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Chair

Mr. James Bezan

Standing Committee on Environment and Sustainable Development

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● (1530)

[*English*]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): We'll call this meeting to order. We have quorum.

We are starting a little bit late and we do have votes tonight, so we have to try to stay on schedule as much as possible.

As you know, we're at meeting number 31 of the Standing Committee on Environment and Sustainable Development. We're going to study Bill C-469, An Act to establish a Canadian Environmental Bill of Rights, pursuant to the order of reference that we received back on June 16. We're going to do this in three different mini-panels today.

The sponsor of the bill, Ms. Duncan, member of Parliament for Edmonton-Strathcona, will introduce the bill to committee.

Linda, the floor is yours.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Thank you, Mr. Chair. I will try to be succinct, and I know you will hold me to that.

I'm delighted to be here. It's a great privilege to have tabled this bill. It is a bill that many individuals and organizations across the country have been working on for decades, and that includes me.

I'm looking forward to hearing from all the witnesses that all of the parties have put forward. I think we're going to have a really good dialogue on the bill and I'm looking forward to it. We have two particularly outstanding witnesses following me, and I'm delighted that they're been available to testify.

Briefly, the purpose of the bill is to implement the right to a clean, healthy environment, an ecologically balanced environment for all Canadians, and it imposes the duty on the government to uphold those rights. Interestingly, this is a bill that we should have no problem whatsoever to find unanimous consent for, because all four parties that have been elected to our federal House have espoused support for these principles.

I could give one example. The 2008 Conservative Party of Canada policy declaration commits to a "belief that the quality of the environment is a vital part of our heritage to be protected by each generation for the next". That, of course, is one of the principles that this bill is founded upon.

The whole purpose of this bill is to provide a legislative measure to implement the accountability measures that all four parties of the House have espoused and have said they support. The purpose of this bill is to give them the mechanism so that we can implement those principles.

Nowhere is that principle more important than in environmental protection. We have signed treaty after treaty and international agreement after international agreement committing to public participation and transparency in environmental decision-making. What this bill does is provide the legal framework to implement those commitments and duties.

This bill is grounded in a number of international principles that the Government of Canada has endorsed. One of those is the precautionary principle. A second is the principle of environmental justice, and that includes both the substantive and procedural rights that are included under the justice principles. It also endorses the polluter pays principle. Finally, the bill is based on the premise that it is the responsibility of the government to preserve and protect the environment in the collective interest of current and future generations of Canadians.

As has been pointed out several times—and I know we're going to have witnesses today speaking to this matter—more than 130 nations, as far as I've been recently updated, have enshrined the right to a clean, healthy, ecologically balanced environment either in their constitutions or in their national laws. For example, a number of nations that we are in the process of signing trade agreements with—or that we have signed with—have incorporated those rights. They include: Colombia, Panama, Cuba, Kuwait, Indonesia, Afghanistan, Mexico, Germany, Russia, Ukraine, United Arab Emirates, Sweden, Switzerland, and South Africa. The list goes on and on. Thus far, unfortunately, Canada is one of the countries that hasn't done that, even though it has happened at the provincial level.

A number of Canadian provincial and territorial governments have already taken action, and quite some time ago; I think it was as far back as 1988 that the Northwest Territories was the first off the plate. It enacted the right to a clean, healthy environment and imposed the duty on its government to uphold those rights, and included the bundle of rights that are included in this bill that I've tabled. Ontario followed suit with a separate environmental bill of rights. The Government of the Yukon has included that bundle of rights within its environmental statute, and Quebec has also enshrined those rights.

Past federal governments have enshrined some of the rights that are included in Bill C-469. For example, there is the right to seek an investigation of an environmental offence and, in some cases, to initiate legal proceedings, but for the most part that is only in the Canadian Environmental Protection Act. Despite some measures taken by the current federal government to provide consistency across environmental statutes—for example, through its enforcement bill tabled last year—it has not provided consistency in this arena and has not incorporated the same kinds of rights and opportunities in CEPA.

In the federal government, there is no comprehensive stand-alone law yet to incorporate these very principles that all four parties have espoused, despite the fact that there has been broad support by Canadians across the country.

What are the key purposes? As I've mentioned, the environmental bill of rights grants every resident of Canada the right to a healthy and ecologically balanced environment and, most importantly, imposes the obligation on the Government of Canada, within its jurisdiction, to protect those rights. The bill would also amend section 1 of the Canadian Bill of Rights to include the right to a healthy and ecologically balanced environment.

● (1535)

What new rights and duties, specifically, are created through this bill?

First is the protection of the public trust. Under existing law, some federal ministers are obligated to do a number of specific actions to protect the environment. For example, under CEPA, the federal Minister of Health has a mandatory duty to look into information about any health impacts associated with toxins that comes to her attention.

Generally speaking, these kinds of rights and duties are not imposed in other federal laws. For the purpose of consistency, because we always talk in our House about the need to be consistent and to respect provincial jurisdiction, it only makes sense that we follow consistently and prescribe these same duties in our federal law: the right to protect the public trust and the obligation of the government to protect that trust.

Second, Bill C-469 would ensure access to environmental information. We do, of course, have the Access to Information Act, but we've been having some problems with that act. Bill C-469 would compel the government to provide effective access to information in a reasonable, timely, and affordable manner.

All three of those categories are very important. Across the decades, Canadians have had problems in all three categories when accessing federal documents. We brought to your attention, as noted in my brief to the committee, the fact that just last year the Information Commissioner gave Environment Canada and Natural Resources Canada a grade of F on making environmental information available to the public. So clearly we need a strong regulatory measure to make sure the federal government responds in a timely fashion to these requests.

Third, the bill would provide a right to participate in environmental decision-making. That includes the right to participate in decision-making by the Government of Canada and also the right to appear before the courts. It would remove that extra barrier and cost for concerned members of the public, who actually have to go to court and prove standing before they bring this substantive matter before the courts. It would provide them the opportunity both to participate in environmental decision-making and to raise a serious matter before the courts, despite the fact that they lack a private or special interest in the matter. In other words, the whole point is to provide an opportunity for the public to step forward and represent the public interest.

By enacting this right and duty, Canada's commitments and obligations under numerous international laws and agreements would be enshrined in domestic law. By way of example, Canada has committed to extensive participation rights and access to information under the Rio Conventions, Agenda 21, the North American Agreement on Environmental Cooperation, and, more recently, the U.S.–Canada Clean Energy Dialogue. Consistent with this participatory right, the bill entitles any Canadian resident to apply to the Commissioner of the Environment and Sustainable Development for a review of law, policy, regulation, or statutory instrument.

Fourth, the bill provides for the right to compel the investigation of an environmental offence. Again, as I mentioned, this right and opportunity already exists under the Canadian Environmental Protection Act, as it exists under most provincial law. This bill will accord that right to all environmental statutes, whether they deal with toxins, fisheries, wildlife, migratory birds, climate change, or environmental assessment.

Fifth, the act extends the opportunity to the public for basic access to legal remedies. There are three categories of environmental remedy. One is an environmental protection action. Another is access to seek judicial review of a federal law. The third is civil action. I won't go into the details. I could answer questions about them during questions.

Sixth, the act would provide whistle-blower protection. Essentially, that means that federal employees who are scientists or technicians, or who have scientific or environmental information and who step forward to participate in decision-making, initiate an investigation, provide information, give evidence, or in good faith refuse to act, would be protected under this statute.

Finally, there is the examination of bills and regulations. Similar to the laws enacted by the provinces and territories, this bill would mandate the Auditor General, through the Commissioner of the Environment and Sustainable Development, to examine all proposed bills and regulations to ensure consistency with the purposes and intent of the Environmental Bill of Rights.

In closing, I wish to express my deep appreciation to all the people who helped me in drafting this bill. That help came from ordinary citizens. It came from communities across Canada. It came from legal experts. I am indebted to them for the extensive work they've done in this field, and we're going to hear from some of them as witnesses.

● (1540)

I believe that Canadians are deserving of a legal right to a healthy and ecologically balanced environment and the opportunities to pursue those laudable goals, and I think the government should be accountable for delivering those rights and opportunities. I'm open to questions.

The Chair: Thank you. Because Ms. Duncan is a member of this committee, I believe that with private members' bills it's standard practice that the member introduce the bill and that the only questions we really would direct at her right now are for clarification. We have till about quarter to or so. We do want to get on to our other witnesses and panels and we started a bit late.

Is there any burning issue from committee members for clarification by Ms. Duncan? If not, we can just move on to our next panel.

Seeing none, we'll suspend to allow our next panel to get set up.

● (1540)

(Pause)

● (1545)

The Chair: Continuing with our next panel of witnesses, we are welcoming to the table Dr. Stewart Elgie, who is a professor in the Faculty of Law at the University of Ottawa. He's also the associate director of the Institute of the Environment. Joining us by video conference all the way from Vancouver, B.C., is Dr. David Boyd, adjunct professor at the School of Resource and Environmental Management at Simon Fraser University.

I will ask that both witnesses keep their opening comments to 10 minutes or less, and then we can have some time for discussion from our committee members.

Dr. Boyd, could you kick us off, please?

Dr. David Boyd (Adjunct Professor, Resource and Environmental Management, Simon Fraser University, As an Individual): That would be a pleasure.

First of all, thank you for the invitation to appear before you today.

Why does Canada need an environmental bill of rights? I believe there are four compelling reasons.

The first is Canada' s poor environmental record.

This record has been demonstrated by studies from the Conference Board of Canada showing Canada ranking 15th out of 17 wealthy industrialized nations on a range of 15 environmental indicators. A study by my colleagues at Simon Fraser University shows us finishing 24th out of 25 wealthy OECD nations on a range of 28 environmental indicators. A study by Yale and Columbia Universities shows 45 countries ranking ahead of Canada. And of course, studies from the World Health Organization and the Canadian Medical Association show that thousands of Canadians are dying premature deaths each year because of exposure to air pollution and other environmental hazards.

As Prime Minister Harper put it so succinctly in his December 2006 year-end interview:

> Canada's environmental performance is, by most measures, the worst in the developed world. We've got big problems.

The fact that we have major environmental problems means that we have to consider taking important steps forward, such as introducing an environmental bill of rights.

The environmental bill of rights is a concept that has many potential benefits, including: stimulating the passage and enactment of stronger environmental laws and policies; improving the enforcement of environmental laws and policies; and increasing citizen participation in the environmental decisions that have an impact on their daily lives. It's actually these potential benefits of recognizing the right to a healthy environment that have resulted in an incredible uptake and recognition of this right around the world.

Ms. Duncan referred to 130 countries where there is legal recognition. My research, which I've conducted over the past five years, shows that the number is actually 170 out of 192 UN member nations, nations that have legally recognized the right to a healthy environment, either in their constitutions and their environmental legislation, or through signing legally binding international agreements. That's 89% of the countries of the world, leaving only 22 laggards, of which Canada is one.

In light of that widespread uptake, I've done research looking specifically at the 100 countries where there is a constitutional right to live in a healthy environment. I'd like to share the results of some of that research with you, because I think it indicates the extent to which the potential advantages that I mentioned earlier are in fact being realized.

Close to 80% of the countries that I studied have improved their environmental laws since recognizing the right to a healthy environment. There has been a significant increase in enforcement in a majority of those countries. Perhaps most importantly, what we're seeing is cleaner air, improved access to clean water, and overall improvements in environmental performance. I can provide some statistics to back up those anecdotal references.

I looked at the ecological footprints of 150 nations—116 with constitutional environmental rights and responsibilities, 34 without—and globally the ecological footprint of nations that recognize environmental rights and responsibilities in their constitutions is significantly smaller. I also looked at performance indices, such as those done by the Conference Board of Canada and those comparing OECD nations, and in all cases there is a statistically significant difference, to the good side, in countries that have environmental provisions in their constitutions.

Third, in terms of the performance, what we've seen is that since 1980—and this is just looking at the wealthiest industrialized nations, the 17 countries that are studied by the Conference Board of Canada—the countries with environmental rights and responsibilities in their constitutions have decreased nitrogen oxide emissions 10 times faster than the countries without. They have reduced sulphur dioxide emissions by an average of 85%, versus 52% for those countries without. They've reduced greenhouse gas emissions eight times faster than those countries without.

So there is a powerful set of empirical facts demonstrating that legal recognition of environmental rights and responsibilities provides exactly the kinds of advantages that we're looking for in terms of having introduced those legal provisions.

● (1550)

The third thing I go into some detail on in my brief is the history of the right to a healthy environment in Canada, which dates back close to 40 years. The legal recognition of the right to a healthy environment has been proposed by both Liberal and Conservative governments in the past in Canada, but as of today, no federal legislation, regulation, policy, or program explicitly recognizes that Canadians enjoy this fundamental human right.

As Ms. Duncan alluded to, there are four provinces and territories that do have legislative recognition of the right to a healthy environment. There is one modest correction in that in 1978, Quebec was actually the first province, with their Environment Quality Act, to recognize the right to a healthy environment.

Canada is lagging behind the majority of nations in the world by failing to recognize the right to a healthy environment. That's why this bill, Bill C-469, is so important for us as we move forward and attempt to improve our environmental performance.

Ms. Duncan reviewed the main provisions of the bill, so I won't go through those in detail other than to say that the general effects that we're likely to see from the enactment and implementation of Bill C-469 are improvements to the health of Canadians, improvements to the health of Canada's environment, and improvements to the health of Canada's democracy.

You have my brief. I have a few specific recommendations for minor improvements to the bill, which include shifting the responsibility for responding to requests for reviews from the minister to the Commissioner of the Environment and Sustainable Development. That would simply make the mechanism more effective. Another recommendation is to add a provision to the bill recognizing that Canadians not only have the right to live in a healthy environment but also have a responsibility to protect the environment. The third one is adding some rules that would actually expedite legal procedures—for example, strict timelines, so that cases don't drag on for years. Another specific change would be to add specific legal remedies to the section on civil actions.

I've also provided some recommendations that are slightly outside the clause-by-clause parameters of Bill C-469, such as actually bringing into force the Environmental Enforcement Act, which was passed in 2009, so that we have stronger environmental penalties. That's a step forward. I think it's important to understand that Bill C-469 actually works hand in glove with the government's Environmental Enforcement Act by allowing citizens of Canada to contribute to the improved enforcement of our environmental laws.

As well, if Canada wants to improve its reputation internationally with respect to human rights and the environment, then we need to ratify the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. It's also long overdue for Canada to ratify the American Convention on Human Rights and the associated San Salvador protocol, which recognizes the right to a healthy environment.

The last thing I would say is that my research, as I mentioned, looks at constitutions and constitutional environmental rights and responsibilities. An analogy can be drawn here with human rights legislation, which we had in Canada for many decades and which didn't result in an improvement in the protection of human rights in Canada. Also, I would note that ultimately we're going to require constitutional amendments so that we have a constitutional right to a healthy environment and constitutional obligations to protect that environment. That really represents the gold standard and, as we've seen from my research, it results in positive outcomes in terms of health, the environment, and democracy.

Thank you very much. I look forward to answering your questions.

The Chair: Thank you very much, Professor.

Dr. Elgie, you have the floor.

[*Translation*]

Prof. Stewart Elgie (Professor, Faculty of Law, University of Ottawa, Associate Director, Institute of the Environment, As an Individual): Thank you. I am going to speak in English today, since I don't speak French very well, as I've already demonstrated. However, if you speak slowly, I will try to answer questions in French.

[*English*]

Thank you.

I don't believe I've been before this committee for over one year or so. It's my pleasure to be back here on this particular bill. This is an important day for Canada, and a day that's long overdue, I would say.

You have my bio in front of you. Let me say briefly that I've practised and taught environmental law for 20 years in Canada, and for two years in the United States along the way. I have had the privilege of working with all of the environmental bills of rights in Canada and several of them in the U.S., so I have some experience on this, but no doubt I have a lot to learn.

Let me start with why we need this law and then move on a little to what I think one can anticipate the effects of this law will be.

Why do we need it? As Professor Boyd has said, the starting point for me is that Canada is blessed with a rich and diverse natural environment, perhaps more so than almost any other country on earth. Not only is it important ecologically, but it's a deep source of pride for Canadians and an important part of our identity. For example, a poll done a few years back showed that after the Charter of Rights and Freedoms, our connection to nature is the most prominent identity symbol for Canada—ahead of even hockey and poutine, shockingly enough.

Not only is it a source of importance to our identity, it's the fundamental basis for our health and the fundamental basis for our quality of life. As Bobby Kennedy Jr. says, the economy is a wholly-owned subsidiary of the environment, so it's hard to think of a more important and more fundamental right that we could be looking to protect.

As David Boyd said, Canada has not always done a great job in its stewardship of the environment. I won't repeat his statistics, except to say that you could go to many other sources and see that Canada's ranking among OECD countries on environmental performance has traditionally been near the bottom for years. That should be troubling environmentally, but also troubling economically.

If you look at the environmental performance index that Professor Boyd referred to, put out for the World Economic Forum at Davos each year, we ranked 46th. You'll see there a very strong connection between the environmental performance and the economic performance of the countries. Of the top 15 countries in environmental performance, nine of them rank in the top 15 in competitiveness as well. So this isn't just about our environment; it's ultimately about our long-term economic wealth as well.

In a larger sense, getting away from the periods and the i's and t's, what will this bill do for Canada? I think three main things.

One of them is that it will make a statement that a healthy environment is a core value, a fundamental value for Canadians. Second, it will empower individual Canadians to participate more in environmental decision-making. Thirdly, and perhaps most importantly, it will lead to increased government accountability and, with that, strengthened environmental protection. All of these are important.

Professor Boyd has gone over the fact that 89% of countries in the world have such an environmental right already. The very first environmental bill of rights that I'm aware of was passed by the State of Michigan in 1970. Canada's first environmental bill of rights came out of the Northwest Territories in 1988-89. Ontario, Quebec, and the Yukon have now followed suit. As he said, even before its current charter of rights, Quebec had a provision recognizing an environmental right. These provincial bills of course vary in their strength and their form. We can get into that in questions, if people want to talk about some of the specifics.

At the federal level, an environmental bill of rights has been either discussed or promised by a variety of Conservative and Liberal governments going back to 1991. I've counted at least five different commitments that have occurred since that date by the two parties, but it's yet to have happened, for a variety of reasons, so this is a very welcome day indeed.

What would this bill do? You have the bill before you, but obviously this is a new and weighty piece of legislation. It would do basically six things at a fairly high level.

Obviously, the first thing it would do is establish a right to a healthy environment. With that right, it would establish a public trust obligation on the government as the steward of the environment for the present generation and also for future generations. These are fairly standard provisions that one finds in environmental bills of rights around the world.

Second, it establishes a right to participate in environmental decision-making, particularly in regulatory and legislative decisions of the government. Again, such a right exists under certain statutes—CEPA and SARA, for example—but does not exist across the board under environmental land use and resource statutes generally. This would be an important expansion.

On access to information as a basic right, again, that exists, more or less, under ATIP already.

On the right to request review of federal policies, regulations, and laws, currently a similar power exists under the Commissioner of the Environment and Sustainable Development act, and I'll talk in a minute about what its effect has been. But again, this also exists under Ontario's Environmental Bill of Rights.

● (1555)

On the right to request an investigation, when citizens have information about a violation of environmental law, they can play a sort of crime stopper role—but an eco-crime stopper role—by providing that information to the authorities. You'll have a set of eyes and ears all around the country trying to pick up environmental violations.

On access to justice, there's no point in having a right if you don't have anything to do with that right: you need a remedy. This will create a right to bring a legal action either against the government for a violation of an environmental right or against a private party for infraction of an environmental statute when the government is not enforcing the law. Without such a remedy, the right of course would be hollow.

I should distinguish, by the way, that this right is not the same as a government prosecution. It couldn't lead to jail time or heavy fines. The main remedies are restoration and cleanup, basically to put people back where they started; the rule of punishment occurs under the criminal law power.

Of course, these kinds of provisions exist in almost all environmental rights at the national and provincial levels.

Last but not least is whistle-blower protection. For employees who are making authorities aware of environmental infractions or participating in environmental processes, there cannot be employer reprisals.

In crystal-ball gazing, what might we expect to be the effect of such a law? We can look to other jurisdictions and learn a little bit from what has happened there. Let me offer a few observations based on my experience.

The Ontario Environmental Bill of Rights is probably the closest analogy to what we see before us here, although it's not identical. Has it worked? One, there has been a very significant increase in public participation. Public engagement, notice, and comment around rule-making and regulations have gone up a lot. About 30,000 people a year visit, read, and comment on regulations and instruments posted under the Ontario Environmental Bill of Rights. So democratic engagement gets high marks.

On the power to request reviews, what we've seen in Ontario is that about 20 to 25 times a year a citizen requests a review or an improvement of environmental legislation. The parallel power federally, the commissioner of the environment, sees about 30 to 40 a year. In Ontario, about 13% of those requests lead to some action: some review or upgrading or improvement of the request.

I'll give you an example. The Oak Ridges Moraine Conservation Act passed by the Harris government in Ontario was originally initiated by a citizen request for review about protection of the Oak Ridges Moraine, as was the McGuinty government's overhaul of the Ontario parks act.

I filed one of these requests for the residents of Beckwith, which is out near Perth. They had a toxic substance called TCE leaching into their drinking water from an old abandoned tannery. If you've ever seen the movie *A Civil Action*, with John Travolta, they had the same thing happening there.

The problem was that Canada's standards for TCE hadn't been upgraded for almost two decades. Under U.S. standards, the level was three or four times higher than acceptable and the residents would have been eligible for things like bottled water so that they didn't have to bathe in this stuff or have their kids bathe in it. But because our standards were outdated, they didn't have that ability. This request led to those standards being upgraded and brought up to where scientists and modern nations say they should be and left the residents of Beckwith not having to drink and bathe in poisoned water.

So there are real effects from this stuff.

What about the requests for investigation? In Ontario, 36% of requests for investigation have led to investigations with some sort of enforcement actions arising out of them. As counsel, when I was practising in Ontario I filed a number of these on behalf of different clients. In almost every case, I would say, the government, even though they may not have taken the exact action my clients wanted, took what would have to be called reasonable action—action that would sort of stand up as reasonable enforcement action.

That included enforcement actions against steel companies in Hamilton for toxic pollution and chemical companies in Sarnia for emissions that were affecting the health of local residents. Again, those were initiated by the citizen process and likely would not have happened without that process. So there have been real improvements.

On legal actions—that will get everyone's attention—the track record is that they've been used very sparingly. The high-water mark is Quebec, which brought in probably the strongest environmental right in Canada in its charter, in 1996, I believe. There have been four actions in four years.

I will conclude.

● (1600)

Ontario has seen only two actions in 16 years, largely because it imposes a number of obstacles—probably unnecessary obstacles—in its statute. If you look to the United States and the equivalent provisions under all U.S. federal environmental statutes, for clean air and clean water particularly you see about 60 lawsuits a year. So if you extrapolate a 10:1 ratio, and recognize as well that in the U.S. they're twice as litigious as we are, a ballpark guess for what you might see under this bill is probably about three legal actions a year in Canada. But there will be far, far more participation through the other mechanisms. This is really a last resort.

I won't go into detail on some of the specific changes I would recommend, but let me at least give you the top lines and we can follow up in questions on them.

As Professor Boyd said, there is I believe perhaps a drafting oversight in the bill, in that the power for citizens to bring a civil enforcement action doesn't have any remedies associated with it. That could be corrected simply by incorporating the remedy section of the act into section 23. I would add a section allowing a court, as a remedy, to order compensation for environmental damages. Right now, if a polluter causes damages and isn't required to compensate the public for them, the public will be left to bear those damages, and that is simply not good economics or good environment.

I would put a maximum on the penalties under this law. If citizens are going to bring an action, it is not like the crown bringing a case. U.S. statutes cap penalties at $30,000 per offence. We're not talking about jail time or multi-million-dollar fines, and I would say that something like that would be appropriate here. The main goal here is restoration.

Finally, last but not least, I would probably even add some provisions to really ensure that litigation is used only as a last resort. One of the most important would be a requirement to give notice to the Attorney General 30 days in advance of bringing any type of enforcement action or environmental bill of rights action, so that the government has a chance to bring an enforcement action or to remedy the violation itself without having to resort to court action. The U.S. has this kind of advance notice requirement, and more than half of the notices get resolved without ever having to go to litigation.

I would hope for friendly amendments in each case.

Thank you very much.

● (1605)

The Chair: Thank you, Professor.

We have about 40 minutes for questions and answers, so we'll kick off our first round.

Mr. Scarpaleggia, for seven minutes, please.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you.

Thank you to the witnesses.

This is a fascinating topic, but also a very abstract issue for many of us who haven't dealt with this kind of legislation before. How would this tie in with the whole issue of private prosecution in Canada?

For example, I'm told that governments can stay private prosecutions. I'm not sure of all the nuances and details, but if an environmental group or a citizen wants to bring action against the government for not enforcing a law—for example, the Fisheries Act—Attorneys General have a right, I believe, to ignore this.

What would this bill do to this right to stay private prosecutions in Canada? I don't know if you have any insights on that. If you don't, we can go on to another question. That would be fine.

Prof. Stewart Elgie: That's a good question.

You could ask the author of the book on private prosecutions in Canada, who is seated to my right and who could probably answer better than I can, but I'll take the first cut at it.

First of all, the purpose of a prosecution is primarily to punish and deter. The purpose of an environmental bill of rights action is really to restore and clean up, so the two have different purposes.

You are right that in common law and in statute the crown has a right to intervene and stay any private prosecution. This bill, on its face, would not attempt to change that. You could add a clause doing that. I won't get into the policy arguments for and against that. There are good ones on both sides, I think, but the drafters have chosen not to include it.

But what this does, though, is provide a safety valve power. These suits, called citizen suits, usually get used in two circumstances. One is in offences that aren't serious enough to warrant the crown using up resources for a full criminal prosecution—the Syncrude duck kind of problem and those sorts of things—but which nonetheless are cumulatively very serious in terms of their environmental impact. It allows citizens who want to bring those actions forward to do so, but appropriately, I think, they should have relatively small penalties and allow for restoration and compensation.

The larger cases, the really serious environmental offences, should continue to be dealt with through proper prosecutions.

● (1610)

Dr. David Boyd: If I could, I will just add one thing to what Professor Elgie has said.

Another significant distinction between a private prosecution and the environmental protection actions that are available under this environmental bill of rights is that a private prosecution is always after the fact, after the environmental damage has been done, but the way Bill C-469 is drafted, it would actually allow environmental protection actions to be brought to prevent the environmental damage from occurring, which is of course in line with the objective of preventing damage.

Again, to return to Professor Elgie's point, it's much more efficient economically to prevent damage than it is to do cleanup and restoration.

Mr. Francis Scarpaleggia: We have a whistle-blower protection act in Canada. How do the provisions in this bill, either explicit or implied, complement or conflict with the current whistle-blower legislation? I remember that when we were studying the whistle-blower act, some of the cases that we looked at involved Health Canada scientists speaking out against this or that, purportedly in the public interest.

Do we need the whistle-blower aspects of this bill or is the current federal whistle-blower legislation sufficient? It seems to me that one might be superfluous relative to another. I don't know. That's a question that came to mind when you mentioned whistle-blower protection.

Prof. Stewart Elgie: We're looking at each other across the country—

The Chair: Dr. Boyd, do you want to answer that question?

Dr. David Boyd: I'm not that familiar with the federal whistle-blower legislation, so I'll pass the torch to Professor Elgie.

Prof. Stewart Elgie: Unfortunately, you have two environmental law experts here, and this usually falls under the labour law part of the curriculum. I know a little bit about whistle-blower legislation, but not enough to give you a detailed comparison of these two, except to say that I can tell you that Ontario's whistle-blower provision in their EBR has seen only one action in 16 years.

But like a human rights provision, I think its main value is not the cases that get brought, but the ones that never have to get brought because it exists. When a company talks to their labour lawyer and is told that they can't do this, that if they do they're going to be slapped with a legal provision, it's hard to tell statistically how many actions get prevented by that, but you can tell that it would be many of them.

Mr. Francis Scarpaleggia: You mentioned, Dr. Boyd, that there are 170 countries with legally recognized environmental bills of rights. They're not necessarily constitutional rights, are they? They're just bills of rights. Those countries represent 90% of the globe.

I know that our environmental performance has not been stellar, but is it possible that the countries that are doing well economically and environmentally and have these bills of rights have no real cause and effect between having the bill of rights and having good environmental or economic performance? It could be that the country doesn't have a fossil fuels industry, already has a good environmental record, and passes an environmental bill of rights perhaps almost as a way of patting itself on the back. I don't know.

Have you been able to look at the causation rather than just the correlation?

Dr. David Boyd: No, I haven't, but there is a very strong pattern of correlation. My research confirms publications of the Organization for Economic Co-operation and Development. They conduct environmental performance reviews of national environmental performance every five years for OECD member nations. Repeatedly throughout those OECD environmental performance reviews are references to the significant impact the constitutional protection of environmental rights and responsibilities has, both in terms of stimulating stronger environmental laws and policies and also in terms of improved implementation and enforcement of environmental laws.

As well, the research I did looking at nitrogen oxide emissions and sulphur dioxide emissions shows that it's not just a correlation. It's a statistically significant correlation between the declines in those air pollutants and the timing of the recognition of environmental rights in those countries.

● (1615)

The Chair: Thank you very much.

Your time has expired.

[*Translation*]

Mr. Bigras, you have the floor.

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Thank you, Mr. Chair.

Mr. Scarpaleggia said earlier that we were in the dark when it comes to the right to a healthy environment. On that point, I am going to take the opportunity offered. I have the impression that the courts are also completely in the dark when it comes to the right of Canadian citizens to a healthy environment. I am trying to understand what the effect of this kind of bill would be in future. As the witnesses have said, some provinces have decided to incorporate this principle in the law. In Quebec, for example, it has been the law since 1978.

Mr. Boyd would probably have preferred a constitutional amendment. We know what that involves. As the constitutional experts say, making that kind of amendment often amounts to opening a Pandora's box. would it not have been preferable to amend the existing legislation, which have stood the test of time in the courts, and in particular in the Supreme Court? Would it not have been preferable to amend the Canadian Environmental Protection Act or other environmental legislation for which there have already been judgments by the Canadian courts, rather than creating a new bill of rights dealing with the environment?

I want to be clear: my goal is not to reject this bill, quite the opposite. I adopt the principle. However, I'm trying to see what would have been more effective, what would have made it able to withstand scrutiny in the courts. This principle is by no means clear, whether for parliamentarians or the courts at present.

[*English*]

Dr. David Boyd: I think what you have to consider when you're thinking in broad terms about the right to a healthy environment is that it's really like any other human right, whether it's the right to freedom of expression or the right to freedom of religion; it's a broad concept and it's actually easier to define in terms of its violation than define exactly what it entails.

So over time, what we've seen in the countries where there is legal recognition for the right to a healthy environment is that it acts as a stimulus to raising standards, to raising air quality standards, raising water quality standards, and raising protection for biological diversity in a way that happens in a systemic fashion. One of the problems we've had in Canada is that we have been upgrading our environmental laws in an ad hoc fashion, and that's why some of the advanced features of the Canadian Environmental Protection Act, for example, are not found in other Canadian environmental laws, like the National Parks Act or the Fisheries Act.

I think another thing that this act will do in terms of stimulus is that we already have some very progressive Supreme Court of Canada decisions recognizing in fact that there is a basic value that Canadians have, which is protection of the right to a healthy environment. The Supreme Court of Canada has stated that on two different occasions. But what has really been Canada's Achilles heel is not so much the legal framework; it has been the implementation and enforcement of the legal framework.

I recently did a quick calculation: if you add up all of the fines, penalties, convictions, and prosecutions under federal Canadian environmental law over the past three decades, you get less environmental enforcement than there is in a single year of enforcement by the federal Environmental Protection Agency in the United States. We haven't given enough resources, we haven't had strong enough penalties, and we haven't applied the political will to enforce the laws we have.

One of the most important things about Bill C-469 is that it facilitates the enforcement of Canadian environmental laws and, by so doing, increases respect for the laws that Parliament has enacted.

Prof. Stewart Elgie: The simple answer to your question is—

Excuse me. I'm hearing myself talk and we don't want to do that.

● (1620)

[*Translation*]

That will be possible, certainly.

[*English*]

You could do it by amending the Canadian Environmental Protection Act and the Species at Risk Act. But it seems to me that there are probably two reasons for not doing it that way.

One of them is that in a way that would almost hide the changes. I think that, much like a human rights act or something, there's a communication or a national pride value in having something called an environmental bill of rights. This is something that I would think we would actually want to kind of hold up proudly for Canadians rather than interspersing it through as subsection 112(13) in a variety of other acts.

Secondly, just from an efficiency viewpoint, you would have to amend a lot of acts. This bill will probably apply to, I would guess, something like 15 to 20 different federal statutes dealing with environment, land use, and resource management. You would essentially be grafting these exact provisions onto 15 or 20 different statutes, and it may actually be more efficient just to do the one. I do note that it does actually amend the Canadian bill of rights, but it only deals with one part—just the right.

[*Translation*]

Mr. Bernard Bigras: Another option might have been an omnibus bill, that would have amended a number of acts. That being said, clause 3 of the bills says "This Act must be interpreted consistently with existing and emerging principles of environmental law". I see that it's talking about a principle that again seems to create legal uncertainty: the concept of environmental justice.

I don't know whether there is cassel on that principle, but, and I want to stress this point, it is defined in the bill as "the principle that there should be a just and consistent distribution of environmental benefits and burdens among Canadians...".

We are told that we must act in a way that is consistent with a principle other than polluter pays. The Supreme Court has already stated a legal opinion and ruled on the polluter-pay principle. The polluter-pay principle, on which there is a judgment of the Supreme Court, holds that the one that pollutes must pay. The environmental justice principle then says that for the environment, there must be a just and consistent distribution of the burden among Canadians. I don't see how those two principles can be compatible.

Am I to understand that if a company in the oil sands industry polluted the environment and was then responsible for an environmental burden, all Canadians, whether they be in Quebec or in Alberta or another province, should shoulder that burden in a just and consistent way? Is there not some inconsistency between the principles being presented to us?

[*English*]

The Chair: We may only have time for one of you, actually.

Prof. Stewart Elgie: That's a very good question.

I think that part of any bill of rights or charter kind of document is that it contains principles that when you stretch them to their limit begin to collide with each other or overlap. So the Charter of Rights has freedom of speech and freedom of religion. I could be exercising my freedom of speech by criticizing religion. I could be exercising freedom of speech by criticizing equality. So you could ask the same question, right? There are principles that in an absolute way are separate, but when you stretch them to their limit, you can in fact find situations where they conflict.

What this is really getting at is something like this: let's say we were to bring in a carbon regulation in Canada. The idea would be that the burden is the cost, basically, of bringing in carbon regulation, and it should be shared with all regions and people across the country. It shouldn't be that one region or one particular sector has to bear the disproportionate share of the problem.

If I were arguing the case, I would argue that this doesn't apply to those who are actually engaged in polluting, that the burden applies to the public burden of bringing in legislation, but where a particular company or individual has been engaged in polluting behaviour, that the polluter pays trumps environmental justice.

The Chair: Thank you. The time has expired.

Ms. Duncan, your turn.

Ms. Linda Duncan: Thank you, Mr. Chair.

First of all, I want to thank both witnesses for taking the time to testify. I know you're both very busy working on exactly this kind of work and I know Canadians appreciate it.

You're of course being put on the spot because of my bill, and my committee members chose not to ask the questions of me, so I'll help you with the answers to some of them.

On the issue of whether or not private prosecution is affected by this bill, I'd be interested in your response to this. Certainly this bill would enable private prosecutions, because it allows people under any environmental law to request an investigation and also to access information. So while it does not do so directly, it does indirectly.

The Yukon bill does specifically accord the right to file a private prosecution. The Criminal Code already allows that. I had actually preferred that this be in the government's Environmental Enforcement Act and consistently across the laws, if we're being consistent. I want to thank Dr. Boyd for bringing to our attention the fact that the government's Environmental Enforcement Act is not yet proclaimed. So thank you for that.

On the whistle-blower protection, the question is whether or not this is necessary. The whistle-blower protection measures are under CEPA, but the purpose of the environmental bill of rights is to apply to all environmental statutes. It would extend those kinds of protections to officials under all those statutes. Perhaps you might want to comment later on whether that's worthwhile.

I wanted to thank you for your recommendations on amendments and just clarify those that are brought to my attention. There are drafting errors in the course of many drafts of the bill and your recommendations are very welcome.

I wanted to ask this of both of my witnesses. I mentioned in my presentation that among the purposes of this bill one of them is to actually provide the domestic federal mechanism to implement, in domestic law, many of the obligations and commitments made by Canada for access to information and for participation in environmental decision-making, for example, under the North American Agreement on Environmental Cooperation, under NAFTA, under the more recent agreements that have been signed, and under commitments made through the G-8 on biodiversity.

Would you comment on that? Do those international laws and commitments not become fully binding and enforceable—for example in our courts—unless they are implemented in domestic law?

● (1625)

Dr. David Boyd: I'll tackle that. I actually have several pages in my brief talking about all of the international declarations and resolutions that recognize the right to a healthy environment. When you combine those international resolutions and declarations with the state practice of 170 out of 192 UN nations now, the right to a healthy environment is very close to becoming a principle of customary international law or a general principle of international law, in which case it becomes binding on Canada regardless of whether we have domestic recognition of it.

In some ways, the Canadian environmental bill of rights that is being put forward represents a recognition of what is very close or may already be an international obligation to recognize this right.

Prof. Stewart Elgie: David Boyd probably knows this issue better than anyone, so I won't add much except to say that there have been cases. For example, the Town of Hudson case took the precautionary principle, which is one of the principles referenced here and incorporated it as a customary principle into Canadian law. it was the first domestic recognition, and I think the second anywhere in the world, of that international environmental principle.

Over time, as David said, these principles get adopted in enough places around the world so that they do get incorporated into customary law. But none of that would be anywhere near as effective as this. Its only purpose is as an interpretive aid. When a court was interpreting a federal statute, they would use that as an aid to interpreting what was there. It wouldn't of course, as you know, create the right if it didn't exist. Having this bill is vastly more effective than waiting for courts to interpret provisions of bills that only touch on some of this.

Ms. Linda Duncan: Thank you.

Dr. Boyd has recommended that it would be useful to add a provision that all Canadians have a duty to protect the environment. I'm trying to recall if that is in the Canadian Environmental Protection Act, but I think it might be in at least one of the provincial or territorial statutes. It was controversial to some extent.

I'd be interested in having either or both of you elaborate on that. Are you suggesting that the reason it would be useful to have that in here would be...? For example, in the case of the ducks killed in the Syncrude pond several years ago, as I understand it, there was an individual working there who wasn't necessarily responsible for monitoring and who reported that. Would that be one of the effects of having that provision in the environmental bill of rights?

● (1630)

Dr. David Boyd: No. The intention of recognizing that Canadians have a responsibility to protect the environment is actually not meant to be enforceable.

It's meant to be encouraging and hortatory, if you will. There are 80 national constitutions that include a citizen's duty to protect the environment. In not a single one of those 80 countries has there been any enforcement or attempt to try to make that legally binding.

As Professor Elgie was talking about earlier on, it's part of the symbolic nature of the law to say, “Look, this is an important Canadian value, and with rights must come responsibilities”.

Ms. Linda Duncan: Professor Elgie, I know that you've moved from being a litigator—and a very effective litigator—to working more in the area of the interface between economics and environment. In the course of the work that you're doing with economists and so forth and in trying to move forward on development polices that actually incorporate environment, do you think this kind of bill would have an influence on that? What kind of influence do you think it might have?

Prof. Stewart Elgie: It's a good question, and one that I won't pretend I've thought of in great depth, but as a lawyer, I'll give you an opinion anyway, of course.

Ms. Linda Duncan: My goodness, have I put you on the spot?

Prof. Stewart Elgie: The thing that comes to mind is this—and I think there are two steps. One is that I think, for the reasons I gave, that this bill is likely to lead to meaningful improvements in environmental outcomes. Then the question becomes whether improved environmental performance links with improved economic performance. This builds a little bit on the earlier question by Mr. Scarpaleggia as well.

I've given you the basic statistic that, according to the World Economic Forum, nine of the top 15 countries find themselves ranked highly for both environmental and competitiveness performance. To answer Mr. Scarpaleggia's question, Michael Porter has done an analysis correlating those two—the guy who does the global competitive analysis for the Davos forum, a business professor at Harvard—and he's found a very strong statistical correlation between the environmental performance outcomes and the competitiveness performance outcomes—which isn't to say it's a one-to-one. Obviously, good environmental performance is not the only variable that affects your economic performance, but it's among that short list of significant variables that's an indicator of strong economic outcomes.

Will this alone create stronger competiveness? No. But what it does is create an incentive for innovation, more productive use of natural capital. If you think of it, the economy of the future is going to reward countries that are energy efficient, low polluting, and use their natural capital wisely. We're already seeing that. If you look at where the growth is around the world, it's in things like clean energy, hybrids, electric cars, fuel-efficient vehicles, local food, organic food.

Those sectors and other kinds of green sectors are growing much faster than traditional sectors of the economy and have been for a decade. So in terms of where the economy of the future is going, Canada positions itself well by creating conditions that will encourage clean innovation and encourage effective, productive use of our natural capital. We should get the greatest—

Ms. Linda Duncan: If I could just interject—

Oh, my time's up.

The Chair: Thank you very much.

Moving right along, we'll hear from Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much, Mr. Chair.

My thanks to the witnesses for attending today.

I'd like to ask some questions of Mr. Elgie and take advantage of his legal background.

However, I am going to try to restrain my usual legal propensity for fulsome questions and would ask you to restrain your propensity for fulsome answers. We have such a little time, we have to be concise.

The first question is whether you are aware of what the usual standard of proof is in Canadian legal actions.

Prof. Stewart Elgie: It depends on the action. If it were a civil action, it would be on a balance of probabilities; if it were a criminal action, it would be beyond a reasonable doubt.

Mr. Stephen Woodworth: Thank you.

In civil actions, the balance of probabilities is the usual standard in most advanced democracies. Are you aware of that?

Prof. Stewart Elgie: I'm aware only of common law countries, so certainly in common law countries, but I'm not aware of the others.

Mr. Stephen Woodworth: Thank you.

Are you aware that this standard is not required in the clause 23 litigation proposed under the bill that we're studying today?

Prof. Stewart Elgie: You're talking about paragraph 23(3)(b), I take it, right?

Mr. Stephen Woodworth: Actually, it's subclause 23(2).

Prof. Stewart Elgie: Okay. Well....

● (1635)

Mr. Stephen Woodworth: A prima facie case is all that's required, not a balance of probabilities case. Is that correct? I don't need you to explain it; I only need you to tell me if I'm reading it correctly.

Prof. Stewart Elgie: I guess I would say no, but let me actually explain why. This is really an onus of proof, I guess, rather than a burden of proof, and this is fairly common in the kinds of public regulatory prosecution standards coming out of R. v. Sault Ste. Marie in Canada.

So in this case, there's an onus on a plaintiff to put forward enough evidence that a court could find on a balance of probabilities. So if a plaintiff doesn't meet that, doesn't get to the 51% standard—that's what prima facie means in this case—then the other side doesn't have to say anything and they won't win. Once the plaintiff meets that standard, in the absence of the defendant saying anything, they're going to lose.

Mr. Stephen Woodworth: Have you ever heard that good lawyers will say it's virtually impossible to prove a negative?

Prof. Stewart Elgie: It depends on what the negative is.

Mr. Stephen Woodworth: Well, if I asked you to prove to me you've never been in Spain, isn't that an impossible burden of proof?

Prof. Stewart Elgie: I can show you my passport; it was never stamped in Spain. I mean, I can't prove with certainty, but I can prove to you on a balance of probabilities I've never been to Spain. I couldn't prove it 100%. If someone said I wasn't responsible for the Syncrude tailings pond discharge, I couldn't prove that with 100% certainty, but I could probably convince you on a balance of probabilities that I didn't cause that.

Mr. Stephen Woodworth: Would you agree with me, at least, that it's a much more difficult burden to prove a negative? To prove that something didn't or won't happen is a much more difficult burden than to prove it will or did.

Prof. Stewart Elgie: I wouldn't agree in the abstract. I think it depends what the thing is. I've had to bring private prosecutions and I can tell you that for a citizen to bring one of those is almost unimaginably difficult.

Mr. Stephen Woodworth: At least would you agree with me that the civil action in clause 23 in this bill does require a defendant to prove that something didn't or won't happen?

Prof. Stewart Elgie: It requires that once the plaintiff has put forward prima facie evidence, which means enough evidence on its face, a court could draw an inference on a balance of probabilities that the harm had been caused by that defendant. So essentially, in a tennis game the plaintiff has to serve first. They don't have to prove it 100%, but they have to get to the point of putting forward a good-faith balance of evidence that this has occurred.

Mr. Stephen Woodworth: Are you aware that the Ontario Environmental Bill of Rights requires a request for investigation and no reasonable resolution of that before going to litigation?

Prof. Stewart Elgie: Yes, and that's one of the reasons that I gave my last recommendation. I actually think—

Mr. Stephen Woodworth: For the moment I have asked you if you're aware of it. I know you'd like to give more information, but I am very aware of the—

Prof. Stewart Elgie: Sorry about that. Yes, I am aware of it.

Mr. Stephen Woodworth: What do you suppose are the benefits of trying, as the Ontario bill of rights does, to resolve issues before going to court?

Prof. Stewart Elgie: I think it's a great idea.

Mr. Stephen Woodworth: Thank you. Would you agree with me that that idea is not carried forward to clause 23 of the bill before us?

Prof. Stewart Elgie: I would agree with that.

Mr. Stephen Woodworth: Do I have time?

The Chair: Yes.

Mr. Stephen Woodworth: Thank you.

You've had some cases in the Supreme Court in relation to environment issues. What would you say is the longest piece of environmental litigation, in terms of duration from start to finish, that you've been engaged in?

Prof. Stewart Elgie: That I have been engaged in?

Mr. Stephen Woodworth: Yes. Or maybe that you're aware of—I think I'll put it that way.

Prof. Stewart Elgie: Probably the longest one I was engaged in was about the construction of a ski hill in Banff park.

Mr. Stephen Woodworth: It's really the duration I'm interested in.

Prof. Stewart Elgie: Oh, how long was it? It was probably 1992... probably five years.

Mr. Stephen Woodworth: Five years, and do you know of longer ones?

Prof. Stewart Elgie: Oh my goodness, yes.

Mr. Stephen Woodworth: What would be the longest one you're aware of?

Prof. Stewart Elgie: Well, the suit over the *Exxon Valdez* oil spill only got settled, finally, a few years ago. I could date that because I was one of the original litigants. That would have been probably close to 20 years. The Pearson and Inco case in Ontario would have gone on for a good decade.

Mr. Stephen Woodworth: That's good enough: 20 years is the longest.

What is the most number of parties that you've observed being engaged in a piece of environmental litigation?

Prof. Stewart Elgie: That would be in India. Are you more interested in Canada?

Mr. Stephen Woodworth: Yes, let's stay with Canada.

Prof. Stewart Elgie: I couldn't say. I guess it was probably the Oldman dam litigation at the Supreme Court, but that's because pretty much every province and territory and about five industry groups—let's say a dozen, maybe 12 to 15—were involved in it.

Mr. Stephen Woodworth: Do you have any notion of what would be the customary cost that each of those parties would likely expend in order to participate?

Prof. Stewart Elgie: It would depend a lot on the type of case and how high up the appeal level it went.

Mr. Stephen Woodworth: Let's take the Oldman dam.

Prof. Stewart Elgie: Well, going to the Supreme Court is actually relatively inexpensive because there's no evidence that you—

Mr. Stephen Woodworth: I'm talking about the whole piece.

Prof. Stewart Elgie: From the trial up...from the start, I would say that if it were simply a judicial review...so these will typically be cases that would be judicial review types of actions, and—

● (1640)

Mr. Stephen Woodworth: I'll tell you what, can I just stop you?

Prof. Stewart Elgie: Sure.

Mr. Stephen Woodworth: Can you give me any kind of—

Prof. Stewart Elgie: Ballpark? Sure.

Mr. Stephen Woodworth: —approximate dollar figure?

Prof. Stewart Elgie: Sure. If it were just.... Let's say something went to trial and appeal level, so two levels of court. Normally they would be under $100,000, but they're often over $50,000.

Mr. Stephen Woodworth: Can you tell me, before we go to a U.S.-style litigious approach that might skew priorities in the interests of individual litigants and incur costs and delays, are you aware of other effective measures to achieve progress in environmental protection?

Prof. Stewart Elgie: Sure. I guess I would start by saying that I don't think Quebec, Ontario, the Yukon, and NWT would agree this is a U.S.-style approach, but—

Mr. Stephen Woodworth: But the bill of course goes far beyond the Quebec, Ontario, and Yukon approaches.

But let's not go back to that. We've already covered it—

Prof. Stewart Elgie: It doesn't, really. The right to sue in Quebec is probably stronger than this—

Mr. Stephen Woodworth: The question really is, what other effective ways to achieve progress in environmental protection can you make us aware of?

Prof. Stewart Elgie: I would say the single most important thing we could do would be to put a price on carbon.

Mr. Stephen Woodworth: All right, and so that involves more stringent regulation?

Prof. Stewart Elgie: No, it doesn't involve regulation. It involves taking something that imposes a real cost on society and actually requiring those who impose that cost to pay the true cost they create. So actually, it involves fixing what Milton Friedman called the single greatest market failure that exists.

Mr. Stephen Woodworth: Isn't this a regulatory process?

Prof. Stewart Elgie: It's actually a fiscal process.

Mr. Stephen Woodworth: Okay. What about other fiscal approaches, like increasing resources toward environmental monitoring?

Prof. Stewart Elgie: Yes, increasing environmental monitoring and.... There are sort of two parts of the equation, right? As David Boyd said, you need to have effective standards and economic incentives and you need to enforce them. So you want to have both sides.

Mr. Stephen Woodworth: Would you have suggestions for us about how to improve other existing environmental legislation like CEPA or CEAA, to use the acronyms?

Prof. Stewart Elgie: How long do you have?

Voices: Oh, oh!

Mr. Stephen Woodworth: Well, hopefully we'll come back to you on that.

The Chair: Thank you, Mr. Woodworth.

Time has expired, and because we don't have enough time to do another round, I think what we'll do is we'll just move into our final witness for today.

I want to thank both Professor Elgie and Professor Boyd for joining us this afternoon.

We'll suspend while we switch up to our next witness.

● (1640)

(Pause)

● (1640)

The Chair: We're back in session. We're now going to welcome as our witness Christian Simard, who is with us by video conference from Quebec City.

Bienvenue.

[*Translation*]

You have the floor.

● (1645)

Mr. Christian Simard (Executive Director, Nature Québec): Good evening.

May I start?

The Chair: Yes.

Mr. Christian Simard: Thank you, Mr. Chair.

Nature Québec thanks the members of the Standing Committee on the Environment and Sustainable Development for inviting us very recently to comment on the nature and effect of Bill C-469 and to answer questions from parliamentarians.

Nature Québec believes that Bill C-429, an Act to establish a Canadian Environmental Bill of Rights, is an important and positive piece of legislation that is within the authority of the federal government.

In the Quebec legislation, there are similar provisions. The Quebec Act recognizes the right to environmental quality. Section 19.1 of Quebec's Environmental Quality Act provides that "[e]very person has a right to a healthy environment and to its protection, and to the protection of the living species inhabiting it". Section 19.2 then provides that "[a] judge of the Superior Court may grant an injunction to prohibit any act or operation which interferes or might interfere with the exercise of a right conferred by section 19.1." In addition, since 2005, section 46.1 of Quebec's Charter of Human Rights and Freedoms has provided that "[e]very person has a right to live in a healthful environment in which biodiversity is preserved, to the extent and according to the standards provided by law."

In concrete terms, including a right to environmental quality in Quebec's Charter of Human Rights and Freedoms opens the door to awards of "punitive damages", formerly called "exemplary damages", for any "unlawful and intentional" interference in that right. That section actually reads as follows: "Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom. In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages."

Apart from the possibility of obtaining an injunction, the Quebec Act does not have as detailed and clear an enforcement mechanism as the one set out in Bill C-429. The bill is more complete, and its mechanisms are better balanced. In addition, recognition of the right to environmental quality islamite to Quebec, for instance by the numerous constraints in legislation regarding access to the records of public bodies and the protection of personal information, which dramatically limit its effect. In a way, there are so many exceptions that there is less transparency. In Quebec, the provisions of the Environmental Quality Act, the Charter of Human Rights and Freedoms or the Sustainable Development Act do not provide for public participation in setting broad public policy, and this also limits their effect. Nor are there any provisions to protect government employees who blow the whistle on their employer, as is the case in clause 25 of Bill C-429.

That being said, we are naturally not arguing, and we do not want Bill C-429 to replace the provinces' legislation in any way. It will be administered by the federal government, and that is fine.

In Bill C-429, there are enforcement mechanisms that are missing from the Quebec legislation, apart from injunctions, only. Those mechanisms are also, to our knowledge, missing from the legislation of most of the other provinces. I am referring in particular to the power of individuals to go to court when the government does not comply with its own laws. That kind of measure, to enable individuals to make sure that the government acts in accordance with those laws and makes sure they are enforced, is very important.

It would be worthwhile for the provinces to follow the model proposed in Bill C-429, in the federal sphere, a model that we would not hesitate to support, if that were done. A number of proposed measures simply do not exist in the legislation of Quebec and the other provinces. What is interesting is that Bill C-429 can be used as a reference point or benchmark for provincial legislators, and even better, does not decree national standards or standardizing legislation that would somewhat impinge on areas under provincial jurisdiction. It also would not seem to risk creating confusion or duplication.

● (1650)

These types of measures, although their objectives are often broad and expansive, are not consistent with the principle of subsidiarity, to do what it is possible to do at the best level, to act at the best level so it will be as effective as possible. So these types of measures are not consistent with the principle of subsidiarity and the effectiveness of environmental legislation. Federal legislation has been enacted in the past, for example on threatened species or protected areas, that contain these kinds of pitfalls, that have consequences opposite to the intended aim, particularly when, for example, it comes to creating protected marine areas. When a government acts unilaterally in areas under other governments' jurisdiction it is generally not effective, it is not the right way to proceed.

Fortunately, Bill C-429 does not repeat that mistake, it respects the division of powers and aboriginal rights. This bill is much more worthwhile, in that sense, and can be used as a model or inspiration, but does not impose anything on the provinces, which work within the areas under their jurisdiction.

We should note some other important measures. Bill C-429 provides that the security that may be required in the case of an injunction, for example, in an environmental protection action, may not exceed $1,000.

At Nature Québec, in 2005, in the case of an injunction to stop the construction of an oil pipeline in Oka National Park, in order to enforce the judgment we had obtained and have the construction stopped, we had to deposit $50,000 security under the Quebec Parks Act. Unfortunately, we did not have that money, and we could not enforce the injunction.

It should be noted that Quebec's Environmental Quality Act, which unfortunately did not apply in the case I referred to, provides that the security required may not exceed $500. The maximum of $1,000 proposed in Bill C-429 therefore seems to us to be entirely reasonable and entirely in order. We also welcome the provisions for counsel fees to be paid if there is no abuse of process. We should also point out that in Quebec, when the right to a healthful environment was incorporated in the Charter of Human Rights and Freedoms, the government refused to fund the Centre québécois du droit de l'environnement, which was the only legal organization that the public could use to exercise their right to a healthful environment. That component is essential, in that it is easy to grant rights on paper without anyone ever being able to exercise them, for lack of resources. Access to justice is still a problem in all situations.

On the other hand, Nature Québec is not afraid that if Bill C-429 is enacted there will be a surge of legal actions with the effect of clogging up the system. I know this is a fear among some parliamentarians, that the legal system might be choked, that this opens the floodgates to all sorts of potentially far-fetched actions.

The Quebec experience, after the enactment of the Sustainable Development Act, which in fact contains very broad principles, does not show that there have been abuses of process. We have no reason to think it would be different with Bill C-469. In fact, we will be providing the committee with information in that regard. The chair of the board of directors of Nature Québec, Michel Bélanger, has done a brief overview of legal actions used, or proceedings in the courts, relating to Quebec's sustainable development and environmental protection legislation and under Quebec's Charter of Human Rights and Freedoms. It seems there have been absolutely no problems in that regard, but we will provide you with that information.

In closing, we would like to point out, once again, the fundamental nature of the proposed Act. From a legal perspective, it is well drafted and is based on solid principles, and at the same time respects provincial powers. There can be no society or development, or even economy, if we do not ensure that resources are conserved and the ecosystems essential to life are preserved. The right to a healthy environment and balanced ecosystems must be recognized as a fundamental right that must not be subject to the vagaries of battle in politics and the media. Bill C-469 proposes a social contract, within the limits of federal powers, between citizens and the federal government, to ensure that there can be no loss of control in future, no evasion or abandonment of this fundamental right, without the public having a means of recourse. As in many countries, we have environmental legislation that may look good on paper, but unfortunately, if the inspectors and the will to enforce these laws do not exist, there is no real environmental protection. Bill C-469 provides balance and enables the public to make sure the government abides by the laws it enacts.

● (1655)

Nature Québec invites all parties to unite behind this legislation, which has all it takes to become an inspirational model in a world where cynicism and indifference all too often rule.

[*English*]

The Chair: *Merci beaucoup, monsieur Simard*.

[*Translation*]

Mr. Christian Simard: I would like to add one thing, Mr. Chair. In the French version of the bill, the expression "*principe de prudence*" is used. Ordinarily, in French we talk about "*principe de précaution*". I don't know whether this is what is found in all legislation, but I think it's important to make sure that it is consistent with the term used in the French-speaking world.

[*English*]

The Chair: Okay.

We're going to go with our second round of questions. To kick us off, we have Ms. Murray.

You have five minutes.

[*Translation*]

Ms. Joyce Murray (Vancouver Quadra, Lib.): Thank you, Mr. Chair. I would like to thank the witnesses for being with us.

The goals and principles of this bill are important, and I think we all support the principles of justice and environmental protection.

I would like to know, and the member for Edmonton—Strathcona may have some ideas about this, whether the bill proposed might have an impact on other federal legislation. If so, what will that be?

[*English*]

With SARA, for example, how might this intersect if a citizen is not satisfied with the political decision on whether to list a species being proposed by COSEWIC? Is this the kind of place where a citizen might take action? If so, how might that overlap, or contradict, or make more complex the processes under SARA?

For me to have a practical understanding of this law, another example would be the Taseko Mines application. The panel, in its environmental assessment, made some determination of damage to the environment and to fish species, but it is the cabinet that decides, on the balance of economic, social, and environmental issues, whether to go ahead with that project. Would this law intersect with those processes, and if so, how?

Thank you.

[*Translation*]

Mr. Christian Simard: Excuse me, I misunderstood. Could the member who spoke identify herself?

Mme Joyce Murray: I am Joyce Murray, member for Vancouver Quadra.

Mr. Christian Simard: Thank you for our question, Ms. Murray. The Bill provides for these things. If you check, the section is not a substitute for existing remedies under environmental legislation. It says just one thing. To improve that legislation, the bill provides that an individual will have the power to suggest potential changes to environmental policies and participating in making policy. It also provides that the Minister will have the power to respond to that request if it is not frivolous, and may also respond to the public. The body of legislation applies, the laws apply, this bill is not meant to replace environmental legislation. However, if the government systematically failed to enforce federal legislation, for example, it provides that an action could be brought.

However, it is not possible that just because an individual wants it, or because someone is not satisfied with a decision of a court under an environmental statute, they will be able to act like a court of appeal or the Supreme Court. That is not consistent with the spirit of the legislation. The bill of rights included in the bill allows for legal action. It also allows, in a fairly circumscribed way, for the public to suggest improvements to environmental legislation.

However, if certain existing laws are not enforced at all, there is an opportunity to go to court to compel the government to enforce its own laws. Why have laws if we aren't going to enforce them?

So that places some value on it, a fundamental right to environmental quality. It is a right that cannot just be put on ice, as circumstances change, or abandon or evade or enforce only in part. It is like a social contract among the public. There is recognition, in legislation, of the right to the environment, and the opportunity for individuals to have access to remedies if the federal government abandons its fiduciary role. If it abandons its role as protector of the environment, remedies are provided by legislation.

● (1700)

[*English*]

The Chair: Thank you. *Le temps est terminé*.

Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras: Good afternoon, Mr. Simard. I am Bernard Bigras, member for Rosemont—La Petite-Patrie.

You gave us a big of the background for the incorporation of the right to an environment in Quebec legislation, and in particular you talked to us about sections 19.1 and 19.2 of Quebec's Environmental Quality Act. You also reminded us of section 46.1 of the Quebec Charter of Human Rights and Freedoms. So I would like to know what the real effect of recognizing a right to a healthy environment is in relation to other existing rights, in particular the rights and certain concessions that some companies might have in the mining or other industries.

Are there examples of decisions of a court where the right to the environment has actually been considered in relation to other laws? Are there judgments that have established that this right is real and may be enforced?

Mr. Christian Simard: There are judgments relating to environmental legislation. I'm not a lawyer, and Mr. Bélanger may be able to give you additional information. However, we know that municipalities' ability to take action to protect the environment, in particular against the destruction of wetlands to protect riparian and costal setbacks, is increasingly been recognized by the courts. The possibility of preserving natural woodlands or conservation parks in urban areas is now recognized as a right that may limit property rights.

The fact that someone owns a woodlot along a lake does not mean, for example, that they can cut down all the trees along the edge of a watercourse or lakes. The municipality can pass bylaws, and there is now provincial legislation that governs this in a case like that. Sometimes, it is in fact confirmed on the ground. There are a number of documents about this.

Mr. Bernard Bigras: As well, you seem to be proud that this legislation reflects the division of powers, that's quite clear. It also seems that this bill talks about application to areas under the jurisdiction of the federal government.

We know that there is often shared jurisdiction when it comes to the environment. On that point, how do you envision this bill being applied?

I will have to reread the bill, but it seems to me that the word "exclusive" doesn't appear in this bill. It talks about federal responsibility, but in a case where there is shared jurisdiction, how do you envision this bill being applied?

Mr. Christian Simard: Clause 9(2) of Bill C-469 says:

> (2) The Government of Canada has an obligation, within its jurisdiction, to protect the right of every resident of Canada to a healthy and ecologically balanced environment.

Clause 8, which refers to the scope of application, says:

> 8. The provisions of this Act apply to all decisions emanating from a federal source or related to federal land or a federal work or undertaking.

For environmental assessment processes, for example, there are already administrative agreements between Quebec and Ottawa. In the case of the Hydro-Québec dam on the Romaine River, there was a federal jurisdiction issue relating to the mouth of the river, and specifically to navigation. Generally, it was under the jurisdiction of Quebec, but a commissioner was appointed by Quebec.

In my opinion, it would be difficult to define it more specifically. The environment was never in issue in the British North America Act. However, it is also defined by agreements with the provinces. I do not anticipate there will be a lot of problem situations. Certainly if the federal government takes on a share of responsibility under a particular statute, a member of the public will be able to bring a legal action. I would remind you that it must relate to "decisions emanating from a federal source or related to federal land or a federal work or undertaking".

A federal source may be a regulatory body. Where it gets a bit complicated, though, is when we're dealing with regulatory bodies that wear two hats. There could be problems in cases where the role of a federal commissioner was challenged in a situation with a federal-provincial panel. For those cases, however, I would trust in the wisdom of the courts.

● (1705)

Mr. Bernard Bigras: Thank you.

[*English*]

The Chair: *Merci*.

Ms. Duncan, you'll have five minutes.

Ms. Linda Duncan: Thank you, Mr. Chair.

Merci beaucoup for a very thoughtful presentation, Monsieur Simard.

I offer my apologies: my questions will be in English, because both you and the interpreter would struggle with trying to translate my French.

I have a very practical question to ask you first. It relates to the experience in Ontario, which has had an environmental bill of rights for some time and has put mechanisms in place to actualize that bill so that it's useful to citizens.

One of the implementation measures used in Ontario—it may be in Quebec as well, and you can inform us—is that they have established a registry whereby the Government of Ontario has to post all proposed laws, policies, and regulations. So the citizens have the right to know what is coming forward and what is being proposed, and then they can contact the government and say that they would like to participate in the decisions on that law or policy going forward.

I'm wondering if any kind of mechanism like that has been implemented in Quebec under their bill, and secondly, whether you think it would be useful in helping deliver on the right to be engaged and then on the duty of the government under this bill to engage citizens in the development of any environmental decision-making or any new law or policy.

[*Translation*]

Mr. Christian Simard: I didn't understand clearly. Can you repeat your question, please?

[*English*]

Ms. Linda Duncan: It's my understanding that under Ontario law they have exactly the same rights to participate in the development of new environmental law and policy—similar to the provisions that I set forth in this bill. But the Ontario government has taken it one step further. They actually have a registry posted online so that the residents of Ontario can know when new law and policy are about to be proposed.

I'm wondering whether measures like that have been exercised in Quebec and whether you think it would be useful to implement the rights under this bill.

[*Translation*]

Mr. Christian Simard: I think the bill contains that provision, which is very similar to the brief. That's what we call it. I think you can, in practice, file a complaint with the Commissioner of the Environment and Sustainable Development.

The opportunity to exert influence and participate doesn't exist in the Quebec legislation, but we think this is worthwhile and desirable. Environmental problems are extremely complex. We are dealing with problems associated with climate change that will be increasingly extreme. So we are absolutely going to need the wisdom of the public and the ability to discuss environmental protection policy with the public.

I think that governments are going to come out looking better as a result of this. These problems are very complex and environmental policy should have the support of as many people as possible. We hope that people will be consulted on broad policy, something that is not provided in the Quebec statute.

For example, there could be an Internet registry. I very much like the sound of what you're saying. It is very interesting. I think that Bill C-469 will open the door to measures, while not specifying whether it's on the Internet or not. It opens the door to suggestions from the public about policy and allows for public openness about these things. I welcome that aspect. That's in Bill C-469.

I would sometimes even like it to be taken further. When the provincial governments and the Government of Canada have to decide about doing oil or gas exploration, or are considering legislation about mines, for example, or how to exploit our natural resources, it would be a good thing if they could hold public consultations when policy is to be made. There could be public hearings bureaus on the environment or commissions that would allow for calm debate about the future of oil and gas resource exploitation development, and even for windmill and alternative energy development. If broad public policy is being made, it is important to seek out public wisdom.

In Quebec, there have been a few exercises relating to forestry, through the Coulombe Commission. It has been done for water and hazardous waste, and I think that improved environmental legislation enormously. That kind of commission can do an in-depth study of the issues and propose new policies to our politicians and officials, who often need those ideas themselves. Managing environmental problems is a culture of complexity. It is not easy.

● (1710)

[*English*]

The Chair: *Monsieur Blaney, s'il vous plaît*.

[*Translation*]

Mr. Steven Blaney (Lévis—Bellechasse, CPC): Thank you, Mr. Chair.

Good afternoon, Mr. Simard. I am Steven Blaney, member of Parliament for Lévis—Bellechasse.

I have been listening to you carefully, particularly since you are talking about the methane terminal project and windmill projects. In fact we have met on this subject.

I am going to let my colleague ask you a few questions, Mr. Simard. But first I would like to share three concerns with you. The first is that certainly, when we talk about substantive rights, every Canadian resident has the right to a healthy and ecologically balanced environment. I think everyone agrees on that. Even the Supreme Court has recognized it, implicitly.

For the other rights, I'm concerned about how this bill might judicialize the environmental process. Just now, one of the witnesses told us this was virtually a form of disguised taxation, a carbon tax, by legislative means.

You also addressed the principle of interference in the division of powers. I thought about the concrete example of shale gas. I will leave that aside. I yield the floor to Mr. Woodworth, because we don't have a lot of time. I am eager to hear you.

Thank you, Mr. Simard.

Mr. Stephen Woodworth: Thank you.

Thank you, Mr. Simard.

I'm going to speak in English because I don't speak French very well.

[*English*]

I assume that you have read this bill. You've said you're not a lawyer, but have you read this bill?

[*Translation*]

Mr. Christian Simard: Naturally, yes, that's wiser.

[*English*]

Mr. Stephen Woodworth: Am I correct to understand that Nature Canada would be interested in the broader issue of greenhouse gases?

[*Translation*]

Mr. Christian Simard: Nature Québec is a member of Nature Canada, but it is still an independent organization. Certainly we are also interested in greenhouse gases, of course.

[*English*]

Mr. Stephen Woodworth: *Merci*.

Would Nature Québec favour, for example, a carbon tax?

[*Translation*]

Mr. Christian Simard: We will be happy to come back and discuss it. At present, we're considering Bill C-469. I would actually like to take the opportunity to respond to a comment by Mr. Blaney, the member for Lévis—Bellechasse, I think...

● (1715)

[*English*]

Mr. Stephen Woodworth: If I may, I need to stop you there, because I'm afraid I have limited time with which to ask my questions and I did have a reason for asking you about a carbon tax. But you haven't answered my question. Does that mean that Nature Québec—

The Chair: A point of order, Monsieur Bigras?

[*Translation*]

Mr. Bernard Bigras: Point of order, Mr. Chair. I think it's important that questions asked by members be directly related to the subject on the agenda. It seems to me that the subject of a carbon tax goes well beyond the subject under consideration today.

[*English*]

The Chair: On that point of order, Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Speaking to that point of order, Mr. Chair, we've heard from testimony today that what's being proposed through Bill C-469 is a price on carbon. How do you achieve a price on carbon? It's through a carbon tax and we know what the Liberals' position is on a carbon tax. I think it's a very relevant question and it came from testimony that we heard.

The Chair: Mr. Woodworth, on that point of order.

Mr. Stephen Woodworth: Yes, in fact—

[*Translation*]

Mr. Christian Simard: I can answer if you like.

[*English*]

The Chair: Just one minute, Mr. Simard. We're dealing with a point of order first.

Mr. Woodworth.

Mr. Stephen Woodworth: In fact, if I thought that the witness was in favour of a carbon tax, I would then like to ask him about certain provisions of this bill which may relate to achieving his goal. I wished to simply lay the foundation first by asking him if he was in favour of it.

If I may add on another comment...? There seems to be a delay in the translation. I hope that my time will be extended accordingly with this witness.

The Chair: I'll extend it somewhat to deal with this point of order, but we do have a problem with time to deal with the motion at the end of the meeting, which we're getting very tight on now.

I would suggest, as always, that we treat our witnesses with all due respect.

I know, Mr. Woodworth, that you're always very effective at getting answers to your questions, but we also ask that you give them some latitude to answer the questions you put before them.

Mr. Stephen Woodworth: I do object, Mr. Chair, if you're suggesting that by interrupting the witness when he wanted to go back and respond to Mr. Blaney I did anything inappropriate, because I didn't think so—

The Chair: No, no, not at all. I'm just asking you to give him a chance to respond.

Mr. Stephen Woodworth: That's my hope.

The Chair: Okay.

Mr. Stephen Woodworth: In fact, I'm going to ask the question again.

The Chair: Okay. You can ask the question, Mr. Woodworth.

Mr. Stephen Woodworth: Is Nature Canada in favour of a carbon tax?

A voice: Québec.

Mr. Stephen Woodworth: *Québec: merci beaucoup*. Is Nature Québec in favour of a carbon tax?

[*Translation*]

Mr. Christian Simard: We're in favour of measures that place a true value on carbon, to ensure it is used wisely. Those measures are complex and may be the subject of other presentations.

To reassure your colleague on the shale gas issues or whatever, natural resources are not covered in this bill...

[*English*]

Mr. Stephen Woodworth: I agree. You've answered my question.

Mr. Chair, if I may, on a point of order—

The Chair: Order.

[*Translation*]

Mr. Bernard Bigras: A point of order.

[*English*]

Mr. Stephen Woodworth: I have a point of order myself, Mr. Chair.

The Chair: Order.

Mr. Simard, we have a point of order. One moment, please.

Monsieur Bigras, on a point of order.

[*Translation*]

Mr. Bernard Bigras: Mr. Chair, I don't really see the connection between the question and the bill we are considering.

When someone asks a question, basic decency and minimum respect for a witness mean that they are given time to answer. As well, he was prepared to answer the question. Our colleague is given the time to ask his question, which was in fact redundant, and the witness is also given time to answer.

[*English*]

The Chair: Agreed.

Mr. Stephen Woodworth: I'm going to withdraw my question, Mr. Chair.

I do believe there is a clear link and a clear mechanism in this act, but I don't believe that this witness is going to allow me to ask the question in a timely fashion. I'm going to surrender the balance of my time to Mr. Armstrong.

The Chair: Actually, time has expired.

We're going to move on to our next point of business, which is Mr. Armstrong's motion.

With that, I want to thank Monsieur Simard for appearing. We all had our chance to ask him a question.

Mr. Armstrong, would you like to table that motion now?

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Yes—

Mr. Steven Blaney: Chair, I think we could thank the witness.

● (1720)

The Chair: Yes. I did.

Mr. Scott Armstrong: Thank you, Mr. Chair.

I support the premise of this bill, but I have concerns—

The Chair: No, we're not on the bill. We're on your motion.

Mr. Scott Armstrong: Absolutely.

The Chair: Okay, but could you move it first before you make your comments?

Mr. Scott Armstrong: Okay. I move:That the Committee continue working on the Statutory Review of the Species At Risk Act (SARA) on Mondays until it finishes providing direction to the analysts for the writing of the SARA draft report. The Committee will continue hearing from witnesses on Bill C-469 —

Ms. Linda Duncan: Point of order, Mr. Chair.

The Chair: Ms. Duncan.

Ms. Linda Duncan: All of the other proposals for varying our agenda have been in camera. I don't necessarily support that, but I'm just wondering why this one is being treated in a different way.

The Chair: No. If the committee wishes to go in camera, we can go in camera.

Ms. Linda Duncan: I'm not requesting that, but I'm just saying I'm puzzled as to why this one is being treated in a different way.

The Chair: Mr. Warawa, on that point of order.

Mr. Mark Warawa: On that point order, Chair, I think it's important that we deal with this to find out if there is consensus to deal with SARA or are we going to be pushing SARA onto a shelf? SARA, the protection of species at risk, is important, we're close, and I think we need to spend time on it at committee. For us not to spend time on this at committee, that decision should not be made behind a closed door. I think it should be dealt with right now in an open meeting.

Ms. Linda Duncan: I think all things should be dealt with in that way.

The Chair: Okay. What I'll do is to ask for a show of hands by members wishing to go in camera.

Mr. Stephen Woodworth: Excuse me, Mr. Chair. Would there not have to be some kind of a motion—

The Chair: But she had the floor and we're dealing with a point of order.

Mr. Stephen Woodworth: But she did not make such a request and—

The Chair: No, she didn't.

Mr. Stephen Woodworth: —in any event, I would suggest that it's out of order when it's in the middle of a motion that is being tabled.

The Chair: At any time a point of order can be dealt with. I have to deal with a point of order as soon as it's called.

An hon. member: A point of order....[*Inaudible—Editor*]

The Chair: No, true enough.

It is common practice and it is a point of order, but is there a request to go...? Let's get the motion on the floor. Then I'll deal with a motion to go in camera.

An hon. member: I don't want—

The Chair: Okay. It's up to the committee.

On a point of order, Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras: If necessary, I will make a motion. I will ask that consideration continue from this point in camera. Is the motion admissible?

[*English*]

The Chair: You can, but you can't do it on a point of order. You can't move a motion for a point of order—

Mr. Holland.

Mr. Mark Holland (Ajax—Pickering, Lib.): I have a motion that we go in camera.

The Chair: We have a motion to go in camera.

I gather...this is about process—

Mr. Stephen Woodworth: On a point of order, I don't think you can accept a motion when a member is in the middle of trying to table a motion.

The Chair: Okay. Let me just deal with it. Give me a couple of minutes.

Procedurally, I need to get the motion on the floor. Once the motion is on the floor, I can deal with Mr. Holland's motion to go in camera.

With that, Mr. Armstrong, please finish moving your motion.

Mr. Scott Armstrong: Thank you, Mr. Chair.

I'm going to pick up where I left off: The Committee will continue hearing from witnesses on Bill C-469, An Act to establish a Canadian Environmental Bill of Rights, on Wednesdays.

The Chair: Thank you.

Mr. Holland.

Mr. Mark Holland: As is standard practice for this sort of matter, I move that we go in camera.

The Chair: Procedurally, I'm going to go with this motion first. We have a motion to go in camera. All in favour? Opposed?

(Motion negatived)

The Chair: The committee stays in public.

We're in public and, Mr. Armstrong, you have the floor on your motion.

Mr. Scott Armstrong: I support the premise of Bill C-469, but I have concerns with Ms. Duncan's fifth point, the judicial remedies. I was particularly concerned with the legal implications and the civil litigation impact contained within the bill.

Therefore, seeing the good progress we've made in working together on the Species at Risk Act over the past couple of meetings, I believe that we should work on SARA on Mondays and continue with Bill C-469 on Wednesdays, seeing as now we're looking at the possibility of opening the door for nuisance lawsuits potentially overriding provincial rights, and now we've brought in the carbon tax implications. So I think it's going to take several meetings to get through Ms. Duncan's bill.

I think all of us have had meetings with NGOs that are encouraging us to continue with SARA and speed it up. I think we're working very well together on pushing SARA through. I think it's a very reasonable request, a very reasonable motion, that we work on SARA on Mondays and work on Bill C-469 on Wednesdays.

The Chair: Okay.

I have Mr. Warawa, Mr. Calkins, Mr. Blaney, and then Ms. Duncan.

I also remind you that when the bells start ringing, it is my duty to adjourn the meeting, unless there's consent not to. The bells will start ringing in five minutes.

Mr. Warawa.

● (1725)

Mr. Mark Warawa: Thank you, Mr. Chair.

To protect the species that are at risk that have been identified through COSEWIC, we need to have an improvement to SARA. We heard from witnesses—-and we had witnesses on SARA—and it's been quite a while since we've had a report that we've been able to forward to the government, back to the House. If we're close to doing that, why would we abandon that responsibility? We had a legislative responsibility to review SARA. Legislative responsibilities are our number one priority—as is Bill C-469, a private member's bill.

So when we're close to finishing with SARA, why would we abandon that responsibility? I think the motion is very appropriate. It strikes a balance that we meet that responsibility of finishing SARA and that we do it in a balanced approach—one day SARA and one day Bill C-469.

Now, my question to Mr. Armstrong is on the point that if we were to finish SARA in a couple of meetings, we wouldn't be meeting on Mondays on SARA anymore. My understanding is that we would then go back to both days on Bill C-469. That's my question, through you, Mr. Chair.

The Chair: I'm sorry. Did you ask a question, Mr. Warawa?

Mr. Mark Warawa: It was through you, Mr. Chair.

The Chair: Mr. Armstrong, a quick response.

Mr. Scott Armstrong: That is my intention.

The Chair: Okay.

Mr. Calkins.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Mr. Chair.

I appreciate my colleague moving this motion. I do think the committee is now going to be tasked with making a decision on this motion that.... It's a frustrating situation. We have more work to do than we have time.

I think all members respect...and they should pay particular respect to the privilege of private members. We need to make sure we do that. If I had a bill before committee and it was being treated in any way that was deemed less than respectful, I would be very frustrated. There is sometimes little privilege on the Hill when it comes to private members' business, and we must always keep that in mind.

However, for about two years on this committee, I've also been slaving away over the Species at Risk Act, and I see the finish line in sight. I think the intention of this motion is respecting both the right of Ms. Duncan, who has the right to have her bill soundly heard before this committee, and also the right of the rest of parliamentarians at this table to get to that finish line. I think the motion does strike a good balance. I'm hopeful that my colleagues will support it.

I do have one technical question. I asked Ms. Duncan about this. I want to make sure we have adequate time to explore the effect this proposed legislation would have. When is the 60 days up since the referral of this bill to committee? Could we get a date of when the 60 days is up? Also, if we wanted an extension on this bill, and we were, as a committee, going to ask Parliament, when would we need to ask? What would that date be? Is it the same date? If I could have some clarification on that, it might help me decide how I'm going to vote on this motion.

The Chair: We'll get that put together. It's sometime in February. I'll get back to you as soon as we pull up that date.

We'll continue.

Monsieur Blaney.

[*Translation*]

Mr. Steven Blaney: Thank you, Mr. Chair. I am a very new member of the committee, but I would simply like to inform you that at the Standing Committee on Official Languages, that's how we work, we often deal with two issues at the same time. It can allow the witnesses a little flexibility. On that point, Mr. Armstrong's proposal is worthwhile and would allow the committee to take on a number of battles at the same time.

[*English*]

The Chair: Okay. Just so you know, the date is February 3. We'd have to ask for an extension by February 3.

Mr. Blaine Calkins: Is that the day we would have to report the bill back to the House unamended if we hadn't addressed the bill? It's the same date?

The Chair: Amended or unamended, February 3 is when we would have to be back in the House.

I have Ms. Duncan, Mr. Holland, and Monsieur Bigras.

Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, I find this absolutely disturbing. If there's one thing that we agreed on when we came back after the summer recess, it was that this nonsense would stop.

We had a discussion in this committee on what our agenda would be and what would go in what order. We also agreed that we would give equal respect to private members' bills, respect equal to what we would give to the government bills. I've bent over backwards to let the—

Mr. Mark Warawa: Point of order, Mr. Chair.

Ms. Linda Duncan: Let me finish—

● (1730)

The Chair: Not on a point of order. A point of order takes precedence.

Mr. Warawa, it had better be a point of order.

Mr. Mark Warawa: Mr. Chair, what Ms. Duncan has just spoken of are things that happened at in camera meetings—

Ms. Linda Duncan: Our agenda is public. It's posted on the website. I am speaking to the agenda that is posted on the website, okay? We have posted the agenda—

The Chair: The motion itself, which included the schedule, is made public.

Ms. Linda Duncan: I'm not revealing anything out of order.

Mr. Mark Warawa: I'm talking about agreements and things being "nonsense"—

The Chair: On that point of order, Mr. Woodworth?

An hon. member: [*Inaudible—Editor*]

Ms. Linda Duncan: Then let me finish—

The Chair: On that point of order—

Mr. Stephen Woodworth: Yes, I want to support the point of order, because Ms. Duncan was not speaking just about our agenda but about the discussions that went into it and specifically what was said, and that seems to me to be out of order.

Ms. Linda Duncan: I haven't said anything about what was said.

Can I finish?

The Chair: Ms. Duncan, just measure your comments carefully if you are referring to anything that comes out of in camera discussions.

Ms. Linda Duncan: I will measure my comments, okay?

The Chair: Ms. Duncan, you still have the floor.

Ms. Linda Duncan: I agree: the endangered species act is very important. So is the Canadian Environmental Assessment Act, and so are all of those that are languishing. What we have agreed, according to our posted agenda, is that we are going to deal with my bill and then we are going to move on and deal with the endangered species act.

What we're doing now again is wasting time instead of moving on. We've already contacted witnesses, as far as I am aware, and these are important people who aren't necessarily always available.

I don't agree with Mark.

The Chair: According to the rules—Standing Order 115(5)—as soon as the bells are sounded, I have to suspend this meeting or adjourn it and send you up to the House to vote, unless there is consent from members to carry on this discussion and get to a moment when we can call the question.

Mr. Mark Warawa: You have consent from this side, Chair.

The Chair: Do I have consent from members?

An hon. member: I didn't get a chance to speak—

An hon. member: No—

The Chair: I have no consent.

With that, I am going to adjourn this meeting. We'll see you guys next week.

The meeting is adjourned.

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