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Chair

Mr. Leon Benoit

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● (1530)

[*English*]

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

We're here to continue our clause-by-clause on Bill C-20. We left off at clause 45. We had some discussion on clause 45. Is there any more discussion on clause 45?

Yes, Mr. Cullen.

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

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): One second, Chair, I just want to catch up and see where we are.

I have one small question.

The Chair: Go ahead, Mr. Cullen.

Mr. Nathan Cullen: Within "Powers and Duties of a Tribunal", it says that it's able to cross international boundaries and take evidence from other commissions. Does this work in reverse as well? In most of these conversations we're having, I cite only the U.S. I can't imagine any other nation when it comes to these inquiries, tribunals, and courts. Does the U.S. have a similar model for establishing a tribunal? If the answer is yes, can they do the same thing in our tribunal system, based on what's cited here in subclause 45.(3)?

The Chair: I welcome you all here again, Mr. Hénault, Mr. McCauley, Ms. MacKenzie.

Mr. McCauley, if you'd like to respond to that question, go ahead.

Mr. Dave McCauley (Director, Uranium and Radioactive Waste Division, Electricity Resources Branch, Department of Natural Resources): No, the United States system does not have an administrative tribunal similar to Canada's. I'm not certain if their courts would be able to come across the border to examine witnesses. Perhaps Ms. MacKenzie might know.

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie (Senior Legislative Counsel, Advisory and Development Services Section, Department of Justice): Their ability to come across the border, to leave their own jurisdiction to speak to witnesses in other countries, is entirely up to their own domestic legislation. This power to take evidence outside Canada, if necessary, is patterned after our own domestic legislation in other tribunals. It's a necessary power.

Mr. Nathan Cullen: So the U.S. does not have a tribunal. Congress cannot establish a tribunal as the Parliament of Canada can? I'm asking this because they could allow this through the courts alone. Witnesses have raised concerns about the threat of lawsuit and the legal liability limits that exist in Canada—whether a judge would see our $75-million limit, or potentially our $650-million limit, as too low to allow a plaintiff to be heard in a U.S. court. That's why I'm asking these questions about subclause 45.(3). It's my understanding that the U.S. would have only the court system. They would go only through the courts for this—they don't have a tribunal mechanism.

The Chair: Mr. Cullen, that isn't something you'd expect our witnesses to be able to answer or to feel any obligation to answer. When you're talking about the American system, it's up to the Americans to decide what they can and can't do.

Mr. Nathan Cullen: When we say that through the tribunal mechanism we can go and collect evidence from the other side of the border, there's often something complementary written on the other side. It would be rare for Canada to establish something that says we can go forth and drag evidence across the border, but we won't allow it to happen the other way. Do the Americans have a matching amendment to make sure that this is not going to be seen in the U.S. as something that they won't seek to comply with, that Canada will be prevented from seeking those witnesses? That's my point. I don't need to hear all the intricacies of U.S. tribunal law.

The Chair: Go ahead, Mr. Hénault.

Mr. Jacques Hénault (Analyst, Nuclear Liability and Emergency Preparedness, Department of Natural Resources): In the United States they have a provision that in the case of what they call an extraordinary nuclear incident a special panel can be put in place. It's not like our tribunal. But it's a system for deciding claims by a panel. With respect to their being able to come across to Canada and gather evidence, I have no idea of their rules and procedures.

● (1535)

The Chair: Anything further on clause 45?

(Clause 45 agreed to on division)

(On clause 46—*Examinations*)

The Chair: Clause 46, any discussion or debate?

Mr. Cullen.

Mr. Nathan Cullen: A quick question.

The tribunal can require a physical examination. It doesn't specify here. Sometimes, especially in U.S. cases, but Canadian cases as well, one physician's opinion versus another... Does the claimant have any authority to have their own physician's examination brought forward to a tribunal, or can the government supersede that and say they'd have to use their doctor, the one the government assigned?

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: Thank you, Mr. Chair.

This gives the power to the tribunal to seek out the information it feels is necessary to assess a claim. The way the tribunal is set up in general is to allow matters to be heard expeditiously so the person making the claim doesn't have to have a lawyer. We've made it as easy as possible for the claimant, so naturally if the claimant wishes to bring forward evidence from any source, the tribunal is able to hear matters as expeditiously and casually as the circumstances will allow. This is drafted to allow the claimant to bring forward evidence the claimant feels is necessary to support the claim.

Mr. Nathan Cullen: Okay. So essentially, if a claimant came forward and said they believe these are the ill effects they've had because of the accident, and they've got a doctor's report saying that, can the tribunal require another physical examination?

The way I read this right now, "...may require...to undergo physical or other examinations that are reasonably necessary to enable the Tribunal...", the tribunal might simply say they didn't like the doctor's report or they didn't believe in it, and thereby create a loophole in which the government is asking for secondary examinations that may be counter to the first one. And then you talked about expeditiousness and trying to get the claims out the door. Could this not throw a wrench into that if the head of the tribunal started issuing requests for physical examinations of every claimant who came before him? Does clause 46 not give them that power?

Ms. Brenda MacKenzie: The provision here does allow the tribunal to get the evidence it considers necessary to adjudicate claims fairly so everybody's claim is handled in a similar fashion. So to answer your question, yes, the tribunal is able to ask for a physical assessment that it feels reasonably necessary to enable it to determine the claim.

Mr. Nathan Cullen: Last question on this. Just in legal terms, I know sometimes the word "reasonable" implies something. I'm trying to foresee a moment when we're not getting clogged up with disputing physicians as to what the effects of the accident were. Did the person have a pre-existing ailment? Was it something directly caused by...? Does "reasonable" implore the head of the tribunal in a certain direction?

Ms. Brenda MacKenzie: Thank you for the question.

Yes, "reasonable" means reasonable to the average informed bystander, so it does, to use your word, "implore" the tribunal to act reasonably in asking for this information.

Mr. Nathan Cullen: Right. Thank you.

The Chair: Mr. Shory.

Mr. Devinder Shory (Calgary Northeast, CPC): Thank you, Mr. Chair.

As Mr. Cullen from the NDP brought it, the way I read this clause is some insurance companies have a list of physicians, specialists, and they refer the individual to be examined by one of those doctors.

● (1540)

The Chair: Ms. MacKenzie, do you want to respond to that?

Ms. Brenda MacKenzie: Yes, that's an interesting observation. The point of the provision is to ensure the claims are handled consistently, so having a consistent method of evaluation would be useful when necessary.

The Chair: Is there anything else on clause 46?

(Clauses 46 and 47 agreed to)

(Clause 48 allowed to stand)

(Clause 49 agreed to)

(On Clause 50—*Panels*)

The Chair: Is there any discussion on clause 50?

Mr. Cullen.

Mr. Nathan Cullen: This is just some background on how these tribunals work. Can you explain subclauses 50(1) and 50(2) just in terms of setting up these "panels of the Tribunal consisting of one or more members to hear claims"? Is this that the chairperson is able to set up a bunch of panels to hear claims rather than all going through one place? Is that how these tribunals are meant to be enacted?

The Chair: Go ahead, Ms. MacKenzie.

Ms. Brenda MacKenzie: Thank you.

Yes, this allows the chairperson to establish multiple panels in the event there are a significant number of claims to be heard. It is, again, aimed at allowing things to be handled more quickly.

Mr. Nathan Cullen: The bill as it is doesn't imagine any notion of the composition of those panels. What do committee members have to base this idea around? Is there any template, or are these other judges? Are they insurance adjusters? The concern is that if it was stipulated previously as to who would sit on these types of panels, then that's helpful, but as it is right now, it just says the chairperson can set up panels.

Mr. Dave McCauley: That's correct. The panel would be set up from the members of the tribunal. The backgrounds of the members of the tribunal are described in clause 38, that a majority of the members are to be appointed among sitting or retired judges.

Mr. Nathan Cullen: So as I understand this, then, there's going to be a sitting or retired judge who's head of the tribunal. There will then be other former judges or current judges who will be part of the tribunal as well, and they'll be assigned solely, individually, to hear these claims independent of the larger tribunal and assess damages?

Mr. Dave McCauley: There is a power to assign individual tribunal members to form a panel to decide claims. There are also situations where you would have a panel of more than one tribunal member to hear claims, and that gets on further.

Mr. Nathan Cullen: So you've only talked about predominantly this one retired or current judge. How many folks are we talking about here? Is this a whole gaggle of judges because the panel is made up of several? Or are we saying there's a panel of three and they just break up the work and they go off and hear these claims? Or does it depend on the size of the body of work involved?

Mr. Dave McCauley: There would be a minimum of five members on the tribunal. So the Governor in Council will appoint a minimum of five members to the tribunal.

Mr. Nathan Cullen: And by clause 33, I think you said, all of them are former judges—

Mr. Dave McCauley: It's clause 38, and it's not all of them; it's just the majority.

Mr. Nathan Cullen: So a minimum three of the five who get appointed by cabinet will be judges or former judges.

Mr. Dave McCauley: Yes, that is correct.

Mr. Nathan Cullen: And those individually can then be assigned to take on a certain block of these petitions.

● (1545)

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: I understand. Thank you.

The Chair: Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle (Trois-Rivières, BQ): The French version reads: "*Le président peut constituer des formations du Tribunal [...]*". I understand that these are committees, but I would like to know if the word "*formation*" is a common legal term. I have never seen it before.

[*English*]

The Chair: Ms. MacKenzie.

[*Translation*]

Ms. Brenda MacKenzie: There are jurilinguists at the Department of Justice who make sure that the two versions are the same. Here, they are. We have determined that the word "*formations*" is the exact equivalent of "panels" in modern drafting.

Ms. Paule Brunelle: Thank you.

[*English*]

The Chair: Okay.

Anything else on clause 50?

(Clauses 50 and 51 agreed to)

(On clause 52—*Public hearings*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: I just want to get some sort of direction from our witnesses as to what will constitute the need to go into private. The hearing is in private "if it is of the opinion that a person's privacy interest outweighs the principle that hearings be open to the public". Is there a working definition of where that line is? Because it's a pretty broad definition, as it's written.

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: This is the concept that we find in numerous places in federal legislation, for instance in the Privacy Act and other places. And one can imagine, for instance, that in hearing a claim some sensitive medical information might be divulged and need to be divulged in order for the claim to be adequately assessed, but it would, however, be embarrassing for the person involved in making the claim. So that would be a clear example where their right to privacy would outweigh the benefits of a public hearing for that type of information.

Mr. Nathan Cullen: I have a question. We're hearing this a few times, that certain definitions or concepts are defined in other places. Is this part of modern drafting, that it's not referenced directly? Because when one reads this, and if I were the tribunal chairperson reading this, as written it could be left open to some interpretation. Why not just reference the Privacy Act or the statute that this definition is based upon, to offer more clarity to those who go ahead and do this?

Ms. Brenda MacKenzie: That's an interesting question. In a sense, to get into legal theory, all of the statutes of Canada are really one big law, and there's a presumption that they are meant to be understood in the context of the entire legislative text, in the context of the entire body of the law.

Therefore when we use concepts such as privacy and wording that is very similar to what one finds in numerous other statutes, including the Privacy Act, one imports the sense of those words, and judges, when they interpret them, understand that that's the spirit and the tone with which we intend them to be applied.

Mr. Nathan Cullen: Sometimes when we've been going through the witnesses and trying to get information about how certain aspects of the nuclear industry work, there have been claims of competitiveness in order to protect some of the information. Could that be applied in clause 52? It's to protect not so much a claimant being embarrassed but a company coming forward and saying that the part of the tribunal they're hearing right now starts to cross over and they're concerned about giving away corporate secrets. Is clause 52 open to that type of interpretation by the chairperson?

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: Thank you, Mr. Chair.

It would be a stretch. Privacy is a personal concept, so people have privacy. So this provision was drafted and would be understood to refer to things such as medical issues.

Mr. Nathan Cullen: I have a last question on that. Is there potential for an individual, as part of the testimony that's brought forward, somebody from the nuclear supplier themselves, who claims the need for a private hearing on the tribunal because of personal implications that may be then later used in a court case? I'm just trying to ensure that privacy is used as little as possible under the definition that we have in clause 52. I don't want there to be any understanding that there is room out for the provider, for the electricity purchaser, for anybody to start to put some of these tribunals into a level of secrecy that's not intended by this notion of harming the individual. Do you follow my meaning?

I hear it's a stretch for a company to come forward. Is it a stretch for an individual from the company to say they want anything to do with issue X to be done in private at this tribunal level because their personal privacy interest outweighs that of the general public?

● (1550)

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: The term "privacy" connotes personal information, and personal information is anything that can, under the Privacy Act and the Access to Information Act, serve to identify an individual or something about themselves personally or privately.

In fact the concepts that you are referring to, confidential business information, for instance, is another important concept of law, but that is described as confidential business information. It's not described as a privacy interest.

It's certainly up to a judge, but I personally would be surprised if this were construed as going beyond what we normally refer to as personal information or privacy interests.

Mr. Nathan Cullen: Thank you.

The Chair: Is there anything else?

(Clause 52 agreed to)

(On clause 53—*Interim award of compensation*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: This just allows the judge, the ex-judge, to award a certain amount. Are there any limitations, in the previous act or anywhere else, on how much of the total compensatory limit can go out immediately? Sometimes I've seen similar instances like this. The chairperson is directed to, but it's never more than 50% of the maximum or 50% of what is anticipated. It's just to get some money flowing. There's no type of clause like that in here. There's no guidance at all for the chairperson. Can they free up as much interim money as they want?

The Chair: Go ahead, Ms. MacKenzie.

Ms. Brenda MacKenzie: What we've done, as we discussed earlier, is limit what the minister can hand out by way of interim compensation prior to the formation of the tribunal. When we get to the establishment of the tribunal of retired judges, we have drafted it to be respectful of their expertise. The tribunal's limitation is that it "may award interim compensation in respect of a claim heard by it before making a decision with respect to the entirety of the claim". Their only direction here is that they're not supposed to be giving it all out. They can give some.

We drafted this because we're mindful that some of these claims could be very complex, and it might take some time to sort out everything. If there's some part of it that's clear, and the tribunal has a good idea of what it's likely to do, then the tribunal is able to award interim compensation. As we read further, we see that those amounts awarded are taken into account in the final determination of the claim.

Mr. Nathan Cullen: Thank you.

The Chair: Is there anything further?

(Clauses 53 to 55 inclusive agreed to)

(On clause 56—*Appeal*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: I'm just trying to understand how clauses 56 and 55 come together. "If a claim has been heard by a panel that consists of less than three members, the claimant or operator may, within 30 days after receiving notification of the decision", apply to appeal in writing.

Can you help me understand this process? This is somebody who's dissatisfied with the claim they have received when heard by a panel of fewer than three members. I thought there was a notion earlier that there had to be a minimum, and it couldn't be done individually.

● (1555)

The Chair: Mr. McCauley, go ahead.

Mr. Dave McCauley: The situation is that the chair of the tribunal would ask for certain cases to be considered either by a claims officer or by a panel of one. A case may be heard by a claims officer who is not a retired judge but is someone who is used to dealing with claims for compensation. In the event that a victim is dissatisfied with the decision of the claims officer, there's an automatic right to appeal or to have a rehearing by a panel of one.

In the event that you have the claim heard by a panel of one, there is the possibility that the dissatisfied victim could make an appeal to a panel of three members.

Mr. Nathan Cullen: I guess my question is whether there is any test for that. Or can anybody who's dissatisfied simply make that secondary claim, and the tribunal must hear that appeal?

Mr. Dave McCauley: Go ahead, Brenda.

The Chair: Go ahead, Ms. MacKenzie.

Ms. Brenda MacKenzie: Yes, I'll start off at the bottom, which is to just be heard by a claims officer. We anticipate that a lot of claims will be just like each other. Suppose there are 200 claims, and they are the same kind of claim. We anticipate that it would be easier for everybody if they could just go to a claims officer and get it all dealt with in a consistent manner. This is structured so that there's basically an automatic right to go up the line, if you're unhappy, to get a more fulsome process, the full-scale process, which would be a panel of three.

Mr. Nathan Cullen: Again, that decision is implored upon the panel. Can the chairperson or somebody else judge whether an appeal is worthy or not, or does that appeal simply have to be heard, according to subclause 56(1)? Do you follow my meaning?

Ms. Brenda MacKenzie: Yes.

Mr. Nathan Cullen: Someone's unhappy because they had a similar claim to somebody else before and after them in the line. They want the full panel to hear their case. Is the tribunal implored to do it?

Ms. Brenda MacKenzie: The tribunal would almost certainly allow the appeal to be heard by a panel of three. The appeal lies to a panel of three. So what we have here is your really quick process with the claims officer. It might go to a panel of one. The chairperson has the authority to put it directly to a panel of three if it's likely to be a complicated matter.

Mr. Nathan Cullen: I also heard in your answer that the tribunal can refuse an appeal.

Ms. Brenda MacKenzie: The implication here is that the appeal will be heard. The appeal is to be heard and decided by a panel consisting of three other members.

[*Translation*]

"*[...] l'appel est entendu et jugé par une formation constituée de trois autres membres.*"

[*English*]

Mr. Nathan Cullen: Do the French and English read the same?

Ms. Brenda MacKenzie: Yes.

Mr. Nathan Cullen: You're reading subclause 56(2) as imploring the panel to hear the appeal.

Ms. Brenda MacKenzie: It is set up in such a way that it does implore the panel to hear the appeal.

Mr. Nathan Cullen: Thank you. That's what I'm looking for.

Ms. Brenda MacKenzie: Yes. It is very unlikely that somebody who's aggrieved would not be able to get all the way to the top in the administrative appeal process here, unless it's just frivolous or vexatious—as we took care of earlier.

● (1600)

Mr. Nathan Cullen: In subclause 56(3) there's something about hearing additional evidence on this appeal. In exceptional circumstances it's noted that more evidence can be brought. If somebody goes before one of these lower-form elements of the tribunal, is unsatisfied with it, finds more evidence, and gets another doctor's note, is that all considered exceptional evidence? Would the tribunal say, "I'm sorry, you didn't do your job in coming to the first one. We won't see your appeal. We see this as potentially vexatious"?

Ms. Brenda MacKenzie: Again we have left it to the good wisdom of the retired judges who are dealing with it. The qualifier is whether it's essential in the interests of justice to do so. An appeal is normally dealt with on the facts that have already been presented. But we have allowed here that perhaps people will find out something different, or they might have something else to bring that would, to a fair-minded person, result in a different conclusion. So the tribunal is given the discretion to do this.

Mr. Nathan Cullen: A lot rests on the judge, obviously, because that's the way the tribunal is established. But there was nothing earlier on the judge's own experience, potential bias, or interest. The current or ex-judges are simply appointed by cabinet. The act itself, Bill C-20, allows the judge quite a bit of discretion to determine what's vexatious and what's not.

Imagine the public having a concern if a judge had previously been a lawyer, had worked for one element of the nuclear industry, became a judge, and was appointed to this because of their experience. But the act leaves so much available to the judge to decide. This could involve many millions of dollars and be quite important. There's no direction given on discretion, if you follow my meaning.

Is that because it's impossible to guide the government that way? You have a judge who worked 20 years as a lawyer for part of the nuclear industry and ends up becoming a judge. Then 10 or 15 years later he's appointed to a tribunal as a retired or sitting member of the bench. Now the public has to come before a judge who used to litigate on behalf of the nuclear industry.

Ms. Brenda MacKenzie: That's a very interesting question. The tribunal members are appointed on good behaviour. An actual bias in fact is bad behaviour.

Mr. Nathan Cullen: One would hope so.

Ms. Brenda MacKenzie: The clear understanding is that a biased judge is a bad judge, so that's simply not acceptable if you're establishing an independent and impartial tribunal.

Mr. Nathan Cullen: Thank you.

The Chair: Shall clause 56 carry?

(Clause 56 agreed to on division)

(On clause 57—*Judicial review*)

The Chair: We're now on clause 57. Is there any discussion on clause 57?

Go ahead, Mr. Cullen.

Mr. Nathan Cullen: This clause says that everything that gets decided is final. Does that include Parliament, or can Parliament overstep a final judicial decision? Especially when a group of compensation packages has been allotted, could Parliament override clause 57 if the broader public and therefore their elected members felt that it wasn't fair compensation?

The Chair: Ms. MacKenzie, go ahead.

Ms. Brenda MacKenzie: The point of control is in the general law-making process, which we'll be looking at later in clause 67, which allows the Governor in Council to make regulations, which are subject to comment by parliamentarians, of course. It sets out the rules, as does clause 68 as well, which deals with priorities for classes, voting claims on a pro rata basis, and so on, but that's not overturning a decision; that is setting out the ground rules for the way decisions in general are dealt with.

Does that answer your question?

Mr. Nathan Cullen: I suppose so. Yes.

I wonder at times about something that's going to be obviously so much in the public interest, particularly if there are many claimants. We've allowed so much into the tribunal's hands in terms of deciding what's in and out, deciding the amounts of claims, deciding about forwarding claims, and so on, and we've often referenced points that haven't been clear in this act. We have to trust the judge's good judgment, but one can imagine a judge making a bad judgment. It happens from time to time.

● (1605)

The Chair: Go ahead, Ms. MacKenzie.

Ms. Brenda MacKenzie: There are two different things. If a judge misapplies... I'll back up again.

Just as in any court, there are general rules about how the judge applies the law. In this case, the law is this act and the regulations made under this act later on. That is a significant point of control, because you have the policy oversight to make sure that the rules of the game are good.

Besides that, a judge can make a mistake. In the event that the judge has misapplied the law, which is what you'd be looking at, then all of these decisions would be subject to judicial review. The court has the ultimate authority, as is the case for any...

Mr. Nathan Cullen: I see, and that's what the Federal Courts Act would...

Ms. Brenda MacKenzie: Yes. You can't review the decision on the basis that you think you have a better idea, but you can review a decision on the basis that the judge hasn't applied the law properly.

Mr. Nathan Cullen: Thank you.

The Chair: Thank you, Mr. Cullen.

Do we have anything further on that?

(Clause 57 agreed to on division)

(On clause 58—*Payment of awards*)

The Chair: Go ahead, Mr. Cullen.

Mr. Nathan Cullen: This is just the money flowing. Am I to understand from clause 58 that all payments are coming through the government, even though the insurance may be held in private? I'm talking about the $650 million liability cap. We're talking about the government dispensing it at this point. I'm assuming that was all private money that was going to go directly between the claim and the insurer, or the company. Is that not the case?

Ms. Brenda MacKenzie: No. After the tribunal is established, what happens is that... We haven't quite got to it yet.

Payments are made by the minister out of the nuclear liability reinsurance account. You have this centralized body, as opposed to various judges and various courts deciding individual claims. Now we have a centralized process. Everything that the operator owes is paid into the nuclear liability reinsurance account, and everything that a claimant is owed is paid out of that account.

Mr. Nathan Cullen: This is where the $650 million would go, if that's where the claim amount got to?

Ms. Brenda MacKenzie: Yes. The operator, under clause 61, would pay to Her Majesty the amount he owes. That goes into this special account, this separate account. That's the money that's set aside for victims. Then the tribunal awards money that's paid out of that account.

Mr. Nathan Cullen: Do they put the full $650 million into this account, then deplete it to where it either runs out or there's money left over, and then return it? I'm just trying to understand. If we're talking about expediency in this act, the government is going to be cutting the cheques. Is it imagined that the operator simply forks over $650 million or $100 million? I don't see where that's worked out in the act, where the money actually sits and where it comes from.

Ms. Brenda MacKenzie: Under clause 61, the operator pays. This is worked out mathematically. It pays the amount equal to the $650 million, less any amounts the operator already paid before the declaration was made and the total of all amounts paid by the minister under the act. So the minister demands the money, the actual money, not the full $650 million. He demands the amount required to cover the claims in that year under subclause 61.(4). Under subclause 61.(5), that's a debt due to Her Majesty in right of Canada and may be recovered in accordance with section 155 of the Financial Administration Act, which basically contains all the mechanisms at the government's disposal to get the money.

Mr. Nathan Cullen: Thank you.

The Chair: Anything else on clause 58?

(Clauses 58 and 59 agreed to)

(On clause 60—*Payments out of the Nuclear Liability Reinsurance Account*)

The Chair: Clause 60.

Go ahead, Mr. Cullen.

● (1610)

Mr. Nathan Cullen: Help me out. This is the cashflow again? If the amount sitting in the nuclear liability reinsurance account is insufficient, an amount sufficient to meet the deficit comes from the consolidated revenue fund. So this says what happens if the money isn't there in a sufficient amount. But I thought we just established that there would be $650 million in this account. So I don't know why this clause is here if the money is topped up. Am I misunderstanding it?

The Chair: Go ahead, Mr. McCauley.

Mr. Dave McCauley: The minister would pay out of the nuclear liability reinsurance account, and the amounts would be reimbursed by the operator into the reinsurance account.

Mr. Nathan Cullen: But is that operating fund right now $650 million? That's my question. The money is not there right now? If an accident happens, the operator dumps in to top up to $650 million?

Mr. Dave McCauley: The operators have the insurance now. The federal government has a small amount in the reinsurance account. When the tribunal is established, the operator's liability is to the crown instead of to the individual victims, and those payments become a debt to the crown. So when the minister pays out the money, the operator is also liable to pay into the reinsurance account.

The Chair: Shall clause 60 carry?

(Clause 60 agreed to)

(Clause 61 agreed to on division)

(On clause 62—*Limit of payments*)

The Chair: Any questions or discussion on clause 62?

Mr. Cullen.

Mr. Nathan Cullen: This is essentially restating the limit. It says the tribunal cannot award more than $650 million. And it says that if additional funds are appropriated by Parliament to provide compensation for damages, the tribunal may award additional funds for the damage.

I want to get the sequence right. If the tribunal is sitting and hearing compensation claims, and they cross over the $650-million threshold, do they have to pause before making any other payments and then wait for Parliament to set aside new funds? If Parliament says it's a billion dollars, does the tribunal have a new limit to work towards? I want to understand how much the ex-judge is going to be influenced by what's sitting out there in available funds.

The Chair: Mr. McCauley.

Mr. Dave McCauley: The limit of the tribunal's authority to pay out is $650 million. But one would expect that if additional funds were being appropriated, they would be appropriated as a result of the tabling of the report, soon after the incident, of the estimated cost of claims, etc. It would be expected that the tribunal would know fairly early on if there would be additional funds to be appropriated that it might then pay out.

Mr. Nathan Cullen: We talked earlier about the sort of triage nature of this in trying to get money to the people who need it most. Is the judge's determination of all claims not affected by whether Parliament has set aside additional funds?

So if a judge going into this tribunal knows that $650 million is the limit—Parliament has not given over any more—and they've got 650 claimants, to pick a number, it's going to affect their decision rather than hearing that Parliament has set aside additional money. Is it not going to affect the amount they allow per claimant, with that interest being not to have anybody at the very end of the line not get any money at all?

Mr. Dave McCauley: That's correct. Going into this, the tribunal must realize that it has $650 million to use to compensate victims. It has by regulation certain abilities to pro-rate expenses, to not pay certain damages, etc., in order to maximize that $650 million or to triage it, as you indicated.

Should the Governor in Council appropriate additional funds for the use of the tribunal to compensate victims, then it can reassess or compensate again individuals who have already been compensated, with the additional moneys.

● (1615)

Mr. Nathan Cullen: What's strange about this process, in a way, is that if in a normal court of law a judge deems you are owed damages of $100,000, then that's what's dispensed, barring any appeal. But in this case, one can foresee the judge deeming they are owed $100,000, but with the budget they have they are only giving $50,000, and if Parliament gives more money they'll give another $50,000. Do you see what I mean? The effect on the decision is determined by the amount of money available, and because the limit may be reached, it's changing the nature of the judges' treatment of a petitioner, of someone coming before the tribunal, in terms of the money allowed. A person comes forward and says they believe they are owed $1 million and the judge tells them they probably are, but there are so many claimants and the initial report said they were going to blow through the limit right away, and the judge awards them $500,000 but tells them, if Parliament decides there is more money, the tribunal could come back and give them more money. Is that right?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: That's a little strange, is it not?

This is what the judge believes you're owed, but it's limited by this. Then you have this interplay between Parliament and this tribunal, where the tribunal is in effect saying it doesn't have enough money to compensate this, as it's gone through these cases and heard they're more complicated and there's more money required.

Mr. Dave McCauley: But the alternative would be that if you had left the issue fully with the courts, the courts would deal with the claims on a first-come, first-served basis. Then that would not serve the bulk of the victims. I would expect, rather, that who can be first across the line would be compensated.

Mr. Nathan Cullen: It's a very Canadian response in trying to make sure it's as fair as possible to everybody and not just who's got the quickest lawyer.

But the notion is also that the judge's decision on compensation is being affected by this clause, in the sense that they know hanging out there is the possibility of this Parliament or a future Parliament making a decision to offer up more money and then doing what the tribunal actually wanted to do in terms of compensation levels. Do you follow me?

I understand the intention of having everything come together and allowing people some sort of fairness in what happens. But around the money question...

Mr. Dave McCauley: The issue, though, is that it's not really any different from any other administrative tribunals that adjudicate very large losses and large damage situations.

The Chair: Ms. MacKenzie, do you have something to add?

Ms. Brenda MacKenzie: Just on David's point, that's correct. We did think about that. In any claim before any court, any private claim, the amount you can get depends on how deep the pockets are of the person you're claiming from.

Mr. Nathan Cullen: That's understood, but we don't know how deep the pockets are. I suppose that's what we're hearing in this. We know there's at least $650 million, but there may or may not be more. So we have the potential of this process going quite a bit longer, depending on whether Parliament hears the will of the chairperson or is paying enough attention to realize, “Goodness, $650 million is not going to do it; we're going to need more.”

I understand that if someone is seeking damages from some company and the judge determines that the company has only $1 million in total assets, that's probably the natural limit that they can go to. Their insurance isn't going to get them any more, so the judge fines somewhere in the range of $1 million, if that's the maximum he or she wants to give.

But on this one, there are two maximums. There's $650 million, but then there's this unknown question mark, depending on what Parliament decides. I just see an interplay between the pressure of the tribunal and the public pressure on Parliament being what actually ends up compensating folks, as opposed to some natural course and limit.

If Parliament simply decides that because it's a non-election year they're not going to compensate any more, then tough luck, and folks are out money that there might otherwise have been. It's something that the judge probably acknowledges and says, "You're probably owed more money, but the election isn't for three years, and you're not going to get any."

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: The limit here is $650 million, because that's all the legislation provides for.

You're right, the scheme is a little bit different, because normally once you've awarded money, that's it; it's all over. We have provided for something a little special. We have allowed the tribunal to go back, and if they've awarded, say, 80% of a particular class of claim to all the claimants—and it might not even be as a result of Parliament awarding more money but because they discover that they didn't use up all their money—they may decide to come along, and in fairness, award another 10% to that class of claimant that was shortchanged.

● (1620)

Mr. Nathan Cullen: What you're imagining, then, in this special clause is almost a situation where a judge would say, "Here's your compensation amount, but come back for more, because we've only given you 50% or 80% of what we deem you to be owed because we're concerned about the total amount. We have only $650 million to work with, as far as we know. Maybe there's more coming. Maybe we won't run out. Maybe there'll be fewer claimants than we suspected."

Do you imagine the judge giving those types of compensation statements?

Ms. Brenda MacKenzie: Yes.

Go ahead.

Mr. Dave McCauley: The accounting of the payments is done exactly to reflect that. The tribunal judge will make a decision as to how much compensation would be available. There would be a reduction based on the regulations provided, to reflect, for example, that a particular payment was being made at 50% of the dollar, and then there would be an amount paid out. That information would be provided to the victim. If further moneys were appropriated, there would be the possibility of these victims returning to the tribunal and seeking additional compensation.

Mr. Nathan Cullen: Where's that?

The Chair: Ms. MacKenzie, did you want to add to that?

Ms. Brenda MacKenzie: I have just one clarification.

The tribunal determines what the damage is, as any judge would. The second determination is how much money there is. It's a two-step process.

Mr. Nathan Cullen: In terms of that instruction, Mr. McCauley, you said in the last piece that the judge can issue a statement that essentially says, "The total claim might be such-and-such, we're giving you a percentage to this limit, and then we might come back." Is that essentially what a judge might rule?

Mr. Dave McCauley: Clause 54 provides the notification that is carried out by the tribunal. They decide an award in respect of the claim in subclause 54(2), and the notification is sent to the minister indicating the award and any reductions prescribed by regulations concerning any amounts already paid with respect to the claim in accordance with the act. Then the payout is done by the minister from the funds.

Mr. Nathan Cullen: What you're imagining in subclause 54(2) as it applies to this particular provision is that the judge would send a notice to the minister on each individual claim, saying, for example, "Dave So-and-so got $100,000 in the claim, and we gave him $80,000 subsequent to there being enough money or more funds made available."

Is that a notice you would see from the tribunal judge under subclause 54(2)?

I didn't read subclause 54(2) that way at all, but you're saying it could be used that way.

Mr. Dave McCauley: It's an accounting of the decision. So it's a pure accounting.

Mr. Nathan Cullen: And in that accounting—

Mr. Dave McCauley: It's columns, columns, columns. This is the payment.

Mr. Nathan Cullen: Right. That's fascinating. I know what you're saying in terms of what's available, but there's one limit and then there's another buy-in, essentially, that may or may not happen, and the judge would be giving a partial compensation, potentially, that may or may not be topped up later on, depending.

Mr. Dave McCauley: In this legislation, as opposed to the previous legislation, there is a requirement for the minister to table in Parliament an estimation of the costs of the incident. So we see that as being the opportunity for having a good quantification of the damages early in the process.

Mr. Nathan Cullen: Last point: that seems difficult to purport to do on the personal level simply because the government would not have heard any of the claimants yet. That report is issued before Parliament saying we think it's going to be about $450 million, but the tribunal has yet to hear the claimants. The claims could come in much, much higher, could they not? Or much lower? A central piece of the evidence is not before Parliament when they're making... It's a broad estimation, right, saying "we think the damages are within this range". That's fair and that's fine, but the tribunal has yet to hear anybody.

● (1625)

Mr. Dave McCauley: I think Parliament would have a lot more information at that time to determine the extent of the damages and the costs of the damages.

Mr. Nathan Cullen: Thank you.

The Chair: Mr. Shory, and then Mr. Allen.

Mr. Devinder Shory: I might have missed this point. Would there be any limitation act that will apply to this act as well? Is there any limitation time-wise to make claims?

Mr. Dave McCauley: No, there is no separate limit. The limitation is within the act, and I believe we've already covered that in one of the previous clauses.

The Chair: Mr. Allen.

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

Following Mr. Cullen's point, doesn't that actually go back to the set-up of the nuclear claims tribunal, which is in clause 31? Because it very expressly says that it stops all proceedings that would have happened under a court process at that point in time, and then under clause 33 there's a report to Parliament:

> The Minister shall, without delay after a declaration is made under section 31, cause a report estimating the cost of the damage arising from a nuclear incident to be laid before each House of Parliament.

So before the tribunal even really gets started, there's going to actually be a report made to Parliament with the broad scope of what we think the damages might be anyway, and the tribunal, as you appropriately pointed out, is going to be the way for us and for the claimants to get action a little faster.

So technically we're not coming in cold, and technically we're not coming in two-step. We're going to have an estimate of that before you can start. Is that not correct?

Mr. Dave McCauley: That's correct.

Mr. Mike Allen: Thank you.

The Chair: Okay. Shall clause 62 carry?

(Clauses 62 and 63 agreed to on division)

(On clause 64—*Reciprocating countries*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: This is a clause we've referred to a number of times in trying to understand nuclear facilities that are near the border where there might be some anticipated effect. Could you help the committee walk through the reciprocating agreements? This is all within clause 64. What is this attempting to do?

Mr. Dave McCauley: This legislation limits the compensation of damage to that which takes place within Canada. If there were a reciprocating agreement with another country, as we have with the United States, then compensation could also be made to victims in that country.

Mr. Nathan Cullen: Through the Canadian tribunal.

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

Mr. Nathan Cullen: Now, earlier we heard in testimony that there was a concern from the nuclear industry that because our liability limits are so low, a U.S. judge would hear a case of the effect of a Canadian accident on an American and say, “That's not proper coverage. We're going to hear your case and you can sue the nuclear provider north of the border.”

Is that what this clause is essentially getting at? Is it saying that under this new regime, a judge might not hear that case so we're going to allow American claimants to be heard at the Canadian tribunal?

Mr. Dave McCauley: A clause very similar to this exists in the existing act. We understand that this is a concern expressed by the industry, that U.S. victims may sue in U.S. courts because the liability limit is quite low now. However, under this legislation we believe that the courts would consider the $650 million limit to be a significant increase from the $75 million and they may avail themselves of the opportunity to bring their claims to Canada.

● (1630)

Mr. Nathan Cullen: In the triage or in the ordering of claimants, is there any distinction made at the tribunal between an American citizen and a Canadian one in terms of damages? They're all seen as equal participants?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: That's interesting.

The Chair: Is there any further discussion on clause 64?

(Clause 64 agreed to on division)

(On clause 65—*Failure to maintain financial security*)

The Chair: Is there any discussion on clause 65?

Yes, Mr. Cullen.

Mr. Nathan Cullen: There seems to be no warning to this, that as soon as they're in contravention... This is just not having sufficient insurance, essentially. That's $300,000 a day with no warning. It just comes on as soon as the moment the government deems a provider to not have sufficient insurance?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: Where did this amount come from?

Mr. Dave McCauley: I believe that we looked at other legislation where fines were ordered against participants, particularly, I believe, in the Nuclear Fuel Waste Act. We looked at a host of acts, and that's where the dollar figure actually came from.

Mr. Nathan Cullen: My only question is, is that sufficient, really? Because if a provider is operating without insurance, the liability for the country would be the $650 million, or some subscribed amount, would it not? I'm just wondering if it's in the ballpark of what a provider would have the government lose if it didn't have that insurance at the right time.

Is it severe enough? I know it's $300,000 a day, which seems like a dramatic amount, but the fact is if an accident were to happen at that moment, the compensation provided by the Canadian taxpayers would be all of it.

Mr. Dave McCauley: Yes, I think the $300,000 a day would be quite significant, but more importantly, without the coverage the operator would not be able to operate. The operator has to have the insurance as a condition of its operation.

Mr. Nathan Cullen: It's just one of those things, that insurance sometimes goes lax for different reasons, right? It's not that someone starts up a plant without insurance. One can imagine that simply running out or not being there for a moment, it's not as if... Well, I'll leave it at that. I was just wondering if $300,000 a day was proportioned on something, or some percentage of what Canada might be on the hook for, but if you deem that on other nuclear acts, then that's fine.

Thank you, Chair.

The Chair: Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): Could we maybe have a clarification with respect to the process of summary conviction? How would that happen? I think I understand that there is a commission of an offence, the offence being that there isn't sufficient insurance, or there hasn't been sufficient proof that a decent attempt was made to acquire the prescribed insurance. I understand that, but how can that be adjudicated upon if the process is one of summary conviction?

My understanding of summary conviction is that there really isn't a hearing, there isn't required a hearing, that there is a fine and the normal litigation period is much more akin to a hanging than a judicial process. Maybe you could just give us an idea of what's involved in summary conviction hearing.

Ms. Brenda MacKenzie: If you think of the Criminal Code, normally a summary conviction involves lesser fines, and so forth. You see that the fine here is not a small fine at all.

What summary conviction entails is that the operator doesn't have the right to a judge-and-jury trial, but it's a judicial process all the same. They are entitled to all the procedural protections, just not a judge and jury.

● (1635)

Mr. Alan Tonks: Just as supplementary to that, would it be before the tribunal?

Ms. Brenda MacKenzie: Oh, no. This would be before a court of law. This is a trial, like—

Mr. Alan Tonks: All right. That's fine. Thank you.

The Chair: Thank you.

(Clause 65 agreed to)

(Clause 66 allowed to stand)

(Clause 67 agreed to)

(Clause 68 agreed to on division)

(Clauses 69 to 74 inclusive agreed to)

The Chair: Yes, Mr. Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): I wonder whether the committee would consider taking a break for about five minutes. We may be able to speed some things up here. Mr. Cullen and I have a follow-up to the last meeting's—

Mr. Mike Allen: You've proven yourself that the breaks work well.

The Chair: Is it agreed by the committee that we suspend for approximately five minutes, as needed, to try to expedite the process?

Some hon. members: Agreed.

The Chair: It is agreed.

We will suspend for approximately five minutes.

● _____ (Pause) _____

●

● (1640)

The Chair: We will resume the meeting now.

We are now on clause 21, and there are some amendments that were brought forward for clause 21.

Mr. Cullen, do you want to move any of those amendments? If so, now is a good time.

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

Mr. Nathan Cullen: Thank you, Chair.

As members on the committee know who have dealt with bills before, when you move one amendment, it has an effect on others. Amendment NDP-3 ends up combining with NDP-11 and NDP-16. This is getting at the heart of the matter.

When this bill was at second reading in the House, a number of members stood up to speak around the issue of the total compensation allowed. There was notice by some, particularly in the opposition, that we could effect the limit at committee: if the $650 million were deemed not to be enough, then we would change it at committee. Our concern is now that, in the amendments I'm attempting to move today—in NDP-3, NDP-11, and NDP-16—the attempt to move that limit upward is challenging, given the way the committee process works. The clerk will probably have something to say, or through you, Chair, about whether it's deemed outside the mandate of the bill or not. In my reading, the bill is to set up a liability limit for the nuclear industry; to say that above this limit, government may come in—or at least that the companies will not be on the hook.

From the testimony we heard at committee, the $650 million was thrown into some question, certainly by the international witnesses we had, who described liability limits in other countries that are very much higher. There was some argument made that the Canadian industry is just too small or is of such a scale that $650 million is as high as they can essentially go. But then we also heard from the Canadian insurers that $1 billion was actually foreseeable and manageable.

So through NDP-3, NDP-11, and NDP-16, we're having the combined effect of raising that limit, ensuring something similar to what the U.S. has in store and has designed already.

It seems that in order for the committee to do this work, in order for Parliament to make an informed vote, having $650 million as the prescribed limit is staring into the face of the evidence, which says that limits should be much higher.

As to the relevance of these three motions, which are combined, they seem well within the scope and intention of the bill designed by the government. All we're saying is that your study was too old—this was done up in 2002, based on the Magellan report that we've heard much about—and if you modernize this bill you'll probably end up somewhere around $1 billion or $1.2 billion for compensation as a liability limit.

I'm interested on your ruling on this or what you see, but this is the main sticking point for New Democrats around this legislation: it's eight years old in its design, the world has moved on, and when we compare ourselves with other countries and jurisdictions, we find that they all have higher liability limits. This in a sense makes this bill unsupportable, although we're trying to modify it where we can.

● (1645)

The Chair: Mr. Cullen, we are dealing with clause 21. You have tied amendment NDP-3, which I'll talk about a little in a minute, to amendment NDP-16; however, amendment NDP-16, I believe, is outside the scope of this legislation, so it's not in order.

And amendment NDP-3, of course, as I think you know, Mr. Cullen, is not in order because it would require a royal recommendation. So amendment NDP-3, which is the one we're actually dealing with now, is out of order.

You also have two other amendments that you may choose to move or choose not to move, Mr. Cullen.

Mr. Nathan Cullen: I do.

Chair, it's not that I'm questioning your decision as much as I'm trying to understand the rationales for consequential amendments that are coming.

We didn't propose this under the suspicion it was out of order, because the spirit and intention of what the government did is to try to create a liability regime for the nuclear industry. That's what this bill is meant to do, create a particularly unique insurance form for the nuclear industry.

In terms of where that number is, whether it's $650 million or more, we understand that as staying within the spirit and recommendation—as I've seen committees do before—of what the bill is trying to do. We're just arguing where that limit is and whether it should be higher or lower.

So I'm not challenging your ruling in a formal way, but I'm trying to understand it so when we look through future amendments that we've moved we can understand where you're seeing the limit of amendments to be for this bill.

● (1650)

The Chair: In terms of amendment 3, you understand that it is not allowed because it would require additional spending through a royal recommendation.

Mr. Nathan Cullen: Maybe that's my question right there, that there is no additional spending on behalf of the government. To go from a $650 million limit to a $1.2 billion limit, there isn't any more money that's coming from the taxpayers. That money is all about what the industry has to carry for insurance.

One could argue in fact that it's actually a reduction in the amount of money coming from the federal taxpayers in the event of an accident. So I guess I'm trying to understand your ruling, in that there's no additional money coming from the government, zero.

The Chair: Yes, Mr. Cullen, what you're arguing is that there wouldn't be additional money if amendment 16 were to pass. I've ruled that amendment 16 isn't in order because the introduction of additional security in the form of contributions is a new concept that's outside and beyond the scope of Bill C-20 and therefore is inadmissible.

So you're basing your argument for saying there wouldn't be any additional spending required on the condition that amendment 16 would pass, which isn't going to happen because it isn't in order.

Mr. Nathan Cullen: So just to follow your logic, Chair, you're saying that because you're ruling NDP-16 out of order, because it creates something that isn't imagined in the bill, it therefore precludes NDP-3. But subclause 24(1), which exists in the bill already, is the insurance component:

> The financial security is to be in the form of insurance with an approved insurer, containing only the terms and conditions set out in a standard insurance policy approved by the Minister.

It also allows in subclause 24(2) essentially what we're asking for in NDP-16, which is alternative financial security:

> The Minister may enter into an agreement with the operator that authorizes that a portion of the financial security be alternate financial security.

So NDP-16 is essentially saying what that alternative financial security could be. I wondered about this as we went through the bill the first time; if this were to stand, which I believe it did, it imagines alternative financial security. In NDP-16 we're saying one could imagine alternative financial security to look like this, thereby directly into the spirit of the bill, if you follow my meaning.

Hear me clearly: I'm not questioning the ruling, but I'm trying to understand what you're basing the ruling on. You're saying NDP-16 is out of order, but then it clearly goes in with subclause 24(2) in terms of this alternative financial security that we've already talked about.

The Chair: Mr. Anderson, go ahead.

Mr. David Anderson: I have a couple of points I'd like to make. One is that there have been good reasons given why the $650 million was chosen. I think that's been explained by our witnesses. The NDP may not agree with that, but there's a good rationale in terms of the assessments that have been done and for the reality that it is an adequate figure.

The second thing I would like to point out is that there is actually a cost to the government should this limit be raised, because the government is reinsuring a number of these facilities. So every increase in the liability would certainly expose the government to higher costs than it has with the bill as it is. So I'd support your ruling that there needs to be a royal recommendation here, because it does expose the government to increased liability and the possibility of increased spending.

The Chair: Yes, I believe that is correct.

Mr. Nathan Cullen: Just to be clear on the royal recommendation component, it's about the reinsurance costs that the government would have, the difference between $650 million and $1.2 billion? Is that what I'm hearing?

Mr. David Anderson: I'm pointing that out as one example where the government would end up possibly having to absorb liability that is higher than the amount given right now.

The Chair: Yes, and what I'm saying is that your amendment NDP-3 would depend on amendment NDP-16 passing, and amendment NDP-16 isn't in order.

Mr. Nathan Cullen: I'm not sure if you heard my point about subclause 24(2)—

The Chair: I did.

Mr. Nathan Cullen: —talking about alternative financial security. Amendment NDP-16 talks about alternative financial security, so I don't understand how it's outside the purview of the bill if it's directly referenced in subclause 24(2).

Again, I don't claim expertise on how these financial systems work, but if the government's own bill said you can do this thing and we suggested a way to do it, I can understand the government maybe not liking it, but I don't see how it's out of order. That's my question.

● (1655)

The Chair: Mr. Cullen, in the legislation as proposed, in subclause 24(2), this is permissible. Under what you're proposing, it's mandatory.

Mr. Nathan Cullen: Okay.

The Chair: That makes a difference.

Mr. Nathan Cullen: My understanding of what gets ruled out of order is when a member of a committee tries to put something into a bill that was never intended, was never imagined, was never a prescription. It is imagined here.

The Chair: It's imagined as something that is optional. The amendment would make it mandatory, which means it involves an extra obligation. Clearly, it is outside of what was intended.

Mr. Nathan Cullen: Again, I'm trying to understand this so I don't move amendments that are deemed out of order without understanding them. If in new clause 27.1, in my amendment, I had suggested that the minister "may"—

The Chair: Okay, we're looking at a lot of different areas here now.

Mr. Nathan Cullen: Sorry, it's amendment NDP-16. We've tied these two things together, so I have to move back and forth between them.

If, on the fifth line down, after "23(1)", it said, "to be held by the nuclear installation, the Minister may require an additional contribution...every year", in the way we craft amendments, that wouldn't have mandated the minister to do it. It doesn't say "shall". Would that have allowed amendment NDP-16 to be in order?

The Chair: Are you referring to subclause 23(1) or to new clause 27.1?

Mr. Nathan Cullen: Well, new clause 27.1 is the amendment, but as you read through new clause 27.1, it references subclause 23(1). I was just trying to take committee members to the actual line. About five or six lines down, the word "shall" appears. If the concern from your legislative advice is that it's mandating something that has only been imagined in the bill, if we don't mandate it in a sense but say that this is an option for the minister to issue that type of reinsurance...

I very much hear Mr. Anderson's point about government being on the hook. I guess what's part of our effort here is that we're reducing government's liability; we're not increasing it. By setting the liability limit higher, the liability of the government is decreased by an equal amount, unless I'm reading the whole purpose of the bill wrong.

Did you follow my point there, Chair, in terms of—

The Chair: I did.

Mr. Nathan Cullen: Does that help?

The Chair: No.

Mr. Nathan Cullen: Oh gosh, I really thought it would.

The Chair: In fact, according to the clerk, that would mean, on another basis, amendment NDP-3 would be out of order.

Mr. Nathan Cullen: On another basis?

The Chair: Yes, because in new clause 27.1, you're...

Go ahead, Mr. Anderson.

Mr. David Anderson: Mr. Chair, I wonder about the rules of debate once a motion has been ruled out of order. We seem to be focused here on one or two of these things. I wonder if we could move on.

The Chair: Yes. I was giving latitude because he was asking in terms of other amendments in the future.

Mr. David Anderson: It has been ruled out of order. Can we move along?

The Chair: I do think we should move along. Amendment NDP-3 is out of order.

Mr. Nathan Cullen: Okay.

The Chair: You can choose to move amendment NDP-4, if you wish.

Mr. Nathan Cullen: I do.

The Chair: Of course, that has the same problem. It's raising the liability level to $1 billion from $650 million. There are the same arguments.

Mr. Alan Tonks: I thought you ruled that one out of order earlier.

The Chair: Yes, amendment NDP-4 is out of order.

Amendment NDP-5, though, is in order, Mr. Cullen, if you would like to go there.

Mr. Nathan Cullen: It's good to have one in order.

Mr. Alan Tonks: Take us there, Nathan.

Mr. Nathan Cullen: I'm taking you there, Alan.

I'm just so overwhelmed with a motion that is in order. This is exciting.

The Chair: Go ahead, Mr. Cullen. Take a little time to get...

Mr. Nathan Cullen: To get over my excitement.

Some hon. members: Oh, oh!

● (1700)

The Chair: Yes.

Mr. Nathan Cullen: This is an amendment to clause 21. It would add a new subsection reading:

> (1.1) If a nuclear incident occurs and the operator fails to prove that the incident was not caused by its negligence, the liability limit referred to in subsection (1) is increased to three times that amount, and any compensation that is payable as a result of the incident shall not be provided for out of the Nuclear Liability Reinsurance Account.

This came from some of the testimony we heard, particularly from John Walker, counsel with the NIAC, that liability for accidents caused by negligence is normally unlimited. We got into this in some of the testimony with our witnesses, that if negligence is proven... Having limited liability always seems like a strange phenomenon in Canadian law. If it is proven that someone made a grave error that caused the accident, also affording them limited liability is a special provision that exists nowhere else.

This is very much like when we first moved—and allow the stretch here—to allow workers' compensation to exist. Up until the moment that companies could feel on their balance sheets the effects of having unsafe work environments, it was very difficult for them to change practices. When owners of companies were able to identity that there was a cost to having unsafe work places, they started to have regulations and improvements in the way their facilities were set up.

This is similar, to say that there must be some cognizance that if negligence occurs—and this only says if it's "proven", not speculation—then certainly affording a limited liability gives protection to a company when it might not be deserved.

This is all about the negligence component, and I think it is one of those things that we have to build into the cost of doing the work. So I move amendment NDP-5.

The Chair: Thank you, Mr. Cullen.

Mr. Anderson, you have some comments on this.

Mr. David Anderson: Yes, I have just a quick comment.

The first thing that strikes me is that this actually assumes negligence and forces the operator, if an incident takes place, to prove it is not negligent. I don't think we can assume negligence. The other point of the bill, its basic principle, is that the operator is absolutely liable for damages. That's the point of the entire bill, and I would say that this works against the basic principle of the bill and against the purpose of the act as it stands.

So we have to oppose this. I appreciate Mr. Cullen's efforts here; however, the amendment works against the basic principle of the bill.

The Chair: Is there any further debate?

Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle: I would like to know what Mr. Cullen thinks about this. If the liability limit referred to in subsection (1) goes to three times the amount specified there, is there not a danger that the operator will just declare bankruptcy and pay absolutely nothing because we cannot take the money from the Nuclear Liability Reinsurance Account? I suppose that it is hypothetical.

[*English*]

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

Mr. Nathan Cullen: I can *en anglais.*

The Chair: It's entirely up to you.

Mr. Nathan Cullen: Yes. This is trying to tie the way nuclear facilities are built and maintained. There should never be any assumption by the operator, because of a limited liability, that anything changes in the way it builds or operates a facility. Now, the operators will say that this is the case. This is trying to internalize an externalized cost.

We have given a false limit to the insurance that's available. We have said we're going to cap it. We never want this to create the unintended consequence that an operator is able to say, "Well, it's only $650 million; therefore, it affects the way we do our operations." This is only in the case that negligence is proven—not suspected, but proven out, in either the tribunal or a court.

We're saying that if negligence went on, and particularly if it was known, as we get into these inquiries—and we can sometimes trace back and find out where the negligence occurred—the liability limit shouldn't be afforded a group like that. It shouldn't be afforded an organization that performed negligently that it get the special $650-million-limit privilege We think that's wrong.

So it's only in the case where it's proven, to add further stringency to the way the providers do their business and the way the employees go about doing their work, so that they know that if they're negligent, if they screw up and cause an accident and cause all this damage, the $650-million limit is not going to be there for them, that it's going to be much higher.

The Chair: Thank you.

I have Mr. Tonks and Mr. Allen on that issue.

Did someone there want to respond?

[*Translation*]

Ms. Paule Brunelle: I have another question.

[*English*]

The Chair: Oh, you have another question. Go ahead.

[*Translation*]

Ms. Paule Brunelle: I would like to ask you a question. Why is this amendment in order? Is it because the reinsurance account is not available? Is that why this amendment is in order but the other one was not? It suggests tripling the amount.

● (1705)

[*English*]

The Chair: Yes, that is exactly the reason.

[*Translation*]

Ms. Paule Brunelle: I want to be a clerk for my next job.

[*English*]

An hon. member: I would have thought it was to be chairman.

Some hon. members: Oh, oh!

An hon. member: A coup.

The Chair: There seem to be a lot of people who are willing to sacrifice the current chair, mostly my colleagues.

Mr. Tonks, go ahead, please.

Mr. Alan Tonks: I was being facetious, Mr. Chairman.

I only have one response with respect to Mr. Cullen's suggestion that is entrenched in that particular amendment.

I'm not a lawyer, but it seems to me that when you go to court you draw your expert witnesses to establish what's fair, both in a procedural form and in terms of quantitative form and. When we were talking about the $650 million we had the Rothschild report, which was submitted as reasonable grounds to establish the quantum of reparation and also the kinds of checks and balances that are in the legislation with respect to natural justice, the tribunal, and so on.

My fear in going Mr. Cullen's route through that amendment is that it flies in the face of the expert testimony that has been provided through the report we have been given by our witnesses. The risk is that you have then set the stage for an appeal to the legislation on the grounds that the expert testimony that established both the quantum and the content of the bill is suspect. I don't think we want to set the stage for that.

We have good legislation. We have reasonable grounds to defend it. I believe we must avoid the constitutionality or whatever you want to bring into it—and I'm going to use the term "at all costs".

I would argue against the amendment, and I would use the grounds that have been given through our witnesses that in a Canadian experience—yes, Mr. Cullen has quite rightfully referred to other experience, but on the basis of the experience and the expert draft that we had through that report—the $650 million is sufficient and that the exigency that may occur, to which Mr. Cullen refers indirectly through his amendment, is not consistent with both the reports we had and the way the whole bill has been constructed.

The Chair: Thank you, Mr. Tonks.

Mr. Allen, then Mr. Cullen.

Mr. Mike Allen: Thank you, Chair.

Mr. Tonks pointed out two very good things. One was the chair, obviously, and the other concerned the points he made with respect to the evidence we heard.

The other thing I would like to point out... And one could make an argument that this probably shouldn't be in order either, because if you look at it, "operator fails to prove...the liability...in subsection (1) is increased to three times that amount", so indirectly you are taking your liability up to $1.95 billion, and any insurance company, when it assesses the risk, would probably say that the premiums would therefore increase, and you will see an escalating amount on that as well.

I would say I can't support it based on those two factors.

The Chair: Okay.

Mr. Cullen.

Mr. Nathan Cullen: I have two points. One, I think Mr. Allen is referring to the Magellan report. The Rothschild one is the report the government commissioned around restructuring of AECL.

Mr. Alan Tonks: No, I don't think so.

Mr. Nathan Cullen: Okay. I might have that wrong.

The report I'm referencing is the one that the government commissioned. It looked at two reactors around which we had much discussion here. There were three factors. One is, the report is eight years old. That's when this bill was constructed. It was constructed around an eight-year-old report.

Second, the two recommendations that came out of the report—there were only two—said that the government should look at Pickering, a place with a higher density of population, and it should also look at different types of accidents, more severe accidents than the one the examiners studied. They were given a direction to study two more isolated reactors under a limited set of conditions for a design accident, one that was imagined, as opposed to a more severe accident. The nuclear insurance group came before us, and under a question from my colleague, Mr. Rafferty—I'll repeat this, because I think this is important—the question was, "As a lawyer, would you think it would be fair to limit liability to an entity if an accident were to happen because of negligence and incompetence?" That is what we're dealing with here.

The answer from Mr. Walker—this is from the nuclear insurance companies themselves—is that "the classical answer would be no". I guess there are no countervailing arguments in a nuclear environment. From the insurer's point of view, to Mr. Allen's point, when the concept that's brought up here about proven negligence and given the moment where you can have this limited liability, the insurance said no. They said that when you look at it this way, you shouldn't do this.

Our report is eight years old, and the government ignored the only two recommendations that came out of the report to study what may in fact happen. We're going to a question of proven negligence, in which the insurers themselves said that if you have proven negligence, the special circumstance that Bill C-20 creates should be modified. Our amendment is modifying that circumstance in saying that we're giving you special treatment as an industry because it's so hard to insure you guys flat out—that it can't be done. That was said by the nuclear industry themselves: without this type of legislation, you don't have a nuclear industry, period.

We're saying that's fine to an extent. We've argued already for a higher liability limit. There's disagreement on that. We're now saying that just in a point of proven negligence, should they still be afforded that special privilege of limited liability? We're saying sure, that it still is afforded to them, but charge them more for it, because they were negligent, and it was proven, and the insurance companies themselves who are involved said that would make sense.

Those are the arguments we're making around NDP-5. I think for all the points I raised, it makes sense. We submit ourselves to the vote of the committee.

● (1710)

The Chair: Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle: Something else in the NDP amendment concerns me. Negligence will have to be proven and that could take a long time before the courts. As I understand it, the principle behind this bill is that, if people are faced with a disaster, we can respond quickly. We want a court that can settle things, and so on. I worry that this could drag on for 10 years while, all that time, people are on their own.

[*English*]

The Chair: Merci.

Mr. Cullen.

Mr. Nathan Cullen: Absolutely.

Just in terms of this being the whole question of expediency, further on in the legislation, as we heard from our witnesses today, the establishment of the tribunal and getting the money out the door is not hindered at all by its intention on NDP-5. The money can still move. The government can make those compensation cheques. With the proving of negligence, the $650 million would still be available with this amendment in the bill.

All that this would suggest is that it would present a question to the court, asking if it should be more. It can't present it to ask if it should be less or slowed down. Not imagined, not intentioned. In terms of moving money quickly out the door for victims after a nuclear accident, absolutely. All this commission would do is to say whether more money should be made available.

That's all. The $650 million and the reinsurance account and all of that is already afforded. That's proven in sections 57, 58, and beyond in the bill. That doesn't get modified by this change at all. All this says is that if they're proven negligent, should the company be more on the hook for more money? We believe they should.

The Chair: Thank you, Mr. Cullen.

I will call the question on amendment NDP-5.

Mr. Nathan Cullen: A recorded vote, please.

(Amendment negatived: nays 10; yeas 1)

(Clause 21 agreed to on division)

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

● (1715)

The Chair: We are now on clause 22 and amendment NDP-7.

Hon. Geoff Regan (Halifax West, Lib.): What happened to amendment NDP-6? Did we adopt that?

The Chair: We dealt with NDP-6 before.

Mr. Cullen, would you like to move the amendment?

Mr. Nathan Cullen: Yes. There's been some discussion between us and the government about a modified version of this. I wonder if Mr. Anderson wants to read it into the record for committee members.

The Chair: Mr. Anderson.

Mr. David Anderson: I can read it into the record. We have copies for everyone and we'll hand them out.

We're suggesting that Mr. Cullen withdraw his amendment on clause 22. We instead suggest clause 68.1, which reads:

> The first review under section 22 must be completed within 15 months after the day on which this act comes into force.

I think your text may say 18 months, but we've negotiated it to 15 months. There are a couple of reasons why we suggest this. One is that the redraft here really clears up any ambiguity. If you look at the original amendment, I think you'll find it's a bit confusing. The redraft gives more time to get this done. It needs to be done at the end of 18 months, but the original one seemed to indicate that you could take three months to do it. If we're going to do one, we'd like to do a proper review.

Second, putting it at the end of the bill is typical of what's going on with legislation now. It's done for technical considerations. The provision will be spent at the completion of the first review. I'm told that the modern drafting practice is to draft transitional provisions and place them at the end of the bill. When the provision is spent after the first review, the transitional provision no longer appears in the electronic version. So once the review is carried out it is deleted from the bill and doesn't show up there.

That's what we're suggesting. I think we have agreement from Mr. Cullen to consider this and support it.

The Chair: Mr. Cullen, do you agree to proceed in that fashion?

Mr. Nathan Cullen: I do.

The Chair: So you are withdrawing NDP-7 in favour of this amendment.

We will then go to any further discussion on this proposed amendment.

Mr. Cullen.

Mr. Nathan Cullen: Thanks to the parliamentary secretary for working on this amendment.

Just so folks have an understanding of what this is about before we get to a vote, as I indicated in my previous comments, this bill has some age on it and there's a need to have a review of where we're setting these limits and the exposure to Canadians. The question is also that the sale or reorganization—whatever you want to call it—of AECL is in the mix.

We believe that if this bill were to come into law, just under a year and a half later it would get reviewed. You'll see in a subsequent amendment the direction of that review. But with so much moving in the nuclear industry, in Canada in particular, but also globally, it seems necessary to have a first review quite expediently and make sure the assumptions that were made by committee members here and in the House eventually still hold correct. As you've noted, I have some doubts about liability regimes, limits, and compensation.

Again, I appreciate the work of the parliamentary secretary to make this amendment clearer and more precise for the committee.

Mr. David Anderson: I believe that Mr. Cullen has withdrawn his amendment, so I don't know if we need to vote on this amendment. He has a second amendment for clause 22, right?

The Chair: We have to vote on this first, Mr. Anderson.

Hon. Geoff Regan: Are we in the right place to vote on this, since this is clause 68.1? We're voting on amendments to clause 22. We could probably agree unanimously to adopt clause 68.1.

● (1720)

The Chair: Can we go that way to make it easier? Can we agree unanimously to adopt clause 68.1?

Some hon. members: Agreed.

(Clause 68.1 agreed to [See *Minutes of Proceedings*])

The Chair: It is adopted. The amendment carries.

Thank you, that was great advice...every now and again.

Now we will vote on amendment NDP-8 on clause 22.

Do you want to move this amendment, Mr. Cullen?

Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle: The—

[*English*]

The Chair: Wait. We have to see if Mr. Cullen wants to move this first.

Mr. Nathan Cullen: I think we have a similar circumstance to the previous amendment. I'll maybe pass to Mr. Anderson for an explanation.

The Chair: Okay, Mr. Anderson, go ahead.

Mr. David Anderson: Thank you, Mr. Chair.

We are going to make a suggested amendment to clause 22 here as well. Has everyone been handed the copies?

Some hon. members: No.

Mr. David Anderson: Okay. We do have copies, and we can hand them out.

There are a couple of reasons for this. One reason is that we're talking about the review. We are making the assumption that the redraft provision will allow the public consultation to consider any matters discussed in the review that have an impact on setting liability limits.

Secondly, Mr. Cullen's original amendment only referred to the House of Commons Standing Committee on Natural Resources. There are committees in the other house that may be interested in this, so our changes will take that into consideration. I'll read it in.

The Chair: Does everyone has the proposed amendment in front of them now?

Go ahead, Mr. Anderson. I think everyone has one.

Mr. David Anderson: It reads:

> (3) In carrying out the review, the Minister shall hold public consultations that include
>
> (a) the participation of both industry and non-industry stakeholders; and
>
> (b) the participation of any parliamentary committee that may be designated or established to review matters relating to nuclear energy.

We just believe that this will cover the interests that Mr. Cullen had here, and it allows for participation. It also allows for the appropriate committees to be part of it as well.

The Chair: Fantastic work.

Is it agreed by the committee to proceed in this fashion?

Some hon. members: Agreed.

The Chair: Okay. Is there any further discussion?

Mr. Cullen, I think you're indicating yes. Go ahead.

Mr. Nathan Cullen: Yes. Again, thanks for the work from the parliamentary secretary.

My apologies to all those either in the Senate or hoping to get there one day. It's easy to forget they sometimes involve themselves in this, although I haven't heard them yet.

The idea of this, again, is to be open as much as possible, and I think open and transparent government is in everyone's best interest. And particularly when the government has involved itself in the private sector, as it has in the nuclear industry, when we look to review these things the public should be given as much opportunity as possible.

This committee is not named here, but it would stand, in due course, that it would be a similar composition to this in the future and be directed to review this. I think it's important to keep that accountability loop, particularly as members of Parliament change and we keep that corporate knowledge up.

Again, thanks for the extra work.

The Chair: Is there any further discussion?

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

The Chair: Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle: I had a question earlier. I wanted to know if amendment NDP-6 had been withdrawn.

Mr. Nathan Cullen: No, everything was passed.

Ms. Paule Brunelle: It has been passed already?

[*English*]

The Chair: Yes, it was withdrawn and the other amendment replaced it. I did actually ask for agreement of the committee to proceed in that fashion.

(Clause 22 as amended agreed to)

(On clause 23—*Obligation of operator*)

The Chair: On clause 23, Mr. Cullen, do you want to move your amendment NDP-9?

● (1725)

Mr. Nathan Cullen: I'll not move amendment NDP-9, Chair.

The Chair: You will not? Thank you.

Amendment NDP-10.

Mr. Nathan Cullen: I can explain this one, Chair.

The Chair: Mr. Cullen, did you want to move amendment NDP-10?

Mr. Nathan Cullen: Yes.

The Chair: Okay.

Yes, Mr. Anderson.

Mr. David Anderson: I believe this is another one of those that's going to require royal recommendation. I'm just wondering whether we challenge that ahead of time, or after Mr. Cullen makes his amendment.

Mr. Nathan Cullen: I'll take a minute. I won't take a long time.

The Chair: That is correct, Mr. Anderson, but you give the member a chance to make the argument first, okay?

Mr. David Anderson: Okay.

Mr. Nathan Cullen: May I, Chair?

The Chair: Go ahead, Mr. Cullen.

Mr. Nathan Cullen: This was a concern raised by Madam Brunelle and some of the witnesses as well.

Under the law right now in this proposed bill, locations with one reactor are treated exactly the same as locations with many reactors. That's an unusual part of the Canadian design; you can have many reactors at one site.

As we try to understand liability and risk, we know that the more reactors, the more moving parts, the greater the risk. What we're trying to do in NDP-10 is identify that it's disproportionate and actually unfair to those who have only one reactor on site, because they have to run the same liability regime as those who are running many reactors on the same site. That doesn't seem to make intuitive sense, and it certainly doesn't make any sense on a risk factor.

It's like paying the same amount for car insurance if you own one car versus ten and you drive all ten of them. Obviously, the risk is higher if there are more cars out on the road, and your insurance would be higher as well. The chance of something happening over ten is greater than it is over one. It's a statistical fact.

That's all NDP-10 seeks to do.

The Chair: Thank you, Mr. Cullen.

Mr. Cullen, I do rule this amendment, NDP-10, out of order based on the fact that it does alter the terms and conditions of the royal recommendation.

Now, is there anything else on clause 23?

(Clause 23 agreed to on division)

(On clause 26—*Reinsurance agreements*)

The Chair: We are now at clause 26, I believe, and amendment NDP-11. Oh, we dealt with that already, Mr. Cullen, so NDP-11 is out of order.

Now we'll go to NDP-12.

Mr. Nathan Cullen: I'll not be moving that, Chair, nor NDP-13.

The Chair: So NDP-12 and NDP-13 are withdrawn?

Mr. Nathan Cullen: That's correct.

The Chair: Now we have NDP-14.

Mr. Nathan Cullen: Yes. I can speak to that.

The Chair: You're moving NDP-14? Go ahead, Mr. Cullen.

Mr. Nathan Cullen: This took us a while. It wasn't really until the clause-by-clause stage where we could get into this as committee members, but on the assessment of risk, as we saw in the Magellan study, the way the risk is assessed is the whole exercise. If you limit the risk assessment to a certain reactor under a certain defined set of conditions, you come up with a number for liability and a number for compensation. That same study asked the government to expand its view and look at more severe accidents in denser populations.

I'll read for members what NDP-14 seeks to do: “When the Minister causes a copy of a reinsurance agreement to be laid before each House...the Minister shall also cause to be laid before each House a copy of all related risk assessment studies that were completed before the reinsurance agreement was entered into”.

I referred to the Magellan study. If this clause had existed previously, all members of this committee and the Canadian public would have had access to that research. So when the government says that it's building Bill C-20 “based upon this assessment”, all this amendment says is to put the assessment before us so we understand where the number comes from.

Instead, we've had to go through all these witness hearings, and it was in a seemingly casual way—I don't want to say that it was in a casual way, because I'm not knocking the witnesses at all—that we got to see the report. Also, the report was made available to committee members, but it wasn't translated. I think we need to formalize this part of the process because the rules you set out at the very beginning for the study will eventually determine the liability limit.

So we're simply asking the government, when it's setting any new liability limit, to tell Parliament and the Canadian people, “This is the study we used to set the liability limit”. It seems logical. The amendment is not asking for any state secrets or anything that would be a corruptive influence. It just says to tell us how you got to the number, show us the data, and allow us to have some conversation about it. That's what NDP-14 seeks to do.

● (1730)

The Chair: Thank you.

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

The Chair: The next amendment proposed is L-1, which is also to clause 26.

Hon. Geoff Regan: I will move this, but I propose changing “shall” to “may”. I expect to be withdrawing it shortly, after we hear from my colleague the parliamentary secretary.

I think that makes it in order. I gather it would not have been in order with “shall”.

Mr. Wayne Cole (Procedural Clerk): Do you mean the first “shall”?

Hon. Geoff Regan: It's where it now says “by a degree-granting educational institution shall provide that Her Majesty in right of Canada”. I don't see another “shall”.

The Chair: There's one in the next line.

Hon. Geoff Regan: Right.

So I think fixing that “shall” does the trick.

A voice: There are too many “shalls”.

Hon. Geoff Regan: It's a “shall” game.

The Chair: I believe it's in order with that change. It was out of order with the “shall”.

Is there any further discussion on this proposed amendment?

Mr. Anderson.

Mr. David Anderson: If I understand this correctly, Mr. Regan's main concern was that the cost of insurance for the research reactors not increase with the passage of this bill. We've had a number of discussions about that. I can give you a long and convoluted explanation, or I can just say that at this time I would like to give my undertaking to the committee, on behalf of the minister and the government, that regulations providing for government reinsurance will be drafted that will maintain the amount of private insurance at current levels for these small operators for a period of time, assuming their activities remain substantially the same.

The government, in addition to the reinsurance it now provides to operators of small, non-power reactors used by educational institutions, will provide reinsurance for 100% of the new liability limit above $75 million, until the time of the conclusion of the minister's first review of the liability limit pursuant to clause 22.

So in effect we're saying that limit will stay in place. There will be no increases in the cost of their insurance until at least the end of the first review, which should be approximately three years. The regulations have to be posted prior to the act coming into force. Then we're talking about a 15-month review after that. So we expect it will take around 33 to 36 months before there is any impact on the educational institutions.

The Chair: You have heard the commitment made by the parliament secretary.

Mr. Regan.

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

I am concerned about any increase in cost to universities these days, as you can imagine. They have great difficulty with all kinds of costs, particularly deferred maintenance. I prefer to know that they won't have an increase for the five-year period, but I appreciate very much the work of the parliamentary secretary. On the basis of his commitment I withdraw my proposed amendment.

● (1735)

The Chair: Okay. We need to have unanimous consent to withdraw the proposed amendment.

Hon. Geoff Regan: I withdraw it.

The Chair: We're out of time.

Can we just have the vote on clause 26 as amended?

Mr. Cullen.

Mr. Nathan Cullen: Is there no other amendment on it?

The Chair: Clause 26.1 is a new clause, so it will come next.

Mr. Nathan Cullen: I see.

(Clause 26 as amended agreed to)

The Chair: Thank you very much.

I apologize for going over time. I wasn't looking at the clock, it was moving so well.

This meeting is adjourned.

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