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Chair

Mr. Leon Benoit

Standing Committee on Natural Resources

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● (1535)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Order.

Yes, Mr. Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Mr. Chair, I'd like to move a motion, if I can do that. I think you'll find it is in order. It is that the Standing Committee on Natural Resources report Bill C-20, the Nuclear Liability and Compensation Act, to the House not later than December 10, 2009.

I have copies in both languages here.

The Chair: Would you like to see a copy of that? If the clerk could distribute copies in both languages, I'll let you have a look at it and then we'll discuss it or debate it. It's pretty straightforward.

Mr. Anderson, would you like to speak to the motion?

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Chair, do you have a minute before Mr. Anderson makes his case?

The Chair: Mr. Anderson would just be speaking to it.

Mr. Nathan Cullen: No. If I may, while not procedure, it's usually good grace, I suppose, to pass the motion out prior to the committee's hearing it.

Hon. Geoff Regan (Halifax West, Lib.): The French is wrong.

Mr. Nathan Cullen: It sounds as if the French might be wrong. Can we have some clarification on that first before we go on?

The Chair: This is the issue we're dealing with at committee. There's no need to have a written motion at all. It's something that is often done up by members. Then they work with the clerk to make sure the motion is what's intended, and then it's read. So there's no need for it to be written.

Mr. Nathan Cullen: I think we need to get to the translation question as well, but just as a matter of good faith among parties, we have all submitted our amendments to the bill beforehand. As I said, while it's not procedurally necessary, the only motions I see that get brought to committee at the last second are often motions that happen in the moment, as committee members arrive at an amendment or a change to something. But to have something prepared beforehand and not submitted until we're in the actual moment—

The Chair: That's simply not correct. If you'd like to debate the motion, you can do that.

Mr. Nathan Cullen: Allow me my point on the translation, then, because I believe Mr. Regan and Madame Brunelle may have some concern with the translation of the text.

The Chair: You can certainly discuss that after Mr. Anderson has made his point. I'd welcome that. It would be appropriate.

Mr. Anderson, do you have something to say on your motion?

Mr. David Anderson: I think we may have some discussion on this, but if there's an issue between the English and French versions here, the English version is what I intend, and I guess that's all I needed to present. I want to present it in both languages. Hopefully, the French language is in agreement with the English version.

Basically, when she gets an opportunity, I'd just ask the clerk if she could read the motion regarding our decision as a committee to actually hear clause-by-clause and the hearings on the bill. I think that would bring some clarity to it. I don't know if you're ready with that yet or not.

Earlier on, when we made a decision on the agenda of the committee through the fall, we talked about a number of issues. We agreed with Mr. Cullen that we would hear some general nuclear issues, and we had a specific motion to hear those general nuclear issues. Then we had a motion specifically that was part of it, which he agreed to. We sat through one committee meeting and made an agreement that we would limit ourselves to three or four meetings on this bill.

Now I think we've already put in seven or eight meetings—I think this is maybe the eighth meeting—with the witnesses, and then with the three, now the four, clause-by-clause meetings. So I think we've been more than generous in terms of providing time to hear the bill. I hope he's going to stay consistent with the deal he made with us earlier this fall in order to move the bill through committee, as well as his issue, which was the general nuclear discussion.

We brought this forward in good faith. We think we're in line with the agreement that was made at committee earlier this fall. We certainly would love to discuss that.

The Chair: The clerk will read that. Thank you.

Mr. David Anderson: Yes, we've been more generous than the motion—maybe that's been our fault, but I won't apologize for that.

The Chair: Okay, clerk, if you could read the.... Is it a motion? It is a motion on what we'd agreed to earlier. Go ahead.

The Clerk of the Committee (Mrs. Carol Chafe): It was adopted on Wednesday, October 7, 2009. It was a combined motion. Would you like me to read the whole motion?

The Chair: Yes.

The Clerk: It was agreed that the committee hold one three-hour meeting on Monday, October 19, 2009, to study the issue of nuclear isotopes, with each party being allowed to bring forward two witnesses; that the committee then spend three or four meetings on the state of the nuclear industry in Canada and abroad, leading into three or four meetings on Bill C-20, An Act respecting civil liability and compensation for damage in case of a nuclear incident; and that when the committee concludes its hearings on Bill C-20, it will return to deal with its report on nuclear isotopes.

Mr. David Anderson: If I can just summarize, I think most people remember that day, and some of that was in camera, so it won't go much beyond this. But after a lot of discussion, this was the general agreement that was reached with all the parties. We had a good amount of debate, and I guess we're just asking that people adhere to what they agreed to earlier this fall. I think we've almost doubled the hearings on the bill itself, and I think that's been generous. We'd like to move ahead, so we are willing to extend the hearings until next week—Mr. Cullen seems to have an interest in this bill—and then we would like to see the bill reported back to the House.

So I think we've gone far beyond our agreement.

The Chair: You've heard the motion—

Hon. Geoff Regan: On that point....

The Chair: Yes, we'll go for debate. Debate on the motion is what I'm looking for.

Have you got a list? If not, we'll go to Mr. Regan. I haven't seen anyone else indicate.

● (1540)

Hon. Geoff Regan: Thank you, Mr. Chairman.

I'm not sure if I understood correctly. I don't know if Mr. Anderson was saying there was an agreement among all parties in terms of what we've been studying over the past number of weeks—we had the nuclear, then this bill, and so forth—because clearly it was not an agreement of all parties. It was a vote taken where two parties—or at least certainly one and perhaps the other—agreed, not including us. So I just want to be clear on that.

The Chair: Okay, thank you, Mr. Regan.

Mr. Cullen.

Mr. Nathan Cullen: I appreciate the words of my colleague Mr. Anderson.

First of all, getting the French wrong on such an important motion for the government seems reminiscent somewhat of some of the parts of this bill. Regarding the intentions associated with the timeline, I had an assumption—at least for my part, and I suspect others on the committee had—that the government was also going to do what committees do, which is to hear the evidence that is brought forward by the many varied witnesses, take that evidence into account, and then consider amendments to a bill, which, we've now been brought to understand, is more than eight years old, in an environment such as the nuclear industry's that is constantly changing and shifting.

It was my intention in doing my job as a committee member to take the information that was given to us as committee members and then apply it to the bill that was in front of us, Bill C-20. The questions I have put to the committee witnesses to this point have been as clear and concise as I can make them. I find also that, especially in this last round of witnesses, some of the answers have, I think both for the witnesses and certainly for me as a committee member, been thought-provoking and reflective of a deeper understanding of what implications for the Canadian taxpayer Bill C-20 holds.

It has been well apparent to me that the agreement we set out, Chair, attempted—and I think Mr. Regan is right in pointing out that the very nature of it is to be not necessarily a unanimous, all-party process—to look at the bill and consider amendments. When I've brought considerations and thoughts to the government side, at least to ask whether they would consider one aspect or another aspect, they've refused out of hand. There's been no notion of negotiation, no notion of being able to improve upon the legislation before us.

While I understand that when in government all sorts of pressures come to be applied and that greater considerations might be out there that the committee members from the government side will not divulge to us, it seems to me that a motion such as this that is before us today to put a timeline on a bill—which the government seems ambivalent about, frankly....

It hasn't moved a single amendment to an eight-year-old piece of legislation; it didn't move a single amendment after hearing many hours of witness testimony; it hasn't considered, frankly, any of the amendments that we've brought forward as opposition; it's just not open to the conversation. If the parliamentary secretary wishes to speak about good faith in the process, I'm all for it. I'm very interested in good faith. That is how I enter into any discussion that we have around this committee table, whether it happens to be about the timeline, as Mr. Anderson has pointed out here today, or in fact the legislation that's before us, for which this timeline is adjusted.

It seems to me, and I say this in all sincerity and imploring the government, that if the government is truly interested in speed, which is what this motion speaks to—moving this thing quicker—then certainly they can find it in their schedules to sit down with committee members. I'm willing to do it today; I'm willing to do it right now. If the parliamentary secretary would like to take a five-minute break, I'll put forward to him again some of the very most reasonable and sensible amendments based on the testimony that we heard from witnesses, both within the industry and outside, to understand what the government's intentions are around this bill.

To this point, the government has simply told us to get lost. They've simply told us that they're not interested in making the bill better; that the thing when crafted eight years ago was an immaculate perfection, anticipating all the things that were going to come in the following eight years, anticipating everything the witnesses told us from around the world and within the industry. That's an incredible amount of intelligence that this government seems to claim: that they could anticipate all of those things; that their bill was swayed not an iota by the testimony they heard.

It calls into question why they even bothered studying the bill at all, if they knew this bill to be perfect in its initial manifestation of 2002. It suggests that they anticipated the European nuclear liability regime, that they understood where the Japanese were going, where the Americans would land. Of course they did not.

In regard to this motion and trying to understand what the government's actual intentions are, I am led to conclude that rather than do the work a committee is meant to do, which is to study legislation and try to improve upon it as best we can—which the government has made zero effort to do, on such an important issue as nuclear liability and safety.... It seems to be a perversion of what the responsibility is to be a government, which is to design the best legislation, with the most current information possible.

● (1545)

Instead what we have in front of us is this idea that we now need to affix a timeline to it because of some notion of good faith and responsibility from the Conservatives.

The Chair: Mr. Cullen, you're repeating your arguments.

Mr. Nathan Cullen: Not at all, Chair.

The Chair: If you have new points to make, please make them. Otherwise we'll go on to the next person who would like to discuss this, or to the vote.

Mr. Nathan Cullen: I want to clarify a notion that the parliamentary secretary said. I want to get the record straight in terms of the number of hearings. The motion that we heard, the motion around the original calendar and schedule, said that there were three or four hearings referred to. That was supposed to be three or four hearings with witnesses. If the parliamentary secretary cares to correct me, there was no notion within the original motion passed by this committee as to how many meetings there were for clause-by-clause.

Perhaps, Chair, you or the parliamentary secretary would like to correct me, but in the original testimony by the parliamentary secretary, he inferred otherwise, that it was somehow a whole package deal within three or four meetings, witnesses and clause-by-clause. That wasn't the case. Committee members will remember that, those of us who were there that day.

Mr. David Anderson: I'd like to clarify.

The Chair: Go ahead, Mr. Anderson.

Mr. David Anderson: I think if Mr. Cullen checks his schedule we had three and a half meetings with witnesses on this issue. We're now into our fourth meeting in terms of clause-by-clause. I may be forgetting, I'm not sure, but that doubles the amount of meetings that actually fulfills what he asked for, which was the three meetings for witnesses. It doubles that, as we've done four meetings already in terms of clause-by-clause. I think he's gotten far more than he negotiated.

I think it's probably inappropriate for him to make light of the notion of good faith and talk about perversion of responsibility when he made an agreement with us. We voted together, as Mr. Regan pointed out. That agreement was put in place. If he wants out of it I guess he can choose to do that, but we were clear and we were precise when we made that motion that day. It can't be much clearer than it is in the book. If he wants to expand the study beyond what we agreed to, I guess he has the ability to do that.

The Chair: Mr. Cullen, just so you would note, this motion would allow for three more meetings to discuss the bill still. It would not end debate today.

Mr. Regan.

Hon. Geoff Regan: Mr. Chairman, I just want to say that there's no question that I would hope we could finish this by next Thursday. I think we should be able to, but I would like to see us work collaboratively between now and then. In fact, I would hope that if we could do that, maybe we can finish it sooner than that. To encourage that, I'd be inclined to vote against this motion, believe it or not. That's how I view it.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Thank you, Chair.

To my point earlier, I'm not sure the parliamentary secretary heard me, but there is a sincere offer back to the parliamentary secretary. If his interest is timing, if his interest is expediency of the bill, if that is truly his interest, my suggestion to him right now is to take 10 minutes, he can hear again offers from the opposition in terms of making this bill better, and then we will absolutely be open to the notion of talking about his motion in front of us today—absolutely.

By doing this, he says the opposite. He says that it's just going to be status quo from the government. They'll move no changes, they'll consider no changes to an implicitly perfect bill that was drawn up more than eight years ago.

I put that directly on this motion to the parliamentary secretary. I doubt he looks all that interested, but if he is, we sincerely will take at least those 10 minutes. If time is his concern, I think 10 minutes will be an investment well worth the offer.

The Chair: Mr. Anderson.

Mr. David Anderson: This bill has obviously been to the House. It has been introduced here. Liberals wrote it, so I'm sure they think it's written as it should have been. It was brought forward. It was passed through the committee to the House as it is. The NDP have a history of treating this bill with—I don't know what word I should use, but they filibustered it last time when it got in the House in order to keep it from moving ahead.

I think when you spend two hours on one clause, asking the same questions again and again...it's hard for us to believe that Mr. Cullen isn't doing that again and that the point of what he has been debating and questioning isn't just to filibuster the bill and slow it down. If he's serious about wanting to sit down and talk about this, we can certainly do that, but the reality is, in the last three meetings he hasn't shown any inclination to treat the bill seriously, so we would have some serious issues with that.

● (1550)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Just to understand, my offer of sitting down with the government again to try to improve this bill has been rejected. I asked for a 10-minute investment from the parliamentary secretary, which does not seem to me and to folks listening to be all that unreasonable. I want it to be noted that my offer was to try to make some sort of mediative stance out of this—I see Mr. Allen is coming in on the conversation—a 10-minute conversation to simply ask if there are any points of agreement within the amendments and the changes we have offered. I hope the parliamentary secretary can at least address that specific offer I have made.

I see his hand is raised.

The Chair: Mr. Cullen, we have a motion we have to deal with.

Mr. Nathan Cullen: I understand.

The Chair: If you want to make that request after, you're more than welcome to do that, but we have to deal with the motion.

Mr. Nathan Cullen: I understand that, Chair.

I think Mr. Anderson has a comment.

The Chair: Okay, Mr. Anderson.

Mr. David Anderson: I'm willing to take a walk with Mr. Cullen if he wants. That's fine. You can take a break or you can continue to debate. It doesn't matter to me.

The Chair: I would have to get the consent of the committee to take a break—

Some hon. members: Agreed.

The Chair: If it is agreed by the committee, we can stand the motion, suspend the meeting for 10 minutes, come back, and continue to debate the motion. We'll continue with the debate on the motion at that time.

Is there agreement?

Some hon. members: Agreed.

The Chair: Seeing agreement, I suspend the meeting for 10 minutes.

● (Pause) ●

● (1605)

The Chair: Let's resume the meeting and get back to the motion before the committee.

Yes, Mr. Anderson.

Mr. David Anderson: I would like to table my motion for now, if that is possible, and make a suggestion as to how we may be able to continue here.

The Chair: Is there agreement to stand the motion?

Some hon. members: Agreed.

Mr. David Anderson: What I am proposing is that we do clause-by-clause through to clause 22, and in clause 22 we consider Mr. Cullen's motion number 6, and once we have considered number NDP-6, we skip over the clauses with suggested amendments and deal with the clauses we seem to be in agreement on, which are the ones without amendment. At the end, we come back to the suggested amendments to the remaining clauses.

● (1610)

The Chair: Mr. Cullen, do you want to get involved in this discussion?

Mr. Nathan Cullen: Yes, always.

First of all, thanks to the committee and to you, Chair, for the time.

This is a way to proceed, but there is one small thing that I'm not sure Mr. Anderson and I totally fleshed out in our conversation.

An hon. member: Uh oh.

Mr. Nathan Cullen: No, no. It's all good.

There are two caveats to this idea of going through. One is to look at clauses of the bill that don't have amendments to them—to have the committee look at those and pass those they deem worthy of passage. That was my understanding.

The caveat is this. As folks who have been through bill review before know, sometimes if you leave a clause behind while you go ahead and pass other clauses, there are occasions where, when you go back to make an amendment earlier in the bill, the language changes. I just want the committee members to be cognizant of the fact that we may pass clauses that will then have to be looked at by the drafters for discordance of language because of an earlier passage.

The second thing is I want clarity on this. Mr. Anderson talked about moving through to clause 21, where we have an amendment. My understanding is that the idea is not to address any clauses that have amendments attached to them today.

Mr. David Anderson: That's my fault.

Mr. Nathan Cullen: Do I understand correctly?

Mr. David Anderson: You're right. I appreciate that.

Mr. Nathan Cullen: Okay, thank you.

The Chair: Is there agreement from the committee to proceed in this fashion?

Some hon. members: Agreed.

The Chair: We will then go to the next clause for which there is no amendment.

Is that an amendment by any party or just an amendment by the New Democrats?

Mr. David Anderson: We wanted to go to clause 22 before that. Mr. Cullen wanted some assurance that we would pass number 6, and we want to suggest an amendment to number 6, but I think he'll find that acceptable.

The Chair: We will stand clauses 18 to 21 inclusive and go to clause 22.

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

The Chair: Is there any debate?

Mr. Nathan Cullen: I have an amendment.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: It is the amendment on which I will be seeking some clarification from the government.

The Chair: That is amendment number 6, isn't it?

Mr. Nathan Cullen: Yes, it's NDP-6.

As it is written right now there is a change under paragraph 22(2)(a) to make a subparagraph (a.1) that would say:

> changes in the nuclear liability standards in other jurisdictions.

I will seek from the government perhaps clearer language to allow that same thing to be accomplished in other places in clause 22.

The Chair: If everyone wants to take a look at that, if need be....

Mr. David Anderson: Mr. Chair, we think we have something that would simplify and clarify that a bit.

The Chair: Go ahead, Mr. Anderson. There has been agreement to do that, so go ahead.

Mr. David Anderson: We're a bit concerned that we're extending the discussion from limited liability here, as Mr. Cullen's words say, to nuclear liability standards. We would like to limit it to a discussion of nuclear liability limits. So rather than insert that clause, we are suggesting a change to paragraph 22(2)(b), which is just a small insertion that would read:

> (b) financial security requirements and nuclear liability limits in other countries and under international agreements respecting nuclear liability;

We would bring in the other countries and any discussion of liability limits there in that clause.

The Chair: Could you just read that again, Mr. Anderson?

Mr. David Anderson: Sure, it's "financial security requirements", and then the insertion is "and nuclear liability limits in other countries and under international agreements respecting nuclear liability". So:

> financial security requirements and nuclear liability limits in other countries and under international agreements respecting nuclear liability.

● (1615)

The Chair: Okay.

Mr. David Anderson: And it keeps that section focused on the idea of limits of liability.

The Chair: Does everyone understand the amendment to (b), which would in effect replace NDP-6?

Hon. Geoff Regan: I can make it simpler, I think, Mr. Chairman, to help my colleagues and others, perhaps.

The Chair: Okay.

Hon. Geoff Regan: This amendment would insert on line 16, after the word "requirements", the words "and nuclear liability limits".

The Chair: Mr. Cullen, did you catch that? Does that meet your —

Mr. Nathan Cullen: I did catch it. I think the wording is right. All I would add to it is "and other countries".

Hon. Geoff Regan: Yes, that's right, "and other countries".

The Chair: So it is the same thing, then?

Hon. Geoff Regan: Correct.

The Chair: Okay.

Madame Brunelle, do you have some...?

[*Translation*]

Ms. Paule Brunelle (Trois-Rivières, BQ): Mr. Chair, I would like to know what big difference that makes.

In fact, two things will be examined: changes in the consumer price index and nuclear liability limits in other countries.

I understand that the NDP agrees with keeping paragraph (a) as it was before.

Mr. Nathan Cullen: They are independent, for us. Here, we want to consider the liability limits in other countries. So paragraph (a) and the new paragraph (b) are separate, in this context.

I am not sure if that's clear or not.

Ms. Paule Brunelle: No. Could you say it in English?

Mr. Nathan Cullen: Yes. After all these years of French classes...

Some hon. members: Ha, ha.

Ms. Paule Brunelle: I apologize. I am the one who does not understand.

Mr. Nathan Cullen: It's okay.

[*English*]

The Chair: Go ahead, Mr. Cullen.

Mr. Nathan Cullen: For us, if I understand Madame Brunelle's question correctly, there's a notion around any changes in the CPI, the consumer price index for Canada, and paragraph (b) is trying to understand...as we've heard from witnesses around the nuclear liability limit in other jurisdictions, there has been confusion and different numbers have been quoted to the committee as to what other countries hold. This is trying to say that that liability limit should be part of what we understand is happening when we set our own limits for our industry, essentially.

The Chair: Okay. Is it understood now what's being proposed here?

[*Translation*]

Ms. Paule Brunelle: I understand.

[*English*]

The Chair: Any further...? Mr. Regan, go ahead.

Hon. Geoff Regan: When you look at the last part of this subclause (b), which says "under international agreements respecting nuclear liability", that would now apply to the words "and nuclear liability limits in other countries". I guess I want to make sure Mr. Anderson hears this. It would say "and nuclear liability limits in other countries under international agreements respecting nuclear liability".

Mr. Nathan Cullen: No, no, the word "and" is in there.

Hon. Geoff Regan: But the point is this. Isn't it right after "requirements", or is it at the end of paragraph (b)? Is it after the word "liability"? I thought it was inserted after the word "requirements".

Mr. Nathan Cullen: Yes, "and nuclear liability limits in other countries *and* under"—

Hon. Geoff Regan: Oh, "and under". I didn't get that "and". Sorry.

The Chair: Thank you.

Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle: Could you please reread paragraph (b), as it has just been amended?

[*English*]

The Chair: Okay. I'll read it:

> financial security and nuclear liability limits in other countries and under international agreements

Or is it "in"?

Mr. Mike Allen (Tobique—Mactaquac, CPC): It's "and under international"—

The Chair: Respecting nuclear liability.

Hon. Geoff Regan: You left out the word "requirements", Mr. Chairman. Did you want to try that again? I think you left out the word "requirements".

The Chair: Oh no, I had "requirements". It was after.

Go ahead.

Mr. Wayne Cole (Procedural Clerk): Just to be sure, for the report, it would be:

> financial security requirements and nuclear liability limits in other countries and under international agreements respecting nuclear liability; and

● (1620)

Mr. Nathan Cullen: That's the intention, Chair.

The Chair: You've all heard the amendment proposed. Is it agreed?

(Amendment agreed to)

The Chair: Okay, paragraph 22(2)(b) has been amended.

Yes, Mr. Anderson.

Mr. David Anderson: I would suggest we set aside clause 22 and go on to the clauses that do not have amendments on them, with the caveats Mr. Cullen mentioned.

(Clause 22 allowed to stand)

(Clauses 18 and 19 agreed to)

(On clause 20—*Damage to means of transport*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: I have a question to our witnesses about clause 20. Clause 20 deals with a nuclear accident that happens during the transportation of radioactive material. The question is around whether there is any consideration given to who is transporting the material. If it's the actual provider—the industry itself—doing the transportation, does it affect clause 20 at all?

The Chair: Mr. McCauley, go ahead.

Mr. Dave McCauley (Director, Uranium and Radioactive Waste Division, Electricity Resources Branch, Department of Natural Resources): Under clause 20, the question was whether it's an operator—

Mr. Nathan Cullen: Yes, if it's a nuclear operator versus.... Whether or not it's the current practice, one could imagine the transportation of nuclear material as being subcontracted. Under this liability regime, does it matter who is carrying the nuclear material when the accident happens?

Mr. Dave McCauley: No, it's whoever would be carrying the material. The damage to the means of transport or the structure or the site where the nuclear material is stored would not be compensated regardless of who owns the—

Mr. Nathan Cullen: —who is moving it.

Mr. Dave McCauley: Exactly.

Mr. Nathan Cullen: As a second question, do operators currently have separate liability insurance for the transportation of nuclear goods? I ask because it seems as if that would be a moment that is different from the normal operation of a nuclear operator. I'm not an actuary, but I imagine it involves greater risk when you start moving things. Do operators carry their own insurance for the transportation right now?

Mr. Dave McCauley: This applies to the means of transport, not to the goods. So if there were to be a separate insurance policy for the means of transport, they would have to get that separate property insurance themselves.

Mr. Nathan Cullen: My question was whether they carry that type of insurance now, to your knowledge. Does the nuclear provider, when it's shipping material, carry some sort of liability insurance along with it? And if it does, how does that affect this liability regime?

Mr. Jacques Hénault (Analyst, Nuclear Liability and Emergency Preparedness, Department of Natural Resources): Yes, that's right. They have separate policies for the.... For nuclear insurance, it's a separate supplier's or transporter's policy for shipping. But again, this clause refers just to the means of transport. If there is an accident in transport involving nuclear material, the act covers that compensation, but not to the means of transport. It won't replace the truck. Under Bill C-20 the compensation will not replace the cost of the truck.

Mr. Nathan Cullen: Okay.

I have one final question, then. If there is harm caused during that transportation accident, is the insurance carried by the nuclear operator only insurance that covers the truck or the train part? Does that transportation insurance also cover damages to the public or industries, or is that covered under Bill C-20? Do you follow my meaning?

I'm not worried so much about the truck. That's a truck or it's a train car. That's not what's going to be the big-ticket item. It's going to be if an incident occurs beside a river or if it affects a community or an industry.

Mr. Dave McCauley: That's covered under clause 8. If there's damage in relation to transportation, damage affecting third parties, that's covered under clause 8.

● (1625)

Mr. Nathan Cullen: That is picked up by Bill C-20.

Mr. Dave McCauley: That's right.

Mr. Nathan Cullen: So the insurance the companies have right now, in terms of transportation, is just for the actual transport itself and nothing else.

Mr. Dave McCauley: There can be separate transportation insurance for the facilities.

Mr. Nathan Cullen: Okay, thank you, Chair.

The Chair: Thank you, Mr. Cullen.

Shall clause 20 carry?

Go ahead, Mr. Cullen.

Mr. Nathan Cullen: Mr. Chair, just on the process, without causing the effect of a counted vote, if I wish to vote against, how does that get recorded in terms of the committee's business?

Hon. Geoff Regan: It's on division.

The Chair: That wouldn't record his name.

Mr. Nathan Cullen: Can I seek "on division" for those clauses?

The Chair: Yes, okay.

Mr. Nathan Cullen: Thank you. That's what I'd like to do for clause 20, please.

The Chair: Okay, that's on division.

(Clause 20 agreed to on division)

The Chair: Yes, Mr. Anderson.

Mr. David Anderson: This works as long as Mr. Cullen realizes his name isn't registered as voting against it. It just records that everyone is not in agreement.

Mr. Nathan Cullen: The intention is to not show unanimity on certain clauses. On clause 20, I'd like that to be the case, but thank you for the clarification.

The Chair: On clause 21, there are three amendments proposed. Two of them are out of order; one is in order. We will stand clause 21 as per the agreement and we will go to clause 24.

(On clause 24—*Insurance*)

The Chair: Clause 24 is the next clause that has no amendment. Clause 23 has an amendment, which is in order.

Mr. Cullen.

Mr. Nathan Cullen: I just want to give folks time to read it, but on subclause 24(2), I believe the last line ends with "that authorizes that a portion of the financial security be alternate financial security".

I'm having a little trouble understanding what "alternate financial security" means.

The Chair: Mr. McCauley, go ahead.

Mr. Dave McCauley: Alternate financial security might be something like a provincial government guarantee, or self-insurance, or a letter of credit, for example, that the operator might be able to get to cover some of the financial security.

Mr. Nathan Cullen: Under Bill C-20, we're saying the liability limit for the nuclear provider is $650 million. If, for example, the Province of Ontario or Quebec says, "We want you to build a new plant; we're going to cover your $650 million limit ourselves as a province", can that be possible under subclause 24(2)?

Mr. Dave McCauley: No, but they can cover a percentage. In the legislation, that percentage is fixed at 50%. For example, if the Province of Quebec wanted to provide a provincial guarantee for half of the $650 million, it would be able to.

Mr. Nathan Cullen: Did you also indicate that that could be covered through private insurance offers as well? Could the nuclear provider go out and get half its liability covered off another way through a private insurer?

Mr. Dave McCauley: Through self-insurance, it could make a proposal to self-insure half of the liability.

Mr. Nathan Cullen: Sorry, I'm not in the insurance racket. What does self-insurance mean?

Mr. Dave McCauley: Based on its revenues and assets, it would make certain promises to cover 50% of the risk of the $650 million in the event of a nuclear incident. It would provide a guarantee to the government that would say, in the event of this situation...and then it would have to make a proposal that the minister would then accept, were the minister satisfied that in fact the operator had the financial wherewithal to provide that self-insurance. Also, the operator would have to provide appropriate promise of payment in order to provide that.

Mr. Nathan Cullen: So could the provider essentially put up collateral to the government and say that, rather than find $650 million in an insurance policy, they're going to put up some of their other facilities as collateral on the insurance? It seems like an unusual regime. I'm just trying to understand how that happens.

Mr. Dave McCauley: It's not really its other facilities. For example, if it had cash assets, etc., then it might provide a commitment that those would be available. This is a commitment against its assets. Oftentimes this is more expensive than actual insurance.

● (1630)

Mr. Nathan Cullen: Last question. Could those assets, then, be a contract for the provision of power? We've seen in feed-in tariffs and laws that a contract to a company for so many megawatts over so much time is seen as an asset, in court certainly. I guess what I'm trying to understand is this. When a company goes to seek its insurance out—and I want to know where the 50% limit is as well—you're saying a nuclear provider can get half of its $650 million out of the promise of other assets. So could it be the contract they have with Ontario Power?

Mr. Dave McCauley: No. Generally it would be something that was more concrete than that, more concrete than just a contract or its revenues from the sale of electricity. It would have to be some kind of an agreement that was provided to the government, that in the event of a nuclear incident, this money would be ring-fenced and would be available for the compensation of victims. The 50% is found in subclause 24(3).

Mr. Nathan Cullen: You said that would be more expensive to do than to just simply go and get insurance?

Mr. Dave McCauley: No, I said sometimes it is.

Mr. Nathan Cullen: Okay. Thank you.

I'm just trying to figure out how they can pony up the money and do that in an unusual way.

Thank you, Chair.

The Chair: On clause 24, is there anything further?

(Clause 24 agreed to on division)

(On clause 25—*Approved insurer*)

The Chair: Is there any discussion on clause 25?

Mr. Cullen.

Mr. Nathan Cullen: Chair, if I can, what is the necessity for this?

To our witnesses, why would the minister be given this power to designate? It says, "in the opinion of the Minister, is qualified". Is this just simply saying that not all insurance companies will be qualified, or does it allow the minister to go beyond traditional insurance companies to allow this to be the insurer? It says, "The Minister may designate as an approved insurer any insurer or association of insurers that, in the opinion of the Minister, is qualified". Why give the minister this power? Is there not an industry standard as to who can insure these types of programs?

Mr. Dave McCauley: Nuclear liability insurance is quite a specialized area, and it's important that the insurers who provide insurance in this area subscribe to an appropriate policy and understand the obligations pursuant to the Nuclear Liability and Compensation Act. So it's left with the minister to make that determination to authorize those insurers.

Mr. Nathan Cullen: Without there being any type of criteria being attached to clause 25, does it not open up a loophole, not with the current minister but with some future minister, to approve and ensure something that's actually below industry standards? It seems like a dangerous clause to me somehow, that there isn't attached to clause 25 any type of stipulation as to what a qualified insurer would be. It simply says the minister has the power to decide who's qualified and who's not.

When you folks were drafting this bill, was there any concern raised about the minister's being given the power to say, "Insurer X over here has no experience..."? And that scenario could exist, where the minister says "Even though you have no experience in the nuclear liability regime, I'm going to let you insure this nuclear power plant." Is that not foreseeable?

Mr. Dave McCauley: It would be up to the minister to ensure there was due diligence of the insurer that was making the application, to ensure that, for example, the insurer had the financial wherewithal and was able to meet the requirements of the legislation.

Mr. Nathan Cullen: But do you see my point? I understand that one would hope the minister would go through that type of rigour, but on the face of it, clause 25, under a more nefarious minister, could simply.... It grants quite a bit of power. It says that in the event of an accident, the minister beforehand would have decided who is qualified to insure. Do you see my point about attaching any type of criteria? Clause 25 doesn't say, "go to leading international standards on insurers". It just says the minister has the power to do it, and one hopes the minister would do as you said, but it doesn't exist anywhere in this legislation. Therefore, it sits in the hands of the minister entirely.

● (1635)

Mr. Dave McCauley: Most of the current insurers are regulated by the Office of the Superintendent of Financial Institutions, so that's one of the considerations today in terms of the financial wherewithal of the insurers. But there are other elements of providing nuclear liability insurance that are important, so that's why the minister is given that authority.

Mr. Nathan Cullen: I understand.

I suppose it's been offered essentially as a matter of faith, because there's no reference to any standard other than what the minister deems appropriate, if you follow my meaning. There's no reference we can find in the bill that says....

I understand there's the Office of the Superintendent of Financial Institutions, but that's a broad, sweeping group. We're talking about, what, three or four companies worldwide that do this, that currently hold insurance for nuclear facilities?

Mr. Dave McCauley: No, no.

Mr. Nathan Cullen: There are more than that?

Mr. Dave McCauley: Actually, yes, there are many more.

Mr. Nathan Cullen: Oh, I see.

Mr. Dave McCauley: Actually, in Canada the Nuclear Insurance Association of Canada is an organization with many insurers who have pooled their assets to provide insurance capacity to the operators.

Mr. Nathan Cullen: It's an amendment we're not going to bring to this, but it sure would have been nice to reference such a group or reference an international standard or something. As it is written in black and white right now—and I understand terms change and groups and association names change—there must have been a way to better reassure the committee. With that much power given to the minister....

This whole thing is about proper insurance. Clause 25 reads that the minister simply has the power to designate whoever she'd like to be the insurer and to permit that insurance to go ahead. With the Government of Canada being the ultimate insurer of this whole thing in providing this limited liability, it's unfortunate, I suppose, that there isn't something given over.

I understand all you've said about this being that the minister will go forward and find a proper insurer, but it doesn't say so. When dealing with legislation, I always feel more reassured when it simply says what the actual intention is rather than give such powers away, if you follow me.

Mr. Dave McCauley: If we read further on, into subsequent provisions, any agreement the minister makes with an approved insurer must be tabled in the House of Commons.

Mr. Nathan Cullen: Thank you.

The Chair: Thank you, Mr. Cullen.

I have three other questioners on this.

Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): I have a very quick one.

Mr. McCauley, it's highly unlikely that a pool based on self-insurance would be set up by the nuclear industry, given the magnitude of possible liability. We did hear witnesses refer to self-insurance and entering into pools for portions of liability coverage. This doesn't preclude that happening, does it? It seems to formalize the insurers, but the minister could look at an application for self-insurance that would satisfy the act.

Mr. Dave McCauley: That's right, yes.

Mr. Alan Tonks: Okay. Good.

Thanks, Mr. Chairman

The Chair: Mr. Regan.

Hon. Geoff Regan: The preface has been to only allow the operators to use insurers in Canada—effectively, to use NIAC. One of the concerns we heard from the Canadian Nuclear Association was that they weren't able to go outside of Canada and consider.... Obviously, they'd have no competition, effectively, is what they're talking about. What's your reaction to that? Is it the department's view that you should do anything about that?

Mr. Dave McCauley: Right now, actually, there are three approved insurers: one is NIAC, one is Nuclear Risk Insurers from the United Kingdom, and the other one is the American Nuclear Insurers. Together, the three approved insurers provide the $75 million capacity. As we increase the limit, I think that less insurance will be available from Canadian insurers, and the operators will have to rely more and more on foreign insurers.

This legislation does nothing to preclude more competition in the industry or proposals from foreign insurers to become approved insurers under our legislation.

● (1640)

The Chair: Thank you, Mr. Regan.

Mr. Allen.

Mr. Mike Allen: Thank you, Chair.

I'd just like to ask the witnesses a question on clause 25. It was under subsection 15(2) in the old act, and the wording has changed just a little bit. Since I'm just a bit of an accountant and not a lawyer, I'd like to get some clarification to make sure that this wording is a little bit stronger.

It seems stronger, but in the old act the last sentence says “The Minister...in his opinion, are necessary for the proper performance of the obligations to be undertaken by an approved insurer.” That's been changed now to “is qualified to fulfill the obligations of an approved insurer under this Act”.

Can you comment on the wording? The minister always had this ability, but has this wording improved that, streamlined it? It seems a little bit tighter now. Can you comment on that?

The Chair: Ms. MacKenzie, go ahead.

Ms. Brenda MacKenzie (Senior Legislative Counsel, Advisory and Development Services Section, Department of Justice): Yes. It's fundamentally the same concept in clause 15, but the language is tighter. The minister has to be satisfied that the insurer is qualified to fulfill the obligations and then approved to insure under the act. And, yes, in the redrafting we were trying to make it clearer and a little stronger.

Mr. Mike Allen: So it's better, bottom line?

Ms. Brenda MacKenzie: Yes, we're trying to improve it.

Mr. Mike Allen: Thank you.

The Chair: Mr. Tonks, is there one more question?

Mr. Alan Tonks: Yes, just a short question.

Mr. McCauley, going back to the question I asked you, and I mentioned the magnitude, I was thinking about the excess side, in terms of $650 million worth of liability. But when we had the witnesses from the small nuclear applications with respect to, say, northern and more rural replacements of diesel with a small nuclear reactor, I think your answer was there could be exemptions made through regulation.

Now, if there was an application, would they have to seek a regulatory change first? Then I'm sure they could go to the insurance pool, NIAC, and so on. At that end of the spectrum, I don't see a problem, but would there have to be a regulatory application made before they could apply for their insurance? Or do they have to go with their insurance to the minister and say, “Look, we can get insured. We want to have this particular implementation in Fraserdale and we're seeking an exemption under the act by regulation.” Is that the way it would work?

Mr. Dave McCauley: No. What would happen is this. For a small facility, such as a small reactor in a remote community, that operator would go forward and obtain the $650 million worth of insurance, but there would be a certain percentage or a certain amount of private insurance that would be required based on the facility and the parameters of the facility, and then the remainder of that would be reinsured by the federal government.

Are you following me?

Mr. Alan Tonks: Okay. But I didn't realize, and I'm not sure the committee did, Mr. Chairman, that the small operator would have to make an application for the full $650 million under the act. I thought that by regulation there could be an amount set in terms of reasonable liability.

Mr. Dave McCauley: Yes. There is provision later in the legislation for the development of regulations, and in those regulations the government is permitted to set an amount of reinsurance for classes of facility or installation. For a very large facility, such as a nuclear reactor, a Darlington, for example, there would be no government reinsurance. They would be expected to get the full $650 million of private insurance from an approved insurer; however, for a smaller facility, such as the reactors that you describe, there would be very significant amounts of reinsurance provided by the government, and those amounts would be established through regulation. So in fact the smaller facilities, such as Slowpoke reactors in universities, etc., the remote reactors you're suggesting, would have to get a very small amount of commercial insurance. A large amount would be reinsured by the federal government pursuant to the regulations.

● (1645)

Mr. Alan Tonks: I see. Thank you very much.

Thank you, Mr. Chairman.

The Chair: Okay. Shall clause 25 carry?

(Clause 25 agreed to on division)

The Chair: Now, clause 26 has six New Democrat and one Liberal amendment proposed, so we will stand clause 26 and go to clause 27.

(On clause 27—*Continuation of Nuclear Liability Reinsurance Account*)

The Chair: Yes, Mr. Cullen.

Mr. Nathan Cullen: I would just like some explanation from our witnesses. We didn't necessarily hear a lot of testimony about the reinsurance component. Can you very briefly explain the justification of clause 27 in terms of this account. Does that account exist now? What does Bill C-20 do to alter it, if it does exist right now?

Mr. Dave McCauley: It does exist. It's a provision in the existing legislation. I don't know if we have actually changed the wording very much on this, but basically it is an account to which premiums are paid for government reinsurance. It is an account that would be used to pay out to victims in the unlikely event of an incident.

Mr. Nathan Cullen: Okay, but at what point does it pay out to victims? How large an account is this? If it has been in existence for some time, is it many millions? Is it thousands of dollars? Here's my second question on this account, after its size: when does this thing kick in? Does it kick in after the provider's insurance is exhausted, before Parliament seeks more funds, or after Parliament seeks more funds? Am I confusing issues here?

Mr. Dave McCauley: No. Reinsurance covers a variety of risks. There are certain risks the insurers are unwilling to cover but for which the act provides compensation. That's one form of reinsurance.

There is the reinsurance associated with small facilities such as university research reactors, for which the government accepts a certain amount of liability.

Finally, there would be the reinsurance associated with amounts over and above $650 million should those ever be required in the event of an incident.

The expectation would be that payments of any of those forms would be made out of that nuclear liability reinsurance account.

Mr. Nathan Cullen: This account, by this definition, has been filled over time by the providers themselves?

Mr. Dave McCauley: That's correct. The government, to this date, has been charging a nominal amount for the reinsurance, and those amounts have been put into the nuclear liability reinsurance account.

Mr. Nathan Cullen: What I'm trying to understand here, Chair, is that between that list of things that you've said require the reinsurance.... I don't really know what this is.

You said they were things that insurance companies were not willing to cover, and the small research reactors, but it's difficult for me as a committee member to understand what that all amounts to. Is this a large field of things? Is it incredibly small?

Then again, to go back to what's sitting in the pot right now and what is estimated by Bill C-20, is it growing at 1% per year? I'm flying a bit blind here. It's not showing what we're actually reinsuring, how much is sitting there in that reinsurance pot, and what happens to these uninsured items if that pot is exhausted.

Mr. Dave McCauley: When I said some of the risks the insurers are unwilling to cover...for example, I think you had the insurers here as witnesses and they addressed certain environmental damages. This is an area of compensation that insurers are very unwilling to be involved in; in fact, it has kind of confounded bringing into force nuclear liability legislation in other countries.

This would, for example, cover risks beyond 10 years, claims beyond 10 years, because the insurers are only willing to pay claims within a 10-year period. We are suggesting that the period of claims can be extended to 30 years. Those are risks that the government would have to cover because the insurers are unwilling to cover them.

● (1650)

Mr. Nathan Cullen: I'm sorry, but just to be clear on this 10 years, are we talking about environmental damage or damages to individuals?

Mr. Dave McCauley: The 30-year limitation period—and I think we've covered that area already—addresses bodily injury.

Mr. Nathan Cullen: So it's for claims after 30 years.

Mr. Dave McCauley: After 10 years.

Mr. Nathan Cullen: After 10 years on bodily...?

Mr. Dave McCauley: Between 10 and 30 years would be compensable through the reinsurance account.

Mr. Nathan Cullen: So this is at the heart of my questions, then, because if somebody comes forward or a group of people comes forward 11 years after the fact with a claim after an accident.... I would imagine that in terms of the contamination and then bodily effects, one can foresee that happening 10 years or 11 years later. The effects might not show up in the next year.

If somebody deems themselves to have developed a form of cancer, let's say, from contamination, we know—and the research did show us—that sometimes it doesn't happen within five years. Sometimes it takes 15 years. Would those claims all fall under this reinsurance liability regime?

Mr. Dave McCauley: That's correct. Claims made beyond 10 years, relating to bodily injury, would fall under this reinsurance regime, and this is similar to legislation internationally, under which it's up to public funds to provide this additional coverage.

Mr. Nathan Cullen: The reason for that is that insurers have a difficult time estimating what that risk actually might be. Is that why?

You said earlier that insurers are unwilling to provide any kind of insurance at all 10 or 30 years after the fact.

Mr. Dave McCauley: I think there are various considerations related to why the insurers will not provide the coverage.

Mr. Nathan Cullen: The fact is, though, that they won't.

Mr. Dave McCauley: That's right.

Mr. Nathan Cullen: In order to cover the scenario of somebody or a group of people coming forward 15 years after the fact saying they developed these types of cancers and they relate them to the accident that happened at that time, that will come out of this pot.

Is there an estimation from government as to what that reinsurance is sitting at right now? How much money is in that and how much is it expected to be?

So if you have the scenario in which a group of people come forward and seek compensation, because they say they now have cancer caused by that accident, the nuclear provider is off the hook because it's been longer than 10 years. That $650 million liability is no longer available. Is that correct?

Mr. Dave McCauley: The liability limit is fixed at $650 million.

Mr. Nathan Cullen: But these folks fall outside of that liability because they showed up 11 years after the fact.

Or do they?

Mr. Dave McCauley: No, they don't. There's a $650 million limit, and the $650 million covers any claims within the period prescribed by the legislation.

Mr. Nathan Cullen: So again, we're back to 30 years.

Mr. Dave McCauley: That's right. It's $650 million unless the government appropriates additional funds. The legislation establishes $650 million as the limit.

Mr. Nathan Cullen: Then for the reinsurance component, we talked about this 10- to 30-year component. Can you explain that to me again? I'm a bit confused.

Mr. Dave McCauley: Reinsurance is a component of the $650 million. The actual payments by either insurers or the government will not exceed $650 million.

Mr. Nathan Cullen: This is for folks who come with a claim more than 10 years after the fact if the $650 million has already been given out to other claimants? If the $650 million is exhausted, that's when the reinsurance kicks in?

Mr. Dave McCauley: No.

Mr. Nathan Cullen: Okay, sorry. As I said, I'm not proficient in the world of insurance.

Mr. Dave McCauley: It's complicated.

If we're looking at the issue of damages or injury beyond 10 years, between 10 and 30 years, this is ahead of damage that is provided through reinsurance. That reinsurance is provided by the federal government.

The limit of liability is $650 million. That's the total liability. It will not exceed $650 million unless so prescribed by the federal government, or unless additional funds are appropriated by the federal government. That is the ultimate exposure, $650 million for an incident.

● (1655)

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: I hope it helps a little bit, but the purpose of the act is to ensure that money is actually there in the amount of the liability limit for whatever is compensable under the act. What Mr. McCauley is talking about is that private insurance is actually not available for every single thing. For example, bodily injury from a 10- to 30-year period. I'm not an insurer, but I guess it's causation. I don't know, but they won't provide it anyway and that's the point. The government ensures that the money is actually there and that there will be money to compensate victims. In the event that there's nobody else to provide it, yes, it comes out of government funds, and that's the purpose of reinsurance.

Mr. Nathan Cullen: Thank you.

The Chair: Is there anything else, Mr. Cullen?

Is there anything else on clause 27?

(Clause 27 agreed to on division)

(On clause 28—*Certain rights and obligations not limited*)

The Chair: Is there anything on clause 28?

Mr. Cullen.

Mr. Nathan Cullen: It's just that this is the preservation of rights. This was referred to earlier in some of the questions about what happens in a nuclear accident. It was repeated again by the witnesses that anything in this bill didn't alleviate the government programs that existed. Clause 28 reads:

> Nothing in this Act is to be construed as limiting or restricting any right or obligation arising under

And then paragraph (c) says:

> any survivor or disability provision of a pension plan.

One of the things that has been of concern to me is that, to the witnesses' knowledge—under any pension plans or these other things listed—I don't suspect a lot of these pension plans deal with nuclear accidents. I'm trying to feel confirmed that a group of workers will not have their pension plans essentially voided because they don't have access to a company that has experienced one of these nuclear accidents.

Did the government look at any provisions that exist under the pension plans of employees who work at these plants? There's this whole question back to how the folks who were involved in the accident can't be compensated, right? We went through the discussion earlier about how, if workers at a plant are out of work for two years, that could be quite devastating to a community if the EI runs out after seven or eight months. This act does not allow the workers to seek any compensation for wages, but a person working at the McDonald's next door could be compensated for wages.

I'm asking the same question with respect to pensions. If a pension plan has a stipulation within it that you can no longer receive benefits, or if you can't pay into the pension if you've stopped working, essentially, if you're a 40-year-old or 45-year-old worker, an accident at a plant could end up jeopardizing your pension, could it not? What does this act say about that?

I'm trying to imagine the people directly implicated by this and if there's anything in their contracts that will then be affected in the event of an accident.

The Chair: Mr. McCauley, go ahead.

Mr. Dave McCauley: What the act does is preserve all those forms of agreements, all those pension plans, all those schemes of health insurance. What this provision does is say that although we are providing a separate and special avenue for victims to obtain compensation, recognize that all of these normal contractual agreements between individuals and their health insurance provider, or their pension provider, or other forms of insurance still exist. It does not preclude obtaining access through all these provisions, so it actually ensures that these are maintained.

Mr. Nathan Cullen: My concern is the reverse, in a sense. It's not that this act would override somebody's pension, but we were trying to deem benefit from an accident, earlier. We were trying to say that under this act, if somebody loses wages due to the fact of the accident, if they don't work at the plant itself, there's compensation made available to them. There was a question mark about people who actually happen to work at the plant, whether they too are available to get compensation. I think in the end we said no, they're not.

If somebody works outside of the plant and has their work affected by this, they will receive wages, they will receive compensation on wages, which then affects their pensions—that's how pensions work; you pay into them through your wages. If somebody loses their job and is unable to go back—the plant doesn't reopen or something happens—they also, in effect, would lose their pensions. It seems as if it's a double hit on the folks who are directly involved. Am I chasing the wrong truck here?

● (1700)

Ms. Brenda MacKenzie: I think we understand your question. We have to go back to the fundamental principle of the bill. As we've drafted it, the operator, under clause 4, doesn't get compensated. If you look at clauses 16 and 18, for instance, where there is compensation provided for lost wages in certain circumstances, it's always linked to property. Since the operator's property is excluded, they're out. That may seem harsh, but the point is that it is understood that the operator should make his own arrangements. That's outside the act. It's to ensure money is preserved for third-party victims.

Mr. Nathan Cullen: Yet it also has a consequence for the workers involved with that operator—that's the harshness point. I have no problem in saying that if an operator has a nuclear accident, they should have their own insurance available to repair the damages to their facility. But we've made considerations in this bill for folks affected, working people who are affected by an accident. It still seems to me that the folks actually working at the plant are broadsided by that principle of not wanting to compensate the operator; they also cannot seek damages in terms of loss of wages—that's right. So as a corollary, the pension plans will also perhaps be made either null and void or simply just not be contributed to and be of little or no value.

I always have to imagine these things under the actual scenarios.

Ms. Brenda MacKenzie: Maybe you should make that clarification.

Mr. Dave McCauley: By virtue of clause 28, the workers will still have access to whatever employee scheme of compensation or pension plan, etc., that exists for them.

Mr. Nathan Cullen: Yes. Getting back to this notion of wages, when talking to a group of workers after an accident, they haven't been back to work, their EI has run out, they're now saying, “Not only am I not getting work, I'm also not contributing to my pension.” So the thing that I thought was there is not there.

But I'll leave it at that, Chair. It just confirms that circular effect. The folks who actually work at the place, maybe through no fault of their own, are now not only out of a job but without a pension they contributed to for 15 years. We know how these pension schemes work. They add up towards the end, not the middle, and as a result of the accident, they are also one of the victims indirectly.

I won't ask any other questions, though, Chair.

The Chair: Thank you, Mr. Cullen.

Anyone else?

(Clause 28 agreed to on division)

(On clause 29—*Where action is to be brought*)

The Chair: Any discussion on clause 29?

Mr. Cullen.

Mr. Nathan Cullen: It's a question back to this tribunal in court. I want to understand whether subclauses 29(1) and (2) affect this at all. It doesn't bring any clarity to the notion, but I want to understand the language in this, and forgive me for not being a lawyer. It reads:

> An action involving damage caused by a nuclear incident is to be brought in the court that has jurisdiction in the place where the incident occurs.

What happens with respect to a tribunal being named? Does it also wipe this out in terms of clause 29?

Ms. Brenda MacKenzie: This is for judicial proceedings before a Federal Court and does not refer to the establishment of a tribunal. Actually, it would apply, I guess. The action is to be brought where the accident actually occurs. The legislation is designed to avoid confusion and time wasting when you're trying to figure out exactly who has jurisdiction. You know where you line up to take your claim. So the point of this is that the action is to be brought in the place where the incident occurs.

The second clarification is that, okay, if there is some interprovincial question, if it occurs, say, at sea—we were trying to think of everything—if you're not sure, we're providing the clarity that it's the Federal Court. So you know where to go.

Mr. Nathan Cullen: This is my last question on that. When it says "the place where the incident occurs", does that just simply mean in the province where it occurs, or does it mean right in the actual town where the thing happens? It's a small question, but it could be important in terms of having that lack of confusion and as much clarity as possible.

● (1705)

Ms. Brenda MacKenzie: It's in the court with jurisdiction where the incident occurs. It would be who had jurisdiction, so it would be the province.

Mr. Nathan Cullen: It would be the provincial court that most made sense, but it would have to be in that province under this stipulation. Correct?

Ms. Brenda MacKenzie: That's right. So people aren't going to have to go too far. And as far as the tribunal goes, that's later.

Mr. Nathan Cullen: That's later in the act.

Okay, thank you.

The Chair: Thank you, Mr. Cullen.

Anything further on clause 29?

Mr. Alan Tonks: No, that's fine.

(Clause 29 agreed to on division)

The Chair: Clause 30 will be stood. There is an amendment proposed by the NDP.

(On clause 31—*Declaration*)

The Chair: Is there anything on clause 31?

Yes, Mr. Cullen.

Mr. Nathan Cullen: Just to understand this, is this simply saying that once the claims have all been made, the government may or shall make the claims public? I'm misunderstanding this, perhaps.

Please help me to understand, Ms. MacKenzie.

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: Subclause 31(1) allows the Governor in Council to declare that claims shall be dealt with, from that point on, from the moment they made the declaration, by a tribunal instead of the court, again following through with the idea that everybody should know where they have to go to make their complaint. And in the event that it's something the Governor in Council feels should be dealt with by a centralized tribunal, if it's in the public interest, then the government makes the declaration that claims will be brought there from that moment on.

Mr. Nathan Cullen: Right. I'm trying to understand what would trigger that. We had a bit of this discussion before, but I was still left unclear as to where the trigger point is for the government to say that the courts are not actually a good place to have this happen and that a tribunal goes ahead. Are there criteria that are imagined in this act?

I looked for it in the bill, and it doesn't necessarily say what shall a tribunal make or when does it stay in court. It seems like a tribunal is somehow more important, is more all-encompassing or something. I'm not sure even what the real differences will be to the public, but why would the government decide one way or the other? I don't know if this criteria applied or is suggested.

Mr. Dave McCauley: The rationale for the tribunal is that an administrative means of addressing the claims is probably more efficient and more equitable than the court system in dealing with a large number of claims. So the criteria are provided in 31(1), where they say that the Governor in Council believes it's in the public interest to establish a claim, having regard to the extent and the estimated cost of the damage—so a large incident—and the advantages of having the claims dealt with by an administrative tribunal.

Mr. Nathan Cullen: I read that line about public interest, but I don't have any working definition of what the public interest is. That's a moving target, for sure, is it not? I don't think there's any codified notion of public interest when it comes to something like this.

Mr. Dave McCauley: I think if we look at the experience in what are called mass torts, governments have reacted by establishing administrative claims tribunals because they're efficient and they're equitable in terms of their ability to bring claims together and deal with them as a group as opposed to a court, which may deal with claims on a first come, first served basis.

Mr. Nathan Cullen: Do they also have a lower standard of evidence required than a court might?

Ms. Brenda MacKenzie: In fact, yes, because they're an administrative tribunal, they can proceed expeditiously.

The point of having a tribunal—there are a number of advantages—is that it's cheaper for the claimant. It's cheaper and it's faster because they're specialized in dealing with this particular problem. So they're not dealing with whoever is coming in the door first and just dealing with them one-off, which is the only way a court can deal with anything. So it's to establish a coherent system of dealing with groups of claims, categories of claims.

● (1710)

Mr. Nathan Cullen: The reason I ask this is, in imagining a future scenario that we don't want to imagine, if there's a nuclear accident, it would be upon members of Parliament, who are the ones who would likely be insisting on this because this would take place as a parliamentary procedure. If I've got this right, the minister would go before Parliament and say he's creating this tribunal.

So for us, as members of Parliament, realizing the things you've just said—that this is quicker, it requires a lower threshold of evidence, and doesn't do things one by one by one—it's good for us to know what those criteria are because those notions of public interest, serving the greater public interest, can mean almost anything.

Ms. Brenda MacKenzie: That's probably a fair comment, but by giving a public interest criterion we make it possible for the Governor in Council to make the declaration when it's appropriate to do so. And because the minister—in clause 33, you'll see—must, as you say, report to Parliament on this, then it is something that's transparent and in the public domain and something that parliamentarians can debate, which we freely admit is your role.

Mr. Nathan Cullen: Okay.

The Chair: Anything further, Mr. Cullen?

Mr. Nathan Cullen: No, thank you.

The Chair: Mr. Allen.

Mr. Mike Allen: Just a quick question for clarification.

Is this the same section as the previous act on the establishment of the commission? It's fairly new, so I just want to clarify that.

It's written in here to give the option to the minister to speed these things up, where need be, and then it also has to be published in the *Gazette*. I don't see any mention of that in the previous act. So it would seem to me that this would be an improvement for the people who could suffer under this accident. Could you clarify that, please?

Ms. Brenda MacKenzie: Yes, we did think this was an improvement, because, as you say, our main interest was making this transparent. Because it's published in part II of the *Canada Gazette*, everyone is deemed to know about it. It's judicially noticed. It was actually important to publish it in part II of the *Gazette* because it's theoretically possible that some actions will have staggered along a certain distance, and they have to be stopped and everything has to go to the tribunal.

So it's to make sure that everybody knows the rules of the game and has a fair opportunity to comment.

Mr. Mike Allen: Thank you.

The Chair: Thank you, Mr. Allen and Ms. MacKenzie.

Is there anything further on clause 31?

(Clause 31 agreed to)

(On clause 32—*Effect of declaration*)

The Chair: Are there any questions?

Mr. Cullen

Mr. Nathan Cullen: Can we get a small explanation from the witnesses on this?

Mr. Dave McCauley: The idea is that once you establish the claims tribunal you don't want claims to be continuing in court. The advantage of the claims tribunal is that it brings all the applicants together, all the claims, and then it is able to deal with them equitably. You don't want two different jurisdictions to deal with the claims.

Mr. Nathan Cullen: If there has already been a claim made in court, does that stop the court process and drag it before the tribunal?

Ms. Brenda MacKenzie: Absolutely.

Mr. Nathan Cullen: Could there be any unintended bad consequences of that? It seems like an unusual move. Are there other precedents in Canadian law that say Parliament can essentially stop a court case?

Ms. Brenda MacKenzie: Parliament is supreme and it can do as it pleases.

Mr. Nathan Cullen: Oh, really. Great. I feel all giddy with the power.

But it's a little unusual. I'm trying to think of an incident in the five years I've been here where a minister of the crown has stood up and by the cause of an action stopped a whole series of court cases that are going on. It's unusual. It's a little heavy-handed.

Ms. Brenda MacKenzie: It's a significant power.

Mr. Dave McCauley: It's not the minister; it's cabinet that makes the decision.

Mr. Nathan Cullen: Oh, cabinet can do that.

Mr. Dave McCauley: It's the Governor in Council that establishes the tribunal.

Mr. Nathan Cullen: Okay. Again, it's a pretty impressive power. I understand that Parliament reigns supreme, but I can't think of an incident—and I don't know if you can—in the last number of years where the cabinet has done something that has stopped a whole series of court cases. That, in effect, is what's being done here.

Ms. Brenda MacKenzie: That's right. You can't imagine anybody doing that unless they were expressly authorized by the legislation, and that's what this legislation does.

● (1715)

The Chair: Is there anything else on clause 32?

(Clause 32 agreed to)

(On clause 33—*Report on nuclear incident*)

The Chair: Is there any question or discussion on clause 33?

Mr. Cullen.

Mr. Nathan Cullen: We don't often see “without delay” language in legislation. This is ordering the minister without delay. I want to make sure whether there is any standard stipulation of that. It's usual to see in an act of Parliament something that forces a minister without any—

Ms. Brenda MacKenzie: It's hard on the minister.

Mr. Nathan Cullen: This is a high standard.

Ms. Brenda MacKenzie: It is a high standard.

The Chair: Anything else?

(Clause 33 agreed to)

The Chair: There is an amendment that appears to be in order on clause 34.

(On clause 35—*Power to make agreements*)

The Chair: Is there any discussion on clause 35?

Mr. Cullen.

Mr. Nathan Cullen: I'm trying to understand the intention of this. In giving the power to this minister of making these agreements, what would these agreements do?

Mr. Dave McCauley: The minister may enter into an agreement with insurers, for example, to deal with claims as they come in.

Mr. Nathan Cullen: This is still under this tribunal.

Mr. Dave McCauley: That's correct. It gives the power to the minister to enter an agreement with an association, an insurer, or a person to carry out any of the functions associated with the payment of interim financial assistance. If the minister wants to pay financial assistance before the tribunal is up and running, then the minister can do so through an association of insurers.

Mr. Nathan Cullen: I am trying to understand why the minister would want to do that. If the whole point of the tribunal is expediency and being able to get money out the door from the insurers, why is there this extra clause?

Mr. Dave McCauley: The tribunal isn't operating yet. There is a declaration, under clause 31, that the claims are to be dealt with by a tribunal, but before the tribunal is established, the minister wants to continue to make payments to victims. This provides that the minister can enter into an agreement with any association or person to pay those claims.

Mr. Nathan Cullen: So I guess what's a little unusual is that the whole point of the tribunal is to establish some sort of fact and to hand out compensation, but this says that even before the tribunal has ruled on that compensation, the minister can also start handing out money.

Mr. Dave McCauley: The issue here is that there may be some who have suffered damage or hardship and you want to ensure that they are provided with compensation immediately. This allows that kind of interim financial assistance to be provided to victims.

Mr. Nathan Cullen: So it might not be the total claim of that victim; it'll be some partial payment. The minister can issue the payment cheques.

Mr. Dave McCauley: It could be. The point is, though, that—

Mr. Nathan Cullen: All right.

Thank you.

The Chair: Okay.

Is there anything further?

(Clauses 35 and 36 agreed to)

The Chair: Clauses 37 and 38 will stand.

(On clause 39—*Term of office*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: I just worry about any political interference with this. The notion is that the tribunal will be set by the government, but then they can remove folks from the tribunal at their own discretion. The wording used in clause 39 is "may be removed for cause".

How do we prevent the scenario that if the government just doesn't like the types of decisions a tribunal officer is making, they can simply say, "You're out, buddy", and put somebody else in?

● (1720)

Ms. Brenda MacKenzie: If I may, Mr. Chair...?

The Chair: Yes, Ms. MacKenzie.

Ms. Brenda MacKenzie: This language actually is the language that one uses in statutes to give maximum protection to tribunal members. In a sense, it's redundant, because it says that each member holds office "during good behaviour", which means they can be removed only if they do something contrary, which would have to be established at a fair hearing and all of that. They could be removed only if they were to do something contrary to good behaviour, which would be that they were in a conflict-of-interest situation, or they did something wrong, or they did something unethical, something like that. It's a high standard, and it would have to be proved in any hearing. Then, the remainder of the sentence, "and may be removed for cause", is actually the same thing. There has to be real cause.

Actually, it's saying it twice to be absolutely 100% clear: the people are appointed on "good behaviour", not at pleasure, for instance, which would allow them to be removed for any reason at all. It's on "good behaviour" and only "removed for cause".

Mr. Nathan Cullen: So this is traditional language around the idea that the government has to make a very strong case to remove somebody from a tribunal.

Ms. Brenda MacKenzie: That's right. You can't get them out with a crowbar unless you can prove they really did something wrong.

Mr. Nathan Cullen: You understand my concern. Because as it reads, if you're not a lawyer, it says, "Well, goodness, who decides what good behaviour is?" If the government chooses to deem somebody as not having good behaviour, they're gone.

Ms. Brenda MacKenzie: Yes.

Mr. Nathan Cullen: But you're suggesting otherwise.

Ms. Brenda MacKenzie: This is the strongest language we have in legislation.

Mr. Nathan Cullen: Is it? All right.

Thank you.

(Clause 39 agreed to)

(On clause 40—*Immunity*)

The Chair: Are there questions on clause 40?

Mr. Cullen.

Mr. Nathan Cullen: This essentially says that no member of the tribunal can be sued while there or after the fact, after the tribunal.

Ms. Brenda MacKenzie: Again, this is standard language that you'll see in many statutes. It is to prevent them from being sued "for anything done or said in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a duty or function of the Tribunal".

The only way they can be sued is if they're acting outside the scope of their duties, and that also brings in the notion of doing something that is really not appropriate. They can't be sued as long they're in "good behaviour".

Mr. Nathan Cullen: Thank you.

The Chair: Is there anything further on that?

(Clause 40 agreed to)

(On clause 41—*Staff of Tribunal*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: I just want to understand how this process goes forward. So the tribunal is announced. Does the tribunal come back to Treasury Board and say, "We estimate that with the damage that's been done we're going to need a budget of approximately such and such"? Does Treasury Board then approve the money the tribunal sets up?

One of the powers of government involves staffing and money. You can have a budget, the parliamentary officer can have lots of money or little, and that will affect the job they do. A tribunal is affected the same way. So do the tribunal officers make that pitch to government and then government approves the funds? I want to understand how the process works and who has the power over the cash.

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: Once again I'm sorry, this is something I don't deal with every day. But the catch phrase "with the approval of Treasury Board" is quite standard. So the funding would be obtained through Treasury Board in the normal way. As the minister responsible for the act, the minister would be responsible for making sure things unfolded as they should.

Mr. Nathan Cullen: But again, nothing really stipulates whether the tribunal is the one making it.... You want to avoid the tribunal officers saying, halfway through the process, "We simply don't have the funds to do the job properly", and government saying, "Tough, this is how it is", as opposed to the tribunal coming forward at the beginning and saying, "We think it's a million dollars", and then making their request.

● (1725)

Ms. Brenda MacKenzie: I see what you're saying. In fact, in the provision it does say that the tribunal employs a staff and fixes and pays their remuneration. But the stipulation is, of course, that they can't just do anything. They have to come to Treasury Board, to cabinet, and make their case.

Mr. Nathan Cullen: So it ultimately remains a decision of Treasury Board, and therefore it's a political decision as to the size of the tribunal and the extent of their budget. That remains within the powers of Treasury Board and cabinet.

Mr. Dave McCauley: This is fixing and paying the remuneration. So the salaries of these employees are fixed by Treasury Board. They define the amount of remuneration for the salaries.

Mr. Nathan Cullen: But is the global budget for this requested by the tribunal or set by government? That's all I'm trying to figure out.

We've seen incidents before in Parliament—and I know it's not the same—of inquiries where the question of money becomes very important in terms of the effectiveness of the whole process. This process being effective will also be connected somewhat to the resources the tribunal deems appropriate. I just want to be clear that it will ultimately be the government's decision to say, "You're cut off. You only get $100,000."

Mr. Jacques Hénault: I don't think this refers to that. I think this says that the tribunal will employ the staff they consider necessary. So they get that staff, but the remuneration for that staff is subject to the terms and conditions of Treasury Board. They can't pay their staff more than what Treasury Board approves, but they can hire the staff they need.

Mr. Nathan Cullen: Okay.

Thank you, Mr. Chair.

(Clauses 41 and 42 agreed to)

(On clause 43—*Inconsistency*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: I need some help understanding this. I don't know the Judges Act, I'm sorry. It says, "In the event of an inconsistency between the two...sitting or retired judge, the Judges Act prevails to the extent of the inconsistency". Can you help me understand this?

Ms. Brenda MacKenzie: Yes. The Judges Act has all kinds of rules for how judges and retired judges are to be treated, paid, and so forth. It is important, because a retired judge would be a very good person to head a tribunal, and might be appointed to the tribunal. So the salary and remuneration set out in the Judges Act for a retired judge to perform certain functions would apply.

Mr. Nathan Cullen: So whatever the Judges Act stipulates the government must pay, the government must pay.

Ms. Brenda MacKenzie: That's correct.

Mr. Nathan Cullen: And treatment and days off and all the rest of that stuff—that's all in there?

Ms. Brenda MacKenzie: All the rest of that is in there. We didn't intend to overwrite that.

Mr. Nathan Cullen: Okay. It would be good to be a judge.

Ms. Brenda MacKenzie: Yes.

(Clauses 43 and 44 agreed to)

(On clause 45—*Powers with respect to witnesses and documents*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: This concerns the question of what bears evidence. In subclause 45(2):

> The Tribunal is not, in the hearing of any claim, bound by the legal rules of evidence but it may not receive as evidence anything that would be inadmissible in a court

Can you help me to understand that? It's not bound by the rules of evidence, but evidence must be up to the stipulation of what would be required in a court of law?

Ms. Brenda MacKenzie: I know that's tough.

They're not bound by the legal rules of evidence. So they can hear people quite informally and expeditiously. That relates to not making it difficult for people to make a claim. So they can relax rules. They're much more relaxed than they would be in a court of law.

However, let's say, for instance, they want some information that is in fact protected by solicitor-client privilege; then it's protected by solicitor-client privilege, but the tribunal can otherwise relax its rules for hearing evidence.

● (1730)

Mr. Nathan Cullen: Is this a special consideration entirely or does this exist anywhere else in law? I'm imagining a tribunal judge trying to decipher this if someone were to make a contention.

Let's say the provider challenges a piece of evidence brought before a court and says, “The claimant can't present this because this is not up to the standard of a legal court”, because that's what it says in the second piece....

The Chair: Go ahead, Ms. MacKenzie.

Ms. Brenda MacKenzie: The first part talks about relaxing the rules.

The second part is talking about a slightly different concept, a big example of which would be that if it's protected by solicitor-client privilege, it's not admissible. But other than that, for somebody to come and make a claim to a court, to make a pitch, he or she doesn't have to hire a lawyer to come before the tribunal. He or she can come and just talk to them.

Mr. Nathan Cullen: Can we hold off on this one until next time, Mr. Chair?

The Chair: Okay.

The time is up for the meeting today.

Again, thank you very much to the witnesses and to the committee for moving along....

Mr. Devinder Shory (Calgary Northeast, CPC): Mr. Chair, I have to make a quick motion.

The Chair: Mr. Shory.

Mr. Devinder Shory: Before any future meeting commences, we should give 10 minutes to Nathan and Mr. Anderson.

The Chair: That is not a point of order.

The meeting is adjourned.

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