House of Commons
CANADA

Standing Committee on Environment and Sustainable Development

ENVI • NUMBER 047 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, February 10, 2011

Chair

Mr. James Bezan

Standing Committee on Environment and Sustainable Development

Thursday, February 10, 2011

● (0850)

[*English*]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): Good morning, everyone.

We're going to continue with our study of Bill C-469.

When we left on Tuesday we were dealing with clause 28. Mr. Sopuck had the floor and had six minutes left.

(On clause 28)

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

I was talking about what this act does in terms of the introduction of U.S.-style litigation and I had just quoted Mr. Chris Hanks, who is the director of environment and social responsibility for the Newmont Mining Corporation; he talks about the increasing avenues for litigation in this particular act as opposed to resolving issues or conflicts.

I maintain that this emphasis on litigation is definitely not in keeping with the Canadian system of government. I think colleagues across the way mentioned approvingly, in a couple of cases, how U.S.-style litigation seems to work there.

I'd like to talk about an agricultural community in California as an example of how U.S.-style litigation works. It's the agricultural community of Mendota, California. In my remarks I started to talk about how it is rural resource communities and agricultural communities that are always the targets of these campaigns. Quite an ugly picture emerges when you look at all of these environmental activists' campaigns in their entirety. You'll see that it's rural communities and rural economies that are always the victims—and I mean always the victims.

The town of Mendota, California, in an article entitled, “Mendota: a town scraping bottom”, has an unemployment rate at this point of 38.5%. This particular community relied on irrigation and agricultural value-added enterprises. One of the reasons, apart from the difficult economy in the U.S., to begin with...they talked about how “water deliveries from the Westlands Water District to Mendota farmers were cut to 10 percent of normal, with federal officials blaming the...drought”—and this is the important part—“and the need to protect” the endangered “delta smelt and other threatened species”.

So don't ever think that environmental legislation, poorly crafted, does not have human consequences.

In terms of these public interest groups, one always wonders and asks the question, who elected them? They always claim to be representative of the people and the grassroots, and so on. Quite frankly, the only legitimate and true representatives of the people are those of us who have been elected, all of us around this room here.

Many Canadian activist groups, for example, receive a lot of money from U.S. foundations, and it's in the millions right now—the David Suzuki Foundation, $10 million; the Pembina Institute, about $3.7 million.

Vivian Krause, writing for the *Financial Post* on October 15, 2010, in an article entitled, “U.S. cash vs. oil sands”, talked about 36 Canadian environmental organizations that are funded by a common foreign source. In this case, it was the Tides Foundation. Their multi-million dollar campaign, with paid full-time staff, expensive billboards, and state-of-the-art websites, is anything but a grassroots operation.

Again, in terms of the Moore Foundation, out of the U.S., for example, they have an explicit direction to their grantees. They are expected to influence British Columbia's resource management decisions specifically with regard to oil and gas. I find it quite ironic that in yesterday's debate in the House about the border discussions Canada is having with the U.S., the parties opposite talked at great length about the need to protect Canadian sovereignty, but in this particular case, it's all right to have foreign-funded Canadian activist groups interfere in the sovereign right of Canada to determine how to manage its own resources. Quite frankly, what chance do poorly funded rural communities and small businesses have when confronted with that kind of firepower?

For example, I have a community in my constituency. The total budget for the town is $300,000 per year. Again, one sees a very unfair fight here in terms of foreign-funded Canadian activist groups descending on rural communities and rural economies, something that this particular act will exacerbate. One wonders, in terms of the parties opposite—especially the Bloc and the NDP, with rural constituents and single-industry towns in their constituencies—how they will explain this to their constituents.

Even though there are assurances in the act against litigants ostensibly making too much money directly from lawsuits and litigation, keep in mind that just the fact that litigation occurs will allow these groups to advertise on their websites for funding from their sympathizers, because just the act of suing somebody is an opportunity to fund-raise.

● (0855)

I'd like to zero in for a minute on the definition of what is a healthy and balanced environment because that's key to this whole act. If an environment is not healthy or balanced under this particular act, then litigation can follow. The notion of balance is something that scientific ecologists abandoned long ago, given that disturbance is a feature of every ecosystem—wildfires, avalanches, mud slides, floods, and so on—and how an ecosystem adapts is the key. The environment is never balanced, and the phrase is meaningless, but it will be subject to judicial fiat.

The other thing, as far as a healthy and balanced environment is concerned, is the notion of environmental change versus environmental harm. To some, all human-induced environmental change is harmful. Not so. New equilibrium can be achieved after human use of the environment. An old forest becomes a young forest. Some reservoirs become fisheries, and so on.

The problem is that one person's change is another person's harm. It's something that will be fought over in court, in the absence of common sense and scientific information on what the actual impact may be. However, in clause 23, which allows for lawsuits by any Canadian entity against various developers, I think we should be careful about what that entails

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

Are there any other comments on clause 28?

Ms. Murray.

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

I reject the contention of the previous speaker that this bill is against rural communities, and that everyone in rural communities just wants the economic activities to go ahead, without considering the environment. In fact, some of the most constructive and participatory people looking to have that balance and protect the environment are members of rural communities and the grassroots organizations that grow up in them.

I've met many of them, and they're to be respected and appreciated for the voice they bring to finding a way to reduce or mitigate impacts on the environment in their backyards, in their areas. They care about the jobs, but they also care about the legacy of a clean environment for the future.

On the member's comments about writer Vivian Krause and all of the exaggerated comments she has made about funding from foreign sources, I would point out that she was a lobbyist for the aquaculture industry and a staffer for a Conservative member of Parliament. So it's not surprising that she's out attacking Liberal and other parties' initiatives and defending Conservative initiatives. I would ask where her funding now comes from.

Thank you, Mr. Chair.

Mr. Mark Warawa (Langley, CPC): I have a point of order. I don't believe Ms. Murray's comments are relevant to clause 28. I think she's taking—

Ms. Joyce Murray: Well, neither were Mr. Sopuck's.

Mr. Mark Warawa: —great liberty when she talks so generally about Liberal or Conservative positions on the environment, when she well knows she supports dumping raw sewage into the Juan de Fuca Strait.

We have, Mr. Scarpaleggia, a Liberal policy of dumping raw sewage into the St. Lawrence.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): I have a point of order.

Mr. Mark Warawa: I am on a point of order.

The Chair: He's on a point of order.

Mr. Francis Scarpaleggia: I'd like to respond to that.

The Chair: You'll get a chance.

Mr. Mark Warawa: So if she wants to go to extremes on what is good for the environment, I think the Conservative position of protecting the environment and the Liberal position of dumping raw sewage are quite different.

The Chair: Mr. Woodworth is next, and then Mr. Scarpaleggia and Ms. Murray.

Mr. Stephen Woodworth (Kitchener Centre, CPC): On a point of order regarding relevance, I want to remind every member present that the clause we're debating at this time is historic. Since the Canadian Bill of Rights was passed in 1960, it has only been amended once. That was on a very technical point of not requiring the Minister of Justice to examine bills or regulations that had already been examined. But there has never before in the history of the Canadian Bill of Rights, which is a historic benchmark in this country, been a substantive amendment. When we are proposing in clause 28 to amend it, we are truly engaging in historic activity. So I think it's a shame that we only get eight minutes for five members to speak to it.

Secondly, it's a shame that we have to descend to talking about who's been a staffer for Conservatives and who hasn't. Surely when we are talking about a piece of legislation before us that is so historic—the first time in 50 years that there has been a substantive amendment to the Canadian Bill of Rights—we should be able to rise above such things.

● (0900)

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I think Ms. Murray was responding to something Mr. Sopuck said. There's nothing out of order about that.

However, I was curious to find out from Mr. Warawa that it's Liberal policy to dump raw sewage, either on the west coast or on the St. Lawrence River. I don't know where that comes from, and I'd like some clarification.

The Chair: That's an issue of debate.

Ms. Murray.

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

While I appreciate Mr. Woodworth's comments about the historic nature of this paragraph, when someone's writing is being quoted, I think it is only in the interests of transparency to disclose that the person is a Conservative lobbyist. Those reading it on the record might think this person has a neutral legitimacy to comment on this.

I also would point out to the member that the repetitive comments about only having eight minutes go back to the fact that the Conservative members were running out the clock on this bill. There were seven amendments, amendments to amendments, and amendments to amendments to amendments on clause 11. I counted. I tracked that. We were going nowhere.

It is that member and his colleagues who created the conditions that required us to move on with this bill or we would spend two years on it. Having this committee's work tied up hour after hour with repetitive comments and amendments to amendments to frustrate this NDP bill is not in the interests of the Canadian public.

The Chair: We're going off from the original point of order.

Mr. Woodworth, final intervention.

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

First of all, it is truly regrettable. One of the things that's wrong with this place is that instead of looking at what is said and trying to examine the merits of the ideas presented, we are trying to smear or in some way discredit the authors. If we were dealing with this in a judicial fashion, we would be looking at the ideas and not the authors.

As for amendments, quite frankly I think it's atrocious that the member suggests we'd be two years doing this bill in order to give it a proper hearing and that we would have to be limited to a minute and a half each in order to prevent us from being two years at this bill.

I don't recall any Conservative amendment that wasn't appropriate and wasn't based on trying to meet a real concern with the bill. In fact I don't think there were that many Conservative amendments that caused delay. The vast majority of amendments that have been proposed in relation to this bill have been proposed by opposition members, oddly enough, since it's their bill.

There's only one thing that makes fulsome debate around this table ridiculous and that's the fact that the members opposite shut their minds and don't listen. Maybe that's why they don't care how long we take to express ideas.

I've said enough. Thank you.

● (0905)

The Chair: Okay. Thank you.

Ms. Duncan, on the same point of order—

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Mr. Chair, I wasn't going to jump in, but I'm afraid as it goes on and on I feel compelled to.

I want to clarify for the record why the majority of the members of this committee had to step in to try to constrain this debate. If anybody at this table would like to have a fulsome debate on this bill, it would be me; it is my bill.

But I agree there is a great backlog of work before us, including SARA, which the Conservative members repeatedly say is so important to move forward with. That is part of the reason I voted to constrain the debate. I don't appreciate the insults or suggestions on my taking part in trying to constrain a fair debate on this bill. I think we've had a good toing and froing, and it became very necessary.

The Chair: Thank you.

I'm going to rule on the original point of order and subsequent issues that were raised. Ms. Murray is fair in debating the comments and issues brought forward in Mr. Sopuck's intervention, so it is in order.

When we look back on the debate, and if you go through the blues, every member of this committee, regardless of political affiliation, was talking at length on the various amendments and subamendments. We have amendments and subamendments coming from all parties. I wouldn't single out any party, when all members were vigorously involved in the debate and in the drafting process of the bill. It's their due consideration of it at this report stage.

Anyway, let's continue on.

Ms. Murray, you have a minute and—

Ms. Joyce Murray: I have a point of order, Mr. Chair.

In terms of the comments of Mr. Warawa, which can only be described as drive-by smears, if Mr. Warawa wants to bring out completely unrelated issues as insults and attacks on both me and Mr. Scarpaleggia, I think it is appropriate that we have either a chance to comment on those drive-by smears or Mr. Warawa should withdraw them.

The Chair: Well, as I said on Tuesday—and I bring all of you guys back to chapter 3, pages 150 and 151—I have no power to censure. When you believe there's an issue of privilege, you can raise that.

I do encourage people to behave here. My job and authority as chair is to maintain decorum. But essentially your freedom of speech is free to rule here.

I do ask that you treat each other with the utmost respect. I didn't hear any disparaging comments by Mr. Warawa that were targeted at an individual. He might have said something about a party—

Ms. Joyce Murray: No, not true. Individual names.

The Chair: Well, yes, I guess he did mention two members.

So I ask Mr. Warawa not to be attacking individual members of this committee or impugn their reputations. But at the same time, he is free to talk about what he wants, as he sees fit, although I'd prefer that it happens not on points of order but through the regular allotted times of debate.

Do you want to respond at all, Mr. Warawa?

Mr. Mark Warawa: Thank you, Chair.

What I was sharing was fact and the position that Ms. Murray, in the past, has supported the dumping of raw sewage into the Juan de Fuca Strait. If she has now seen the light and changed her position, I would love to hear that, but that's been her past position.

Also, with the dumping of raw sewage, just downstream from Mr. Scarpaleggia into the St. Lawrence, that's a big concern to myself and to many Canadians. I have not heard him speaking out against that to this point. I hope he has also changed his position.

Because we have two prominent Liberal members in this committee with that position of not speaking out against the dumping of raw sewage, then my assumption is that's a Liberal policy.

The Chair: We're way into debate, and you know what? We're not going to have an apology from Mr. Warawa, I don't believe.

Ms. Joyce Murray: Then I'm going to insist that I actually correct the record on that issue.

The Chair: Okay. I'm going to give one minute to do that, and do it quickly, because we need to move on.

Kids, we want to get through the bill, and today's our chance to get through the bill, so let's get her done.

Ms. Joyce Murray: Thank you, Mr. Chair. I appreciate that.

As the Minister of the Environment for British Columbia, I brought forward a liquid waste management plan for the greater Victoria area that added a substantial number of tests to the water at the outfalls of the sewage and a timeframe for those markers to require by law that a sewage treatment plant be brought forward. Lo and behold, within about three years that sewage plant was required and was being built.

So contrary to what the member is suggesting, which is completely false, my actions, as the Minister of the Environment, have resulted in this massive investment in sewage treatment that is under way at this point.

Thank you.

● (0910)

The Chair: Okay.

Back to the debate on clause 28. The Conservatives have used up all their time.

Mr. Francis Scarpaleggia: I was going to intervene as well because I've been impugned.

Chair, if I may, I just—

The Chair: Just quickly, please.

Mr. Francis Scarpaleggia: I've asked questions in the House to the government as to why it doesn't provide more funding to upgrade waste water treatment plants. I'm scandalized by the idea that raw sewage is being dumped in any waterway in this country. I've actually visited that sewage treatment plant in the east end of Montreal; that's how interested I am in that issue. I just want to be on the record.

The Chair: Okay, let's move on.

Clause 28.

Ms. Duncan.

Ms. Linda Duncan: Has Ms. Murray finished?

The Chair: Yes. Well, you had your hand up. She can come back on clause 28 if she wants. They have about six minutes left.

Ms. Linda Duncan: Okay. I didn't want to cut her off.

I think it's important to point out that we are debating clause 28 of this bill. It deals with the right to not be deprived, except by due process of law. It's right in the provision. There are lots of ways of providing due process of law, but it's essentially enshrining a right in the Bill of Rights. It has very little to do with litigation. There are lots of ways that one can assert those rights. It makes it clear that the government cannot remove those rights without following the due process of law, which is what this bill sets out to do.

Of course, rule of law is the dividing line between a dictatorship and a democracy. I would think that all the members at this table hold the position that Canada should be running its affairs through the rule of law in a democratic fashion.

The whole intent of adding this provision is to bring us in step with the majority of democratic nations around the world. As was pointed out to us in testimony, approximately 170 UN member countries have recognized the right to a healthy environment. More than 85 of those nations have actually amended their constitutions. I have not made that recommendation, because opening up a constitution is a monumental process. Instead, the recommendation is to amend the Bill of Rights, and when we look at the context of the Bill of Rights, I think it makes a very sound case.

I find Mr. Sopuck's comments about this right harming rural organizations to be absolutely offensive. The majority of organizations and individuals who have contacted me in support of this bill are small rural organizations. They desperately want these rights and opportunities. When he speaks of giving people the opportunity to fight against the firepower of foreign-powered entities or large entities, that's the right of small rural communities and aboriginal communities to fight against major international operations that are about to devastate their areas or draw down their water. If he had spent time in Alberta, as I have for my entire life, he would know about the battles, the lines drawn, and the changes in the political landscape of Alberta—100% because rural Alberta feels that the government is not representing their interests in protecting their lands, waters, and wildlife. This is precisely what this bill will do at the federal level.

I find the comments absolutely peculiar. If you look at the number of organizations and entities that regularly appeal permits, and so forth, it's the small farm organizations that are concerned that towns want the revenue from a massive intensive feedlot, from a proposed hazardous waste landfill, from an oil sands operation, from the emissions from a sour gas facility. They're farmers, they're rural communities, and they are the ones seeking these rights and opportunities.

I remain puzzled that Mr. Sopuck spoke about the rights of small rural communities to express their rights, yet voted against clauses 11 and 12 that specifically would have given those communities the right to participate in environmental decision-making where they felt that their families' heritage farms, their enjoyment of their properties, and their access to traditional hunting grounds were impacted. This provision has absolutely nothing to do with the right to go to court and has everything to do with the right to ensure that their right to a healthy environment is not taken away without due process of law.

The Chair: Thank you.

See no other hands, we shall go to the vote.

(Clause 28 agreed to)

● (0915)

The Chair: We will now go back to the stood clauses, starting with clause 2.

(On clause 2—*Definitions*)

The Chair: We'll go to amendment NDP-2.

Ms. Duncan, can you please move it?

Mr. Woodworth.

Mr. Stephen Woodworth: I just want to clarify the procedure. I think we stood clauses 2, 6, and 9—

The Chair: Yes.

Mr. Stephen Woodworth: —and the preamble, and my understanding of the reason we stood the preamble and clause 2 was that those are sections that under committee practice need to be decided after the substantive provisions of the bill have been decided. If that is so, then I would have expected that we would be dealing with clauses 6 and 9 before we get to the preamble or clause 2.

I don't profess to be an expert on committee rules, but if that was the principle that caused us to stand the preamble and clause 2 originally, then I would think we should finish with the substantive clauses first and then move to the preamble and clause 2.

The Chair: The preamble is always held to the end of the bill regardless of process, and we will get to the preamble after we do the stood clauses.

The reason we are dealing with clause 2 now is that there is nothing in clause 6 or clause 9 or their subsequent amendments that will affect clause 2. So if there is no impact on clause 2, we can deal with it right now.

Mr. Stephen Woodworth: The problem I have with that, Mr. Chair, is it is possible—and I'm not contemplating this myself—that substantive clauses might be amended from the floor during debate. Therefore we cannot know for certain whether or not clauses 6 and 9 will impact clause 2 until we are completely finished with debate on those clauses.

The Chair: You guys are the masters of your own domain, so if the committee feels it wants to do clauses 6 and 9 first and come back to clause 2, we can do that.

● (0920)

Mr. Stephen Woodworth: I'm asking for a ruling on whether I'm correct on the point of principle.

The Chair: Parliamentary committees are the masters of their own domain. I put clause 2 up here because there's nothing in clauses 6 or 9 that will affect clause 2, so essentially we can deal with it. But I have no problem with it. If the committee wishes to move to clause 6 and clause 9 and come back to clause 2 later, we'll stand clause 2 again.

Is there general agreement on that?

I haven't seen heads nodding, and I'm not seeing any opposition. Okay. Let's go to clause 6, then.

(Clause 2 allowed to stand)

(On clause 6—*Purpose*)

The Chair: We have one amendment, Liberal number 1, which is on page 9 in your docket.

Going back, we actually started debate on clause 6. Amendment Liberal L-1 was already moved and on the floor. We then had a subamendment moved by Ms. Duncan. I will just read it back in case you don't have it there, Ms. Duncan. It is that the amendment be amended by (a) replacing the word “complement” with the words “ensure consistency with”; (b) replacing the words “in the event of an inconsistency” with the words “in the event of any conflict”; (c) replacing the word “convention” with the word “law”; and, (d) replacing the words “the extent of the inconsistency” with the words “the extent of any conflict”.

That is the subamendment we were debating.

Mr. Blaine Calkins (Wetaskiwin, CPC): Could you repeat the second one?

The Chair: It is (b) replacing the words “in the event of an inconsistency” with the words “in the event of any conflict”. Essentially, we are taking “inconsistency” and replacing that with “conflict” and “complement” with “ensure consistency with”.

Mr. Blaine Calkins: Is that one subamendment, or are those four separate subamendments?

The Chair: It's always moved as one subamendment.

Mr. Blaine Calkins: Thank you.

The Chair: So we are on the subamendment.

Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, as I understand it, the reason we held this back is we wanted some direction from the Library of Parliament staff, looking at other precedents. We wanted to make sure we were using the appropriate wording that was consistent with other statutes, so if we could defer to them to report to us, I would appreciate that.

The Chair: Ms. Courtney, could you provide us with a little bit of insight?

Ms. Kristen Courtney (Committee Researcher): Guyanne is distributing some examples of wording used in some other legislation to deal with this particular issue, which was raised by the shipping industry. These are just a selection from four different acts of ways that it's been dealt with. As you'll see in most of them, they specifically address the international law with which we're concerned there may be a conflict, as opposed to wording it in general terms. The Oceans Act is one exception where they do apply it generally. They say “subject to Canada's international obligations”. In that case, the law would have to be interpreted and applied in light of those international obligations.

Maybe I should refresh everybody's memory of what this is all about. The shipping industry was concerned that the civil action provisions of this bill could potentially conflict with an international convention that we've implemented in domestic law through the Marine Liability Act. Mr. Scarpaleggia's amendment was intended to ensure that doesn't happen, but there were some concerns about the wording. These are a few examples of how that's been dealt with.

The Chair: Comments?

Ms. Duncan.

Ms. Linda Duncan: Thank you, Mr. Chair, and thank you for compiling this information.

Having looked at the legislation, I have to admit to finding the original proposed amendment odd, because it is at odds with what the Government of Canada has done in all other circumstances, where they in fact have provided that the environmental statute prevails over other rights and opportunities. It leaves us in a quandary. I'd be willing to hold my comments and let Mr. Scarpaleggia speak to it because I believe it was he who brought forward the original amendment.

What we are looking at is simply whether to use “complement”, “conflict”, “consistency”, and so forth. The use of that language has been quite helpful and I think that advises us we should use the word that was given, “inconsistency”. I have to say that I am troubled that only in this law are we saying that the provisions of the convention would prevail over.... No, it doesn't?

Maybe we could get clarification. I'm trying to see the difference between this and the provisions we're given.

● (0925)

The Chair: Could we have clarification, Kristen, please?

Ms. Linda Duncan: Okay. The Oceans Act would be the only one that would deal with the same subject area.

Ms. Kristen Courtney: They all do the same thing. Basically, in all four of these acts they're saying that whatever this domestic law we're dealing with, the Marine Liability Act is the one that prevails in the case of an inconsistency, which is the domestic law implementing the international law.

Ms. Linda Duncan: Prevails.

Ms. Kristen Courtney: Yes. It's the Marine Liability Act that prevails.

Ms. Linda Duncan: Correct, but this provision says the opposite, does it not?

Ms. Kristen Courtney: Mr. Scarpaleggia's?

Ms. Linda Duncan: It says that in the event of any inconsistency between the provisions of this act and international law, the convention would prevail. So it says the opposite.

Ms. Kristen Courtney: The provisions of that act, the Marine Liability Act.

Sorry, the Marine Liability Act and the convention say the same thing. The reason this wording—

Ms. Linda Duncan: You just reference it by the Marine Liability Act.

Ms. Kristen Courtney: That's right, because if you reference the international law, I think there are concerns in some circles about subjecting Canadian sovereignty to international law, which people are sometimes uncomfortable with. If you reference the Marine Liability Act, then we're only subjecting our Canadian laws to another Canadian law. It doesn't raise that concern in the same way.

Ms. Linda Duncan: In fact, if we were going to be more correct, we would specify that the provisions of the Marine Liability Act would prevail.

Ms. Kristen Courtney: Right.

Ms. Linda Duncan: Okay. I leave it to Mr. Scarpaleggia to see if he'd be amenable to that.

Mr. Francis Scarpaleggia: Yes, I would, indeed. So I don't know how we proceed.

The Chair: We have a subamendment right now, and we have to deal with that. We can't deal with another subamendment to a subamendment. So we'd have to deal with this subamendment—

Ms. Linda Duncan: It's hard to vote—

The Chair: —and then come back to the amendment.

Ms. Linda Duncan: We'll vote for it, subject to changing it more, or whatever. Let's just vote for that wording.

The Chair: The wording that we have there right now? Okay.

So we're dealing with the subamendment that has been circulated. Everybody is getting the words in front of them now.

I'm looking for any other comments; I'm seeing none. Are we ready for the question on the subamendment?

An hon. member: A recorded vote, please.

The Chair: It's always recorded at this time and date.

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

The Chair: We're back to the amended amendment.

Mr. Woodworth.

Mr. Stephen Woodworth: First of all, I want to thank the analyst for giving us the examples she's put before us today.

I'm surprised at the use of the word “inconsistency”, but there it is, and it certainly does seem to create a precedent. I'm not entirely unhappy to see it removed at this stage. However, I'm also struck by the clarity of the Canada National Marine Conservation Areas Act, subsection 28.01(2), which seems to be the clearest way that I can see on the page the analyst has given us of protecting people against double indemnity, if I can put it that way. The difficulty is that this clause is so complex. I keep returning to the thought that you can't really get to the root of some of these problems by way of the amendments we're seeing, so I'm still not comfortable with subclause (2) as amended, which is proposed in LIB-1.

Thank you.

The Chair: Okay.

Other comments?

Ms. Duncan.

Ms. Linda Duncan: I just want clarification. At what point do I propose my additional subamendment?

● (0930)

The Chair: If you want another subamendment, you do it now, before we vote on it, because if we run out of people to talk about it, we're calling the vote on the amended amendment.

Ms. Linda Duncan: Okay.

Having heard from the Library of Parliament, and given these precedents, I would like to table the amendment that the words... where is it in the bill? Oh, it's in the amendment, so I can't find the line. But the words—

The Chair: You have to be dealing with subclause (2), the amendment to LIB-1, that's been amended.

Ms. Linda Duncan: All right. Okay.

So in line 5 it would replace it with “Act and the Marine Liability Act,”. I would appreciate feedback on the—

The Chair: Are you just adding that before the word—

Ms. Linda Duncan: No, I'm taking out—

The Chair: You're going to take out...?

Ms. Linda Duncan: —“provisions of international convention in force in law” and replacing that with “the Marine Liability Act”. As I understand, that's the way it's been referenced in other Canadian law, to be specific.

The Chair: You can't replace the word “law” because the committee has already taken a position on the word “law”.

Ms. Linda Duncan: To put the word “law” in.

The Chair: The word “law” is in; we can't change it. However, you can remove from “Act” to “international”.

We might have a grammatical.... And if that's the case, then we're back to....

Ms. Linda Duncan: How about if I said “between the provisions of this Act and the provisions of any other federal law, including the Marine Liability Act”?

No, that's too broad. I don't know. I'm trying to resolve Mr. Scarpaleggia's—

The Chair: I'll just offer this as a suggestion to make it so that it's grammatically correct. I'm not allowed to accept any amendment that is “out of order if it is moved at the wrong place in the bill, if it is tendered in a spirit of mockery, or if it is vague or trifling”. Rendering the clause to be unintelligible or ungrammatical is also out of order. That's all on page 768, in chapter 16.

What you could do is after the word “and”, insert “the Marine Liability Act”, and then go on to “the provisions of any international law”. Is that correct?

Ms. Linda Duncan: Actually, I don't want to say that. That's the problem.

The Chair: That's not what you were trying to do.

So then I would suggest, if you want to change this wording again, it would have to happen in the House at report stage, and you can move an amendment at that point in time.

Ms. Linda Duncan: I will leave it as it is. I'll leave it to Mr. Scarpaleggia. I guess I won't proceed with tabling an amendment because it doesn't appear to be possible with the way it's drafted.

The Chair: Okay.

Mr. Calkins.

Mr. Blaine Calkins: I have a question about the validity. I think I understand what Ms. Duncan is trying to do. I don't know why she's not able to do it just because we've already voted on something. We voted on this bill in the House of Commons to send it here and yet we're able to change it. I don't know why we can't amend something that's already been amended.

If you could clarify why it would be out of order for her to replace the words “and the provisions of any international law”, simply because we just voted on it.... Could you point out why it would be out of order to do that? I think Linda should have the opportunity to amend her own bill.

The Chair: Anything's possible by unanimous consent. The rules are, however, that once you've taken a decision on the wording, which you already had, you can't amend something that's already been agreed to by committee. So the word “law” has already been agreed to, in replacing that from “convention”.

However, if you wish, by unanimous consent, to allow Ms. Duncan to move her other amendment, I would be more than happy to entertain it.

Do I have unanimous consent?

I see heads nodding; I don't see any nays.

Ms. Duncan, you have the floor. You can do it as you see fit.

Mr. Francis Scarpaleggia: She's powerful.

The Chair: Everybody's happy again and getting along so nicely.

Would you tell us exactly the wording, then?

● (0935)

Ms. Linda Duncan: I think it would then start at “Act”, and we replace it with “Act and the Marine Liability Act”. We're taking out “the provision of the convention”.

The Chair: Okay.

So you're removing the words from “the” to “Canada” and replacing them with “the Marine Liability Act”.

Ms. Linda Duncan: I have to replace the whole thing because it refers to “convention” again. So we didn't amend it.

The Chair: We'd have to take out right to the end. So we're taking out after “and” right to the end—

Ms. Linda Duncan: At the end of “prevail”.

So we take out “the provisions of any international law in force in Canada, the provision of the convention will prevail”, and replace that with “and the Marine Liability Act”.

The Chair: So read it the way it's going to read, then, between “the provisions of this Act and the Marine Liability Act” to “the extent of the conflict”.

Ms. Linda Duncan: It reads: “In the event of any conflict between the provisions of this Act and the Marine Liability Act, the provisions of the Marine Liability”—or do you say “the latter”? I don't know if you can say “the latter will prevail” in proper legislative drafting. I don't know.

The Chair: So “convention” becomes “Marine Liability Act”, and the words from “the provisions” down to “Canada” will become “Marine Liability Act” as well. We're putting “Marine Liability Act” in twice.

I'll just read it for clarification so everybody has it the way at least I understand it. It would read:

> This Act is intended to ensure consistency with Canada's rights and obligations under international law. In the event of any conflict between the provisions of this Act and the Marine Liability Act, the provision of the Marine Liability Act will prevail to the context of the conflict.

Ms. Linda Duncan: Did you say "the provisions of the Marine Liability Act"?

The Chair: Should it be "the extent of the Marine Liability Act"?

Ms. Linda Duncan: No, it should just say "between the provisions of this Act and the provisions of the Marine Liability Act".

The Chair: We're not getting translation.

Let me make sure that we have the wording here.

"[A]ny international convention in force in Canada" becomes "the Marine Liability Act". So we say "between the provisions of this Act, the provisions of the Marine Liability Act"....

Ms. Linda Duncan: It says "will prevail to the extent of the inconsistency".

The Chair: It will say "the Marine Liability Act will prevail".

Ms. Linda Duncan: And then it says "to the extent of the inconsistency".

The Chair: We already took out "inconsistency". We already changed that to "conflict" in the original subamendment.

Ms. Linda Duncan: Yes, that's fine. Okay.

The Chair: I have Mr. Woodworth and then Mr. Calkins.

It's as clear as mud.

Mr. Stephen Woodworth: Mr. Chair, I hesitate a little bit, because, first of all, I'm pretty sure that I was the one who originated the discomfort with the word "inconsistency". So I'm hesitating here. Also, I certainly find that it is a very risky proposition to be trying to amend a bill and a provision that is fraught with such complexity and such difficulty. Having said that, what I think Ms. Duncan is moving toward is a clause that is equivalent to section 2.1 of the Arctic Waters Pollution Prevention Act. Being a cautious lawyer, I always take comfort from precedent, and I assume that when that provision was first enacted, somebody must have thought about the use of the word "inconsistency" and decided it was okay or maybe even better than the word "conflict".

I also notice that the section includes regulations made under the act, whereas the amendment Ms. Duncan has proposed does not.

My difficulty with trying to move amendments, or to put a new patch on old skin, if I can mangle a phrase, prevents me from trying to save what Ms. Duncan is doing. But I did feel compelled to point out that if one were trying to choose between what she's proposed and what's in section 2.1 of the Arctic Waters Pollution Prevention Act, I would probably go with section 2.1. However, I leave it up to Ms. Duncan and Mr. Scarpaleggia as to whether they want to pick up on any of that.

Thank you.

● (0940)

The Chair: We'll go to Mr. Calkins.

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

Following on the learned comments of my colleague who just spoke, my original intent upon reading this was basically articulated in the first sentence, which is, "This act is intended to ensure consistency with Canada's rights and obligations under international law".

Now that the focus is removed from any particular convention, such as the Convention on the International Trade in Endangered Species and the Migratory Birds Convention Act, and is focusing now primarily on the Marine Liability Act, I think the first sentence no longer applies.

If the first sentence reads that it's intended "to ensure consistency with Canada's right and obligations under international law", I would interpret that to mean a multitude of international laws or domestic laws we've passed to honour international commitments and agreements, whether they are laws that deal with international conventions, such as the Kyoto Protocol and the Copenhagen Accord, or the plethora, or multitude, of international environmental laws. To now say that we're going to do this in the first part of this amendment and then limit the scope of it to simply the Marine Liability Act, in my mind, means that we have to do some housekeeping on this still.

I don't know how we would do that. I look to the mover of the amendment for some direction and guidance on what he's trying to achieve here. Either remove the first sentence completely or we have to vote and decide to defeat the proposed amendment by Ms. Duncan.

The Chair: We definitely can't amend right now while we're dealing with the subamendment, by unanimous consent, we are dealing with at this point in time.

If you believe that there is a conflict between the beginning part of this clause and the subamendment that's proposed, then I would suggest that you vote against it. Everyone has to make his or her own decision.

Monsieur Bigras, *c'est à votre tour.*

[*Translation*]

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

I do not really have an opinion on the issue, but I would nevertheless like to make a comment on the amendment.

We must take into account the fact that Canada signs international conventions, one of which is the International Convention for the Control and Management of Ships' Ballast Water in February 2004. It means that once this convention will be in force, Canada will have a duty to comply with those international standards.

So if we say that the Canadian Marine Liability Act supercedes these conventions, this could give rise to a number of problems. I would not go as far as saying that it could even involve the Kyoto Protocol, but there is definitely an issue in so far as we believe that Canada should honour the conventions it has signed.

[*English*]

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: As I understand it, Mr. Bigras is saying we should leave that first sentence?

[*Translation*]

Are you saying it is important to keep the first sentence?

Mr. Bernard Bigras: I was more comfortable with the original wording.

Mr. Francis Scarpaleggia: But you are still okay with the amended wording?

[*English*]

The Chair: It's the same thing as I said just previously, that if you believe the subamendment we're dealing with right now is not consistent with the beginning part of amendment L-1, then you are definitely free to negate the subamendment.

Mr. Scarpaleggia.

● (0945)

Mr. Francis Scarpaleggia: I understand where the inconsistency could be seen to lie, but is it possible to just pass the subamendment and then come back and remove the first sentence?

The Chair: You guys can do whatever you want.

Mr. Francis Scarpaleggia: Well, should we vote, Chair, on the subamendment first of all and clean that up?

The Chair: Seeing no other hands, we shall vote on Ms. Duncan's subamendment. And I'll read the entire subsection (2), which would read as follows:

> This Act is intended to ensure consistency with Canada's rights and obligations under international law. In the event of any conflict between the provisions of this Act and the Marine Liability Act, the provisions of the Marine Liability Act will prevail to the extent of any conflict.

(Subamendment negatived)

The Chair: So we're back to the amendment L-1, as amended. It reads this way:

> This Act is intended to ensure consistency with Canada's rights and obligations under international law. In the event of any conflict between the provisions of this Act and the provisions of any international law in force in Canada, the provisions of the law will prevail to the extent of the conflict.

(Amendment as amended negatived)

The Chair: A point of order, Mr. Woodworth.

Mr. Stephen Woodworth: Can I report this to *William Shatner's Weird or What*?

The Chair: It's public. You can do whatever you want.

That was an hour of debate on the amendment. We shall keep going.

We're back to clause 6, unamended. Any further discussion on clause 6?

Mr. Calkins.

Mr. Blaine Calkins: Mr. Chair, the reason we stood this was to find out what the rest of the bill was going to look like before coming back to the purpose of the bill. This is the clause that sets the overarching tone of the bill. Based on all of the testimony we've heard, I will be speaking about some of the problems that we on this side of the table see with clause 6.

Clause 6 sets out the purpose of the bill:

> The purpose of the *Canadian Environmental Bill of Rights* is to
>
> (a) safeguard the right of present and future generations of Canadians to a healthy and ecologically balanced environment;

One of the concerns we have, Mr. Chair, and I'm sure we'll get into this in great detail, is what exactly the definition of a healthy and ecologically balanced environment is.

In my mind, while this might be well intentioned by a person of goodwill moving this legislation forward, it does raise a number of questions as to exactly how that would be interpreted in a court of law. We all know that when we deal with clause 23, and the various other clauses of the bill that give force or provide actions on behalf of the Canadian public to hold the government or others to account, particularly in civil matters, anything that needs to be proved when it comes to a healthy and ecologically balanced environment will come down to a balance of probabilities made in a court decision in a civil action, which anybody can take, whether or not they have a direct vested interest in that particular action or undertaking.

This is the underlying problem with the legislation. This gives the overarching danger that was mentioned by many who testified before this committee. Virtually everybody in any business environment, whether they were from the chambers of commerce or the various shipping industries, had concerns and expressed consternation about how easy it would be, through clause 23, on a balance of probabilities, to bring action against any undertaking involving the federal government.

We need to iron out exactly what the definition of a healthy and ecologically balanced environment is. My personal view of that would differ probably from just about everybody else's at this table. Although we would have many similarities, we would have, I'm sure, some differences. For example, is a healthy environment the right to work at an oil sands project, or a Hydro-Québec project, or any other project, so that you can provide food, clothing, and shelter to your family? I would consider that to be a much more healthy environment than the alternative. When we look at it in its depth, breadth and scope, we need to take those kinds of things into consideration.

Paragraph 6(b) says:

> (b) confirm the Government of Canada's public trust duty to protect the environment under its jurisdiction;

I don't have too much trouble with that particular paragraph. However, the problem with this now is the clauses that subsequently follow in the bill, which provide opportunities for individuals to bring action against the government if there is, in their eyes, a perceived failure to protect the public trust duty. Those clauses that we've gone through are numerous and would provide for much second-guessing within the bureaucracy of the various departments in Canada, if this legislation should come to pass.

Already, I think every member of Parliament at this table understands that if a federal dollar is spent on any project in their particular constituencies, it triggers an environmental impact assessment under the Canadian Environmental Assessment Act. Everybody knows about the delays, the time it takes to move projects forward, whether or not the project appears to be what I would call a no-brainer, right up to the fact that it might be a very complicated project breaking new ground.

I used to be a computer programmer. We used to use the term "analysis paralysis" when we over-analyzed a situation to the point where we spent all of our time analyzing the problem and none of our time moving forward and actually solving the problem.

● (0950)

I think this particular clause in this bill sets the tone for the various clauses that follow after, which would lead to what I would consider more red tape, more hand-sitting. I think it would send a chill to all of those in the administration such that they're not going to move at all, because every public servant would be under the wrath of any environmental group and any Canadian with an interest in filing a complaint if somebody does something they consider to be or construe as out of line with the public trust duty to protect the environment. This would mean any undertaking that would require federal permits or authorities, and we all know about some of the, what I would consider, dangerous clauses this bill presents when it comes to judicial activism.

Paragraph 6(c) states:

> (c) ensure all Canadians have access to
>
> (i) adequate environmental information,
>
> (ii) justice in an environmental context, and
>
> (iii) effective mechanisms for participating in environmental decision-making;

I don't know what "justice in an environmental context" means. We hear complaints all the time—or at least I do from my constituents—that we don't even have justice when it comes to our justice system; we have a legal system. The people in my constituency, at least, feel that we've long since lost any sense of justice at all.

Given this clause, we have now basically given legal standing to something called "an environmental context". That is something I find particularly alarming, because anything I do, whether it's simply breathing and the expulsion of CO_2 from my body, could be construed as causing environmental harm. I know that sounds a little bit ludicrous, but if we're going to go down this road, we need to be very careful about any precedents we set.

I'm actually very concerned. I can see a future date where there's a case of the environment versus so-and-so, the environment versus so-and-so, and the environment versus so-and-so, because if we're going to give the environment this kind of standing as an entity, that would be quite a shift and a leap forward from what we're able to do currently under our rule of law. It would create I think even more uncertainty for all of those wishing to move forward under the pillars of sustainable development for the creation of projects and wealth generation in our country.

Paragraph 6(d) states:

> (d) provide adequate legal protections again reprisals for employees who take action for the purpose of protecting the environment;

I spoke quite a bit on this at the last meeting when we dealt with the whistleblower protection. The whistleblower protection in this bill is already covered under a much broader and wider scope of legislation that protects basically all federal employees. We already have these protections available through the Canada Industrial Relations Board for those employees working on a project through the private sector. We also have provisions in the Criminal Code of Canada that deal with reprisals by employers against employees.

I actually think the addition of this into this particular legislation would create opportunities for discourse should one act be changed and another not be amended. It would create inconsistencies. When we have inconsistencies in the law, that creates uncertainty. I think it would actually potentially, in the future, create opportunities for those inconsistencies to be exploited, much to the detriment of employees who are actually seeking to do the right thing, which is to blow the whistle on problems within the government.

● (0955)

The Chair: Thank you, Mr. Calkins.

Mr. Blaine Calkins: I didn't get to paragraph (6)(e), Mr. Chair.

The Chair: It doesn't matter. You've had eight—

Mr. Blaine Calkins: So my privileges as a parliamentarian are only extended to eight minutes?

The Chair: Eight minutes—you bet.

Mr. Blaine Calkins: Oh, that's great.

The Chair: Other comments? Seeing none, shall clause 6 carry?

(Clause 6 agreed to [See *Minutes of Proceedings*])

(On clause 9—*Right*)

The Chair: Moving right along now to clause 9, amendment LIB-1.1 is on page 10.1 in your docket.

Mr. Mark Warawa: A point of order.

What happened to Bloc amendment 5?

The Chair: We defeated it.

Mr. Mark Warawa: It was defeated. So that's already been dealt with.

The Chair: Yes.

Mr. Mark Warawa: Chair, I'd like to speak to—

The Chair: We need to get it moved first.

It's on the floor.

Mr. Warawa.

Mr. Mark Warawa: Does Mr. Scarpaleggia want to speak to it first?

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: This is Mr. Kennedy's amendment, but I think it's self-explanatory. Essentially, I take it that the intent of this bill is to give citizens an opportunity to hold actors accountable for actions that affect the environment negatively. I guess it follows that there's a duty on behalf of individual Canadians to make environmental protection a personal priority.

● (1000)

The Chair: Mr. Warawa.

Mr. Mark Warawa: What it would do is place an obligation on every person in Canada to protect the environment. This exposes individuals to a new level of liability. I believe it's Liberal window dressing, and again it creates a bad bill and makes it even worse. The amendment doesn't address how the right to an ecologically balanced environment—and again, we're not sure what that means; it depends on how the courts interpret that. So it doesn't address how it's balanced with competing interests such as economic and social goals, which is sustainable development. It focuses on one, not three, pillars of sustainability. So we will not be supporting that.

The Chair: Okay.

Mr. Sopuck.

Mr. Robert Sopuck: People in the third world have coined a phrase for first world environmentalists. They often call them eco-imperialists, placing their views above the rights of those countries and individuals. This particular amendment has the potential to do the same here. I would remind people of the recent incident where this young elementary student—I think it was in Quebec or perhaps Ontario—was sent home because he brought a sandwich to school in a plastic bag; the teacher felt that this somehow was causing environmental harm. That kind of disgraceful behaviour by self-appointed people who assume they know what's best for the environment, and thereby the individual, is what will result from this particular amendment. I think this amendment is problematic at best and should be defeated.

The Chair: Are there any other comments?

I have Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: Mr. Chairman, I will not support the amendment of my friend Francis. Since we are talking here about a charter of environmental rights, the word "duty" might be too strong in this bill, especially since in the preamble we already talk about an individual and collective responsibility to protect the environment.

[*English*]

The Chair: Ms. Duncan.

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

I appreciate the Liberals bringing this forward, and I think they did that in good faith and in response to a recommendation by one of the witnesses, Dr. Boyd. Dr. Boyd, in his submission, in suggesting that this be added, said it would be oratory, not enforceable. For that reason, I find that it's not necessary to add the provision because it doesn't actually provide any enforceable duty. Those enforceable duties are already contained in existing environmental law. For example, everybody must obey the Species at Risk Act, must obey the Canadian Environmental Protection Act and so forth. So it's a little puzzling to add in when in fact we already have some provisions. But the main reason that I would have is that the preamble already makes the oratory statement, where it states:

> Whereas Canadians have an individual and collective responsibility to protect the environment of Canada for the benefit of present and future generations;
>
> Whereas Canadians want to assume full responsibility for their environment, and not to pass their environmental problems on to future generations;

I understand the intent of what Dr. Boyd was wanting to convey, and he was very clear it was to be simply oratory and not enforceable. My position is that in fact what he wanted is already reflected in the bill in the preamble.

The Chair: Seeing no other hands, we're going to call the question on Liberal amendment 1.1.

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

● (1005)

The Chair: Back to clause 9, unamended. Are there any comments on clause 9?

Mr. Warawa.

Mr. Mark Warawa: Again, Chair, this exposes individuals to liability. Of the witnesses we heard speak to committee, those who would benefit if Bill C-469 did pass and become legislation supported it. But again, there would be a personal benefit to them. Every other witness said Bill C-469 was so bad that it wasn't redeemable. It was too badly written, and it wasn't worth the effort to try to amend it. But there have been attempts by the opposition members to amend it, so it moves forward.

The policy implications of adopting the public trust doctrine are not clear, but they could be very, very significant. Depending on how broadly the doctrine is interpreted, this provision could make the government legally liable for inactivity in the face of threats to the environment. It could also be interpreted to mean that the government owes the public legally enforceable fiduciary duties. It could shift the focus of control from elected government to the courts, and we've heard that repeatedly.

It could also increase uncertainty for business in Canada—and we heard that from the witnesses—and the loss of investment and the loss of jobs. This provision would entrench the public trust doctrine in federal environmental law, raising many novel policy questions. The bill defines the public trust as the federal government's responsibility to preserve and protect the collective interest of the people of Canada in the quality of the environment for the benefit of present and future generations. This definition captures many of the components of the doctrine that have been well established in American common law and statutes. In the U.S., the doctrine has been applied by courts for decades to preserve the public interest in a variety of resources, including waters, dunes, tidelands, fisheries, shellfish beds, parks, commons, and wildlife, and it's been invoked by the government to collect damages for environmental harm. We heard my colleague speak eloquently on that and the concern that this is an American-style litigation bill. Actually, we heard that from witnesses too.

In Canada, the doctrine is not well developed. The Yukon Environment Act places the duty on the government of the Yukon to conserve the environment in accordance with the public trust, but this provision has not been judicially considered and its impact on government decision-making with respect to the environment is unclear. In common law, the doctrine has been recognized in Canada to a certain extent with respect to navigation, fishing, and highways but had otherwise received little attention until the Supreme Court of Canada made favourable references to it in its 2004 decision, British Columbia v. Canadian Forest Products Ltd. Since then, academic commentary has focused on the potential of the doctrine as a useful environmental protection tool. As the Supreme Court of Canada expressed in its 2004 decision, recognition of the public trust doctrine raises many policy questions, including the crown's potential liability for inactivity in the face of threats to the environment, the existence or non-existence of enforceable fiduciary duties owed to the public by the crown in that regard, the limits to the role and function and remedies available to the governments taking action in account of activity harmful to public enjoyment of public resources, and the spectre of imposing on private interests an indeterminate liability for an indeterminate amount of money for ecological or environmental damage.

So this poses very serious questions, exposing individuals to a new level of liability, and would not be in the interests of Canadians. I think back to comments made by Mr. Sopuck regarding this being a tool of attack against rural Canadians. I think that's something we all have to take very seriously, particularly with the attacks against Hydro-Québec and BC Hydro. These are a new potential....

● (1010)

Think back to the witnesses who will benefit if Bill C-469 passes. Their hope was not for increased litigation; they wanted Bill C-469 to be used as the stick to intimidate. This is not in the interests of the environment; it's not in the interests of Canadians, all Canadians, including rural Canadians and Quebeckers.

Thank you.

The Chair: Mr. Sopuck.

Mr. Robert Sopuck: I would remind Ms. Duncan that I represent a rural constituency with communities that depend on the harvesting and management of resources. I don't need any lectures about who cares about rural Canada. My communities understand, to their bones, what a healthy and ecologically sound environment is.

However, I want to zero in on the phrase in the definition “essential ecological processes are preserved for their own sake”. Again, I find that a bit of a laughable phrase. I'm still waiting for somebody to define what a non-essential ecological process is. They are all essential, so the word is redundant.

In terms of “preserved for their own sake”, that phrase has the potential to give the environment rights. Rights are a human concept, not a concept in nature. Ecological processes are extremely important, but they don't have any rights. It's rather like the concept of animal rights, which some of you may remember was almost enshrined in law ten years ago in Bill C-15B. The Chrétien government tried to bring it in. That caused an uproar in rural Canada, the same kind of uproar this particular act will engender.

If you look at all of the environmental fights in this country, they were all directed primarily, if not all, against rural resource harvesting and rural land management activities.

I think the Hydro-Québec example is a pretty good one. In terms of environmental change in Quebec, 23,000 square kilometres of land have been flooded by the hydro development. In my own province of Manitoba, which has a very similar kind of hydro development scheme, there is 6,000 square kilometres of land that has been flooded.

I know the oil sands get beaten up, but in the oil sands there are only 602 square kilometres of land that have been affected—far, far less than any hydro developments in Canada. I should also make the point that in terms of the oil sands, 10% of the land that has been affected has been reclaimed.

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I have a question for Mr. Williams; actually, whoever wants to take this can take it.

The Chair: Ask through the chair, please.

I apologize. Chair, I have a question for you. The public trust doctrine is popular in the United States. I believe it's been around for a while, as I think Mr. Warawa mentioned.

Has it not now been inserted in the Quebec water act? Does anyone know?

The Chair: Do the analysts have any knowledge they wish to share?

Ms. Kristen Courtney: Our computer is not working, so I can't double-check the—

Mr. Francis Scarpaleggia: That's fine. In the Quebec water act I think it says that all of Quebec's water belongs to Quebeckers. I'm wondering if that constitutes a kind of public trust doctrine.

My second question is given that many experts now are suggesting that public trust doctrine should be used in Canada as an effective way of protecting the environment, if we were to do that, where would we start? Would we not have to start introducing this doctrine into Canadian law through bills like this?

I'm not a lawyer; I don't know. If we agree that public trust doctrine is a good concept, where do we begin in terms of introducing it to Canada? That's my question.

● (1015)

The Chair: Ms. Courtney, do you want to respond?

Ms. Kristen Courtney: There are two ways it can be done. As Mr. Warawa noted, there have been decisions in Canada where the courts have alluded to it. So far, though, none of the decisions have firmly established that the doctrine exists in Canada, or the content and meaning of it.

Most of the academic commentators have interpreted these references to it that have taken place over the past 30 years or so, but more commonly and more assertively over the past six years since the 2004 Canfor decision, as saying that through the common law the public trust doctrine is evolving. It's becoming a part of Canadian law. There hasn't been a firm test case to affirm that or anything like that yet, though, so the one way it could become part of Canadian law is just to do nothing and leave it up to the courts.

Mr. Francis Scarpaleggia: Another way would be to introduce legislation that refers to it.

Ms. Kristen Courtney: Exactly, so if you do it this way, through the legislation, you're going to affirm immediately that yes, this is part of Canadian law, and for parliamentarians this will allow you to define precisely what you want the content and meaning of this doctrine to be. If you leave that up to the courts, then you may have to react to that later if you wanted to change that. There are those two separate ways, each with their own project lines.

Mr. Francis Scarpaleggia: Could you remind me if the Forum for Leadership on Water, which is the primary think-tank interest group on water issues in Canada, supports this bill because it includes a public trust doctrine? I know they submitted a brief. I know they supported the bill. FLOW supported the bill, and I think partly it was because it did include the public trust doctrine.

Going back to Mr. Warawa's initial point about how Liberals support the dumping of raw sewage, I would suggest that on this bill we are on the side of those who want to protect Canada's water by supporting this bill and, more specifically, the public trust doctrine that is in it.

The Chair: Thank you.

Ms. Duncan.

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

I just want to briefly add something in follow-up to Mr. Scarpaleggia's comments, and I reiterate, through you, Mr. Chair, to the Library of Parliament, you are absolutely 100% correct.

There are, of course, three ways you can apply the public trust in Canada. One is through the courts—

Mr. Stephen Woodworth: I'm not sure if I've lost track of where we are, but I thought we were still considering clause 9.

The Chair: Yes, we're dealing with clause 9.

Mr. Stephen Woodworth: Clause 9 speaks about a healthy and ecologically balanced environment. On the public trust doctrine, the duties of the government as a trustee are referred to elsewhere in the act.

Ms. Linda Duncan: In fact, it is in clause 9—

The Chair: It's also referred to in clause 9, in subclause 9(3) on the next page.

Mr. Stephen Woodworth: I apologize.

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

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

Just briefly, if the governments of the day choose not to clarify in law, it is up to the courts to determine. In fact, there is a case before the courts right now arguing for the public trust in Canada. I'm sorry, I can't give you the citation, but we could follow up in another committee meeting and provide that.

A preferable way, obviously, is to clarify in law. As was pointed out in testimony to us, more than 100, almost 200, countries have chosen to provide the public trust and the right to a healthy environment through statute or constitution, the majority of those through actually amending their constitution to provide the public trust. Of course, how exactly this will be applied depends on its application and the circumstances of each case and precedent as it's determined.

The main reason for finally bringing this forward in a statute is there is study after study, as witnesses told us, by everybody from the Conference Board of Canada to the Canadian Medical Association, that Canada is being shown increasingly to have a poor record compared to other wealthy industrialized nations. It's also important for Canada, in harmonizing with other nations, to say that we believe that environmental protection is equal to economic development, which is reflected in the side agreements to some of our trade agreements.

It's very important that we have this document that simply clarifies in law and gives those rights and opportunities.

● (1020)

The Chair: I see no other hands, so I will call the question.

(Clause 9 agreed to [See *Minutes of Proceedings*])

(On clause 2—*Definitions*)

The Chair: We will go back to clause 2 and amendment NDP-2.

Just for the interest of committee members, NDP-2 also applies to NDP-3, so we will only have one vote. If we pass NDP-2, NDP-3 will carry. If we defeat NDP-2, NDP-3 will be dealt with separately.

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

Ms. Linda Duncan: Yes, Mr. Chair.

I wish to table an amendment to the effect that Bill C-469 in clause 2 be amended by adding after line 31 on page 2 the following:

> "aboriginal land" means
>
> (a) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and that are subject to the *Indian Act*;
>
> (b) land, including any water, that is subject to a comprehensive or specific claim agreement, or a self-government agreement, between the Government of Canada and aboriginal people where title remains with Her Majesty in right of Canada; and

I saw fit to make this amendment because it would make clause 8 consistent with the Canadian Environmental Protection Act.

In their wisdom, after extensive consultation, the Government of Canada chose to divide up the definitions between "federal land", "federal work or undertaking" and "aboriginal land". I'm presuming they heard testimony to that effect and, having heard all sides, made the decision that those were two distinct entities.

So I simply want to make sure we're consistent with the way the government is preferring to present.

The Chair: There is a point of order from Mr. Woodworth.

Mr. Stephen Woodworth: I want to be clear that I correctly understand the procedure. The way I understand this is that we are proceeding with a substantive amendment to the definition provisions. I think it's because we previously amended clause 8 with NDP-4 and that therefore necessitates a substantive amendment to the definitions clause.

Am I correct in that understanding, Mr. Chair?

● (1025)

The Chair: It helps with the interpretation of the bill, and we're dealing with the interpretation clause. In NDP-4 we already made the change in the bill, so we now use the words “aboriginal land”. We need to have a clearer definition of it in the interpretation clause.

Essentially, if you look at page 3, paragraph 2(c), under “federal land”, you're going to be removing that with amendment NDP-3 and moving it over to the new definition of “aboriginal land”. I think it helps with the clarification.

Mr. Stephen Woodworth: I just want to be sure that this substantive amendment is necessitated by the amendment of clause 8. I think you've told me that's the way you're looking at it.

The Chair: I'm not calling it substantive; I'm calling it a clarification. It helps with the interpretation of the bill.

Mr. Stephen Woodworth: I wish to speak to it briefly.

The Chair: You have the floor, Mr. Woodworth.

Mr. Stephen Woodworth: Thank you.

I find it ironic that we have not heard any witnesses from any first nations groups that might be affected by this act, the amendment to clause 8, or this amendment. I think that's regrettable. It is partly due to the fact that we closed off witnesses, despite a motion from the Conservative side to request additional witnesses. I can't help but feel that we may be in violation of some constitutional requirement to consult with first nations if we pass this bill without having consulted them.

I only raise it at this point because the amendment makes it very clear that this act does apply to aboriginal lands, including reserves, surrendered lands, and other lands that are set apart for the use and benefit of the bands and subject to the Indian Act. So I'm somewhat uneasy that we as a committee haven't consulted with first nations in the review of this bill.

Those are the only comments I will raise regarding the amendment. I'm not entirely sure what the deficiency was in the previous version, but I can't really comment one way or the other on that.

Thank you.

The Chair: Ms. Duncan.

Ms. Linda Duncan: I want to clarify that when you read the bill before us in full, the purpose and intent is to hold the Government of Canada accountable for delivering its responsibilities to protect the rights and interests of Canadians. It very clearly says “within the jurisdiction of the Government of Canada”. We've had a good, thorough discussion about that.

We previously heard testimony on the Species at Risk Act and our review on oil sands and water. We heard considerable testimony from Métis and first nations peoples calling for the government to actively enforce federal laws for the protection of their lands, waters, and peoples.

The Chair: Monsieur Bigras.

[*Translation*]

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

I support the principle of the amendment. Nevertheless, I would like some clarification on the proposed amendment, especially its paragraph (c) which expands on the meaning of the lands mentioned in paragraph (a) or (b). It talks about the subsurface but also all layers of the atmosphere. I wonder if adding this reference to the layers of the atmosphere does not go beyond the scope of the lands to be covered by the amendment. Why add "all layers of the atmosphere"? Does this not open up the scope of Ms. Duncan's amendment? As for the rest, it is very similar to what we already have in the Canadian Environmental Protection Act, as Ms. Duncan mentioned. However, I would like to know why we would widen that scope.

● (1030)

[*English*]

The Chair: Ms. Duncan.

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

In the Canadian Environmental Protection Act, Interpretation, subsection 3(1), the definition of aboriginal land also includes that same clause, which is why I added that. If we want to remove it for the purposes of this, it's up to the members. But to be completely consistent with the Canadian Environmental Protection Act, I also included new paragraph 2(c).

The Chair: Okay.

Mr. Woodworth.

Mr. Stephen Woodworth: Thanks very much, Mr. Chair.

There is something else I might say about this. It is a good section to illustrate the overall impact of this act on groups such as first nations or provincial governments or provincial agencies. Because this provision makes clear that the act extends to aboriginal lands, it means that the public trust duty, which we were speaking about a few moments ago, for the federal government also extends to aboriginal lands. At first blush, that may seem perfectly fine, but when we think about the fact that we have not defined the public trust duty, the meaning and content of it, it means that the courts will clothe that phrase with meaning.

If the Government of Canada has entered into an agreement with a first nations group in relation to aboriginal land, or if the federal government has entered into an agreement with a provincial government or a provincial agency, the courts, under this act, will have the authority to review those agreements in the light of whatever the courts determine should be the meaning and content of the public trust duty. If a judge or the court finds that the agreement permits a first nations community to develop its land in a particular way that the court feels does not meet its standard of environmental public trust, then the court will, under section 19, be empowered to order the federal government to remediate that and perhaps not to pursue its agreement with the first nations community, the province, or the provincial undertaking involved.

That is the constitutional issue that concerns me. The courts will now be given this ability to veto, if I can put it that way, agreements that the federal government might wish to make in relation to aboriginal communities or provinces.

Thank you.

The Chair: Thank you.

I see no other hands.

Shall NDP amendment number 2 carry?

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

The Chair: As I said earlier, if NDP-2 is carried, then NDP-3 is also carried.

We're moving to Bloc motion number 1. Do I need to have that put on the floor first?

Monsieur Bigras, would you put it on the floor, please?

[*Translation*]

Mr. Bernard Bigras: Thank you, Mr. Chairman. I will move amendment BQ-1. I move that Bill C-469, in Clause 2, be amended by replacing line 8 on page 4 with the following:

> or undertaking that is within the exclusive legislative

● (1035)

[*English*]

The Chair: I'm going to have to make a ruling on this, Monsieur Bigras. I'm going to declare that this amendment seeks to make a substantive modification by amending the definition of "federal work or undertaking" in the interpretation clause, essentially removing any joint jurisdiction. If you go to page 769 of O'Brien and Bosc, in chapter 16, under "Interpretation Clause", it reads:

> The interpretation clause of the bill is not the place to propose a substantive amendment to a bill. In addition, an amendment to the interpretation clause of a bill that was referred to a committee *after* second reading must always relate to the bill and may neither exceed the scope of nor be contrary to the principle of the bill.

So in the opinion of the chair, the proposed amendment is substantive and is therefore inadmissible.

[*Translation*]

Mr. Bernard Bigras: Could I...

[*English*]

The Chair: I ruled, and there is no debate. You can challenge the chair if you wish, but there's no debate on it. I've ruled it inadmissible.

[*Translation*]

Mr. Bernard Bigras: I challenge your ruling.

[*English*]

The Chair: We'll do this again, as we did last week, on Tuesday.

But before you guys vote, I'll read this so you all understand. On page 1049, chapter 20, it says:

> The Chair makes...decisions on his or her own initiative following a point of order raised by a Member.
>
> Decisions by the Chair are not debatable. They can, however, be appealed to the full committee. To appeal a decision by a Chair, a Member must inform the committee of his or her intent immediately after the decision is announced. The Chair then asks the committee to vote on the following motion: "That the decision of the Chair be sustained".
>
> This motion cannot be debated or amended and it is put to a vote immediately. If a majority of Members vote in favour of the motion, the Chair's decision is sustained. If a majority of Members vote against the motion, the Chair's decision is overturned. In the event of an equality of voices, the Chair's decision is sustained. The overturning of a ruling is not considered a matter of confidence in the Chair.

But I do not like to be overruled. Anyway, I hope we don't make this a habit.

So the question is, and I'll put it right now, that the decision of the chair be sustained. It's not debatable.

Mr. Stephen Woodworth: I have a point of order.

I just want to make it clear, because there was some confusion the last time we voted on a motion like this. Since the decision of the chair was to rule the proposed amendment out of order, sustaining the chair will mean that the proposed amendment is ruled out of order.

The Chair: Yes. That is the clarification. So you're voting to sustain my decision.

(Ruling of the chair sustained)

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

Mr. Mark Warawa: I was elected in 2004, so I've been here for over six years.

Mr. Blaine Calkins: That's too long, right?

Mr. Mark Warawa: It's been a great experience, and I continue to learn. But in those six years, I have seen the chair challenged only three times. There was one about three years ago, in the case of Bob Mills. When there was a challenge to his decision, he left the chair, and that's why we have other chairs.

[*Translation*]

Mr. Bernard Bigras: On a point of order.

[*English*]

Mr. Mark Warawa: I am speaking to a point of order.

In those six years, I've seen it three times. I've seen it twice relating to this bill: Ms. Duncan challenged the chair, and now Mr. Bigras has challenged the chair.

● (1040)

Mr. Bernard Bigras: Yes, it's my right.

Mr. Mark Warawa: It rarely happens. I don't want to see you leave the chair, but if it's repeatedly happening in this committee, there is a message: one would question whether or not this committee has confidence in you as a chair. It's a serious matter.

[*Translation*]

Mr. Bernard Bigras: On a point of order.

[*English*]

Mr. Mark Warawa: It's not frivolous to challenge a decision of a chair, and when we've seen it—

The Chair: Come to the point, and then I'll come to you.

Mr. Mark Warawa: We see it repeatedly used, and I hope it wasn't used frivolously. I will trust that all members of this committee take it seriously when they challenge your decision. It is not a trivial matter; it's a serious matter and could question the confidence of the committee in your chairing the meeting.

The Chair: Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras: Mr. Chairman, I believe that Mr. Warawa's comments are not a point of order. You are still in the chair and you are the guardian of the rights of members of this committee. What I did was within my rights and it is not proper for the parliamentary secretary to pass judgment on the appropriateness of challenging your ruling. I do not think I have any lessons to learn from the parliamentary secretary.

I respect your decision but I should remind you that we have already considered a bill that would enact a federal Sustainable Development Act. We are talking here about federal legislation, national legislation that has been amended and which has become a federal law. So I believe that challenging your ruling was within my rights and it is not incumbent on the parliamentary secretary to tell me what I should do in committee.

[*English*]

The Chair: On the same point of order, Mr. Woodworth, and then Ms. Murray.

Mr. Stephen Woodworth: Just very quickly, Mr. Chair, whatever rights Monsieur Bigras has, I don't think he had the right to continually interject vocally during the course of Mr. Warawa's submissions.

The Chair: He had a point of order.

Mr. Stephen Woodworth: Well, he wanted to raise this point of order, and I'm just saying the manner in which he ought to have raised this point of order was to wait until the previous point of order was finished—as in fact you directed him to do—rather than to try to drown out Mr. Warawa as he was speaking.

The Chair: Ms. Murray.

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

I was surprised to find the parliamentary secretary essentially questioning the competence of the chair, based on the fact that MPs are exercising their rights and responsibilities in this committee. I thought that was quite surprising and unnecessary.

Thank you.

The Chair: Ms. Murray...Ms. Duncan.

Ms. Linda Duncan: I'm really happy you keep confusing me with her. I consider that a great compliment.

I just want to add that I echo the comments of the colleague immediately before me, Ms. Murray. I don't think a challenge of a decision of the chair in any way.... I want to make it clear on the record. In no way am I questioning the competency and capabilities and sound decision-making of this chair, whom I have found commendable for the entire two years I have been on this committee.

The Chair: Let me just say this.

It is within your parliamentary rights and privileges to challenge the chair at any time. I am making rules-based decisions, and if it does become a habit, I will leave the chair. This is the third time. Actually, I've been challenged three times as the environment chair. I never was challenged in the chair when I was at the agriculture committee, but this is the third time now I've been challenged as chair of the environment committee. I was overruled once, a couple of years ago. So I hope we don't make this a habit. Otherwise, you guys will be looking for a new chair.

Anyway, we're almost out of time.

Mr. Mark Warawa: I move to adjourn.

(Motion agreed to)

The Chair: We're out of here.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca