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Chair

Mr. James Bezan

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● (1550)

[*English*]

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

Ms. Duncan.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Mr. Chair, I would like to present a motion.

The Chair: Yes.

Ms. Linda Duncan: My motion is:That, pursuant to Standing Order 97.1 (1), the Committee requests an extension of thirty sitting days to complete its study of Bill C-469, An Act to establish a Canadian Environmental Bill of Rights.

The Chair: Okay. Do you want to speak to it?

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

As we have not progressed as far as many of us had hoped on the bill, and, as I understand it, the time period will be up very closely when we return from our Christmas break, it is necessary to bring this motion forward so that we can complete the review of the bill.

I'm hoping I will get the support to complete the review of the proposed amendments by members of the committee—unless, of course, miraculously, we complete it today.

The Chair: Does anybody else want to speak to the motion?

Yes, Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Chair, I lament the fact—as many do, I hope, around this table—that we are not working on SARA and haven't for weeks. I would ask Ms. Duncan if she would accept a friendly amendment that this be forwarded on to the House immediately in its unamended form.

She had such confidence—

Ms. Linda Duncan: [*Inaudible—Editor*]...this is the motion.

Mr. Mark Warawa: I'm asking her to accept, if she would, a friendly amendment that it be forwarded on to the House immediately, unamended.

The Chair: The bill? No, you'd change the intent of the bill. The reason we're extending this....

Mr. Blaine Calkins (Wetaskiwin, CPC): It's in the motion.

Mr. Mark Warawa: Chair—

The Chair: You're asking for....

It's up to you: he's asking if you want to add that as a friendly amendment.

Ms. Linda Duncan: I don't see that as a friendly amendment, so I'm afraid I can't accept it.

The Chair: Okay.

So it is not accepted.

Are there any other comments?

We're voting on Linda's motion to extend, pursuant to Standing Order 97.1(1), by 30 sitting days.

All in favour?

(Motion agreed to)

The Chair: When we last met, we were talking about Liberal amendment L-1.2.

The Conservatives had the floor—they had four minutes left—on new subclause 10(2).

Who wishes to speak to it?

Mr. Armstrong.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): I'm just going to finish some of the comments I started at the end of the last meeting.

Despite the amendment, clause 10 of Bill C-469 remains redundant, and given the extent to which access to environmental information is already provided in existing federal statutes and other government initiatives, I believe this amendment does nothing to help that.

I am going to stop my comments at that point.

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): I've been trying to just figure out precisely what this amendment does, and I must confess it is eluding me. I don't quite understand what is being proposed that we're not already doing. What is there that this amendment would permit to be disclosed that would not be disclosed under the Access to Information Act?

The implications of this amendment are really rather murky, in my opinion. I don't know, for example, regarding confidentiality, whether or not the Access to Information Act contains an override that would prevent private information from being disclosed under this section or not.

Ordinarily, I like to have all the answers, but in this case, I'm afraid, I'm just asking the questions, because I genuinely don't know the answers.

Thank you.

● (1555)

The Chair: Are there any other comments?

Seeing none, we're voting on the amendment.

All those in favour of amendment Liberal L-1.2?

(Amendment agreed to)

The Chair: Now we're speaking to the main clause, which is clause 10.

Mr. Armstrong.

Mr. Scott Armstrong: As discussed in the analysis of the amendment, clause 10 of the bill places an obligation on the Government of Canada to ensure effective access to environmental information by making such information available to the public in a reasonable, timely, and affordable fashion.

This already exists in many other federal statutes involving the environment. For example, the Canadian Environmental Protection Act, 1999, requires the minister to establish a registry for the purpose of facilitating documents relating to matters under this act. The registry has been available online since March 31, 2000, and contains approximately 3,000 documents related to regulations, notices, orders, permits, guidelines, codes of practice, agreements and policies, substances, and enforcement and compliance actions. Information is available to facilitate participation in consultations and decision-making processes under the act. The registry has already received between 34,000 and 164,000 unique visits per month since it was established in 2009.

In a second example, the Species at Risk Act also requires the minister to establish a registry for facilitating access to documents relating to matters under this act. This registry is also online and provides access to over 2,300 documents related to Canada's strategy and legislation for protecting and recovering species, species lists, and information on assets.

A third example of pre-existing legislation that makes this clause redundant is the Canadian environmental sustainability indicators initiative. It was given permanent funding in budget 2010, and provides Canadians with regular information on the state of air quality, greenhouse gas emissions, water quality, water quantity, and protected areas.

A fourth example of redundancy is in the Canadian environmental assessment registry, which was established in 2003. Pursuant to subsection 55(1) of the Canadian Environmental Assessment Act, it is an important source of public information on projects undergoing environmental assessment under this act. The registry aims to help the public find information and records related to current assessments, and provides timely notice about the start of an assessment and opportunities for public participation.

A fifth example of redundancy of this clause is in the Access to Information Act, which applies to information related to environmental statutes. It gives Canadian citizens and permanent residents the right to be given access to or request any record under the control of a government institution. It places an obligation on the head of a government institution to make every reasonable effort to assist a person in connection with the request; respond to the request accurately and completely; and, subject to the regulations, provide timely access to the record in the format requested.

With all of these existing mechanisms in place to share environmental information, it's unclear why this provision is needed in this act.

On a further analysis, it's been indicated that the provision would also oblige government officials to reveal to Canadians the negotiating positions of the government on critical environmental treaties and bilateral agreements. The decision on whether or not a government negotiating position is public should really rest with the responsible minister. This could cause serious issues for us when we go to negotiate international or multinational agreements concerning the environment.

Therefore, I do not support this clause. I believe it's redundant in several situations.

The Chair: Thank you.

Ms. Duncan.

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

Clause 10 has been added first and foremost because of concerns about accessing environmental information through the federal government. It's not a new problem, but the recent grade for the Minister of the Environment was an F. So it adds “reasonable, timely and affordable”. There have been concerns about the fees and delay in providing the information.

The very purpose of this provision is to deliver in law on the commitments by the Government of Canada on the right to participate and access to information. It delivers on the North American Agreement on Environmental Cooperation article 1, article 2.1, article 4.1, and article 4.2. In articles 4.1 and 4.2 particularly, Canada commits to advance notice and opportunity to comment on any proposed law and policy. That is why this provision has been added.

Secondly, indeed there are some provisions, specifically in CEPA, but there are many environmental statutes that do not make specific provisions. The intent of this bill is to do an override to ensure access to environmental information by Canadians.

● (1600)

The Chair: Thank you.

Mr. Woodworth.

Mr. Stephen Woodworth: Before I begin, Mr. Chair, I just have a question. May I know how much of each Conservative member's minute and a half is left for me to use?

The Chair: You have six minutes and 35 seconds.

Mr. Stephen Woodworth: Oh, very good. Thank you. I don't think I'm going to need to take all of colleagues' minute-and-a-halfs.

I do want to make one or two comments. The first is that we did hear evidence from Theresa McClenaghan of the Canadian Environmental Law Association—I practised alongside her in Waterloo region for many years—and also Professor Stewart Elgie of the University of Ottawa. Although I did not agree with much of what they said, they did get it right on at least this point—namely, that the information rights referred to exist under other broad federal access to information provisions.

You can see that for Professor Elgie in the blues of October 27, 2010. Theresa McClenaghan appears in the blues for November 1, 2010.

But one thing they did miss...and I almost missed it, actually, until I read this section again carefully. As I said the other day, every time look at this section I see some new time bomb waiting to explode.

Mr. Armstrong mentioned that the government may have to reveal to Canadians negotiating positions. It's even worse than that. If you look closely at clause 10, you will see that it begins by referencing "the protection of the environmental rights of residents of Canada and entities". As we know from the definitions section, an entity doesn't have to be a resident of Canada; it can be any foreign agent that opens an office in Canada.

This clause then goes on to say that we have to make "such information available to the public". I'm not a judge, but if I were, I would assume, in interpreting the word "public", that I'd be going back to the beginning words of the clause, where it includes not only residents of Canada but also entities.

So probably for the very first time in history, this act would give the right to foreign agents to directly access the negotiating positions of the Canadian government in environmental matters at least.

Maybe it'll turn out that way, maybe not, but I think that's another one of these little time bombs that this act contains. We'll all look forward in ensuing years to see whether it's an unfortunate Conservative government or an unfortunate Liberal government that has to deal with these little time bombs, if this act is enacted.

Thank you.

The Chair: Seeing nobody else, I will call the question on clause 10 as amended.

This will be a recorded vote.

(Clause 10 as amended agreed to: [See *Minutes of Proceedings*])

(On clause 11—*Right to participate in government decision-making in environmental matters*)

The Chair: Does anyone wish to speak to this?

Mr. Warawa.

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

Clause 11 prohibits the Government of Canada from denying residents "standing to participate in environmental decision-making or to appear before the courts in environmental matters solely because they lack a private or special legal interest in the matter".

Clause 11 is unnecessary, and I'm going to break it into two parts.

It's unnecessary because existing legislation—the Canadian Environmental Protection Act, 1999, and the Species at Risk Act—provides residents of Canada with the opportunities to participate in a number of decision-making processes related to the environment. These existing rights are carefully tailored to maximize public participation, while recognizing the finite government and judicial resources, as well as the need for timely implementation of programs and policies.

On the second item, regarding a person standing before the court, the government cannot deny a person standing before the court. Standing before courts is determined by the courts themselves. Courts may currently grant public interest standing when the applicants demonstrate they have a serious issue to be tried, that they have a genuine interest in the matter, and that there is no other reasonable or effective way to bring the issue before the court. So the purpose of this provision is quite unclear.

In fact, Chair, when we heard from witnesses, Theresa McClenaghan of the Canadian Environmental Law Association pointed out that it's "generally the courts who make standing decisions". That can be found in the blues for November 1.

So clause 11 obliges the Government of Canada not to deny residents standing to participate in the environmental decision-making solely because they lack a private or special legal interest in that matter. The Government of Canada currently provides opportunities for residents to participate in decisions, as I've said, in CEPA 1999. Members of the public are given an opportunity to comment on proposed regulations. They have in the past, and they would continue to have that opportunity to provide input, and may file notices of objection to proposed regulations or decisions respecting substances.

Under the Species at Risk Act, members of the public may participate in the development of recovery strategies. And as I've said before, it's quite tragic that we are not dealing with the Species at Risk Act, as is our legislative requirement. Instead, we are languishing on a bill that is a big bill of concern and again would kill jobs and investment.

Back to requiring the courts to permit standing—or the government, which doesn't make sense, actually. The provision would likely prevent the government from denying residents an opportunity to participate in such decisions solely because they lacked a special interest in the matter; it would not prohibit the government from denying standing for other reasons.

The second part of the proposed clause prohibits the Government of Canada from denying standing before courts on environmental matters. However, the provision appears to be misplaced, as standing before courts is determined by courts, as I've shared in the quote. It's not to be the Government of Canada that determines that. Court discretion to grant or deny standing: it's important that the courts have that discretion to discourage frivolous litigation, preserve scarce judicial resources, and ensure the determination of an issue benefits from the contending points of view of those most directly affected by the issue.

Moreover, courts may grant public interest standing when the applicants demonstrate they have a serious issue to be tried, that they have a genuine interest in the matter, and that there is no other reasonable and effective way to bring the issue before court. As such, the purpose of this proposal is, I believe, inappropriate.

● (1605)

I believe I have three more minutes, but at this point, to correct another serious bombshell, I would move that the last third of the clause be struck, with a period after the words “participate in environmental decision-making”.

So my motion would remove “or to appear before the courts on environmental matters solely because they lack a private or special legal interest in the matter”.

As I've said, courts should have that discretion. We've heard that throughout different standing committees in Parliament. Courts should have the discretion. For the NDP to try to remove that discretion is, I believe, a very dangerous step, so therefore my motion.

● (1610)

The Chair: All right.

We have an amendment to line 17 in the English version to remove everything after “decision-making”. After the period following “decision-making”, the rest would be deleted.

We're now speaking to the subamendment.

Mr. Woodworth.

Mr. Stephen Woodworth: Thank you very much, Mr. Chair.

I would like to suggest a friendly amendment if Mr. Warawa is prepared to accept it.

If we delete the entirety of those last two and a half lines or so, we will be in effect expanding the paragraph to simply say that the Government of Canada shall not deny standing to participate to anybody.

The words “solely because they lack a private or special legal interest in the matter” are, I think, an important qualification. If they are left, then the clause would, with Mr. Warawa's thought, be amended to say that “the Government of Canada shall not deny any resident standing to participate solely because they lack a private or special legal interest in the matter”.

But there may be other reasons why the Government of Canada may deny standing to Canadians. If we also omit the words “solely because they lack a private or special legal interest in the matter”, then if there is another good reason to deny standing, I'm afraid the government won't be able to make use of it.

So the friendly amendment that I'm suggesting would result in an amendment that would simply delete the words “or to appear before the courts on environmental matters”—full stop—and leave in the words “solely because they lack a private or special legal interest in the matter.”

Mr. Mark Warawa: I'll accept it as a subamendment.

The Chair: If it's a subamendment, I'm going to have to—

Mr. Mark Warawa: Accept it as a friendly amendment to my motion.

The Chair: The thing is that we're not dealing with motions here. We're dealing with clauses of a bill.

You want to delete one part.

You're suggesting that we leave in....

Mr. Mark Warawa: On a point of order, Mr. Chair, if we're not dealing with the motion, then we cannot move forward. We have to have a motion on the floor that we can debate and then vote on.

I believe we do have a motion on the floor....

Well, Chair, maybe we don't—maybe nobody moved clause 11—in which case, what are we debating on?

The Chair: Just for information, one thing you'll not find in this book is friendly amendments. They don't exist.

Mr. Blaine Calkins: Kind of like friendly chairs.

The Chair: Yes.

Often those things are done because there's consent around the table to accept them.

I'll ask for consent. Anything is possible with unanimous consent.

Is there consent to allow Mr. Woodworth to do this amendment to...?

You have a point of order, Mr. Woodworth?

I'm asking for consent first.

Mr. Stephen Woodworth: I know, but I think you've put the question slightly incorrectly.

I think the question is whether we will allow Mr. Warawa to—

The Chair: To accept this friendly amendment.

Mr. Stephen Woodworth: Yes.

The Chair: Otherwise, we're dealing with it as a subamendment.

● (1615)

Ms. Linda Duncan: That's presuming, then, that the motion has been tabled.

The Chair: We definitely have a request to delete some words and leave in some words.

Is there consent to deal with it in that way?

Ms. Linda Duncan: Yes.

The Chair: Okay. So we'll deal with it. The subamendment's been accepted, and you're on to the....

It means that we're dealing with the main amendment.

Mr. Blaine Calkins: Could you tell me what it is we're discussing now, please?

The Chair: The amended clause would read: Every resident of Canada has an interest in environmental protection and the Government of Canada shall not deny any resident standing to participate in environmental decision-making solely because they lack a private or special legal interest in the matter.

Is that correct?

Mr. Blaine Calkins: We're debating now, Chair, an amendment to the clause.

The Chair: Yes.

Mr. Blaine Calkins: Mr. Chair, I'd like to move a subamendment, please.

The Chair: Okay, we're moving a subamendment.

Mr. Blaine Calkins: I would like to delete the words from “Every” to “and”. The clause would start with “The Government”.

I believe the first comment has no standing or basis in law, and is purely an editorial comment injected into the bill.

The Chair: What are you talking about?

Mr. Blaine Calkins: I would like stricken from the clause the words “Every resident of Canada has an interest in environmental protection and”.

The Chair: That's another amendment. We're dealing with the end of the paragraph, not the beginning. So I'd like to deal with that as a separate amendment, not as a subamendment.

Mr. Blaine Calkins: I'll wait. I'll defer to your wisdom.

The Chair: We will deal with the latter, and then we can come back to the former.

Mr. Woodworth, you have the floor.

Mr. Stephen Woodworth: Thank you.

I just want to second Mr. Warawa's comments that it is a little nonsensical to suggest that the Government of Canada can deny standing to anyone who wants to appear before the courts.

Now, it shouldn't surprise us, I suppose, that something that I think is, I repeat, nonsensical may be found in this bill. But Mr. Warawa is I think correct that if the Government of Canada is or is not involved in an environmental matter before the courts, the Government of Canada doesn't make the decision about who has standing.

Wouldn't it be a nice world if the Government of Canada could tell the courts what to do in any given case? But that's not the world we live in. The courts decide, I think for themselves, who has standing. The Government of Canada might have a word on it, but ultimately doesn't deny anyone standing. It's up to the courts, I think.

I'll just leave it at that.

That is why I think the amendment makes sense.

The Chair: I have Mr. Scarpaleggia, on the amendment.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): I'm just seeking clarity.

Is it correct that it's not up to the Government of Canada to decide who shall appear before the courts in environmental matters? Maybe there's nuance here that I'm not picking up. It's either one or the other, is it not?

Maybe somebody could just elaborate on that.

The Chair: Go ahead, Ms. Courtney.

Ms. Kristen Courtney (Committee Researcher): That's right, in a court action, it's the court that grants or denies standing to a party or to someone who seeks to be recognized as a party.

I believe one of the witnesses made a comment about it, that it's not technically correct to say that the government shall not deny a resident standing to participate in a court action. It's the court that does it.

The witness proposed some wording to deal with that.

Mr. Francis Scarpaleggia: So then we really do need to strike out this part here.

Am I speaking to the subamendment or to...? I don't know anymore.

The Chair: We're speaking to the amendment. There's only one amendment on the floor.

Mr. Francis Scarpaleggia: So then I imagine we must take that part out, “to appear before the courts in environmental matters”.

● (1620)

The Chair: Are there any other comments?

Ms. Duncan.

Ms. Linda Duncan: Thanks, Mr. Chair.

It's hard to speak to this because I'm not really sure where we're are at now. I don't know why they don't just strike the clause.

The reason it's twofold is that there has been a regular practice by the federal crown to oppose standing when environmental lawsuits are filed.

There are two questions here. Are we dealing with the issue of whether the provision is worded in a way that says precisely...? I don't think it would be correct to say that the Government of Canada shall not oppose; I don't think that is what is said in statutes.

What is intended here is that the Government of Canada shall not deny; in other words, shall not make presentations to deny standing in those circumstances. That's a very important provision.

The whole point of this provision is to deliver on the North American Agreement on Environmental Cooperation, which Canada and a number of provinces have signed, to provide access to remedies to Canadians on environmental matters. This provision specifically provides, in both cases, access by Canadian residents to environmental decision-making processes and to the courts.

That's why it's twofold. To remove the second part would be to say we want to withdraw from a part of the North American Agreement on Environmental Cooperation. This provision simply implements something we had already committed to about 15 years ago.

The Chair: Mr. Woodworth and then Mr. Scarpaleggia.

Mr. Stephen Woodworth: Thank you, Mr. Chair.

I think I heard Ms. Duncan suggest we should strike the clause. If so, I'd certainly be prepared to support that, if she wishes to move it.

Ms. Linda Duncan: I'm not suggesting it; I'm suggesting that's what you want.

Mr. Stephen Woodworth: Apart from that, I can see at least three possibilities here. There are probably more, but on a quick reading there are three possibilities with respect to this unfortunate section.

One is that maybe what we're trying to do in this clause is to say there will never be a statute of the Government of Canada that purports to deny standing. In other words, if we ever pass another environmental statute it has to not deny standing to people just because they lack a private or special legal interest. That's not what the clause says, but it's a possibility that's what it's getting at.

Second—and what I think it probably is getting at, but Ms. Duncan doesn't like—is that this clause wants to direct the Government of Canada to direct its agents, solicitors, and prosecutors not to oppose applications for standing. Ms. Duncan says she doesn't think that's the way it should go.

The third thing it could mean is that maybe this clause wants to tell the courts they shouldn't refuse standing solely because people lack a private or special legal interest, and to tie the hands of the courts.

In any event, I certainly think as it's presently worded it makes no sense. It could mean anything or nothing.

The Chair: Okay.

We will have a clarification from our analyst, and then I have Mr. Scarpaleggia and then Mr. Ouellet.

Ms. Kristen Courtney: To clarify, Mr. Scarpaleggia, you asked before about the word “deny”. It is true that usually it is the court that denies standing.

One of the witnesses, Theresa McClenaghan, suggested wording to address the situation. To address the situation where the Government of Canada is participating in a lawsuit and opposes a person's standing—so they make submissions to the court that the court should deny standing—the wording suggested by this witness was that the federal government “shall not deny, oppose, or otherwise contest this standing”.

Ms. Linda Duncan: I would accept that as a friendly amendment.

Ms. Kristen Courtney: That would be one way of dealing with what I think is envisioned.

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I think that clears it up. Ms. Duncan said she would accept that wording. So I don't know how we get—

● (1625)

Ms. Linda Duncan: We vote on the first one and then you can table that.

Mr. Francis Scarpaleggia: I guess we'll vote against these amendments and subamendments, and Ms. Duncan can propose new wording?

Ms. Linda Duncan: No, you should propose it, I think.

Mr. Francis Scarpaleggia: Okay.

[*Translation*]

The Chair: Mr. Ouellet, it is your turn.

Mr. Christian Ouellet (Brome—Missisquoi, BQ): I would like to talk about the evidence given by Ms. Teresa McClenaghan, Mr. Woodworth's colleague. I will read this to you in English, because I do not have the French translation; my apologies to my francophone colleagues.

[*English*]

It reads as follows:

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

[*Translation*]

That is my comment.

[*English*]

The Chair: We're voting on the amendment by Mr. Warawa, with the help of Mr. Woodworth, to delete the words “or to appear before the courts on environmental matters” after the word “decision-making”.

All those in favour?

(Amendment negatived)

The Chair: It is defeated, so we are back to the main motion.

Mr. Mark Warawa: I believe I have another minute and a half.

The Chair: We'll let Mr. Warawa have the floor.

Mr. Mark Warawa: Thank you.

I would move, as Mr. Calkins has brought to our attention, that the first part, “Every resident of Canada has an interest in environmental protection and” be deleted.

Mr. Blaine Calkins: Mr. Chair, may I speak to that?

The Chair: We're on the amendment. I know you're next on the list on the main clause.

Mr. Francis Scarpaleggia: I don't know how it works, Mr. Chair....

The Chair: We're on the amendment that was just moved by Mr. Warawa.

I'll go to Mr. Calkins, and then I'll give you the floor.

Mr. Blaine Calkins: Mr. Chair, I don't want colleagues around the table to think that this is anything more than simple housekeeping. The reality is that while it would be hard to find a Canadian who wouldn't agree that every resident of Canada has an interest in environmental protection, this comment is purely, in and of itself, editorial insofar as the legislation is concerned.

We just had a motion brought forward and an amendment by the Liberal Party at the last meeting amending clause 10 of the bill, saying that every Canadian has an obligation to protect the environment.

Again, this is a very assuming statement that every resident of Canada has an interest in environmental protection. While I certainly have an interest in it and while I believe the sponsor of the bill has an interest in it, and while I believe every member of this committee has an interest in it, it's a little bit assuming that every Canadian would view that this clause is absolutely correct.

I believe it has no bearing and should have no bearing in a court of law because it is basically legislating the morality of environmental thinking in the country. Therefore, I simply suggest that we remove it.

The clause, in its intention, is about the Government of Canada and its ability to involve Canadians who are interested, but to make the broad statement that every Canadian is interested, I think is simply more of an editorial comment in its lecturing and frankly quite condescending to Canadians.

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I'd like to call the vote.

The Chair: You can't call the vote.

Mr. Francis Scarpaleggia: No?

The Chair: Mr. Warawa.

Mr. Mark Warawa: Mr. Chair, I appreciate that Mr. Calkins is bringing this to our attention, because I think he's quite right.

The motion is that we remove “Every resident of Canada has an interest in environmental protection”. Well, define “environmental protection”. I'd like to give an example. We just had a vote in the House of Commons, and it was Bill C-429, An Act to amend the Department of Public Works and Government Services Act (use of wood).

Of course, the coalition supported that—

The Chair: Ms. Murray on a point of order.

● (1630)

Ms. Joyce Murray (Vancouver Quadra, Lib.): On a point of order, Mr. Chair, I fail to see that this is relevant to the amendment being proposed by Mr. Calkins.

Mr. Mark Warawa: Speaking to that point of order, Chair, if I've just begun speaking, and Ms. Murray has called a point of order when I haven't had a chance to make my point, therefore she's not going to be able to know whether or not it's relevant.

So speaking to that point of order, if she would be patient and allow me adequate time, I think she will find that this is actually very relevant.

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

Mr. Stephen Woodworth: Oh, I'm sorry, no, I wanted to speak to the amendment.

The Chair: Okay. I'll put you on the list.

I was wondering the same thing, Mr. Warawa—

Mr. Mark Warawa: I want to make my point.

The Chair: —if you're going to get to your point and be relevant to the amendment.

Mr. Mark Warawa: It becomes very relevant when I point out that using wood for sewer pipes, as they used to use wood for sewer pipes years ago, is not environmentally friendly, and yet we have the coalition supporting a motion that they deem to be environmental protection by using more wood.

Now, there can be opportunities where the use of wood, I would think, would be enhancing environmental protection, but using wood for sewer pipes, or for, as an example, building bridges instead of using concrete or steel, would not be environmentally friendly, would not be enhancing, and the protection of the environment—and also for hydroelectric dams to use wood instead of concrete and steel would not—

Ms. Linda Duncan: Mr. Chair, on a point of order, this provision commands no substantive determination, simply the right to participate and have each voice heard, so I see no relevance in what Mr. Warawa is speaking to. Could he please make it relevant?

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

You're not speaking to the point of order?

Mr. Stephen Woodworth: No, I am. The line that we're discussing does have a significant impact on the clause. And when my turn comes to debate, I'll explain why I think that is.

Mr. Mark Warawa: May I speak to the point of order?

The Chair: To the point of order, Mr. Warawa.

Mr. Mark Warawa: Chair, again I've been interrupted by the opposition members, not giving me adequate time to make the point. And the point, I believe, is very clear: what is the definition of “environmental protection”? It may be quite different for me, as to members across the way, but I think most Canadians would agree with me—I'm quite sure they would—

Mr. Christian Ouellet: No, they wouldn't.

Mr. Mark Warawa: —that building sewer pipes out of wood is not enhancing environmental protection.

And that's the example I'm using.

Mr. Christian Ouellet: That's why you are a minority government.

The Chair: Order.

Mr. Warawa, you're getting fairly broad, and you can pull in so many things that you consider environmental protection. I want you to talk to the issue of the clause—

Mr. Mark Warawa: [*Inaudible—Editor*]...problem with the bill, Mr. Chair.

The Chair: —and how removing the first part of it improves the clause. So I do want you to be more relevant.

Mr. Mark Warawa: So Chair, am I speaking to my...?

The Chair: You're speaking to the amendment, which is removing "Every resident of Canada has an interest in environmental protection and", at the beginning of clause 11. That's what you're speaking to.

Mr. Mark Warawa: Thank you. So I'm not speaking to the point of order interruption.

What we're proposing should be removed is "Every resident of Canada has an interest in environmental protection", which has not been defined, and that's the very point that I'm trying to make. And without a definition of "environmental protection", if we do not have that clear, then it's not relevant. It's a feel-good, meaningless statement.

So removing that and beginning with "The Government of Canada shall not" is, I think, more appropriate, and therefore we have the motion to remove that editorial, meaningless comment.

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: Thank you.

I mentioned on a number of occasions how every time I look at these things I see some new interesting little nonsensical thing. On this occasion, having read this paragraph for about the fifth time, I realize that what line one is actually trying to talk about is a legal interest, and that's the phrase that appears in the last line of this clause, "legal interest".

I think what the clause is really trying to say is that because every resident has a legal interest in environmental protection, they shouldn't be denied standing, because they don't have a private or special legal interest.

Why the clause doesn't say that, I don't know, but it doesn't say that, Judges are required to find meaning, so some judge somewhere down the road is going to be asking, if we're saying legal interest in the latter half of the paragraph and just interest in the first half of the paragraph, what does that mean? What does it mean that a resident of Canada has an "interest" in environmental protection rather than saying a "legal interest"? This is just another poorly drafted clause, in my opinion, which we shouldn't as professionals let pass.

I think all of us here are professionals. Not just Ms. Duncan and I, who are lawyers, but everyone here as parliamentarians have some kind of standard to pass coherent legislation, not mishmashes, which throw together different terms for the same thing in the same paragraph.

The one thing I am glad about, though, is that this clause doesn't give an interest in environmental protection to foreign agents.

I see Ms. Duncan laughing about that, but it's the only clause in this bill that I can see that doesn't give foreign agents the same rights as residents of Canada. I'll speak about that more later.

● (1635)

The Chair: Okay. I have nobody else on the list. We're voting on the amendment to delete the words "Every resident of Canada has an interest in environmental protection and" from clause 11.

(Amendment negatived)

The Chair: We're back to the main clause.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I'd like to amend clause 11.

I'd like to add to the phrase "shall not deny", and say instead "shall not deny, oppose or otherwise contest".

We're just adding about three words.

The Chair: So it's "shall not deny, oppose or otherwise contest".

Mr. Francis Scarpaleggia: Yes.

I don't know if the grammar is proper here, but....

The Chair: Okay.

We have an amendment on the floor by Mr. Scarpaleggia.

Mr. Woodworth.

Mr. Stephen Woodworth: I would just like to be very clear from the analyst whether or not the Government of Canada can deny standing to a resident to appear before the courts on environmental matters since we're keeping the word "deny".

Ms. Kristen Courtney: I think the purpose of retaining the word deny there is because you've got two parts after that. So no, the Government of Canada can't deny a person standing to participate in a court matter, but the Government of Canada can deny a person standing—the first part says "to participate in environmental decision-making". So I think it encompasses both of those.

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: That being the case, if one were trying to draft a proper clause to incorporate Mr. Scarpaleggia's idea, I would have suggested, if it were my amendment, that the words "oppose, or otherwise contest" should go in the clause that relates to the courts, since "deny" is sufficient to the other issues. And since "deny" is not appropriate in court proceedings, the amendment, in my view, still doesn't make sense, and it would require a further amendment, if we're going to do this in a legislative and responsible way, to say further down "or to oppose, or otherwise contest standing before the courts", etc.

● (1640)

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I think if I understand—

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

Mr. Mark Warawa: Mr. Chair, my question, on this point of order, is where this recommendation came from. It came from the clerk, but where did the clerk hear that from? I think she reported it was from Theresa McClenaghan with the Canadian Environmental Law Association.

Is that correct? What's the source of this recommended amendment?

The Chair: It's not the clerk, it's the analyst. And that's not a point of order, but you can ask that question if you want to get on the speaker's list.

Mr. Mark Warawa: Thank you.

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I thank Mr. Woodworth for his point, which was clear to me.

As I understand it, if we struck the word "deny" and just left it at "Canada shall not oppose or otherwise contest", would that suffice? In that case, I would accept a friendly amendment from Mr. Woodworth.

Mr. Stephen Woodworth: On a point of order, it's not a friendly amendment suggestion.

Mr. Francis Scarpaleggia: Well, whatever.

I'm giving him the opportunity to be friendly.

Mr. Stephen Woodworth: I don't want very much part, if any, in trying to correct all of the many flaws in this bill.

The Chair: Let's make sure we're speaking in order and through the chair.

Mr. Francis Scarpaleggia: So if we took "deny" out, it wouldn't solve the problem?

Ms. Linda Duncan: What Mr. Woodworth is suggesting is... [*Inaudible—Editor*].

The Chair: I have to get back to my speaking list.

I have Mr. Warawa and then Ms. Duncan if she wants to be on it.

Mr. Warawa, you had a question for our analyst.

Mr. Mark Warawa: Thank you.

Who was the source of this recommended amendment? That's a question through you to the analyst.

Ms. Kristen Courtney: You're right, it was Theresa McClenaghan of the Canadian Environmental Law Association.

Mr. Mark Warawa: Thank you.

The Chair: Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, I'd simply make the comment that unfortunately, because of the restrictions of our process, I don't know if it's even possible to make a friendly amendment to Mr. Scarpaleggia's proposed amendment. We may just have to vote it down and start again.

I agree with Mr. Woodworth, and he doesn't seem to be willing to put forward a friendly amendment, which I would be willing to do. As I understand it, the correct wording would be "Canada shall not deny any resident standing to participate in environmental decision-making or"....

Were the words to "oppose", or "object to", or "contest" the standing to appear before the courts? I can't recall, but perhaps the clerk could read out the wording that Mr. Scarpaleggia used.

The Chair: The wording we have is "deny, oppose or otherwise contest".

Ms. Linda Duncan: Well, I guess my friendly amendment then would be, after "deny", to strike the words "oppose or object", and add in the word....

The Chair: You are making a subamendment.

Ms. Linda Duncan: Yes, I am.

The Chair: So where are you doing this now?

Ms. Linda Duncan: As I understand it, Mr. Scarpaleggia's amendment was "shall not deny, oppose or contest".

Is that what he said?

The Chair: It was "otherwise contest".

Ms. Linda Duncan: Okay.

What I'm saying is that my subamendment is to strike the words after "deny, oppose or otherwise contest" and add those words in after....

The Chair: That's a major amendment. You'd move that to a different part of the clause. So I'm not going to accept that at this time as a subamendment, but if you want to move that as an amendment, after, we can do that.

Ms. Linda Duncan: Fine.

The Chair: So we're still speaking to Mr. Scarpaleggia's amendment.

Are we ready for the question?

An hon. member: What's the question?

The Chair: Mr. Scarpaleggia moves that the motion be amended by adding, after the words "shall not deny", the words ", oppose or otherwise contest".

Mr. Mark Warawa: I thought I heard a subamendment moved.

The Chair: I ruled it out of order.

Mr. Mark Warawa: You ruled it out of order.

The Chair: Yes.

Mr. Mark Warawa: Thank you.

The Chair: All those in favour of the amendment?

(Amendment agreed to)

The Chair: We're back to the main clause as amended.

Mr. Scarpaleggia, you're next on the list.

● (1645)

Mr. Francis Scarpaleggia: I have nothing to add.

Can I call the vote?

The Chair: No, you can't call the vote.

Mr. Warawa has just indicated he wants to speak. He has just a couple of minutes.

Mr. Blaine Calkins: Mr. Scarpaleggia, if you want to take over as the vice-chair, we'll gladly bring another member in.

The Chair: Mr. Warawa.

Mr. Mark Warawa: Chair, in my comments I brought up two points. One, normally the courts have discretion on whether or not to grant standing. We heard that from the analyst. So that is the norm, that the courts would have that discretion. Then we heard that the Canadian Environmental Law Association—which spoke in favour of Bill C-469, possibly having a bias in favour of this bill—wants to make this bill better.

The clock is ticking, so perhaps Mr. Woodworth can speak on this.

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: Thank you, Mr. Chair.

I'm just following up on a request that was left with me by Mr. Cannan, who was here a few moments ago, to propose an amendment to clause 11.

It would result in words being added to the first line so that it would read: “Every resident of Canada has an interest in balanced and cost-effective environmental protection and economic development”.

Might I speak to it ?

The Chair: Yes, you may speak to it.

Mr. Stephen Woodworth: It goes back to a question that was raised earlier in our deliberations about the issue of sustainable development and the fact that sustainable development requires that we balance cost-effectiveness and economic development with environmental protection.

I've noted already that there are spots in this act where definitions depart from the international standards. I referred previously to the Rio declaration on the precautionary principle. It is an international declaration and incorporates the issue of cost-effectiveness into the precautionary principle.

Although it's true that one day a Conservative government may have to deal with the irresponsible provisions in this act, I suggest it could also be a Liberal government that one day might have to deal with the irresponsible elements of this act. The one thing I'm pretty sure of is that it's unlikely to be an NDP government that will ever have to deal with the irresponsible elements of this act.

Ms. Linda Duncan: Bring it on.

Mr. Stephen Woodworth: So I really strongly urge my Liberal colleagues across the way to stop and think for a moment. I know there is a competition going on between the Liberals and the NDP for a certain left-wing vote that they both think they need, but the reality is that if this provision, if this act, in fact, doesn't balance the issues of cost-effectiveness and economic development with environmental protection in the way that Canada has traditionally approached environmental matters, if this act passes without that kind of a balance, the chickens may some day come home to roost under a Liberal government. For that matter, regardless of who is governing the country, there are going to be problems for Canadians.

We all do have an interest in environmental protection, but we also have an interest in being cost-effective and an interest in being balanced in terms of economic development. Remember that every house we build damages the environment. Every car we put on the road damages the environment. So unless we want to go back to living in igloos and mushing on dogsleds, we do have to do things in a sustainable way and balance cost-effectively environmental protection and economic development. This is just common sense and the responsible approach, and I think it would be a shame if the Conservative Party were the only party to take a common sense, responsible approach to this bill.

Now, had we earlier done something to say that interest meant legal interest only, which is what I think originally this clause probably started out to say, then this point wouldn't arise. But since we currently have a clause that talks about an interest generally, I just want to, as strongly as I can, urge at least the Liberals across the way to take a responsible approach and include some recognition and some acknowledgement that cost-effectiveness and economic development need to be balanced with environmental protection.

I don't mean to leave out the Bloc Québécois, but I know they have no interest in governing Canada and no particular concern for Canadians generally.

● (1650)

Mr. Christian Ouellet: [*Inaudible—Editor*]

Mr. Stephen Woodworth: However, that said, I think even the Bloc must be aware that these provisions will affect the people of Quebec, *les Québécois*, Hydro-Québec, and therefore, the Bloc should also be interested in ensuring that this act balances a responsible approach of cost-effectiveness and economic development with environmental protection.

Thank you.

The Chair: Mr. Warawa.

Mr. Mark Warawa: Chair, we are dealing with an amendment to this clause. Is that correct?

The Chair: That's correct.

Mr. Mark Warawa: Now, you've said there is no such thing as a friendly amendment. But if I was to seek it from Mr. Woodworth, if it was a very minor change, but made it a little bit more palatable, would you entertain that?

The Chair: It's up to the committee. What are you proposing?

Mr. Mark Warawa: Well, thank you for your indulgence.

Before we had time limitations put on committee members, I shared with the committee the importance of sustainable development—that's a term around here—and this amendment is using the term “economic development”. I think if “economic” was replaced with “sustainable” development.... It includes the three pillars, which is economic, social, and environmental.

Mr. Stephen Woodworth: That's a good idea.

The Chair: So you're suggesting that where the wording reads right now “balanced”....

Every resident of Canada has an interest in balanced and cost-effective environmental protection and economic development

An hon. member: So “balanced and cost-effective environmental protection and economic development”.

Mr. Mark Warawa: No, “sustainable” development.

The Chair: You're going to add that in.

Mr. Mark Warawa: No, I want to replace “economic” with “sustainable”.

Chair, we have not—

The Chair: Okay.

Do I have consent for the friendly amendment of Mr. Warawa's?

Some hon. members: Agreed.

The Chair: Yes, I have consent? Nobody has said “no”.

Okay, go ahead.

Mr. Mark Warawa: So do I have consent?

The Chair: Yes.

Mr. Mark Warawa: Thank you.

That's the only point I wanted to make.

Now, we haven't yet defined what “sustainable development” is. We do in present legislation, but of course, Bill C-469 wants to remove the economic and social parts, those pillars of sustainable development. So when we get to that clause and we go back to definitions, hopefully the coalition will support the present definition of “sustainable development”.

Thank you.

The Chair: So we're voting on the amendment by Mr. Woodworth, which reads, to the best of my knowledge, “balanced and cost-effective environmental protection and sustainable development”.

That's the question, that's the amendment.

(Amendment negatived)

The Chair: It's back to the main clause.

Mr. Mark Warawa: Has the main clause been amended?

The Chair: Yes, it has. It was amended by Mr. Scarpaleggia's amendment. So we have added the words “oppose or otherwise contest” to it.

The Clerk of the Committee (Mrs. Guyanne Desforges): Do you want to read it, as amended?

The Chair: Yes.

Just so we are all clear on the amended version of clause 11, it reads:

> Every resident of Canada has an interest in environmental protection and the Government of Canada shall not deny, oppose or otherwise contest any resident standing to participate in environmental decision-making or to appear before the courts in environmental matters solely because they lack a private or special legal interest in the matter.

Mr. Woodworth, you have one minute and 15 seconds left.

● (1655)

Mr. Stephen Woodworth: I just want to say that I am very glad that this particular clause does not give foreign agents the same rights as Canadian residents. So I suppose a foreign agent could be denied standing, if they didn't have a private or special legal interest in the matter.

But I do think from a legal perspective that this creates some very confusing interpretation issues, because the very next clause, which talks about the government's obligation to ensure public participation, does give foreign agents the right to participate.

So we have sort of a conflict between clauses 11 and 12. But maybe we can fix that by deleting the entities section, which refers to foreign agents, from clause 12.

The Chair: You're getting ahead of yourself now, but you are pretty much out of time.

Mr. Mark Warawa: Can we have a recorded vote?

The Chair: Yes.

So we are voting on clause 11 as amended.

(Clause 11 as amended agreed to [See *Minutes of Proceedings*])

(On clause 12—*Government's obligation*)

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: Thank you, Mr. Chair.

I guess the first thing I would like to address is the question of the rights of foreign agents, which are referred to in clause 12. I don't think that any other statute anywhere else in Canada—although I stand to be corrected—has given rights to foreign agents to participate in Canadian policy on the environment or anything else, simply by their opening an office in Canada. I think, although I stand to be corrected, this will be the first time in history that a statute has granted such rights to foreign agents.

It certainly goes beyond the provision in clause 6 that talks about safeguarding the rights of Canadians and ensuring that Canadians have access to adequate environmental information. Clause 6 at least does restrict itself to simply giving rights and protection to Canadians.

I suppose the reason that we are giving foreign agents these rights in clause 12 and elsewhere in the act is that this bill is specifically designed to be tailored to a variety of international interest groups, who have made their submissions—

The Chair: Mr. Warawa on a point of order.

Mr. Mark Warawa: On a point of order, Chair, I'm having a hard time hearing Mr. Woodworth because of the chatter across the way. I would ask for decorum.

Thank you.

The Chair: Yes, I'm having trouble myself.

Please keep the conversations to a minimum.

Mr. Woodworth.

Mr. Stephen Woodworth: Thank you, Mr. Chair.

In fact, I have noticed that throughout this debate, whenever a government member tries to speak—or not whenever, but frequently when a government member tries to speak—the government member is met with an unnecessary point of order, or even with heckling, such as is occurring at this point in time.

I don't think I've ever seen heckling at this committee until it was decided by someone to try to shut down debate on this bill. Now we have heckling. We get points of order. We get motions to curtail members to a minute and a half each, or else they have to extort time from their colleagues.

In any event, I appreciate my friend's intervention to allow me to continue speaking.

To go back to the point, when we look at clause 6, it protects Canadians. When we look at clause 11, it protects Canadian residents. But everywhere else, these foreign interest groups will be permitted to come to Canada, open up an office, and pursue their agenda, regardless of what the Canadian agenda might be. This shows itself again in clause 12.

By the way, it also gives foreign agents the right to sue the government in clause 16. It gives foreign agents the right to sue private Canadian interests under clause 23, all because of the definition of "entities" and the fact that this word, which to my knowledge.... Well, I shouldn't say, because I really don't know, but I certainly have never seen that word used before in a statute.

So this new and revolutionary way of importing foreign organizations to participate in Canadian policy-making is found in clause 12. Not only that, but it creates a problem with clause 12 being in slight conflict with clause 11.

I'd like to move that we simply delete the words "and entities" from clause 12.

● (1700)

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I'm told there's a way around this, and it might be by just simply, later on in the bill, defining "entities" to mean Canadian-registered or Canadian-controlled organizations.

I'm just wondering what the analysts think of that. Is there a way of simply changing the definition later on, so that we can move on?

The Chair: We'll come back to definitions, of course, in the preamble.

Mr. Francis Scarpaleggia: I guess that's at the beginning, yes.

The Chair: We can do that at that time.

Mr. Francis Scarpaleggia: Does that work?

Ms. Kristen Courtney: Certainly, if you wanted to....

I stand to be corrected, but I believe Mr. Woodworth's concerns could be addressed through the definitions.

Mr. Francis Scarpaleggia: Okay.

That's what I would suggest, Chair, because I'd like Mr. Woodworth—

The Chair: Just a minute.

I've been advised that if we don't amend the bill.... Right now it just says "entities". If you amended it to say "foreign entities", then we'd have to change the definition. But right now, since we aren't amending the bill on that particular issue, we wouldn't do an amendment to the definitions.

Mr. Francis Scarpaleggia: I'm sorry, I don't follow.

The Chair: Do you want to speak to that, Wayne?

Mr. Wayne Cole (Procedural Clerk): There are two reasons for amending an interpretation clause. One is to clarify something that's in the bill. The other is to make a substantive change to a definition that is required because of amendments that have been made to the bill.

What the chair was saying is that, because no change is being made to the use of the term "entities" in the bill, there might be procedural difficulties with attempting to change the definition.

Mr. Francis Scarpaleggia: Essentially, if we wanted to address Mr. Woodworth's concern, which I think is shared by others, we would have to amend clause 12 by perhaps inserting the words "Canadian-controlled" entities. Is that what you're saying?

Mr. Wayne Cole: Yes, something like that.

Mr. Francis Scarpaleggia: Well, I would like to propose that amendment, to add "Canadian-controlled" between "and" and "entities".

The Chair: Okay.

Mr. Mark Warawa: A point of order.

The Chair: I have an amendment I have to deal with.

Do you have a point of order?

Mr. Mark Warawa: I do.

The Chair: Okay, what's your point of order?

Mr. Mark Warawa: Mr. Chair, I don't believe the motion is in order, or the subamendment is in order, because what is on the table is a motion to remove the word "entities". It's not appropriate for them to be adding a word in front of "entities" when the motion is to remove it.

So I believe the point of order would—

The Chair: Yes, you are out of order, because he's removing the word "entities".

Mr. Francis Scarpaleggia: I suggest we vote on that.

The Chair: I have speakers, though, and then we can come back.

I have Ms. Duncan, then Mr. Woodworth, on the amendment.

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

I think it would be rather inaccurate to say that there's no other law that allows foreign entities to sue the Government of Canada. The Conservative Party in its wisdom, with the support of the Liberal Party, passed NAFTA, which is the only law I'm aware of—there may be others—that allows foreign entities to sue the Government of Canada. I am not aware of any, and I would welcome anybody tabling any case where a foreign entity has brought an action under environmental law other than NAFTA.

On the amendment that I would suggest to be made, I'm a little bit unclear from the clerk about the first category. I don't understand why the kind of amendment that Mr. Scarpaleggia's suggesting isn't an amendment that hasn't come up over and over again that would clarify. So there are a number of things coming up, and I would think that if the Conservative members want to be constructive at this table they would actually be suggesting some amendments when we get to the interpretation clause at the end, which I would certainly welcome as amendments to my bill.

By the way, a number of statutes reference adults and corporate persons. The Northwest Territories bill of rights references adults and corporate persons. This is not unusual.

I think a better turn of phrase to what Mr. Scarpaleggia said would be “a registered Canadian entity”. To take out “entity” would make absurd our process. Regularly, members around this table invite the Assembly of First Nations, the Canadian Association of Petroleum Producers, the Shipping Federation of Canada, the Canadian Union of Public Employees, and the Canadian Hydropower Association, so are they suggesting that we don't think any of those associations should have the right to participate in any of this decision-making?

The purpose of this bill is to recognize the process that has gone on, since time immemorial, where, yes, we like to hear from individuals, but generally the policy of every federal government that I've worked with in four decades is to reach out to the Canadian Environmental Network, they reach out to CAPP, to the shipping association, to the forestry association. In fact, probably 99% of all witnesses we've heard before this committee have been registered entities. So I find it really puzzling.

Now, if they want to say that you don't want foreign entities, that's a perfectly reasonable suggestion. I'm not aware of any foreign entities intervening in any of these sessions, but to restrict it I think is a very good idea. So I think Mr. Scarpaleggia is moving towards a very sensible recommendation, to change it to a registered Canadian entity.

If we cannot add a definition at the end or clarify a definition, then I would suggest that if there is common interest in this committee of constraining entities to registered Canadian entities, I would certainly welcome that as a friendly amendment where it's deemed appropriate.

● (1705)

The Chair: Okay. We have to deal with this amendment first.

I have Mr. Woodworth, then Mr. Armstrong.

Mr. Stephen Woodworth: Thank you. How much time do I have, Mr. Chair?

The Chair: Well, you're speaking now to the amendment, so you have your eight minutes.

Mr. Stephen Woodworth: All right, then I'll try to express this fully.

I commend Ms. Duncan on an ingenious argument. I won't go back in history to say that I was no great fan of NAFTA when it was brought in, for actually one of those reasons, but apart from that, NAFTA is at least a mutual agreement. It at least allows Canadians to sue...as well as other North Americans to sue Canadians. If we were to enter into an agreement on the environment that gave Canadians the right to mess with the American environmental policy process, there would be some mutuality allowing them to come here to mess with ours.

But quite frankly, I can't imagine any country in the world inviting foreign agents to just open an office in their country and have full rights to participate in their policy development process the way this act does. So without mutuality, I don't think Ms. Duncan's very ingenious argument holds up.

Second, and much more important, I'm glad that Ms. Duncan brought out the fact that simply talking about residents of Canada excludes first nations and perhaps other organizations. She has really pointed out another flaw in clause 11. I'm not talking about clause 11 here, except to contrast it with clause 12, because regrettably clause 11, as we have now approved it, does not refer to entities, foreign agents or domestic. Therefore first nations groups, as Ms. Duncan quite rightly points out, can still be denied standing because they lack a private or special legal interest, although individual first nation members would not be so denied standing under clause 11.

As a responsible and professional lawyer, when I look at the two clauses, headings don't have any legal effect, but they are both under the heading of “Public Participation” and deal with it. One gives rights to residents of Canada only, and the other gives rights to residents of Canada and entities.

It is not a responsible way for a legislator to proceed, having different rights for no apparent reason. I can't think of a reason. Maybe Ms. Duncan has a reason why in clause 11 she only gives rights to residents of Canada, whereas in clause 12 she gives rights to residents of Canada and entities.

For the sake of consistency between those two paragraphs, I hope my amendment will pass and make this a slightly more sensible bill. I wish we could do something about the definition of entities, but one way or another we certainly can't accomplish that in this paragraph.

Thank you.

● (1710)

The Chair: Thank you.

Mr. Armstrong.

Mr. Scott Armstrong: Mr. Woodworth compared this bill to something like NAFTA, which is an agreement between several nations that we worked very hard to put in place. There was also a resolution process put in place for any disputes.

There's no resolution process for any disputes in this, and I have concern about the loss of sovereignty that this clause makes possible. Are we going to open the door for China, North Korea, or other countries with totally opposing types of governments to influence our environmental policy in this country and challenge our environmental decisions?

We have to make sure we protect our environment and our country from influences such as these foreign countries and foreign entities. We do not want to give them access to controlling anything in our country, let alone its environmental future.

So therefore I'm really opposed to this clause, and I support the amendment.

The Chair: Thank you.

Ms. Murray.

Ms. Joyce Murray: Can you clarify what amendment we're debating right now?

The Chair: The amendment as moved by Mr. Woodworth is that the motion be amended by deleting the words "and entities" after the words "residents of Canada".

Ms. Joyce Murray: Thank you.

The Chair: This will be a recorded vote.

(Amendment negatived—[See *Minutes of Proceedings*])

The Chair: Now we're back to clause 12.

Mr. Woodworth has the floor, and then Mr. Scarpaleggia.

Mr. Stephen Woodworth: How much time do I have, Mr. Chair?

The Chair: You have three minutes, 50 seconds, starting now.

Mr. Stephen Woodworth: Thank you very much, Chair.

I'm going to try to make a couple of points very quickly just to highlight them. One of them is that we don't really know what is meant in this clause by "effective, informed and timely public participation". Our government and our laws already have any number of ways for people to participate, and these are carefully tailored to maximize public participation while recognizing finite government and judicial resources.

So I hope if anyone hears about this they will know that the added costs of greater efforts to offer opportunities of this nature are going to inevitably eat into our environmental budget. There will be less money for species at risk, less money for environmental enforcement, less money for the Canadian Environmental Protection Act, and so on. It hasn't been shown to this committee, in my opinion, that there is anything wrong with the amount of participation that is occurring at present.

Next, these processes will create further delays. We don't know, for example, whether participation will extend right down to the very issuing of individual permits and what degree of public participation will be required for that as distinct from the making of regulations or passing of statutes. But one thing for sure is that it will inevitably create further delays and create problems along that line.

I want to make a remark that the process that we as a committee have chosen, and have been compelled to choose, for this bill violates the very principles that are purporting to be stated in clause 12, because we have not had an opportunity for effective, informed, and timely participation in the decision-making around this bill. Not only have members of Parliament been restricted in what they are allowed to say because of the opposition motion on time limits, but also, Mr. Calkins's motion to allow further interested persons to testify in relation to this bill has been shelved. We haven't been able to get to it, and witnesses who are alarmed about this bill have not been permitted to testify and to give evidence at this committee because of the opposition and their attitude in that sense. So the opposition—

● (1715)

The Chair: Ms. Duncan on a point of order.

Ms. Linda Duncan: Perhaps the chair can clarify, but I am not aware of any witness contacting us and objecting that they have not been given the opportunity to speak.

The Chair: That is debate.

Mr. Stephen Woodworth: So we'll let Ms. Duncan debate with me on her own time then.

The Chair: I paused it.

Mr. Stephen Woodworth: Thank you.

In any event, I know we've received written submissions, and I rather suspect that, if we asked them, those who have provided written submissions would be more than happy to come and state their views, but that opportunity has been denied.

I'm just pointing out that clause 12 seems to want to give an opportunity for effective, informed, and timely public participation in decision-making in all other respects except regarding the passage of this bill.

I want to say also that we don't know whether this clause may lead to an obligation for the government to fund groups that want to participate in this process, just as that obligation has grown up elsewhere in relation to other legal mechanisms for public participation. We don't even know, for example, if the government will end up funding views of groups—

The Chair: Your time has expired, Mr. Woodworth.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: Like Mr. Woodworth, I'm a good Canadian, and I don't want North Korea making environmental policy in Canada. So I'd like to amend clause 12.

My suggested amendment would be to add, between the words "and" and "entities", the words "registered Canadian-controlled".

Now, my registered means Canadian-controlled. I don't know. That's a point of debate.

The point I'm trying to get across is that this would apply to entities or organizations that are truly controlled by Canadians, and not simply Potemkin villages or shell organizations that are representing foreign interests, environmental or otherwise.

I don't know exactly how to word it. I'm open to suggestions. But that's the point I'm trying to get across.

The Chair: We're on to an amendment to insert, between "and" and "entities", the words "registered Canadian-controlled".

Ms. Duncan.

Ms. Linda Duncan: I'd like to hear from our legal analyst, but I think it's redundant. A registered Canadian entity means that it's registered in Canada, which means controlled under either federal or provincial law.

I just think it's redundant, but I welcome the opinion of the legal analyst.

The Chair: Legal advice?

Ms. Kristen Courtney: It's not legal advice.

An hon. member: Right on.

Ms. Kristen Courtney: I would have to look into it, to be sure, but of course the committee can define it how it wishes in the definitions section.

The Chair: Mr. Warawa.

Mr. Mark Warawa: Mr. Chair, did you accept that? I believe you did accept it.

Therefore, if we have advice from the analyst that she cannot give advice, maybe the appropriate motion....

Would you seek consensus that it be set aside?

● (1720)

The Chair: Or to stand it.

Mr. Mark Warawa: Or to stand it.

The Chair: On the amendment to clause 12, shall we stand that, and clause 12?

Some hon. members: No.

The Chair: No? Okay. So we won't.

We're now on debate on the words "registered Canadian-controlled".

Mr. Woodworth.

Mr. Stephen Woodworth: It probably goes without saying, because I've said it before, but I hope everyone appreciates that this amendment would introduce another inconsistency into this bill. I don't know if we've reached it anywhere else yet, as I haven't had time to look....

Oh, yes, in clause 10, for example, we've referred to just "entities", so now we're creating yet another inconsistency.

Although I very much sympathize with what Mr. Scarpaleggia is trying to do, this bill is just so flawed. I wish we could send it back for proper drafting, if nothing else. But I guess we're not going to do that. I don't think I can support introducing yet another inconsistency into the language of this bill, even though I think Mr. Scarpaleggia is on the right track.

The Chair: Mr. Warawa.

Mr. Calkins...[*Inaudible—Editor*]

Mr. Blaine Calkins: Mr. Chair—

The Chair: I have Mr. Warawa on the list, and then Ms. Duncan.

Mr. Blaine Calkins: I did raise my hand at the same time as Mr. Woodworth did.

The Chair: I missed it. I'm sorry.

Mr. Mark Warawa: Mr. Chair, I think—

The Chair: I have you, then Duncan, then Calkins.

Mr. Mark Warawa: Chair, we heard from the analyst that she could not provide guidance on this. And what we see being developed here is a "Frankenbill".

I went back and reviewed some of the testimony we had. We were told by the experts that this bill should be set aside. Why? Well, because it was so badly flawed that it was not amendable.

Who said that, Chair? It was the vice-president of policy and environment for CAPP. He said, "In our view, Bill C-469 is not good policy for Canada."

The Chair: Order. There are too many conversations going. Order.

Please continue.

Mr. Mark Warawa: He went on to say, "We believe it is fundamentally flawed and we respectfully submit that it cannot be amended into good policy."

The Chair: Order.

Mr. Mark Warawa: Actually, every witness that we heard from that did not have...would not be benefiting from Bill C-469. Every witness said the bill should be set aside.

You, Chair, clarified that when we had the Canadian Hydropower Association. You asked Mr. Jacob Irving. And they also represent Hydro-Québec.

You said: I just want one clarification as chair. In your presentation and in your responses, you definitely had reservations about the bill. Would the Canadian Hydropower Association prefer that the bill be set aside or be amended?

Mr. Jacob Irving responded, saying: There is probably opportunity for amendment, but it depends. Ideally one would like to see amendments come through that deal with all of our issues, and then that's fine. But if those amendments don't come to the fore...And that's what we're seeing already here. They're creating a bill that is not based on expert advice. They're not wanting a clause to be set aside, but they want to move forward.

So then he went on to say, "...setting the bill aside would have to be the logical choice."

And Chair, yet we forge ahead. I think we should have listened to the advice of the witnesses and set the bill aside. It is so badly flawed. Clause by clause by clause, Mr. Chair, the bill is turning out to be a Frankenbill.

I think at the first opportunity—

● (1725)

The Chair: Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): I would like to know what we are discussing presently. Are we discussing a clause of the bill or an amendment? I cannot see the relevance of what the gentleman is saying.

[*English*]

The Chair: We need to be speaking to the amendment by Mr. Scarpaleggia, which is "registered Canadian-controlled". We are getting rather broad, about the entire bill. Let's stay focused on the amendment to clause 12.

Mr. Mark Warawa: Chair, the reason I believe it is relevant—

Am I speaking to the motion or am I speaking to some point of order?

The Chair: I made a ruling that I wanted to be.... You were getting fairly wide-ranging, in my opinion. I'm asking you to come back to the amendment.

On a point of order, we have Mr. Woodworth.

Mr. Stephen Woodworth: Surely, Mr. Chair, if Mr. Warawa wants to speak to the point of order before you rule against him, he should be given an opportunity.

The Chair: As you can see in the House, many times the Speaker will make a ruling, even though there are other people who still wish to get up on a point of order. I don't have to hear everyone on a point of order to make a decision. So I made a decision, and you can challenge that decision, if you so choose.

Mr. Mark Warawa: Mr. Chair, then I'm speaking to the motion, not to the point of order. But if there are other, future points of order —and there likely will be—coming from the coalition members, Chair, I hope there will be an opportunity to hear from both sides of the table so that you can make a good decision.

I'm not questioning your decision, Chair; you're greatly respected here.

So Chair, specific to the amendment that "registered Canadian-controlled" be added before "entities," the analyst has said she can't give advice on that. The logical conclusion, then, is to set it aside.

The committee does not want to do that. They want to move forward without knowing the consequences of that amendment; therefore we would have to vote against it.

The Chair: Ms. Duncan.

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

The consequences are no consequences, in my opinion. I just thought that it might be redundant. I'm not opposed to the amendment. It was merely a suggestion: I thought our analyst might be able to help.

I'm back again to our legislative clerk. This issue has come up over and over again in the bill. I've been sitting waiting for constructive amendments from those who have raised it. Regrettably, this is the first time there's been a constructive amendment. It's regrettable that a constructive amendment wasn't made earlier. Because the same issue has been raised and was raised previously, it seems to me to be the will of the committee to want to limit the provision to Canadian-registered and potentially -controlled entities. That would include NGOs and would include associations and corporations.

If that is the case, it seems logical to me that the first category of allowed changes—to the interpretation—would be the logical way to do it, because at this stage we can't go back to make the whole bill consistent.

I guess I will be pursuing that further. It's regrettable that we have this convoluted process, which I've never run into before, for reaching consensus on important legislation, but we are stuck with the convoluted process we have. This is one aspect I really don't fully understand, and so I would like to find out more about that first category, concerning when you can change the interpretation clause, if it is important to the—I forget the way you described it—clarification of the provision. To me, if the majority so voted, or have an intent to want to change this clause, then it would make sense for consistency throughout the bill to have it the same, and that's our intent. Certainly, I would be happy to have that intent.

The most sensible and logical way to do that is to define "entity" so that it is consistent throughout. But I'm at your will as to what is possible within the system. I would rather that we don't pass this amendment if that then constrained us such that we can't define "entity" because we have already defined it in one clause. I'm trying to avoid that situation. If we're going to just keep saying the same phrase again, and we would like it to apply to the previous provision, and you can't go back....

I guess I'm seeking your counsel.

The Chair: I think it comes back to the basis that "entity", as it's written now in the interpretation and the way it appears currently in the bill.... If we don't touch it here, we can't touch it in the interpretation. So we have to change or tighten up the wording around the term so that we can go back and work on the interpretation. That is my understanding.

● (1730)

Ms. Linda Duncan: So we could change part and then embellish in the definition?

The Chair: Yes, exactly.

Ms. Linda Duncan: Then maybe we have to throw out the amendment or amend the amendment further so that we can then define it.

We're running out of time anyway. Maybe we can pursue this—

Ms. Joyce Murray: Let's complete this clause.

The Chair: Mr. Calkins has the floor.

Mr. Blaine Calkins: How much time is left for the Conservatives?

The Chair: You have three minutes and fifteen seconds.

Mr. Blaine Calkins: Okay. I won't use all that.

I just want to say thank you to Francis for trying to put this amendment forward.

Could you read it again? I think he said three words that were added.

The Chair: They are "registered Canadian-controlled".

Mr. Blaine Calkins: Okay. I'm not sure that's the right thing, but I think it's a step in the right direction.

So thank you, Francis, for putting it forward.

Unfortunately, this goes back to what I said. I tried to reason with colleagues on the committee that because the legislative process we follow here—and Linda, you're quite right—goes clause by clause, we don't understand until clause 12 that we should have added something in the definitions clause, and there's no mechanism to go back to it.

So this exercise is actually quite useful, in the sense that if this bill doesn't pass...and I don't believe it should, because it's going to look like a Frankenbill. That's unfortunate, but it is what the process makes happen.

What I would recommend is that we should go through this. We've had the debate. It's helpful and useful to have these debates. Ideally what I would like to see is the definition of an entity done in the first part of the bill, in the definitions clause, so that it would apply equally to all the clauses and we could simply refer to it equitably throughout the bill. I just don't see a mechanism whereby we can do that, which is why my original recommendation, in my original motion, was to just set this bill aside completely, take into consideration the testimony that came from everybody, and rewrite it so that we can come back.

It's so hard to start with a bill that's poorly crafted and get something useful out of it at the end—because of the process, not because of anybody's intentions here at the committee; not because of any good or ill will, or any objective. It's really frustrating.

Mr. Chair, I'm not going to use up any more time. I'm just trying to remind colleagues that had we gone back, and if somebody else were to have brought forward this bill after the testimony.... But my sincere hope is that this bill, because it's going to be a hodgepodge at the end, is going to be deferred or dismissed or set aside.

Then, Linda, if one of your colleagues or anybody who feels inclined to bring back a private member's bill to deal with this particular issue takes into consideration all of the testimony that we've heard here....

Unfortunately, this is all in camera, which is going to be very difficult to—

The Chair: No, it's all in public.

Mr. Blaine Calkins: Are we in public? Oh, that's even better. I thought we were in camera. I stayed up late last night

So that information will at least be helpful if we get an opportunity for a do-over.

With that, Mr. Chair, I don't want to use up any more time. I see we're already past. I would hope that we just get to the question on the amendment.

Ms. Linda Duncan: I have a point of order.

The Chair: I'll hear Ms. Duncan on a point of order.

Ms. Linda Duncan: I apologize that I had forgotten: we have already defined “entity”. This issue is already resolved.

If people return to the definition of entity, if they can see anything there that allows for a foreign corporation that is not registered to carry on business in Canada, or has an office in Canada....

We had better make sure that we're not putting through an amendment that's not already—

The Chair: That's not a point of order, but I was going to draw to everyone's attention that the definition actually does say that it's registered in Canada.

Mr. Blaine Calkins: I think we're going to support him on this.

The Chair: I have on the list Mr. Scarpaleggia and then Ms.—

Mr. Francis Scarpaleggia: That's a good point that Ms. Duncan brought up, but the point I'm trying to get across is that I think, based on other situations, it's possible to have an office in Canada and be duly incorporated in Canada but still be foreign-controlled. There might be some situations....

For example, in the Broadcasting Act, it's not enough to be incorporated. There are rules about how much of the voting shares there are, or what have you.

I'm not trying to be redundant. I'm just trying to cover ourselves off; to say that it's not just a matter of having an office somewhere in Canada; that you really have to be a Canadian-controlled entity.

Ms. Linda Duncan: It says “authorized to carry on business in Canada”.

An hon. member: —“or that has an office or”—

● (1735)

The Chair: Order, please.

Mr. Francis Scarpaleggia: The other point I'd like to make, Chair, is that if there is a problem with the wording, that's what the Senate is for. The Senate can clean this up when they pass the bill.

Some hon. members: Oh, oh!

Ms. Linda Duncan: That's great. That's why I don't understand the reasoning here.

The Chair: Mr. Woodworth has the floor.

You have about a minute and twenty seconds.

Mr. Stephen Woodworth: Thank you.

I just would like to certainly strongly, vehemently disagree with Ms. Duncan's interpretation of the definition of “entity”, because it quite clearly uses the word “or”. That's disjunctive: either they are authorized to carry on business in Canada, or that has an office or property in Canada. So they can have an office in Canada without being authorized to carry on business in Canada. And what Ms. Duncan has said, I'm sure, was unintentionally legally incorrect.

I also will take some small issue with Mr. Scarpaleggia and plead with him not to pass his responsibility as a member of the House of Commons to come up with a responsible bill on to the Senate, because really it's in the Commons where we should exercise common sense and responsibility.

The Chair: We're voting on the amendment.

Mr. Mark Warawa: A recorded vote.

The Chair: A recorded vote.

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

The Chair: So we're back to the point of order.

Mr. Francis Scarpaleggia: On a point of order, I want to clarify that my comments were made in jest, so Mr. Woodworth should take it that way.

The Chair: Mr. Warawa.

Mr. Mark Warawa: I move that the meeting be adjourned.

The Chair: Okay. Before we—

A voice: Can't we do the—

Mr. Blaine Calkins: We're debating the—

The Chair: No. He called for a motion to adjourn. That's non-debatable. It's a dilatory motion.

Before I call the question, I will say Merry Christmas to everyone, have a great break, and we'll see you in the new year.

All those in favour?

Some hon. members: Agreed.

The Chair: We're out of here.

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