ordered to do something and you did 47 other things that cost a whole bunch more money, you're not going to be compensated. It's like that. You are going to be compensated for what you were ordered to do by a competent authority. So there's an objective trigger to what you're compensated for.

● (1605)

Mr. Nathan Cullen: I see. So what the judge or tribunal will be looking for when determining costs in clause 17 isn't so much about whether the authority was reasonable in its initial determination of what needed to be cleaned up. Instead, it's looking to see whether the contractor or the province was reasonable in cleaning up what they were told to clean up. It's looking at whether they padded their budgets or did more than they were authorized to do. When you say "reasonableness", it is directly linked only to what the government ordered done. It's not reasonable in the sense of what reasonably should be done to clean up the environment. That question was answered further up.

Ms. Brenda MacKenzie: Yes, that's right. What's reasonable to be done is what you've been told to do. And your reasonable costs will be linked to what you were instructed to do by a competent authority.

Mr. Nathan Cullen: I'll go back to the lakes. Who is the competent authority that determines under clause 17 what environmental cleanup would be required in the Great Lakes, which is a shared body of water? Who makes that decision?

Mr. Dave McCauley: I don't know who that competent authority would be. It would be up to the judge to determine if the agency that ordered the cleanup was indeed the competent authority.

Mr. Nathan Cullen: Here's my next point.

If the judge determines that the agency that did the cleanup was not ordered to by a competent authority, is the cleanup potentially non-negotiable? Is it simply not compensated for?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: I'll go back to my question about making sure everybody knows who's making the decisions.

The department doesn't know who has the authority to order a cleanup and what extensiveness of cleanup would be done on something like the Great Lakes, yet we've determined that the time immediately following a nuclear incident is a critical time. Decisions will have to be made. Is there not then a burden of risk placed upon those who order the cleanup, that they may in fact not be compensated for it if they didn't, by some later judge's decision, hold the competent authority title?

Mr. Dave McCauley: The philosophy here is that those who order mitigation or remedial measures on the environment have the competency to order those remedial measures.

Mr. Nathan Cullen: As determined by the judge?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: But my point is this. In the immediate aftermath of an accident, the Canadian public would expect quick action, certainly. This would not be a calm day. Folks are going to have to go out and put booms up or seek to start digging up soil, or do something. I don't even know what they do when it comes to the cleanup of a nuclear accident.

Even under a flood in Canada, we have emergency preparedness guidelines to know exactly who does what and who gets to say what. In order to avoid the scenario in which somebody does a bunch of work that they don't get paid for or does work that's improperly done, they run through those scenarios. Do we run through those scenarios, in terms of a nuclear accident, as to who gets to say yes and who gets to say no?

Mr. Dave McCauley: There are nuclear emergency plans, and they involve responsibilities of both provincial governments and the federal government and the operator. They have competencies defined and responsibilities in those nuclear emergency plans. And it would be up to the court, when paying compensation, to determine whether in fact the victim who is making the claim is making the claim for measures that were ordered by a competent authority.

Mr. Nathan Cullen: With respect to environmental contamination, the government feels confident that the nuclear emergency plans in place define all the competent authorities involved. Is that right?

I would imagine that part of the planning is to say, okay, in the event of an accident you do this, you do this, you do this; you are the competent authorities on this, this, and this, and the cleanup will look like the following.

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: I guess my question is this. Why not reference either those plans or those authority guidelines in the act to give everybody assurance that the cleanup done under clause 17 will be compensated for and there will be no confusion so nobody hesitates on initiating the plan? We simply don't want any hesitation when something like this happens.

● (1610)

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: The names of provincial statutes change and the names of provincial authorities change. We did in fact think about that, but it was better to be generic so you didn't miss somebody than to be specific and then perhaps, with a name change or a new emergency organization established or a protocol in a province, we could accidently leave somebody out who we actually intended to be caught. So by being generic we leave it up to the judgment of the court into the future. It was better. I thought about it, we thought about it, and we thought it was better to be generic.

Mr. Nathan Cullen: The risk of potentially causing any confusion feels lessened because those plans, as they go through, will be updated. I'm just talking about competent authorities here in terms of environmental authority.

Who has the authority to clean up what? Who can issue it and pull in the contractors? The government, to my knowledge, doesn't actually own any of the equipment that would do the cleanup. Whether provincial or federal, this is all going to be done by either the.... I don't know if it would be done by the nuclear operator themselves. They can't be compensated, though, is that right? They can't be compensated for damages—we established that in subclause 16(1)—but can they be compensated for cleanup, under clause 17?

Ms. Brenda MacKenzie: We have carved out damage to the operator's own installation from coverage, because we don't want the operator to syphon off. A lot of the expense would be there, and we don't want the money intended for third party victims to be spent there.

Mr. Nathan Cullen: Many millions of dollars.

Ms. Brenda MacKenzie: What we have in clause 17 is a requirement that if a competent authority, acting under legislation—and you'd have to establish that it was legislation and if he is or is not acting under the legislation—then reasonable costs of the measures are compensable. It doesn't matter who has been ordered to do it.

Mr. Nathan Cullen: One would assume the expertise exists within the nuclear industry itself in terms of cleanup. If it happens one kilometre or five kilometres off-site or further, it would be the one to know what they're doing, because odds are that local Joe Contractor down the road probably doesn't have the equipment to clean up a nuclear-contaminated site.

Just to be clear, the operators can then be compensated for that work under clause 17.

Ms. Brenda MacKenzie: If they've been ordered.

Mr. Nathan Cullen: If the province or the federal government orders them to clean it up.

Ms. Brenda MacKenzie: Whoever has been ordered to do the remedial measures, yes.

Mr. Dave McCauley: Yes, it wouldn't necessarily be *the* operator; many contractors could be responsible for decontaminating property.

Mr. Nathan Cullen: I just wanted to make sure there wasn't an unintentional loophole created. I'm not passing any comment on your writing, but an exclusion to the operator receiving any compensation would not unforeseeably make it impossible for them to be compensated for environmental remediation that happens off-site.

I don't see the notion of remedial measures included in clause 17. Often under acts pertaining to the mining industry and to pulp and paper operations, when an environmental cleanup happens there are levels of cleanliness, I suppose, or a return to a pre-existing state, that are included in the directions to the company, and they're very explicit. They've had to be, because Canada has had an experience where I think Mr. Tonks's riding had a site that picked up, closed down, and the costs of remediation of the site were extensive, because our concern for the environment in 1940 was very different from what it is today. The expectations of the public are much higher in terms of what "returning to pre-existing state" means.

Clause 17 doesn't really get at what the expectation is as to the level of cleanup, and this is an important point simply because one person's cleanup can be extraordinarily different from what the tolerance is. I can imagine the public meeting where folks are saying five years down the road, after the box has been ticked and the contractors have all left, that they still think the site is contaminated. Under legislation, if it's not defined then it seems nebulous.

Can you help me see where the definition of mitigation really is? What is it considered to be?

● (1615)

Mr. Dave McCauley: It would be for the competent authority to define the level of remedial measures to be taken. For example, when you're talking about decontamination or the cleanup of property, then the competent authority would define to what criteria the property would be cleaned up, and then the claim would be brought to the court. Our legislation does not define what those cleanup criteria will be; rather, it relies on the competent authority to define the necessary measures.

Mr. Nathan Cullen: If I'm using those other industrial applications under the mining act and others, that's not left up to other authorities; it's explicitly said what the post-use level of remediation must be. Mining effluent, potential acid rock drainage, and those types of issues are toxic in nature but not even anything in the stratosphere of the stuff we're talking about here. I don't know why in this act it seems more open than it would be in another act under Parliament.

Mr. Dave McCauley: In this situation the competent body would determine the necessary level of cleanup criteria, and I don't think that is different from any other industry where you have to undertake a cleanup when the regulator doesn't define to what level you clean up the property.

Mr. Nathan Cullen: We can't reference those standards in terms of what the nuclear industry is contracted to do for a cleanup. Do those standards exist right now, or is it for Natural Resources Canada to decide after the fact?

Mr. Dave McCauley: No, Natural Resources Canada would not be the competent authority to define the cleanup criteria. It would be a regulatory body that would be responsible for that.

Mr. Nathan Cullen: Can you give me an example?

Mr. Dave McCauley: The Canadian Nuclear Safety Commission.

Mr. Nathan Cullen: So the Canadian Nuclear Safety Commission, under clause 17, would be given the authority to define when cleanup is done. Is that right?

Mr. Dave McCauley: No. It could be a competent authority under clause 17, and in that capacity it could order that certain remedial measures, such as cleanup of a property, would have to be done to a certain level that it may prescribe.

Mr. Nathan Cullen: It sounds like what I said, though. Is it not given over to that authority to decide what the level of cleanup is?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: And do they define that level now, or will they define it once an accident happens? Does that exist...? The struggle is to vote on a clause when we don't know what the standard of reference is. We don't know what it's referencing to. And that's flying a bit blindly, if you follow me.

If it says that this act orders a cleanup to happen and to pay for the remedial costs, and then when we ask what the standard of remediation is, it's referencing something that we can't see as legislators. Then it's irresponsible for us to vote for it. It's like saying that we're going to compensate to a sufficient level and we ask for a sufficient level, and that's decided by somebody else who hasn't written it down. We have no idea what “sufficient” might mean.

Mr. Dave McCauley: Well, that's not the purpose of this legislation, to specify cleanup criteria. The purpose of this legislation is to indicate that where a competent authority—and we understand that the Canadian Nuclear Safety Commission is very competent in this area—defines that a property must be cleaned up, then the court takes that and compensates the victim for the costs incurred in undertaking that remedial measure.

Mr. Nathan Cullen: I totally understand.

And does the CNSC have a working definition of what remediation is? Do they have a level at which they say something is now returned to a pristine state? Or is it still contaminated, but not so long?

Mr. Dave McCauley: I believe it would be based on the specific case that was presented.

Mr. Nathan Cullen: I'm sorry, I don't understand what you mean.

Mr. Dave McCauley: The level of cleanup that would be required, the order—

Mr. Nathan Cullen: It's contextual. They'll decide on a case-by-case scenario how clean the cleanup needs to be.

Mr. Dave McCauley: They have specific requirements, but I think it would be better for somebody from the Canadian Nuclear Safety Commission to be explaining those to you.

● (1620)

Mr. Nathan Cullen: Chair, in terms of an amendment we have to clause 17, shall we move it now?

The Chair: Yes, go ahead, if you'd like, Mr. Cullen.

Mr. Nathan Cullen: Thank you, Chair.

Clause 17 reads:

> Reasonable costs of remedial measures taken to repair, reduce or mitigate environmental damage caused by a nuclear incident may be compensated if the measures were ordered by an authority acting under federal or provincial legislation relating to environmental protection.

Our amendment, which is in the committee's package under NDP-2, is that Bill C-20, in clause 17, be amended by replacing lines 9 to 11 on page 6 with the following:

> compensated.

Essentially what this has the effect of doing is saying that clause 17 would read as follows:

> Reasonable costs of remedial measures taken to repair, reduce or mitigate environmental damage caused by a nuclear incident may be compensated.

The Chair: Are there any comments on that?

Mr. Allen.

Mr. Mike Allen (Tobique—Mactaquac, CPC): Thank you, Mr. Chair.

I have a couple of questions to the witnesses about the impact of this amendment.

I've been listening to Mr. Cullen dance around this for about 50 minutes now, and the simple measure in clause 17 is that there has to be some kind of competent authority to designate what that damage is, because if you leave that open-ended and stop at saying compensated, who the heck is going to make that determination? It could be someone from God knows where if they have an opinion on something. So if it's a competent authority, a federal or provincial legislation, as you said, under CEPA, it could fall under that, and then it would be compensated under this. I think it would be very risky to put this in, so I'd like your comments about that.

I would also like to ask a second question, since I've listened to Mr. Cullen dance around this for 50 minutes. Does this clause represent a change from the previous act? How do you believe this has strengthened it? I think globally when we look at this act as it is, this is a better act than what we had before. There exist a number of nuclear installations out there now that we do need to cover. Whether or not anybody ever builds another one is not the question here today. We have things that we have to cover.

Further, we also know from the testimony that we heard—and we'll get there a little bit later—about the potential risk to ratepayers and other people from compensation levels being too high.

So do you see this amendment opening up something that we won't be able to close and opening us up to too much risk? Also, how has this clause changed from the previous act?

The Chair: Mr. McCauley.

Mr. Dave McCauley: Thank you.

Regarding the first question, in terms of the amendment, yes, I believe that in fact the amendment would open up the legislation by requiring the courts to determine if these measures were reasonable. Our view was that it was best to provide some rigour into the determination of what remedial measures were, and that's why we introduced the concept of federal or provincial competent authorities into the legislation.

In answer to the second question, this provision does not exist in the existing legislation, the Nuclear Liability Act. It was introduced for the very reason that the Nuclear Liability Act was brought into force in the 1970s when there was very little concern about the environment or environmental damage. This really addresses the fact that there could be damages to public lands and that it was appropriate that there be something in place ahead of there being any damage here, so that the mitigation of that damage could be compensated. This provision would also bring Canadian legislation up to the standard of some of the international conventions in this area as well.

● (1625)

Mr. Mike Allen: So the short answer is that Mr. Cullen is filibustering a bill that's better than what we have today and for nuclear installations that we need coverage for today. So the best thing to do is to get on with it.

Thank you.

The Chair: Thank you, Mr. Allen.

Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle (Trois-Rivières, BQ): I listened carefully to what Mr. Cullen said about reasonable costs. However, I think that striking out this part of the clause would be completely unreasonable. Moreover, if you take into account his concern about provincial legislation, then I think it is important to keep this part of the clause so provincial legislation can apply. For this reason, I will vote against the amendment.

[*English*]

The Chair: Mr. Cullen, perhaps you want to wrap up the discussion on this.

Mr. Nathan Cullen: Not necessarily, but I will make some comments. I'm not sure I'm going to go down Mr. Allen's track. I understand he has somewhere else to be or something else more important to do.

In terms of protecting the Canadian taxpayer from some hundreds of millions of dollars of compensation around environmental damage, I believe the reasonable authorities to pay for it are the ones who caused the damage in the first place. I know it is a strange notion perhaps to my friend Mr. Allen, but it's not to me: that if you caused it you should potentially pay for it.

We heard from witnesses that the insurers were able to cover up to $1 billion. The government set a limit eight years ago. They've listened to many hundreds of hours of testimony and still deem the act they drew up eight years ago to be perfect and without fault. They've learned nothing from the witnesses, nor have they learned anything over all of that time in terms of the international conventions that have happened and have been modified since.

It's incredible: a snapshot in time back then, and also the context of a government willing to sell more nuclear reactors to India and to privatize the entire operation in the same breath. It's remarkable.

In terms of this amendment, which is what we're talking about, the concern I have and the reason we moved a change—and Paul raises a very good point—is that I think the amendment as chosen can be improved. This is a question to our witnesses. Concerning mitigation, there are three central components to the environmental damage caused. There's repair, reduce, and mitigate. The concern we had and what we're seeking to improve in this clause surrounds the scenario that somebody goes forward in that immediate period and tries to stop the flow of a river or to do some mitigating measure, but there's absolutely no time to get the authorities to approve the work. What we're trying to address in clause 17 with our amendment is to have some reasonableness given to the judge to say that while they didn't get an order from the Ontario Ministry of the Environment or the Canadian Nuclear Safety Commission to do the work they did, it was obviously well intentioned and was seeking to mitigate the damage to the environment of a nuclear accident.

What I'm seeking to do in clause 17 is to allow the judge or the tribunal some possibility of awarding compensation for someone who was trying to do the right thing, but in the urgency of the time and the process as described, which is not laid out in clause 17, did not have the authority to go forward and do it. I'm not sure if you follow my reasoning here, Mr. McCauley.

To finish that, Mr. Chair, if that were handled within the clause as it sits right now—that case of somebody going forward without the written authority but just in the urgency and the good intention—then that would be helpful too.

Mr. Dave McCauley: I think we rely here on the importance that these matters are brought to the attention of those authorities who are most knowledgeable about them, and that they are the ones that authorize measures, rather than individuals moving forward and doing what they think is necessary to mitigate environmental damage. There are competent authorities who know what needs to be done and who will order that.

The turnaround time, I would suggest, would be fairly short in terms of issuing orders and defining what needs to be done. I think that's a preferred route over having individuals going forward and taking whatever actions they feel personally might be necessary in terms of mitigating environmental damage.

● (1630)

Mr. Nathan Cullen: I guess that's the crux of the amendment on clause 17. It's that trust in the speed.

You've just described a confidence that the authorities will have enough prescience and speed on the ground to be able to issue those orders, to bring in the contractors. I know what you're trying to avoid, which is kind of like the wild west, where people are out doing all kinds of things that might do more harm than good in the end.

I guess why I feel certain that individual actions should be included in this is that a judge or a tribunal is also going to make the determination of the compensable damage. If somebody goes out and does something wrong that causes harm, obviously a judge is going to look at that as well and say that person will not be compensated for something that ended up making matters worse. I suspect it's going to happen anyway, frankly. I don't think everybody living near a nuclear reactor, if they hear about an incident, is going to say that because of clause 17 in Bill C-20, they're not going out with their backhoe to do anything because they're not going to be compensated for it.

I think if folks hear about a contamination or a leak and if something's happening, they may seek to go do it anyway. Under the act as it's written right now under clause 17, they are specifically excluded from taking any mitigative actions.

Mr. Dave McCauley: I think that leaving it to a judge to determine what is an appropriate remedial measure would also put the individual who took the measure in a difficult situation. If it was left to a judge, that individual would not know whether he or she was going to be compensated. We're saying that it's primarily the competent authority who will determine these actions. It's clear that we don't expect the individual to be going out and remediating the environmental damage. That's for a competent authority.

Mr. Nathan Cullen: This amendment to clause 17 is attempting to deal with the notion of expediency. I want to understand why you're so confident in the competent authority's ability to get these orders out the door quickly. Did the CNSC, or some authority that you referenced when drawing up this legislation, say that they could issue orders within minutes or that it was going to be days? Where does the confidence that you're expressing in relation to clause 17 come from?

Mr. Dave McCauley: There are nuclear emergency plans that define response actions in the event of a nuclear incident. Those plans and actions are practised, and there's a learning process associated with those plans. One of the considerations would be to ensure that mitigation and remedial measures are ordered quickly.

Mr. Nathan Cullen: These are CNSC-ordered operations? These are plans that every nuclear operator has in hand? In the event of an accident, this is the plan that unfolds, and here are all the competent authorities that are referenced. That's what exists in the plan that would reference the CNSC?

Mr. Dave McCauley: There are various authorities that have responsibilities under these nuclear emergency plans, going right from the operator of the facility up to the Canadian Nuclear Safety Commission. There are also various levels, agencies, that all have specific responsibilities.

Mr. Nathan Cullen: We talked earlier about what an incident was —whether it was contained, on-site or off-site, severe or not. These plans also take off-site contamination into account?

Mr. Dave McCauley: Yes, that's correct.

Mr. Nathan Cullen: Are certain expectations and timelines associated with these plans? This is what we're getting back to. Many of the folks surrounding such a facility work there and might have some knowledge about mitigating techniques, but they're at home and not on shift. Are there schedules for the roll-out of efforts at mitigation of environmental contamination?

● (1635)

Mr. Dave McCauley: I'm not certain of the timelines. I imagine that there are time objectives. The intent would be to order mitigation and to take whatever measures are necessary as soon as possible. So I imagine there are time objectives, but I can't competently say yes or no.

Mr. Nathan Cullen: In our second amendment, we've attempted to find a way to ensure that people who had gone forward, in emergency conditions, to mitigate damage would not be excluded from the compensation line.

What I'm hearing from government is that they feel confident with the plans that are in place. The expediency will happen, the competent authorities will be dispensed, the cleanup will happen in a timely manner, and there will be no individuals or other contractors trying to get some work done. My friend in the Bloc raised a concern about the provincial authority. We were also concerned about who was running the show, who was making the decisions about what gets cleaned up. You don't want a turf war when something like this happens. I think we're all in agreement on that.

I'll withdraw NDP-2 out of respect for that consideration.

The Chair: Is there consent from the committee to withdraw that motion?

(Amendment withdrawn)

The Chair: Are we ready for the question?

Some hon. members: Recorded vote.

The Chair: Okay, a recorded vote.

[Clause 17 agreed to: yeas 10; nays 1]

(On clause 18—*Preventive measures*)

The Chair: Shall we go to the vote on clause 18?

Yes, Mr. Cullen.

Mr. Nathan Cullen: Maybe I'll allow the witnesses to first present the argument for this, but my assumption is that it's allowing for folks to be compensated for preventive actions that they do. Is that correct?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: Why is there the need for this to exist? Is this in the event of an accident happening? Or is this work that was done that was later deemed to be helpful in mitigating the damage of an accident?

I want to get the timeline right as to when clause 18 is invoked.

Mr. Dave McCauley: This provision provides compensation, for example, in the event of a preventive evacuation. So there may not have been any damage, or there may have been damage, but the idea is that a victim could bring forward a claim for compensation, for example, if they were evacuated from the area because there was a consideration that there may be a release of radiation, for example, or there may be an incident.

Mr. Nathan Cullen: Is that the exclusive scenario imagined under clause 18? When the local nuclear power station thinks there might be an accident coming or there's a problem, they evacuate a community. Folks seek some hardship damages because they were evacuated and nothing actually happens, and they seek compensation. I'm trying to understand. That seems like an awfully particular thing to seek out in a whole clause.

● (1640)

Mr. Dave McCauley: No, it also could be in the situation where there was no release of contamination; for example, a precautionary evacuation. There had been an incident at the plant, so there was a precautionary evacuation. Alternatively, there may be an actual incident, and these are preventive measures that an authority orders as a result of that incident. Therefore, victims would be compensated for taking those preventive measures to ensure that no damage took place.

Mr. Nathan Cullen: Okay, I want to stay on the residents for a moment. If only those ordered out would be compensable.... I'll get that word eventually. Is that the word?

Mr. Dave McCauley: Compensated?

Mr. Nathan Cullen: But there's a term as well. Only those who are given a direct order and then come back and seek compensation.... You ordered me out because of this type of hardship. I'm seeking money from the government or from the nuclear provider. Does it also apply to a contractor or somebody who's on-site, let's say, and the company says, we think there might be an accident coming; we need to do this, this, and this, and build up a whole bunch of protection here. Is that what's imagined? You talked about other works done to mitigate the potential of an accident, but whether an accident happens or not, they can seek compensation. I'm confused by that.

Mr. Dave McCauley: I don't think I'm following your question.

If there's an order to take a preventive measure, then that is compensable. We were getting back to clause 17, almost. It's somewhat similar. If an authority acting under a nuclear emergency scheme that's established under federal-provincial legislation—so it's a competent authority—orders that certain measures be taken, if it's recommended, then those measures will be compensated for. For example, if there is an evacuation of the local community, then people who were evacuated—businesses, residents—do have a legitimate claim for compensation.

Mr. Nathan Cullen: If a nuclear authority were to order a contractor to do a series of work in that crisis moment, is this also contingent?

Mr. Dave McCauley: Yes. If one can imagine that there were a preventive measure that required that, yes, they would be able to receive compensation.

Mr. Nathan Cullen: Again, does the trigger for this whole thing opening up have to come from the CNSC? Who is it that decides? What it reminds me of is when governments issue states of emergency, only by that statement is the funding then ordered up so people can be compensated retroactively and all of that. On that legislation, that's what the trigger is. On this legislation, what is the trigger?

Mr. Dave McCauley: It is a recommendation under federal or provincial legislation. It's not necessarily the Canadian Nuclear Safety Commission. It could be an emergency measures organization in a province as well.

Mr. Nathan Cullen: I see. They have also been given the power to say they think an accident is coming or an accident has happened, maybe. That's more likely the scenario. It's not predicting an accident. They've seen something that causes a concern. They think an accident may have happened. They order an evacuation. They order a whole bunch of work to be done. This is what clause 18 is for.

Mr. Dave McCauley: Typically, it is the operator who would notify the emergency measures organization or the Canadian Nuclear Safety Commission of an incident, and then there would be a decision taken to order an evacuation.

Mr. Nathan Cullen: Then this is the moment. The scenario is that an operator says something has gone wrong and they are showing increased levels.

Bruce is going to take me on a tour in a little while and I'll finally understand what the buttons all mean, but they see trouble at the site—not them, someone unnamed. I don't want to get sued for libel. I'm not sure it happens here. A nuclear operator says there is a problem and thinks some sort of accident has happened or is about to happen and they are going to notify the relevant authority, whatever it is. Again, you haven't defined it, because those can move around in new agreements. Understood. They order an evacuation. They also tell the operator to do what needs to be done to stop this from happening or to contain it if it is thought to have already happened. If there has been an accident, shore it up and try to keep as much of the stuff inside as possible. Those contractors and those residents who were ordered to do something can seek compensation.

● (1645)

Mr. Dave McCauley: That's correct. I simply want to make sure you aren't under the assumption that what we're compensating here is reparations to the installation. Rather, these are preventive measures taken by someone other than the operator.

The Chair: Thank you, Mr. Cullen.

I'll go to Madame Brunelle, who has some questions.

Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle: I live close to the Gentilly Nuclear Power Station. I own a beautiful house in the country, by the river, and I think it is great. The Quebec Ministry of Public Security gave us iodine pills and evacuation plans. Every year or so, the small municipality of Champlain, where I live, has an emergency measures drill and checks its communication system and so on with the help of many volunteers.

If I understand this clause, it means that in case of an evacuation ordered and administered by an emergency preparedness organization, there would be compensation. For example, if I have to leave my home and spend several days in a hotel or if I lose some property, I would be able to access a compensation process. Is that right?

Mr. Dave McCauley: Yes.

Ms. Paule Brunelle: This is clear, Mr. McCauley.

[*English*]

The Chair: Is that all, Madame Brunelle?

[*Translation*]

Ms. Paule Brunelle: Yes.

[*English*]

The Chair: Are there any further questions on clause 18?

Mr. Cullen.

Mr. Nathan Cullen: Mr. Chair, you don't say that with enough enthusiasm. “Any other questions” is all in a high tone and then drops at the end.

The Chair: I lack a certain amount of enthusiasm, I will admit.

Go ahead.

Mr. Nathan Cullen: The parliamentary process is a wondrous thing.

The question I have we referenced earlier. At first, folks weren't entirely certain. We got into the notion of workers at the site. I think this was back in clause 15. We weren't sure about collective agreements. That was put aside. I don't know if you have any further research on that. We also found that the nuclear operator itself—I think you have clarified it again in clause 18—can't be compensated for anything they were doing to the site itself, so if an order is issued and there is an accident, for damages that are repaired or shored up, the nuclear operator can't seek compensation under Bill C-20. That would be counterintuitive.

For the workers working at the plant who are also ordered out, under one of these instances—I imagine it wouldn't be a day necessarily, it could be quite a long time—are they able to seek compensation? For instance, their neighbours are evacuated, and these folks are also evacuated but are also out of work. Under clause 18, is this a place for that authority...? I think you actually referenced clause 18 a bit when we were talking about clause 15, and you said there was something further down the line in terms of whether an authority had issued an accident.

Could you help me out?

Mr. Dave McCauley: What would happen is that there would probably be more involvement of workers as opposed to less involvement of workers. If workers' families in the immediate vicinity were to be evacuated, certainly there would be compensation available to them. But I don't foresee workers not being engaged in addressing the situation.

Mr. Nathan Cullen: So in the plans you've looked at, from.... I don't want to make an assumption. Has the department looked at the emergency plans we referenced back in clause 17? We identified that every site has one of these emergency plans in the event of an accident. I assume that when drawing up Bill C-20, the department looked at them. We talked about competent authorities, who's in line to do what, and who can say what. Is it true that the plans also imagine that the workers at the site are the ones doing the repair and cleanup in the event of an accident?

Mr. Dave McCauley: I wouldn't want to comment on that issue.

There would be a lot of activity at the plant in the event of a nuclear incident, and it's not entirely a certainty that all the workers would be evacuated. In fact, I think it would be just the opposite. They would have to be there in order to ensure that the incident was dealt with.

● (1650)

Mr. Nathan Cullen: We talked about the work being done to the site. I'm not sure how clause 18 delineates or makes the distinction between work done that was meant to contain the accident.... I assume that under clause 18 the mitigatory action would be compensable.

Mr. Dave McCauley: No. Work that was done by the operator to control the incident or to respond to the incident would not be compensable under the legislation.

Mr. Nathan Cullen: Would it make any difference if it were a contractor to the operator? Would it be the same thing?

Mr. Dave McCauley: If it were a contractor, the operator would be paying the costs of having the contractor do the work. It wouldn't be the legislation; it would be the operator.

Mr. Nathan Cullen: In terms of the public, we've identified that if there's an accident in an area, if the community is under an evacuation order and folks leave, they can be compensated for lost wages. We also know that there are significant transportation routes around some of these plants—Highway 401, the VIA Rail line, and CN Rail. What does clause 18 say about those matters?

I'm just talking about the public here for a moment. You said that if folks were evacuated for a week and they lost a week's worth of wages and had to pay for hotels and what not, clause 18 seeks to compensate them.

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: In the case of a serious nuclear accident, I could imagine Highway 401 being closed for many hours, until it was secure.

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: I'm trying to understand where your liability of risk limit lies. Where do you set the boundaries? Clause 18 talks about people under evacuation order. I can't think of anybody else so far under clause 18. Is that it? Is this just about evacuations?

Mr. Dave McCauley: No. For example, if there were situations where decisions were taken to prevent further damage, an order was issued banning the consumption of certain foodstuffs, for instance, that would be considered a preventive measure. Because that would be an order to prevent further damage, that action would be compensable.

Mr. Nathan Cullen: Okay, this is helpful.

So when you're talking about further damage—and the damage I've been imagining so far is physical plant damage—you're talking about damages in the broad sense of damages. As for foodstuffs—I'm not sure what you're saying about food. Why is that?

Mr. Dave McCauley: It would be to prevent damage. For example, if there were a decision not to—

Mr. Nathan Cullen: Harvest a crop.

Mr. Dave McCauley: I mean if there were an order not to harvest a crop, etc.

Mr. Nathan Cullen: I see. Or it could be livestock or what not. If they were ordered killed or what not, they could be compensated here.

Mr. Dave McCauley: Yes.

Mr. Nathan Cullen: Going back to the transportation routes, if CN were unable to access the line going by a plant for a few days, would they end up here?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: That can add up.

If the 401 is closed for three days, who would sue for that? In terms of CN, it's a clear case—the contractors or what not. If you close a major highway route in Ontario or Quebec, who sues?

Mr. Dave McCauley: Well, those individuals who consider that they had sustained damage would launch a lawsuit, and it would be up to the judge to determine whether they could be compensated under the legislation.

Mr. Nathan Cullen: Back to this estimation question, this is a limited liability bill. In clause 18, one of the specific examples we've used concerns evacuation and lost wages and the hardship associated with that evacuation. What studies did the government either initiate themselves or reference in trying to understand what a typical evacuation might cost per day?

Mr. Dave McCauley: We set a limit, which was our recommended limit for operator liability, of $650 million. We then undertook the study by Magellan, which we produced for the committee on Monday, to determine how the damages associated with a foreseeable incident would relate to that $650 million limit. That was the study we undertook.

● (1655)

Mr. Nathan Cullen: Magellan also said to take a look down the road at a Pickering-type scenario. With reference to things like clause 18, I don't understand how you set the limit. For the number of people we're talking about around Pickering, give or take 250,000, you would then work your way backward through clauses like clause 18. Is that what you just said?

Mr. Dave McCauley: We didn't work our way back specifically through different types of damage. We identified the various types of damage for the consultant, and the consultant did an evaluation of a foreseeable incident and what the likely cost of the damage would be. The study indicated that it would be within the bounds of the limits we had set.

Mr. Nathan Cullen: What you just said is that the study you did looked at a couple of sites, Gentilly-2 and one other, and that this was within the range of compensation that would be coming. They added up all these different areas of compensation. One of them was the likely cost of an evacuation.

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: The study authors then said that what you must also implicitly do is two things: look at a more serious accident, and look at a site that has a higher density of population around it. I'm assuming that one of the reasons they did that.... The government instructed the authors to look at the sites they looked at. I don't remember anywhere in the study where the authors said that they chose the sites. The government said to pick these two sites.

Mr. Dave McCauley: As I recall, there was a discussion with the consultant, and it was determined that Gentilly and Darlington were considered to be mid-level facilities, and the population density was mid-level. So those would be indicative of the costs that would be incurred, and that's why they were chosen.

Mr. Nathan Cullen: Would they also be indicative of the costs that would be incurred around a site like Pickering?

Mr. Dave McCauley: I think there would probably be more costs associated with Pickering just because the key element, in terms of damages, is the evacuation cost. If there were a denser population, one would expect that the costs would be higher for the evacuation.

Mr. Nathan Cullen: I think this is a concern that's pressing for something like clause 18. When we talked before about there being a certain limited amount of money that a judge or a tribunal will dispense, the amount of money is based on two places that have a much lower density than a place like Pickering, which we just talked about. My concern is that we're going to run out of cash, in terms of paying, and then they'll seek cash from Parliament for a place like Pickering, under clause 18, right away. We're tripling or quadrupling the number of people we're evacuating. And I assume that we're quadrupling the cost of that evacuation, as well.

Mr. Dave McCauley: The limit on liability was not set based on any particular incident. Rather, it was based on international levels, insurance capacity, and other factors. Then we assessed that vis-à-vis the study.

Mr. Nathan Cullen: Yes, I know. I understand. And yet the author said to head down the road, look at Pickering, and also look at more serious accidents—I would assume for clauses like clause 18.

Mr. Dave McCauley: I'm sorry, excuse me?

Mr. Nathan Cullen: The authors of the study that the CNSC commissioned said that when you're looking at these issues of compensation, what the liability regime should be, the government should also go down and look at places like Pickering, with a much higher density—and not just much higher density right around the facility itself but a near proximity to a very large population like Toronto. The evacuation costs associated with Pickering and potentially, if it were a bad incident.... Again, this isn't me, these are the authors of the report who are saying you need to look at this. I don't understand why in clause 18, then, the government didn't try to limit the liability further.

● (1700)

Mr. Dave McCauley: We were comfortable with the costs coming out of the Magellan study vis-à-vis the limit that we had recommended. And it could well be that the evacuation costs associated with Pickering may be higher; nonetheless, based on international practice, the available capacity, etc., the $650 million figure seemed to be quite appropriate. For the costs associated in the Magellan study, the dollar value was $1 million to $100 million, so we felt there was sufficient buffer there between the $650 million that we understood.

The Chair: Mr. Cullen, these questions are questions that you've asked before in going through other clauses of this bill, and I would encourage you to stay away from repeating the same questions.

If I could, to all committee members, I'll remind committee members that this committee has dealt with this legislation previously, and it would probably help limit the number of questions that would be asked if the members of the committee would go back and review the questions and answers that were given when this bill, as Bill C-5, went through the committee before. So a little bit of homework in terms of looking at the questions and how they were answered before could end or limit the amount of repetition. I would suggest that that happen; otherwise, at the rate we're going, at the rate of two clauses per meeting, we'll be here till the end of June.

If you have questions that haven't been asked before and answered before, if that were the case, then fine. But that isn't the case, and Mr. Cullen, you are starting to repeat even this time exactly the same questions you've asked before. So I'd ask you to stay away from that. Go ahead and continue on clause 18, and hopefully for the next meeting you and all members will review what happened when this legislation was dealt with previously.

Mr. Nathan Cullen: That's good advice. I appreciate the advice.

You referenced $1 million to $100 million, Mr. Hénault. You didn't give a context to it. Was it for evacuation? What's the reference of the figure? I'm sorry. I haven't heard it before.

Mr. Jacques Hénault (Analyst, Nuclear Liability and Emergency Preparedness, Department of Natural Resources): Yes, that's right. The report says that the range for an evacuation, depending on the incident, weather conditions, and a bunch of other factors, could range from $1 million to $100 million, and the $100 million reflects the worst-case design-basis accident.

Mr. Nathan Cullen: So this is important. The $1 million to $100 million reflects the worst case of a design-based accident at the two sites that were studied. Is that correct?

Mr. Jacques Hénault: That is correct.

Mr. Nathan Cullen: So when the government tried to estimate in terms of costs under clause 18, one of the figures given to you by the study was, ballpark, somewhere between $1 million and $100 million for a foreseeable accident—I think that's the term we used—at those two sites. There was no estimation given for a site at Pickering. Does the government have any work on what the lost wages would be in evacuation of any other sites other than the two studied? Did the study include lost wages as a part of that $1 million to $100 million component?

Mr. Jacques Hénault: Yes, that's right, the lost wages, economic loss.

Mr. Nathan Cullen: It's economic loss...so businesses, etc.

Did the government study any of the other sites in the meantime, since the report came out and the authors recommended further study, in terms of lost wages, evacuation costs, or anything like that?

Mr. Dave McCauley: No.

● (1705)

Mr. Nathan Cullen: I'm trying to get a sense of what is captured in the economic loss regime. We've talked about evacuation, lost wages, and people being unable to go to work. There has been much research done since this bill was written, because an incident came after this bill was written, and the members from Toronto will remember this well—the SARS effect. Various elements of the government attempted to assess what the economic impact was of SARS in the Greater Toronto Area and the economic region.

Here's my question. You've undertaken a study to look at the impacts of moving people out of the site, putting them in hotel rooms, and compensating them for any lost wages under clause 18. Is that correct?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: If I were sitting on a city council or a regional authority, under clause 18 would I have the ability to seek any compensation over the loss of something larger than that, the economic loss of an area that's had a nuclear accident? I'm assuming that if we can have an incident like SARS and lose many tens of millions of dollars of economic activity, as the government reported, is that a viable compensation stream? Is that something the government considers under clause 18?

Mr. Dave McCauley: Clause 18 provides compensation for:

> costs and losses of persons who live in, carry on business in, work in or are present in the area

That includes:

(b) the costs and economic loss...arising from the loss of use of property as a result of the measures.

That is, if you were evacuated and you couldn't use your business, you could be compensated for that economic loss.

Mr. Nathan Cullen: If I'm an owner of a hotel operating in the immediate vicinity; I'm compensated for my hotel having been evacuated and for the week the evacuation order remained in effect. But it's not difficult to imagine that the number of bookings going into that hotel would be greatly reduced in the months following a nuclear accident, as they were after an incident like SARS. Is that imagined under this clause, that someone would come forward to the tribunal and say, my hotel typically experienced 60% higher...or my restaurant, or whatever business in the affected vicinity? I'm not talking about somebody 100 miles down the road saying they feel they've been damage by this, but somebody in the immediate area.

I just want to know what the government is liable for. I want to know what the nuclear providers are liable for. Are they liable for something like that?

Mr. Dave McCauley: For a hotel owner, if no one could visit his hotel because people were evacuated or he was in an evacuation zone—

Mr. Nathan Cullen: We understand that is compensable.

Mr. Dave McCauley: —he would be able to be compensated.

What was the second example?

Mr. Nathan Cullen: If in the aftermath my business fell by 50% to 80%, and I attribute that directly...and I have an economic study from the Province of Ontario saying that economic activity in the area dropped 70% in the two years following the incident, I want to know if clause 18 allows for that loss to be compensated or not.

Mr. Dave McCauley: It would be for a judge to determine if that was to be compensated, but there is a concern of remoteness as well. Certainly there has to be some rationale as to why people are not going to the hotel, either because there is contamination associated with it or there is damage, but—

Ms. Brenda MacKenzie: Just for clarification, your question is specifically about clause 18, which relates to damages arising from preventive measures—for example, if the owner had to put a barrier around his hotel and people couldn't come for another six months to stay there. That's a preventive measure.

Mr. Nathan Cullen: I'm sorry, that's the part I don't understand. Why is that considered a preventive measure? It's a preventive measure to what? It's not to the accident happening or to contamination flowing out of the site....

I understand the necessity in terms of naming authorities that have a certain amount of openness and vagueness, but it concerns me when we say that a judge will have to decide. When you say a preventive measure is putting up a barrier across the road, it is a preventive measures to what? It is preventive to somebody driving down the road, but certainly not to the extent of containment of the accident. Is it?

● (1710)

Ms. Brenda MacKenzie: It's to keep people from going somewhere they shouldn't. It's a preventive measure in the sense of preventing damage to people. That would be also be encompassed by preventive measures. It is preventing people from being harmed by—

Mr. Dave McCauley: If a competent authority requires that barricades, etc., have to be put in place to prevent individuals from gaining access to the area, then those preventive measures would be compensable.

Mr. Nathan Cullen: So the city or whoever slaps up a barrier could never be seen as being liable for any damages somebody sought, because they were doing it under authority. Any claim for damages would have to go further up the pipe. Is that correct?

Mr. Dave McCauley: All the damages associated with the incident would go to the operator. No one else would be held liable.

Mr. Nathan Cullen: All the damages would go to the operator.

Mr. Dave McCauley: The operator is absolutely and exclusively liable.

Mr. Nathan Cullen: In the consultation process leading up to Bill C-20 and clause 18, aside from sitting down with the nuclear providers themselves, the operators, and the CNSC—we're talking about communities being affected in evacuations and such—did the government sit down with any of the communities that host these nuclear facilities?

Mr. Dave McCauley: We did not sit down with the communities that host the facilities, but we have had representations in support of the bill from those communities.

Mr. Nathan Cullen: I'm sorry, I don't understand the second part that you said.

Mr. Dave McCauley: The Canadian Association of Nuclear Host Communities has passed resolutions in favour of the bill. It is supportive of the bill.

Mr. Nathan Cullen: So measures in clause 18 that deal with a community's capacity and the costs of evacuation, which we describe as measures taken to prevent damage—and evacuations are considered a measure to prevent damage, and the same with stores getting rid of produce, anything that can be seen as somebody's initiative to try to prevent it—can only be compensated if they were ordered. Is that right?

Ms. MacKenzie might—

Ms. Brenda MacKenzie: By way of clarification, it's if the order has been recommended.

Mr. Nathan Cullen: What is the difference from what I said?

Ms. Brenda MacKenzie: In clause 17 the measure is ordered. That's more formal.

In section 18 the measure is recommended, and that takes into consideration that this is happening very quickly. If an authority acting under an emergency scheme has recommended to the people that they get out, then this is covered.

Mr. Nathan Cullen: This goes back to the concerns I had around mitigation and speed. There are two levels of speed that can be offered under this legislation. The difference between clauses 17 and 18 is that your definition for what can be compensated is based upon something that can happen much more easily. Is that right? You've made a distinction between a recommendation and an ordering of a thing to go forth.

Ms. Brenda MacKenzie: Yes, there is a difference. The preventive measures are preventive. You have an emergency unfolding and you want people to be compensated if they are following a recommendation from a competent authority to do what they have to do on the spur of the moment.

Mr. Jacques Hénault: If I could add to that, with respect to the choices recommended in some of these nuclear emergency plans, whether it be New Brunswick, Quebec, or Ontario, sometimes the word “recommended” is used rather than “a direct order”.

Mr. Nathan Cullen: Can you tell me why?

Mr. Jacques Hénault: That's the way it was set up. Sometimes it's indicated that way in these plans.

● (1715)

Mr. Nathan Cullen: I can't go back to a clause, but.... The ordering was done in terms of the actual cleanup component, because you deem that a more formalized process. Here, the competent authorities.... We went through this to try to understand what that meant, who gets to say go ahead and do it and who can't. Under a recommendation, is it the same authorities but their trigger is lighter, if you follow my meaning? Does it still have to be the competent authorities? I guess that's the heart of the question.

Ms. Brenda MacKenzie: It is a competent authority acting under a nuclear emergency scheme emergency. So the sense in clause 18 is that there's some sense of urgency that something has to be done right now. So if that authority acting under a nuclear emergency scheme recommends, for instance, that women of child-bearing age leave now—just in case—then the cost of those measures are compensable.

Mr. Nathan Cullen: There are buffer zones created around these sites, is that correct? I want to understand, when we're seeking out compensation for a potential evacuation, if there's a zone where you simply can't build near the site. Is that your understanding, Mr. McCauley?

Mr. Dave McCauley: I believe so.

Mr. Nathan Cullen: There have been concerns raised. The reason this is relevant is around the ability and immediacy of being able to get folks out in an evacuation order and the compensation sought for it. Does the department have the authority to prevent cities from getting too much closer, thereby making clauses like 18 easier to do in the event of a nuclear accident?

Mr. Dave McCauley: The department does not have authority in that regard.

Mr. Nathan Cullen: Is that under CNSC? Who determines what the buffer zone is like?

Mr. Dave McCauley: I'm not certain, but I believe it would be the CNSC.

Mr. Nathan Cullen: Let's go back to the notion of lost wages.

You concentrated around this question a little bit because you said you felt the workers who were at the site would be involved, more so in the event of a nuclear accident. Legislation can't go one way or the other on that assumption. If a worker is not involved in that cleanup and is out of work for a number of months, extended beyond EI.... I think we established earlier that a worker from the plant couldn't receive compensation. If a worker is ordered out and is not involved in the cleanup, can they receive compensation under clause 18?

Mr. Dave McCauley: The act does not preclude compensation under any other existing right or obligation under a scheme of employee compensation. So if there was an arrangement for the employee to be able to receive unemployment insurance, etc., then those kinds of schemes—worker's compensation, insurance, etc.—stay in place regardless. This act does not move those out.

Mr. Nathan Cullen: That wasn't my question, and that's not what I'm raising, because we've been there. It was more beyond those schemes, because these things can be shut down for a couple of years. Those schemes don't last a couple of years. I want to know if the government, if the operator, is liable under Bill C-20, clause 18, for any compensation to a worker, showing no prejudice towards the other schemes that are available?

The last time I recall, we couldn't get to an answer on this question.

Mr. Dave McCauley: I think the last time we clarified that the worker would not be compensated as a result of clause 16.

Mr. Nathan Cullen: Is that also true in clause 18? I guess that's my question.

● (1720)

Mr. David Anderson: Mr. Cullen is quite a way off of the topic here, clause 18. If we wanted to move to some of the topics that deal directly with that, we could do that, but I think he's talking about remedial measures and things that are proposed. I think he needs to come back to that, rather than going where he's going right now. This isn't about remedial measures; clause 17 was. This is the recommendation that measures are taken ahead of time.

The Chair: Mr. Cullen, do make sure your questions apply to the clause we're dealing with. If you look ahead in the bill, you can see what is coming down the road in terms of clauses. You could ask the questions at the appropriate time.

Mr. Nathan Cullen: Chair, as someone who has dealt with legislation before, you know there are moments where the passing of one clause then affects a further one. I've been very cautious with witnesses, and I think you've heard me when the witnesses have said that it's dealt with further on or it's a reference later on. I've kept my questions as tight as I could to the clause we're dealing with. I think I've referenced back to clause 18 as many times as humanly possible in this, but I'll be diligent in staying directly on point.

Mr. David Anderson: If that is in fact true and he's speaking accurately, we could probably move on to clause 19 then.

The Chair: The suggestion is that we move on to clause 19.

Mr. Nathan Cullen: I think before that point of order Mr. McCauley had a—

The Chair: Is there an answer to the question? Does someone have an answer to the question Mr. Cullen has asked?

Ms. MacKenzie.

Ms. Brenda MacKenzie: Just to clarify, clause 18 says that lost wages "arising from the loss of use of property as a result of" preventive measures are compensated. So clause 18 is clearly talking about an emergency situation, because it is an authority acting under a nuclear emergency scheme.

Later on, we see in clause 28 that certain rights and obligations are preserved—that is employment insurance, worker's compensation, and all that. We're trying to say that preventive measures are compensated for anybody working in the area, but considering the fact that it is an emergency measure and the employee will be covered by employment insurance and the like, it's likely that the employee of the nuclear power plant is under clause 28 rather than clause 18.

The Chair: Is that okay, Mr. Cullen?

Mr. Nathan Cullen: It's very helpful, because it gives us a sense of where some of these matters would happen.

I want the committee and witnesses to be assured that the overlap question of compensation to workers in terms of existing government programs is not and never was my concern. I know those programs exist. My concern is that the shutdown of a nuclear plant in the event of an accident will greatly outlast, in most cases, the programs that do exist.

There have been some concerns raised about whether compensation could be sought through Bill C-20. That's why it has come up twice now. We can't simply say EI and worker's compensation are going to handle this. Worker's compensation would only apply if they were hurt, and I'm not even sure how EI would take effect. If a business went out of business because there was an accident, could they seek EI and what would the extent of their EI be?

My question was never whether it now distinguishes and makes those things no longer applicable. That's not the point. The point has simply been whether they are on the list. Are workers on the list along with other people when an accident happens? That's the core I've been trying to get at. It's not seeking anything beyond that. I think Mr. McCauley and Ms. MacKenzie understood that, in terms of where the questions lay.

The last sentence before paragraph (a) says "carry on business in, work in or are present in the area may be compensated". Is there a previous point in the legislation where "in the area" is defined? Who decides it? Is it a judge or the tribunal?

Ms. Brenda MacKenzie: This is again a factual determination. It is the authority recommending that measures be taken in a specified area. Where it says "the following costs and losses of persons who live in, carry on business in, work in or are present in the area", that is the specified area that the authority acting under a nuclear emergency scheme has identified. That's what we're referring to.

● (1725)

Mr. Nathan Cullen: When they've taken in a specified area, that is first designated by—

Ms. Brenda MacKenzie: That is a factual matter. The authority has to be acting under a nuclear emergency scheme and say, in this area, these are the measures that are going to be taken to prevent damage. Then, provided that this recommendation has been made, the people who live within that specified area, carry on business there, or have a presence there can seek compensation for the reasonable costs of the measures.

Mr. Nathan Cullen: Thank you. Because clause 18 is at that lower threshold...I don't want to call it a lower threshold, but it's the term that comes to mind in terms of being recommended rather than ordered. The specified area...this is in the immediate moments afterwards; we're talking about mitigated measures. In the immediate moments after a nuclear incident, does the operator, in conjunction with the authority, designate where they think the specified area will be?

Ms. Brenda MacKenzie: Under clause 18 it is exclusively the responsibility of the authority acting under a nuclear emergency scheme to say they recommend that these actions be taken by these people within this mapped area.

Mr. Nathan Cullen: This is the map.

Ms. Brenda MacKenzie: People, of course, are going to comply. They'll want to, since it is relating to an emergency scheme. That is why we felt it important to choose this terminology.

Mr. Nathan Cullen: Again, the authority is not designated under this act.

Ms. Brenda MacKenzie: That's correct. It's an authority acting under a nuclear emergency scheme established under federal or provincial legislation.

Mr. Nathan Cullen: Is there a question of time? We established that there was a three-year and then a ten-year period in terms of seeking damages on the environmental side of things. Does clause 18 restrict itself in terms of the loss of use of property only while under the evacuation order, or can the loss of use of property be deemed to go under that three-year and ten-year compensatory time limit?

Mr. Dave McCauley: The limitation period is applied to every head of damage under the legislation. You must make your claim within three years of understanding that you've suffered the damage. If you were evacuated, you would have to make your claim within three years of the evacuation.

Mr. Nathan Cullen: The point I was getting at was the loss of use of property. That doesn't necessarily only apply to the evacuation timeline, does it? Mostly the context we've been talking about is when folks are forced out, when they've been asked or told to leave under a recommendation, not an order. Does it—

Mr. Dave McCauley: No. I think that otherwise you might be looking for an economic loss, and that might be under a different head of damage. This is for preventive measures. If you are evacuated and therefore cannot go to your place of work, for example, you therefore receive economic loss associated with it.

Mr. Nathan Cullen: That was done in a preventive manner, rather than something where we said we deem we can't go back to the site. Once the evacuation order is lifted, that's when the clock stops and you might be able to seek compensation for the loss of your business site.

Ms. Brenda MacKenzie: Under clause 18.

Mr. Nathan Cullen: Other clauses will deal with other things, but under this clause that's where it's at.

The Chair: Okay, Mr. Cullen, we're out of time for today's meeting.

We actually only passed one clause at this meeting, so it will be about a year at this rate, if we continue at this pace. I would encourage members of the committee to go over the questions and answers from the last time this was at committee, so we can expedite this. It's part of the role of the chair to try to ensure the business of the committee is dealt with in an expeditious way.

Time being finished for today, I again thank the witnesses, Ms. MacKenzie, Mr. McCauley, and Mr. Hénault, for coming. We'll see you again on Wednesday.

This meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca