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Monday, November 1, 2010

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)): I call to order meeting number 32.

Ms. Duncan.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Yes, Mr. Chair. I think it's a point of order. You have provided to us a new agenda for Wednesday. I'm hoping that at the end of this meeting we could have five minutes to discuss where we're going with the review of my bill.

The Chair: Yes. As you know, Wednesday's meeting—

Ms. Linda Duncan: I'm not suggesting that we discuss it now, but at the end of the meeting.

The Chair: Okay. Just for information, I think everybody's received the notice. Wednesday's meeting agenda had already been circulated ,and all of the witnesses that we had lined up declined or backed out over the weekend. The last one backed out this morning. We'll talk about it at the end of the meeting. I'll try to save five minutes.

Okay. With that, we have a motion by Mr. Armstrong.

Mr. Armstrong, can you put that motion back on the floor?

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

I'd like to 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, An Act to establish a Canadian Environmental Bill of Rights, on Wednesdays.

The Chair: We were discussing this at our last meeting. Is there more discussion on the motion?

Not seeing any discussion on the motion, I will call the question. All in favour? Opposed?

(Motion negatived)

The Chair: The motion is defeated.

Mr. Warwara.

Mr. Mark Warawa (Langley, CPC): Mr. Chair, while we're discussing this, I'm not sure why the opposition would want to stall a very important continuation of SARA. My understanding is—

The Chair: There's a point of order by Mr. Kennedy.

Mr. Gerard Kennedy (Parkdale—High Park, Lib.): Have we not just disposed of the question?

The Chair: The question has been put and was defeated. Discussion is to take place before the motion, so we should move on with our agenda, Mr. Warawa.

Mr. Mark Warawa: My question then, Chair, is regarding the appropriateness of changing the motion to read, "on Wednesdays".

Would it be sufficiently different to change it to Wednesdays? Maybe the opposition is concerned about having meetings on SARA on Mondays. Would it be in order now to move another motion just changing "Mondays" to "Wednesdays"?

The Chair: We just dealt with it. Essentially, the purpose of the motion was to split the time, regardless of days, between SARA and Bill C-469. We discussed this at the previous meeting, we just called the question, and it was defeated.

I don't believe there's any appetite at committee to provide for work both on SARA and on Bill C-469 at the same time, so we'll continue with the agenda we have.

Mr. Mark Warawa: Thank you for that clarification. That's it from me.

The Chair: Okay. That's it.

We're going to suspend just quickly. I'll ask that all witnesses in the room please come to the table so we can get set up.

I believe we have Mr. Amos in the room, along with Beatrice Olivastri, from Friends of the Earth, and Jamie Kneen, and then we have a couple of witnesses by video conference.

We're suspended.

● _____ (Pause) _____ ●

● (1535)

The Chair: We're back in order and in session.

We're going to continue with our study of Bill C-469, An Act to establish a Canadian Environmental Bill of Rights.

We're welcoming to the table, from Ecojustice Canada, William Amos; from Friends of the Earth Canada, Beatrice Olivastri; and from MiningWatch Canada, Jamie Kneen. By video conference, we have, from the Canadian Environmental Law Association, Theresa McClenaghan, the executive director and counsel, and as well, from the Canadian Maritime Law Association, John O'Connor.

I'm going to ask all of you to keep your opening remarks to 10 minutes or less, and that will provide us with enough time for committee members to ask our witnesses questions.

We're going to kick it off with you, Mr. Amos.

Professor William Amos (Director, University of Ottawa - Ecojustice Environmental Law Clinic, Ecojustice Canada): Thank you very much.

Thank you to the members of this committee.

It's a really happy day for Ecojustice to see this bill being discussed. I'd like to congratulate—

Ms. Linda Duncan: Excuse me, Mr. Chair, but I'm not getting the translation.

The Chair: The French channel is working. Are we okay now, Ms. Duncan?

We're good.

Back to you, Mr. Amos.

Ms. Linda Duncan: I'm sorry. Go ahead.

Prof. William Amos: That's okay. You're always allowed to interrupt your own congratulations.

We at Ecojustice feel that Bill C-469 is a major step forward, and we're happy it's being debated, so thanks to all of you for the invitation.

Ecojustice, for those of you who don't know, has been practising as Canada's leading public interest and environmental law organization, or at least the largest one, since 1990. We've stood side by side with groups like the Canadian Environmental Law Association and West Coast Environmental Law, which have been working on a pro bono basis for groups around the country that are deserving of our assistance. By "deserving", I mean that they have cases of the utmost importance in terms of protection of the environment and don't have the means to pay. This is something that has been worked at for many years.

The Canadian Environmental Law Association in particular has been very involved in establishing environmental rights in Canada. Ecojustice has been working more recently on this issue and we're very happy to have been engaged on this bill in particular. I'm going to talk a bit about that.

However, I won't be talking today about litigation that in all likelihood you will have seen on the front pages of the newspapers with respect to a charter challenge being brought by members of the Aamjiwnaang First Nation, who are seeking an interpretation of sections 7 and 15 of the Canadian Charter of Rights and Freedoms that would allow for the annulment of a pollution permit granted by the Ontario government.

That's not what we're discussing today. Obviously this is not about changing the constitution or seeking an interpretation of the constitution. This is about a federal law, and a federal law that respects federal jurisdiction, so we're squarely within that realm.

Ecojustice is very keen to see all parties working together on Bill C-469. We don't see any reason why this shouldn't be the kind of legislative initiative that can be supported both by opposition parties and by the government.

In particular, with our partners Friends of the Earth Canada and the Sierra Club, we started working on our model environmental bill of rights, which was released publicly back in June 2008. As we did this, we ensured that all parties received a copy of the model law and were offered the opportunity to be briefed on the model law.

To that effect, we sent letters to the leaders of each party. In fact, we did have the opportunity to meet with Monsieur Bigras and Monsieur Duceppe. We met with the Liberal environment caucus, and of course we met with the NDP, with Nathan Cullen at that time, and subsequently with Linda Duncan.

Unfortunately, we didn't have the opportunity to meet with any members of the government. Our letter wasn't responded to, unfortunately, but that doesn't mean to us that this can't be achieved in a collaborative fashion across the aisle. We think this is an issue that should be dealt with by all parties together in recognition of the fact that this is just such an important issue.

For Ecojustice, Bill C-469—I'm going to give you a big picture here and I'll leave the specifics to questions—prioritizes the values of transparency, public participation, and accountability. Accountability, I think, is the real word to follow here. At the end of the day, Canadians are concerned that governments, whether those are municipal governments, provincial governments, or the federal government, have not fulfilled their obligations with regard to being accountable to enforcing the law. That's a serious issue.

I think all politicians of all stripes have to understand that a majority of Canadians out there really feel as though governments are letting them down regarding their accountability on environmental enforcement. That's not withstanding the great initiatives that may have been put forward, and I commend the federal government on their work in regard to the environmental enforcement act, which has yet to be brought into force, but credit where it's due....

● (1540)

Secondly, the bill would bring about consistency and equity for public participation across the board on all federal environmental statutes. Right now, what we have is a mishmash. The participation and access that Canadian citizens have depend on the statute and it simply isn't conducive to solid engagement by our citizenry.

Third, Bill C-469 will enhance access to justice. In our opinion, that will lead to better and more accountable decision-making. The easy analogy that could be used is the carrot and the stick. Just because avenues of litigation are available to citizens, it doesn't mean they will necessarily use them. What it does mean, though, is that it changes the calculus in incentives for behaviour that would lead to more enforcement; that is, behaviour on the part of those whose activities would be enforced and the behaviour of those who would be engaged in the enforcement activity itself.

I won't go into the argument that Bill C-469 will bring Canada into line with the international community; it's fair to say that Dr. David Boyd did a remarkable job of that last week. He is Canada's foremost authority on the issue of environmental rights across the world. I hope his testimony was carefully considered.

Bill C-469 also reflects carefully considered analysis of other provincial jurisdictions. We recognize that in Canada it's not about the federal government taking control or reinventing wheels. It's a matter of learning from experiences of other jurisdictions—and there's a lot to be learned. There's a lot to be learned from the Yukon and from the Northwest Territories in regard to the establishment of environmental rights. It's the same with Quebec, which has the most impressive record and the longest record in terms of legislative protection for rights.

[*Translation*]

I should have said earlier that I will not speak in French today, but I am very willing to take questions in French. I apologize for having neglected to tell you that earlier.

[*English*]

We looked at the Northwest Territories in developing this model legislation. We looked at the experiences of Yukon, of Quebec, and in particular of Ontario, where it has been 20 years since they enacted their legislation. I look forward to hearing more about that from my colleague, Ms. McClenaghan.

In terms of the key provisions, it's fairly clear that we need the establishment of an environment right and a corresponding public trust duty. This isn't anything new or radical. This has been done before. It has been done in various states. It has been done in various provinces. The public trust doctrine is also not unfamiliar to the common law.

With regard to access to environmental information and participation in environmental decision-making, there would be some major steps forward in this regard, particularly vis-à-vis a right to request investigation and a right to request a review. These are key provisions. They're available in Ontario. The system works in Ontario. The citizens feel more engaged. They participate more. Usually that means that better decisions are made. At the end of the day, there is a judicial stick available.

In various Canadian jurisdictions where environmental rights are protected and where there are opportunities to engage the judiciary in ensuring environmental enforcement, the experience is that they're not used extensively. I'd be happy to discuss this issue. We're very concerned that Canadians would be misled that there is a floodgates sort of concern with this kind of legislation, when in fact history has demonstrated that there is no such concern. It doesn't matter whether you're looking in the Northwest Territories, Ontario, or Quebec.

I'm sure I'm getting to the end of my time, so I'll conclude by simply saying that I think it's high time we enact a bill that reflects the values of Canadians. This isn't just about the nuts and bolts of rights of review, rights to request investigation, and the greater ability of citizens to use the judiciary to ensure environmental accountability.

What is it really about at the end of the day? It's about asserting our values as Canadians. It's my belief and it's Ecojustice's belief that this bill does just that.

Thank you.

● (1545)

The Chair: Thank you, Mr. Amos.

We'll move on to Friends of the Earth and Ms. Olivastri.

Mrs. Beatrice Olivastri (Director, Friends of the Earth Canada): I'd like to echo Will's comments that we appreciate very much the chance to have this time with you and also the fact that you are assessing and studying this bill. As someone of long standing in the environmental movement or—I don't know if I should say this—with grey hair, it's great to see this on the table and being actively discussed. So thank you for this opportunity and for your work together.

As Will has said, this bill of rights, Bill C-469, is seeking to improve access to information, public participation in decision-making, and access to justice. I think we're all going to tell you that it's very timely. I especially want to emphasize it's timely to advance the interests of all residents of Canada in undertaking their responsibilities and exercising their rights to protect the environment.

I'm emphasizing this notion of residents, because not all people living in Canada at this point who are interested in the environment are citizens yet, or perhaps won't be citizens, but I would like you to consider that we want to and seek to—in so many ways—foster shared Canadian values with all who reside in Canada. So we're suggesting you consider one of several text changes and move from using “Canadians” to “people of Canada”. We offer you a definition of resident at the end of our page; it's a bit of housekeeping to help you along in your work.

Friends of the Earth's detailed analysis of environmental rights in Canada, which we reported on in something called “Standing on Guard, Environmental Rights in Canada”, finds that there are grave inequities in the provision of environmental rights when you look across all the jurisdictions. We like to think—and we'd like to think you agree—that residents in Newfoundland or P.E.I. should have access to the same environmental rights as someone who lives in Ontario, the Yukon, or Quebec. We think they should be entitled to the same provisions when it comes to information and notice, public participation, and the requirement for government response. Those are just three of the 10 indicators we used when we looked at the provision of environmental rights in Canada.

One of the things that interests us very strongly about this bill is the opportunity to bring some coherence in bringing together what is right now a patchwork of provisions and procedural opportunities under the laws of Canada. To be clear, we're not saying that this is going to affect what happens in Newfoundland, necessarily, unless we continue to work with all of our colleagues in Newfoundland.

So we're not saying that by adopting and passing this bill we will affect the work of Newfoundland or any other jurisdiction's own work. But we can provide a bar. We can raise the bar from what Canada now has as a patchwork to something very comprehensive, with some leadership. Those of us who are in the field will continue to show that leadership to those in other jurisdictions.

Friends of the Earth will continue to work with our colleagues and supporters in the different provinces to encourage them to raise their bars. I'll refer to Newfoundland in a couple of situations, because we have a very compelling experience taking place there right now that is instructive in what you can accomplish with this bill.

The other thing I want to note is the time perspective of 40 years, because next year it will be 40 years since the Department of the Environment was established, in advance of the UN Conference on the Human Environment in Stockholm in 1972. So we have 40 years of history, with all kinds of activities and important pieces of work put forward, and opportunities and rights, but as I would characterize it, it's very much a patchwork of opportunities.

Over that 40-year period, many of us have been involved in the collection of work that Canada provides leadership on. Canada is on the leading edge of so many files and is dealing with everything from stratospheric ozone protection to biodiversity, transport, management of hazardous substances, persistent organic pollutants...you name it. There's a whole litany there. I probably don't have to repeat it for you.

While this was happening globally with developed and developing countries, I want to point out this very important development of a consultative culture here in Canada. It started around the management of chemicals. It started around dealing with chemicals from cradle to grave.

● (1550)

As someone who was at that time spending a lot of time with colleagues in other countries, I found it interesting. Partly, it's the scale and size of the country and the number of players we have that allowed us to create this consultative culture, but it's also the goodwill to figure out how to work together. Also, as I've said, it was growing out of a cradle-to-grave management around chemicals at the time, but extending, then, into many other areas of consultation—not just about the environment. It definitely was affecting the overall federal consultation culture or policy.

So I think we'd like to convince you—and add our voice to others—that it's a really important time now to take the 40 years of experience around that and put it into something as compelling as the Environmental Bill of Rights. The consultation culture, to me, is the front end of the experiences people have in access to information, in participating in committees and providing their input in advance of conflict, and in trying to be engaged in decision-making in a way that is constructive and positive.

I wanted to mention to all of you that Friends of the Earth is not a legal organization. Having said that, we benefit from the counsel and assistance of the environmental law organizations in Canada and many wise legal practitioners who provide their support individually to us. But in the delivery of our mission, which is to work to restore communities and the earth, we use a whole set of tools. We use research, education, and advocacy, and especially we insist through our work on the enforcement of laws and regulation.

So over the 10 years that we've been able to work with Ecojustice, as one example, we've had the privilege of obtaining standing in many cases that have gone to the Supreme Court. That standing was in the interests of providing fresh insights, of providing expertise that allowed for the development of moving from principles to practise: such as the polluter pays principle and moving that into Canadian law in terms of shaping the use of environmental class actions. It's a whole range of things.

I wanted to say that for those who are concerned that this bill would open the floodgates of litigation, there is a wide body of experiences that show how you can move from the different avenues or rights available into engagement and into productive experiences. For example, they have a very interesting experience in calling for a factual record on the lack of enforcement of Canada's pulp and paper effluent regulations. This was in the early 2000s.

It was an area of great concern because, as a sector, pulp and paper was the largest single user of water, and we were very concerned about what we saw as the impact of that effluent on the reproductive capability of fish. We were successful in having that factual record performed. That was through the Commission for Environmental Cooperation. It took five years. It's always a test of stamina, but with very useful results.

What I would point to, and the point I'm trying to make here, is that through that process we then moved into a working opportunity with Canada's Forest Products Association, with leading scientists in this field, with other environmental organizations, and with Environment Canada itself, to work—for the past six years now—on various ways and means of reducing the endocrine-disrupting impact of effluent on fish. So that opportunity to use a very important environmental right, the petitioning opportunity there, opened up transparency, first of all, but it also opened up the opportunity to work constructively together.

Increasingly, we at Friends of the Earth are called on to help individuals and communities navigate their way through this patchwork, this rather complex collection of environmental rights and responsibilities. The example I wanted to share with you is that of the retired fisherman in New Harbour, Newfoundland, and it is about working with him to help him exercise his rights on an investigation—just recently delivered—and assessing that using section 17.

What he really wanted us to do was use the Fisheries Act. There was nothing available to him to use that. Instead, it was the new PCB regulation under CEPA. That's still in play, but I'd have to say that Newfoundland is a place that could add some amazing, some important, environmental rights to their portfolio of procedural rights. We're happy that there were federal rights available for this gentleman and happy to be able to help him use that.

● (1555)

Finally, I just wanted to say that, with the history and experience I was talking about over the last 40 years, we want to see that Canadians are able to call on Parliament for accountability. We've offered some text as well that would add a provision saying that "Every obligation imposed on the Government of Canada, a Minister, the Commissioner or a federal source in the Act is justiciable"—I can never say that word "justiciable".

With that, I will say thank you again for your attention. In terms of drafting, I have two pages of specific suggestions for you that I'd be happy to talk about later.

The Chair: Thank you.

Mr. Kneen, could you make your opening comments, please?

Mr. Jamie Kneen (Communications Coordinator, MiningWatch Canada): I also would like to thank you for this opportunity to share our observations on Bill C-469.

I apologize for not having had the opportunity to prepare a more detailed written brief in advance. However, we see this bill as an important step and one that we're pleased to address. This bill touches on several aspects of our work and would greatly improve environmental governance at the federal level.

MiningWatch Canada is a pan-Canadian coalition of environmental, aboriginal, social justice, and labour organizations that researches and advocates for responsible mining practices and policies in Canada and by Canadian companies abroad. We work directly with communities affected by all phases of mining activities, from prospecting and exploration to closed and abandoned mines, supporting their efforts to make regulatory measures and planning processes useful and accountable.

We also do research and policy analysis and advocate for improvements in Canada's legislative and regulatory framework to support sustainable development and environmental justice. This bill clearly supports this objective, providing tools that we would have found useful in several instances.

I'm a biologist by training, not a lawyer, although I do know some very good lawyers, and MiningWatch does not do legal work per se. We rely on the expertise and experience of organizations such as Ecojustice, which has provided us with superlative representation in the two lawsuits that we have undertaken in our 11-year existence. I will therefore defer to the expert commentary of others when it comes to the technical details of this bill and possible improvements or amendments to it, but I would specifically endorse Professor Boyd's submission and his comments, among others.

In general terms, this bill addresses weaknesses in the way existing legislation deals with fundamental aspects of environmental governance: access to information, enforcement of existing laws, and participation in decision-making.

Access to information is critical to all of the areas covered in this bill. Without information, it is impossible to know what environmental conditions may be changing as a result of what activities, how those activities are supposed to be regulated, and who is supposed to be responsible. Federal authorities should maintain the most complete information they can and make as much of it as possible as accessible as possible in the most timely and accessible manner. This is not currently the case.

We've been told by federal agencies, for instance, that they do not need to provide us with information since we can get it through access to information. Not only is this an abuse of the access to information system, which is apparently already overloaded in light of its reported diminished responsiveness, but it also represents an irresponsible delay in providing that information.

MiningWatch and Great Lakes United had to undertake legal action to address the federal government's refusal to enforce existing legislation and regulations that require the mining industry to report data on the millions of tonnes of toxic materials that are dumped into waste rock and tailings management areas. We won that case, thanks to able representation by Ecojustice lawyers, but also in recognition of the absurdity of the situation.

Prior to taking court action, we had already engaged with government and industry through years of multi-stakeholder consultations and debates convened by the federal authorities. Despite our efforts to insist the law be applied equally to the mining industry, federal bureaucrats consistently failed, in the face of a determined mining industry resistance, to apply the requirements of the national pollutant release inventory under the Canadian Environmental Protection Act.

Why is this information important given that the releases in question have to do with the dumping or stockpiling of contaminated material within an operating licensed mine site? First, "operating" is a key word. Mines do not operate forever, and tailings dumps that are actively monitored and managed now will eventually become public liabilities. We need to know what's there. Second, spills and accidents do happen. Whether those spills are small or massive, appropriate contingency plans need to be in place and securely funded, and we cannot evaluate the adequacy of those plans without knowing what's there.

This example is important for several reasons. It illustrates the fact that when existing laws are not enforced, legal action remains the last resort for citizens and watchdog groups. This is incredibly time-consuming and costly in terms of organizational resources, if not in cash outlay, not only for the plaintiffs, but also for the government.

● (1600)

By the same token, it illustrates the need for a more specific legal cause of action, such as this bill would provide. If this bill had been law, it is possible that we could have gone to court and resolved this situation sooner or—more likely and more desirable—that the clear potential for legal action would have prompted compliance on the part of Environment Canada without us having to actually go to court.

Public participation in decision-making is also important, whether from a sustainable development and democratic governance perspective or a purely technocratic perspective. Environmental decisions should not be made without public involvement on principle.

Sound environmental decisions cannot he made without public involvement, especially in view of the progressively diminished budgets and capacities for scientific and technical work within federal departments, which are also increasingly trying to keep their work focused within their jurisdictions and mandates. The external factors and complex considerations involved in sound environmental decision-making cannot come solely from government or private proponents.

In addition to improving the final decision, ensuring effective public involvement also improves the public acceptance of decisions, minimizing the likelihood of a public backlash. For better or worse, it seems that people tend to accept decisions that they were involved in even if their interests or input were not well represented in the outcomes.

This is why public participation is a cornerstone of environmental assessment, at least in theory. Yet even after the Canadian Environmental Assessment Act, CEAA, was revised in 2003 to make public involvement mandatory in comprehensive studies and to expand and clarify the opportunities for public involvement in screenings, the federal government still resisted.

One extreme case was the proposed Red Chris copper/gold mine in northern B.C., which, at 30,000 tonnes per day milling capacity, was clearly over the 3,000 tonnes per day threshold of the comprehensive study list.

MiningWatch was preparing to intervene in the federal environmental assessment process on that project when we were informed that the Department of Fisheries had decided that the mine itself was not part of the assessment—just the tailings dump that would destroy fish habitat. It should be noted that the proposed mine would turn the headwaters of three creeks in northwestern B.C. into a tailings dump, destroying fish habitat and risking contamination of the entire Stikine watershed.

But since tailings impoundments are not on the comprehensive study list, the assessment would proceed as a screening, and public participation was not deemed appropriate for the screening either. To make a long story short, we contacted Ecojustice, which agreed that this seemed wrong. We eventually won the case in the Supreme Court of Canada earlier this year. The ruling cemented the role of the public in decision-making under CEAA.

This situation lasted barely three months before the government used the Budget Implementation Act to amend the CEAA to give the Minister of the Environment or his designate the power to make discretionary decisions on the scope of a proposed project, replicating precisely the conditions that the Supreme Court had rejected.

It is important to note that the Supreme Court had rejected this discretion on the basis of the logical and consistent functioning of the environmental assessment process, not just the letter of the law. We now no longer have a guarantee of a public role in the environmental assessment process. This bill would provide a strong measure of remedy.

To sum up, MiningWatch strongly supports the stated purpose of this bill: to extend to every Canadian resident the right to a clean, healthy, ecologically balanced environment and the right and the tools to hold the government accountable to enforce the laws. This bill clearly serves the public interest, specifically in the areas that MiningWatch works in: access to environmental information, enforcement of environmental protection laws and regulations, and the protection of public participation in environmental decision-making.

To quote Winston Churchill, “Give us the tools, and we will finish the job”.

Thank you.

● (1605)

The Chair: Thank you.

We'll move over to a video conference and the Canadian Environmental Law Association.

Ms. McClenaghan, you have the floor.

Ms. Theresa McClenaghan (Executive Director and Counsel, Canadian Environmental Law Association): Thank you very much.

I would echo the thanks for the opportunity to appear before the committee. I also very much appreciate the opportunity to appear by video conference.

We too, unfortunately, did not have an opportunity to prepare our remarks in advance. We will ensure that they are provided to the clerk so that a written copy will make its way to you in due course. Our remarks are prepared by me and by Richard Lindgren, a long-standing counsel with CELA. His contribution was especially valuable because he was one of the people directly involved in the creation of the Ontario Environmental Bill of Rights a decade and a half ago.

Let me offer a word about CELA. CELA is a federally incorporated not-for-profit corporation with a mandate to use law to advance environmental protection and advocate for environmental law reform. We're also funded as a legal aid specialty clinic on the topic of the environment. We have a particular interest in the rights of the public to participate in environmental decision-making, to obtain information about activities and decisions that affect their environment, and to ensure that this participation is available to all Canadians, no matter what their income and no matter how removed they may be from direct contact with those who make the decisions.

In our view, then, not only are the provisions of Bill C-469 important for environmental protection, but they also deal with matters of fundamental justice and equity in the provisions to better involve Canadians in the environmental decisions that affect them and provide statutory remedies.

I would note in passing that it's CELA's 40th anniversary this year. I've had occasion to be reviewing our archives and noted just the other week that 40 years ago CELA was calling, along with others in Canada, for an environmental bill of rights. Calls for an environmental bill of rights have surfaced in Parliament at least every decade since. We would submit that now it is time to proceed and that, furthermore, we now have the benefit of much experience with other EBR systems, such as that of Ontario, to help design a very good Canadian federal environmental bill of rights system.

I would echo the comments made earlier that we should have access to these kinds of rights regardless of where in Canada we happen to live.

Here are a couple of general comments. We strongly support Bill C-469 and we urge all parties to ensure its timely passage and implementation. We would still advocate that substantive environmental rights should be incorporated into the charter, but we support Bill C-469 because unless and until such amendments are made, it places long-overdue environmental rights and substantive procedural protection on a statutory basis. Even if we eventually were to obtain such charter amendments, in our view Bill C-469 would become an important adjunct to those constitutional rights.

As I mentioned, CELA has been advocating a bill of rights for the past 40 years, but in the early 1990s we were very involved in the drafting of Ontario's Environmental Bill of Rights. We've made extensive use of the legal tools under Ontario's law since then, and we think there are lessons learned from the Ontario law that will help with assessment of the federal proposed bill.

I have some specific comments. I'll just touch on them, and then perhaps there will be an opportunity for elaboration later, during questions and answers.

The first comment is that we support the current version of the proposed bill, but we think there are also opportunities to improve and strengthen the bill, should the committee see fit—in particular, having regard to Ontario's Environmental Bill of Rights experience to date.

First of all, clause 3, the interpretive section of the bill, says that the bill should be interpreted in accordance with various principles, such as the precautionary principle and so forth. We would say that these should not merely be interpretive aids, but should also be included in clause 6, which is the purpose of the legislation, and therefore should form part of the federal government's affirmative duties under the legislation. They should not just be interpretive aids, but also purpose statements.

We also note that in clause 10 there's a right to access environmental information. As others have noted, there are some other statutes that provide those types of access, although it's patchwork in terms of both rights and practice. We think this is an important addition here, but we also think it should be clarified that these rights would be additional to other existing broad federal access-to-information provisions, not replacements for them.

● (1610)

Furthermore, to echo the comments made by Mr. Kneen and others, the provisions under this bill would have to provide for a very timely access, because if the purpose in part is to allow the public to comment on decisions that affect them, then they need this information in a very timely way. We had some litigation in Ontario around that very point, with the commissioner for information provision here in Ontario saying that it's inappropriate to hold up public access to environmental decisions under the FOI statute when there's a consultation happening under the EBR.

We also support the standing provisions in clause 11. We would make a technical note that this should be broadened because it's generally the courts who make standing decisions. So we should specify that the federal government would not deny, oppose, or otherwise contest the standing of residents interested in environmental protection.

We also like the positive duty created in clause 12 to ensure meaningful public participation. We would strongly submit that this has been in practice one of the most important aspects of Ontario's EBR, and we strongly encourage similar provisions at the federal level. It's a major discrepancy right now that citizens in this province in particular—Ontario—can access postings of decisions, policies, and laws and make comments on them before the decisions are made when it's much less certain whether they have that opportunity federally.

We think it might be useful to include specific sections as to how the participation would be undertaken; for instance, by way of maintenance of electronic registries, mandatory public notice, and minimum comment periods, either in the statute itself or in regulations that should be provided. Let me say that the provision of a registry in Ontario has been a very important piece of the success of the EBR in Ontario, in that although the various provisions may well be subject to other notice opportunities, at least there's one place that Ontario residents can access to see a variety of instrument proposals or a variety of ministries' policy proposals and see which ones they're interested in commenting on.

In terms of the right to seek a review in clause 13, we note that it should be broader, to be consistent with the purposes section of the act. It is somewhat narrower than the purposes section of the act.

We also very much support the public right to request investigations, but we would note that one of the experiences in Ontario is that the official may confirm that an offence has been committed and then isn't actually obligated to undertake any action to address it. This is something that should be done in the federal bill, and we also think it should be done in the Ontario bill, for that matter: that there would be a positive duty to institute appropriate legal action in the case of a finding that an offence has actually been committed.

Similarly, we are very pleased to see the proposal in clause 16 establishing a public right to seek judicial review. We think it would be an extremely important mechanism, particularly in light of the remedy specified in the clause. But we would echo the point others have made, which is that judicial review is only used by our clients, environmental groups, and citizens' or ratepayer groups as a last resort. Normally, people pursue all the non-litigious methods they can, and only when they are not achieving any success and it remains an important matter do they proceed to judicial review action.

We also think that the limited undertaking as to damages and special cost rules are quite important. The fiscal barriers are otherwise very important. As I noted, we see this statute as an important access-to-justice statute that would take away access differences, such as how much money you have to spend on litigation.

The civil right in clause 23 would be an important additional right. We, too, do not anticipate that clause 23 would result in a floodgate of frivolous or vexatious civil actions, because of the cost, complexity, and uncertainty associated with environmental litigation.

Finally, we also support the proposed amendment to the Canadian Bill of Rights. As we said, we would like to see substantive environmental rights included in the charter, but in the meantime, given the difficulty and complexity of achieving a charter amendment, the Canadian Bill of Rights amendment should be undertaken as an interim measure and should remain in place.

● (1615)

Finally, we would echo that we strongly support enactment of the Canadian Environmental Bill of Rights. We think it would help ensure access to environmental justice in Canada. We would submit that the committee should recommend its passage in an expeditious manner, either in its present form or in accordance with the recommendations for change that we and others have made.

Again, we thank you for the opportunity to provide these comments and we look forward to further discussion this afternoon.

The Chair: Thank you very much. Thank you for staying on time as well.

Last but not least, we have Mr. O'Connor, with the Maritime Law Association.

You have the floor.

Sorry, we can't hear you, Mr. O'Connor.

Mr. John O'Connor (Chair, Committee on Pollution and the Marine Environment, Canadian Maritime Law Association): *Maintenant*?

The Chair: Yes, you're on.

[*Translation*]

Mr. John O'Connor: Thank you, Mr. Chair.

I am speaking to you from Quebec City. I was not able to be with you in Ottawa today.

I would like to thank the committee for allowing me to participate in this session by teleconference.

[*English*]

My name is John O'Connor, and I am the chair of the environmental committee of the Canadian Maritime Law Association.

Unlike some of our colleagues here, the Canadian Maritime Law Association has been around for many years, long before the federal Department of the Environment was commenced. In the marine field, as a matter of fact, one of the more important years was 1967. That was the year of the huge pollution, the very large oil pollution, in Europe that led to an international convention that is enforced today in Canada. This very important convention, which we call the civil liability convention, is enforced in this country. Canada is a member to this convention.

That was in 1967, and we, the Canadian Maritime Law Association, commenced our environmental committee immediately after that accident. We participated with the Government of Canada in the adoption of that convention, or at least in having input into the adoption of that convention, in 1969.

Canada did not join the convention, by the way, until 1989, but we did eventually become a member.

In the meantime, in 1973, Canada put together what was then part XX of the Canada Shipping Act, which was the very first piece of federal legislation in the marine field that had anything to do with civil liability and oil pollution.

Our committee has been around for a long time. I personally have chaired it for many years, and we have spoken to many bills. I must say that today is a fun experience for me. I'm always somehow in the group of the industry people who are usually speaking negatively about bills. Today, to hear all these committees speak positively about it, it's heartening. We too support much of the bill.

Our view is that many of the frustrations and problems that other areas of the environment have encountered are less present than in the marine field. In the marine field, when there is an unfortunate accident, or pollution, it's often very high-profile. The government does not sit back and do nothing. On the contrary, our experience is that not only is the Department of Transport very active but also even the Department of the Environment itself has taken a great interest in marine activities over the years.

Just as reference, you may think of Bill C-15 in 2005 and Bill C-16 in 2009. I was flattered to be asked to speak to those bills in both the House and the Senate, by the way.

I think what I would like to do, in the time I have, is simply underline that our association is in favour of anything that will assist in reducing pollution or improving the environment. The bill, then, certainly is not something we're against. However, there are three points I'd like to raise, because I think there are three flaws in the bill and I just want to bring them to your attention. Perhaps this committee will be able to address some of these problems.

First, you have to understand how the bill is divided. Clause 16 creates the environmental protection action. Clause 19 talks about remedies. Clause 22 talks about a true judicial review under the Federal Courts Act in section 18.1. Finally, clause 23 creates a new civil action.

It's a bit complex, the way they've done it, but I've heard people today talking about “patchwork” application. To my mind, patchwork application means that in different parts of the country there are—or there are not—different pieces of legislation available for use in environmental matters. But patchwork doesn't just mean horizontal. It can also be vertical. The problem we have in Canada is that with all the good faith we have in trying to settle these problems, we have built overlapping levels of legislation. This is a problem that the CMLA has spoken to before.

In other words, we adopted these international conventions, which are very strict and very clear. We tried to create clear and obvious remedies for when environmental problems involve vessels. Then we'd go and adopt Bill C-15 and Bill C-16, which give almost overlapping remedies without any clarity as to whether the convention should overrule or be overridden by the legislation.

I'm sure you know that Parliament is sovereign enough that if it enacts a piece of legislation, the fact that it may have adopted an international convention does not mean that the convention overrules. It's the contrary: Parliament is so sovereign that it can decide not to respect its international obligations, if it wishes.

● (1620)

Our view is that we should have some clarity on how the conventions and the legislation fit together. To do so, we have addressed three points.

The first is in clause 19 of the bill. Where we're talking about the remedies under clause 16, there seems to be something that I personally do not understand. Subclause 19(2) says, “If the Federal Court finds that the plaintiff is entitled to judgment”, it may “(a) suspend or cancel a permit or authorization” of the defendant.

Yet clause 16 clearly states there's only one defendant; ìt's called “the Government of Canada”. The Government of Canada does not hold permits, so I'm wondering how subclause 19(2) fits into the scheme. I think it may be a bit of an oversight, unless I'm misunderstanding something.

My second point has to do with clause 23. Clause 23 creates a civil action. The Canadian Maritime Law Association feels that the civil action that is created in the marine field is not necessary, for the simple reason that we already have civil actions under our CLC, the civil liability convention. Then they added civil actions under the environmental legislation that was amended under Bill C-16 and Bill C-15, notably the Canadian Environmental Protection Act, 1999, and the Migratory Birds Convention Act, 1994, both of which allow a civil action that seems to overlap the CLC action, which is enacted under the Marine Liability Act. Now we're adding a new civil action.

We do not speak out for any environmental section except marine: we don't believe it's necessary to have a new additional civil action in clause 23 for the marine world. But again, we're not speaking about other sectors of the environment.

We noted that subclause 23(3) clearly states that it “is not a defence to a civil action” that the activity was authorized by an act of Parliament or a regulation. This is in contradiction to the Ontario legislation and frankly seems a bit surprising. If there is federal legislation on the table saying you are supposed to or you are enabled to do something, and it somehow comes into a pollution question, at least in the marine field, it's difficult to understand how this would work. You would say that you're going to have someone taking a civil action and that you cannot set up a defence that it's permitted by legislation.

You will also notice that paragraph 23(3)(b) goes on to say “there is no reasonable or prudent alternative”. Unlike other sectors, you can think of certain pollution in the marine field that is unfortunately absolutely necessary. For example, a vessel is unable to have a propeller that's turning unless there is some lubrication of the propeller shaft.

It's provided for in federal legislation that this small amount of pollution is legal. It has to be. Otherwise, the ship would not be able to function Therefore, it's baffling as to how this would work. You would have someone saying you're polluting because of your propeller shaft. We would be saying that it's provided for under the legislation and under the international conventions and someone would say that's not a defence.

With regard to clause 23, we would suggest that it be limited to fields other than the marine field. At the very least, it would seem that subclause 23(3) goes one step too far.

I would like to conclude by talking about international conventions. We've heard people speaking about international conventions this afternoon, and in our submission to Parliament we have added a suggested clause, which is on page 3 of our submission. It's in English and in French. Simply, why not add a clause to this act stating that it is intended to complement our international convention obligations and rights, not to over-ride them? That way we would at least know that Parliament intends to have the international conventions it has adhered have priority over this act.

As a final point, I would like to say—and this is my own error, as I put this together in great speed and haste to try to get it to the committee in time—that on page 2, I refer to sections 54, 55, and 57 of the Marine Liability Act because I was looking at my own handwritten copy. But in fact that was changed with Bill C-7 in 2009 and should read sections 48 and 78. I apologize for that error; it is entirely my own.

The other thoughts I've expressed are those of my committee.

Once again, thank you for the opportunity.

● (1625)

The Chair: Thank you, Mr. O'Connor.

We're going our rounds for members to ask questions of witnesses.

I will ask all the witnesses, because there are five of you, to keep your responses short and concise. We have a limited amount of time for each member to ask questions.

We're going to kick it off for seven minutes with Mr. Kennedy.

Mr. Gerard Kennedy: Thank you, Mr. Chair.

Thanks to all the participants.

I'd like to address some of the broader questions that are coming into play here. It's a very broad act. It purports to be about rights for individuals, but to access it, there needs to be an entity like Ecojustice and so on in place, I would imagine. This is not something that.... The average person would need assistance with in terms of accessing the remedies under this act—perhaps.

Here's what I would like an opinion about. Does an act that is this broad, with these remedies that I guess are filling gaps—or at least overcoming gaps, as I've heard them described—help simplify the regime we have? In terms of trying to make this work, how much difficulty will we be in?

We heard a little bit from the marine folks on this front, but you've had an occasion to think about this. I know that this has been in discussion for many years, and I know there have been earlier efforts or at least discussions about it, so I'm wondering if you could address that notion that we're going broad with this act and what that will do to the existing regime of protections that we have in place. That's an open question. I'm just hoping that somebody can give us some of the considered thinking that's gone on behind this.

● (1630)

Ms. Theresa McClenaghan: I might start with the first part of your question, which is whether you need specialized help to access the provisions in the bill.

That is definitely not the case in Ontario. On the contrary, as I mentioned, this is a great leveller. Yes, we can run workshops, but even without workshops people can very easily get on the registry and start to watch the notices for their community, start to watch the proposed pieces of legislation and regulations in a ministry they're interested in, and start to make submissions.

It turns out that those submissions, whether you're talking about something significant like a whole new statute, or something really specific like an instrument for a facility in a community, are very much influenced by the things the members of the public say. By and large, the tens of thousands of submissions that have been made under the Ontario system have come from individual citizens. Only a fraction of those have been assisted by CELA, Ecojustice, and other environmental groups. It's been an extremely important statute for Ontario. It would almost be unthinkable now to imagine that these decisions could proceed without this kind of access.

Without using up too much time, I will say that in terms of the broader civil remedies, the Ontario remedy is vastly underused, because it has very onerous thresholds about whether anyone could prove harm to a public resource, which is one of the tests. It's pleaded now and then, but has not made its way into any decisions.

Our advice would be that you don't make it so onerous that it's worthless to people. It needs to be something that has a real chance of affecting outcomes.

Prof. William Amos: Could I answer that? Because that's a good question.

At the end of the day, it's intended to be a principled document and it's meant to be a broad statement of values. But at the same time, it gets into a bunch of nuts and bolts, and it would appear to open the door for recourse to judicial proceedings where a lawyer's assistance might be necessary.

Ecojustice would echo the comments of Ms. McClenaghan. Ecojustice isn't going to be representing any more people because of this. Our resources are limited; that's just the reality. But what we might be able to do is assist citizens who are concerned and help them understand what their rights are and how they can participate in the process more effectively.

Theresa's comments are well taken that in Ontario there's a registry and citizens can follow a process from the beginning to the end. Following a process and understanding where decisions are coming from, and why, and seeing a basis of documentation, is absolutely critical. I'd say that at the end of the day this opens more doors for the average citizen in terms of access to justice. I note that in paragraph 21(2)(a), they talk about “counsel fees” being made available for litigants whether or not they have representation, so I think there are specific references to situations where that might not be the case. I think the goal here is to move this away from the domain of the lawyers and move it into the hands of citizens.

Mr. Gerard Kennedy: I wondered if maybe the question wasn't really phrased easily enough to get at this, but the idea is that this is a fairly broad and encompassing effort. By definition, it touches on principles, and those principles are then meant to be relied on, I suppose at various stages of different hearings and so on. I don't know what the overarching value is in the sense that it's not actually in the constitution and so on and what reliance there could be in conjunction with other acts.

I'm not a lawyer, and I'm not asking for a legal opinion. I'm just trying to understand its place. What will this bring that's new and different? Is it totally supplementary? Will it displace some of the things in place today? I'm trying to get that sense or a lay perspective of what the existence of an environmental bill of rights would do for citizens out there and how they can understand it, as against the protections we currently have.

I've heard a lot about the gaps, and I understand them, but I just want to know how it addresses those gaps. Does it make this somewhat more complex? Do you rely on one thing and then you might try another...? Or does this simplify things? Does this clarify what citizens can have by way of what they know is there and legally protecting their right to their environmental health and well-being?

● (1635)

Prof. William Amos: My answer to the question would be that this is going to allow Canadians to put on a pair of glasses through which they can see how myriad federal statutes are going to be applied, because there's going to be an assumption that this is the baseline. The baseline is that public participation is guaranteed, that information is going to be provided, and that the public is going to have access to the processes involved in implementing various federal statutes.

So to the extent that there are gaps in federal statutes not allowing participation or not providing information, or where registries aren't available, this bill of rights is going to serve as a lifting up. It's going to serve as a baseline, if you will.

The interpretation, at least from our Ecojustice perspective, is that the ideal would be for this law to allow—and I believe it's drafted in such a manner that it would allow—federal laws to be interpreted with a view to its provisions. So the application of the Fisheries Act or of the Species at Risk Act would be impacted, and the ministerial discretion that is available pursuant to those acts would be impacted by the provisions of the Environmental Bill of Rights. That is, if there is going to be significant harm to the environment pursuant to a discretionary decision, then there is going to be an opportunity for citizens to try to force the government to take a second look at the situation.

The Chair: The time has expired for Mr. Kennedy.

[*Translation*]

You have the floor, Mr. Bigras.

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

My thanks to the witnesses who are here with us and those who are elsewhere, in Quebec City or anywhere else.

The more witnesses we hear from and the more we read about the topic, the more we realize that creating environmental legislation is no small task, to say the least.

Like my colleague Mr. Kennedy, I am trying to find my way in all this and to work out an approach. It seems to me that we can choose two routes, the first being to work from current legislation. Since I got here in 1997, we have been called on to work on the Canadian Environmental Protection Act, the Species at Risk Act and the Canadian Environmental Assessment Act. Is it not better to strengthen current legislation and make the state and its citizens subject to clear obligations in environmental protection, rather than to create new legislation for every member of the public? Is it not better to work from the legislation we have at present and make sure that those laws are strengthened and enforced, instead of creating new legislation?

In the situation at hand, we have no case law at our disposal. But there is environmental case law stemming from the Canadian Environmental Protection Act. I should make it clear that I am not dismissing the principle of environmental law. It exists in Quebec and in Ontario too. But do you not think that we should further strengthen the laws we already have rather than make new ones for everyone?

[*English*]

Ms. Theresa McClenaghan: As you noted, this is related to the earlier question as well. The way we see this bill, as in the Ontario case, is that it's an overlay. It provides some commonality across the way departments and ministries make their decisions. It provides some principle to those decisions. It doesn't take away from the fact they have specific jobs to do under those specific statutes.

In the Ontario case, what happens is that the particular ministries are required to prepare something called a statement of environmental values, which they do as they see fit for the kind of mandate they're dealing with, whether they're the ministries of environment or natural resources, and so forth. Then they have to carry out their decisions in accordance with those values.

In this case with the federal bill, the principles are being set out in the statute, these interpretive provisions and the purposes, and the departments would have to make sure they operationalize or decide how their job—which isn't changing—under the Fisheries Act or under CEPA still has to be done, but in a way now that's consistent with this bill.

So it exactly gets at your point, which is a valid one, that we do need to reinforce and enhance the existing statutes. This is a very useful way to do it and a very common way internationally of doing it: by way of an environmental bill of rights.

● (1640)

[*Translation*]

Mr. William Amos: I think that it is absolutely necessary to amend a whole range of environmental protection legislation at federal level. But I do not think it is realistic to have to wait for all that to happen.

In the review process for the Canadian Environmental Assessment Act, we had to wait from 2000 right up to 2003 before the changes were included in Bill C-9. The process leading to the creation of the Species at Risk Act took from 1995 to 2003. In my opinion, the same thing is happening with the Canadian Environmental Protection Act, 1999.

Canadians see nothing efficient in waiting for each act to be reviewed, nor does that interest them. As Ms. McClenaghan has just mentioned, if it is possible to amend several acts at the same time and to make sure that they are enforced, it will greatly help us, all across Canada.

[*English*]

The Chair: Mr. O'Connor, you were trying to respond as well?

[*Translation*]

Mr. John O'Connor: I share the point of view that seems to be at the crux of the matter. At federal level, unlike in Ontario and the other provinces, I find the focus to be on a relatively limited number of sectors of the environment. I feel that putting various laws on top of each other, layer after layer, creates confusion, whether it is Bill C-15, Bill C-16, or this current Bill C-469. In my field, we are left confused. We wonder what is a priority for enforcement and what is not.

I understand that my colleagues are interested in seeing, or even are anxious to see, the bill before us become law. Perhaps they are afraid of losing one, two or three years if the choice is for consolidation. But I think it would be a good idea. No provisions would disappear; they would be included in a clear act in which the priorities would be laid out. That is one of the major problems we face in the maritime law sector.

Thank you.

The Chair: You have a little time left.

Mr. Bernard Bigras: My last question goes to Friends of the Earth Canada and Ecojustice Canada.

You have launched a number of lawsuits against the federal government in recent years. I still remember the one on September 20, 2007 about the climate change act. That case went before the Federal Court.

Could you tell me what you think that passing this bill would have changed in a lawsuit such as the one you filed on September 20, 2007?

[*English*]

Mrs. Beatrice Olivastri: You're referring to the case that was the Kyoto Protocol Implementation Act—

Mr. Bernard Bigras: Yes.

Mrs. Beatrice Olivastri: —the domestic act that brought the requirements for Canada at a domestic level. That case was not permitted to proceed at the Supreme Court. At the point that it was at the Supreme Court, I think our expectation was that it actually was a broader question about the rule of law, the democratic process, and what the role of Parliament was in agreeing to this act that then was not acted upon.

So as for what would be different, Will may have something in addition to this, but in my estimation it would be that, as I commented earlier, I would hope that this environmental bill of rights would require all such acts to have—and someone's going to help me with the terminology—judiciability. That would be a requirement: that these kinds of decisions made by Parliament must be acted upon. I think that's a clear message that's required. I would have been very pleased, in fact, to have had that work done under the mantel of something like the Canadian Environmental Bill of Rights.

● (1645)

[*Translation*]

The Chair: Thank you. Your time is up.

[*English*]

Ms. Duncan, it is your turn for seven minutes.

Ms. Linda Duncan: First, I'd like to thank all five witnesses for taking the time to come and testify. It was very constructive input for my part, being the one who tabled the bill, and I found the effort you took to propose amendments very helpful. I'm the first to admit that there are some things that can be corrected—for example, correcting the headers under some of the sections. I really appreciate the hard work that all the witnesses have done in looking at the bill.

I also wanted to thank all the witnesses for their hard work in the past for providing effective ways for the public to participate constructively in decision-making. Of course, that's what the bill is all about.

I had one quick question to Ms. McClenaghan. Thank you for sharing the information about the Ontario situation. Obviously that's a beginning model for this bill, as well as a few models from other jurisdictions like the Northwest Territories and Quebec.

I appreciated your input on the registry. I'm wondering whether you think the bill would be improved by an actual amendment to require the creation of the registry. We heard last week about the value of the registry and how that in fact has turned around and opened up the door to the public actually participating in environmental decision-making. Do you want to elaborate on that at all, about your experience with the registry?

Ms. Theresa McClenaghan: Yes. We do suggest that adding a specific requirement for a registry would be a good amendment to the bill. We said it could also be done by regulation, but we would far prefer to see it in the statute as a statutory provision.

It has been fundamental to the experience of the average Ontarian who has anything to do with the Ontario bill of rights and who does so by way of the registry. It gives the type of access that's very specific, helpful, and germane, but also unparalleled, compared to what happened before.

For citizens of Ontario, in terms of being able to go in through a portal, a library, or their own computer and see proposals that affect them.... It could be they could search by proposals in their community. They can search by proposals that have something to do with water. They can look for new laws that a variety of ministries are introducing, and then there are comment opportunities. Similarly, when there are specific instruments for a factory in their community and there will be a certain type of emission, for example, they can comment.

So it's quite an important provision, I think, for most people. As I said, apart from when you get into some of the others, the requests for investigation and review are other parts of our bill, too, but most people would have encountered the registry if they've encountered the bill. Yes, it is very fundamental to the success of the bill here, I would say.

I want to add that many federal tribunals provide very good registries. We really like the fact that they do that, we point clients to them, and we help people access them. What should happen, in our opinion, is there should be a registry, and then, for those places where there are already registries, they should provide a gateway or point to take people over to that other venue.

It's very difficult for people—the ordinary person—to maintain a watching brief across all kinds of different decision-makers, departments, boards, and tribunals federally. A registry in one place, where they could keep an eye out for the things they are interested in and that then would divert them into the specific decision-making process, would be very helpful.

Ms. Linda Duncan: Thank you.

I noted the testimony by Mr. O'Connor. I'd like to put the question out to all the witnesses, including Mr. O'Connor. Bill C-469 provides not only opportunities for the public to be engaged in existing law, treaties, conventions, policy, and practice, but also the opportunity to participate in any future legislation.

I just participated in the three-day meeting on the Arctic held by the Canadian Council on International Law. Coming out of that meeting, it's sounding to me like we are going to have a lot of new policy and practice, and possibly legislation, at least to do with the Arctic, and possibly the other oceans. Do the witnesses not think that it's important for the public, particularly those communities who are directly affected in the case of the Arctic, and certainly the Arctic communities, to have the right to participate in these critical decisions?

● (1650)

Mrs. Beatrice Olivastri: Absolutely.

Mr. John O'Connor: Certainly I would agree with what you've just said, in the sense that as the new legislation comes into force, we, the Canadian Maritime Law Association, are very interested, for example, in the Arctic and in developments in the Arctic. But we have no objection to there being public participation in the legislation as it comes about.

I don't want to repeat myself, but I think our problem is simply one of priorities. It's one of where do we turn and how we can tell the international community what we're doing with international conventions while at the same time we're applying general legislation such as this, creating remedies to the marine environment.

Mrs. Beatrice Olivastri: I just want to say that it is absolutely necessary for people to participate in work going forward and in new opportunities. I'd have to say that the current collection of opportunities is very fragmented. You can do the search and hunt them out, but as I said earlier, I would see this bill as providing coherence to an electronically wired collection of people in Canada.

I think the opportunity to engage people more fully up front in the positive consultation periods on the development of policy is really well served by this bill. I think the opportunity then to seek recourse is also well served. But I really want to focus on the fact that we have many avenues. Just dealing with something once it's gazetted is fine, but it's not really speaking to the imaginative, creative, and positive kinds of contributions people will make if they know in advance.

The Arctic is one of those areas where we need and should have all the best energy people have around the collection of issues we're going to have there. I think this bill would certainly support that.

The Chair: Sorry, but your time has expired.

It goes by fast when you're having fun, I know.

Mr. Woodworth, you have the last seven minutes.

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

I want to give my thanks to all of the witnesses for attending.

In particular it's nice to see you again, Ms. McClenaghan. I'm sorry that we don't have more opportunity to chat.

In the interests of time, I'd like to address my questions to Professor Amos if I may, just to put a focus on things.

First of all, do I understand correctly that the Ontario Environmental Bill of Rights and the Yukon Environment Act both have a pre-litigation procedure whereby an interested party, before going to court, must request an investigation and the government is given an opportunity to resolve the issue at that stage? Are you aware of that?

Prof. William Amos: I'm aware of that. That's also the case for CEPA 1999. The reason these provisions haven't been used is that the individual who has a problem will say that the request for investigation was—

Mr. Stephen Woodworth: You'll find that what we have to do here, unfortunately, is ask you to answer the question, and if there's time, I'll let you add additional information. But right at the outset, at least, I don't have a lot of time.

My next question to you is this: do you see any benefits from allowing the possibility of resolution before judicial proceedings are instituted?

Prof. William Amos: There are benefits to it, but if it precludes the use of the stick at the end of the day, then no, it's not useful.

Mr. Stephen Woodworth: So what do you think would be the benefits of allowing the possibility of a resolution before a matter goes to court?

Prof. William Amos: Settlement of a dispute and protection of the environment ultimately are going to be goals of this.

● (1655)

Mr. Stephen Woodworth: What you've been pointing out is in fact that this opportunity for the government to step in and resolve issues before litigation has actually held back the numbers of litigation. Am I understanding that correctly?

Prof. William Amos: To the point of nullifying their utility.

Mr. Stephen Woodworth: All right. So in fact the complaint is that those existing provisions don't really encourage or allow enough litigation, correct?

Prof. William Amos: It's not a question of encouraging litigation; it's a question of ensuring that the objectives of the statute are achieved. In this case, it's environmental protection.

Mr. Stephen Woodworth: Yes. So what I'm understanding is that these existing provisions—I think I heard you say—are discouraging people from moving forward with litigation. Did I not hear you correctly?

Prof. William Amos: I think “discouraging” might be a bit kind. It's rendering literally useless the provisions.

Mr. Stephen Woodworth: So the idea with removing the opportunity for the government to resolve issues before court is in fact that more of these sorts of lawsuits will see the light of day, correct?

Prof. William Amos: I think it's a false question. I think that at the end of the day you're going to have settlement processes that occur prior to any litigation. The point is that you need to ensure that the potential for litigation actually affects the behaviour of the litigants.

Mr. Stephen Woodworth: I don't regard it as a false question. In fact, it was raised in the paper that we were given by Professor Boyd. In fact, he felt that these things were obstacles, procedural obstacles, and by removing them there would be no procedural obstacle to litigation. I'd just suggest to you, sir, that in fact it's those kinds of opportunities for resolution that have resulted in a history of not so much litigation in Canada. Don't you agree?

Prof. William Amos: I would agree there is a non-litigious culture that has developed in Canada, primarily because of the difficulties associated with standing and the difficulties of actually bringing an action to court.

Mr. Stephen Woodworth: I've heard you say two different things. I've heard you say that this bill won't increase litigation significantly, and then I've heard you say that Ecojustice might assist citizens to participate more effectively and that this bill opens more doors to access to justice for average citizens.

I heard another witness say that the Ontario legislation is vastly underutilized due to the high thresholds. I'm going to take all of that as being authentic evidence and the notion that more litigation won't be resulting from this bill as not quite so authentic.

But I have another issue I'd like to ask you about, and that is coming out of subclause 23(3) of the bill, which has to do with civil actions. I read subclause 23(3) as a presumption that authorization by another act will not be a defence to an action under clause 23. It's a rebuttable presumption, but am I reading that correctly?

Prof. William Amos: That's my understanding of it. The issue of statutory authorization as a defence is a very live issue that's being debated in the courts these days.

Mr. Stephen Woodworth: Correct. And I notice that, unlike subclause 23(1), which refers to “an Act of Parliament”, subclause 23(3) just refers to “an Act”. May I take from this that subclause 23 (3) would apply equally to provincial acts as well as to federal acts since it doesn't specifically refer to acts of Parliament?

Prof. William Amos: That's a really interesting question of interpretation, and I'm not sure I know the answer to that.

Mr. Stephen Woodworth: My concern, for example, is that if the Government of Alberta passed legislation that allowed the taking of water from the Athabasca, for example, subclause 23(3) would indicate there's a presumption that this is not a defence to a clause 23 lawsuit. Do you think that's a reasonable interpretation?

Prof. William Amos: I don't imagine that the Federal Court would have jurisdiction over the interpretation of provincial acts. However, since clause 23 indicates that the judicial forum available is not simply the Federal Court but also the provincial superior courts, it would be my understanding that paragraph 23(3)(a) is worded broadly so as to give those provincial courts that jurisdiction.

● (1700)

Mr. Stephen Woodworth: Sure. Well, my concern, for example, is that the Province of Quebec might have legislation that authorizes a hydroelectric establishment, but that under this federal legislation the court would have to impose a presumption that the provincial act did not save the operator from section 23 civil action. Does that sound like a reasonable interpretation of this act?

Prof. William Amos: I'm not sure, because at the end of the day you can have an activity that's authorized through a variety of statutory and regulatory mechanisms. One statutory authorization is not going to give a free ticket; it's going to depend on what law is applicable.

Mr. Stephen Woodworth: I agree with you that it's complex, and I'll take your answer that you're not sure.

The Chair: Thank you.

The time has expired.

Mr. Stephen Woodworth: Am I out of time? I have six more questions.

Voices: Oh, oh!

The Chair: We'll go to our five-minute round.

Starting us off will be Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): I'm intrigued by this discussion. I was wondering if you could tell me as succinctly as possibly, Mr. Amos.... It is difficult now for citizens and citizens groups to take court action. That's what we were saying. We're saying that this bill will make it easier.

Could you just tell me very quickly why it's difficult and why this bill will make it easier?

Prof. William Amos: That's a complex question, but I'll try to be as quick as possible.

Number one, it's going to make it much simpler to obtain standing before the courts. Often that's a threshold issue, as the courts will say that you simply don't have standing to bring this forward.

Second of all, it will increase the opportunity for them to engage in proceedings without the same concern, or with a lesser degree of concern, about the potential costs at the back end. There are options here. There are options provided for in the legislation that would reduce adverse cost awards or where litigants could seek reduction or elimination of potential adverse cost awards.

So there are all sorts of hurdles, and we could get into the issues of causation—

Mr. Francis Scarpaleggia: No, that's clear.

Mr. Kneen, I'm really interested in how this bill would strengthen the environmental assessment process. You were talking about the Red mine. Is that what it's called? What is the proper name of the mine?

Mr. Jamie Kneen: It's the Red Chris project.

Mr. Francis Scarpaleggia: Yes, the Red Chris mine.

Mr. Jamie Kneen: The case is referenced as MiningWatch.

Mr. Francis Scarpaleggia: Yes, I'm familiar with it. Could you tell me again how this bill, if it were passed into law, would change that situation? Then we can go on from there to talk about environmental assessment more broadly.

Mr. Jamie Kneen: The guarantee of access to information and public participation is what we missed, especially missed the public participation in that process. That was what we missed and what we ended up taking to court.

Mr. Francis Scarpaleggia: Going now to environmental assessments in general, would passage of this bill mean that there would be no such thing as a screening, the minimal level of screening that is one kind of environmental assessment? In other words, would all screenings become similar to comprehensive reviews, with public participation? Is that what it means?

Mr. Jamie Kneen: I don't think so. That certainly wouldn't help anybody. What would be useful is a more consistent and coherent reporting and public notification system, and then the identification of the public participation that is supposed to take place.

The difficulty we're in right now is that, with the changes in the law, the pre-existing guarantees no longer function. We're looking to this legislation to essentially reinstate those as a baseline.

Mr. Francis Scarpaleggia: Could you elaborate on that? We know now that the minister, through the federal budget legislation, has given himself the power to define the scope of projects.

Would this bill, if it had been in law then, have changed anything? Would it have constrained the government's power essentially to give itself this ability to define the scope of projects in such a way as to avoid environmental assessment?

● (1705)

Mr. Jamie Kneen: No. That determination does not prevent an environmental assessment; what it allows is a change in the project description so as to bypass the comprehensive study list, which is the guaranteed public participation mechanism. This wouldn't affect that determination, so the project description could still be changed by the minister.

What would remain, however, would be the guaranteed public participation, and that's essentially one of our key interests here. Whether or not the minister decides to simply look at one aspect of the project, it would still be subject to that public notification and participation.

Mr. Francis Scarpaleggia: In terms of reviews and investigation, apparently there are no criteria for the minister to follow in deciding whether to perform a review. Do you think criteria should be specified?

Mr. Jamie Kneen: Yes. I think that would be useful.

The Chair: Your time has expired.

Go ahead, Mr. Warawa.

Mr. Mark Warawa: Thank you, Chair.

To each of the witnesses, thank you for being here.

Mr. Amos, I'm going to begin with you. You mentioned that you met with Ms. Duncan and with Nathan Cullen, I believe. To what extent was Ecojustice involved in the drafting of this Bill C-469?

Prof. William Amos: Ecojustice wasn't involved in the drafting of this bill. Back in 2007 and 2008, Ecojustice set about working on a project to develop a model bill of environmental rights. We did extensive research on U.S. and provincial territorial jurisdictions that had experience in this area and then we published it. It's still available on the web. The date—June 2008—is still on it.

We've been engaged ever since in trying to speak with parliamentarians on all sides, trying to engage them and convince them that this is a law reform initiative worthy of pursuing.

Mr. Mark Warawa: Okay.

Were you consulted regarding the drafting of Bill C-469?

Prof. William Amos: I was consulted, yes.

Mr. Mark Warawa: You were, personally. Were others from Ecojustice?

Prof. William Amos: Yes. My colleague Margot Venton and I have both participated at various times in discussions with various parliamentarians.

Mr. Mark Warawa: Okay. Who do you speculate would be the primary people using Bill C-469 if it became legislation? We have environmental groups, ENGOs, as the primary witnesses here. Would you see them as the primary users of this type of legislation?

Prof. William Amos: In my assessment, it would be the average Canadian, the Tim Hortons Canadian, who would be using this.

Mr. Mark Warawa: In Bill C-469, you used the term “resident”, Canadian resident. Could you define “Canadian resident”?

Prof. William Amos: I haven't used that term. The legislation proposes the use of that term—

Mr. Mark Warawa: Right. Could you define that?

Prof. William Amos: That's an immigration law question that I'm probably not qualified to answer, but I would understand that it would be a person who has the particular status of resident under Canadian law.

Mr. Mark Warawa: So it's not necessarily a Canadian citizen. It would be a resident.

Prof. William Amos: Yes.

Mr. Mark Warawa: You support Bill C-469, but you're not sure what “resident” means.

Prof. William Amos: In fact, in our model legislation—and I imagine that my colleague Beatrice Olivastri has comments to this effect—we articulated that the rights should be for all Canadians, so it's Canadians and Canadian entities.

Mr. Mark Warawa: Okay.

Mr. Kneen, you said that Ecojustice assisted in your legal action. You've also said that when existing laws are not enforced, then legal action will promote action. I think that's what you said. You went on to say, "Give us the tools, and we will finish the job". The term “stick” has been used a number of times; when you said “tools,” were you referring to the stick?

Mr. Jamie Kneen: I was referring to a range of legislative and regulatory tools, specifically the measures envisioned in this bill. What I meant by that was that organizations such as ours work with affected communities. We do a lot of education work. We work through the Canadian Environmental Network with other environmental organizations. We do a lot of orientation and training. I think this goes to some of the other questions that have been raised in terms of what the available tools are, and the—

● (1710)

Mr. Mark Warawa: I'm sorry to cut you off, but it was a very short question.

I heard a number of people use the term "stick". Do you agree that whatever the tools are, they're to force the government to take action? I think you said that. Is that correct?

Mr. Jamie Kneen: Yes. I think there's an important distinction between having the ability to sue and actually doing so. The gap we're looking at now is whether the incentive is there on the part of federal agencies to actually fulfill their mandates and enforce their own legislation.

Mr. Mark Warawa: So Bill C-469 would increase the number of court actions against the government and the role of courts in shaping environmental policy.

Mr. Jamie Kneen: I didn't say that.

Mr. Mark Warawa: Do you agree that public policy would be created by litigation or the threat of it?

Mr. Jamie Kneen: No. The entire point is that the threat of litigation is a very strong motivator. Our group doesn't like to litigate any more than anyone else. It's expensive and time-consuming. If there's a lower-cost way of achieving those results, we will choose it every time.

Mr. Mark Warawa: So it's the threat of litigation that's the "stick"?

Mr. Jamie Kneen: I believe so.

The Chair: Thank you.

Your time has expired.

Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras: Thank you very much, Mr. Chair.

The questions raised by my colleague Mr. Woodworth bothered me a lot, particularly in regard to the interpretation of subsection 23(1).

I am trying to come up with a typical case that could happen in Quebec. Let's say Hydro-Québec decides to build a dam in northern Quebec. They have to build a road so that trucks can get to the site, but, unfortunately, that has to be done right next to a fish spawning ground.

So, inevitably, the hydroelectric project, which would result in a reduction of greenhouse gas emissions, could lead to people filing lawsuits because the Fisheries Act, which protects fish habitat, has been contravened.

How do you think that a bill of this kind could help the lawsuit against Hydro-Québec, for example, which is trying to make sure that the fish habitat is protected?

Subclause 23(1) reads as follows:

> 23. (1) Every resident of Canada or entity may seek recourse in the superior courts of the relevant province to protect the environment by bringing a civil action against a person who has contravened, or is likely to contravene, an act of Parliament or a regulation made under an act of Parliament or other statutory instrument, if the contravention has resulted or will likely result in significant environmental harm.

The act of Parliament in question could very well be the Fisheries Act.

Do you think that Bill C-469 would make a lawsuit easier if people wanted to protect the fish habitat, as in the case of the hydroelectric project?

It's a valid question.

Mr. William Amos: It's a good question. I believe the answer is yes. It is possible that it would increase the ability of members of the public, or of any kind of group, to go before the courts to ask that measures be put in place to protect the environment.

You should also know that clause 23 on civil action is only one possibility in a wide range of possibilities. In that situation, the defendant could be Hydro-Québec or anyone else.

But under clause 16, there would also be the possibility of bringing an environmental protection action against the government. So there could also be an action against the federal government for failing to enforce the Fisheries Act.

So various scenarios could happen. The important point is that significant environmental harm must be shown. It could not be done for any reason.

It is the same situation as with the Environment Quality Act in Quebec. Subsection 19.1 gives Quebeckers the right to a healthy environment. They may be granted an injunction and, if they want, they may use that section to challenge measures taken by Hydro-Québec as well.

● (1715)

Mr. Bernard Bigras: Has there been an increase in lawsuits under the Fisheries Act in recent years?

Mr. William Amos: No, not at all. But all this discussion leaves me a little afraid, and I come back to the point Mr. Warawa raised. History tells us that, despite the various provincial and territorial statements in favour of environmental legislation, there have not been many lawsuits. We are talking about less than ten cases in Ontario. In the Northwest Territories, there have been two cases.

So this is not a situation in which public policy and the legislation would be derailed by lawsuits. They are only one possibility. The object of this bill is not to encourage citizens and civil society groups to sue in court. Having read the questions that the government members asked Mr. Boyd and Mr. Elgie, my fear is that they are afraid that it will make Quebec and Canada into more litigious societies. In my opinion, that is not the case at all.

The Chair: Your time is up.

[*English*]

Mr. Calkins, you have the floor.

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

I was so enthused and inspired by the line of questioning from Mr. Woodworth that I think I'll give my time to him. If there's any remaining, I would appreciate using it.

Mr. Stephen Woodworth: Thank you.

Although I'm going to go to a different line of inquiry this time, I will still ask my questions directed to Professor Amos. That is, regarding section 16 and the idea of the Government of Canada as trustee of the environment, and a review to determine if the Government of Canada has failed to fulfill its duties as trustee of the environment, would you consider that one of those duties would be to control or reduce greenhouse gases entering the environment from Canada?

Prof. William Amos: Yes.

Mr. Stephen Woodworth: In the remedy section for that, I notice that if the court determines that the Government of Canada has failed in its duties as trustee, it can order the defendant—that is, the Government of Canada—to take specified preventative measures in relation to that.

I'm wondering if you know of any precedent or principle that would prevent the court from ordering the Government of Canada to control or reduce greenhouse gases by means of putting a price on carbon.

Prof. William Amos: I don't think to this date the courts have done so; however, in the litigation referred to previously, the Kyoto Protocol Implementation Act litigation, the principle of justiciability was raised. It would be an interesting question to see how the courts dealt with that in the context of interpreting this bill.

Mr. Stephen Woodworth: I understand that this is a new bill, in Canada at least, so of course it hasn't been done before, but your agency or organization—correct me if I'm wrong—is pretty highly interested in the issue of controlling or reducing greenhouse gases. Isn't that correct?

● (1720)

Prof. William Amos: That would be part of our mission, yes.

Mr. Stephen Woodworth: All right. So do you think that, had you the opportunity to go to the court and complain that the Government of Canada had not fulfilled its duty to reduce or control greenhouse gases, you might consider asking the court to require the Government of Canada to put a price on carbon in order to prevent greenhouse gases?

Prof. William Amos: I think it's speculative. And at the end of the day, we would probably prefer not to go court, and we would probably prefer to enter into a dialogue with the government as to what appropriate policies could be enacted to make sure that we didn't need to go to court.

Mr. Stephen Woodworth: We've been doing that for years, right?

Prof. William Amos: That would be a matter of some interpretation.

Mr. Stephen Woodworth: I guess what I'm getting at is there are some good things in this act, but one of the concerns I have is the fact that it seems to allow the possibility for a group like yours to go to court and complain, for example, that the Government of Canada is not dealing with greenhouse gases, and to ask the court to impose, as a preventative measure, or indeed in the words of paragraph (i) in subclause 19(1), "any other order that the court considers just", to ask the court to come up with a solution around greenhouse gases and carbon taxes.

That's my concern. Or are you telling me that your group would never ask the court to do such a thing?

Prof. William Amos: No. What I would say is that this bill isn't about carbon taxes. That's transparent. However—

Mr. Stephen Woodworth: I never said it was.

Prof. William Amos: No, but I mean this is a line of questioning that is consistent with the previous meeting, which goes to this politically contentious issue of carbon taxes. What I would say is that I would agree that the enactment of this bill would reflect a legislative commitment, on the part of parliamentarians, to the worthiness of environmental issues for adjudication and the recognition that environmental protection concerns are deserving of judicial time and resources. So there's a recognition that—

Mr. Stephen Woodworth: And judicial resolution...?

Prof. William Amos: On occasion, but not necessarily. There—

Mr. Stephen Woodworth: Not necessarily, but quite possibly.

Prof. William Amos: Yes, absolutely, quite possibly. But as many of our speakers have already mentioned, this is focused on guaranteeing participation and guaranteeing access to information, which then allows government decision-makers to engage with citizens to hopefully prevent that end-of-the-line situation.

Mr. Stephen Woodworth: In that case, do you think we could do something with this act to take away the sections that worry me, in that we might end up putting policy-making into the hands of judges? Could we maybe amend that out of this act?

Prof. William Amos: I think that's an interesting proposal that I would disagree with entirely. The reason I most disagree with it—and I'm actually surprised that you wouldn't disagree with it—is that the stated position of this government is that they're going to be watching what happens in the U.S. vis-à-vis climate change and developing our own climate change policy here with a view to theirs.

Here in Canada, there's nothing wrong with looking at what's happened in the U.S., and they have a strong tradition of using litigation to help generate societally beneficial outcomes through environmental challenges in the courts.

The Chair: Thank you.

Mr. Stephen Woodworth: You're suggesting that's the route we should go.

Prof. William Amos: I'm not suggesting that it's where we have to go—

Mr. Stephen Woodworth: Sorry, but I think I'm out of time.

Prof. William Amos: —but I'm suggesting that it's one mechanism that could strengthen the environmental governance regime in Canada.

The Chair: Thank you very much.

As we discussed at the beginning of the meeting, Ms. Duncan wanted some time to discuss our upcoming agenda for our Wednesday meeting, I believe.

With that, I'm going to dismiss our witnesses. I want to thank all five of you for taking time out of your busy schedules to appear today to provide your input on this act. We'll definitely take your testimony and written briefs and use them in our evaluation and report back to Parliament, as deemed necessary.

With that, Ms. Duncan, you wanted to discuss our Wednesday meeting.

Ms. Linda Duncan: Yes, Mr. Chair.

I know you are trying to go in the direction that I am and I appreciate your efforts in that regard. I was just troubled when I received this notice that all of a sudden we were reviewing SARA and, after the fact, it has been explained.

I just want to make sure that in future we make sure that all of the committee is on board with what we're going to be doing, because that was inconsistent with what we had agreed to. I'm worried that it might be opening a Pandora's box. Are we going to be doing this every meeting from now on if we have difficulty contacting witnesses?

Is there anything we committee members can do to help facilitate making witnesses more readily available in a timely fashion to complete the review of this bill, which I'm quite happy to expedite?

● (1725)

The Chair: I'll respond first, before I give the floor to you, Mr. Warawa.

It's part of my responsibility and duty as chair of this committee to fulfill the administrative role of making sure that our meetings are scheduled and that we are productive and working. I have no control, unfortunately, over witnesses.

We did have four witnesses who originally said they would be appearing on Wednesday. All four have now since cancelled on us. In the interests of time, especially since the last one to decline the invitation did so just around lunchtime today, and to keep us moving forward, I made the decision that we go back to SARA on Wednesday and continue working on the issues and options paper.

If you, as committee members, want to be talking to the potential witnesses we have invited to ensure that they do show up, I'd encourage you to do so. Unfortunately, we have no control over their schedules. But it does make it much more difficult for us to present a balanced report when we're not getting all the information brought forward.

Go ahead, Mr. Warawa.

Mr. Mark Warawa: Thank you, Chair. I just want to address the comments made by Ms. Duncan that there was an agreed agenda. There was not an agreed agenda. I think there was a motion that was passed by the coalition to not deal with SARA, which I disagreed with, and I made that very clear to each of the members.

I think we had a moral responsibility to fufill our first responsibility, which was to finish SARA and to make sure that species that are at risk are being dealt with properly. But that was voted on—the coalition said no, we don't want to deal with SARA—so we're now dealing with Bill C-469.

I'm a little concerned also that the number of witnesses is being very one-sided. We're not hearing from industry. We're not hearing from first nations. We're not hearing from fishermen. We're not hearing from Hydro-Québec; we heard from testimony that Hydro-Québec could be shut down, and yet we're forging ahead with Bill C-469.

I think we need to hear witnesses or we need to proceed to clause-by-clause, but to have this go on, and without an agreement about how long this is going to be, I think it's fruitless.

The Chair: We have a point of order over here, Mr. Warawa.

If it's debate, I'll be ruling against it real quick.

Mr. Gerard Kennedy: No. I think we're hearing debate, but I'm not wanting to join it. I thought we passed a motion from a subcommittee. Is that not correct?

The Chair: We did. I was going to get to that. There was a report, which is public, that came from the subcommittee and that set the agenda. That takes us so far and after that then I have to play my role as the chair to make sure that our meetings are filled.

Mr. Gerard Kennedy: Thank you, Chair.

The Chair: Mr. Warawa, if you could, wrap up your comments, please.

Mr. Mark Warawa: I think I've made my point.

The Chair: Okay. If I—

Mr. Mark Warawa: The point is that on Bill C-469, if Ms. Duncan would like to have us move on to clause-by-clause, that's fine, but if we're going to hear from witnesses, there should be a balanced presentation so that we're hearing not just from ENGOs, which are very important to hear from...but they're the main beneficiaries. They're the ones who have assisted Ms. Duncan and the NDP in writing this legislation. It really appears to be the tail wagging the dog. I'm very concerned that we're not getting a balanced presentation from witnesses.

The Chair: Mr. Warawa, I'll just say in defence of the clerk and the analysts here, as well as other members of this committee, that we did extend invitations to everyone we had on our list, including first nations and including different members of industry. Unfortunately, we haven't heard back from most of them, and the ones that originally said that they were going to be here are now backing out. So we're put in kind of a quandary, and I'm trying to find the best way to get through the quagmire.

With that, are there any other comments?

Ms. Duncan.

Ms. Linda Duncan: Thank you, Mr. Chair, for summing that up. Nobody I've heard of is objecting to any of the witness names that are put forward. It's the witnesses themselves who have pulled out, and nobody's more disappointed than I am that we're not hearing from all sides. I know that the clerk is bending over backwards to try to reach people.

I'm raising this because I have undertaken to expedite the review of my bill. I've worked very cooperatively. I respect the view of every opinion in this committee and I don't think it's fair to be name-calling to one side of this table. It was a majority that voted in favour of an agenda and so be it.

Let's not just keep reinventing the wheel. So we will be moving Wednesday. Hopefully we can complete the table of contents and the analysts can start their work.

I think it's incumbent upon all the committee members to be reaching out to complete the review of this bill and identify witnesses. I mean, if a particular industry representative.... I didn't put forward those names, so I can't speak to why they would suddenly not be available. If we can come up with other industry representatives, I would be delighted to hear from industry. That's why I'm suggesting that maybe the committee can assist the clerk.

● (1730)

The Chair: Those are good points. I would just also say, finally, that since our meeting on Wednesday is changing and we aren't going to hear from more of our witnesses until after we get back from break week, I would suggest to anyone who wants to put forward amendments to Bill C-469 to have them in to the clerk by Wednesday, November 17.

With that, I'll call for a motion to adjourn.

An hon. member: So moved.

The Chair: We're out of here.

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