House of Commons
CANADA

# Standing Committee on Environment and Sustainable Development

ENVI • NUMBER 048 • 3rd SESSION • 40th PARLIAMENT

**EVIDENCE**

## Tuesday, February 15, 2011

---

## Chair

**Mr. James Bezan**

# Standing Committee on Environment and Sustainable Development

**Tuesday, February 15, 2011**

● (0845)

[*English*]

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

We're continuing our clause-by-clause consideration of Bill C-469. We are in the interpretation clause, clause 2, and we are at BQ-2.

Monsieur Bigras, could you read BQ-2 into the record?

[*Translation*]

**Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ):** Yes, Mr. Chair. I propose amendment BQ-2, which reads as follows:

That Bill C-469, in Clause 2, be amended by replacing lines 33 to 36 on page 4 with the following:

"the advantage of two or more provinces."

[*English*]

**The Chair:** Okay. Do you want to talk to that motion?

[*Translation*]

**Mr. Bernard Bigras:** This falls under the perspective of amendment BQ-1, the amendment that we were not able to introduce. We believe that the bill should apply strictly to companies under federal jurisdiction. We do not believe that even companies under shared jurisdiction should be subject to this bill.

Basically, the purpose of this amendment is to remove paragraph (*i*) from the definition of "federal work or undertaking" in section 2.

[*English*]

**The Chair:** Mr. Woodworth.

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** I have a point of order, Mr. Chair.

I missed some of the preamble to Monsieur Bigras' comments, and I'm trying to determine what amendment to the act would justify or necessitate the amendment in question.

**The Chair:** So...?

**Mr. Stephen Woodworth:** My understanding is one ought not to be amending the definition section in a substantive manner, which this does. In effect, it deletes the coverage of the act over concurrent areas of jurisdiction. One ought not to do that unless it is necessitated by an amendment elsewhere in the act.

Furthermore, I question whether this amendment is in order. It seems to me that by removing the application of this bill to areas of concurrent jurisdiction, the amendment is exceeding the scope of the bill, which clearly was directed to us from the House as a bill that would apply to both exclusive and concurrent federal jurisdictions.

**The Chair:** Last week I ruled BQ-1 out of order because it was a substantive change, talking about the “exclusive” legislative authority of Parliament. Because that was ruled inadmissible, we are still talking about the legislative authority of Parliament, which is “including, but not limited to”. So it still provides the opportunity for all jurisdictions that the federal government has authority over, and removing paragraph 2.(i), under “federal work or undertaking”, would not change the authority of Parliament in joint jurisdiction.

Mr. Woodworth.

● (0850)

**Mr. Stephen Woodworth:** I want to understand this. The way this would work out, at least in my view, is that if we remove paragraph 2 (i), under “federal work or undertaking”, we are no longer extending the jurisdiction of this act to works outside the exclusive legislative authority of the legislatures. In other words, we are no longer extending the jurisdiction of this act to areas that are concurrent. The paragraph in question simply means that if something is exclusively provincial, it would not fall under the jurisdiction of this act. If we remove this paragraph, then we are restricting the scope of the act, not simply in non-provincial jurisdictions, but also in concurrent areas of jurisdiction. That seemed to me to be substantive. Not only that, it seemed to me to be, in effect, outside the scope of the act, which clearly was intended to apply to any areas of exclusive federal or concurrent federal jurisdiction. Now we're going to change that.

**The Chair:** Essentially, it's not a substantive amendment. Even though it's not specified within the bill, it doesn't change the scope of the bill. The scope of the bill still applies to all areas of federal jurisdiction, including joint jurisdiction or concurrent joint jurisdiction. That is still in effect, because the exclusive authority was not admissible. It's not a substantive change, so we'll leave it on the floor. It's up for debate.

I have ruled on that order.

Mr. Woodworth.

**Mr. Stephen Woodworth:** If your interpretation is correct that the amendment is not intended to exclude the application of the act from areas of concurrent jurisdiction, we need to consider precisely what it is intended to do.

Let me be the devil's advocate for a moment. Previously, with the section, the act clearly referred only to work outside the exclusive legislative authority of the province. If we remove that provision it may be inferred that we're trying to go after work that is within the exclusive legislative authority of the provinces.

**The Chair:** But at the beginning of this definition it says "including but not limited to", so it is open to all areas of authority of the federal government, concurrent or exclusive.

Do you wish to speak to the amendment?

**Mr. Stephen Woodworth:** I am speaking to the amendment. I accept your ruling on whether or not this is out of order.

I'm simply saying that the purpose of the amendment is somewhat mysterious. I'd appreciate further elaboration as to why we would want to remove that section. It makes it clear that the act does not apply to anything within the exclusive authority of the provinces. Why would we want to remove something that makes it clear that the act is not going to touch on the exclusive authority of the provinces? It makes no sense.

● (0855)

[*Translation*]

I say that with great respect, Mr. Chair.

**Mr. Bernard Bigras:** For us, it has always been clear that we believed that this charter should apply basically only to companies with exclusively federal jurisdiction. We think that these works or undertakings that might come under a shared power should not necessarily be subject to this legislation. I put that before you.

It is not a major amendment for us, but we have to present it at this stage.

[*English*]

**Mr. Stephen Woodworth:** Mr. Bigras says that it is his intention with this amendment to remove areas of concurrent jurisdiction from the ambit of this act. That is what I surmised at the outset. You have ruled that's not going to be the effect of this amendment, even though it is what is intended.

I want to say, however, to Mr. Bigras that the removal of this section will not affect the preamble of this definition. I want to remind him that the preamble of this definition says that "federal work or undertaking" means any work or authority that is in the legislative authority of Parliament. Simply removing paragraph (i) will not restrict that preamble so as to exclude concurrent jurisdiction.

Mr. Chair, you've persuaded me in the course of your remarks; however, it would seem to negative the purpose that Mr. Bigras has in proposing this amendment. Of course, in this committee that doesn't necessarily mean anything, but I suggest this is an unnecessary amendment and it won't affect that particular issue.

Thank you.

**The Chair:** Are there any comments?

Ms. Duncan.

**Ms. Linda Duncan (Edmonton—Strathcona, NDP):** I would add that care was taken to provide the very same definition that is in the Canadian Environmental Protection Act. I'm worried about varying from that. There was some clear reason for adding paragraph (i), and I suspect it might be because of a series of Supreme Court decisions, including Friends of the Oldman. There it was argued that because environment isn't specified in the Constitution it is arguable, except in those cases where there is exclusive provincial jurisdiction, that there may well be federal jurisdiction that includes spending power.

I don't see anything else in here that would reflect the spending power. It could be a facility, for example, that's cost-shared or....

**The Chair:** Are there other comments?

**Ms. Linda Duncan:** I think the argument of Mr. Woodworth and the chair is correct that this is simply meant to elaborate. It is intended to be an umbrella for the situation of the determination by the superior courts that it isn't necessarily definitive. It is often arguable, depending on the actions taken by the federal government.

**The Chair:** Mr. Warawa.

**Mr. Mark Warawa (Langley, CPC):** After listening to the dialogue, I want to summarize what I'm hearing. The issues we heard from many of the witnesses.... The issue of uncertainty will remain even with this amendment, and facilities and works in Quebec, like Hydro-Québec, will still be at risk of litigation. Uncertainty will remain.

(Amendment negatived)

● (0900)

**The Chair:** We'll move on to Bloc-3.

Mr. Bigras, you can move it onto the floor.

[*Translation*]

**Mr. Bernard Bigras:** This involves amendment BQ-3, which reads: That Bill C-469, in Clause 2, be amended by replacing lines 21 and 22 on page 5 with the following:

"principle that there should be a just distribution of environmental benefits".

The amendment would eliminate the principle of consistency. So it would remove the word "consistent" from the section as presented.

That there be some kind of fairness is one thing, but that there be some kind of consistency is another. It is the principle of the associated costs and the burden imposed consistently on all Canadians. We think that this will go against the polluter pays principle.

There needs to be fairness. But imposing a burden that would be consistent across Canada could create concerns in Canada. We think that the polluter pays principle should apply and not the principle of consistency in sharing the environmental burden.

[*English*]

**The Chair:** Mr. Woodworth.

**Mr. Stephen Woodworth:** I want to place this as a point of order, Mr. Chair.

Once again we are, in my view, looking at a substantive amendment. As for the question of polluter pays, I'm tempted to use the expression “red herring”, but I don't want to try to surmise Monsieur Bigras' motives. I will say that it's a misplaced argument, in that the phrase “just and consistent” in referencing “just” certainly is ample to allow for the principle of polluter pays, which of course is found elsewhere in the same definition section and elsewhere in the act.

What I believe, knowing the great concern that Monsieur Bigras has to protect provincial rights and in particular to do his very best to make the best of a bad act for the province of Quebec, is that Monsieur Bigras' amendment is really directed toward the issue of “asymmetrical federalism”, to use a term. That is to say that this act might apply differently in one province than it would in another province. This is certainly something that changes the tenor of the act. Certainly my comments regarding the impact of this act as we debated it on the distribution of powers between provinces and federal government were all based on the principles seen here, which were that these burdens would fall equally on all provinces.

So now to be told that those arguments I made at that time will no longer apply, because we are going to incorporate a notion of asymmetrical federalism by deleting the reference to consistent distribution of environmental benefits, certainly makes a lot of our debate over the impact of this on provincial governments somewhat beside the point.

So I believe it is a substantive amendment and one that is not related to any previous amendment in the act. I believe, in fact, that it exceeds the scope of the act that was sent to us by the House, and which in fact did not contain any hint of asymmetrical federalism or any hint that burdens would not be shared both justly and consistently.

For those reasons, I ask you to rule this amendment out of order.

● (0905)

**The Chair:** I'm going to rule it as admissible, and although you've outlined some of what you believe Mr. Bigras' motives are, I believe he is looking for clarity within the act and looking to bring some more consistency into the definitions with regard to what some of the other clauses alluded to further on in the act.

We're going to allow it to stand, but you're definitely free to raise that in your debate.

Are there any comments?

Monsieur Bigras.

[*Translation*]

**Mr. Bernard Bigras:** I understand what Mr. Woodworth has explained to us. He would like the environmental burden, so, for example, the environmental costs of a particularly polluting industry, be shared consistently among all Canadians.

But, in reality, when there is an industrial sector present or when a province makes strategic choices, we cannot, under the guise of environmental justice, want to divide up the costs of its choices to all provinces and Canadians. A principle must apply at any given time. When we make economic choices, we must take into account the consequences and cost of those choices.

As I read it, the burden is clear. The principle of environmental justice is the "principle that there should be a just and consistent distribution of environmental benefits and burdens among Canadians".

If that was the case, it would mean that the people in Newfoundland should pay for the environmental damage and costs created by operating the oil sands. Fairness is one thing. But consistency of the burden goes against the recognized fundamental principle, the polluter pays principle. If the people in Newfoundland want to cover the environmental costs created by operating the oil sands out west, that's their choice, but it certainly isn't Quebec's.

We do not believe that this principle of environmental justice should take into account the consistency of the burden.

[*English*]

**The Chair:** Ms. Murray.

**Ms. Joyce Murray (Vancouver Quadra, Lib.):** Just listening to Mr. Bigras' comments, it occurs to me—not that I'm an expert in translation or in the French language—that the word *uniforme* has a different meaning from the word “consistent”. In English, you can be consistent with a principle, which would not apply a uniform *fardeau* across the different provinces.

In my understanding of the word *uniforme*, I would agree with this amendment; however, the word “consistent” I don't have a problem with, because consistency is not the same as uniformity. You could have non-uniformity that could be consistent with certain underlying rationale or criteria.

I don't know if there are any other comments about a potentially better word than *uniforme*, but if that's the word, I would support this amendment of removing that phrase.

**Ms. Linda Duncan:** Thank you for pointing that out. I wasn't catching that in the French it's different. I agree that this is not saying the same thing. So for that reason, unless we can come up with a word to satisfy Mr. Bigras, I'm fine with simply taking it out.

**Mr. Stephen Woodworth:** Mr. Chair, I'm just having a bit of difficulty finding the word in the French version. Could someone assist me as to what page this French version of this principle of environmental justice is found on?

**The Chair:** It appears earlier, at the bottom of page 4, line 32.

**Mr. Stephen Woodworth:** Where is it?

[*Translation*]

It says "*principe de prudence*". Is that it?

No, it's where it mentions "*justice environmental*".

● (0910)

[*English*]

**The Chair:** BQ-3 is on line 32.

**Mr. Stephen Woodworth:** Thank you, I found it.

I think that Ms. Murray's comments are well placed, but this simply points out to perhaps an issue in the translation of the document. We would benefit, perhaps, from knowing what is a more accurate French definition of the word “consistent”, rather than *uniforme*, one that would capture the sentiment that Ms. Murray has expressed. I think the difficulty is—to follow up on what Ms. Murray has said—that if one simply jettisons the notion of consistency, one is opening the door to inconsistency, and inconsistency in the application of the principles, to paraphrase somewhat what Ms. Murray has said.

That would be a shame, in that while consistency doesn't necessarily mean uniformity, consistency does mean that we are treating people equitably, so it would be a shame to lose that word. In fact, as I speak, I wonder if the word “equitable” might be a better choice than the word “consistent”. But be that as it may, it would be a shame to lose that principle from this section of the bill.

That is my submission.

**The Chair:** You could always move that as an amendment after we deal with this. You can move to insert those words.

**Mr. Stephen Woodworth:** Mr. Chair, Mr. Bigras is pointing out to me that the French translation of “just” seems to be equitable. I think there is still meaning in the English word “equitable” or “consistent”, which says that in the end these principles should be applied in the same manner to everyone consistently.

**The Chair:** You can move that amendment to the English version.

**Mr. Stephen Woodworth:** I'm not proposing to do that, because I have to assume that the French definition of the word *equitable* must be pretty close to equitable, and then we'd be left with the words “equitable” and “*equitable*” in the French version. I'm not going to propose that, but I would like, if we could maintain—

**The Chair:** If you wish to have equitable treatment between the French and English version, you may want to put “equitable”—

**Mr. Stephen Woodworth:** I would like the translators to find an appropriate but different translation of the word “consistent”, rather than the French word *uniforme*.

**The Chair:** Okay. Are there further comments?

(Amendment agreed to: yeas 6; nays 5) [See *Minutes of Proceedings*]

**The Chair:** We'll now go to BQ-4.

Monsieur Bigras, *s'il vous plaît.*

[*Translation*]

**Mr. Bernard Bigras:** Amendment BQ-4 reads as follows:

> That Bill C-469, in Clause 2, be amended by adding after line 38 on page 5 the following:
>
> "'resident of Canada' means a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*."

[*English*]

**The Chair:** Mr. Bigras, you wish to speak to it?

[*Translation*]

**Mr. Bernard Bigras:** Mr. Chair, we had a number of discussions while we were studying this bill to determine who could take action before the Federal Court or another court.

In my opinion, there is a fundamental principle to clarify who these residents are who can take action in court or elsewhere. So we believe that the term "resident" must be limited to two things: Canadian citizens and permanent residents, within the meaning of the *Immigration and Refugee Protection Act*.

As a result, we would limit the scope of the act. It would be limited to Canadian citizens and permanent residents.

● (0915)

[*English*]

**The Chair:** Are there other comments?

Mr. Woodworth has a point of order.

**Mr. Stephen Woodworth:** I might as well put it on the record, Mr. Chair—although your rulings have been running in a different direction—that I cannot see how we can possibly consider that reducing the ambit of the word “resident” to exclude certain persons now is not a substantive change to the act. The act as it came to us included residents, in my submission, whether they were Canadian citizens or permanent residents or non-permanent residents.

Now, Mr. Chair, this amendment proposes to remove from certain residents of Canada all the supposed rights that are guaranteed in the act. How can that not be a substantive amendment? If it is a substantive amendment, where is the amendment to some other provision that justifies it, and how does it not fundamentally change the nature of the act and therefore exceed the scope of the act?

Once again, I ask you to rule this amendment out of order.

**The Chair:** I'm going to rule that it is admissible. As you know, throughout the bill we talk about a “resident of Canada”. I'm just looking at one page here; it is said in clauses 10, 11, 12, 13, and 14. Almost every clause on those few pages start off with “any resident of Canada”.

We're providing clarity, just as we did with the acceptance of Ms. Duncan's bill on aboriginal lands.

**Mr. Stephen Woodworth:** Pardon me for being argumentative, Mr. Chair, but that is precisely my point, that when we considered this bill throughout, we considered it based on the definition of “resident”, which was in paragraph 2. The reality is that the....

I'm sorry. There is no definition. My apologies.

**Mr. Chair:** So this is a new definition—

**Mr. Stephen Woodworth:** I was looking in the wrong spot. Thank you.

However, I will say that we considered it in relation to the definition of “resident”, which is the ordinary meaning of the word “resident”: someone living in the country. There is no question of clarification; we all know what a resident means. And to now impose a specialized definition of “resident,” one that is different from the ordinary definition of “resident”, in my view changes the whole tenor of our discussions throughout the rest of the bill.

I can't put it any more strongly than that.

**The Chair:** Just so you understand where I'm coming from, what's providing my rule-making process is in chapter 16 of O'Brien and Bosc, "The Legislative Process". Starting on page 768, first of all on the form of an amendment: "An amendment is also 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".

Going on to page 769:

> The interpretation clause of a 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. This rule does not apply to a bill that has been referred to a committee before second reading.

So in this case this does apply to the scope of the bill, it is not exceeding it, it's providing clarification to the language that's already in the bill, so I am going to say it is admissible.

Ms. Duncan.

**Ms. Linda Duncan:** Mr. Chair, I will be supporting this amendment. I appreciate Monsieur Bigras bringing it forward. It was a matter of contention throughout discussion of this bill about who may or may not have rights and opportunities under the law.

**The Chair:** Order.

**Ms. Linda Duncan:** I realized in retrospect. And as the sole person drafting an act, there are many challenges. The decision by the drafter I was working with was to choose the language that we had. In other similar bills, they took different approaches in environmental bills of rights in other jurisdictions, but quite often what they did was use the language "every person resident in Canada". Now, that would have been very wordy, so I think actually Monsieur Bigras has come up with the perfect solution, that it just simply makes it clear that wherever there is reference to "resident", it is a person as he has defined. So I'll be supporting the amendment, and I appreciate his making it.

● (0920)

**The Chair:** Okay.

Mr. Woodworth.

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

I don't propose to challenge your ruling, but I do wish to point out the implication of this amendment.

I can't quite put my finger on it, but I'm sure that elsewhere in this bill we have amended the.... Actually, I think it was section 28 of the Canadian Bill of Rights, to include a right to a healthy and ecologically balanced environment.

I think elsewhere we have made reference to section 7 of the Canadian Charter of Rights and Freedoms. We're going to try to take a look at that section in the preamble—Ms. Murray is on top of it. There we are. We are saying that compromising the life, liberty, and security of the person would be contrary to section 7 of the Canadian Charter of Rights and Freedoms.

Now, those of you who have ever dealt with refugee law will know that the Supreme Court of Canada has extended the protection of the charter to persons who are not permanent residents. In other words, if you come to Canada as a refugee and you are subject to judicial or governmental decisions, the Supreme Court of Canada, about ten and a half years ago—I don't remember the name of the case—indicated that such persons should be granted the protection of the Canadian Charter of Rights and Freedoms.

What we are doing with this amendment now is to say that those persons, in relation to the bill, will in effect receive second-class status. They will not be able to benefit from the protections of this so-called environmental bill of rights. This is somewhat anomalous, in my opinion. It certainly adds another layer of complexity to Canadian law regarding rights. A refugee claimant who has not yet received permanent resident status will be entitled to protection under the Canadian Charter of Rights but not to protection under the Canadian environmental bill of rights.

I'm not sure what will happen in relation to the amendment we've made to the Canadian Bill of Rights. I have to assume those persons will not be able to take advantage of that amendment to the Canadian Bill of Rights, which we've made under this act, since we are now redefining the scope of this act to apply to a limited class of residents and not all residents.

Once more we're into an area, in my view, of highly dubious legislation writing.

Thank you.

**The Chair:** Mr. Calkins.

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

My colleague just made the same case I was going to make.

As we know, the definition of "resident of Canada" here is made pursuant to a section that's prescribed: subsection 2(1) of the Immigration and Refugee Protection Act. Should that act ever change, and should the section that defines "resident of Canada" in that act change, then we would have a conflict here. I think it's always best to reference a definition without referencing a particular paragraph or clause in another bill, because it creates housekeeping nightmares.

Notwithstanding that, we're all fully aware of some of the issues pertaining to the refugee and immigration acts and legislation we have here. In particular, I would turn my comments to the Singh decision, I believe, in 1985, which basically states that any person who sets foot within the territorial boundaries of Canada is afforded the rights of a Canadian citizen and the rights of due process of every Canadian citizen.

In that case, my colleague Mr. Woodworth is absolutely correct. This proposed legislative amendment would be different from that scope, and it would in my estimation not stand a charter challenge. As a result of the precedent set in the Singh decision, this would be putting a bad clause in an even worse bill.

● (0925)

**The Chair:** Mr. Scarpaleggia.

**Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.):** Mr. Woodworth raises an interesting point, as usual. I have a question, though, which perhaps he could answer and clarify for me.

It is indeed true that refugees have rights that are protected under the charter, but do refugees have the full scope of rights that Canadian citizens enjoy? For example, can refugees who are not permanent residents of Canada make donations to political parties? Can refugees or would-be refugees vote?

Maybe Mr. Woodworth could address the differences between the rights afforded to those who land on Canadian soil and those who hold Canadian citizenship or permanent resident papers.

**The Chair:** Mr. Woodworth.

**Mr. Stephen Woodworth:** Thank you.

I'd like to make two points.

I'll respond to my colleague's inquiry in a moment. First, though, I neglected earlier to mention that changing and restricting the definition of "resident" will not in any way prevent the problems regarding who can apply under this bill, in that it is not necessary for an "entity", which is the problematic section, to be a Canadian resident.

That's the actual point that I have tried to make repeatedly in the course of the debate. There is nothing in the bill that requires entities to be Canadian residents, so this amendment will not touch that problem and will not do anything to prevent foreign agents, being groups from outside the country who open an office in Canada, from enjoying the rights that are guaranteed to entities under this bill.

With respect to Mr. Scarpaleggia's inquiry, first a disclaimer: I don't pretend to be an expert in this particular area of law. That said, I think the answer to his question is fairly simple. The rights that were guaranteed to refugee applicants—that is, people whose cases have not yet been determined—are those under the Canadian Charter of Rights and Freedoms, those which we consider to be fundamental to the proper protection of individuals.

I suppose that before we had this discussion, I was operating under the assumption that the title of this bill, and the quasi-constitutional references to it, meant that this bill was intended to give environmental rights in a very fundamental way to people. It was in that way analogous to the Canadian Charter of Rights and Freedoms. But now, if this amendment passes, of course, we will have to say that this bill is not really a bill of rights, that it doesn't protect anything that's so fundamental that it ought not to be deprived from everyone who resides in this country. Instead, it only protects extras that are not really that important and that therefore don't have to be secured to people who are not either citizens or permanent residents.

That, to me, is a fundamental change in the scope of the bill. But if the colleague who proposes it wants to tell us that this really isn't a bill of rights, that it's really not protecting anything fundamental, then I guess that tells us something about her intentions.

I'm sorry; let me amend that. I don't want to comment on her intentions.

That tells us something about the bill that she's proposing.

Thank you.

**The Chair:** Any comments?

Ms. Duncan.

**Ms. Linda Duncan:** Mr. Chair, unless I'm completely surprised at the end and the Conservative members of this committee all vote in favour of this bill, which will stun me, I have to say that I'm finding the argument rather interesting.

This bill, of course, does not amend the charter. That's a constitutional document and would supersede this legislation, as it supersedes all legislation. So of course somebody who felt they were not accorded proper rights could challenge the bill.

I thought Monsieur Bigras was trying to come up with a fair compromise in the discussion around the table of the fear raised, particularly on the other side, about foreigners coming onto our land and shutting down operations. And there are lots of examples about Quebec, for some unknown reason.

I think Monsieur Bigras has tried to come up with a reasonable compromise. He still has an opportunity to think about it, as we do. My preference, of course, would be to include all, but I also want to respect the proposed amendments of those around the table. It provides clarity for who the residents are, and I think it's a fairly reasonable proposal—unless someone has an amendment to offer.

● (0930)

**The Chair:** Are there any other comments?

(Amendment agreed to: yeas 6; nays 5) [See *Minutes of Proceedings*]

**The Chair:** We're back to the original clause now.

Amendments BQ-3 and BQ-4 are agreed to, so now we're dealing with whether clause 2 will be carried as amended.

Are there any comments?

Mr. Woodworth.

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

There are various difficulties presented by the definitions in clause 2. Some of them we have touched upon in relation to the individual clauses of the bill. I'm going to try to go through them and simply highlight them, because in a way they all touch on the weaknesses in this bill and they are intertwined throughout.

The first difficulty is with the definition of "entity," which is essentially any group that is either "authorized to carry on business in Canada or that has an office or property in Canada". An entity need not be a resident, need not have any relationship to the rule or undertaking that is being challenged in court or otherwise, and need not even have to have a permanent office in Canada. It simply has to be a group that opens an office.

The question of federal land has now been amended to make it absolutely clear that it includes aboriginal land, and a definition of “aboriginal land” has been added. While I don't purport to be a constitutional lawyer, I seem to recall hearing time and again in committee that particularly at least when one is legislating with respect to aboriginal rights, one is under a constitutional requirement to consult with aboriginal groups before doing so.

It's rather remarkable that in so many environmental matters—in fact, I think, in the two and a half years that I've been on the environment committee, in every case when we have been considering environmental legislation—we have invited and heard from aboriginal groups, except one; that would be the case of this bill. We have not heard from aboriginal groups in relation to this bill, and yet we have heard from other witnesses the grand impact that this bill is going to have. The mover of the bill certainly expresses in the bill the view that this should have a grand impact on the scheme of things; yet we have not heard from aboriginal groups in relation to it.

The definitions of “federal source” and ”federal work or undertaking”, notwithstanding the substantive amendments here today, include matters that will impact upon provincial works and undertakings. That is to say that they will still apply to areas of concurrent jurisdiction, wherever the federal and the provincial government have a shared environmental jurisdiction. They also will still apply to such provincial undertakings as Highway 407, which I mentioned in the course of debate and which is proposed by the Government of Ontario in order to ease transportation problems in the east of Ontario, because of its impacts on federally regulated environmental issues, whether those would involve species at risk or waterways that might be involved, fisheries issues, or indeed the jurisdiction that is contained under the Canadian Environmental Protection Act.

I've tried to do my best to point out that this provision will similarly impact works in the province of Quebec, because I want to make known to the people of Quebec what danger is presented to hydroelectric works in particular, which are so important to the province of Quebec, by a federal bill that will in effect place the determination of environmental issues in the hands of litigants and judges.

● (0935)

Moving on, the definition of a “healthy and ecologically balanced environment” is one of those that is fraught with difficulty in interpretation. We haven't heard too much about how the courts will interpret that clause. One wonders if the phrase “cultural dignity” is included in any other federal statute. It's not one that's known to me, personally, and I don't think I've heard any evidence to the effect that it is included in any other statute.

I think one of my colleagues pointed out that in the definition of “healthy and ecologically balanced environment” there is a reference to “essential ecological processes”. That begs the question: what is a non-essential ecological process, and exactly what do we mean by an essential ecological process?

Of course what we're doing here is in effect delegating those decisions and allowing courts to fill in the content of this act. We are in effect abdicating our responsibility as legislators to produce legislation with certainty that every citizen and every resident can understand.

There are other issues along a similar line. The precautionary principle, for example, departs from some very well recognized definitions of precautionary principle as incorporated into the Rio Declaration, which refers to “cost-effective” actions. By removing that key phrase “cost-effective”', we are opening the floodgates, if you will, to pre-emptive strikes against development, which will potentially grind them to a halt, because there will be no reference to acting in a cost-effective way. Any cost will be insufficient in relation to the damage that is referred to.

Under the principle of environmental justice, today we've seen that we are now proceeding in a manner that will permit an asymmetrical application of this act across the country, and we did that with little or no discussion of the implications.

We're out of time, are we?

● (0940)

**The Chair:** We're out of time.

Mr. Scarpaleggia.

**Mr. Francis Scarpaleggia:** I have one point of information.

When we were discussing “entity”, months ago now, what came out of that discussion? Can somebody remind me what came out of that discussion? We were talking about defining “entity” as a Canadian-controlled, -registered or -incorporated body, and then we left it and said we'd come back to it later.

**The Chair:** It was in clause 12. We inserted the words; we amended it so that it was “Canadian-controlled entities”. But then clause 12 was defeated.

**Mr. Francis Scarpaleggia:** Okay. Will it be possible...? I guess it's too late now to.... Would it have been possible, if it were not too late, to have amended the definition of entity to reflect that change; I mean, to bring a similar amendment to...?

**The Chair:** Well, you have to look at the definition that already exists within clause 2, which says, at the top of page 3:

> “entity” means a body corporate, trust, partnership or fund, an unincorporated association or organization that is authorized to carry on business in Canada or that has an office or property in Canada.

**Mr. Francis Scarpaleggia:** That doesn't necessarily mean Canadian-controlled. Would it have been possible to have—

**The Chair:** You can't go back and undo the bill. You have to do it here. And since we didn't change the term “entities” in any way, shape, or form in the bill—actually, we deleted it when deleting clause 12—it would be tough to be admissible.

**Mr. Francis Scarpaleggia:** So we cannot propose an amendment to “entity”. And that's because we tried it later on in the bill. Is that correct?

**The Chair:** Yes.

**Mr. Francis Scarpaleggia:** Okay, but we can propose an amendment in the House.

**The Chair:** Yes, at report stage.

**Mr. Francis Scarpaleggia:** Yes, okay.

My question to Mr. Woodworth is in relation to his statement that the bill somehow encumbers hydroelectric projects or projects that involve the development of provincial natural resources. And I can see his point. But how would he then view the Fisheries Act, with its prohibitions against polluting or damaging waterways, thereby placing some restrictions on provincial natural resource projects? I just don't understand how he's fine or seems to be fine with the Fisheries Act but not with this act when it comes to impacts on provincial natural resource projects. Should I read into this that he thinks the Fisheries Act should be repealed?

**The Chair:** Mr. Woodworth, on a point of order.

**Mr. Stephen Woodworth:** Thank you for that.

We had an interesting debate in the House yesterday, in which the NDP members took the view that closure was a fundamentally non-democratic thing. I challenged them in the House to speak to their colleague on this committee, with a view to reopening the closure issue that the opposition members imposed on this debate.

I've just been placed in the position, Mr. Chair, where Mr. Scarpaleggia has asked a perfectly reasonable question. Not only is it a perfectly reasonable question, but it's also a question that is very important and needs to be understood by this committee. However, as a result of the closure rule imposed by the opposition members on this debate, I cannot answer his question.

It's really too late to have a proper discussion with respect to the rest of this bill. But at the very least, I wonder, Mr. Chair, if you might rule that, since Mr. Scarpaleggia has asked a perfectly reasonable question and has, through you, directed it to me, and it is on such a highly important issue, it be in order for me to be given the time to answer it.

● (0945)

**The Chair:** As you know, Mr. Woodworth, I love your interventions and the well-thought-out points you raised. Although interesting, it's not a point of order.

However, even though your time has expired, anything is possible through unanimous consent. I know Mr. Scarpaleggia had a question for you.

Would the committee consent to allow Mr. Woodworth a chance to respond to the question?

**Mr. Francis Scarpaleggia:** How much time would you give him, Mr. Chair?

**The Chair:** I would ask him to be very succinct and to the point, and he'd have to....

**A voice:** Two minutes?

**Ms. Linda Duncan:** I wanted to speak to the point of order first.

**The Chair:** It's not a point of order.

**Ms. Linda Duncan:** Didn't you just do a point of order? How did he speak?

**The Chair:** I ruled that it wasn't a point of order, though. He made a point, but it wasn't a point of order.

As things happen in the House, we often have people stand to speak on points of order that aren't points of order, which are then ruled as not being points of order.

**Ms. Linda Duncan:** I'd like the deference of the chair to speak to the point before I go.

**The Chair:** You can take the floor to speak. But is there consent to allow Mr. Woodworth a chance to respond to Mr. Scarpaleggia's question?

**A voice:** Absolutely.

**Ms. Linda Duncan:** If I get a chance to speak to it.

**The Chair:** Okay.

You can respond, Mr. Woodworth, but be very brief.

**Mr. Stephen Woodworth:** Thank you very much.

The importance of the issue is indeed that, for example, the Fisheries Act would become engaged, for example, in an undertaking by Hydro-Québec that would alters waterways, and that therefore might potentially cause significant environmental harm. The power the federal government now has is to consider such situations and to enter into agreements with the provinces, which do contemplate some significant environmental harm for good reasons because of the significant benefits of such a project. However, as we've seen throughout this act, the ability of the federal government to enter into such agreements will now be constrained by the courts. The court will have, under clauses 16 through 19, the ability to order that such agreements be set aside if the court determines that the federal government has acted in a way that contravenes the act and that causes significant environmental harm. Consequently, the court will be in a position to order the agreement set aside and the undertaking remediated.

It just takes all of that federal-provincial decision-making out of the hands of the federal government and the provinces and places it in the hands of a judge. This is a highly significant feature of this act, one which in my view is extremely unfortunate and which justifies not proceeding with this act.

Thank you.

**The Chair:** Mr. Scarpaleggia, do you have any follow-up?

**Mr. Francis Scarpaleggia:** Mr. Woodworth mentioned remediation. In fact, under the Fisheries Act there has to be remediation, does there not, if a waterway is damaged?

**Mr. Stephen Woodworth:** But is that according to a judge or to the government? That's the issue.

I'm sorry, Mr. Chair, for interrupting, but again Mr. Scarpaleggia is following the right chain of thought. The issue is in whose jurisdiction it is and in whose decision-making power it is to—

**Ms. Linda Duncan:** Mr. Chair, on a point of order, I appreciate Mr. Woodworth's interpretation of the law, but he is only one member of this committee, and perhaps other people on this committee would also like to discuss this. I'm finding this is getting a little out of control.

**The Chair:** I have you in sequence.

**Mr. Stephen Woodworth:** I do apologize. I recognize I have interjected, but I just wanted to say that the issue is that the federal government's ability to determine remedial measures will now be impaired and subject to the decisions of the courts in a way that will not allow the same degree of consensus to develop that federal-provincial negotiations now permit. In court we operate under what's sometimes referred to as the “king of the hill” theory, whereby somebody wins and somebody loses. It's an entirely different process in federal-provincial negotiations.

● (0950)

**The Chair:** Ms. Duncan.

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

Mr. Chair, I just wanted to add at the beginning that in no way do I see a vote on this committee on time that we are going to allot to the particular matter we're reviewing to be a vote on closure. I found the comments on our vote on the many matters before us and how we might resolve that and move forward, to call that closing down debate.... Frankly, I just had to speak to that. I don't see the similarity at all.

We all had a chance to vote on it: the majority voted to hopefully very soon, hopefully today, move on to other matters.

I just wanted to speak to this argument that this bill somehow opens up the opportunity for judicial review that has never existed, would not exist otherwise, which is, of course, frankly absurd. There have been countless cases brought before the courts, countless determinations to allow standing, and to rule in many cases that the government had to go back and revisit. Judicial review goes on all the time in this country. There are cases proceeding right now on the interpretation of responsibilities. In some cases federal laws impose mandatory duties—for example, under the Species at Risk Act—and there has been a long series of cases.

The law is not intended to be carved in stone. Most of the amendments that come forward, from my experience, are brought forward at the request of operators and owners of facilities. Permits and approvals are opened up regularly. In fact, the law provides for opportunities for proponents, operators and owners, to request the opening up of operating approvals.

There are provisions in law, as Mr. Scarpaleggia has pointed out. For example, the Fisheries Act has an absolute prohibition on impacts on fish and fish habitat and man's use of fish, and that can be constrained by action of the government. This is a matter of consternation for about 40 years that the government hasn't been using those particular tools to constrain what that means and to provide certainty. In fact, it's the other way around: it has usually impacted communities that have been asking for this constraint and where there are actually regulations and authorizations.

So there are two sides of the fence. I think the public just as much wants legal certainty as the operator of a facility. But the government itself is revisiting what standards are—for example, control of greenhouse gases—and has announced imminent regulations coming in place. It regularly reviews the regulation of toxins, regularly adds new substances to that list of regulated toxins. So of course industry is at risk, but the government usually operates in a reasonable way to give due notice, give opportunity for input on all sides.

The whole point of this bill is that in fact many impacted communities are not happy that there would be deliberations behind closed doors simply between two levels of government. They would like to be heard. They would like to have their rights and interests considered. Mr. Sopuck had raised the issue about rural communities. For 40 years I've worked with rural communities and first nation and Métis governments that are concerned and regularly go to court because they feel they're not being consulted.

I also wanted to add the point that in fact we did try to engage first nations. The Assembly of First Nations was contacted and chose, for whatever reason—perhaps the time didn't work.... And I, myself, contacted a number of first nations.

[*Translation*]

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

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

I understand Mr. Woodworth's concern about the scope of the bill, particularly the part about judicial review.

We need to keep in mind that we were initially also concerned about the lack of guidelines in this bill. That is why—and correct me if I'm wrong—Mr. Woodworth was concerned about clause 16 of the bill.

If I'm not mistaken, the committee adopted amendment BQ-6, which stipulated that we are eliminating subclause 4 of clause 16, which states, "It is not a defence to an environmental protection action under subsection (1) [of clause 16] that the Government of Canada has the power to authorize an activity that may result in significant environmental harm."

If I'm not mistaken, amendment BQ-6 was adopted, Mr. Chair.

So it seems to me that this should be a strong argument that would give Mr. Woodworth some guarantee about the scope of the bill. I think that we have given the guidelines required in this bill so that it can wend its way to the House of Commons—at least I hope it will—and reach the report stage.

● (0955)

[*English*]

**The Chair:** Merci.

Seeing no other hands, we are voting on clause 2.

(Clause 2 as amended agreed to: yeas: 6; nays: 5)

**The Chair:** We now go to the preamble, and we have NDP-1.

Ms. Duncan, do you wish to move it?

**Ms. Linda Duncan:** I am advised that it's not allowable, so I will not move it.

**The Chair:** It is a substantive change. It is inadmissible. Just so everyone knows, I'll read something from page 770 of O'Brien and Bosc, chapter 16:

> In the case of a bill that has been referred to a committee after second reading, a substantive amendment to the preamble is admissible only if it is rendered necessary by amendments made to the bill. In addition, an amendment to the preamble is in order when its purpose is to clarify it or to ensure the uniformity of the English and French versions.

We never dealt with sustainable development in any way, shape, or form in the amendments to the bill, so it is inadmissible.

So we're talking about the preamble. All the amendments have now been dealt with. We are on to the preamble. Is there any discussion on the preamble?

Mr. Woodworth.

**Mr. Stephen Woodworth:** I agree with Ms. Duncan's reasoning that her amendment would be inadmissible, although I regret that the act as a whole, including the preamble, does not enshrine the principle of sustainable development as it is enshrined elsewhere in federal law.

The act does make reference to sustainable development, but it does not actually flesh out what is meant by "sustainable development" in a way that would allow for proper consideration of social and economic considerations and needs. The definition refers only to development that meets the needs of the present and does not follow the usual formulation.

I think the witness from the chamber of commerce was correct to say that what should really be in the preamble of this act—I'm paraphrasing him—is that years of development of statutory and regulatory and environmental controls are now going to be bypassed by way of applications to the courts.

Even the removal of subclause 16(4) won't prevent this. Once we open the door to court action, the courts will simply imply the same provision as was found in subclause 16(4). I accept Ms. Duncan's opinion on this point. Introducing all these new lawsuits will vastly expand the powers of courts and greatly reduce the power of the legislature to deal with these matters. It will create uncertainty for developers, which can only have deleterious effect.

There is no good reason for this. We've heard several times that this act really doesn't change what's already occurring. I say that if that's the case, why do we want to pass it and introduce such uncertainty?

Those are my comments on the preamble. Thank you.

● (1000)

**The Chair:** Mr. Sopuck.

**Mr. Robert Sopuck (Dauphin—Swan River—Marquette, CPC):** Having judges decide what a healthy and ecologically balanced environment is will be extremely difficult, because the concept itself is somewhat meaningless. There's no such thing as balance of nature.

The Ottawa River, which flows through this town, is that in balance or is it not? It has dams; it has all kinds of human development around it. Balance is clearly in the eye of the beholder.

To have the essence of the bill, which is the right to a healthy and balanced environment, not be clearly defined simply because it cannot be defined, which would be the basis of the bill, makes the whole thing problematic.

I will reiterate and I will defend the point that it's rural communities that will bear the brunt of this. I would remind Ms. Duncan that she doesn't represent a rural constituency. I do. My constituents are involved with logging, mining, agriculture, trapping, and forestry. When one looks at the environmental issues in this country and the environmental fights, the targets of all environmental activism, almost bar none, are rural resource industries. It's rural communities that will bear the brunt of this particular bill, and I stand by that.

**The Chair:** Mr. Warawa.

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

I wanted to summarize my opposition to the bill.

The Osler analysis of Bill C-469 was that it "encroaches on areas of provincial environmental jurisdiction"; it "does not allow for the social, economic, and environmental pillars of sustainable development to be balanced appropriately"; it overlaps with aspects of existing legislation; and it removes numerous safeguards.

We heard from the witnesses, and they said that it was not good policy for Canada. They believed it was fundamentally flawed and that it could not be amended into good policy.

The Canadian Chamber of Commerce said that the lack of legal clarity will chill any investment consideration, that a fundamental precondition of commercial development, wealth creation, and economic acceleration is..... They said that it had completely failed the test of being a good bill and they don't support it.

We've heard there's been no aboriginal consultation on this. We've heard now that it creates classes of people that the bill will apply to; it limits judicial discretion; it's anti-sustainable-development; it creates American-style litigation; it duplicates, creates red tape, and kills jobs.

So it is not good for Canadians. It's not good for the environment. It is good for special interest groups.

**The Chair:** Thank you.

[*Translation*]

Mr. Bigras, it's your turn.

**Mr. Bernard Bigras:** Thank you, Mr. Chair. I would like to comment on what Mr. Sopuck and Mr. Warawa said.

Mr. Sopuck just said that industries with a significant presence in the rural regions were the first victims of environmental legislation. The opposite is happening. Environmental laws exist to protect the resources and ensure that the resource regions can survive and that the industries can continue to develop. The day we no longer have resources, companies will close their doors. That's the reality.

Here's another completely outmoded vision of development that makes people think that environmental legislation is an economic constraint. But it isn't. Environmental legislation exists to protect the resources and ensure that economic sectors, such as the forestry sector, can continue to develop. So I am opposed to this type of thinking. It isn't the intent of the bill or the meaning of sustainable development. I think that it involves a completely outmoded vision of development.

● (1005)

[*English*]

**The Chair:** Ms. Murray.

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

I'd just like to comment that the social compact in Canada is very clear. The exploitation of resources for the common good and for the creation of jobs and wealth is important. But the compact also includes the protection of an ever healthy and ecologically balanced environment.

Fifty years ago, in communities by the Fraser River, it was normal for pickup trucks to pick up garbage and just load it into the Fraser River to get rid of it. We don't do it that way any more. This is another step in the acknowledgment of this important social compact. We can exploit resources and impact our environment, but we need to do it in a carefully balanced way so that we have a sustainable, healthy ecology.

This is an important statement of that social compact in Canada. It's one that gives citizens a greater sense of involvement and ownership and responsibility and rights around the environment and the impacts on the environment. My experience in British Columbia, working with fish and wildlife groups for almost three years in a very constructive and direct way, is that tens of thousands of residents of rural communities in British Columbia—and I know it's the same across Canada—have a huge investment in maintaining wildlife habitat, maintaining wilderness, and maintaining the capability of the environment to support the very kinds of things the members opposite are talking about: hunting, trapping, fishing, wilderness guiding, and so on. Those are the very people who will also be enabled and empowered and involved in ensuring that the social compact is carried out in a balanced and effective way in Canada.

So I'm supportive of this law as an expression of that evolution of our understanding of the need to have a balanced and ecologically healthy environment for all Canadians and residents.

**The Chair:** We'll go to Mr. Sopuck.

**Mr. Robert Sopuck:** Nobody argues with the grand sentiments expressed by Ms. Murray. I certainly believe them as well. A clean and healthy environment is what we all want. What we're discussing is the means for getting there. And those of us on this side have a very different view from those on the other side.

In terms of rural Canada, I should make the point that those of us who actually live out there believe in stewardship and management of the environment, realizing that looking after the resources, such as our forests and our soil, are critical to the health and well-being of our communities. The key difference between those of us who live out there and those who don't is that we understand the need to use and manage the environment. It is the use and management of the environment itself that is more often than not the target of these activists.

Thank you.

**The Chair:** We'll go to Mr. Scarpaleggia.

**Mr. Francis Scarpaleggia:** I just would like to make one point. Mr. Sopuck was talking about the employment effects of environmental action, and Mr. Bigras mentioned that we need to protect the resources to protect the economy in rural areas. I'm wondering if Mr. Sopuck doesn't see the link between environmental action and job creation, whether it be in urban centres or rural centres, where, for example, a firm might have to invest more resources to conform with an environmental regulation.

For example, if it became illegal for mining companies to dump their tailings in lakes, thereby killing freshwater lakes, and instead they had to build proper impoundment areas, one would think that maybe that would contribute to employment in the area in the construction trades, for example.

That's the whole heart of sustainable development, as we understand it, which is that good environmental policy is good economic policy.

**The Chair:** Go ahead, Ms. Duncan.

**Ms. Linda Duncan:** I find it interesting that from the other side of the table we keep hearing that this bill is all about litigating, that it's all about going to court. The Conservative members of this committee, when regrettably I arrived a few minutes late, voted down clause 12. We simply gave residents of Canada, Canadians, the right to participate. In fact, it would have imposed the duty of the government to ensure opportunities by Canadians for effective, informed, and timely participation in decision-making related to policies and law development.

From my perspective, that's one of the most important parts of this bill. The whole point is that communities have been frustrated that they have been cut out of decision-making at the front end and on too many occasions are then forced to have to resort to the courts to try to redress an impact that probably could have been resolved if they'd simply been at the table and been able to dialogue an alternative.

There are good examples of mechanisms put in place in the province I come from, Alberta, that former Premier Ralph Klein put in place: the Clean Air Strategic Alliance, which is a table to discuss decision-making on air pollution management, and later, a round table on water, the Alberta Water Council. Those are exactly the kinds of mechanisms that would be really useful at the federal level. That provision could have allowed for some innovation and going back to that kind of process, which frankly we used to have at the federal level and which has now disappeared.

So yes, Mr. Sopuck, I agree, grand sentiments aren't enough. The public wants the right to be at the table, at the advanced stages, in decision-making on developments that are under the total or partial authorization of the federal government. They want an opportunity to have their voice heard, whether they're for or against a development or whether they want to simply make recommendations for a different site, for different conditions on the development. Even when a decision was made at the time that may have been considering all interests, it may well be that something was not properly considered, something wasn't added.

There has been case after case where communities and first nations have gone to the courts and have won that ruling, saying that the government has not fulfilled its duty under the Environmental Assessment Act, the Species at Risk Act, or the Environmental Protection Act, and the courts have said the government must go back and take a second look at this and assert its responsibilities.

That's the whole point of this bill: to do the front-end work, to let people who are concerned have a seat at the table. Let their voices be heard, to seriously consider the other side of the scale. So if we truly believe in balancing environmental protection and economic development, we need to make sure we have every mechanism in place to make sure the voices and inputs are heard. It's only when that fails completely that regrettably people have to resort to the courts.

I believe in the division of responsibilities between the administration and the courts. That's what the foundation of a democracy is. I fully respect the appointments made to our courts. I fully respect the careful, thoughtful decisions they make on behalf of the citizens of Canada.

● (1010)

**The Chair:** Mr. Calkins, you have just over a minute.

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

I just wanted to respond to what Mr. Scarpaleggia said in his comment, that "good environmental policy is also good economic policy". I agree with that notion, and the concept that he brought up in his particular example dealt with mines and the tailings ponds created during mineral exploration.

If he were to propose a motion for this committee to study a way to make recommendations to the government, to mitigate some of those concerns through either the Canadian Environmental Protection Act or the Fisheries Act, I would wholeheartedly welcome that. If he were planning to propose legislative changes to mitigate this or the adoption of new regulations along with any other investments that the Government of Canada may make so that we can clean up our environment, I would agree with Mr. Scarpaleggia.

The problem is that Mr. Scarpaleggia's premise says that good environmental legislation is also good economic legislation. I would disagree with him that this is good environmental legislation. Therefore, it's not going to be good economic legislation, and that's the premise we're operating from on this side, based on the witness accountability we had.

Everybody around this table shares a common concern for the health and well-being of our environment. That goes without saying. I don't believe this legislation is going to accomplish what Mr. Scarpaleggia's noble goal is, and I would be more than happy to work with him in a constructive manner in the future to address some of these concerns, because they are concerns shared by most Canadians.

● (1015)

**The Chair:** Monsieur Ouellet.

[*Translation*]

**Mr. Christian Ouellet (Brome—Missisquoi, BQ):** Mr. Chair, I haven't spoken much during this debate because I felt that the government wanted to take on the fundamental goal of all legislation, which is to educate and provide a morality and values to the population as a whole. Even the legislation that prohibits theft is not made first with courts in mind. Legislation is made to tell people that they must not steal and that there will be consequences if they do.

At all stages of this bill, we have been told about what might happen in court and only about that. The statements are unbalanced. Rather than talk about the consequences of this bill on the entire population, we talked about the impact on Canada's legal apparatus. The discussions have focused only on that.

This is why I stepped out of the debate. I am not a lawyer and I do not understand the bill that way. I find it unfortunate that, for a government bill, the government absolutely wants to take away the citizens' right to speak and be the only entity to have a say. The debate is focused only on the legal aspect. I deplore working like this in committee.

[*English*]

**The Chair:** Are there other comments?

I have one question for you, Ms. Duncan. This is your bill. If there were an organization—say friends of the forest or something like that—that decided that logging operations were removing trees that are a carbon sink and it would cause environmental harm to harvest those trees, they would be entitled to bring forward a legal action against those organizations and the governments involved in issuing those permits. What do you think the outcome of the legal case would be with your bill?

**Ms. Linda Duncan:** Thanks for the question. It's a good question, Mr. Chair.

I can't pre-determine, because I can't anticipate that anybody would bring a case that simple. They would still be required to bring forward the case and make their case, and they're going to be seeking specific remedies. It will also be within the jurisdiction of the court within the confines of those remedies. Because provincial governments are the ones that authorize—the forests are owned by the provinces—it probably would not be within the ambit of the federal government to shut down that operation, unless there was some pre-existing federal law that required some kind of activity be undertaken; for example, if it was the last wren in the boreal forest and the last of the woodland caribou. It may be that they bring the action and they also enjoin the Canadian Environmental Assessment Act and say that there should have been a cumulative impact assessment.

You'd have to look at the nature of why they brought the case and what would happen. In that case, it may well be.... My guess is that the first thing they would do is judicial review, probably. I'm going on the basis of what the majority of cases have been in Canada. The vast majority have simply been judicial review by first nations, environmental organizations, community associations, fish and game associations, and so forth, or nature organizations, to require the government to deliver its responsibilities. So they'd want an interpretation of the law and then they'd want the government to deliver those if the court held that is the correct interpretation of the law.

It would depend on the extent. I can't say what the determination would be. I don't think the court would impose a duty that it didn't think was in the confines of the established law to begin with. I don't believe that, but then I don't know what would happen. You have to look in terms.... Remember that this act is simply on the federal government within the bounds of the federal jurisdiction. It's probably more likely.... I can't think of what kind of action that would be.

From my experience, I would say that the actions would be constrained. First of all, you have to find a lawyer who's willing to bring the case. My experience with lawyers is that it's hard to get them to bring a case. Organizations like Ecojustice prefer to bring cases that are winnable. They're also expensive to prepare and put together. So I can't say specifically what would happen in that kind of case. Somebody might do that, but from my experience I can't think of anybody who would bring a wide-open case like that.

You're going to want to have an experienced lawyer who understands the constraints of federal jurisdiction and the bounds of what the court would probably rule. As I said earlier, I think the most important part of this bill is the front end. It was with deep regret to me that that provision was struck down.

● (1020)

**The Chair:** Thank you.

I see no other hands. The Conservatives don't have any time left.

**Mr. Mark Warawa:** How did that happen?

**The Chair:** We'll move on. Shall the preamble carry?

(Preamble agreed to: yeas 6, nays 5)

**The Chair:** We're on clause 1, the short title. Are there any comments?

(Clause 1 agreed to: yeas 6, nays 5)

**The Chair:** Do we have any comments on the front page, the title?

(Title agreed to: yeas 6, nays 5)

**The Chair:** We're now on the bill as amended. Do we have any comments?

Mr. Woodworth.

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

I would like to try to put all of our discussions into perspective.

We haven't really engaged in much consensus on this bill, but let me begin by saying that I hope there is a consensus that this bill is very revolutionary, that it does introduce into our law a number of new lawsuits. It introduces into our law any number of new concepts: for example, the concept of intergenerational equity, the concept of a principle of environmental justice, even in a certain way the concept of public trust, although it's not entirely new, certainly, given a different twist in this legislation from has been in the law previously.

So this will be a revolutionary new way of effecting environmental policy in Canada. And I don't say that to be complimentary to the mover of the bill, but just to point out a fact that, goodness gracious, we are enacting the first substantive amendment to the Canadian Bill of Rights. After 50 years of that iconic legislation being a benchmark in Canada, this bill is going to include a substantive amendment to it. So I hope we can all agree that this is a revolutionary change to Canadian law and environmental policy.

● (1025)

[*Translation*]

Some people are saying bravo.

[*English*]

I ask why we are doing this. What is our purpose? What need are we trying to address with this revolutionary overhaul of Canadian environmental law and policy? It's been stated by Ms. Duncan that, well, judicial review already occurs. Well, in one way she's right, but in another way she's overlooking what this bill does to judicial review.

Certainly judicial review already occurs, but it occurs in a balanced way, subject to a variety of checks and balances—I think someone used that phrase earlier—that are not found in this act. Indeed, our law already places a high premium on protecting the environment and it already gives citizens the right to participate in environmental policy. In fact, it already does a number of things that this bill purports to do.

In fact, in my experience the only citizens whose right to speak has been cut off, to refer to Mr. Ouellet's point earlier, are those who are opponents of this bill, because we have been prevented from speaking. We have been refused in this committee to hear additional witnesses. The opponents of this bill are the ones whose right to speak has been cut off.

In fact, our law in the Canadian Environmental Protection Act, for example, already allows a lawsuit to proceed in relation to environmental contraventions; however, it's very cautious and circumscribed, right? And among other things, it first requires the government an opportunity to investigate and resolve the issue in the same way that the Ontario Environmental Bill of Rights does.

So what's wrong with that? What complaints have we heard? Well, we've heard that it doesn't allow enough lawsuits. It discourages lawsuits. We've also heard from the very same witness that it's a good thing for the government to try to get in in advance of a lawsuit and mediate and investigate and resolve issues. But that very sensible circumscription is omitted from this bill.

In other ways this bill omits sensible circumscriptions. For example, the notion that to have standing one should have a direct interest in the matter that is being litigated has been tossed out by this bill. Anyone, no matter where they live or what interest they may have in a legal sense, is entitled to litigate under this bill.

This bill duplicates things that are already being done. We already have a petitions process that will look after a request for investigation. We already have the justice department that scrutinizes bills to ensure that they comply with the charter. Now the Office of the Commissioner of the Environment and Sustainable Development will also be doing that.

So I would characterize this bill as one that overreaches. If we were to go back and examine what the real complaints are here, is the whistleblower protection that we've enacted into Canadian law really inadequate? Does it leave out an important sector that should receive whistleblower protection? Well, if we were to examine that, as a responsible committee would, we might come up with some reasonable, implementable, and non-duplicative way of amending the existing law to remedy such a deficiency. That's the way a proper legislature should proceed; that's the way a proper legislative committee should proceed.

But simply papering over all of the existing processes that are intended to allow everyone's interest to be addressed and to impose overreaching and revolutionary solutions such as this, I have to ask, why are we doing it?

As Ms. Duncan so aptly put it in response to a question from the chair, even she can't predetermine what the results of a court challenge under this act will be.

● (1030)

In fact, farmers among us would say that if we adopt this bill, we're buying a pig in a poke. We really don't know what the results will be and where the courts will take this. We only know that we are transferring large areas of jurisdiction from cautious governmental agreement and regulation into the hands of the courts. Most problematically, in paragraph 19(1)(f), the courts will be empowered to "order the defendant to take specified preventative measures" if a judge determines that the government, i.e., the defendant, has somehow failed in its as yet uncircumscribed obligation to act as trustee of the environment. This is a wide-open door, and it behoves us not to enact revolutionary legislation of that nature unless there is a clear and pressing need to do so.

While there may be flaws in our existing environmental regime, there is no overall deficiency. We've been on the right track for the last 20 to 30 years. We've been doing good things. We should continue this course in a democratic fashion that hears from all stakeholders and arbitrates among them, rather than pushing it all over to the courts, where things are decided on a "king of the hill" basis, either you've won or you've lost, and there's no room for mediation or compromise. Judges will decide on the basis of winners and losers.

I have to remind committee members that we have to ask ourselves why we are doing this. What is the need we're trying to meet? Why are we overreaching in this fashion?

Quite frankly, none of the evidence suggests any reason, any need that deserves to be met in this revolutionary fashion. So I plead with members to take a step back and not plunge us into this kind of an exercise.

**The Chair:** Thank you.

Are there comments?

Shall the bill as amended carry?

(Bill C-469 as amended agreed to: yeas 6; nays 5)

**The Chair:** Shall the chair report the bill, as amended, back to the House?

**Some hon. members:** No.

**The Chair:** All in favour?

**An hon. member:** Recorded vote.

**The Chair:** Recorded vote.

(Motion agreed to: yeas 6; nays 5)

**The Chair:** Finally, shall the committee order a reprint of the bill as amended for the use of the House at report stage?

**Some hon. members:** Agreed.

**The Chair:** We're going to go in camera so we can discuss Ms. Duncan's motion, so we'll suspend for a few minutes.

[*Proceedings continue in camera*]

**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**