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Chair

Mr. James Bezan

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● (0845)

[*English*]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): We'll get rocking and rolling and continue flying through Bill C-469.

When we adjourned last week we dealt with the amendments to clause 23, so we're back to the main clause itself.

Are there any speakers?

Ms. Duncan.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Mr. Chair, there's been a number of questions that have just been asked. If you could reiterate where we're at with clause 23, the provisions that are struck down, what's still there....

The Chair: On clause 23, the amendments were all defeated. Liberal 3, NDP 13, and Liberal 4 were all defeated—all those amendments. We are back to the main clause 23, unamended.

Ms. Linda Duncan: But as I understand, we have.... Oh, I guess it would be a separate section. Liberal amendment 5.2 is related, but I guess we vote on the main clause before we go to that.

The Chair: Yes, that is a new clause, and we'll deal with that after we deal with clause 23. That's the creation of a new clause.

Let's go back to clause 23.

Mr. Woodworth.

(On clause 23—*Superior Courts*)

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

Where I would like to begin today is with some evidence that was received from Dr. Elgie regarding this clause 23 and how it compares with the Ontario bill of rights, which does give a right of action to sue, which is in some respects similar to the right of action that is given in the Canadian Environmental Protection Act.

One of the salient differences between this act and both of those other statutes is that the other statutes provide that in order to be eligible to sue someone privately, one must first request an investigation by the relevant government and that investigation must contain an unreasonable result. Dr. Elgie said at least two things. One, he said he thought that requirement reduced the number of lawsuits and somehow represented a barrier to lawsuits, but he also said that the opportunity to resolve issues at an early stage in that manner is a good thing. Before I came here today I had his precise quote and it's just not in front of me at the moment. However, I think it could be generally recognized that we might agree with Dr. Elgie that it is a good thing to try to resolve issues at an early stage.

In fact we also heard from a witness from the Ontario government. In its submission it was stated at page 9 that applications for investigation have created a useful means to bring alleged contraventions of legislation and instruments to the ministry's attention. I'm just really pointing out that the absence of such a provision from clause 23 in this bill is, in my view, going to mean that we—that is, the people of Canada—will not have the benefit of that useful means to bring alleged contraventions of legislation and instruments to the ministry's attention.

As to the proposition that somehow that section in the Ontario act has prevented lawsuits from going forward—although I'm troubled by the notion that we need any more lawsuits going forward—I do notice that in the analysis provided by the Ontario government, there were 26 requests for investigations and actually only six investigations occurred. So there were 77% of the requests received that didn't result in any investigation, much less one that reached an unreasonable result. I conclude from that that in those 77% of cases at least that provision would not have in any way prevented lawsuits from going forward. I just don't buy the argument that that's any significant barrier.

The next point I would like to make is that the existence of this provision, clause 23, in a similar way as the problem in clause 16, is that courts and litigants will set environmental priorities. So for example in the case of a project regarding Hydro-Québec, if a permit is issued and if there is in any event a contravention and the possibility of serious environmental harm, the courts can order a halt to such a project or indeed even order the reversal of it under the provisions that are contained in clause 23.

Moving along very quickly, it's also important when considering the creation of a new lawsuit such as this committee is considering to consider the implications of the various limitation periods that apply. In other words, how long will developments, whether by Hydro-Québec or otherwise, be under a cloud and subject to the possibility of a lawsuit existing?

● (0850)

Not with regard to Hydro-Quebec, but in Ontario, section 17 of the Limitations Act provides that as long as the cause of action is undiscovered, there is no limitation period. So some environmental group might come along ten years after Highway 407 is built, and if they discover a contravention at that time and the possibility of serious environment harm, they can raise it at that point and ask the court to remedy that.

In Quebec, my impression is that section 2922 of the Quebec Civil Code allows a ten-year limitation period within which such lawsuits might be brought. And of course because these lawsuits are being brought in the Superior Court of each province, it will be up to the laws of each province to determine what the limitation period will be. So it will vary from province to province.

There are lots of problems with this clause 23. We've already adverted to the fact that subclause 23(3) indicates it's not a defence to a civil action that an activity was authorized by an exemption or other permit, and the evidence we heard on that is that even without clause 23, there are court decisions that suggest that would be applied in somewhat the same manner at least.

Another interesting thing found in clause 23 that makes it very worrisome is the way the playing field is tilted in favour of plaintiffs and against defendants. One of those ways is found in subclause 23 (2), where the burden of proof is shifted from the plaintiff to the defendant. The plaintiff has an evidential burden to demonstrate a prima facie case of significant environmental harm. A prima facie case, I'm going to say, is the possibility of significant environmental harm, and once the plaintiff meets that onus or that burden then the persuasive burden of proving on a balance of probabilities that no significant environmental harm will occur rests with the defendant.

● (0855)

The Chair: Mr. Woodworth, your time has just expired. It goes by quickly.

Mr. Stephen Woodworth: There is lots to be said.

The Chair: Are there other comments?

Monsieur Bigras.

[*Translation*]

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

We will vote against clause 23, which stipulates, among other things, that every resident of Canada or entity may seek recourse in the superior courts of the relevant province to protect the environment by bringing a civil action against a person who has contravened, or is likely to contravene, an act of Parliament or a regulation.

I would refer to the comments made by Department of Justice official Kathleen Roussel when she appeared on November 22. She was pretty clear about the fact that this sort of provision does not add any needed clarity. She said, and I quote:

> Civil suits are definitely handled by the superior courts as a general rule. [...] It does not normally have to be specified. [...] I think it's more to clarify, although it wasn't necessary perhaps.

It does not need to be specified because the Constitution is clear on this point. In fact, section 12 of the Constitution Act, 1867, clearly establishes that each province has the exclusive authority to make laws in relation to property and civil rights in the province. And so we believe that the use of civil law in an attempt to protect the environment should come under the authority of the Government of Quebec, since it is in a better position to determine the measure's effectiveness and scope, and ensure that it does not have a detrimental effect on the judicial system.

Furthermore, Quebec has already recognized the right to a healthy environment and to its protection, and to the protection of the living species inhabiting it. And Quebec has always taken a responsible and balanced approach to ensuring that right. To that end, Quebec established parameters defining that right and enshrined it in the province's body of law.

I encourage you to read division III.1 of the Environment Quality Act, which sets out those provisions in sections 19.1 to 19.7. I would also encourage you to read Ontario's Environmental Bill of Rights, 1993, part VI of which stipulates all the conditions under which a civil action may be brought.

Therefore, we will vote against clause 23.

[*English*]

The Chair: Are there any other comments?

Ms. Duncan.

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

Where do I start? I will only reply to some of the issues raised.

In respect of the issues that Monsieur Bigras has raised, if it were the case that these kinds of actions were not allowable under federal law, then presumably section 22 of the Canadian Environmental Protection Act would not have been allowed. I'm not aware of any actions being brought to strike down that provision. If it is found to be valid in a previous federal statute, I would presume that the same rationale would have been provided for it that is provided for this.

Also, one thing that I would clarify is that this part of the bill, clause 23, is about standing. Yes indeed, citizens can seek standing to bring civil actions forward, but what this does is.... It doesn't take away from any pre-existing rights. In fact, the statute is very clear later on that in no way does this bill take away any pre-existing or otherwise existing remedies. What it does in subclause 23(1) is specify that citizens have the right. In other words, it provides for standing.

I'm a little bit puzzled by Mr. Woodworth's proposal, although I don't object to it, and I would welcome an amendment to add in that prerequisite. Maybe I could get clarification from the clerk, but it's my understanding that all the Conservative members voted against clause 14. In order for that to be a prerequisite, we would need to have the opportunity to file, to request an investigation. The two would go together. So to be consistent, we would have to retain clause 14—which, as I understand it, I think survived the vote—in order to make that a prerequisite. I would not be averse to adding that, but that's up to the members of the committee.

I think that's all I wanted to provide, except for the issue that the purpose of this is specifically tied to contraventions of environmental laws. It's not a wide-open provision where damage has occurred and may occur. It's because of a contravention of a legal requirement in the statute.

● (0900)

The Chair: Thank you.

Does anyone wish to comment?

Seeing none, we shall ask the question.

[*Translation*]

Mr. Bernard Bigras: I would like a recorded vote.

[*English*]

The Chair: Yes, a recorded vote.

(Clause 23 agreed to: yeas 4; nays 2)

The Chair: So we'll move over to our amendments for 23.1, creating a new clause. We have here a bunch of identical clauses.

First we'll deal with NDP 14. NDP 14, Liberal 5, and Liberal 5.1 are identical, if you look at them. I guess you can make a choice about which you go with first based upon date of submission.

Ms. Linda Duncan: I'd be happy to have the Liberal one go first if they want.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): They're all identical.

The Chair: They're all identical. Even 5 and 5.1, both coming from the Liberals, are identical.

Mr. Francis Scarpaleggia: I'd be happy to defer to Ms. Duncan.

The Chair: Okay, Ms. Duncan, yours was in first. Both came in on November 16, but yours was in slightly ahead of that.

Ms. Linda Duncan: Mr. Chair, I wish to table an amendment to the effect that Bill C-469 be amended by adding after line 31 on page 14 the following new clause 23.1:

> 23.1(1) The plaintiff bringing an action under subsection 23(1) may only be ordered by a superior court to pay costs if the action is found to be frivolous, vexatious or harassing.
>
> (2) The plaintiff referred to in subsection (1) may be entitled to
>
> (a) counsel fees regardless of whether or not they were represented by counsel; and
>
> (b) an advance cost award upon application to the court if, in the opinion of the court it is in the public interest.
>
> (3) In exercising its discretion with respect to costs related to an action under subsection 23(1), a superior court may consider any special circumstance, including whether the action is a test case or raises a novel point of law.

● (0905)

The Chair: Do you wish to speak to it?

Ms. Linda Duncan: Yes.

Mr. Chair, this provision is added in order to protect the inherent purpose of this provision. The inherent purpose of this provision is to allow Canadians to bring an action to seek recuperation or protection or restoration of a damaged area if a federal law has been violated. These are public interest applications. They are not applications seeking personal gain. There's no provision for receiving any kind of compensation or damages to the plaintiff. The very purpose is to bring the action in the public interest to ensure that where a federal act is violated and damage has occurred, the person who violated would be required to restore and so forth.

Similar to the provision mentioned before previously under the bill, it enables a litigant who brings forward a case and does not have legal counsel. From my experience, it's very hard for public interest litigants to obtain counsel, and there are very many occasions when they proceed on their own. So the intention is to compensate them for their time and provide for an advance cost award if the court feels it's in the public interest to proceed with that action. Again, that's completely within the discretion of the court if they think that the case is so important and the request for costs is critical.

In all likelihood, from experience, that would include costs to bring forward expert witnesses to speak to the damage caused and perhaps what the cost for restoration would be.

When you get to subclause (3), it specifically says this action is intended as a test case or to raise a novel point of law, and the very point is to clarify in law what duties and responsibilities are and to protect the public trust.

The Chair: Mr. Woodworth.

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

I have three points. First, I find it very ironic that the opposition coalition—if I may call them that for today—has come up with three versions of the same amendment, with two of them coming from the same party. If this is what we can expect from them in government, I think Canadians ought to worry.

Second, this provision is one more example of how this bill is creating incentives for environmental groups and activists to engage in litigation, because they're going to be paid as lawyers, whether they are lawyers or whether they have lawyers or not. That's one of the fundamental flaws with this bill that doesn't exist in any of the other environmental litigation legislation we've looked at, including the CEPA environmental litigation, the Canadian environmental bill of rights, and so forth. I think this is a very bad way to go.

The third observation I'd like to make is to recall a speech I heard from a good Liberal many years ago. Some of my Liberal colleagues opposite may remember Elinor Caplan. She gave a very good exposition on the difference between socialist government, extreme right government, and good government. She used the analogy of a boxing ring. She said the government was like the referee in a society that is like a boxing ring. The socialist government will always leap in on the side of the weak guy and start beating up the big guy along—

The Chair: Did I hear a point of order?

[*Translation*]

Mr. Bernard Bigras: Point of order. The Liberal Party does not seem all that interested in jumping into Mr. Woodworth's ring.

I would encourage you, Mr. Chair, to bring the member back in line and to proceed straight to the proposed amendments. I get the sense that the member is moving away from the scope of the amendments.

[*English*]

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

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

We've seen a limitation in time for each of us around this table. Mr. Woodworth has expressed that frustration numerous times. This is an opportunity for him to tie it all together and make some important points. For the opposition members to try to restrict Mr. Woodworth's time even more is not appropriate. I think what he is saying is relevant, and he should be able to continue making his points.

● (0910)

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: On that point of order, the point I'm making is that by allowing a disproportionate advantage to plaintiffs in clause 23 we would be like the socialist referee who jumps into the ring and starts beating up the defendant alongside the plaintiff. So that's the relevance of it, and I'd like to expand on it a little further.

The Chair: Mr. Woodworth, I trust you will be relevant to the amendment we're discussing. Continue.

Mr. Stephen Woodworth: I thought I just explained the relevance of it.

The Chair: I'm trusting you on that.

Mr. Stephen Woodworth: Thank you.

The point is that this clause gives an enormous advantage to the plaintiff and no reciprocal advantage to the defendant. If one wanted to be fair, one might want to say that neither the plaintiff nor the defendant may be ordered to pay costs, unless the action or the defence is found to be frivolous or vexatious.

One might say that the plaintiff and the defendant may be entitled to counsel fees regardless of whether or not they're represented by counsel, and an advance award, etc., but no, instead, this is, in the manner that Elinor Caplan was describing, a prototypical case of a socialist jumping into the ring to help beat up one side of an issue on behalf of the side that they perceive to be the little guy.

Now, the prototypical extreme right wing would impose this kind of a provision except perhaps they would replace the word “plaintiff” with “defendant” and beat up on the plaintiff on behalf of the defendant, but really, Mr. Chair, the point of Ms. Caplan's analogy was to say that a good government doesn't go to either of those extremes. A good government instead simply equips both parties with boxing gloves and a good ring and training, and then lets them go to it and lets the merit of the matter determine the issue.

I just think this is another good example of where this bill is the government, through the legislature, jumping into the ring on behalf of one side and trying to leave the other side with as few defences as possible. The same thing could be said regarding subclause 23(3) and a number of other provisions in this bill. It's bad law.

Thank you.

[*Translation*]

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

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

I do not find Mr. Woodworth's arguments all that sincere. He said that the government had to be the referee, but it did not assume that role during the last vote. Members on the government side did not vote for or against the motion. And that is why it is hard for me to think anything Mr. Woodworth just said was sincere.

[*English*]

The Chair: Are there other comments?

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I was wondering if maybe Mr. Woodworth would.... This may be a little off topic, but I was wondering if he would like to analyze Minister Clement's latest moves vis-à-vis the CRTC last week through that prism—

Some hon. members: Oh, oh!

The Chair: Order, order.

Mr. Francis Scarpaleggia: But that's not really the main point I wanted to make.

Mr. Stephen Woodworth: Point of order, Mr. Chair.

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: Although I'm a little slow off the mark, I guess since I know that my colleague Monsieur Bigras and I agree on the importance of civility and proper conduct in this proceeding, I believe that Mr. Ouellet has just in some fashion impugned my motives, as if to say that I didn't really believe that this was a one-sided clause and that it was weighted unfairly in favour of a plaintiff.

I believe Mr. Ouellet has just indicated that I'm not sincere in that submission. If so, it seems to me that he's impugning the motive of what I've said, and I ask the chair to rule him out of order accordingly.

The Chair: Okay. As I mentioned earlier....

On that point of order, Monsieur Ouellet.

[*Translation*]

Mr. Christian Ouellet: That is not what I said. I said he was not sincere when he stated that the government was supposed to serve as the referee. It did not do so during the last vote. I did not question Mr. Woodworth's other comments.

● (0915)

[*English*]

The Chair: Okay.

Just so everyone knows, let's go to page 93 of O'Brien and Bosc, our great rule book. Chapter 3, “Privileges and Immunities”, talks about the importance of freedom of speech:

> Freedom of speech permits Members to speak freely in the Chamber during a sitting or in committees during meetings while enjoying complete immunity from prosecution or civil liability for any comment they might make. This freedom is essential for the effective working of the House. Under it, Members are able to make statements or allegations about outside bodies or persons, which they may hesitate to make without the protection of privilege. Though this is often criticized, the freedom to make allegations which the Member genuinely believes at the time to be true, or at least worthy of investigation, is fundamental.

I'll now go on to the section dealing with misuse of treatment of speech. On page 97 we have a ruling by Speaker Fraser, as follows:

> There are only two kinds of institutions in this land to which this awesome and far-reaching privilege [of freedom of speech] extends—Parliament and the legislatures on the one hand and the courts on the other. These institutions enjoy the protection of absolute privilege because of the overriding need to ensure that the truth can be told, that any questions can be asked, and that debate can be free and uninhibited.

I would also mention that on page 99 we have what Speaker Milliken noted in 2003, as follows:

> Speakers discourage members of Parliament from using names in speeches if they are speaking ill of some other person because, with parliamentary privilege applying to what they say, anything that is damaging to the reputation or to the individual,…is then liable to be published with the cover of parliamentary privilege and the person is unable to bring any action in respect of those claims.

So we do need to treat each other with respect. However, it states on page 150—still in chapter 3—that:

> Unlike the Speaker, the Chair of a committee does not have the power to censure disorder or decide questions of privilege. Should a Member wish to raise a question of privilege in committee, or should some event occur in committee which appears to be a breach of privilege or contempt, the Chair of the committee will recognize the Member and hear the question of privilege, or in the case of some incident, suggest that the committee deal with the matter. The Chair, however, has no authority to rule that a breach of privilege or contempt has occurred.

So I don't have any power to rule. And I don't believe it was that great of an impugnity.

At any rate, we have to respect, first of all, the matter of freedom of speech, and allow people to say what's on their minds, although I do have to maintain order and conduct and police that to the best of my ability. So I do ask everybody to get along.

Mr. Scarpaleggia, you have the floor.

Mr. Francis Scarpaleggia: Well, Mr. Woodworth made a point about coalitions, based on the fact that the three amendments were identical, and I'm just wondering if it might not have had something to do with the fact that the same legislative drafter was drafting all of the amendments.

I don't think there was any kind of collusion on that. I think it was just that the lawyer at the House of Commons was the same lawyer for all of us.

The Chair: Other comments?

Ms. Duncan.

Ms. Linda Duncan: In closing, Mr. Chair, I want to add again that I have referenced a number of times the North American agreement on environmental cooperation under the NAFTA agreement. Article 6 provides that Canada commits that it will provide access to remedies in environmental cases. That is why this provision and a number of the other provisions are added in—to implement in domestic law the commitments made by Canada under that agreement.

Again, this provision is added to deal with the issue of standing. It's simply to allow concerned Canadians to come forward with cases where they have evidence that there has been a contravention of a federal environmental law, or that there is likely to be. Of course, they would have to make that prima facie case to the court before they could proceed, at any rate.

The Chair: Mr. Woodworth, you have three minutes and 40 seconds.

Mr. Stephen Woodworth: Thank you. That's more than adequate.

I want to just continue the tradition I've set of being the only politician at this table to apologize when an apology is warranted.

I want to apologize to the members of the opposition if my earlier remarks suggested that I thought they were colluding in relation to this amendment. In fact I was attempting to suggest exactly the opposite, that even within the same party they weren't talking to each other to find out precisely what they were proposing by way of amendment. If they had been talking to one another, they might have realized that all three of them were proposing the same amendment.

I surely don't mean to suggest that there's anything untoward, or any behind-the-scenes collusion. I mean, there may be, but it's certainly not within my knowledge, so I'm not going to assert that. What I do mean to suggest is that as a group they don't seem to have their act together. They're falling all over each other proposing multiple versions of the same amendment.

That's really all I wanted to say. I apologize if my remarks were construed to refer to collusion.

Thank you.

● (0920)

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I accept that apology, Chair, but would just point out the contradiction that in Mr. Woodworth's statements he mentioned the coalition, so that implies an assumption of collusion. But let's put the matter to rest and get on with the job.

The Chair: Seeing no other hands up, I shall go to the question.

Shall clause 23 carry?

The Clerk of the Committee (Mrs. Guyanne Desforges): It's the amendment, NDP-14.

The Chair: Oh, it's the amendment, proposed clause 23.1.

(Amendment negatived: yeas 4; nays 5)

The Chair: Amendments LIB-5 and LIB-5.1 are inadmissible, so we go to LIB-5.2.

Ms. Murray, do you want to move that?

Ms. Joyce Murray (Vancouver Quadra, Lib.): Mr. Chair, I'll speak to amendment 5.2, which is the proposal that Bill C-469 be amended by adding, after line 31 on page 14, the following new clause 23.1:

> NOTICE TO ATTORNEY GENERAL OF CANADA
>
> 23.1 Thirty days before seeking recourse pursuant to section 16 or 23, the resident of Canada shall provide written notice to the Attorney General of Canada.

Mr. Chair, while the bill already includes provisions to protect against frivolous lawsuits, this amendment would be an additional measure to ensure that litigation is a last resort by requiring that citizens give the Attorney General 30 days' advance notice before filing a legal action under this bill. This would provide the government the ability to take enforcement action without the need for litigation and allows for it to act as an enforcer of the law.

The Chair: Are there any comments?

Ms. Joyce Murray: That's all, thank you.

The Chair: Okay.

Mr. Woodworth, then Ms. Duncan.

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

The intention, as expressed by Ms. Murray, is a laudable one, but in my view this provision does not adequately carry it out. In fact, 30 days' notice seems quite inadequate. If the Government of Canada, for example, received notice that Hydro-Québec was about to be sued pursuant to section 23 as a result of a dam constructed five years ago—after eight years of consultations that proceeded to construction of the dam—it seems unlikely that the Government of Canada would even get to the bottom of it in 30 days, much less come up with a remedy or an adequate solution.

Where I thought this amendment was going is that it would enable the Government of Canada to intervene in the lawsuit by receiving notice of the pending lawsuit. Since the Government of Canada would clearly have an interest in the issues in the lawsuit, I thought this was simply a procedural amendment that would give some notice to the Government of Canada to allow it to intervene in the lawsuit. In that respect, it has some value. But quite frankly, I would also point out the fact that these lawsuits are rather complex, and the government, if it receives such a notice, would undoubtedly—or may, rather, I should say—apply to intervene in the lawsuit to present its perspective, since it may be accused of allowing a contravention. This would engage the parties and the government in additional cost and delay.

From that perspective, it points out that these section 23 lawsuits will be rather costly and create long delays.

However, having heard Ms. Murray's explanation that it's somehow an attempt to provide an investigation clause—if I construed her correctly—similar to that found in CEPA and in the Ontario Environmental Bill of Rights, I'm afraid I just can't support it, on the basis that 30 days would be far too short. It's a band-aid on what is otherwise a gaping wound.

● (0925)

The Chair: Ms. Duncan.

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

I'm very supportive of the amendment. I think it's acceptable, because it provides more time than in the case of CEPA. It provides far more advance notice than the Ontario Environmental Bill of Rights, which merely requires not later than ten days after the day the statement of claim is served. In this case, it's before the statement of claim is even filed in the courts, let alone served.

Of course the Attorney General of Canada and any other party can apply to intervene. This simply gives a heads-up to the Government of Canada that the plaintiff is considering filing this action. From my experience in working with public-interest litigants, I have yet to see a litigant who seeks to go to court on their own, without having spent many months, if not years, trying to get the government to intervene. This would just be pro forma additionally giving notice.

This provision would allow the Government of Canada to do a number of things. They could intervene. They could also intervene to take action to address the problem that the public litigant is raising. So the matter of notice is an excellent addition to the bill.

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: Thank you.

This clause clearly differs from the Environmental Bill of Rights in Ontario and CEPA because it does not indicate that the action is in any way delayed, stayed, or prevented by anything the government might do. In the CEPA case, the Minister of the Environment is first asked to conduct an investigation, and either responds unreasonably or fails to conduct an investigation within a reasonable time.

I don't have a full copy of that section. I only have a summary of it, but quite frankly I don't see the ten-day thing that Ms. Duncan was referring to. I only see the failure to conduct an investigation within a reasonable time being required before the plaintiff can proceed with an investigation. In the Ontario Environmental Bill of Rights there must be a similar unreasonable result or failure to conduct an investigation before the action can proceed.

Again, while the intent of this particular amendment is moving in the right direction, it doesn't prevent a lawsuit or really give an adequate opportunity for the government to take investigative measures to prevent a lawsuit. A lawsuit may still go ahead. The government is made aware of it, and I suppose may engage itself at some additional legal cost to intervene in it.

The Chair: Ms. Murray.

● (0930)

Ms. Joyce Murray: Thank you.

I just wanted to comment in response to Mr. Woodworth's notes on this amendment. Continually bringing up only the example of a massive hydroelectric project in the past, one with years of controversy and legal difficulties, in a way brings forward a straw man example, when in fact what this Canadian Environmental Bill of Rights is more geared towards providing for are the many cases where smaller but still harmful examples of pollution of the environment are occurring, and really, across the country.

One of Canada's most respected experts on water, Dr. Karen Bakker from the University of British Columbia, spoke recently at an event that I hosted. She did a talk on the five myths about Canada's water. One of the myths is that our water is pristine. She proceeded to talk about the fact that it's actually the opposite in many parts of Canada. The fresh water is being contaminated by various kinds of pollution that citizens are unaware of, or when they're aware of it, they are very frustrated in their inability to actually protect that water.

An example is a lake on Vancouver Island. When I was up in the Campbell River area, a delegation of people was concerned about arsenic and other toxic materials going into that lake and their years of inability to find a government body that would take action on that.

I just want to point out that it's not really useful to test everything here against a massive hydroelectric project when the benefit of this legislation is that private citizens can become more involved and can be encouraged to think that they can make a difference in their area, in their region, where they see something happening that shouldn't be happening.

This particular amendment is pointing specifically to the possibility of a citizen bringing forward a potential action and giving the responsible body a chance to actually correct the problem or giving the federal government a chance to step in and take its responsibility. It can't always do that because of resource constraints, but this would nudge that action that needs to be taken, for example to protect fish habitat in a lake on Vancouver Island.

Thank you.

The Chair: Ms. Duncan.

Ms. Linda Duncan: With all due respect, Mr. Woodworth, I think you may be talking about apples and oranges.

Attorneys General, of course, at the federal and provincial levels, in their respective areas of jurisdiction, have the right under the Criminal Code to intervene, to stay or take over a prosecution, but they do not have a similar absolute right to move in and stop the civil action. What this is doing is actually giving a heads-up to the Attorney General.

What they may do is within the full ambit of their powers and within the full ambit of the government to look into the matter subject to the court case that the litigants are considering bringing forward. It actually gives an opportunity to the Attorney General to intervene, to potentially initiate an action on their own, or to seek or to issue an environmental protection order. There could be all kinds of measures that come forward.

Again, it's a measure to give the government the opportunity, a heads-up, to step in and intervene. As my colleague pointed out, there are many, many cases across Canada where the department is stretched thin or where, for whatever reason, on the balancing of interests, it decides not to intervene or to bring suit or prosecute. It gives an opportunity for that community to seek recourse in the courts to have the impact remedied that is caused by a violation or an imminent violation of a critical environmental statute.

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

Mr. Stephen Woodworth: Thank you.

First, in response to Ms. Duncan, if she were to look at the provisions of the CEPA section 22, “Environmental Protection Action”, or at the Ontario Environmental Bill of Rights action, she would see, in fact, that it is a precondition for lawsuits that the relevant ministry be given an opportunity to investigate and respond reasonably to a complaint or a request for investigation and that those lawsuits cannot proceed unless that precondition has been satisfied.

With respect to Ms. Murray's comments about a straw man in the issue of hydro power, if it is, it is a straw man that was suggested to us by the Canadian Hydropower Association. It's not anything certainly that I've invented; it's in the evidence that we've heard.

The difficulty with this clause and with this bill is that there is no provision in the bill that exempts massive hydro-power situations. Therefore, it's going to be up to a judge somewhere to decide whether or not an undertaking of Hydro-Québec should be stopped or allowed to proceed.

Speaking on behalf of Hydro-Québec and other Canadian hydro-power developers, Mr. Irving of the Canadian Hydropower Association said the following, in reference to this bill:

> It effectively takes decision-making authority out of the hands of the subject-matter experts in the agencies such as Environment Canada, Fisheries and Oceans Canada, and Natural Resources Canada, and transfers it to judges. The parameters of judicial review set out in the bill ignore the fact that such decision-making requires careful balancing of environmental, economic, and social considerations, which is the proper purview of parliamentarians and civil servants, not judges.

So that all of the future of Quebec, which may be engaged with the proper development of its hydro-power resources, is rightly concerned that these decisions will now be made by judges and that there is a very serious risk that jobs will be lost, development will be lost, even the environmental benefits of hydro power may be lost. So we can only hope and pray that when this bill comes to its final vote, the concerns that are relevant to the people of Quebec will be felt.

Thank you.

● (0935)

The Chair: Okay.

You have about 30 seconds, Mr. Sopuck.

Mr. Robert Sopuck (Dauphin—Swan River—Marquette, CPC): Just to address Ms. Murray's comments, and tangentially Ms. Duncan's, in Ms. Murray's case, when citizens brought forward this action and she says government didn't act, these governments are accountable and they have to balance all kinds of issues. Just because one group of citizens ostensibly doesn't get their way doesn't mean governments weren't responsible. Maybe in a case that requires the shutting down of a single-industry town to fulfill this small group's request, well, what does that do to the local community?

Again, any government that makes a decision will be held accountable at some point.

The Chair: Thank you.

Are there other comments?

Let's call the question on amendment LIB-5.2.

A voice: No time left for the Conservatives?

The Chair: Absolutely none.

(Amendment negatived: nays 5; yeas 4)

The Chair: Let's move on to clause 24.

Are there any comments on clause 24?

Mr. Calkins.

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

I know that we've just disposed of the clause before, but there was only one question and comment I was going to make pertaining to that, given the fact that I didn't have time to speak to it under the time allotment for that particular amendment. My understanding—and maybe Mr. Woodworth can help me with this later, or anybody else who's involved in the legal field—was any application made before a Federal Court can be made in a jurisdiction outside of where the actual complaint is actually taken. So I'm wondering, and the only question I had was, could a group from Alberta, could a group from Newfoundland or Nova Scotia or New Brunswick make application to a Federal Court about a process that's happening in Quebec? That would be my only question.

The Chair: A point of order, Monsieur Bigras?

[*Translation*]

Mr. Bernard Bigras: Mr. Chair, it seems to me that we have already voted on clause 23(1). Mr. Calkins may be mistaken, but I would appreciate it if you would remind the committee that we are indeed on clause 24.

● (0940)

[*English*]

The Chair: We are talking about clause 24. Clause 23 has been dealt with.

(On clause 24—*Federal source or federal work or undertaking*)

Mr. Blaine Calkins: I'll start as soon as the interruptions stop, Mr. Chair.

Clause 24 actually changes the scope of what we're talking about quite a bit, Mr. Chair. On the surface of it, actually, clauses 24 and 25, because they're so intertwined, on first blush would look like important clauses to put in. I know that certainly from my perspective, as a Conservative, whistleblower protection is very important. It's critical to bringing transparency and accountability to governments and to all parties involved.

However, I think because of our process I have to speak specifically to clause 24. Because clause 24 is so small, it actually brings into question the scope of and circumscribes the powers in clause 25. I can't really speak about clause 24 without speaking about clause 25. I hope that Mr. Bigras will at least grant me that, when he won't grant me a chance to speak about clause 23. This brings into question clause 25:

> Section 25 applies in respect of employees who are employed on or in connection with the operation of any federal source or federal work or undertaking and in respect of the employers of all such employees in their relations with those employees.

This clause doesn't make any sense, of course, unless you go over and read the first part of clause 25. In the very first section, subclause 25(1) says that:

> Any person may file a written complaint with the Canada Industrial Relations Board alleging that an employer or person acting on behalf of an employer or in a position of authority in respect of an employee of the employer has taken reprisals against an employee on a prohibited ground.

That seems well and good, Mr. Chair. What clause 24 does, as I interpret this particular clause, anyway, is broaden the mandate of the Canada Industrial Relations Board. Now, that brings us to several questions. Right now, my understanding is that the Industrial Relations Board deals specifically with the private sector. It does not include in its scope any ability to deal with the federal service. At least that's my take on what clause 24 would in fact do.

Now, that raises all kinds of alarm bells in my head right away, Mr. Chair. Because the Canada Industrial Relations Board gets its remuneration from the Government of Canada, the taxpayers of Canada, this clause immediately calls into question, in my mind, whether it shouldn't go before the Speaker of the House for a royal recommendation. It would require certain sums of money to be spent on the administration of this bill, should it come to pass.

Notwithstanding that, I want to talk a little bit about the Industrial Relations Board. Notwithstanding that the remuneration and travel and living expenses and compensation for all of the board members, as set out in the charter for the establishment of the Canada Industrial Relations Board, are there, what we're dealing with, specifically, in the Industrial Relations Board, mainly, are negotiations between unions and employers. It brings into question all of the laws this quasi-judicial body has for dealing with conduct between, particularly, union employees and their employers. It would deal with such things as reprisals by employers against said employees.

Clause 24, as I said, would broaden the Industrial Relations Board's jurisdiction to include employees of the federal public service. It would overlap with the jurisdictions of existing tribunals and would basically duplicate current protections against those reprisals, thus creating uncertainty and the likelihood of further litigation. The part I'm speaking to, of course, is the whistleblower protection in clauses 24 and 25. Hypothetically, down the road, if this bill should come to pass, because the mandate of the Canada Industrial Relations Board, as now set out through this act, has been broadened, would the current composition and the current appointments, meaning the directorship and the adjudicating body of the Industrial Relations Board, make sense? Or should that be revamped in light of the changes being proposed by this particular legislation?

Also, it overlaps with legislation that's already in place that protects federal public servants, such as the Public Servants Disclosure Protection Act and the quasi-judicial body set up within that and also with various sections of the Criminal Code that deal with reprisals from employers against employees.

Clause 24 coupled with clause 25 would basically change the jurisdiction of and the matters that can be considered by the Industrial Relations Board. They would broaden their mandate without actually changing the Industrial Relations Board's ability to get the right people in place to deal with the issues brought about by this legislation.

The Industrial Relations Board currently has jurisdiction over certain labour relations issues concerning employees who are employed on or in connection with the operation of any federal work, undertaking, or business, as defined in the Canada Labour Code.

● (0945)

The Canada Labour Code, Mr. Chair, applies to about 800,000 Canadians right now. Of course that would be any operating pan-Canadian or multinational organizations, if they were engaged in anything to do with the federal government.

The board currently has no jurisdiction over employees of a federal source, which is defined by the bill as:

> (a) a department of the Government of Canada;
>
> (b) an agency of the Government of Canada or other body established by or under an Act of Parliament that is ultimately accountable through a minister of the Crown in right of Canada to Parliament for the conduct of its affairs; or
>
> (c) a Crown corporation as defined in subsection 83(1) of the *Financial Administration Act*.

Therefore, Mr. Chair, the inclusion or the wording of this legislation is so broad and so encompassing that not only do I think it might not pass the test of a royal recommendation, but it is broadening the jurisdiction of the Canadian Industrial Relations Board.

I don't know whether Ms. Duncan is trying to do this intentionally through her legislation or if it's a slip-up or it just wasn't looked at as thoroughly.

I have many more comments to make on this. But because we're dealing specifically with clause 24, this is the crux of the problem with clause 24, and unless I'm misinterpreting this, I don't think this is something that we on the Conservative side can support.

The Chair: Thank you.

Other comments?

Mr. Woodworth. There are only about 45 seconds.

Mr. Stephen Woodworth: I thought Mr. Calkins did a good job and I just wanted to sum up a little bit.

First of all, the Canadian Industrial Relations Board has jurisdiction only in relation to industrial relations and occupational health and safety for non-government employees.

The Public Servants Disclosure Protection Tribunal, on the other hand, has jurisdiction in relation to whistleblowing, but only for government employees.

This provision somehow doesn't match either of those particular situations.

The Chair: Thank you.

Other comments?

Ms. Duncan.

Ms. Linda Duncan: I'd like to have clarification: are we currently reviewing clause 24, or are we reviewing clause 25?

The Chair: We are reviewing clause 24. But since it refers to clause 25, they connect to the crux of the matter, which is that first subclause in 25.

We are voting on clause 24. I don't see any other comments.

(Clause 24 agreed to: yeas 6; nays 5)

(On clause 25—*Filing a complaint*)

The Chair: Mr. Calkins.

Mr. Blaine Calkins: Now that my eight minutes have been refreshed, Mr. Chair, this will be an opportunity for me to talk further about some of the issues that exist with this.

As I say, on first blush—and I commend Ms. Duncan for this—of course whistleblower protection is one of the most effective ways that any government can bring about accountability within its own ranks. Of course we always applaud those public servants who come forward and raise issues of concern. It serves the public interest and it also serves the interest of all taxpayers and of course the government, because we know that ministers only can go so far down into their departments.

Notwithstanding the fact that I was unable to convince my colleagues across the way that broadening the mandate of the CIRB to include federal employees was not a good idea, I'm now left with clause 25, under the heading "Filing a complaint", dealing with subclause 25(1), which I've already read into the record. We can go all the way down through the various subclauses, all the paragraphs in (3)—those are the heart and the crux of the matter:

> (3) For the purposes of this section, an employer has taken reprisals on a prohibited ground if the employee in good faith did or has attempted to do any of the following for the purpose of protecting the environment

The one that raises my eyebrows immediately, Mr. Chair, is paragraph 25(3)(d):

> seek the enforcement of any Act of Parliament or any regulation made under an Act of Parliament or other statutory instrument that seeks to protect the environment;

I used—

● (0950)

The Chair: I sometimes speak too fast for our interpreters, but could you just slow down your speech a little bit?

Mr. Blaine Calkins: Is this for your benefit, Mr. Chair, or for the—

The Chair: No, for the benefit of our interpreters.

Mr. Blaine Calkins: Okay. I'm sorry, Mr. Chair.

My apologies to the interpreters. I thought I was going slowly. I can actually go quite a bit faster. If you challenge me, I can do that.

Paragraph 25(3)(d) raises alarm bells in my head because this allows basically any citizen of Canada to second-guess the enforcement decisions made by any enforcement officer entrusted with the enforcement of any statute in Canada.

As a former conservation officer and national park warden, I can assure you that the last thing that I would need is somebody calling into question...or basically filing a complaint saying that in the opinion of the public I didn't do my duties as a member of a law enforcement authority charged with the responsibility of protecting the environment.

Notwithstanding that, for all of those paragraphs, such as applying for a review or an investigation, providing information to an appropriate authority for the purposes of an investigation, giving evidence in a proceeding under this act or regulations, or refusing to state an intention or refusing to do anything that is an offence under this act, basically these are already taken care of, Mr. Chair, in various other pieces of legislation that we currently have.

What it does is set out the process to the Canada Industrial Relations Board for employees—we've already talked about that—when it comes to the facing of reprisals. That would broaden the mandate of the CIRB without actually going through the appropriate perusal by, for example, the industry committee. This actually would be a little bit of a step out of the scope of the environment committee to look at, I think; however, we're all members of Parliament and we would be voting on this in the House anyway.

The government supports protecting workers from reprisals, as I've said. Of course, the Environmental Protection Act of 1999 already makes it an offence for an employer to dismiss, harass, or discipline any employee for the reason that he or she has reported a Canadian Environmental Protection Act violation or has refused to do something that would constitute an offence under that act. That legislation already exists, Mr. Chair. The Industrial Relations Board adjudicates industrial relations and occupational health and safety issues, so those employees are already covered under the auspices of that legislation.

The proposed complaint process under the CIRB would strain board resources. We already talked about the remuneration for the CIRB with the broadening of its mandate. It already looks after 800,000 employees in the private sector across this country. If we were to bring the entirety of the federal public service into that fold, one can only imagine with the price tag for that would be.

This clause, as I've said, overlaps with the provisions of the Canadian Environmental Protection Act, which already makes it an offence for an employer to dismiss, harass, or discipline any employee for the reasons that he or she reported a violation or refused to do something.

There is also overlap with provisions in the Criminal Code that prohibit employers from retaliating, or threatening to retaliate, against an employee for providing information to a person whose duties include the enforcement of federal or provincial law respecting an offence that the employee believes has been or is being committed contrary to any federal or provincial law by the employer, or an officer or employee of the employer, or, if the employer is a corporation, by one or more of its directors.

The Public Servants Disclosure Protection Act already creates the tribunal that already oversees this. This is the whistleblower protection that basically spans the entire public service. I can't help but think that any additional clauses or any specificity under clause 25 would only seek—by way of accident, I would presume—to create confusion and to create an opportunity for someone to not be able to defend themselves should they bring something forward under the Public Servants Disclosure Protection Act.

Furthermore, subsection 425.1(1) of the Criminal Code states:

> No employer or person acting on behalf of an employer or in a position of authority in respect of an employee of the employer shall take a disciplinary measure against, demote, terminate or otherwise adversely affect the employment of such an employee, or threaten to do so,
>
> (a) with the intent to compel the employee to abstain from providing information to a person whose duties include the enforcement of federal or provincial law, respecting an offence that the employee believes has been or is being committed contrary to this or any other federal or provincial Act or regulation by the employer or an officer or employee of the employer or, if the employer is a corporation, by one or more of its directors; or
>
> (b) with the intent to retaliate against the employee because the employee has provided information referred to in paragraph (a) to a person whose duties include the enforcement of federal or provincial law.

● (0955)

Mr. Chair, I hope I've convinced my colleagues across the way that bringing this forward already, with the current protections that already exist through the Canadian Industrial Relations Board, through the Public Servants Disclosure Protection Act and the tribunal created there, and also through the clauses in the Criminal Code, that adding this clause in this bill, should it come to pass, would only create more confusion and uncertainty. It would create opportunities for employers to have an out if this particular legislation isn't worded correctly, and provide fewer opportunities and less incentive should this clause come to pass. It would create that uncertain environment—fewer opportunities for the public service to come forward, which would be an unfortunate, unintended consequence of passing this legislation.

The Chair: Thank you.

Ms. Duncan.

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

Yes, indeed, this provision, clause 25, coupled with clause 24, is consistent with other measures in law, specifically consistent with some provisions under the Public Servants Disclosure Protection Act, consistent under CEPA, and very specifically consistent with the Ontario Environmental Bill of Rights. It in no way contradicts those provisions. What it does instead is in fact provide legal certainty and clarity in the case of environmental protection officers on the specific actions they are charged to undertake under those particular statutes.

The whole purpose of this bill is it is intended as an omnibus kind of bill to extend those kinds of rights and protections to all government employees who are delivering the responsibilities under all federal environmental statutes, not only CEPA.

I do want to bring to the chair's attention that I intend to table an amendment. In fact, other members will be pleased to know that the amendment I do wish to table would, in subclause 25(1), strike out line 6 and add in “or the Public Sector Integrity Commissioner”.

Now that, of course, is a new agency. I'm advised that in fact the Canadian Industrial Relations Board is a relevant board in certain circumstances, and the Public Servants Disclosure Protection Act—

The Chair: Are you moving that right now?

Ms. Linda Duncan: I don't know when I should do it. I was speaking to the issues they raised.

The Chair: We'll finish off speaking to the main.... This is all counting as time against clause 25. You can move your amendment at the end of it, and then we'll start the clock ticking again.

Ms. Linda Duncan: Okay, I just wanted to add.... I will speak to the amendment later. In fact, I think that is a valid point.

The Chair: Mr. Calkins has a point of order.

Mr. Blaine Calkins: I'm not trying to close debate here; I simply have a question of process.

Given the fact that we have a time allocation on the clause and a time allocation on amendments to that clause, if Ms. Duncan has just moved an amendment, do we now shift to...? I don't know how we can have.... We're putting the cart before the horse if we finish and close debate on the main clause before we finish and close debate and deal with a particular amendment.

My question is, if the amendment passes, then the clause changes, and then are we back to the amount of time we had before? It seems to me we're doing things a little bit out of order here. We have to have some process and mechanism of moving an amendment. I'm just wondering how that would work, Mr. Chair.

The Chair: This is Ms. Duncan's first opportunity to have the floor—she's used up two minutes and 20 seconds—and she has not indicated fully.... I'm not sure if we're talking page 15 or page 16 where she wants to move this amendment. There are only 25 seconds left on the main clause for the Conservatives, and this is time taken away from the NDP on the main clause. I have to stick to the rules we've brought into play. However, with the amendment, the clock starts over.

I'm going to suggest that you move the amendment. Let's get to the amendment. Exactly where do you want to place this—what page and what line?

● (1000)

Ms. Linda Duncan: Mr. Chair, I wish to table an amendment to subclause 25(1) on page 15 to strike out line 6 and replace it with:

> Board or the Public Sector Integrity Commissioner alleging that an employer or person

So what I am doing is adding in the words "or the Public Sector Integrity Commissioner".

The Chair: You may want to speak to that.

Ms. Linda Duncan: As I mentioned, Mr. Chair, I believe that other members of the committee may....

The Chair: Point of order, Mr. Calkins.

Mr. Blaine Calkins: I'm sorry, Linda, I just didn't follow. Are you striking anything out, or are you simply inserting words?

The Chair: The way you properly stage an amendment is that the entire line is removed and then rewritten. Essentially what she's doing is after "board", Ms. Duncan is inserting the words "or the Public Sector Integrity Commissioner alleging" and then it continues on from there.

Mr. Blaine Calkins: Okay, so it's an insertion of words.

Sorry, Linda, I didn't mean to interrupt.

The Chair: On that point of order, Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras: There may have been a problem with the interpretation. I want to know whether we are keeping the words "Canada Industrial Relations Board" and adding "or the Public Sector Integrity Commissioner".

The Chair: Yes.

[*English*]

I may have to rule on this.

Based upon the rules in chapter 16, "The Legislative Process", and we are governed by the rules, I'm going to have to rule that amendment out of order, since you're talking about the Public Service Integrity Commissioner, which was not mentioned in the bill previously and it's not in the interpretation clauses. Based on that, on principle and scope, I'll just read from chapter 16, page 766:

> An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill. (This rule does not apply to a bill referred to a committee *before* second reading, since the principle of the bill has not yet been agreed to by the House.) Similarly, an amendment which is equivalent to a simple negation of the bill or which reverses the principle of the bill as agreed to at second reading is out of order.

Because this amendment goes beyond the scope that was in the original draft of the bill that was tabled in the House and was brought to us after second reading, and the House has already voted on it at second reading, and Public Sector Integrity Commissioner was never mentioned, I'm going to rule that amendment out of order.

Ms. Duncan: Can I speak to that?

The Chair: No. A rule of the chair is final. You can challenge the chair; that's up to you. But I have made a ruling and it's rules-based.

Ms. Linda Duncan: What does challenging the chair mean? I don't want to challenge your ability to make a ruling.

The Chair: You can if you want. The question would be on shall the ruling of the chair be sustained, and then you would vote against that.

Ms. Linda Duncan: I don't want to challenge you. I just want to challenge your ruling.

The Chair: Essentially, I've ruled the amendment out of order, and we're back to the original clause.

● (1005)

Ms. Linda Duncan: I guess I am challenging the chair, Sir.

The Chair: Okay. It's a dilatory non-debatable motion. The question is: shall the chair's ruling be sustained? If you want my ruling to be sustained, you vote in favour. If you wish it to be overturned, you vote against.

(Ruling of the chair overturned: yeas 6; nays 5)

The Chair: Based on that vote, my ruling's been overturned.

An hon. member: What?

The Chair: You didn't intend to do that? You're supporting me?

An hon. member: Yes, we are. We are supporting you.

The Chair: So you vote positive because you want to sustain my ruling.

Do you guys want to do that one more time?

Do you understand? I know we haven't done this very often. Actually, this is only the second time since I've been in the chair that I've been challenged, because I do make rules-based decisions.

Do you understand? If you want my ruling to be sustained, you vote in the positive. If you—

Ms. Joyce Murray: But could you please restate your ruling?

The Chair: My ruling is that the amendment is inadmissible based on page 766, chapter 16, because it's beyond the principle and scope of this bill.

So if you agree with me, say yes. If you disagree with me, you say no. Right?

The Clerk: Yes.

Do we start again?

The Chair: Is everybody clear?

Some hon. members: Yes.

The Chair: So if you support me, you say yes. If you support the challenge, you say no.

I'll ask one more time, and then we'll move on.

(Ruling of the chair sustained: yeas 7; nays 3)

The Chair: My ruling stands, so we're back to clause 25.

You have the floor, Ms. Duncan. We're back to clause 25. You have roughly five minutes left.

Ms. Linda Duncan: Okay, thank you.

I just wanted to reiterate again the purpose and intent of this provision. Again, it is to clarify the protection of the rights and opportunities for employees to assert their responsibilities in relation to environmental protection, and that would include participating in environmental decision-making; to implement any law, policy, act or regulation; to proceed to apply for an investigation; to seek the enforcement of an act, which could be an investigation, an inspection, issuing a warning, environmental protection measure, initiate a delay in information; and to also provide information and to testify in proceedings.

Regrettably, similar measures have become necessary to include—for example, the Ontario Environmental Bill of Rights includes those provisions—because there have been circumstances where environmental officials have been stifled in the delivery of their responsibilities. This is intended to say clearly that it is their right to exercise their responsibilities under those statutes and their right to seek recourse to the appropriate authorities where they are given an inappropriate reprisal.

The Chair: Okay.

Mr. Calkins, you have 25 seconds.

Mr. Blaine Calkins: Well, if I can just address the one concern Ms. Duncan brought up, which is that she wants to broaden the scope of this whistleblower protection to include all environmental legislation, under the Public Servants Disclosure Protection Act, who is covered by the PSDPA? The Public Servants Disclosure Protection Act "covers all employees in federal departments and agencies, most Crown corporations and the RCMP". So broadening this to include just the environment department does not give it any greater scope than is already there through the Public Servants Disclosure Protection Act, and it would create confusion and uncertainty if one changed and the other didn't, and we would have a dog's breakfast in dealing with these kinds of complaints going forward.

This is not the right place to do this.

● (1010)

The Chair: Okay, thank you.

Ms. Duncan.

Ms. Linda Duncan: Yes, Mr. Chair, I'd like to respond to that.

This provision does not expand those statutes to bring under its ambit the Environmental Protection Act or its employees. They already have those opportunities. What it does is provide clarification for the kinds of activities by those specific employees and clearly set out their rights. It doesn't conflict; it provides, in fact, what the member had called for: providing greater legal certainty.

The Chair: Seeing no other comments, we shall go to the vote.

(Clause 25 agreed to: yeas 6; nays 5)

(On clause 26—*Examination by the Auditor General*)

The Chair: On clause 26, we have amendment NDP-15.

Ms. Duncan, can you move it onto the floor, please?

Ms. Linda Duncan: Yes, Mr. Chair.

I would like to move an amendment to the effect that Bill C-469, in clause 26, be amended (a) by replacing line 18 on page 16 with the following:

> The Commissioner shall, in accordance

(b) by replacing, in the English version, line 29 on page 16 with the following:

> and the Commissioner shall report any such

The purpose, Mr. Chair, of this provision is to specify that it would be the Commissioner of the Environment and Sustainable Development, not the Auditor General. That would make it more consistent with the Auditor General Act, in which there are consistent provisions provided for the role of the Commissioner of the Environment and Sustainable Development. It is in response to an issue raised in the House previously by Conservative members of the House.

The Chair: Are there any comments?

Go ahead, Mr. Warawa.

Mr. Mark Warawa: Thank you, Chair.

I won't spend long on the amendment. Thinking of past comments made by my colleagues across the way and a history of supporting separating the Office of the Commissioner of the Environment and Sustainable Development from the Office of the Auditor General, to now see an amendment from the NDP is not particularly surprising.

When a ruling was made in the House regarding the Office of the Auditor General and whether this would increase the duties of the Auditor General's office and require a royal recommendation, the decision was made based on the roles and responsibilities of the Office of the Auditor General. This amendment changes everything in the bill that says “Auditor General” to “Commissioner”. And I believe it has, in that direction, increased the roles and responsibilities. It expands the scope of the commissioner's office. The commissioner's office, not the Auditor General's office, would be required to review every regulation and every bill adopted by the government.

Would that expanded scope of duties for the commissioner's office increase the cost of operating the commissioner's office? The answer is a clear yes. Would that require a royal recommendation? Very possibly it would. That's an interesting question for this committee. Is passing this going to trigger a royal recommendation for Bill C-469? It could.

We'll be voting against this amendment.

It's also interesting that this is an NDP amendment. We've seen a plethora of amendments to an NDP bill. I don't remember, around this table, seeing as many amendments made by the author or co-author of a bill as we've seen with Bill C-469. There has been amendment after amendment, even challenging the chair and limiting the amount of debate that can be carried on around this table. But that is what we're dealing with.

I don't believe this is in the interest of the Office of the Commissioner of the Environment and Sustainable Development. We need to respect that, and we need to respect the Office of the Auditor General.

What is the outcome of this expanded scope? Is it necessary? Is it appropriate? The commissioner said that what's being proposed is not appropriate. We heard that in his testimony. The commissioner is recommending against this. It was also brought to our attention that this is already being done. A review of all regulations and bills developed by the government have to be, right now, reviewed by the Department of Justice. Which is the appropriate body? Well, it is the Department of Justice.

Should the commissioner's office be tasked with this new duty, at increased cost and duplication? This has been the theme we've seen throughout Bill C-469: redundancy, duplication, increased cost, and increased red tape. One would question why we would do that. It doesn't make sense. Duplication creates uncertainty, conflict, and cost. It's not in the interest of Canada, but it would be in the interest of special interest groups. So we'll be voting against this.

● (1015)

The Chair: Are there any comments? I see none.

(Amendment agreed to: yeas 6; nays 5)

The Chair: We're back to the main motion, clause 26 as amended.

Are there any comments?

Mr. Mark Warawa: Just to review, clause 26 as amended expands the scope of the Commissioner of the Environment and Sustainable Development. Those duties impose a mandatory obligation on the commissioner to review every regulation and every bill developed by the government.

Currently, the Auditor General has discretion in deciding which issues related to the environment and sustainable development should be brought to the attention of the House. That discretion will be removed. Another common theme we've seen with Bill C-469 is removal of the discretion of the courts. So this discretion is now removed from the Office of the Auditor General.

Currently, lawyers with the Department of Justice examine new legislation regulations to determine their consistency with existing legislation. If this bill were to come into force, the consistency of new legislation regulations with the Environmental Bill of Rights would become part of that examination. Clause 26 would expand the scope of the commissioner's duties and assign a job to the commissioner that is already done by the Department of Justice. Therefore there would be increased redundancy.

It's disappointing to see a continued pattern that is not in the interest of the environment or Canadians, but is in the interest of special interest groups. Our government agrees that it's an important responsibility to protect the environment for the current and future generations. We also believe we have an obligation to account for social, economic, and other priorities, and the principle of sustainable development.

This has brought to the committee's attention that the NDP is the only party that has voted against the Federal Sustainable Development Act. In the House recently, they were the ones that voted against it. We now have Bill C-469 that actually changes the definition of sustainable development. All legislation was to be viewed through the prism of sustainable development. There was unanimous support from this committee and from the House as recently as a couple of years ago. That appears to be changing under Bill C-469.

We will be voting against clause 26.

● (1020)

The Chair: Ms. Duncan.

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

I hold a different opinion, obviously, since I tabled the bill in this provision. In fact, we've had the ruling of the House that the provision should survive.

The Commissioner of the Environment and Sustainable Development, under the Auditor General Act, subsection 23(2), is already authorized on behalf of the Auditor General to report annually to the House of Commons concerning anything the commissioner considers should be brought to the attention of the House in relation to environmental and other aspects of sustainable development. So it's already consistent within the terms of the Auditor General Act for the role of the commissioner. Under subsection 23(2), the Auditor General Act actually specifies the exercise of the authority of the Governor in Council. The authority of the Governor in Council includes the making of regulations.

So I submit there is nothing in clause 26 of this bill that is contradictory to the scope of the responsibilities already assigned to the commissioner. It simply makes consistent for this bill that the commissioner will also review legislation to make sure that there is adherence to this bill.

One has to go back to the purpose and intent of the bill, which is to safeguard the right of present and future generations of Canadians, confirm the Government of Canada's public trust duty, and ensure all Canadians have access to information, justice, and so forth.

It's simply assigning, consistent with the function already assigned to the commissioner, to ensure what the Government of Canada stands up in the House every day talking about—the balancing of economic development and environmental protection. This is simply one more mechanism whereby we can ensure that legislation and regulations coming forward respect the principles of the protection of the public trust for Canadians.

The Chair: Mr. Sopuck.

Mr. Robert Sopuck: On that last point, we could have a philosophical discussion.

The Chair: Did you have a point of order, Mr. Warawa?

Mr. Mark Warawa: I did. My apologies for interrupting.

I have a question on procedure, and this may be a question for the legislative clerk. We have now an amended clause 26, removing the words "Auditor General" and inserting "Commissioner".

The House ruled that it did not require a royal recommendation because the Auditor General's office had the discretion. Now, with those amendments, it's now with the office of the commissioner, no longer the Auditor General. Could that trigger a royal recommendation? That's a question to you and the clerk.

Procedurally, once the deputy speaker has ruled on this, you can't bring it back in the House. But could that question come from this committee with the changes? This bill should, I hope, die in this committee, but if it's carried forward, could this committee request a review of the royal recommendation question?

The Chair: The environment commissioner works in the Office of the Auditor General, so it shouldn't change the royal recommendation that we've already received. As to whether or not the amended version of a bill can be requested for another royal recommendation, I think that would be up to the parties rather than the committee.

Let me read this from June 15. This is the ruling by Speaker Milliken on Bill C-469:

> As the member for Edmonton—Strathcona pointed out, the Office of the Auditor General includes the position of Commissioner of the Environment, who reports to Parliament through the Auditor General. The Commissioner is given a broad mandate with respect to the content of that office's reports, as set out in paragraph 23(2) of the Act, which reads, in part: "The Commissioner shall, on behalf of the Auditor General, report annually to the House of Commons concerning anything that the Commissioner considers should be brought to the attention of the House in relation to environmental and other aspects of sustainable development...."

Then it goes on:

> The provisions of Bill C-469 concerning the Auditor General are limited to the examination of federal bills and regulations. Here again, it does not appear that the bill broadens the mandate of the commissioner, nor does it require the commissioner to undertake any work not already within his purview. In conclusion, the Chair is unable to find any authorization for a new expenditure of public funds in Bill C-469, nor does the bill appear to assign any function to the Office of the Auditor General that goes beyond the existing mandate of that office. I therefore rule that Bill C-469 does not infringe on the financial initiative of the Crown and so does not require a royal recommendation.

So I think that would stand, since the environment commissioner works out of the AG's office.

● (1025)

Mr. Mark Warawa: The previous wording of clause 26 was such that it was the Auditor General that would be making that discretionary decision. Since that responsibility now goes to the commissioner, does the Auditor General still have that discretionary power, or is it removed? Is that new responsibility assigned to the commissioner? Does the Auditor General still have that discretion?

The Chair: I just read from the Speaker's ruling. The Speaker believes that the commissioner's powers are equally as broad as the Auditor General's, because he functions out of the AG's office. So I don't believe that changing "Auditor General" to "Commissioner" in clause 26 changes anything contrary to the Speaker's ruling.

Mr. Sopuck, you have the floor.

Mr. Robert Sopuck: I do have a disagreement with the point about balance between economic development and environmental quality. The track record is quite clear that in terms of environmental indicators, the wealth-creating western societies, by and large, have the best environmental track record, in terms of environmental mitigation, for example, environmental remediation, and a whole host of other environmental indicators related to the preservation of landscapes. So to me there's no balance at all; wealth creation and environmental protection go hand in hand.

The phrase "sustainable development" keeps getting thrown around over and over again. I'd like to remind the committee, going back to the Brundtland Commission in 1986, that her definition—regardless of what may or may not be in our act—was that "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: the concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given...." She then talked about the idea of limitations that the environment does pose to certain kinds of economic development, which I agree with. There are only so many trees you can cut or so many fish you can catch.

But the central feature of the definition of "sustainable development" is that it is a development concept, and the social, economic, and environmental legs of the sustainable development stool are meant to be equal. The poverty and the lack of development was a major concern of the Brundtland Commission when they came up with the globally accepted definition of "sustainable development".

Thank you.

The Chair: Are there any comments?

(Clause 26 as amended agreed to: yeas 6; nays 5)

(On clause 27—*Regulations*)

The Chair: Now to clause 27.

Mr. Woodworth.

● (1030)

Mr. Stephen Woodworth: Mr. Chair, I need some guidance. Perhaps I'll make this a point of order and a request for guidance.

Would it be in order for me to request that you rule clause 27 out of order as exceeding the scope of the act? If that's in order, then that would be the request I would make, and I would tell you why.

The Chair: The House has already voted on this bill with clause 27. Once it comes to us from the House, after second reading, we have to consider the entire bill. So it's in order.

Mr. Stephen Woodworth: So I'll just lower my remarks and for the same reasons tell you why I don't think this clause makes a great deal of sense, whether it's in order or not. If somehow, through some magic, I managed to persuade my colleagues that it didn't make sense, perhaps they wouldn't vote for it.

The reason I think it doesn't make sense is because it authorizes the Governor in Council to make regulations generally for carrying out the purposes and provisions of this act. As nearly as I can see, there is only one section in the act that refers to the need for regulations, and that's clause 26, which just passed, which seems to suggest that there might be some regulations prescribed about how the Auditor General shall examine other regulations—or rather the commissioner. There's no guidance given. There is no specificity given as to precisely what the regulations are that are contemplated.

I'm reminded of my good friend Derek Lee, from the Liberal Party, who I observed raised this point on occasion in the justice committee, that this seems to give the Governor in Council, i.e., the cabinet, wide-open scope to make whatever regulations the Governor in Council would like to make.

Ordinarily, we would call this a basket clause and we would stick it at the end of a list of regulations that would be contemplated by the act. It would be a basket clause, meaning that this is sort of to catch anything that's already been missed. That only really works well if it's at the end of a list of things the Governor in Council might regulate on, whether it's the time periods for notice, or the proper forms for lawsuits, or whatever it may be. But in this case, we don't have any specificity whatsoever.

If there was a list, there is a legal principle that says that a basket clause like this should be interpreted in accordance with the nature of the items that are specified in the list. The lawyers around the table might remind me of the Latin for that; it escapes me right now. Without any specificity preceding it, there is no way to know what kinds of regulations the Governor in Council might wish to make.

I suppose since there's a Conservative government in office right now, I wouldn't be too worried if the Conservative government wanted to make some regulations that might drastically affect the implementation of this act. But as I can't discount the possibility that in some hopefully very distant future there might be a government of another persuasion, I am concerned about giving the Governor in Council such a wide-open, unspecified authority to make regulations as is found in this proposal.

Those are my comments. Thank you.

The Chair: Thank you.

Are there any other comments?

Ms. Murray.

Ms. Joyce Murray: Excuse me, Mr. Chair, but we were commenting on clause 28?

The Chair: Clause 27.

Ms. Joyce Murray: Okay. I'm going to make a comment in support of that. I just want to broaden my remarks a little bit to respond to some of the things that I've been hearing over the course of this bill. The members opposite talk about the balance. Mr. Sopuck talked about sustainable development and the balance of environment and economy.

There's been a lot of implication that the members on this side, the Liberal members, are not for a strong economy. I want to make the point that a strong economy is extremely important. I characterize a lot of the debate that's happened around this bill as not actually being about the environment or the economy. It's actually about the role of citizens, the right of citizens to be engaged, to have transparency, and to have rights with respect to what other parties are doing to the environment, which affects their lives and their future. So it's not surprising that members of a government that has been historic in its attempts to shut down democracy and its attempts to make partisan arm's-length organizations, like the CRTC—

● (1035)

Mr. Mark Warawa: Point of order.

The Chair: Point of order, Mr. Warawa.

Mr. Mark Warawa: Chair, you've repeatedly asked us to stay relevant and also keep our comments polite. Now a vicious attack by the member opposite is not in keeping with your request.

The Chair: I do agree that your comments need to be relevant to the clause that's in front of us, which is clause 27.

Ms. Joyce Murray: This clause is about the making of regulations in order to enact this bill. Mr. Chair, my comments are directly to the heart of the discussion and the heart of the intent of this bill. This bill is intended to empower citizens to be engaged and to have some rights with respect to their environment. That's why it is not surprising that a government that shuts down organizations that say anything counter to the government's view of the world, that defunds organizations that challenge the government in any way—

Mr. Stephen Woodworth: Point of order.

The Chair: Point of order, Mr. Woodworth.

Mr. Stephen Woodworth: Mr. Chair, first of all, I think it rather odd that a member of a party that has limited democratic debate at this committee to one and a half minutes for each government member should be talking about shutting down democracy.

Apart from that, I regret to say that Ms. Murray seems to be disregarding your earlier admonition to stay relevant to the clause. She is not talking about the implications of the regulation-making authority, which is granted in clause 27. I would ask you to call her to order once again.

The Chair: Yes, I'll agree with Mr. Woodworth that we want to make sure that the comments are relevant to clause 27. We can't even go on and try to read the crystal ball as to what types of regulations the Governor in Council may want to bring forward on the bill. So let's keep your comments confined to clause 27.

Ms. Joyce Murray: Thank you, Mr. Chair.

Mr. Chair, I'll just conclude by saying that the provision to make regulations to enact this bill is core to the effectiveness of the bill, so I'll be voting in support of it.

The Chair: Thank you.

Ms. Duncan.

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

Mr. Chair, I'd have to offer that I find it frankly quite surprising that Mr. Woodworth would speak against clause 27, given the submissions of the committee. Presentations by him and some of his other colleagues in the Conservative Party have been remonstrating that there wasn't enough detail in the bill.

There are two ways you can present a bill: you can put all the details about every procedural aspect, or you can take an approach where you provide by associated regulations what those procedures might be. That was the choice I made in enacting this.

In fact, by including this provision I'm pretty well giving a blank slate to the government of the day to either expand or constrain the rights and opportunities and duties under the bill through regulations. Of course they'd have to be consistent with the general intent of the bill.

I would just like to close by saying that I appreciated the comments of my colleague.

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: Thank you very much.

I'm pleased to include myself in the circle of Ms. Duncan's colleagues. I appreciate her compliment to all of us. However, I want to say that I believe that she's missed a third way when she says either you can put the detail in the bill or you can leave all the detail to the cabinet. I believe she's missed the third way, which is that you can enact an intelligently and reasonably circumscribed ability for the government to legislate within confines set out by the legislature.

This is the point I recall Mr. Lee making so ably, that one shouldn't write a blank cheque. In a way, on the issue of accountability, it's almost as egregious to give the cabinet a blank cheque as it is to give the courts a blank cheque, which this bill certainly does in spades.

In both cases, in my view, it is up to the legislature to prescribe appropriate limits. This bill certainly does not prescribe appropriate limits to the authority of the courts. And in this particular case, ironically, it doesn't prescribe appropriate limits to the ability of the cabinet. So it's on that basis that I object. And although I guess I can't speak for Mr. Lee, I'm almost certain he would object too, if he were here, and I've known him for many, many years.

Thank you.

(Clause 27 agreed to: yeas 6; nays 5)

● (1040)

The Chair: Okay, now clause 28.

Mr. Sopuck.

(On clause 28)

Mr. Robert Sopuck: This clause almost sums up what the entire bill purports to do. One thing that hasn't been emphasized in these discussions, at least the ones I've been on, is that Bill C-469 plants a dagger in the heart of rural communities, especially low-income and economically vulnerable resource communities.

Rural communities are much more dependent on the harvesting of natural resources than the rest of the economy. The natural resource economy is carrying the entire country right now, and natural resource harvesting and processing occurs in rural areas.

Rural economies and rural communities are the most common targets of environmental activism, whether it's oil sands, pipelines, commercial forestry, the seal hunt, the trapping industry, mining, commercial agriculture, ocean agriculture, intensive animal agriculture, or other resource industries. The common thread is that these natural resource harvesting activities occur only in rural areas. It is almost always vulnerable rural communities that bear the cost of these aggressive and well-funded environmental campaigns.

As a member from a rural, somewhat low-income constituency that depends upon the harvesting of natural resources, I can tell you that it is communities like mine that will be the first targets of the actions allowed under this bill.

Furthermore, this bill introduces U.S.-style litigation into Canada, where it is not appropriate. We just got a letter from Newmont Mining Corporation. They write to us that the draft legislation appears to be focused on increasing avenues for litigation rather than resolving issues or conflicts.

The Chair: Ms. Duncan, point of order?

Ms. Linda Duncan: I would like to question the relevance of the statements of Mr. Sopuck. This provision does not deal with any standing to bring a legal action. It's a specific amendment to an existing law that does not have relation to any of the rights in the bill.

The Chair: Ms. Duncan, make sure you say you have a point of order, rather than just a comment or debate, so I can acknowledge it.

Mr. Warawa.

Mr. Mark Warawa: Speaking to that point of order, we're in clause 28 and the paragraph speaks to “the right of the individual to life, liberty, security of the person, including the right to a healthy and ecologically balanced environment, and enjoyment of property, and the right not to be deprived thereof except by due process of law”.

I believe my colleague is very relevant. Relevancy is not just for the elites of Toronto or the elites in Canada. It's for all Canadians, including rural Canadians. My colleague is speaking and standing up for rural Canadians. To say that this is not relevant is to be short-sighted about what is relevant to Canadians. I think what he's speaking to is relevant and appropriate.

This is another example of the opposition trying to stifle healthy debate. They restricted the time for debate, and now they're trying to keep my colleague from standing up for rural Canadians. I think it's awful what's happening.

● (1045)

The Chair: Ms. Duncan, do you wish to speak to that point of order?

Ms. Linda Duncan: Yes. In my comments I made no reference whatsoever, contrary to what Mr. Warawa was suggesting, to his speaking on behalf of rural residents. I'm delighted that he would speak on behalf of rural residents. I didn't object to that. I objected to suggesting that this provision automatically provides a right of access to the courts.

The Chair: I'm going to rule.

I believe Mr. Sopuck is relevant. He's quoting subsection 1.(a) of the Canadian Bill of Rights, which is broad in its scope. It refers to the individual right to life, liberty, security of person, and enjoyment of property, which Mr. Sopuck was addressing. So I'm going to allow Mr. Sopuck to continue.

However, time has expired. You have six minutes left, Mr. Sopuck, but I will entertain a motion to adjourn and we'll continue this on Thursday morning.

Is there a motion to adjourn?

An hon. member: I so move.

The Chair: We're out of here.

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