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Chair

Mr. James Bezan

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● (0850)

[*English*]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): We'll call this meeting to order. We're at meeting No. 44, and of course everybody knows we're continuing our study of Bill C-469, an act to establish a Canadian environmental bill of rights.

I welcome all of you back from your winter break. I hope you're all recharged and ready to rock and roll.

Now, as you recall, we were considering clause 12. At the last meeting we had just passed an amendment to clause 12, moved by Mr. Scarpaleggia, which read, "and registered, Canadian-controlled entities, the Government of Canada shall". So that is inserted on line 22 in the English version on page 8 and line 24 in the French version on page 8.

We left on clause 12, and this is how much time is left: the Conservatives have used up all their time on clause 12; the NDP has five minutes left; the Liberals have six minutes left; and the Bloc have the full eight minutes available to them.

There is no time left on the full motion for the Conservatives. The time had completely ticked away.

So is there any further debate on clause 12?

I'm going to call the question.

Mr. Stephen Woodworth (Kitchener Centre, CPC): On a point of order, my memory of that day is not as good as yours is, apparently, but I want to be clear. I would, if I had the opportunity, make a few points this morning, but you're telling me that I do not have the opportunity to further debate this. Is that correct?

The Chair: That is true. Based upon the time allocations that were left, according to the blues, there is no time left for Conservative comments.

Point of order, Mr. Woodworth.

Mr. Stephen Woodworth: I'd like to call the question.

The Chair: We can call the question, because there's some....

Do you have a comment, Mr. Scarpaleggia?

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): I'm just trying to situate myself. I'm sorry, Chair.

So we're on clause 12, which is "In order to contribute to the protection of the environmental rights of residents of Canada...". Is that the clause?

The Chair: Yes.

Mr. Francis Scarpaleggia: Could you just—

The Chair: Read the full amended clause?

Mr. Francis Scarpaleggia: Yes.

The Chair: Okay, I'm pleased to do that.

So this is on line 22, and we're replacing line 22—

Mr. Francis Scarpaleggia: Oh, we're talking about residents.

The Chair: Yes. So the way it reads is "In order to contribute to the protection of the environmental rights of residents of Canada". Then we take out the next line completely and it says "and registered, Canadian-controlled entities, the Government of Canada shall...". So "entities" comes out and is replaced with "and registered, Canadian-controlled entities". Then it continues on: "ensure opportunities for effective, informed and timely public participation of decision-making related to policies or Acts of Parliament or to regulations made under an Act of Parliament or other statutory instruments."

So that is the question.

(Clause 12 negatived)

(On clause 13—*Right to request review of Acts, regulations, statutory instruments and policies)*

The Chair: On clause 13, we shall go in your dockets to amendment NDP-5, which is on page 11.

I don't see the NDP here to move their motion. So if there's no mover, we move on.

Then we go to amendment Lib-1.3 on the next page.

Mr. Francis Scarpaleggia: What are we doing with NDP-5? Is it lost now as an amendment?

The Chair: Yes. If the NDP aren't here to move it onto the floor it's lost.

Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Unless I am mistaken, we can always discuss other amendments and get back to this one later, as long as we do so before all amendments pertaining to clause 13 have been voted on.

[*English*]

Mr. Stephen Woodworth: Point of order.

The Chair: Point of order, Mr. Woodworth.

Mr. Stephen Woodworth: I'm not getting any translation at all.

The Chair: Are you on channel one?

Mr. Stephen Woodworth: I've tried all channels.

The Chair: Try moving down one, please, Mr. Woodworth.

Mr. Stephen Woodworth: Sure, I'll try changing chairs.

The Chair: Ms. Duncan, since you were walking in the door just as we were dealing with NDP-5 on clause 13, I will give you the opportunity to move that onto the floor.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Go ahead now?

The Chair: Yes, if you want to move your amendment on the floor and please explain the amendment.

Ms. Linda Duncan: Thanks, Mr. Chair.

I am pleased to table my amendment NDP-5. Shall I read it?

The Chair: Please.

Ms. Linda Duncan: I move that Bill C-469, in clause 13, be amended by adding after line 38 on page 8 the following—

[*Translation*]

Mr. Bernard Bigras: I have a point of order.

[*English*]

The Chair: Point of order, Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras: I haven't been able to hear the French interpretation on channel 2 for the last few minutes.

● (0855)

[*English*]

The Chair: Okay, we're having some problems here. I do apologize. This is the first actual meeting in this room. I know they had a couple of test runs through here, but we may be experiencing some technical difficulty.

Okay, we're good to go now.

Start again, please, Ms. Duncan.

Ms. Linda Duncan: I wish to table an amendment to clause 13. I move that Bill C-469, in clause 13, be amended by adding after line 38 on page 8 the following:

> (1.1) Within 20 days of receiving an application made under subsection (1), the Commissioner shall make a record of that application and send a copy to the appropriate Minister.

I'm putting forward that amendment to make this bill consistent with the Auditor General Act, which gives this kind of a specific provision and is also consistent with the Ontario and other bills of rights. So it gives clear direction on how to proceed with the applications and the actions of the commissioner and his duty to actually send it on to the appropriate minister.

The Chair: Are there any other comments on the amendment?

Mr. Calkins.

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

Thank you, Ms. Duncan, for moving your amendment.

We heard a bit of testimony. Unfortunately, we're going back quite some time now, so I don't remember it all. But going through the bill right now, subclause 13(1) reads:

> Any resident of Canada or entity that believes that an existing policy or an Act of Parliament or a regulation made under an Act...may apply to the Commissioner for a review by the Minister responsible

The whole problem—and I think this is why Ms. Duncan is moving this amendment—is that the application was made to the commissioner, but in subclause 13(2) the actual response is made by the minister. I guess this is simply a technicality of bumping from the commissioner's office to the minister's office so that the minister can then fulfill his duties under subclause 13(2). Is that correct?

I believe we heard several testimonies from witnesses and from Ms. Duncan basically saying that this is to make it consistent with what's already in the Auditor General Act for the Commissioner of the Environment to do, which is what was said in the testimony we heard, that this section of the act actually doesn't do anything new. It doesn't allow Canadians any more abilities than they have. It does lay it out maybe a little more specifically, but it doesn't add any new rights for Canadian citizens to engage in the democratic process, which they already have through the petition process under the Auditor General Act.

So I appreciate what Ms. Duncan is trying to do to clean up her own bill, and I guess if this clause is going to pass, the addition of that subclause would seem to make sense. But because the entirety of the bill doesn't seem to make any sense, I'm going to have a hard time supporting it, Mr. Chair.

The Chair: Are there any other comments?

(Amendment agreed to)

The Chair: We shall now move to Liberal amendment LIB-1.3.

Mr. Kennedy, would you move that onto the floor?

Mr. Gerard Kennedy (Parkdale—High Park, Lib.): Thank you, Mr. Chair. It is so moved.

Essentially we're looking at making available the results of the review in writing to the party making the request. It allows the commissioner to review the minister's conclusion before he writes to the party making the request.

We heard from Simon Fraser University on how useful the amendment would be, giving it additional weight in terms of making sure that somebody gets a chance to look at it before it is finally done.

So the commissioner is the effective part of this, in terms of allowing input in expertise and review before the final report back from the minister to the parties involved.

● (0900)

The Chair: Are there any comments on amendment LIB-1.3?

Mr. Calkins.

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

Looking at the addition of subclause 13(5), it reads:

> Upon conclusion of the review and with the approval of the Commissioner, the Minister shall communicate the results of the review in writing to the party making the request.

Upon first glance it does appear that this seems to be a nice clause at the end of this section of the bill, which does bring some closure and brings things back—and of course it's always nice to communicate with people after they've made a request. Notwithstanding that, the same argument I used in my first address still stands here, insofar as this section doesn't do anything that isn't already available to Canadians.

I just wonder, and maybe my colleague can elaborate or explain to me, the way I read "Upon conclusion of the review and with the approval of the Commissioner", is that simply a closure from the commissioner to make sure that the Commissioner of the Environment has fully dealt with the particular issue? Because in my understanding, I don't know of any other part or section—and maybe others can help me—or any other laws that we have in this country in which parliamentarians are held in abeyance because somebody from the Auditor General's office says we can or cannot do something. Normally, the Auditor General's office goes in after decisions are made and audits whether or not those decisions were acted upon fully. In no other place do I see members of Parliament, ministers of the crown, or any other of our agencies actually waiting for permission from the Auditor General's office or the Commissioner of the Environment's office—one and the same—to do or act on anything.

Is this supposed to be a matter of courtesy, to wait for closure from the commissioner's office, or is this actually empowering the commissioner's office far beyond the scope of what I think the commissioner's office should have?

The Chair: Mr. Kennedy, could you respond, please?

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

Through you to the member opposite, I don't know why the independent commissioner would be a threat to any self-respecting minister doing his job following the act. That's all the commissioner is going to do. The commissioner has no powers beyond. So in what manner is this an affront to anyone? It simply is making sure that the process is being followed.

I believe you remember the committee where the testimony came forward that the request from outside bodies was for more involvement and engagement by the commissioner. We felt there shouldn't be that much weight or financial burden on him. So this is just truing the process, making sure it is what this law purports to do.

I appreciate your interest in it working better, but the environment commissioner is an officer of Parliament through the Auditor General and is there for exactly that purpose, to ensure that we abide by our processes. There are several others, the elections commission and so on. That's what Canadians want us to do, make sure that if we pass a law it's actually adhered to. And that's the role we're asking him to play.

The Chair: Thank you.

Ms. Duncan.

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

I'm trying to find the provision. I found it when I spoke to the Speaker's ruling on whether the bill should proceed. My understanding is—and I think it might be in the Federal Sustainable Development Act—that the commissioner for sustainable development is in fact given a similar but more limited role under that statute.

This provision, clause 13, in no way prevents any minister of the crown from reviewing any law, any regulation, statute, or policy at any time. It absolutely does not interfere with that power. What it does is it gives Canadian citizens.... It's my understanding that the Conservative Party of Canada stands on the platform that there should be more grassroots involvement in law and policy-making at the federal level. This provision helps to enable that. It provides a process whereby a resident of Canada, or entity, as defined in the act, has the right to submit an application to the commissioner seeking that a statute, law, or policy be reviewed. It's at the complete discretion of the minister to decide whether or not to proceed with that review.

The amendment that Mr. Kennedy has put forward simply ensures that this is done in an open, transparent, and informed manner. So I don't comprehend the objections to the overall provision.

This provision, as with other similar provisions in this bill, is intended to finally implement a Canadian domestic law, the commitments under the North American agreement on environmental cooperation. Article 1(h) of that agreement commits Canada, as it does the United States and Mexico, to "promote transparency and public participation in the development of environmental laws, regulations and policies". This measure merely implements in domestic law a sensible, forthright, open, transparent procedure to deliver on that commitment.

● (0905)

The Chair: Thank you.

Mr. Woodworth.

Mr. Stephen Woodworth: I have just a quick comment. In large measure, this section duplicates what goes on in relation to our existing system of petitions. And I'm not referring specifically to the amendment. But the problem we will now have is that there will be dual streams, dual procedures. There may be concerns raised by the public on the same issue under both streams.

Up until now, at least, I haven't heard any evidence whatsoever that there's anything wrong with the petition process already in existence. I don't believe we've had any evidence of that. In fact, when the commissioner for the environment testified in delivering his report, there seemed to be a suggestion that the petition process was working very well.

What we're really doing here is making the law more complex. We are increasing red tape, without any evidence-based reason to do so.

Thank you.

The Chair: Ms. Duncan.

Ms. Linda Duncan: Indeed, section 22 of the Auditor General Act does give the power to the Auditor General to receive petitions from residents on environmental matters but specifically limited to sustainable development. The provision in this bill in clause 13 is specific to the review of law, regulation, and policy. So it is not identical and it does not introduce any new red tape. It simply allows for an application on a more specified manner to flow through the same kind of procedure that's already in existence.

The Chair: Mr. Calkins, and then Mr. Woodworth.

Mr. Blaine Calkins: I appreciate the interventions that have been made by Mr. Kennedy and Ms. Duncan. However, when we empower the minister under section 3 to make a decision as to whether or not a review should even be conducted, it seems rather counterproductive to me to then bind the hands of the minister to, in section 5, ask permission for the commissioner to report on the review. If he's bound in section 4 to report every 90 days to the commissioner anyway, then one could logically assume that if in the past 90 days the minister has decided to report in section 5, why would he or she need the permission of the environment commissioner to do so? If this is the sole discretion of the minister, as outlined in section 3, why are we bringing the Commissioner of the Environment into the reporting part of it in section 5?

The Chair: Okay.

Mr. Woodworth.

Mr. Stephen Woodworth: Chair, I just wanted to respond.

I appreciate Ms. Duncan's attempt to respond to my concerns, so I just want to give her some feedback on that. I have to say that nothing in what she said really makes a distinction between the role of the Auditor General and through that office to the Commissioner of Sustainable Development, and what we have in this act. Sustainable development I hope is a broad category that allows the Auditor General to look at all of the regulations and statutes and acts of the federal government in relation to the question of sustainable development of the environment. Certainly that's the approach of the government in its sustainable development plan that was tabled about a year ago for discussion.

I just see that we're really duplicating processes here. At least nothing that Ms. Duncan has said thus far has really made a clear distinction. There certainly hasn't been a hue and cry to say that there's anything wrong with what the Auditor General and, through that office, the Commissioner for Sustainable Development have been doing in this regard.

Thank you.

● (0910)

The Chair: Are there any other comments?

(Amendment agreed to)

The Chair: We'll go to the main question on clause 13. It's been amended by both NDP-5 and L-1.3. Are there any comments?

Mr. Calkins.

Mr. Blaine Calkins: Now that we have proceeded with the two amendments, clause 13 does look a little bit different. However, other than the last amendment, which I think significantly changed the decision-making capabilities of the minister, unfortunately, should this law come to pass by basically making him a handboy to the Commissioner of the Environment, seeking their approval to actually make a decision on law, which doesn't make much sense to me.... The commissioner can always advise. The commissioner's job is to look at things, departmental objectives, and basically audit the environment department, but this is a severe change from what's currently happening.

In general, my concerns with clause 13 are not so much that it's a problem with engaging the grassroots. Ms. Duncan did allude to the fact that the Conservatives are a grassroots party. We are a grassroots party, Mr. Chair. We just had a congress in Edmonton to discuss policies. We're going to have a convention, hopefully this spring. Of course grassroots conventions are an affront to the other political parties across from us, so I would imagine a federal election would probably be a good strategy on their part to derail us from actually being able to conduct our grassroots policy meetings this spring. But I won't get into that in a closed-door meeting, because it doesn't do any good.

An hon. member: What's the point?

Mr. Blaine Calkins: I'll get back to the crux of the matter here.

I think my colleagues across the way understand that our position has always been, from the outset, that the bill seems to be redundant in a few cases. My point in this particular case would be that this section of the bill really doesn't offer anything new. It does specifically outline in quite detailed mechanisms now how a process would actually happen. But we all know that the more prescriptive things get, the more bureaucracy there is, the more red tape there is. And that concern alone, in and of itself, is going to create work where there doesn't need to be any work. We should be focusing on responding to our constituents' needs, and not responding to what the commissioner tells us we can and can't do within prescribed timelines, which is quite frustrating.

However, my own opinions aside, we heard quite clearly from testimony—in fact I believe it was Mr. Stewart Elgie, from the University of Ottawa, who stated that a similar power already exists under the Commissioner of the Environment and Sustainable Development. I'll go back to his testimony. He was talking generally about this bill and the overarching six things this bill would do differently. He said,

> Second, it establishes a right to participate in environmental decision-making, particularly in regulatory and legislative decisions of the government. Again, such a right exists under certain statutes—CEPA and SARA, for example—but does not exist across the board under environmental land use and resource statutes generally. This would be an important expansion. On access to information as a basic right, again, that exists, more or less, under ATIP already.

But he also said,

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

I understand that Ms. Duncan is trying to make this more consistent with what we see in Ontario, but we've already heard quite clearly from other witnesses that the same power already exists through the petitions process, and that is done under the Auditor General Act, where the Commissioner of the Environment and Sustainable Development already gets his or her power.

The existing process under the Auditor General Act sets out a more complete timeline for responding to those petitions where constituents can get together, put forward a petition, and sign it, which is a lot more weighty than just having individual letters coming in. And under the existing process, petitions must be forwarded to the appropriate minister within 15 days of receipt—so faster timelines. The minister is obliged to acknowledge the receipt of the petition with 15 days—a faster timeline than what's being proposed here—to consider the petition, and to send the petitioner a reply within 120 days of receipt, a more reasonable timeline to respond to the individual request.

That has brought overarching legislation, which allows Canadians who want to be involved in their democracy to make those kinds of petitions under any statute, under any provision of Canadian law, under any issue of concern to Canadians, not specifically dealing with anything in the environment. So I don't understand why we would create a whole new set of rules, red tape, and bureaucracy to deal with an issue when we already have an overarching policy and mechanism in place where Canadians can have their concerns addressed.

● (0915)

So based on that, Mr. Chair, I appreciate and I believe that the tabler of this legislation has goodwill and that some around this table believe they are doing what's in the best interest of the environment and for Canadians, but I don't see how this would significantly impact or make a change to the process that's already in place. As a matter of fact, what I see this clause doing is transferring a lot of the decision-making capability away from the hands of the elected officials—which is what we are sent here by our constituents to have—and placing it in the hands of the office of the Commissioner of the Environment.

I think that's the wrong way to go. I think we want to use the existing process. It seems to be working fine. Members of Parliament are already obligated to table petitions on behalf of their constituents, so that's not a problem. We already have a bona fide way of getting those concerns in front of the minister of the crown for any particular department on any particular issue with a prescribed timeline, and I just don't understand why we need to duplicate it here. I think it's redundant. It adds, as I say, red tape and bureaucracy where it's not needed and actually creates more difficulty rather than clarifying a process.

The Chair: Thank you.

Are there any other comments?

A voice: I think we have a recorded vote.

The Chair: We'll have a recorded vote.

(Clause 13 as amended agreed to: yeas 6; nays 5)

(On clause 14—*Right to request investigation*)

The Chair: We will move on to clause 14. There are no amendments, so we're going straight to it.

Mr. Armstrong.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): I think it's important that we review what this clause actually means and what it actually does. Clause 14 authorizes any resident of Canada or entity that believes an environmental law has been contravened to apply to the commissioner for an investigation of the alleged offence by the minister responsible for that law and sets out what information must be included in the application.

The government is supportive of providing opportunities for residents of Canada to seek investigations of environmental offences. Such opportunities are already provided for under the Auditor General Act, the Canadian Environmental Protection Act of 1999, and the Species at Risk Act. This proposed provision would create a significant overlap of those opportunities. We heard testimony from several witnesses who were concerned about this. Now we have clause 13, which will create what I call a super power commissioner or a commissioner in chief that has such binding power and authority.

If we have people from all across the country or entities from all across the country applying for investigations, are we going to have a massive increase in the commissioner's office to be able to entertain what could be thousands and thousands of applications for investigations? Are we going to see a huge increase in the size of the commissioner's office and the realm of the power controlled by the commissioner? I have concerns about that.

If you were a developer looking to start a project in Canada, if you were a foreign entity looking to invest, and you had several countries in which you could choose to invest, the increasing amount of red tape, of redundancy, of challenges, of applications for investigation that this bill is now creating would give pause to anybody who was going to invest in projects in this country.

As I mentioned before, I'm the only committee member from Atlantic Canada. We have several projects. We have tidal power in the Bay of Fundy. We have lower Churchill Falls in Newfoundland. These are large projects that really could determine the future of the east coast of Canada and in fact the power production of the entire country. We have huge opportunities there.

This would allow entities, foreign entities, maybe individuals who are employed by or who are agents for companies that have competing interests that are bidding on contracts, to try to create more and more investigations and to make all kinds of frivolous applications to the commissioner.

All these applications are going to have to be reviewed by the commissioner and his office. I am very concerned about the impact of that. So clause 14 gives me great pause and great concern because of the redundancy, the increase in red tape, and really, once again, the possible enlargement and increase in the power of and control by the commissioner's office.

I think we should take great pause before we pass clause 14 and consider what the actual impact could be or will be.

Thank you.

● (0920)

The Chair: Ms. Duncan.

Ms. Linda Duncan: While I find the input by Mr. Calkins very interesting, last year the government brought forward Bill C-16, an omnibus bill to amend environmental enforcement provisions of federal environmental statutes. It appeared that there was a very careful review of all the enforcement provisions. In their wisdom they did not bring forward any amendment to rescind section 17 of the Canadian Environmental Protection Act, which provides for citizens to apply for the investigation of an offence.

So Mr. Calkins may feel this way, but it doesn't appear to be the position—

The Chair: Mr. Calkins.

Mr. Blaine Calkins: I believe we're speaking about clause 14 of this bill, and I haven't spoken to it. So I'm wondering to whom Ms. Duncan is addressing her concerns.

Ms. Linda Duncan: He didn't...?

The Chair: Mr. Armstrong spoke.

Ms. Linda Duncan: Oh, it was Mr. Armstrong. I'm sorry.

The Chair: They're like peas in a pod, those two.

Ms. Linda Duncan: I'm sorry to give credit to your colleague, Mr. Armstrong.

The Chair: Just make sure who you are addressing.

Mr. Armstrong and then Mr. Calkins—

Ms. Linda Duncan: Very good.

Mr. Armstrong, I hear your issues and concerns. I didn't hear the same issues and concerns being raised when the Government of Canada brought to our committee their Bill C-16, which was an omnibus bill to amend the environmental enforcement provisions to make them more effective for the Government of Canada.

A very similar provision exists in the Canadian Environmental Protection Act under section 17. The experience has been, over the life of that act since 1984, that there have not been monumental requests for investigations. In fact, it has not provided overwhelming work or red tape. That provision and this provision in clause 14 are consistent with the North American agreement on environmental cooperation, under which Canada has committed to make provisions to enable citizens to be involved in the enforcement process and request investigations.

If you read on to subclause 15(2), it very clearly says that the investigation will not proceed if it is frivolous or vexatious. So that has already been thought through and dealt with.

On the issue of foreign entities, it's my understanding that in our last meetings we already clarified and redefined the provision on entities. So I'm not really sure where this issue of foreign entities arises. They would not be qualified to apply here, given the definition of entity in the bill. It's simply a provision that would extend the rights and opportunities accorded by the government under the Canadian Environmental Protection Act to other environmental statutes.

It simply provides for a consistent opportunity, where information comes to the attention of the public, to file a request for an investigation of a suspected violation. There is no obligation to proceed. It's in the hands of the department to take a look at it. If they're already proceeding with an investigation, then so be it. It's my understanding, from my years of working with enforcement officers, that they appreciate people bringing these matters to their attention.

This provides that if you want to bring a complaint forward to the government about an alleged violation, you have to do it in a very organized way and provide certain information. In fact, it avoids wasting time. Right away you provide this concise statement on what provision of the act you think is violated and your evidence supporting that.

I appreciate your input, but the provision already exists in law. The intention of this provision in my bill simply accords that right and opportunity across the board to all environmental statutes, which is appropriate and would be consistent.

● (0925)

The Chair: Are there any comments?

Mr. Armstrong.

Mr. Scott Armstrong: I acknowledge Ms. Duncan's statement, but we're going to have to disagree on several aspects of it.

Would it be possible for a single person or entity to make several challenges for an investigation under different acts—for example, the Species at Risk Act, and the Environmental Bill of Rights? Could we see individuals or entities making several redundant challenges over and over again in an attempt to slow down the process?

The redundancy of this bill is something we see in several clauses throughout the bill itself, and I am concerned whether there is protection against frivolous or mischief-making provisions in it. I'm concerned that a single person could constantly try to slow down a process by making application after application under different provisions in different acts.

The Chair: Any comments?

An hon. member: A recorded vote.

(Clause 14 agreed to: yeas 6; nays 5)

(On clause 15—*Acknowledgement*)

The Chair: Moving on to clause 15, are there comments? There are no amendments.

Mr. Warawa.

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

Clause 15 sets out the timelines applicable to the request for investigation under clause 14 that just carried. Regarding the timelines, this clause would require the minister to acknowledge receipt from the commissioner within 20 days of receipt and give notice of a decision not to conduct an investigation within 60 days of receipt. Otherwise, the minister must report on progress every 90 days.

As we've heard repeatedly, the government is supportive of providing opportunities for residents of Canada to seek investigations of environmental offences. Such opportunities are already provided under the Auditor General Act, the Canadian Environmental Protection Act, known as CEPA 99, and the Species at Risk Act. The provisions allowing the public to request investigations would create significant overlap of those opportunities.

Over the last number of weeks, as we approach the budget, the spring budget, all Conservatives have been asking Canadians—jobs is number one, the economy is number one—"Do you have any suggestions how we can do better?" One of the common messages that I've heard is eliminate waste, that there is only one taxpayer, that you can't keep going back to the taxpayer for more taxes—more, more, more. They want us to eliminate waste.

Sadly, what is being proposed in Bill C-469 is increased waste, not removing red tape. Bill C-469 creates red tape; it creates duplication of what already exists. To jump to the front of a parade that's already in progress and say "Look at all the people following me, look at all the support I got" is disingenuous. We need to find out where the problems are and eliminate red tape.

We've heard repeatedly from witnesses that Bill C-469 is creating duplication. Duplication creates waste. If you have one entity or one resident within Canada who puts in a request through what already exists, and then under Bill C-469 could initiate the same thing, you could have in the same office the same exercise repeated numerous times. Does that create efficiency? No. That creates waste.

We also heard that Bill C-469 will kill investor confidence. It creates uncertainty. Does it increase the protection of the environment? No. When you have limited resources, again, only one taxpayer, limited resources of tax revenue, and you try to do the same thing again, where do those dollars come from to actually duplicate the same thing over again? Well, those dollars have to come from somewhere, so it would have to come from what is already been allocated to that ministry, to that department, and to that commissioner's office, making that office and that department even less effective and efficient.

We've also heard that there will be an increase in litigation. Where do those funds come from? Again, they come from those departments. We've heard that Hydro-Québec and B.C. Hydro increased litigation, to their costs. Those costs for increased litigation, where are they going to come from to protect themselves? Well, it will have to come from Canadians, the taxpayers.

Bill C-469 creates uncertainty, duplication, and waste, and that's not what Canadians want.

We've also heard that it's very directly related to a possible court-directed tax, a carbon tax, which could be attached to this.

● (0930)

So what we have in clause 15 is a timetable, or timelines of what there would be under Bill C-469 for requests for investigations. For example, the requirement for the minister to give notice of a decision not to conduct an investigation under Bill C-469 is 60 days from the minister receiving it. Under the Species at Risk Act, the minister is not obligated to a timeline imposed. Under the Auditor General Act, it's 120 days. So there are inconsistencies there too, duplication and inconsistencies.

For the minister to acknowledge receipt of a request for investigation under Bill C-469, it's 120 days from receiving it from the commissioner. What already exists under the Auditor General Act is 15 days from the minister receiving it. Again, it's creating confusion. Which request will take priority? When you have a department doing the same thing twice, which takes priority? Or should it be the same person and we do a cut-and-paste? Well, why would we do a cut-and-paste?

So I guess this is further evidence of the duplication and the lack of need for Bill C-469. If this already exists, why would you introduce Bill C-469?

Thank you.

The Chair: Mr. Sopuck, there's a minute and a half left on the Conservative side.

Mr. Robert Sopuck (Dauphin—Swan River—Marquette, CPC): Thank you.

I'd like to expand on my colleague's excellent points about waste and duplication and talk about the effect of onerous and excessive environmental processes that quite frankly have little to do with the environment but a lot to with stopping projects. We're talking about people's livelihoods and communities that are affected by onerous environmental processes that actually, as I said, have nothing to do with the environment.

I would reference the Mackenzie Valley pipeline project. That particular process took 36 years. I happened to be a young biologist back in the seventies, working on the environmental aspects of the Mackenzie Valley pipeline, and I know that area quite well. Because of that 36-year process, with natural gas at an historic low price, chances are that pipeline will never be built in the foreseeable future, and we'll have communities in the Mackenzie Valley left economically destitute for the foreseeable future.

That's the problem with environmental processes that go on far too long and that have nothing to do with the environment. And that's why this is a very dangerous and poorly thought-out bill.

● (0935)

The Chair: Thank you.

Ms. Duncan.

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

Just for the record, I'd like to clarify that I think that Mr. Warawa is comparing apples and oranges. Clause 14 of Bill C-469 is not comparable to the Auditor General Act, it's comparable to the Canadian Environmental Protection Act. The timelines set forth in clause 15 of this bill before us now are identical to the timelines set forth in CEPA for reviewing and responding to investigations. So they are, in fact, completely consistent. There isn't duplication. In fact the two provisions can stand if they are consistent and don't conflict.

The purpose of the provision in this bill is to provide for consistency of rights and opportunities to Canadians across all environmental statutes. Why should Canadians only have the right to file a request for investigation of the Canadian Environmental Protection Act to do with a toxin and not be able to file an investigation under, for example, the endangered species act, or the Fisheries Act, or any other environmental statute?

The discretion lies 100% with the government. Simply because somebody files information suggesting that a potential alleged violation should be looked into necessitates no specific response. The responses by the Government of Canada are set forth in their enforcement compliance policy with each of their statutes. This in no way interferes with that. This right to file a request for investigation in no way automatically leads to a prosecution. In many cases it may simply lead to a warning. It may lead to reassurance that in fact there is no violation. It may lead to a discussion with provincial authorities saying maybe they'll proceed with the matter; it's more relevant under their legislation. We don't know what the end result will be.

The whole purpose of setting forth these provisions in one bill is to make it a user-friendly opportunity for the public to know what their rights and opportunities are to participate in the environmental protection process.

My concern is that we don't have enforcement officers, inspectors, and investigators in every little community in Canada. We have the vast Arctic. The Auditor General of Canada reported that she was concerned that there wasn't sufficient monitoring going on in the Northwest Territories on compliance with federal laws. So what this provision does is it gives a very clearly prescribed process whereby members of communities can be watchdogs and can pass on the information in an orderly way to the enforcement officers.

The Chair: Thank you.

Are there any final comments?

An hon. member: A recorded vote.

The Chair: A recorded vote.

(Clause 15 agreed to: yeas 6; nays 5)

(On clause 16—*Environmental protection action against the government*)

The Chair: So we'll move on to clause 16 and go to the amendment.

Ms. Linda Duncan: Mr. Chair, do we deal with the headers at the end?

The Chair: No, we're dealing with it right now.

We go to NDP-6 in your docket.

Ms. Linda Duncan: Okay, good. Thank you.

The Chair: We are dealing with the title, the heading actually, in the bill.

I just want to refer everyone first, before we move it on to the floor, just so we understand this. In chapter 16 of your O'Brien and Bosc, on page 733, it reads:

> To assist the reader, legislative drafters insert headings throughout the text. In past practice, such headings have never been considered to be part of the bill and have not therefore been subject to amendment.

However, I'll go to footnote 125 at the bottom of page 733. It says:

> In recent years, however, some authorities on the legislative process have modified their position in this regard in response to jurisprudence, and Committees of the House have occasionally amended headings. See, for example, *Sullivan, 4th ed., p. 305; Standing Committee on Environment and Sustainable Development, Minutes of Proceedings, May 14, 2008, Meeting No. 32.*

So it has been done in the past, and we are open to consider this.

Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, I wish to table an amendment that Bill C-469be amended by replacing the heading "JUDICIAL REVIEW", before line 24 on page 10, with the following: "ENVIRONMENTAL PROTECTION ACTION".

Mr. Chair, if I could speak to that—

● (0940)

The Chair: Yes.

Ms. Linda Duncan: — I believe there was simply an error at the drafting stage, which I did not catch. The intention was to provide user-friendly headers. I can't speak now to later headers, but "JUDICIAL REVIEW" will appear at a different spot. This whole part under part 2, "REMEDIES", deals with environmental protection actions. Therefore I'm putting forward the recommendation that this govern this clause right up until clause 22, because it is a more appropriate, more accurate descriptor of this part of the bill.

The Chair: Mr. Woodworth.

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

The citation you just read referred to the ability of headers to assist people reading the act. I'm concerned that this proposed amendment will do exactly the opposite and will simply serve to confuse people reading the act.

First of all, although as a lawyer I am well aware of what is meant by lawyers when they say "action"—and I guess the lawyers who read this act will indeed know what an action is in a legal sense—the majority of Canadians don't necessarily equate the word "action" with the lawsuits that this section is governing. In fact, it doesn't lend anything to the interpretation of this section to call these things actions. If anything, I might say with a little irony, the intervention of the court and the increased access to lawsuits may result in a greater degree of inaction on the environmental front.

Apart from that, it is my understanding that the Canadian Environmental Protection Act of 1999 contains provisions that are referred to as an environmental protection action. I think that's the exact wording of this amendment, if I'm not mistaken, although I should get it in front of me—environmental protection action, yes. I'm pretty certain that is the exact phrase or wording that is used in the Canadian Environmental Protection Act of 1999. Yet that wording in the Canadian Environmental Protection Act refers to an action against an alleged offender who has caused significant environmental harm, and it may only be brought after the Minister of the Environment fails to conduct an investigation of the alleged offence and to report within a reasonable time, or gives an unreasonable response to the investigation.

This, by the way, is another one of those duplicative provisions. Those provisions I just referred to in the Canadian Environmental Protection Act are now duplicated in clauses 13 and 14 of this bill. Poor, ordinary Canadians are going to have some difficulty sorting out which act to apply under. By the way, if they're looking to see what the current state of things is, they're going to have some difficulty. They're going to now have to check under two acts. Of course, there will have to be two government ministries: one that is administering the Canadian Environmental Protection Act and one that is administering this act.

We're certainly, by the protection of those earlier provisions, doing a great service to environmental lawyers and environmental groups, because it is going to increase the red tape. I just don't think we're doing a service to ordinary Canadians.

However, be that as it may, I've digressed. What I really mean to say is that the wording that is proposed in this amendment, rather than helping people, is likely to mislead them and confuse them into thinking that we're talking about the kind of environmental protection action that is referred to in the Canadian Environmental Protection Act of 1999.

Indeed, clause 23 is such a thing, but clauses 16 to 19 are quite distinct, because they deal with lawsuits against the government, all of which I say for two reasons. The first is to express the reasons that I will not be supporting this amendment. The second is because I would like to move, if it's permitted under the rules, a subamendment to Ms. Duncan's proposal, so that the word “action” in her proposal is replaced by the word “lawsuits”, which more adequately captures in ordinary language the intention of this provision, clause 16.

● (0945)

The Chair: I'll accept that subamendment, which would change the word “actions” to “lawsuits”.

We're speaking now to the subamendment by Mr. Woodworth.

Ms. Duncan.

Ms. Linda Duncan: I do not accept the amendment. The header “Environmental protection action” is 100% consistent with the Canadian Environmental Protection Act. If you look at that act, immediately preceding section 22, the Government of Canada in its wisdom has used the header, “Environmental Protection Action”. So I believe if the Government of Canada has seen fit to use that provision, then I'm abiding by that and being consistent.

I won't speak to the substantive matters that Mr. Woodworth has raised, because I think those belong to the discussion on clause 22.

The Chair: Okay.

Mr. Woodworth wanted the floor back.

Mr. Stephen Woodworth: Yes.

As always, I do respect my friend's comments and her efforts to respond to my submissions, and it would be unfair of me not to pursue that for the benefit of all of us and particularly her.

What she did was just to state exactly my point that in the Canadian Environmental Protection Act, in the manner that I described, the Government of Canada has designated a lawsuit against a private individual who has caused significant environmental harm, after the Minister of the Environment has failed to conduct an investigation, to be an environmental protection act. That is quite distinct from what Ms. Duncan has invented in this act, which, in clause 16, is a lawsuit against the government to compel the government to do things.

So the two things are quite different, and that's why I think the heading she's proposed will mislead people. It may be that another way to solve this would be to include in this bill before us some amendment of the Canadian Environmental Protection Act to change the name of the lawsuit it's talking about. But to try to equate them is what will cause confusion.

The Chair: Are there any comments on the subamendment? Seeing none, we're going to call the question on the subamendment that is moved by Mr. Woodworth that the motion be amended by replacing the word “actions” with the word “lawsuits”, in the plural.

(Subamendment negatived)

The Chair: It is defeated, so we shall move back to the main amendment, which is changing the heading to read ”Environmental Protection Action”.

(Amendment agreed to)

The Chair: We're moving on to amendment BQ-6.

[*Translation*]

Mr. Bigras, go ahead.

● (0950)

Mr. Bernard Bigras: Mr. Chair, I am moving amendment BQ-6, which states the following:

> That Bill C-469, in clause 16, be amended by deleting lines 5 to 9 on page 11.

I would first like to remind you of the subject covered by this clause, that is, the fact that the federal government being given the power to authorize an activity that may result in significant environmental harm does not constitute a defence.

Many groups, stakeholders and witnesses have told us that Bill C-469 is lacking safeguards and pointedly ignores existing laws and regulations. Under this amendment, the government will not be able to authorize an activity, regardless of what it is, that may result in environmental harm. This would limit the government's decision-making power and its activities.

In addition, there are some issue with the interpretation of the bill. I want to point out that the Canadian Environmental Assessment Act does exist. In defining environmental effects, the act's provisions use the wording “significant adverse environmental effects,” while Bill C-469 states the following:

> “significant environmental harm” includes, but is not limited to, harm whose effects on the environment are long lasting, difficult or irreversible, widespread, cumulative, or serious.

The fundamental issue is deciding which legislation will apply when this clause is adopted. We are opposed to subclause 16(4) and we propose its deletion.

The Chair: Thank you very much.

[*English*]

Are there other comments?

Ms. Duncan.

Ms. Linda Duncan: I have a problem with this amendment that Mr. Bigras is raising, because it would be contrary to the common law as it stands now in Canada.

We were provided the brief by Ecojustice on November 17, 2010. I believe that was given to everybody. They went to the effort, because this matter had come up previously, of going through some of the legal precedents. They provided us with, for example, the Supreme Court decision in Ryan v. Victoria (City), 1999, where the court stated:

> Legislative standards are relevant to the common law standard of care, but the two are not necessarily co-extensive. The fact that a statute prescribes or prohibits certain activities may constitute evidence of reasonable conduct in a given situation, but it does not extinguish the underlying obligation of reasonableness.

They later go on to say:

> Compliance with a statutory standard of care does not abrogate or supersede the obligation to comply with the common law standard of care. The requirements are concurrent, and each carries its own penalty for breach. However, in appropriate circumstances, compliance with statutory standards may entirely satisfy the common law standard of care and thus absolve a defendant of liability in negligence.

Clearly, the court is saying that it depends on the circumstances of the case. For example, one may raise the defence of officially induced error. If a government authority leads a defendant into believing that the actions that he or she took actually would result in compliance with the law, generally they have been acquitted on that basis.

In the case of a civil action—we're talking about a civil action here, not a criminal proceeding—the courts have held in case after case that this is simply evidence that can be tabled.

In the case of this provision, subclause 16(4), it simply states that the government has the power to authorize an activity that may result in significant environmental harm; it doesn't say that the government has authorized. So it's saying that simply because there's a provision in law that gives the government the power to authorize an activity, they may or may not have exercised that. What legal precedent is saying is that even where the government has exercised that authority, and has issued an approval, that's not an absolute bar to a civil action. That's because we have a number of common-law rights that are still in existence by which the courts have held that if the person is damaged by some kind of activity, regardless of the fact that a level of government has authorized that....

Also, in the Supreme Court decision in St. Lawrence Cement Inc. v. Barrette, the court held that

> Standards provided for in statutes and regulations also place limits on rights and on the exercise thereof. Many examples of this can be found in the Civil Code of Québec, in zoning rules and in environmental standards. As a result, the question of the relationship between violations of the law and civil liability needs to be examined.

The court goes on to say:

> The standard of civil fault corresponds to an obligation of means. Consequently, what must be determined is whether there was negligence or carelessness having regard to the specific circumstances of each disputed act or each instance of disputed conduct.

So we have the issue that we have the common-law rights that Canadians are given, and then we have the power of the government to authorize by statute. The Supreme Court has held in numerous cases that the statutory power does not absolutely override the common law, that it can be a piece of evidence that's tabled. You also look to the due diligence of the party that is being sued.

● (0955)

The Chair: Thank you.

I have Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I appreciate that explanation by Ms. Duncan. I just have a question. Am I to understand, then, that subclause (4) is somehow superfluous, because it's already the case in common law?

The Chair: Ms. Duncan.

Ms. Linda Duncan: The intention is to clarify for the litigants and all the parties, and for the court. It simply draws on legal precedent in stating the obvious. You may be correct, but it certainly makes it clearer to the parties.

I'm not going to die on a hill over this. I just thought I would put this on the record. I think Mr. Bigras is trying to raise a sincere concern. I understand there may be some difference with the Quebec situation, which of course is codified in the common law in the rest of Canada, and that may be where we're in a bit of a dilemma.

Mr. Francis Scarpaleggia: Am I correct in saying that if we keep it in the bill it strengthens that principle that's already been established in court decisions and so on?

The Chair: Do you wish to respond? I have some other speakers on the speakers list as well.

Ms. Linda Duncan: It's an intention to clarify in the statute that this is not a defence that can be raised in the case of litigation. That doesn't prevent the defendant from coming forward and saying he has received an approval and has been duly diligent in complying with those provisions and so forth, right? It doesn't stop that. It simply says it's not an absolute bar to an action being brought that certain approvals have been issued.

The Chair: Mr. Scarpaleggia, are you okay with that? Okay.

Mr. Kennedy, and then Monsieur Bigras.

[*Translation*]

Mr. Gerard Kennedy: I understand Mr. Bigras' concerns, but according to what I've read, the intent of the provision is to keep the government's power in check. A decision on a project could become an unrestricted licence to destroy the environment or cause environmental problems, unless such a process makes it possible to identify other issues. If a ban is imposed on companies or individuals with a permit, it could become too difficult to appeal it through the process provided for in the bill now before the committee.

● (1000)

[*English*]

I just think it is a limit to the government power that makes some sense, because the whole permitting process is not meant to be a blank exemption. And I don't think it takes away the ability for hydroelectric or other projects to go ahead; it simply says where there are grounds. And notwithstanding what we've heard from the members opposite, there are many qualifications, against frivolity, against other things, that really only genuine environmental concerns should be raised. If environmental things are caused that weren't anticipated at the time of permitting, this is a limit on the power of government to not be omnipotent and with one act to cause a bunch of other unintended harm.

That's how I regard it, and I hope it might be viewed in that way. I don't think it is overarching or that it knocks out other statutes or that it takes away the powers that government has to provide permits. It simply says if damage is caused, that's not a complete defence. It's simply you've got a permit, therefore whatever else you do is also allowed.

The fact is those arguments have been raised, and I think that Ms. Duncan accurately raises where courts have often disposed of them. But it does take a lot of time in the process, and I think it would be fair for us to be able to get to the heart of the matter: is there a new environmental damage or not, and is it beyond what was contemplated? People can rely on the fact that they've followed their permits; it's just that's not a complete defence if something else has happened.

You can look at any number of instances and find that's something we could use to make sure that companies have the whole reliance that a permit is not permission to do whatever the heck else might come up. I think most companies would acknowledge they don't intend to do that per se, but this would put everybody on their toes to make sure.

[*Translation*]

The Chair: Mr. Bigras, you have the floor.

Mr. Bernard Bigras: Mr. Kennedy is invoking trivial reasons, but the facts are quite the opposite. I invite him to read subclause 16 (4), which states the following: “[...] has the power to authorize an activity that may result in significant environmental harm.” It does say “that may result” and not “that results” in environmental harm. Therefore, we're talking about the possibility of resulting in significant environmental harm.

First, there is a problem with the very definition of “significant environmental harm” if we compare it to the definition found in the Canadian Environmental Assessment Act, where “significant adverse environmental effects” is the wording used.

Second, I want to remind Ms. Duncan that any issues related to civil action, which she talked about in her opening arguments, are covered by clause 23, which we will have the opportunity to debate. We are currently not discussing civil action, but rather the government's decision-making power.

I invite my Liberal colleagues to have a good look at the briefs submitted by the Shipping Federation of Canada. I also ask that, before making their decision, they read the brief submitted by the Conseil patronal de l'environnement du Québec, which represents Hydro-Québec as well as many other Quebec companies.

[*English*]

The Chair: Ms. Murray, you have the floor.

Ms. Joyce Murray (Vancouver Quadra, Lib.): Thank you, Mr. Chair.

Just to add to the comments of Mr. Kennedy, the way I understand this, it's clarifying that it's not just in the case that a permit has been applied for and granted for an action; it's actually precluding the situation where the Government of Canada has the power to grant a permit.

A practical example might be an agency of the government that does some kind of development that has a major lasting impact on a salmon spawning stream or something like that. The Minister of Fisheries and Oceans has the power to authorize that activity but may not have actually authorized it. So this is saying it's not a defence that the Government of Canada has the power to authorize that activity. The Minister of Fisheries could have issued a permit for that activity; whether she did or didn't is not considered in this phrase.

I think this is a good clause that clarifies that the power of the Government of Canada to authorize that activity is not a defence for an activity that creates that harm.

● (1005)

The Chair: Ms. Duncan, were you wanting back on that?

Ms. Linda Duncan: Just briefly. Thanks, Mr. Chair.

I just want to reiterate to Monsieur Bigras.... And I'm not saying I won't agree with his amendment, if that's the hill he wants to die on. If he looks again at Ciment du Saint-Laurent v. Barrette, the court said:

> In Quebec, art. 1457 C.C.Q. imposes a general duty to abide by the rules of conduct that lie upon a person having regard to the law, usage or circumstances. As a result, the content of a legislative standard may influence the assessment of the duty of prudence and diligence that applies in a given context. In a civil liability action, it will be up to the judge to determine the applicable standard of conduct — the content of which may be reflected in the relevant legislative standards — having regard to the law, usage and circumstances.

So essentially what they're saying in relation to Quebec as well is the judge still looks at the circumstances of the case and whether they were duly diligent and so forth.

This is a civil action; this is not a criminal action. This is in fact a civil proceeding.

That's all I wanted to add. The intention was simply to recognize, over time, what the Supreme Court has been holding. I don't want to add anything else.

We could call for the vote. If this is a hill upon which Monsieur Bigras must stand, then I would support removing the provision, but it is simply meant to reflect what the courts have held.

The Chair: Are there any other comments?

Seeing none, I'll call the question on the amendment.

Mr. Blaine Calkins: Mr. Chair, on a point of order, could I just have the amendment in English one more time, please?

The Chair: The amendment is essentially removing subclause 16 (4), which is deleting lines 5 to 9 on page 11.

(Amendment agreed to: yeas 6; nays 5)

The Chair: We will now go back to clause 16, as amended. Are there any comments on clause 16?

Mr. Woodworth.

Mr. Stephen Woodworth: Again, I want to commend Monsieur Bigras, because I think he is on the right track with his concerns regarding this bill.

I think the discussion we had was quite enlightening. Although I don't always agree with everything Ms. Duncan says, I do accept that she, by reason of her background and experience, has some familiarity with what the courts do in relation to statutes like this. And I have no reason to doubt her when she says that the Supreme Court of Canada and other courts have interpreted such provisions exactly as if the paragraph that we just deleted existed. And in fact my reason for not supporting the deletion in that amendment was because I think that now it will happen by stealth and by judicial activism rather than being explicit in the act.

I think Monsieur Bigras is correct in his concerns for the people of Quebec on this. I want to give you an example of how this section will impact on provincial rights and the activity of provinces by referring to a proposal by the Ontario Ministry of Transportation to construct an easterly extension of the Highway 407 transportation corridor. Those of you who travel along the section of Highway 401 east of Brock Road through to the Quebec-Ontario boundary will know that this is an essential activity. The federal government is involved, under the Canadian Environmental Assessment Act, and in fact the Canadian Environmental Assessment Agency delegated the preparation of the draft comprehensive study under that act to the Ministry of Transportation of Ontario.

The problem is that clause 16 would allow a resident of Canada or an entity to go to Federal Court to challenge the actions of the federal government in exercising its environmental jurisdiction where there is significant environmental harm. Does anyone think that the extension of a four-lane or six-lane high-speed transportation corridor would not cause significant environmental harm?

The government in fact has an obligation in certain cases to approve projects where they are warranted, particularly if it has a request from a province or a provincial government, even where there may be significant environmental harm. Does anyone here imagine that the damming up of rivers in northern Quebec and the consequent flooding that occurs does not create significant environmental harm?

And if the federal government does not enter into agreements with provinces in order to allow such projects to proceed, they are going to be blocked.

● (1010)

[*Translation*]

Quebeckers know this now. The Conseil patronal de l'environnement du Québec said the following:

> This bill calls into question the power of the federal government to give legal authorization for projects or actions likely to have environmental impacts and grants the courts very broad ordering powers. It includes many vague concepts, such as a right to a healthy and ecologically balanced environment, which is not circumscribed, contrary to what is found in Quebec's legislation, for example.

It also states the following concerning the bill:

> [...] does not respect certain principles of natural justice, such as the right to be heard for a party likely to be affected by a recourse. [...] it undermines the credibility of all the authorization processes where stakeholders have the opportunity to intervene and be heard, processes that are often long and fastidious. Consequently, it would be the source of great legal uncertainty, because all the federal government's decisions and authorizations in environmental matters, legally adopted or granted, could be contested.

[*English*]

My apologies to the translators.

My point is that the people of Quebec are well aware that this provision will be particularly difficult. It will possibly cause federal-provincial agreements to be set aside. The absence of subclause 16 (4), as we've heard, doesn't matter. The courts will not consider that the government may have the power to authorize, where warranted, significant adverse environmental effects.

I want to say, by the way, that this clause is quite complex. Anyone reading it, any lawyer reading it, will see that there are very serious implications in clause 16. Quite frankly, I certainly don't think we can have an intelligent discussion that does them credit in the eight minutes I am allowed, even though all of my colleagues are giving me their time.

I also want to say I'm well aware that I could play the game of moving multiple amendments in order to get all these arguments on the floor, but I'm not going to play that game. I'm going to take the time available to me, and if we cannot have a fulsome discussion because of the closure motion that was passed earlier on this, more the pity for the people of Canada, Quebec, Ontario, and their governments, which will have to put up with this bill if it's passed.

I want to specifically make some points about the public trust doctrine that has been proposed in clause 16. The fact is that there is no significant Canadian case law. Without any case law to draw on, it is difficult to say with any certainty precisely what duties and obligations the public trust doctrine will impose on the Government of Canada. In fact, the courts will be threshing out the words we find in clause 16.

What does it mean for the government to fail to fulfill its duties as trustee of the environment? Paragraph 16(1)(b) is a little clearer: “failing to enforce an environmental law”. Paragraph 16(1)(c) puts us right back into new territory. What does it mean that the Government of Canada has violated the right to a healthy and ecologically balanced environment? It's difficult to say with any certainty precisely what duties and obligations this doctrine will impose on the Government of Canada.

Courts and litigators will determine government priorities. While the government may feel that the protection of species at risk is the most important thing to do, it may be ordered to divert its finite resources to other issues in relation to the environment, such as greenhouse gas emissions, which is very important, contaminants, enforcement of laws against international shippers, or enforcement of laws against projects like the Hydro-Québec projects that may be proposed. The fact is that it will be up to courts to determine where the priorities will be with the finite resources that the government has available, and those decisions will be driven by litigators.

● (1015)

The Chair: Mr. Woodworth, your eight minutes are up.

Are there comments from other members?

Ms. Duncan.

Ms. Linda Duncan: I will just add briefly that part 2, environmental protection action, in clause 16 is simply enshrining commitments made by the Government of Canada under the North American environmental cooperation agreement, particularly article 6, providing private access to remedies.

The Chair: Thank you.

(Clause 16 as amended agreed to)

(On clause 17—*Interim order*)

The Chair: We'll move on to clause 17.

Mr. Calkins.

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

I'll try to pick up where my very capable colleague, Mr. Woodworth, left off.

Clauses14 through 19 are very much related to one another, so any of the changes we've made, amendments we've accepted, of course always have impacts on subsequent clauses. However, I don't believe the amendment that was made in the last clause is going to affect clause 17, for which I'm thankful, because it does remove some of those complexities.

Clause17, again, is quite broad and encompassing in its powers and it bestows more powers upon the courts and litigants and environmental organizations and activists to basically bypass the ability of the government to permit for the purpose of development and so on. Subclause 17(1):

> A plaintiff bringing an action under subsection 16(1) may make a motion to the Federal Court for an interim order to protect the subject matter of that action, when, in the court's opinion, significant environmental harm may occur before the action can be heard.

This is the stopgap between the filing of an order and allows cease-and-desist types of things to happen. While it might seem well and good in its intention, it does create a number of problems, which I'd like to discuss. When it provides a plaintiff in an environmental protection action to make that motion to the Federal Court for an interim order to protect the environment, the court, of course, has to be of the opinion that significant environmental harm may occur before the action can be heard. As such, the order is not to be withheld on the grounds that the plaintiff is unable to provide any undertaking to pay damages.

Subclause 17(3) says,

> Any requirement to provide an undertaking to pay damages in support of the plaintiff's application shall not exceed $1,000.

That's capped. To my knowledge, there's no place right now in Canadian law—maybe I stand to be corrected—where that is capped at $1,000. Basically this gives anybody who's got $1,000 in their pocket—and we all know how much money is available to environmental activists and organizations that fund-raise viciously on the backs of particularly Alberta oil sands, with a lot of their mistruths and so on. We can clearly see where this particular piece of legislation is going. This would allow anybody to line up and pay $1,000 each to file orders before the court for cease-and-desist motions that are quite problematic.

I don't see that this piece of legislation is going to be offering anything new. For example, any project that involves any particular federal legislation, which the Environmental Bill of Rights certainly has scope over, would already be taken into play by the environmental impact assessments done through the Canadian Environmental Assessment Act, and then of course if there were any concerns, those would be dealt with.

In that environmental impact assessment, if any species were at risk in the prescribed area, that would be documented and there would be mechanisms to deal with that through the Species at Risk Act. If there were any alteration, damage, or destruction to fisheries habitat or if there were any depositions of deleterious substances, of course an environmental impact assessment would identify all those concerns and have mitigating factors put in place through the Fisheries Act, and of course there are various mechanisms through the Canadian Environmental Protection Act, through the Canada National Parks Act, and so on.

The other problem that we don't discuss is, because we're the environment committee, we should be focused specifically on those laws, acts, and regulations that apply to the Minister of the Environment. If we go back to its inception, the bill talks about much broader concepts: the health of the individual through a healthy and ecologically balanced environment.... I can't remember the exact words.

That broadens the scope of this bill to not only include those acts and regulations that are the responsibility of the Minister of the Environment, but any other act or legislation, whether it be through the Department of Health, through the Department of Agriculture. Wherever changes are made in the environment, this would allow those kinds of actions to be put in place. If anybody can make the case before the court that such an action, whether it's breaking ground by a farmer, whatever the case may be.... We are limited of course to crown land, but of course, Mr. Chair, you and I from our agricultural backgrounds both know that farmers lease crown land to graze cattle and so on, so all these kinds of considerations could be taken into account by individuals if this section of this bill should come to pass.

● (1020)

So I have some large concerns. The only penalty for frivolous action that could be brought to bear against somebody is $1,000. So you could have a multi-million-dollar project going forward, creating jobs, with sign-offs from the federal and provincial governments, environmental impact assessments, and stakeholder meetings, and then at the very end anybody with $1,000 could file an injunction against the project. All you have to do is line up a couple of dozen people with $1,000 in their pockets and you can keep this little kangaroo court going on and on. That is my concern with this particular piece of legislation.

If we're going to have this legislation in place, what the heck do we have all the other legislation for? Why do we have a department? Why do we have thousands of environmental technicians, in private industry and in the Government of Canada, if we're going to go through this process just to have it overturned and provide an out to anybody with $1,000 in his pocket? There's no limit to environmental organizations. It doesn't say the $1,000 has to belong to the individual; it can belong to anybody who has the $1,000.

I would never speak to the intentions of the sponsor of the bill. I believe she's doing what she thinks is best for the environment. However, it seems to be going down the same road. I'll be using the same arguments over and over again that we already have all these provisions in place. We have thousands of civil servants, thousands of people in the private sector, working to make sure that any progress we make on any development goes forward in an environmentally responsible manner.

We're one of the most environmentally responsible countries in the world. Yet we seem to keep harping on these kinds of issues because it's politically expedient to do so. We're playing politics with something that's very dangerous right now, which is the state of our economy, the state of our recovery. This is dangerous legislation that takes us down a road we have never travelled in Canada.

Based on that, I'll be voting against clause 17.

● (1025)

The Chair: I recognize Mr. Kennedy.

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

I thought I heard the member opposite refer to kangaroo courts. But the courts are able to dismiss anything that's frivolous. They don't have to stop a project or grant an order. The probity of the courts is not in question here. This simply says that we're going to have extra insurance for individuals, which other jurisdictions already have.

The Conservative Party used to believe in the rights of individuals; they believed in people exercising their rights. That's where the American tradition comes from. A lot of environmental protection in the States is done by individual litigation in support of defending the environment. Sometimes property rights are a little bit stronger there, but essentially it is done in a constructive fashion. So the allegation that it's a kangaroo court simply because it concerns the environment or that reconciling the economy and the environment requires damage to the economy is very old-fashioned thinking.

The idea that you can't reconcile things in a manner that would not require any action by the court is part of the problem. That's part of the reason we need to have an environmental bill of rights. All the members opposite have had their briefings from Environment Canada and know how few enforcement officers there are.

I'm not sure what Mr. Calkins means when he says Canada has an outstanding reputation for protecting the environment. We're 54th out of 57 countries in dealing with climate change. On biodiversity we're not rated that highly. Our marine protection is way behind that of other countries. As to species at risk, I think we have seven habitats out of 450 that have actually been identified.

There is perhaps a genuine interest on the part of all members of the committee to see the environmental protections brought from the realm of something abstract to something that can happen. This is simply saying that we people in government don't have the wherewithal, that the discretion of ministers is not always sufficient to protect the environment, and that individual Canadians can actually express themselves in a manner we shouldn't be afraid of. Who are we to take away their rights to do that? Who are we to restrict this option?

This simply opens the door to individuals to take action on behalf of the environment—not in a kangaroo court but in a court of law. They should get that respect, and this simply enables that. For the members opposite to be on the one hand accepting of the bill and on the other fundamentally dismissive of that principle is something they have to contend with.

This is an expansion of the rights of individuals. I think it's a useful thing. It's not a frivolous or a reckless thing, and anybody who tries to use it that way will find themselves unable to do so.

Thank you.

The Chair: Mr. Woodworth, you have 30 seconds left in the Conservative allocation.

Mr. Stephen Woodworth: The issue is whether that reconciliation will be done by judges or by democratically elected decision-makers. And regrettably, the very first time a Hydro-Québec project or an Ontario Ministry of Transportation project is stopped dead in its tracks by an interim order under this section, I hope people will remember that it was the work of this committee that created that delay and that expense.

● (1030)

The Chair: Thank you.

Mr. Calkins, you have ten seconds.

Mr. Blaine Calkins: Just to reply, I think my colleague across the way has taken my words out of context. We don't have kangaroo courts right now, but my contention is that if we open it up and make it so available to frivolous and vexatious causes, the process itself becomes a kangaroo process.

The Chair: Thank you.

Are there any other comments?

Ms. Duncan.

Ms. Linda Duncan: Thank you.

I'd like to echo the very cogent comments by Mr. Kennedy. Well said.

We heard a lot of testimony about whether the existing rights and remedies to have access to the courts have created a floodgate situation, and very clearly they have not. The government, in their wisdom, when they amended the enforcement bills, did not take away the existing rights of access to investigation and access to the courts. Perhaps now they're thinking in another direction. But thus far in Canada there has not been a floodgate of litigation; that's far from the truth.

I am encouraged that Mr. Woodworth believes that decisions should be made by the democratically elected members. I am looking forward to my bill going through the House of Commons and being approved by the Senate.

Again, these provisions are simply consistent with the commitment made by the Government of Canada under the North American agreement on environmental cooperation. If you look at the sections on private access to remedies, we undertake that we will provide access to injunctions. It's up to the court to determine if the case is valid or not. It's very clearly circumscribed by requiring that there be significant environmental harm so that action is brought in the public interest. It's not an action for damages. It is an action brought in the interest of the public and protection of the environment, and may only be sought in the case of significant environmental harm being caused if there is not an interim injunction.

And on the matter of limiting the damages to $1,000, that's consistent with the approach adopted in the United States, because they have found that it's not simply enough to give communities the right of standing if they're barred from accessing the courts because of onerous costs. This is just ensuring that we deliver on our responsibilities as well under that side agreement to NAFTA.

The Chair: Thank you.

Seeing no other hands, I shall call the question.

(Clause 17 agreed to: yeas 6; nays 5)

(On clause 18—*Factors to be considered*)

The Chair: We're going to clause 19, amendment NDP-7, on page 13 in your docket.

Ms. Duncan, can you please put that on the floor?

Ms. Linda Duncan: Yes, Mr. Chair.

My proposed amendment is that Bill C-469, in clause 18, be amended by replacing lines 27 and 28 on page 11 with the following:

> result from an attempt to maximize economic benefits;

I don't think that makes sense, to tell you the truth.

The Chair: So it's essentially taking out "business profits" and changing it to "economic benefits".

Do you wish to speak to that, Ms. Duncan?

Ms. Linda Duncan: I'm thinking, on looking at this, that two amendments have been put one on top of the other. But I can't change my amendment as now tabled.

The Chair: On clause 18 there is only amendment, NDP-7. It is the only amendment.

Ms. Linda Duncan: Sorry. I was looking at a completely different amendment, which I think is being brought later. So yes, I stand by that.

The Chair: Do you wish to speak to that?

Ms. Linda Duncan: There has been a lot of discussion at this table about balancing environment and the economy. And during the discussion of Bill C-16 there were a lot of criteria that were added in by the government as factors for the court to consider. One of the provisions was the issue of maximizing business profits.

I'm simply clarifying that language and clarifying that it is a consideration that I think should be considered. So it would be whether the harm resulted from—or may result from—an attempt to maximize economic benefits.... So as to not make it so specific, it broadens the category of matters that can be considered.

● (1035)

The Chair: Other comments?

(Amendment negatived)

The Chair: We go back to the main clause, clause 18.

Mr. Blaine Calkins: Did you say the amendment was defeated?

The Chair: The amendment was defeated.

Is there any debate on clause 18?

The Bloc voted against.

Mr. Sopuck, you have the floor.

Mr. Robert Sopuck: Thank you very much, Mr. Chair.

I'm glad the topic of the definition of "significant environmental harm" has come up, because it's something that needs to be defined and discussed. I don't approach this as a lawyer; I approach it as a biologist and a farmer, and a person who lives in a rural area.

I think it's a truism in law—and my colleague to the right of me confirmed the phrase—that hard cases make bad law. It's easy to divine environmental harm if you define it as a hard case, like Ms. Murray did with the destruction of a salmon spawning area or direct dumping of a toxic substance into a lake or a stream. Those are easy ones. But too often environmental change and environmental harm are conflated. What is one person's environmental change, well within the bounds of sustainability, is another person's harm.

A whole number of examples, especially in rural communities and rural resource communities, spring to mind. For example, in Manitoba and Saskatchewan we have very large reservoirs that have been constructed for flood control, recreation, irrigation, and so on. There has been, in those cases, a significant environmental change, but I would argue very strongly that in many of those cases the ecosystem has adjusted to the new reality. We have a new kind of environment out there, where ecosystem processes have reconfigured themselves and are operating very well, and can do so in perpetuity.

For example, when I look at the definition of a "healthy and ecologically balanced environment"—and I'm reading from the bill itself—it means

> an environment of a quality that protects human and cultural dignity, health and well-being and in which essential ecological processes are preserved for their own sake, as well as for the benefit of present and future generations.

Just as an aside, as a biologist I'd like somebody to define for me what's a non-essential ecological process. I think all ecological processes are essential. I think the focus on ecological process is what's important.

For example, in many forest communities across the country what happens is that an older forest, through forest management and forest practices, is changed to a younger forest with all of its essential ecological processes intact. Again, this particular bill has the potential...well, it definitely will allow groups and organizations that happen to have a different value set compared to, for example, the rural forestry community in Quebec, where people happen to like a young forest and understand how environments can change positively because of human interaction.... What will happen is those rural communities will be attacked by this particular act, by people and organizations using this act.

I represent a rural resource community. I think we all have to be reminded that it's the natural resource industries that are carrying this entire country right now, whether it's the oil sands, whether it's forestry, whether it's agriculture, whether it's natural gas development. What those natural resource industries contribute to the country basically keeps all of our social programs going. Too often, people who never venture into natural resource areas do not have an understanding of what kinds of processes go on out there and what we, as farmers and loggers, actually do. Unless you understand that, you cannot appreciate that environmental change is not necessarily a bad thing.

In terms of clause 18, I also look at the precautionary principle. I understand that the precautionary principle is already recognized and entrenched in several federal laws, like the Federal Sustainable Development Act and the Canadian Environmental Protection Act. Again, as listed in these acts, the lack of full scientific certainty should not be used as a reason for postponing cost-effective action to protect the environment. The word “cost-effective” doesn't show up in the definition in this particular bill.

Actually, there are a lot of problems with the precautionary principle. If you look at how environmental assessments are carried out, you'll see they're really risk assessments, where you make a judgment based on the development at hand and then decide whether the change to the environment is within the bounds of sustainability. The problem with the precautionary principle taken to its illogical extreme is that then you would never do anything, because you would be too afraid of doing some kind of environmental harm.

● (1040)

I should make the point that in terms of environmental assessment, science must guide all decision-making, and I have a very simple three-word rule for how I approach the environment: Do the math. The math of the environment is often forgotten as we wrangle about process and legal issues and so on.

I would urge the committee, concerning clause 18, to take a really good look at the doors this particular clause opens from a litigation standpoint, as well as to strongly consider that rural resource communities and the natural resource industries that I pointed out before are basically carrying the entire country.

Thank you, Mr. Chair.

The Chair: Thank you.

Are there any comments? Seeing none, I will call the question.

(Clause 18 agreed to: yeas 6; nays 5)

The Chair: Instead of starting another clause, we're almost out of time, and I have a motion to adjourn.

All in favour?

Some hon. members: Agreed.

The Chair: The meeting is adjourned.

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