House of Commons
CANADA

# Standing Committee on Environment and Sustainable Development

ENVI • NUMBER 034 • 3rd SESSION • 40th PARLIAMENT

**EVIDENCE**

## Monday, November 15, 2010

## Chair

**Mr. James Bezan**

# Standing Committee on Environment and Sustainable Development

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● (1535)

[*English*]

**The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)):** We'll call this meeting to order. I want to welcome everyone to our 34th meeting.

As we all know, we're televised today, and we're continuing with our study of Bill C-469, an act to establish a Canadian Environmental Bill of Rights.

Joining us today we have a number of witnesses. From the Shipping Federation of Canada, we have Michael Broad, who is the president. From the Canadian Association of Petroleum Producers, we have Tom Huffaker, vice-president of policy and environment. Joining us from the Canadian Chamber of Commerce we have Warren Everson, who is the senior vice-president of policy, and Johan van't Hof, who is the chief executive officer of Tonbridge Power Inc.

I want to welcome all of you here. As I explained earlier, we do have a ten-minute time limit for your opening comments.

With that, I'd kick it off with Mr. Broad, if you can bring us your opening comments, please.

**Mr. Michael Broad (President, Shipping Federation of Canada):** Thank you, Mr. Chairman.

[*Translation*]

Ladies and gentlemen, members of the committee, thank you for having agreed to hear us today on Bill C-469. You received the English and French version of our short brief several weeks ago already. My intent today is not to reread out loud a document you have probably already looked at.

The Shipping Federation of Canada is federally regulated and represents international maritime transport headed for or leaving Canadian ports. Our members are listed at the end of our brief and they operate ships that carry Canada's international trade. Our industry is regulated by a broad spectrum of regulations that cover all of our operations, whether we are referring to the ship, its equipment, its cargo, its crew, its containment material, processes or management. These regulations are based in large measure on international conventions Canada subscribes to.

The position we wish to share with you today is that of operators who wonder how the new act will impact the stability of the regulatory framework that governs their activities, and whether the new civil action remedy may be invoked against operations that are in full compliance with regulations.

Our concern is that at this time, we still don't know how the two new remedies introduced by the legislation will apply, i.e. the judicial review and the civil action, and what their implications are for federally regulated industries.

[*English*]

Although we have read with interest the speeches delivered by the various political parties when the bill was introduced and discussed at second reading, they have not furthered our understanding of how the new act, and its new remedies in particular, will actually work, nor has the parliamentary library yet produced any background research that would contribute to our comprehension of this bill. We have also read the transcripts of the November 1 hearing before this committee, but the discussion addressed the government's lack of action rather than its regulatory production. As a result, our concern about the impact that the new remedies will have on federally regulated industries such as our own remains as acute now as when we first read the bill. This is why we are here before you today to clarify the legislator's intent with respect to this bill and hopefully find a response to our questions and concerns.

Our fundamental question with respect to Bill C-469 is as follows. Will a federally regulated operator be safe if he complies with all of the relevant federal regulations, or will he remain exposed to the civil action remedy introduced by the bill? Clause 23 of the proposed bill provides that every resident of Canada can seek recourse in Superior Court against a person who has contravened, or is likely to contravene, an act of Parliament or a regulation, if such a contravention has resulted or will likely result in significant environmental harm.

The Canadian Environmental Bill of Rights is an act of Parliament, and clause 9 of the act guarantees the right to a healthy environment. Therefore, Bill C-469 makes it possible for anyone to initiate court proceedings against a federally regulated company and claim that the company infringes on his or her right to a healthy environment. We are especially alarmed by subclause 23(3), which, if we have read it correctly, simply implies that regulatory compliance is not a defence. This is of paramount significance for us, because regulatory compliance is the necessary safe haven for doing business. Without a guarantee that regulatory compliance will make it safe for you to conduct business, business becomes an activity that is too risky to undertake.

Related to this concern is our other question: how reliable will the regulations adopted under the current regulatory process be? Will anybody be able to challenge them at any time under the new judicial review remedy, on the basis that another standard should have been adopted instead? If so, all of the operators who rely on that particular standard would face nothing but confusion and uncertainty. The wording of clause 16 of the bill, which deals with the judicial review process, is so wide that we can easily foresee this section being used to challenge the government on any environmental regulatory standard at any time. This runs exactly counter to the regulatory predictability that is so essential for our industry to operate within.

Does regulatory compliance still have any relevance and value? Does the regulatory process still have any relevance or value? These are the questions that we cannot answer based on what we have read in the bill.

In view of the foregoing, we respectfully submit that if it is not your intent that the remedies introduced by Bill C-469 be applicable against regulatory standards and regulatory compliance—clauses 16 and 23 respectively—this should be stated explicitly. We have suggested wording towards this end in our brief.

Although our brief focuses on the issue of regulatory standards, because it is a key consideration for federally regulated operators, our reading of the bill raises other questions as well, including its consistency with international conventions on maritime liability. This is a point that was raised in the presentation of the Canadian Maritime Law Association on November 1, which, needless to say, we support.

We hope that your committee will have the opportunity to hear from other witnesses as well, including representatives of the federal departments that produce and administer environmental regulations, and from specialists in public and administrative law.

There is an old saying that the road to hell is paved with good intentions, and we are concerned that the legislator, buoyed by the enthusiasm surrounding this bill, may fail to adequately consider how the act's mechanisms will actually work within the existing statutory framework. Although our testimony is designed to highlight our industry's concerns regarding the relationship between the remedies proposed by the bill and the regulatory standards by which we are governed, we suspect there are other issues that should be clarified before, rather than after, the bill receives royal assent.

● (1540)

Thank you for your attention. We would be pleased to answer any questions.

**The Chair:** Thank you, Mr. Broad.

Mr. Huffaker, you can go ahead.

**Mr. Tom Huffaker (Vice-President, Policy and Environment, Canadian Association of Petroleum Producers):** Thank you, Mr. Chairman and committee members.

We are pleased to have this opportunity to comment on Bill C-469 today.

I am Tom Huffaker, vice-president for policy and environment at the Canadian Association of Petroleum Producers.

As many of our concerns with this bill are legal in nature, we have provided a separate legal opinion. I am pleased to have with me the author of that analysis, Shawn Denstedt, a partner at Osler, Hoskin and Harcourt. He is available to assist me in answering your questions today.

I will make a few high-level comments on our overriding concerns with the bill rather than focusing on the many points of detailed objection that would arise from a line-by-line review. We provided a copy of our full statement last week, and I will make a slightly shorter statement today.

CAPP represents companies large and small that explore for and develop Canada's natural gas and oil resources. We are part of a large, growing, and technologically advanced industry that contributes greatly to the wealth of the country, with over 500,000 Canadians directly or indirectly employed in the industry, annual investments of $110 billion, and payments to government exceeding $15 billion per year.

Canadians expect safe, reliable, and responsible energy development and delivery. Meeting high environmental standards is part of that expectation. We embrace those expectations. Canada has among the highest environmental standards in the world. Development is subject to numerous licensing and approval processes. Environmental considerations form part of all the decisions on whether to approve developments that could have an environmental impact. The Canadian Environmental Assessment Act provides a rigorous process for assessing environmental effects.

The provinces where we operate have their own high environmental standards and rigorous regulatory regimes. These standards operate within a careful balance of federal and provincial law. There is no bright line where federal environmental jurisdiction ends and provincial jurisdiction begins. Respect for the rights and responsibilities of the differing jurisdictions is, of course, fundamental in Canada. We need wise and experienced policy-makers and politicians to ensure that a balance and respect for provincial jurisdiction is maintained.

The oil and gas industry, like many other industries here, is regulated from cradle to grave. The regulatory framework is open and transparent. Canadians who are affected by energy projects have robust opportunities to participate in regulatory processes. The National Energy Board conducts itself in a fully transparent manner, and all relevant input and opinion from any person or entity with a reasonable interest is accepted.

This bill is an appeal to the rising environmental sensibilities of Canadians. We are all acutely aware of the importance of environmental performance and the need for industry to meet high standards. However, we frankly do not see what problem this bill is trying to solve. Canadians already enjoy open and transparent environmental decision-making. This bill will only burden responsible development, while providing new avenues for those seeking to discourage development, growth, and job creation.

This bill would allow any resident of Canada to go to court, claiming that the Government of Canada has failed to carry out its duty as a trustee of the environment. And courts could grant a wide range of remedies. So the delicate art of politics on which the respect for federal and provincial powers now depends will become subject to rulings by federal courts brought by environmental activists.

Bill C-469 imposes a quasi-constitutional obligation, in our view, on the government to place environmental protection above all else. We embrace the need to place high priority on environmental protection, but environmental protection does not stand alone as a priority. The economy and energy security also rank high. More practically, Canadians want high environmental standards, but they also expect government and regulators to emphasize worker and public safety, jobs, and energy to heat their homes and power their vehicles.

Our own polling confirms that the overwhelming majority of Canadians believe it is not only important to balance environmental protection, energy security, and economic priorities, but possible. This bill threatens the very balance our public demands and believes in, and which is already codified in the federal Sustainable Development Act.

The Canadian legal system is a leader globally in protecting individual rights. However, it is one thing for the law to give me a right to protect the things I own by suing someone who trespasses on my rights, and it is quite another for every single Canadian resident to have the legal right to take environmental questions to court. These are questions of public policy that are for governments to decide through legitimate democratic processes. Every adult Canadian citizen can vote. Can every Canadian adult afford to go to court?

When activists bring cases to court under this bill, can every Canadian go down to the courthouse and ask to have their voice heard, maybe to protect the economic opportunity for their children in the future? Of course not.

● (1545)

This bill would undermine the proper role of elected officials. We believe that we need to pause, and think long and hard before we choose to diminish the ability of our democratically elected leaders, such as those in this room, to address complex problems.

Under this bill, no industry large or small can operate secure in the knowledge that they are on safe ground as long as they comply with the general law and any permits and licences they have been issued. Under this bill it does not matter whether those permits and licences have been issued under federal, provincial, or territorial law.

In a civil action, under clause 23 of this bill as we read it, a Canadian or resident or entity, whether or not they have any direct interest in the matter, need only claim contravention of an act of Parliament alleging significant environmental harm. The entities that can bring such action include environmental organizations that specialize in taking actions to court. All they need to do is open an office in Canada. Where the money to fund it comes from can be anywhere.

Businesses large and small need predictability to invest and provide the jobs that Canadians need. We look to government to provide that predictability, not only through laws and regulations that are enacted but also through the policies that guide implementation of those laws and regulations as well as the practical wisdom that is brought to bear when decisions are made to take enforcement action.

There will be no predictability, in our view, if Bill C-469 becomes law. The carefully balanced policies of government and the wise counsel of public servants will be held hostage to the court actions of single-interest groups. The bill will significantly increase the risks and costs of doing business in Canada, in our view. The result will be a loss of competitiveness for Canada, with reduced investment in economic opportunities and fewer jobs.

Capital is mobile, and while it is drawn to countries that have advanced environmental, regulatory, and legal systems, such as Canada, those systems have to be predictable and reliable for countries to be attractive to investors. We support good policy that holds industry to high standards of environmental performance.

In our view, Bill C-469 is not good policy for Canada. We believe it is fundamentally flawed and we respectfully submit that it cannot be amended into good policy.

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

**The Chair:** Thank you, Mr. Huffaker.

Mr. Everson, your comments from the Chamber of Commerce, please.

● (1550)

**Mr. Warren Everson (Senior Vice-President, Policy, Canadian Chamber of Commerce):** Thank you very much.

My name is Warren Everson. I'm the senior vice-president of the Chamber of Commerce.

[*Translation*]

As you know, the Canadian Chamber of Commerce is the organization that is the most representative of business people in Canada. Thanks to our network of more than 400 local chambers of commerce, we speak on behalf of 192,000 businesses of all sizes, active throughout the country.

[*English*]

Bill C-469 would create a Canadian environmental bill of rights. The intention of the bill is to safeguard the right of present and future Canadians to a healthy and ecologically balanced environment. That's a laudable goal, but this bill is not the correct approach. In our view, it would fundamentally change the nature of environmental protection in Canada, increase uncertainty, invite litigation, and create a new barrier to investment.

We oppose Bill C-469 in principle and we have numerous specific concerns with the bill. In particular, the principle is that Bill C-469 dismisses decades of work done by parliamentarians to establish national agencies to protect the environment. It proposes to replace a predictable process, whereby the provinces and the federal government are responsible for environmental regulation, with an endless litigation process brought by private parties. It would in effect turn the Federal Court into an environmental protection agency.

The new rights afforded to the bill do not have to be exercised for environmental purpose. They could be used for commercial benefit. They could be used to impose a private agenda onto a large population's agenda.

Currently, the federal government has broad discretion to balance the needs of environment with other societal concerns. This bill would take away that discretion and permit the courts to continuously challenge the decisions made by government or even by Parliament. Not very many people would want to invest in a situation in which any resident or entity could take them to court even if they were following all the rules.

Mr. Chairman, as I mentioned to you, I have a brief and a whole series of specific issues with the bill, but in light of the fact that I was able to persuade one of the members of the Chamber of Commerce who has direct involvement with these matters to testify, I'd like to just very briefly conclude and then submit my brief to the committee for its use and introduce my colleague.

It will come as no surprise to the committee that my conclusion is that Bill C-469 should be set aside. People can certainly take issue with environmental laws and they can say we don't have enough of them or that we're not enforcing them adequately, but if that's the case, then citizens should be dealing with Parliament, not going around the legislative process to the courts.

The bill before you today seems to us to be a statement of frustration with current process. What it is not is a working law. It's a blank cheque and it asks the Federal Court to fill in the blanks. Courts have said over and over again in the past that it's not the job of the court to make policy, and you politicians have said many, many times that it is not the prerogative of judges to make law in Parliament's place.

Thank you very much.

**The Chair:** Mr. van't Hof.

**Mr. Johan van't Hof (Chief Executive Officer, Tonbridge Power Inc., Canadian Chamber of Commerce):** Mr. Chairman and honourable members, thank you very much for taking the time to hear me.

My name is Johan van't Hof, and I am the chief executive officer of a publicly traded company on the Toronto Stock Exchange called Tonbridge Power Inc. My role here as a CEO is to talk to you briefly about my experiences in getting permitted a 214-mile power line that connects Lethbridge to the United States. It may come as a surprise to you that Alberta is not connected at all to the United States from an electricity perspective, which is a bit of a paradox, given that it is the energy province of our country.

I also speak to you as someone who has worked for 10 years in about 23 countries doing infrastructure finance, where many of those countries became failed countries. I pondered long and hard as I was going through this why that was, because it's very relevant to our conversation today.

I noticed that the countries that accelerate and create wealth so they can do the right things for their citizens have a stable currency, an independent judiciary, proper infrastructure that works and can be relied on, education, and a lack of corruption. Most importantly, they have a rule of law, you know what it is, and you can count on it to be enforced, so you make decisions on a risk profile that is known. In several of the countries I worked in, those factors were no longer the case. That is the case in our country, and that is one of the challenges I have with this particular bill, because it would make the test that people like me have to meet terribly opaque.

Our project is a 214-mile power line that will connect 600 megawatts of wind power to the grids in both the United States and Alberta. It is funded under the Obama stimulus bill—$161 million—and it is creating 400 jobs on both sides of the border. We are in construction now, but in order to do so we had to meet the tests of six permits, including from the National Energy Board, the Alberta Energy and Utilities Board, and the Western Electricity Coordinating Council. We had to get a presidential permit from the Department of Energy. We had to meet the NEPA and EPA standards. We met with the Montana Department of Environmental Quality, the State Historic Preservation Office, and on and on. There were over 16 agencies we had to meet.

On the environmental impact statement we had to do—and this is in an area of our country and of the United States—we do not cut down one tree. It is the plains. The spans for our poles are 1,200 feet, and the poles are only four feet in diameter, so the impact is almost minimal. The environmental impact statement was 1,100 pages. We had several dozen open houses, and we received all of our permits in 2008. We did not receive certainty on this point until the matter was resolved by the Supreme Court of Canada, because our opponents literally tried to litigate us into the ground. That is essentially where I have this issue.

It's not that we don't need environmental laws; we do. I am a proud Canadian, and I want to have a society and a country of which I'm proud when I go global. The issue is that when we look at economic growth, that means impacts. The more growth we have, the more electricity we need; the more electricity we need, the more power lines people like me have to put in. We don't put them in because we want to; we put them in because they're demanded, because people buy more televisions.

But here's the point, honourable members. Without knowing what the rule of law is, unless people like me know what the tests are—I'm happy to meet them and I'll put the capital in to meet them fully and exceed them—where the sidelines are, that they will be enforced, and I can count on them to be enforced, we're not going to go into it.

So to conclude, my concern with this bill is that it would facilitate and enable 20 years of litigation glue. Merely the threat of that litigation glue will mean that nothing gets done or proposed, because precisely the lack of legal clarity will chill any investment consideration.

A fundamental precondition of commercial development, wealth creation, and economic acceleration is that there is a rule of law that can be enforced and counted on so participants know what they have to meet, and that if they meet it they are acceptable. That is what we're asking for. We just want to know reliably what tests we need to meet. In my judgment, this bill fails that test completely.

Thank you.

● (1555)

**The Chair:** Thank you very much.

I want to thank all our witnesses for staying well under the time limit.

We'll go to our first round of seven minutes. Mr. Scarpaleggia, please start us off.

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

You're correct, Chair. It was very efficient testimony, I thought.

Mr. Broad, I was reading your brief last week. I'm curious about the interaction between domestic regulations and the standards under international conventions, and how this bill would change that interface or undermine the efficient functioning of that interface. You did talk about it in your brief.

There's one thing that I didn't understand, though, and it's where you say in relation to this point about international conventions that Canada's internal standards tend to be higher than the international standards under conventions. Given that, how would that put Canada in a compromising situation if our standards are already higher than international standards? That's one question.

The second has to do with the situation with the State of New York at the moment in regard to ballast water. I wonder if you have any thoughts about that as a kind of case study of what could happen if this bill were adopted. As you know, the regulations are so stringent for docking in New York State in terms of treating a ship's ballast water that if the regulations aren't changed they're saying there would be no traffic into New York State.

If you could just start by answering those two questions, I'd really appreciate it.

**Mr. Michael Broad:** Thank you.

With respect to the first question, in international shipping, as it is described, the ships go all over the world and trade all over the world, so they need to be assured that the laws are fairly standard throughout the world. Through a UN agency called the International Maritime Organization, there are laws made about the operation of ships and the like, and the Canadian government follows the international laws and comes out with their own laws to go along with the international laws.

I guess what we're saying is that if we sign an international treaty, this bill, if it goes through as is, may go against the international treaty. The only problem we have is that you could have a situation whereby international law dictates that you must have a certain process or machinery on your ship, we agree to it, and then a month later some other process or equipment comes out that is a bit better. After you've just spent millions of dollars reconfiguring your ship to put on the new stuff, this other equipment becomes available. Could a citizen come up to us and say, “Well, you didn't use the best available technology”?

You get into situations where you're following international law and following Canadian law and regulation, yet if something changes in the marketplace so that a month later a process comes out that might be a bit better, you can't afford to just change it overnight. I guess that's what we're getting at in that point.

● (1600)

**Mr. Francis Scarpaleggia:** Is it possible that using the new technology that appeared after the international regulations were made or international standards were set would put you in conflict with international standards?

**Mr. Michael Broad:** Absolutely.

**Mr. Francis Scarpaleggia:** Okay.

In terms of the New York State situation, do you have any comments?

**Mr. Michael Broad:** Yes. Well, that's a situation where the United States federal government has certain regulations that follow international law and unfortunately the State of New York decided to come out with a regulation on ballast water that was different from the federal and international standards.

What they're asking for is that by 2012 any ship transiting New York waters must have equipment on board that's 100 times more efficient than the existing standards out there. Unfortunately, there's no equipment that is 100 times better than the existing standard: what you've got is what you've got. Even if this equipment were available, you could not measure the efficacy of the equipment. You just need too much water.

So a state government has come out with a law that is contrary to the federal law and international law, and that will essentially block trade in the Great Lakes for ships going up the Great Lakes. Basically, it's preventing trade in Ontario ports and all Canadian ports up the lakes. It's preventing ships from going up there and trading. Unless that law is changed, it's going to have a tremendous effect on Canada's trading lanes.

**Mr. Francis Scarpaleggia:** Thank you.

Mr. Huffaker, you operate under the Ontario Environmental Bill of Rights, I guess. Your industry would operate under that bill of rights, so I wonder if you could tell us if that bill of rights has been detrimental to the oil industry in Canada.

**Mr. Tom Huffaker:** I think the key point we would make is that we don't see it as having the same kind of structure and being the same kind of law or the same kind of provision. I can't cite a specific example where it has been a problem in Ontario, but I can say it's clearly much narrower in the sense of being provincial only and not applying, obviously, across the entire country.

**Mr. Francis Scarpaleggia:** But does it give any citizen, any resident of Ontario, the right to call into question a regulation the way this bill does? Is it as aggressive that way?

**Mr. Tom Huffaker:** If I may, let me ask Mr. Denstedt if he would be able to provide a further answer to that.

I have no further answer to that, really. I am sorry.

**Mr. Francis Scarpaleggia:** I understand your point about democratic processes and so on, and the fact that money from outside of Canada could come in to finance court cases against the Canadian economic interests. In that case, would you agree to applying the principles of election financing, if you will, to the financing of environmental court cases? In other words, if you're not a citizen of Canada, you can't finance an action by an NGO in Canada against the Canadian economic interests.

● (1605)

**Mr. Tom Huffaker:** I would not presume to be an expert in deciding exactly how the financing should be structured, but that is one of a long list of reasons why we see it as fundamentally flawed.

**The Chair:** Thank you; your time has expired.

[*Translation*]

Mr. Bigras, you have the floor.

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

I also wish to thank our witnesses.

I liked what Mr. Huffaker had to say in reply to Mr. Scarpaleggia's question. He pointed out that there could be differences regarding environmental law and the right to a healthy environment, whether under Ontario law or under this legislation. In this legislation, the right to a healthy environment is being created, which is a good thing. I don't see a problem with that principle. There may be a problem insofar as civil actions are concerned.

Perhaps the matter needs to be researched, but according to what I've understood, where these rights exist in the provinces, they are subject to more guidelines than the provisions of the bill before us. It might be interesting to conduct a comparative analysis of this bill and what exists in the provinces, such as in Quebec. Quebec adopted a comparable model.

That said, there are two groups of witnesses before us and I believe I understand that according to one group, we are being urged to throw the bill overboard. However, one witness said that it might be possible to work with the bill, among other things by clarifying subclause 23(3).

The Shipping Federation of Canada said in its brief that the simple fact of alleging environmental harm will be sufficient to trigger procedures, and that is the problem. I think that that is an important point.

If all of this were subject to limits and guidelines, namely as to the grounds that could trigger legal action, do you think it would be possible to improve the bill? My question is addressed to all of you.

[*English*]

**Mr. Michael Broad:** After listening to Johan, I don't think so. But if I understood the question correctly, I think what we focused on was what we thought were the big problems for us in this bill. We're not saying we're for the bill, and we're not against it, but we're only saying that this bill will provide problems for us in knowing where we stand, knowing where our operators stand.

**Mr. Tom Huffaker:** I think we feel broadly that effectively granting everyone a standing to sue over almost anything, anywhere, is such a fundamental problem to certainty in the investment climate, such a fundamental problem to federal-provincial relations, and ignores, as I said, the balance of rights and responsibilities that we all think are important, we see it as fundamentally flawed.

**Mr. Warren Everson:** I'm not in a position to comment on how the civil actions work within the provinces, but I am aware they do exist in a number of provinces. It begs the question of whether or not you would need a federal statute on top of that to allow additional layers of citizen involvement.

I will say that I believe the work that you would need to do to make this bill workable is excessive compared to the value of the bill. For example, there isn't in the bill even any guidance to a court. It's hard to justify being too sympathetic to the bench, perhaps, but some judge somewhere is going to be served with a case and is going to look for a frivolity clause that could be invoked, or for a repetition clause.

When the access to information legislation was enacted in the federal House—I was working on the Hill at the time—we saw a number of petitioners after several years bring case after case after case towards the same defendants, or those who effectively became defendants. No one in Parliament intended it to be that way, but the way the bill was worded allowed it.

So giving the courts some tools to work with to reject frivolous claims, for example, would be a useful piece of work. But I do think the bill requires so much work that it's just not beneficial.

● (1610)

[*Translation*]

**Mr. Bernard Bigras:** What do you say to those who claim that the same type of model, being used in some provinces and elsewhere in the world, has not increased the number of litigations? That is the case in Quebec. The claim that these famous activists are going to rise up and launch lawsuits for more or less groundless reasons has not been borne out. That is because there were guidelines. You say that you are afraid of this bill because it does not set out any limits, any guidelines. However, the models that were put into effect did not in fact lead to an astronomical increase in the number of lawsuits. That is not what happened.

[*English*]

**Mr. Warren Everson:** I think that's an extremely good point, and I can hear Johan wanting to get into this conversation.

I'm not a lawyer, and I can't comment on the difference between a civil action in the federal House and the common law. There is certainly a jurisdictional issue this committee would have to confront in the case of a spill, but saying that a statute exists at a provincial level and has not been abused is not by itself a rationale for introducing it in the federal House.

**Mr. Johan van't Hof:** Mr. Chairman and honourable members, I speak to you as a finance person. I'm a project finance person and I get projects done: I get them financed and I get them built. I can tell you that you will not get projects financed until they are beyond the risk of appeal. Bankers will not take the risk of appeal. Therefore, the very threat of being able to persistently and consistently take things beyond some level.... We have one group in Alberta on our case that's now on their eighth try in the Federal Court of Appeal. It's a case of *res judicata*, for those of you who are lawyers, so we are able to defeat it every time.

But the simple fact is that if there is a threat of litigation chill, these projects do not get financed; and accordingly, nothing gets done. We absolutely need to know what the test is, to know what the clarity is. If we haven't met it, then by all means, we should be forced to meet it. But I can tell you that the threat of appeal is sufficient to stop a project.

[*Translation*]

**The Chair:** Thank you very much. Your time has expired.

[*English*]

Ms. Duncan, you have the floor.

**Ms. Linda Duncan (Edmonton—Strathcona, NDP):** Thank you, Mr. Chair. And I'd like to thank the representatives for presenting on my bill.

Mr. Broad, your association, the Shipping Federation of Canada, and the Canadian Merchant Service Guild, the International Shipowners Alliance of Canada, and the International Transport Workers' Federation all intervened against the government's enhanced enforcement bill, Bill C-16, did you not?

**Mr. Michael Broad:** Yes.

**Ms. Linda Duncan:** Thank you.

**Mr. Michael Broad:** It was for one reason: that the bill introduced the possibility of criminalizing seafarers.

**Ms. Linda Duncan:** Thanks.

Mr. Huffaker, it's nice to meet you.

I've had a long association with your predecessor organization, the Canadian Petroleum Association, and did some work with CAPP when I was on the board of the Clean Air Strategic Alliance. I really have enjoyed working with CAPP members.

Can I ask you, does CAPP support the position taken by the Canadian Petroleum Association in my time in the 1980s and early 1990s that once laws are enacted, whether federal or provincial, they should be effectively enforced?

**Mr. Tom Huffaker:** Obviously there are questions of rules and regulations and how those are promulgated, but yes, we support the enforcement of the law.

**Ms. Linda Duncan:** And would you support the position...? My understanding has always been that the position at the provincial table is that all persons who are concerned or impacted by an environmental law, policy, or regulation should have the opportunity to also have input into the making of that law.

**Mr. Tom Huffaker:** I think the law has generally been that the people who are impacted.... We believe that under existing procedures, both federally and provincially, Canadians do have robust opportunity, if they're impacted by a project, to be engaged.

**Ms. Linda Duncan:** I have to admit, Mr. Huffaker, that I'm shocked by a statement in your brief where you seem to suggest the public shouldn't be delving into these matters, that we should be leaving the making of law and the monitoring and the enforcement and the litigation to the government. And yet when we look at the list of people and organizations who have met with the Minister of the Environment, 99% of that list is industry, and a lot of them oil and gas.

So are you suggesting that industries should be able to influence environmental policy-making and law, and not the public?

● (1615)

**Mr. Tom Huffaker:** Of course not. We're suggesting that people who are directly impacted should obviously have the ability to intervene or be involved in projects where they are impacted, as they've been very liberally under NEB and other sorts of hearings. We're suggesting it is a bridge too far to give standing to everyone who perceives themselves as interested in their own minds the right to intervene and bring actions on any decision of government relating to environmental policy.

**Ms. Linda Duncan:** So you're only saying we should restrict the rights of the public when it comes to litigation. Because your presentation says we should leave these decisions to the government, including the making of law. So could you just clarify that?

**Mr. Tom Huffaker:** I think we refer in our testimony to the fact that the public and interested parties, those who are impacted, have broad rights now to be involved in these matters in various Canadian federal and provincial processes.

**Ms. Linda Duncan:** I'm not surprised by the presentations to do with duplication by the intervenors here, because that has been the practice of industry: to argue that we should be getting rid of the federal government in environmental regulation because we have the provinces.

One of you had tabled a legal opinion by Osler and company, I think. It was interesting, there was a selective quote from what is an extremely historic case, and that's the Friends of the Oldman. Is it not true that the reason the Friends of the Oldman is an important case is that the Supreme Court declared that the federal government has jurisdiction over the environment?

**Mr. Tom Huffaker:** I'm going to ask if Mr. Denstedt wants to respond to that. It's on his legal opinion.

**The Chair:** Mr. Denstedt, please.

**Mr. Shawn Denstedt (Partner, Litigation, Osler, Hoskin, and Harcourt LLP, Canadian Association of Petroleum Producers):** Thank you, Mr. Chairman.

Ms. Duncan, I would disagree with the narrow interpretation you've put on that case. One of the propositions of the case is that it indeed shares jurisdiction, and because the environment is, in its essence, intertwined, both the province and the federal government will be involved in decisions that affect the environment, and they should cooperate.

**Ms. Linda Duncan:** Correct. And was not that case launched because the federal government had failed to do a federal environmental assessment and the court held they should have?

**Mr. Shawn Denstedt:** That's correct.

**Ms. Linda Duncan:** Thank you.

I have one more quick question to Mr. van't Hof.

Mr. van't Hof, you raise concerns in the MATL line that you're being taken to court. Is it not true that the reason you're being taken to court is that a good number of the farmers had been, in their view, excluded from the review processes and felt it necessary, unfortunately, to have to go court to get the right to participate in those reviews?

**Mr. Johan van't Hof:** Mr. Chairman, Ms. Duncan, that's quite inaccurate. Both the Alberta Utilities Commission and the NEB have made it clear, and the court of appeal made it clear, that the degree of consultation was acceptable.

**Ms. Linda Duncan:** I'm not disagreeing with the decision. I know the determination of the court. But is that not the reason the farmer went to court, that he had been excluded from the proceedings?

**Mr. Johan van't Hof:** No. The reason he went to court was to stop the project.

**Ms. Linda Duncan:** A lot of the briefs raised the issue that we don't really need this federal law, because people have the opportunity at provincial levels. But is it not true that we also have a lot of federal laws on the books, and is it not true that federal law has paramountcy?

**Mr. Michael Broad:** And there's an opportunity under federal law for people to bring forth different opinions too.

● (1620)

**Ms. Linda Duncan:** Precisely. And isn't the purpose of this bill to ensure that those rights are available under all laws, certainly under the Canadian Environmental Protection Act? It's a very modern act, to the credit of the last few governments. They've bent over backwards to update and modernize that law.

But unlike Bill C-16, for which the government did an omnibus bill and amended a lot of statutes, they have not taken similar action in updating equal rights, for example, under the Arctic waters protection act, the Migratory Birds Convention Act, or the Fisheries Act. Is it not correct that the level of rights and opportunities is not the same under all federal environmental statutes?

**Mr. Michael Broad:** I thought just the contrary, that everybody had an opportunity to express their views on any piece of legislation that came about under federal law.

**The Chair:** Thank you very much, Ms. Duncan. Your time has expired.

Mr. Warawa, can you wrap us up on the seven-minute round?

**Mr. Mark Warawa (Langley, CPC):** Thank you, Chair.

Thank you to the witnesses for being here.

What we're heard today is actually quite eye-opening and shocking. This is our third meeting of witnesses. During the first two meetings we heard primarily that Bill C-469 would be used as a big stick, a threat to avoid litigation. The witnesses thought there might not be an increase in actual court cases but that the threat of litigation would encourage government, business, or whoever to take action.

I'm hearing that Bill C-469 would create great uncertainty, and that the financing of projects would grind to a halt because of the threat not only that action would be taken but that the appeal process would never end. I'm hearing that it's not likely, because whatever the decision, if some resident of Canada didn't agree with it, they could initiate an action and have this big stick. So would anything ever happen, or would things grind to a halt? So your testimony today is really important.

At that first meeting we heard that some believe there should be a carbon tax in Canada. Canadians have said no to a carbon tax, but then we've heard that this could be the Trojan Horse that would make that possible. The blank cheque that one of you mentioned could be used by the courts as a way of imposing a carbon tax on all Canadians, all industry.

I have another concern about Hydro-Québec. I'm not going to go into detail on that, because I'm sure Mr. Blaney from Quebec would want to ask questions on that. But I'm from British Columbia, and hydroelectricity is very important in those two provinces. If a resident of Canada—and I'm not sure of the definition of "resident"—was living in Canada legally, they could initiate an action and it would give them the big stick to infringe on or maybe turn aside permits for operations of hydroelectric companies if they didn't like what was happening and in their opinion they deemed that there could be environmental harm.

The common thing I've heard is that there was great effort, years of consultation, to try to find a balance of sustainability in which everything would be considered—the environment, the economy, ecosystems—and to create a balance after consultation. After you achieve that and permits are issued, there still is an opportunity for appeal and Bill C-469 could shut everything down.

Is that kind of a fair analysis?

**Mr. Johan van't Hof:** Yes, exactly; that's precisely what it is.

We experienced a very seasoned regulator in the Alberta Energy and Utilities Board. We had three to four weeks of hearings, we had several dozen witnesses, we had several hundred pages of analysis and expert testimony, and the tests we had to meet were known. The tests at the NEB were known and we still got taken to the Supreme Court.

It's my understanding of this particular legislation that even though you meet those tests—and it cost us several million dollars to meet those tests—if somebody didn't like it, they would be able to say, “I think there's another impact that you haven't thought of”.

So the years and decades of regulatory certainty that had been developed.... I'll give you an example now. We have to move our centre line 20 feet, because we are in a road allowance. We have to go to the Alberta Utilities Commission to move it 20 feet and we have to invite comment from anybody within 800 metres—and we are doing that, because that is the test today, 800 metres.

It's highly unlikely, but it's possible that even though the Alberta Ministry of Transportation is telling me, “move it, because you're in our road allowance”, and it's only 20 feet, we could have our permit held up on appeal of that move under this thing.

● (1625)

**Mr. Mark Warawa:** To get a decision made that everybody in Canada agrees with would be rare. So through consultation, you would have decisions based on the best interest of the majority of Canadians and on the principles of sustainability. You have to both protect the environment and also provide a balance for jobs.

If you do this, which is what I think I'm hearing from you, that would be at risk. It would remove the principle of sustainability, and basically it's a threat of litigation—legislation by threat of litigation. Is that fair?

**Mr. Warren Everson:** I'll speak to that, and of course that does summarize our view.

One time many years ago I was in a parliamentary committee, and one of the members of Parliament spoke exactly to this issue of the unanimity of legislation. He called it—he was making an extreme point for the purpose of illustration—the Clifford Olson provision. He said what if only one person in the country didn't want to do something and it was Clifford Olson? He's still a resident of the nation. You could drop Mom Boucher or someone else in there for the purpose of it. The point he made, and I think it's one that always has to be made, is that members of Parliament are being asked to make those decisions.

If I may offer one other point here, in these hearings I would encourage the committee to hear from the Canadian Bar Association or some other organization about the situation that will confront a judge when a case comes forward. It seems to me it's just a common sense observation that it would be extremely difficult for a judge, given the resources available in the Federal Court, to handle an extremely sprawling environmental case, analyze all the motions, compel all the studies and examination, and come up with some kind of conclusion—even then still arriving at the point I raised in my brief, which is that the judges don't want and you don't want them to actually make the law.

**Mr. Mark Warawa:** Mr. Huffaker, you mentioned you believed the bill was fundamentally flawed and cannot be amended to become good policy. Do you all agree with that?

**Voices:** Yes.

**Mr. Johan van't Hof:** Yes.

**Mr. Mark Warawa:** Thank you.

**The Chair:** Thank you, Mr. Warawa.

We'll go to our five-minute round, and I'll still be judicious on time.

Mr. Dosanjh, you can kick us off.

**Hon. Ujjal Dosanjh (Vancouver South, Lib.):** Thank you.

I'm going to be very brief and then I'll share time with my colleague, Mr. Tonks. I'm a temporary member of this committee for today.

You raise some interesting points, particularly you, Mr. Broad. I'm going to ask you a question with respect to your second recommendation. I understand your first recommendation. It has merit, but I think the issue of citizen participation and the issue of certainty—those two issues—are colliding. But I'd rather focus on the second recommendation.

My cursory look at this section tells me that this simply reverses the onus for you, in an eventuality to prove that what happened wasn't beyond the foreseeable, reasonable consequences of your utilizing your rights under the legislation. It reverses the onus for you to actually prove that.

I don't say whether I agree or disagree with it; the question I have is this: can you see a situation in which you as the industry might know of certain consequences that might flow from your actions, within the given set of laws, that might exceed the foreseeable reasonable consequences of that legislation and what was intended under it? Could you possibly foresee that kind of situation?

And then, under those circumstances, would you consider that the industry under those circumstances, knowing what it knew, would have an obligation to cease and desist at that point?

● (1630)

**Mr. Michael Broad:** You know, we're being very simple here.

**Hon. Ujjal Dosanjh:** I thought I was being simple.

**Mr. Michael Broad:** All we're saying is that if somebody were to bring a civil action against us, because we were following the law we could say we were following the law, that we were following the regulations.

**Hon. Ujjal Dosanjh:** But this section simply reverses the onus for you, to prove that you were actually within the law; that you didn't exceed the foreseeable or reasonable consequences of the action. That's not a difficult concept. I'm just wondering whether you can foresee those kinds of circumstances in which you might have an obligation, knowing what you knew, to cease and desist and say, “uh-oh; we're going beyond what was intended.”

**Mr. Michael Broad:** Anne, maybe you might....

**The Chair:** Ms. Anne Legars is a witness. Ms. Legars is director of policy and government affairs for the Shipping Federation of Canada.

Do you wish to reply to Mr. Dosanjh's question?

**Ms. Anne Legars (Director, Policy and Government Affairs, Shipping Federation of Canada):** I don't know whether I understood the question well, but If what you mean is that we can prove that we complied, we have no problem doing that. If it's a defence, we are fine with that. If it's not a defence to demonstrate that we complied, we have a problem. That's basically what our brief is about.

**Hon. Ujjal Dosanjh:** This particular paragraph in fact says to you that it's "not a defence" that "the activity was authorized by an Act or a regulation or other statutory instrument, unless the defendant proves"—unless you prove—"that the significant environmental harm is or was the inevitable result of" doing a legal activity.

Isn't that a defence? What you're saying is that you don't have a defence, that it removes the defence. I'm suggesting to you it doesn't remove the defence; in fact, it reverses the onus for you to prove that you were within your rights.

**Ms. Anne Legars:** If the intent of the legislation is the way you stated it, it would mean it is a defence. We would love it. The way we read it is that it wouldn't be a defence, and that's why we have a problem.

**Hon. Ujjal Dosanjh:** No, it says it's not a defence to a civil action unless you prove that you were within your rights. That's what it says.

So putting it positively, it is a defence as long as you can prove that you were within your rights. It's not fair to say that the defence is removed. Defence is made more difficult, I'd agree; I'd concede.

**The Chair:** Do you want to respond to that from a legal perspective?

**Mr. Warren Everson:** I'm not a lawyer, so I can speak with the freedom of ignorance here. I would go to court and would say that I was authorized to do this thing and that everybody understood—the people who permitted me understood—the extent of my activities and understood that there would be environmental degradation. The agency that was then on the hot seat would show up and say "We had no idea there would be this damage" and that they were never told. Of course they would say that. And therefore, would it function as an actual defence? Possibly it would, but not a good one, for sure, and it would be a very tortuous situation to find ourselves in.

**The Chair:** Thank you. Time has expired.

Mr. Calkins, you're on.

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

I'm just going to put this in some kind of context. Of course, whenever we're discussing environmental things, the discussion is near and dear to my heart. Much of my past has been spent as a national park warden, and I was a conservation officer, I have a zoology degree in fisheries and aquatic sciences, and I spent a lot of my previous life, before I became a parliamentarian, enforcing the law and protecting the environment.

However, when I saw this bill.... At first blush, you read a bill like this and say—I think one of you said it—the road to hell is paved with good intentions. My colleague Ms. Duncan has brought this forward, and I believe that in some way she probably means well by it. But I believe firmly in my heart that this upsets the balance we have in society right now, so much so that it's actually dangerous.

Mr. van't Hof, if I may be so bold, you said this would provide barriers to investment. Well, I would suggest to you that it would rip the guts out of our economy as it exists today. There is no clause in this bill that would prevent them from retroactively going back and undermining any permit that has already been issued, whether it's for an oil sands operation, a current transmission line, or a coal-fired reactor. There's nothing.... God forbid that this bill should ever come to pass in its current form, but if it ever got out there, it would not only put a chill in investment, but anybody who wanted to do so could undo every permit, every regulation, or every regulatory process that's ever been done. We're talking about years' and years' worth of stuff.

I don't know, Mr. Huffaker, whether you can speak to what it takes just to go through.... I know CAPP is broad in its perspective, broad in its application, and in your membership. But in oil sands, to get a permit to even create a tailings pond or a settling pond takes years and years of dotting the i's and crossing the t's.

Mr. van't Hof and Mr. Huffaker, could you elaborate on how much bureaucracy, red tape, and double-checking there already is when going through environmental application permits?

● (1635)

**The Chair:** Mr. Huffaker, you can go first, and then Mr. van't Hof.

**Mr. Tom Huffaker:** Certainly for those pursuing major projects in Canada, in Alberta, and in other provinces, yes, these are processes that take years and years and years. They're looked at very seriously by a wide range of provincial regulators and bodies, sometimes a wide range of federal regulators and administrative bodies.

This is sort of what we get at when we say we have excellent environmental laws and Canadians have access, when they are directly impacted, to intervene in those processes. I don't know that we have thought through what it could mean for projects already permitted because we've worried so much about what it could mean for the future and what damage it would do to the balance we've tried to take to these projects, and what damage it would do to the investment climate and certainty for operators.

You may well be right that it even could have an impact looking back on projects that already have years and years invested in working through regulatory processes and the law and complying with those requirements, and of course in some cases staking billions of dollars reliant upon that compliance and that legal status in projects that in some cases also created thousands and thousands of jobs and billions of dollars in economic benefit.

**Mr. Blaine Calkins:** Mr. van't Hof.

**Mr. Johan van't Hof:** Mr. Chairman, honourable members, I completely concur. It will gut the capacity to finance these projects. Banks will not take litigation and appeal risk because then they have nothing.

In our situation, there are literally decades of detailed regulations, detailed rules, standards, expert witnesses, engineers, environmental people, cultural resource technicians, people who know whether this is a teepee ring or whether it's a pile of rocks. There is an extremely entrenched ability and knowledge base to be able to assess what is an acceptable impact and what is not. And that is ultimately what it is about. When you have 1% or 2% growth rates in an economy, you have impacts, and this is about picking impacts that are acceptable to our society. Ultimately my experience was we had a whole coterie, a whole parade, of deeply expert people there who were able to do that, and in particular deeply seasoned regulators who were able to separate the wheat from the chaff, as it were, and come up with a balanced answer.

So if you take that away, I think it just stops. I think projects stop.

**Mr. Blaine Calkins:** I just want to touch on one more thing.

I can't read your name there, sir. Mr. Denstedt, could you elaborate on this? It was brought up earlier, the Oldman River Dam case that happened several years ago in the province that I live in, Alberta. Isn't the fact that there was an actual case brought forward and it was actually dealt with through civil action already proof that we don't need to do any more to augment the system? Where there's a gross dereliction of duty by the federal government in any particular case, we already have a broad scope application of civil litigation, do we not, in this country? Why do we need more?

**The Chair:** Mr. Denstedt, I'll ask you to be very brief in your reply.

**Mr. Shawn Denstedt:** I can be very brief here. First of all, the Oldman River Dam case was under the EARP process, which predated the Canadian Environmental Assessment Agency. Essentially that gave rise to the Canadian Environmental Assessment Act. That's an act under which major projects undergo environmental assessment review. In cases that I've been involved with—for example, in the oil sands or in the offshore or in Newfoundland—we have sometimes hundreds of intervenors participate in the process, file evidence—20-some thousand pages of evidence on Mackenzie, nine years and counting on the process.

So yes, there are not only abundant and robust opportunities to participate, they're real and they exist today.

● (1640)

**The Chair:** Thank you very much.

*Vous avez la parole*, Monsieur Ouellet.

[*Translation*]

**Mr. Christian Ouellet (Brome—Missisquoi, BQ):** Thank you, Mr. Chair.

I would like to start on a lighter note.

While listening to your presentations, especially Mr. Huffaker's, I was surprised that you quoted the amount of money that oil generates in Canada, the number of jobs, the incredible development, etc., but that you did not, even though this is the Standing Committee on Environment and Sustainable Development, mention the quantity of greenhouse gases that you produce; I was also surprised that you did not talk either about your contribution to climate change nor of the quantity of water that you protect, and so on.

Mr. Everson, I am under the impression that you were speaking particularly on behalf of large chambers of commerce. In my riding there are chambers of commerce and their attitude is not the one you described. They are very interested in seeing—and I would say that this is in fact one of their priorities—a very strict law to protect the environment. You see, that is very different. And yet you are a part of the...

I would like to put the same question to all of you. If we set aside what Mr. Calkins said earlier it seems to me that you are not against the principle embodied in this law. If I understood correctly, it is not the principle but the coercive procedures that the law would put in place that are of concern to you. I am not saying that this is groundless, I don't know.

My question is addressed to all of you. Since it is likely that the principle of the legislation is valid and you are in favour of it, would there be some way of amending the bill to make it acceptable from the point of view of its constraints?

I will begin with you, Mr. Broad, but I would like to hear from each one of you.

[*English*]

**Mr. Michael Broad:** It's what's in our brief. Basically, we propose two amendments.

**Mr. Christian Ouellet:** You didn't speak loud enough. I have to put on my—

[*Translation*]

**Mr. Michael Broad:** Me too.

The two amendments we are proposing are in our brief.

**Mr. Christian Ouellet:** So you do think that the law could be acceptable. Could you remind us...

[*English*]

**Mr. Michael Broad:** Well, I'm wondering what the reason behind the bill is. It's my understanding that before any law is enacted under the federal government, people come, they talk about it, they bring opposing views, and then it goes to first reading, second reading, blah, blah, blah, and it goes on to become law.

This law seems to make the law a moving target. Despite the fact that you bring laws into effect and we abide by those laws, all of a sudden somebody says they don't like it so they're going to take you to court. How can you do business when a country passes a law that you don't know is going to be effective or is going to last? How long is it going to be there? Is it going to be a month, two months, two years, or whatever?

I don't see the reason for this law. We already have a system that provides for discussion and whatever.

At the end of the day, hopefully, the government brings out laws that serve the public. Certainly with respect to environment, I don't think any of us here would oppose any environmental—

[*Translation*]

**Mr. Christian Ouellet:** I would like to hear what Mr. Huffaker has to say on this matter. Mr. Broad probably has a very important motive: he wants to link this up with the international code.

You do not have this concern; how do you think this bill could be amended or reworked to make it acceptable?

[*English*]

**Mr. Tom Huffaker:** Let me start by saying I think we have a premise we agree on. I think your point was that we all agree that environmental protection and environmental standards are important. We do, I think, all agree on that.

We come back to what is the necessity for this provision. We take the view that Canada is a country with very high standards of environmental laws and a lot of opportunity for impacted parties to intervene. To us, the law is not so directly about the environment but about creating a sweeping class of individuals and organizations that would have standing to sue. And from our point of view, that is a very negative development in terms of it reducing the balance around sustainable development, about energy, environment, and social factors. And environmental factors being looked at together creates a tremendous amount of uncertainty and a tremendous amount of lack of balance from where we sit.

As I said, we think in some ways it addresses the wrong thing. It isn't about environmental standards; it's about giving everybody the right to go to court. We're not supportive of that in this circumstance.

● (1645)

[*Translation*]

**The Chair:** Your time is up.

Mr. Blaney, you have five minutes.

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

First of all, I would like to read the following sentence:

> [...] we are concerned that Bill C-469 would enable anyone to challenge any regulatory standard at any time, thereby trumping the existing regulatory process and creating regulatory unpredictability.

This is on page 3 of Mr. Broad's brief.

Good afternoon, and thank you to our witnesses for being here.

I would like to say something to my colleague Mr. Blaine. I too, Mr. Blaine, have worked in the environmental field in the past: I practised applied engineering for 20 years. Unfortunately, I am not a lawyer. I must say that my other colleague Mr. Warawa makes the Quebecker in me sit up and take notice whenever he talks to me about Hydro Quebec and says that a federal act could encroach on fields of provincial jurisdiction and jeopardize hydroelectric development. This concerns me particularly because I was a civil engineer. It really upsets me. I hope that my colleagues from the Bloc will be sensitive to this issue, that is to say this bill's potential interference in fields of provincial jurisdiction.

I am thinking for instance of the flooding that occurs when dams are built. Obviously this has important environmental repercussions. When reading the information provided, it appears to me that any citizen could jeopardize the implementation of a project even if it has been approved at the various regulatory stages. Your testimony is almost shocking. I am quite shaken by what you have to say since the substantive principle of the bill is that any Canadian resident has a right to an ecologically balanced and healthy environment. I think that there is a consensus here on this bill.

We are talking about infringing on areas of jurisdiction, we are talking about...

[*English*]

**The Chair:** A point of order.

[*Translation*]

**Mr. Christian Ouellet:** Mr. Chairman, this matter has already been raised. You could have said that in fact this matter of provincial areas of jurisdiction was raised during the first hearing on this bill. It seems to me that it is up to you to reply to Mr. Blaney in this case.

[*English*]

**The Chair:** But that's not a point of order. Mr. Blaney is more than welcome to use his time as he sees fit, as long as he is being relevant.

And you have been relevant, Mr. Blaney.

[*Translation*]

**Mr. Steven Blaney:** If you consider that this is not a point of order, I will ask a real question then: who is going to defend Quebec and the interests of Quebeckers here, when we are studying a bill that encroaches on provincial areas of jurisdiction? This is clear, and several witnesses have said so.

Mr. Chairman, I will continue with a question for Mr. Huffaker.

There is a great deal of talk about sustainable development. In your testimony, you mentioned that this bill would create an imbalance between the environment and the economy. We know that sustainable development is the equilibrium between development and the economy, and you say that this bill will create an imbalance. I'd like to hear your comments in this regard.

You also talk about the intergenerational equity principle, which seems to me to be commendable. However, you feel that it constitutes a threat.

Mr. Chair, I'm going to leave what time is left to the witnesses. If my colleagues wish to raise point of order, I hope that this will not eat into the time left for my witnesses. Thank you.

[*English*]

**Mr. Tom Huffaker:** We have spoken and will continue to speak on the question of balance. We think sustainable development is about the economy, it's about social factors, and it's about the environment. Certainly those are the sorts of things the Brundtland commission, for example, talked about—all three—and the importance of balancing them and advancing them all. We feel that by making one value paramount at a quasi-constitutional level, this bill does threaten that balance that we think is very important to the country and that we think Canadians believe is not only important but also possible.

My intergenerational fairness question was just a quick example to make the point that someone might be inclined to intervene against an environmental group but might not have the wherewithal to be there. You could see an individual like that or a family like that unable to intervene on the other side of one of these court actions and yet feeling that they want X, Y, or Z development to go forward because they feel it's in the long-term interest of their family or their children.

● (1650)

[*Translation*]

**Mr. Steven Blaney:** Thank you very much.

Mr. Everson, you mentioned that this bill could lead to a greater number of legal proceedings in the area of environmental law. I'd like to hear what you have to say on this.

Do you feel that this bill, as Mr. Warawa was saying, will act as a deterrent to businesses and prevent them from breaching regulations, lead to out-of-court settlements, or will it increase the number of environmentally-motivated lawsuits?

[*English*]

**Mr. Warren Everson:** I think the bill is established specifically to permit legal proceedings above the regulatory processes that are in place today. As such, of course, we would expect to see a lot of actions. It's an interesting question as to whether or not they would be forward-looking—i.e., about new projects, or even challenges to existing operations and situations that are permitted already. I certainly believe that it would be easy to abuse the law.

Monsieur Bigras asked the key question: Can you make this law better and make it useful? One of the prime considerations would be the possibility of abuse, whether it be someone in Alberta or Ontario who wants to challenge a project running in Quebec because they want to disadvantage that project for as long as possible, or even a business competitor who is already running a permitted project, seeing a new competitor enter and saying "I will just stop them as long as I possibly can with as many actions", because there is no frivolous defence here.

[*Translation*]

**The Chair:** Thank you very much. Your time is up.

[*English*]

Mr. Tonks, your turn.

**Mr. Alan Tonks (York South—Weston, Lib.):** Thank you, Mr. Chairman, and thank you to our witnesses.

As I was listening to your presentations, I was trying to put myself in the place of Canadians who would be following the arguments that have been put forward. It occurred to me—and I do understand the concept of rule of law and predictability through natural justice—that at the front end, in terms of a full airing, all have a right to appear before a tribunal or whatever the body would be that would be dealing with, in this case, an environmental assessment, be it a class or an individual assessment, provincial or federal.

It occurred to me that you've characterized this bill of environmental rights as being draconian in nature. Possibly, the Charter of Rights and Freedoms back many years was viewed the same way. The charter was invoked to bring some closure to that natural justice, that the issue was being dealt with, and would have probably been a human rights or a social issue at the time.

Would it still be your position that if the bill could be changed in some way to be a final tick-off, if you will, that it would conform to the declaration somewhat similar to a charter? I've been at hearings where the final question that's asked is whether it conforms to the charter. So could this bill be improved or changed such that it was a final touch test in principles, as opposed to substantive judicial process? Could that be done?

**Mr. Shawn Denstedt:** Thank you, sir. An excellent question.

When we looked at this, for our review of CAPP, certainly one of the concerns we had was that it had a charter-like appearance and the preamble certainly indicated that it could rise to that status. That gave us pause to ask, is this an attempt to bolster up this legislation to a charter-level authority? This is fine, and if Parliament decides that's important, it should do that and proceed through the amending process accordingly.

But where we see this as a problem is that Canada has built up detailed regulatory processes to conduct environmental assessments that look at very detailed technical data, and they arrive at conclusions that look at disadvantaged groups and the job opportunities provided, development of infrastructure in the north—for example in Mackenzie—all building to a decision that rests on whether there's a likely significant effect.

The problem with this bill, from our legal perspective, is that the definitions in this act do not line up with the tests in the Canadian Environmental Assessment Act, so there's a different standard.

● (1655)

**Mr. Alan Tonks:** Okay.

I have just a final question, Mr. Chairman.

I think Mr. Huffaker mentioned the Federal Sustainable Development Act. Inasmuch as that act is up for review, would there be an opportunity, should this bill fail in terms of its principles...? I was interested to hear that someone was quoted as asking what is the reason behind the bill. Let us infer that there is a reason behind the bill and that the bill is a sort of protection of all citizens in a complex society. Would it be more appropriate, as part of the review, to look at the federal sustainability act and deal with some of the issues that have been raised in this particular bill?

**Mr. Tom Huffaker:** I'd be happy to briefly answer that. I'm not deeply involved with that particular act and I have not been involved in commenting on the review.

There are a number of pieces of environmental legislation, of course, that are in the course of review now, as this House knows: the Species at Risk Act, CEAA, etc. We are involved in those, and of course in some ways it's an example of the access that a broad number of Canadians have to these processes. These types of associations are involved in commenting and testifying on those reviews, as are a number of environmental and other groups.

I'm pleased to say that in some cases around some aspects of SARA a broad group of energy and other industries have submitted joint submissions with a range of environmental groups. I think it just underlines that there is a lot of access to the process and a lot of opportunity in this democratic society for people to put their views out on the table inside the legislative process, which tends to be where we think these sorts of rules—the law—should be made.

**Mr. Alan Tonks:** Thank you, Mr. Chairman.

**The Chair:** Thank you, Mr. Tonks. Your time has expired.

Mr. Armstrong, you have the floor.

**Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC):** Thanks to all of you for being here. I've enjoyed your testimony.

I think this bill's heart is in the right place, without a doubt. I think we've heard several people testify that they agree with this: that all Canadians deserve to have a sound and clean environment. However, I think there's been a lot of discussion on clause 23, the judicial remedies. I think that's where a lot of the concern is from all the witnesses today, so I want to give an example and then have some comments from you about my example.

Yesterday, in Parrsboro, Nova Scotia, which is in my riding, the Minister of National Defence and I announced an undersea cable project that will connect tidal power generators to the Nova Scotia power grid. It was a $20-million announcement. It was the largest announcement from our green fund for any project across the country.

As for the capacity of the cable—and Mr. van't Hof, you'll understand a lot of the technical details more than I will—it is a 64-megawatt cable. It eventually will be able to produce enough power to power at least 20,000 homes. That's enough to power almost every household in my riding.

Could you see Bill C-469 potentially having a negative impact on the progress of this project?

**Mr. Johan van't Hof:** Absolutely, I can see that, depending on whether it's direct current or alternating current, DC or AC. If it's AC, it will have EMF. If it's EMF, it will have an impact on fish species.

You'll have issues with trenching. You'll have issues with icebergs possibly coming through and ripping it up, so you'll have to trench it down a hundred feet to get below where the icebergs get tipped over and scour it up.

So at some point there's the impact of that and whether or not you have scallops or other kinds of species that you're going to be disturbing, and also whether there are maintenance issues. If it's an AC line, it will have an oil-cooled thing, and you may have environmental leaks on the oil. I mean, it goes on and on.

But in fairness, the regulators know exactly what these issues are, and there is an entirely competent consulting crowd out there that knows exactly what the right tests are and what the right safety standards are. That's my point: I'm not sure that this bill is fixing a problem that I understand. On that particular project, I would know exactly how to assess it, and I would know as an operator exactly what to propose, because I know what the tests are.

● (1700)

**Mr. Scott Armstrong:** All right. So what you're saying is that there are already a lot of regulatory hurdles for that project to get over before it actually comes to fruition—

**Mr. Johan van't Hof:** Oh, yes.

**Mr. Scott Armstrong:** —and what this bill would do would be to open up this clean, green energy project, which is going to produce up to 3,000 megawatts of clean and green perpetual power, to another hurdle that could be set in the way by any resident of Canada, and maybe not even by a Canadian citizen. That would have negative environmental impacts, because it would slow down the production of this green energy, which is what we're trying to produce as a country on order to get off fossil fuels.

So in the end, this bill actually could damage the environmental future of our country by slowing down many projects. Would you share that opinion?

**Mr. Johan van't Hof:** I would. I think that's precisely right. No project ever meets the test of unanimity. And what troubles me about this is that essentially, I, as a developer, have to risk shareholder money trying to find unanimity.

In every project you do you are advised as to who the parties are who have standing. And I can tell you that we were scrupulous in making sure that we sent every party a registered letter, a registered EIS. A registered environmental assessment went to those persons' homes so that we could meet the test of standing. The problem here is that I can't mail it to 33 million people.

Thank you.

**Mr. Scott Armstrong:** Mr. Everson, you testified that this opens things up to some sort of abuse of the law by competitors. There are projects going on in my riding. We also have potential for wind energy and shale gas. We have potential for geothermal. We could actually be a green energy producer in the northern part of Nova Scotia.

If you were a company bidding on one of these projects, these government contracts or provincial government contracts, and you didn't get the bid, would you then possibly try to slow that project down? Does it open it up to abuse by people, because of sour grapes because of not getting the contract, if every resident can do it? Does it open it up to abuse by a competitor who may be unsuccessful getting this bid or by another competitor who may see the project coming and a vast amount of competition in his or her own current business? Does it open it up to abuse by other competitors and failed competitors?

**Mr. Warren Everson:** As it's currently drafted, the bill has no protection against that, so yes, of course.

You said that everyone in testimony supported the purpose of the bill. But I don't actually agree. The bill proposes to install individual action to the court over the regulatory processes that have been constructed at the provincial and federal levels. And I don't believe that the court is a better equipped agency for evaluating environmental impact, period. I don't believe that judges are trained and resourced to do what can be done today.

**The Chair:** Thank you, Mr. Armstrong. Your time has expired.

The final five-minute question in the second round goes to Mr. Carrie.

**Mr. Colin Carrie (Oshawa, CPC):** Thank you very much, Mr. Chair.

I'm just here as a guest today too, but I'm shocked by what I'm hearing. I come from Oshawa, and we compete internationally in the auto industry. My concern is about having a bill that throws us so out of balance internationally and about how it will affect our competitiveness internationally.

Internationally, do any of our competing countries around the world have a law like this?

We talked about domestic competitors. But if foreign competitors had branch offices in Canada and wanted to use frivolous cases for anti-competitive reasons, could that happen?

I have perhaps one more question, Mr. Everson. Do you have any idea what this bill would cost our economy at a time when there is a global economic downturn?

**Mr. Warren Everson:** Of course I can't assess what a cost would be, but I would like to point something out. In the current CEPA, the precautionary principle cites cost-efficiency and cost-effectiveness, even in a piece of legislation that was a very significant achievement for environmentalists. The CEPA clause says that "where there are threats of serious or irreversible damage, lack of full scientific certainty is not a reason for postponing cost-effective measures to prevent environmental degradation". That's a very unusual thing for Parliament to install in legislation. So you don't have to prove your case before you can move to mitigate the damage.

The Canadian Chamber of Commerce is actually quite a strong supporter of that provision, and it's not present in this law. Cost-effectiveness is surely a logical provision in any act, especially if you're giving guidance to judges who are going to issue the order.

● (1705)

**Mr. Colin Carrie:** Absolutely.

Could anybody else comment? Do other countries have things like this?

What if we had foreign competitors and they had branch offices here? Could they use these frivolous cases for anti-competitive reasons?

Does anyone have any idea?

**Mr. Shawn Denstedt:** Maybe I can help you a little bit. Certainly a number of other countries have environmental bills of rights. What I can't help you with, though, are the various safeguards and parameters built into that legislation or the regulatory processes those countries go through. Because if the regulatory process is such that you can proceed through it, in many cases and in many countries in 12 to 18 months, which is about half the time it takes in Canada, it could accommodate action later on. But again, I'm not sure of the parameters.

What I do know is that in the UN declaration of principles it is much more a balance of the economic aspects of a healthy environment. It definitely intertwines those two objectives, and that's what seems to be lacking here.

**Mr. Colin Carrie:** Thank you very much.

**The Chair:** Thank you.

Before we start our third round, I want to get a clarification from Mr. Broad.

When you were answering a question from Monsieur Ouellet, you were talking about the amendments you're proposing in your brief, but then it sounded like you're almost saying that the bill in its present form would be best set aside. I simply wanted to get a clarification from you on whether you'd prefer it if the bill were set aside, or if it's the amendments that you want to see go through.

**Mr. Michael Broad:** I'd prefer it to be set aside, but if it has to go through, those are the amendments we would propose.

**The Chair:** Okay. Thank you for that clarification.

We're going to go with our third round of five minutes per party.

Mr. Scarpaleggia, you're the first one.

[*Translation*]

**Mr. Francis Scarpaleggia:** Thank you, Mr. Chairman.

First of all, I'd like to refer to a point raised by Mr. Blaney. And that is the matter of Hydro-Quebec finding itself subject to a federal law. Currently both Hydro-Quebec and BC Hydro and Ontario Power Generation are subject to the federal Fisheries Act. That means that federal legislation already applies in all of the provinces in the area of natural resources.

I would like to talk, rather, about this fear we all have of this bill, should it be passed, giving rise to frivolous legal actions. Since we are starting to think about amendments, I'd like to know whether it would be possible to amend this bill so as to prevent such frivolous lawsuits. Since I am not a lawyer, I don't know how we would go about doing that. And so I am asking you.

Moreover, you say that the industry does not like being exposed to the possibility of multiple litigation and that this increases the risk from the point of view of business. You know your market and you know what you are talking about. I respect your opinion. Regarding the oil sands, many migratory birds have gotten caught in the tailings ponds. This situation could give rise to endless legal action. This will not prevent the oil industry from creating tailings ponds. So the risk of being sued will always be there. Certain environmental problems are recurrent and expose the oil industry or other industries to potential and endless litigation. That has to be taken into account. I don't know if you'd like to comment on this.

● (1710)

[*English*]

**Mr. Warren Everson:** I'll take the plunge.

It seems that in every parliamentary committee hearing somebody, somewhere, has to say “If it's not broken, don't try to fix it.” So it falls to me to say that here.

It's not clear to us. Your colleague compared this legislation to the charter. What the charter did was establish an individual right in excess of the collective power of the state. We don't see that as a useful approach to this legislation.

You asked if the legislation could be altered to take away the danger of continuous litigation. I'm almost tempted to ask Ms. Duncan to answer the question. The bill is set up to allow private parties to bring litigation, even if state agencies have made themselves content with a project or a situation. As such, we consider that the danger of frivolity or inappropriate use of the act is considerable. And it's not all targeted at business; an individual could run to a federal statute to set aside a provincial land decision. Land planning legislation could be trumped by a person accessing the federal legislation.

I don't believe there's a compelling enough reason to justify this kind of legislative adventure.

[*Translation*]

**Mr. Francis Scarpaleggia:** I don't know if you are in a position to answer me. How can a federal bill — we aren't talking about the Canadian Constitution, nor of the Charter of Rights or the Fisheries Act — lead to interference in fields that are clearly under provincial jurisdiction? I have a lot of trouble understanding how this aspect of the bill would not be amended by the courts. I don't know if you can enlighten me on this.

You are no doubt aware that even if there is a democratic process surrounding the adoption of bills or regulations, a lot of citizens are frustrated by the fact that even if there are regulations, there are exceptions that crop up. For instance, this morning, we learned that a tailings pond in Alberta, even though the Alberta Energy Board gave its approval, is leaking and contaminating a stream and some wetlands. It is the frustration over such incidents that gave rise to this bill, in my opinion.

Since I am out of time, I will yield the floor.

**The Chair:** Your time is up.

[*English*]

Does anybody want to respond? I'm going to give you only 15 seconds.

Mr. van't Hof.

**Mr. Johan van't Hof:** In the United States, quite often if somebody's going to bring an action they have to put up security for the costs they are inflicting, and that's in the millions, as it should be. Otherwise litigation is just intended to litigate you into the ground, and quite often the security is.... It's only real actions that happen.

**The Chair:** Thank you very much.

[*Translation*]

Mr. Bigras, you have the floor for five minutes.

**Mr. Bernard Bigras:** Thank you, Mr. Chairman.

If the bill is here in committee, it is because a majority of parliamentarians supported its principle. Not just on this side of the table, but also on the other side. This means that in principle, parliamentarians unanimously want to see the right to a sound environment recognized. That is reality. I think that the majority of MPs want to work on the bill before us. I agree with Mr. Scarpaleggia: we do want to prevent frivolous legal action.

There are two problematic elements in the bill. Firstly, there is the whole issue of simply alleging environmental harm. Secondly, there is the possibility of breaching a law. I think that that is what we have to work on in this bill.

I'd like to get back to the issue of guidelines. I think that the legal opinion submitted by the Canadian Association of Petroleum Producers is quite interesting. For instance, on page 5, they tell us that “Unlike comparable provisions in the CEPA and the Ontario Environmental Bill of Rights, 1993, a person does not need to apply for an investigation before bringing an environmental protection action or civil action under Bill C-469”.

And so I'd like to get back to my original questions. Can't we bring in guidelines so as to avoid legal actions that would have unfavourable economic consequences as well as unacceptable social repercussions? For instance, isn't there an investigation procedure that we could include before people could institute legal action?

Some people may ask for the bill to be tossed into the dustbin, but the fact is that parliamentarians want to work with it. Are there constructive amendments that could limit this civil action access, so as to ensure that what a majority of parliamentarians want will be expressed in an upcoming piece of federal legislation?

● (1715)

[*English*]

**The Chair:** Mr. Huffaker.

**Mr. Tom Huffaker:** I'm happy to start.

Obviously the governing political bodies in Canada, represented in part by this group here, will make decisions on whether this becomes law or some part of this becomes law. It's our place here not to try to intervene in that role but to express our opinions on what the consequences have been. I think this group has been fairly clear—most of us—that we don't believe this particular version is amendable into something that, in our view, would be healthy for the Canadian economy or helpful to the Canadian environment. We've all said that we believe in environmental protection, that Canada has very, very high standards, but a law that mostly expands environmental rights by expanding who has standing to bring actions is perhaps not the right answer to the environmental needs of the country. We continue to be of the view that we don't see how it can be amended into being an appropriate piece of legislation, for our part.

**The Chair:** Mr. van't Hof.

**Mr. Johan van't Hof:** I can just give you the examples that we had. The same group has litigated us eight times—three times after the Supreme Court denied leave to hear it. We've been awarded costs, which approximate 1% of our costs, by the court. We've paid millions of dollars. We've been awarded about $40,000 of costs. They've not been ordered to pay it. Three of those court cases are now after the Supreme Court has denied it, and the courts keep denying it on the principle of *res judicata*.

The simple fact is that the courts are cluttered with people who want to stop projects on the basis of litigating these things into the ground. That is the deep abiding concern I continue to have with this. I don't see anything that doesn't allow people who have legitimate standing. If people have legitimate standing, the existing rules allow them to get in, and it obligates people like me to notify them in writing, with registered mail, so that they have an opportunity to do exactly that. This gives people 4,000 kilometres away the ability to say "I disagree with the decision in Newfoundland". I just think that's inherently wrong.

[*Translation*]

**The Chair:** Thank you, your time is up.

[*English*]

Ms. Duncan.

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

We've heard a lot of testimony here today about the need to balance and that the representatives for industry in Canada strongly believe in the need to balance. I put before you that this is exactly what this bill is setting out to do, to begin to redress the imbalance that's already there. For example, we have the NAFTA agreement. We have a trade agreement with Colombia. We have a trade agreement with Panama. We have a trade agreement with Chile. The government has a process of negotiating a trade agreement with the European Union. Since the negotiation and signing of the NAFTA agreement, the side agreements on environment have been seriously watered down, to the extent where there are practically no environmental rights whatsoever. In these trade agreements industry has lots of enforceable, litigatable rights: just claim compensation if the government makes a decision that, for environmental reasons, it can't proceed with the project in any of the three countries. Yet in the environmental side agreement, those rights aren't enforceable.

I hear a lot about the need to redress the imbalance. We now have the MPMO in the government because industry feels the CEAA process is not considering enough the needs of industry to streamline. We have the new Budget Implementation Act of the government, saying they intend to streamline all the regulatory processes to enable northern development.

I put this to you. If you truly believe in the balancing, why are you so against a bill that by and large has nothing to do with litigation but for the most part would provide the rights and opportunities to the public, who feel very strongly that they have not had an equal voice in decision-making, that they have not been given standing in a lot of federal reviews?

Yes, indeed, there are a lot of opportunities at the provincial level. I come from a province that I think has one of the best energy boards and review processes. Unfortunately, for transmission lines, now the government, in their wisdom, have decided they will not allow public hearings for a good number of those hearings, so we're regressing. Previous to that, we had a very good review process.

The question I would put to you is why are you so opposed to begin to accord some of those rights when in fact the Department of the Environment Act, which gives the mandate to the minister, makes absolutely no mention of a duty to balance? Is it not true that this balance should occur in cabinet, not within the environment ministries or the authorities who are supposed to be enforcing and applying environmental statutes?

● (1720)

**Mr. Tom Huffaker:** I'm happy to respond.

I think we would come back to the point that we don't agree with the premise that environmental balance is not already in the equation in Canada. This country has an extensive set of federal and provincial environmental statutes and regulatory bodies, at both the federal and provincial levels, that are charged with addressing those requirements.

I can certainly assure you that when our members go through project approvals at either level, demands upon them, appropriately, are very, very focused on environmental protection. We think that's important, and we think it already has a place. We don't need to effectively add a right to intervene for every resident of Canada to that process, or over that process, to guarantee a high environmental standard in the Canadian legal framework. We think it's already there.

**Ms. Linda Duncan:** I'd like to ask a final question, if any of you would like to reply.

We heard testimony that more than 150 nations have enshrined environmental rights, and that many have enshrined them in their constitutions, at the national level. We also heard testimony that similar environmental bills of rights are in place in many jurisdictions in Canada at the territorial and provincial level. The question I would put to you is why you feel the same rights and opportunity should not be accorded under federal law.

**Mr. Warren Everson:** I'll take a shot at that.

First, I do think the bill is disrespectful of the jurisdictional relationships between the governments of Canada. A statute that says any Canadian or resident of Canada can seek a review of any policy or regulation is excessive.

In my view, this bill is not well written; it's not a functioning statute. In my opinion, it doesn't stand the test of credulity when you say it's not intended to be about litigation. It Is explicitly a litigation-empowering piece of legislation. That's why it exists.

**The Chair:** The time has expired, and we're going to move to our final questions.

Mr. Calkins, please.

**Mr. Blaine Calkins:** Thank you, Mr. Chair.

I'm going to preface my question by highlighting some of the things that I think most members of this committee already know.

Just off the top of my head, I can think of what we have. We have the Canadian Environmental Assessment Act, the Canadian Environmental Protection Act, the Convention on the International Trade of Endangered Species, the Canada National Parks Act, the Species at Risk Act, the Department of Fisheries and Oceans Act, and the Migratory Birds Convention Act, not to mention any others that I may have forgotten. These are just the federal statutes that apply to the protection of the environment. They're all quite long and arduous.

We go through and debate these things quite a bit at this committee when we do statutory reviews. All of these acts and pieces of legislation have their accompanying regulations. You know all about those regulations. They outline the processes companies, organizations, and utilities will go through to get the permits that allow them to conduct business in Canada.

I'm going to talk to you specifically about clause19 of the bill, and I'm just going to read these out.

Paragraph 19(1)(b) would allow a court to grant an injunction to halt any contravention. Paragraph 19(1)(e): “order the defendant to restore or rehabilitate any part of the environment”.

Paragraph 19(2)(a): “suspend or cancel a permit or authorization issued to the defendant or the defendant's right to obtain or hold a permit or authorization”. That means suspending permits that already exist. Paragraph 19(2)(b): “order the defendant to provide financial collateral for the performance of a specified action”.

You'll notice that paragraphs (a) and (b) can be both; there's not one that says (a) or (b). A judge can actually make you clean up everything you've done and order equal payment and restitution at the same time, which is basically getting hit twice for the same thing.

These kinds of clauses really concern me. The problem is that these are brought about by clause 16, which says that every resident of Canada may seek recourse. The actions under subclause (3), if you look at it, are subject to a civil standard of proof, which is on the balance of probabilities, not beyond a reasonable doubt. The balance of probabilities is having a civil test applied to basically what could be considered, in a criminal case, proof beyond a reasonable doubt.

I'm going to ask you very simply.... On the fisheries committee two years ago, Mr. Lévesque and Mr. Blais from the Bloc Québécois—and my colleague Steven Blaney does a great job sticking up for Quebec on this, as well—invited the members of the Chisasibi First Nation, which is located on the eastern shore of James Bay, to appear before the committee to testify on the disappearance of eelgrass, and the massive environmental problems and degradation caused by the James Bay hydroelectric project.

If this legislation were to come to pass, would the members of the Chisasibi First Nation not be able to use this legislation, if they found a sympathetic judge, to basically order Hydro-Québec to undo all they have built in the James Bay hydroelectric project and ask them for financial compensation of the same amount?

● (1725)

**The Chair:** Does anyone want to answer that?

Mr. Denstedt.

**Mr. Shawn Denstedt:** That would be giving free legal advice, I think, but that is one of the problems. You've identified one of the problems with the legislation. It is unclear whether there is any availability to rely on vested rights to protect your interests. So in the case you gave, because significant environmental harm is defined as being something that's irreversible, if that effect is in fact irreversible, there might be a successful claim under clause 16 here, which would give rise to remedies under clause19. That's all very fact-dependent, but is it possible? Yes. Could a creative lawyer make that argument? Absolutely.

**Mr. Blaine Calkins:** Thank you.

**The Chair:** In the interest of time, I'm going to cut you off there, Mr. Calkins.

First of all, I want to thank all of our witnesses for appearing today and for your input on our study on Bill C-469, an act to establish a Canadian Environmental Bill of Rights: from the Shipping Federation of Canada, Mr. Broad and Madame Legars; from the Canadian Association of Petroleum Producers, Mr. Huffaker and Mr. Denstedt; and from the Canadian Chamber of Commerce, Mr. Warren Everson and Mr. van't Hof. Thank you very much.

We are going to suspend this meeting quickly. I have one member who wishes to ask a technical question, which we'll do in camera. To all those who aren't tied to a committee member, I'd ask that you quickly vacate the room so we can finish off our meeting.

Thank you very much.

[*Proceedings continue in camera*]

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