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Chair

Mr. Dean Allison

Standing Committee on Foreign Affairs and International Development

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● (1110)

[*English*]

The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)): Pursuant to the order of reference of Wednesday, March 3, 2010, Bill C-300, an act respecting corporate accountability for the activities of mining, oil, or gas in developing countries, we will commence. This is meeting number 22.

I want to thank our witnesses for being here today. We have Audrey Macklin, a professor of the faculty of law at the University of Toronto. Thank you for being here today.

We've also got Thomas Shrake, chief executive officer and president of Pacific Rim Mining Corporation. Thomas, thank you for being here today.

Before we get started, I have Mr. McKay.

Hon. John McKay (Scarborough—Guildwood, Lib.): Chair, I've submitted a motion that we use the second hour of today's proceedings for clause-by-clause. When we initially went through this last week, we were given the impression that there was literally quite a number of witnesses who wanted to come before the committee to talk about Bill C-300. The result is what you see: two witnesses.

We have a drop-dead date of June 11 on this bill. I think it would behove the committee to at least attempt a clause-by-clause for the second hour of this committee hearing, so that we can at least make an effort to introduce the amendments, which in my view strengthen the bill and make it possibly more acceptable to the government members. I'm not quite sure that it does, but nevertheless, it is a step in some direction.

I was just wondering whether I could seek to have you solicit the opinion of the honourable members as to whether we could use the second hour for clause-by-clause.

The Chair: Mr. Abbott.

Hon. Jim Abbott (Kootenay—Columbia, CPC): Mr. Chairman, I believe that our clerk worked diligently to get the witnesses who did want to present here this morning. Due to time differences, a full 12-hour time shift between where they presently reside and where we are, it turned out to be insufficient time for us to make that happen.

If I recall correctly, it was Mr. McKay who, when we had witnesses previously, made a very compelling argument that when witnesses have had things said about themselves, their company, and events going on in their country, it's very important that they have the opportunity to at least have a counterbalance to the testimony that has been given. Regrettably, because of the time differences, that wasn't possible. As a consequence of those efforts, however, and in the hope that such was going to be happening, we have not had an opportunity to make any preparations whatsoever for clause-by-clause. Therefore, we would not be prepared to enter into clause-by-clause in the second hour of this meeting.

The Chair: Okay. It sounds to me like there's going to be more discussion on this. Could we defer this discussion until after the witnesses? You've got a notice of motion, John, so there's going to be some more discussion when they're done.

Hon. John McKay: What I'm concerned about is that it does affect how we proceed today, Chair, because if in fact the decision is to turn down the motion, then what do we do? Do we take the second hour and continue on with the witnesses, or do we effectively adjourn and lose the hour?

The Chair: Well, my thought is that since we have two witnesses here, why don't we hear from the witnesses and then come back to this motion right away, as soon as we've heard them? I'm sure we're not going to need more than an hour.

You've got a notice here, and we can discuss that right away. I know I've got a bunch of names on the list. Can we proceed in that direction? Okay, we'll deal with this soon enough.

We'll do what we do normally. We'll start with Mr. Shrake.

Mr. James Lunney (Nanaimo—Alberni, CPC): On a point of order, Mr. Chairman, could you clarify if we're going to do one round of questions?

The Chair: Yes, we are. As I said, some witnesses have taken the time to be here. We'll deal with the witnesses, and then we'll deal with the motion.

The floor is yours for ten minutes, sir. What we'll do is hear from both of you, and then we'll go around the room for hopefully a couple of quick rounds of questions.

Welcome, and thank you for taking the time to be here. The floor is yours.

Mr. Thomas Shrake (Chief Executive Officer and President, Pacific Rim Mining Corp.): Thank you.

Members of the committee, thank you for the invitation to appear.

I'm the president and CEO of Pacific Rim Mining Corporation. My purpose in coming here today is to set the record straight on a very disturbing and fictitious allegation made here in a prior committee meeting by Mr. Richard Steiner, who has made similar allegations elsewhere. I will document our experiences to demonstrate to you why the bill you are considering simply will not work.

Pacific Rim began a new business initiative in 2001. In this initiative, management sought to build a cutting-edge company that set the highest standards for environmental protection and social responsibility. Our strategy is to explore and develop only a certain type of gold deposit called low sulphidation epithermal deposits. These are among the most environmentally clean metal deposits on the planet. Our El Dorado deposit in El Salvador is such a deposit.

El Dorado currently has a resource of 1.4 million gold ounces, a resource that was growing steadily until we were forced to discontinue our work as a result of a program of systematic expropriation by the government of El Salvador. In December 2006, former President Saca ordered the Minister of Economy and MARN, the environmental and natural resources ministry, to stop granting concessions and environmental permits respectively. Slowly the existing concessions are falling off the books, using an obviously planned strategy. With no environmental permit, there's no way a company can fulfill its work program and maintain its mineral rights. Eventually they expire. Every mining company in El Salvador has been damaged.

El Salvador has a relatively new mining law, a competitive investment law, and a new environmental law. We have obeyed and/or exceeded the requirements of all these laws. We entered into El Salvador at the invitation of the highest levels of government. Our $80 million investment created an asset with a market value of hundreds of millions of dollars. Today our market cap is $20 million. Obviously our company has been severely damaged.

We submitted an application for an exploitation concession in late 2004, almost six years ago. Included in that application was a feasibility study for an underground mine, which sets new precedents for environmental protection in the Americas. In our numerous community consultations, we determined that water was a major concern for the people of Cabañas. With this knowledge, we designed a system to collect water in the rainy season for use during the dry season, making extensive use of recycling. This runoff would otherwise flow into the Pacific Ocean.

Mr. Steiner states that the El Dorado impacts include competition for surface water resources. In reality, we will increase the availability of surface waters in the dry season when they are most needed, as we discharge cleaned waters. Water that will flow into this reservoir has been sampled and analyzed for years. It is currently polluted with bacteria, fertilizers, defoliates, pesticides, and detergents. The water leaving the operation will be cleaner than the water that arrived.

The cyanide content of the tailings water is less than the cyanide content of the average cigarette smoker's blood, in sharp contrast to Mr. Steiner's claim that the mine impact includes water contamination from cyanide. The ores in our El Dorado deposits are alkaline. Mr. Steiner incorrectly states that there will be acid mine drainage from this mine site. The waters from the historic workings are alkaline, and our extensive chemical testing demonstrates the lack of acid potential, as is typical with low-sulphidation deposits. The El Dorado ores have a very low accessory metal content. Mr. Steiner incorrectly claims that El Dorado impacts will include contamination by heavy metals.

As exemplified by Mr. Steiner's misinformation, grossly exaggerated statements, if not outright lies, are commonly used in the opposition to extractive industries by certain NGOs—not all, but certain NGOs. These rogue NGOs use the environmental argument as a tool to increase the political cost of a mining decision. Many are ideological groups who oppose foreign investment in developing countries, and their opposition is not limited to mining.

Worst of all, Mr. Steiner testified that Pacific Rim is involved in the murder of anti-mining activists. This accusation is simply outrageous. It is contrary to everything we believe and practise. There are suspects in jail awaiting trial for these crimes, and there is no known connection between the criminals and our company. A three-page investigative piece in the local paper concluded that there was no connection. These allegations are completely unfounded, but through repetition they have gained traction. They have served their designated purpose of increasing the political cost of the mine permit and damaged the good reputation of the company.

● (1115)

Mr. Steiner has made the same murder accusations in *El Salvador—Gold, Guns, and Choice:*, a report he wrote while being hosted by a local Salvadorian NGO, ADES. ADES is a rogue NGO with a long and disturbing history of violence against our company. They are also the originators of these groundless murder allegations. In fairness to Mr. Steiner, we have no knowledge that he was aware of ADES's violent history, but he did rely on their testimony in his reports.

We attempted to mediate this violence when the first signs of it appeared in 2006. ADES was passing out flyers that read “Death to the Canadian miners”. We met with a well-known American NGO, who is a primary source of funding for ADES activities. We suggested that perhaps we could work jointly to look at a way to improve the social and environmental quality of our project. The response was a cool, “Do you know who we are?”

We then turned to the flyer and we expressed our hope that violence would not be used in the debate. Unfortunately, violence has become a commonly deployed tool. I'll provide a few examples of this violence, almost all of which has occurred not at El Dorado, our development project, but at our Santa Rita exploration project, whose remoteness makes it an easy target. On one occasion, a local water quality NGO and a company environmental scientist were fired upon while sampling a spring.

We sponsor an eye care NGO for the extremely poor. While providing a free clinic, the eye doctor and his team were threatened and forced to leave the community without providing the free eye care. Company employees were held against their will, while others fled on foot in panic.

On two occasions while drilling on our private property at Santa Rita, we were invaded by armed gunmen, some with assault rifles, some hooded, and almost all of them from well outside the community. Mobs damaged the property as well as hacked down the trees we planted as part of our reforestation effort that now totals 50,000 trees. ADES was responsible for planning and executing all of these violent attacks.

We anticipated confrontation early on and continued to meet with our workers on a regular basis to reinforce our policy that confrontation of any kind is strictly forbidden: if you confront, we lose. Our people are instructed to behave like Mahatma Gandhi. They may speak to the issues, but always in a passive manner. At none of these violent incidents have company employees retaliated or confronted their aggressors.

NGOs play a valuable role serving an important balance in the investment and development process. We support the right of NGOs to oppose, to demonstrate, and to lobby. Unfortunately, there are bad actors who spread fabricated lies and operate under the credo of the end justifies the means. There is little in the way of checks and balances for NGOs. They are beyond reproach, and rogue NGOs take full advantage.

Let's not forget who else has been victimized. Cabañas is the single poorest department in El Salvador. Two years ago we reduced our activities, and 200 direct exploration jobs were lost, as well as hundreds of indirect jobs. Our polls clearly show that the vast majority of the people in the area of the El Dorado mine favour the mine. In August 2008 only 25% of Salvadorians were opposed to mining, in general.

El Salvador has been hard hit by the global crisis. U.S.-based foreign investment has plummeted by 60%. Unemployment approaches 40%. Those living in extreme poverty constitute 40% of the population. Our company would be the single greatest taxpayer in the country. Not only would our operation provide desperately needed employment; it would set the bar high for environmental standards for future mine development. Additionally, it would send the message to future foreign investors from all economic sectors that El Salvador obeys the rule of law and is open for business.

Our company has been damaged beyond repair by rogue NGOs. Our mine has been made to appear as an environmental disaster when it is the opposite, a model for environmental protection. We've been cast as demons, responsible for violence, when in reality we are the victims of the violence. There is no place for violence in the mining debate.

To use our company as an example of why this bill is needed turns the truth on its head. The truth is that we attempted to raise the bar for environmental and social responsibility, but we have been victimized by a planned strategy of misinformation and intimidation. The bill before you will create a gridlock. It will add further delay to the already lengthy development process. The business will suffer and the consumers will pay.

Thank you.

● (1120)

The Chair: Thank you, Mr. Shrake, for being here.

Now we're going to move to Ms. Macklin. Thank you for being here. The floor is yours for ten minutes.

Professor Audrey Macklin (Faculty of Law, University of Toronto, As an Individual): Thank you.

I've been asked to comment more broadly on Bill C-300, so I will not be responding directly to Mr. Shrake's remarks.

I was a member of the national roundtables on corporate social responsibility and the Canadian extractive industry in developing countries. I was also a member of the Harker mission in 1999 that went to Sudan to investigate allegations with respect to Talisman Energy in that country.

What I want to say today about Bill C-300 is fairly straightforward. Let me begin with this point. I think we would all agree that the Canadian government has a legitimate interest in how its money is spent—that is to say, how its financial support, or investments, or tax incentives are used by those who are the recipients. This is true whether that money goes to support domestic or international projects, or whether the recipient of government funding is a non-governmental organization that is part of civil society or a corporation.

In other words, the Government of Canada, I hope you will all agree, has an interest in accountability for how its money is spent, and Bill C-300, in short, is nothing more or less than a mechanism for accountability. That is to say, the government supplies export credit and investment and undertakes promotional activities for Canadian corporations in their activities abroad. Bill C-300 is, I think, directed at ensuring that the financial support that the government provides is not spent on conduct that would run contrary to Canada's public policy commitments or international human rights obligations.

It seems to me that in the government expenditure of funds for overseas projects, whether that's through CIDA or the IDRC, there too the government has a legitimate interest in ensuring that the money it provides is used for purposes that are consistent with Canada's own obligations and its public policy with respect to, say, international development in the case of CIDA.

So, really, Bill C-300 is no more or less than simply a mechanism for holding those recipients of government financing—corporations —accountable for how they use government money, and a way of saying, "We, the government, the taxpayers of Canada, don't want to spend our money on activities or conduct that we think are inimical to Canadian public policy or our international human rights obligations."

I hope that by saying that, I've made one point very clear: in no way is this bill about extraterritoriality, any more than Canada acts extraterritorially in deciding whether CIDA is going to fund some project in another country. We don't say that's an act of extraterritorial regulation, and neither is this; this is about how the government is going to spend its money. No company, no corporation, has a legal entitlement to that money, and there's nothing wrong with holding it accountable for how that money is spent.

Now, what does this bill suggest or indicate will be the criteria for accountability? Well, it indicates a couple of codes of conduct, most notably, I think, the voluntary principles on security and human rights and the International Finance Corporation's policy on social and environmental sustainability, performance standards on social and environmental sustainability, etc.

These are codes of conduct that many companies have voluntarily signed on to—though not all companies. These are also standards or principles that the International Finance Corporation, which is the commercial branch of the World Bank, uses to decide who it's going to lend money to. These principles also form part of what are called the "equator principles", which private lending banks around the world have used as criteria for deciding to whom they will lend money.

So for the Canadian government to bring these principles to bear in assessing accountability for recipients of government support is not to stray far beyond and is not to extend its reach beyond what we already see in play among financial actors worldwide.

● (1125)

These principles are evidently not so vague that international banks can't apply them or that the companies that want loans from these international banks can't meet them. They're not so vague or general or devoid of meaning that companies are unwilling to sign on to them for fear that they are signing on to principles they cannot understand or operationalize.

This is a way to bring those same principles and standards of accountability to bear on the forms of government support that Canada provides to companies. In so doing, I think Canada is simply acting in a way that is consistent with what the special representative of the Secretary General, John Ruggie, proposes as a good way to ensure corporate social responsibility worldwide. It encourages individual states to use instruments within their jurisdiction and authority. So it's consistent internationally. It's not inconsistent with what host states can do or will do. In the end, then, it is just a mechanism for Canada to take part in the global trend toward ensuring accountability for how transnational corporations engage in their activities in various states.

I think that you have already heard my colleague Penelope Simons' response to a concern that this form of accountability will somehow drive Canadian companies to incorporate elsewhere, that it will encourage corporate flight, so I won't reiterate what she said. I will only say that all over the world countries are adopting various mechanisms for holding their corporations accountable for their activities abroad. They aren't identical to what Bill C-300 does; some are much more interventionist. The United States, for example, has in place a whole system of tort liability.

This statute in no way creates a new ground of civil liability. It's not as if anybody can use this statute to go and sue a Canadian company in a Canadian court. Nor does it create any kind of criminal liability, an even more significant form of regulation. It doesn't do any of those things.

Some people, some organizations, take the position that perhaps Canada should await the outcome of special representative John Ruggie's report sometime in 2011 before taking any steps. I would simply point out that John Ruggie has in fact come out in favour of home state regulation. Some people take the position that if states are the ones to regulate it should be the host states and not the home states of corporations that do the regulating.

There are three responses to this. First, not all host states have the rule of law infrastructure to effectively regulate themselves. Second, they do not necessarily oppose or find a conflict between a mechanism like this and the actions they may take. These are not substitutes; they may be complementary. Third, it's important to realize that a claim that companies will flee Canada if they are held accountable in the way that Bill C-300 proposes is in a sense a threat. It's a mechanism of intimidation that companies use. If you regulate in this way, they say, firms will leave. Canada's a pretty strong country. It's a fairly financially secure country. If those kinds of mechanisms of intimidation are used against a country like Canada, imagine what corporations are saying to the host states, which are weaker, less able to regulate, and more desperate for investment. They might ask a host state to sign a contract that exempts them from their national regulation. They might demand that a foreign government sign an agreement not to pursue disputes against them in their national courts.

● (1130)

I'd encourage members of the committee to be mindful of these strategies of intimidation that are used to discourage home state regulation. If your view is that it is appropriate for the host state to regulate, you should know that they, too, are being subjected to similar kinds of challenges and they are even less able than a country like Canada to deal with them effectively.

Thank you.

The Chair: Thank you, Ms. Macklin.

We're going to start our questions with Mr. McKay.

Hon. John McKay: Thank you, Chair.

Thank you both for coming. I particularly thank you, Mr. Shrake, for coming and talking to the committee about a real live situation.

I want to direct my question to Professor Macklin, because Mr. Shrake does, in effect, put a live example in front of the committee. He talks about his company putting $80 million in, and that at one point it was valued at several hundreds of millions. Now he's written it down to $20 million. He's being effectively forced to withdraw his company's presence in the community because the government isn't renewing its licences.

They've got pretty serious allegations—which he describes as gross misstatements, if not outright lies—about murder and various other activities. It's a bit of a difficult situation, to say the least. And he's come here to defend his company's reputation, which is one of the things the mining companies are very concerned about, their reputation, and the ironic effects of a country with 40% unemployment having a significant employer withdraw from activity in El Salvador.

Ironically, as I was listening to his testimony, I was thinking this is actually the case for Bill C-300, because there's no place for Mr. Shrake—or for that matter Mr. Steiner—to go. These kinds of allegations will go on and on and on and on because there's no resolution to these allegations. And whether the NGO is motivated by good motives or motivated by bad motives, or something in between, it just carries on.

So using Mr. Shrake's I think heartfelt presentation to this committee, make the case as to why Bill C-300 would actually be good for Pacific Rim.

● (1135)

Prof. Audrey Macklin: I recall that when I was part of the mission to Sudan there were certainly conflicting reports from Talisman Energy and from non-governmental organizations about what was going on there. Sitting in Canada, it was difficult to know what was really going on.

If a company is, as Mr. Shrake suggests, the victim of wrongful accusations and allegations that have a detrimental effect on its reputation, it would seem advantageous to have a forum within which those allegations can be considered in a reasonable and attentive way. It seems to me that what Bill C-300 does is provide a forum for that. Rather than being judged in the court of public opinion, which as I understand from Mr. Shrake's assessment is deeply damaging to his corporation, it might be beneficial—indeed it might well be more than beneficial—to have a neutral forum where allegations that are brought can be tested against the response the company would make and dealt with in a constructive way. I could imagine that under this legislation, if one got to the point of devising regulations under it, you would want to establish a process by which that could be done.

Ultimately, if Mr. Shrake is correct that there is no basis for these allegations, then presumably the outcome of this process would vindicate his corporation in a way that cannot satisfactorily be done at present.

There is provision in this for a rapid disposition of what is termed here to be frivolous and vexatious complaints. I have no view, obviously, on the complaints that are brought with respect to this corporation. But I would note that if Mr. Shrake is correct that they are merely frivolous and vexatious, this provides a mechanism for disposing of them quickly. If it turns out there is some evidentiary basis to them, it provides an opportunity by which they can be fully ventilated. So in either case I would think it would be to the benefit of all concerned to provide that forum.

Again, if Mr. Shrake is correct that there are organizations whose actions are not motivated by good faith, then I would think a process like this would discredit them ultimately and thereby deflate their potency, all of which would be done to the benefit of Pacific Rim or other corporations in his situation.

I say this, of course, taking no position on the allegations that were made against his company, or indeed Mr. Shrake's response to them. I'm in no position to assess that.

Hon. John McKay: Let me direct this to Mr. Shrake.

I accept that your positioning is quite heartfelt, and you certainly have a strong and coherent view about your company's activities in El Salvador. Yet if Bill C-300 doesn't pass—and certainly, if this government has its way, it won't—you will continue with this press war forever and a day, with extraordinary reputational damage to your company and the industry and, I would even argue, to Canada's reputation.

Given that I think your view would be that you would prefer the ombudsman's report, the 2007 report, which the government has chosen not to proceed with, and given that Bill C-300 is, at the end of the day, the only forum in which you could actually clear your name in any kind of a serious way, why would you be fighting Bill C-300 so vigorously?

● (1140)

Mr. Thomas Shrake: First of all, let me backtrack a little bit on your statement. We are not just throwing our hands up and walking away. We are in the process of international arbitration at the World Bank through ICSID in a CAFTA filing, which started last week. I was in Washington, D.C., last week for the preliminary objection phase of the CAFTA hearing. So we're not throwing up our arms and walking away.

Another important point here is that I'm an American economic geologist. I'm really not that familiar with Bill C-300. I came here just so that you can understand and see what life is like for us out in the field. I know this inside and outside, because I've lived this nightmare for five years. So I can answer any questions specifically that relate to what is going on in the field.

It's not unique to El Salvador. I've done systematic exploration programs in Argentina, Chile, Peru, Costa Rica, El Salvador, and Mexico over the last 25 years. While the tone of the opposition has changed dramatically in the last 25 years, this is not a very unusual event. Armed mobs have taken over exploration camps in three countries that I know of. Basically, the idea or design is by the same group of people.

I do not oppose regulation at all. I think there's a place for responsible regulation. Again, I have limited knowledge of your bill, and I apologize for that. I only found out I was testifying here on Friday, and I spent my entire weekend preparing my statement. Because of CAFTA, I must have lots of lawyers involved as well.

I don't think any company is afraid of oversight. I think what we're afraid of is providing a tool to irresponsible NGOs to just stop the process. I think there is a concerted effort.... I don't want to sound like I'm a conspiracy theorist, but I think there are certain groups out there that are ideologically opposed to this, and will basically do anything they can to slow the process and thereby stop the process. If the time value of money reaches the point of being ridiculous for investing in the minerals business, then nobody is going to invest.

Hon. John McKay: We understand that, with a lot of sympathy.

The Chair: Thank you, Mr. McKay.

We're now going to move on to Madame Lalonde, for seven minutes.

[*Translation*]

Ms. Francine Lalonde (La Pointe-de-l'Île, BQ): Thank you.

Mr. McKay used some of my questions, but there are certainly others.

You have described the situation surrounding these crimes with a lot of passion. What have you done to put an end to the situation?

[*English*]

Mr. Thomas Shrake: We have not rolled over and accepted all of this. We have filed charges against some of the perpetrators. We have gone to the Government of El Salvador. I've worked closely with the American embassy over the last five years and kept in constant contact with them. So we haven't rolled over.

I described this sort of assault on the eye care NGO program, where we were trying to provide eye care. We document everything, and we've been trying to get video documents of some of these violent exchanges. But every time, the first thing they do is destroy the cameras. In this incident, we filed charges for assault and kidnapping. But the only charge that stuck was for the destruction of the camera. Witness testimony in the court system of El Salvador is basically not used. So when it comes down to one witness versus the other, it's a flip of the coin in the courts. Plus, our witnesses were intimidated to the point where they wouldn't testify anyway.

● (1145)

[*Translation*]

Ms. Francine Lalonde: Given your answer, I am inclined to ask Mr. McKay's question again.

Under these circumstances, given that you have to use the justice system and to put pressure on the United States and El Salvador, don't you think that Bill C-300 can prevent this escalation since a decision will be made in all fairness? It is a process that you can start with.

[*English*]

Mr. Thomas Shrake: I'm not opposed to oversight or Canada's having legal teeth, and I don't have any problem with a bill that would accomplish this. But my understanding of the bill is that it provides too much power to.... I would be afraid of the irresponsible NGOs that might want to use this bill to stop the process, or even delay it. That's my fear. You don't have to stop it. People who are opposed to foreign investment in the extractive industries recognize that you don't have to stop it. All you have to do is slow it down to the point where people won't want to invest in it, and it won't happen. They're very sophisticated.

[*Translation*]

Ms. Francine Lalonde: Your answer is strange. Actually, on the one hand, you are saying that the bill should not have too much power, while on the other hand, at the end, you are saying that more aggressive means are needed to deal with those crafty NGOs. There is a kind of contradiction there.

In your opinion, what measures should the bill include? On the one hand, you are saying that there could be reasonable and responsible regulations, and on the other hand, you are saying that there is too much power.

[*English*]

Mr. Thomas Shrake: I don't have the answer. Sorry. I only know how it is in the field. I am not opposed to regulation. We need regulation for business, industry, government, and NGOs. I think everybody has to have some form of oversight. I am not familiar with all the details of this bill. The thing I fear is the provision that would allow people to just put a halt to what we're doing. I've been accused of so many things I haven't done that I just....

Hon. John McKay: Welcome to politics.

[*Translation*]

Ms. Francine Lalonde: But you know that they were at that round table. The NGOs, mining companies, the government and academics were all there. They all agreed on that together.

What can you tell us about that, Professor Macklin?

Prof. Audrey Macklin: I would like to add something to that.

[*English*]

Because all this bill can do is affect government funding, it's not in a position to put a halt to anything. It simply determines whether, for example, export credit will be provided by Canada, whether the Canada Pension Plan will invest in this company, and so on. It's not about being able to put a halt to activities. It is more of an incentive program, subject to, I suppose, the impact of the Special Economic Measures Act. But that doesn't go as far as your fear.

That is my response.

The Chair: Thank you very much.

We're now going to move over to Mr. Van Kesteren. Are you going to split your time with Mr. Lunney?

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Yes. Thank you, Mr. Chair.

Thank you for appearing before the committee. We believe on this side—and I think there are others, too—that the bill has some serious flaws. For instance, we all have a colleague who formerly was an international trade lawyer. He looked at the bill and his interpretation was that it's going to be challenged under international law. Those are some of the areas.

The other thing that concerns me is as a law professor, Professor Macklin, I'm sure that you teach your students the law of unintended consequences. We hear that a lot here. You know, it's right. Oftentimes we'll think of a law that really sounds good, and the opposition will come back and they'll say, “Listen, this is what could happen”. That's an area we have some real serious concerns about too. The other, which hasn't been mentioned at all and it should be mentioned, is that the CSR counsellor is in place to do a lot of the things you've talked about.

I appreciated your presentation. I thought you gave a balanced approach. You mentioned, too, that the intent—again that intent—is fairly obvious. But what about the argument that the bill doesn't go far enough? For instance, could it be argued that a shipping company that takes the extracted minerals would also fall under this as well? That's directly responsible.

Just let me finish my thought. I guess the point I want to make is what's good for the goose is good for the gander. If we're going to encourage our way of life, the very things we hold dear, the things we cherish, and our rights in the democracy we live in, why wouldn't we take that further? Why wouldn't we include, for instance, the service sector, which is I believe at this point the largest part of our economy, or what about telecommunications in a country like Saudi Arabia, which has serious human rights violations? Wouldn't that apply as well? I'm asking you generally. If this is right for the mining industry, why wouldn't it be right for all those other industries?

● (1150)

Prof. Audrey Macklin: In terms of the reach of this statute—and you mentioned something about shipping companies—I'm not entirely clear. Let me give what I think might be an answer based on what I think your question was about.

On the issue of what might be called the relationship of intent—how close, is it enough, do you have to intend to do things that are in breach of the voluntary principles—is it enough if you know there's a risk that you might come into violation? What happens if you are connected to somebody who's connected to somebody who might be violating them, and so on?

So those are issues that I think certainly warrant attention, and those are the sorts of things that typically in government legislation of this sort remain to be worked out, both through the level of regulation, through the Governor in Council, and then through guidelines and policies that are developed by the body implementing it.

So I don't deny that one has to give thought to those issues, but as I understand it—and I speak to you, as a parliamentarian, perhaps of greater expertise in this—when I teach administrative law, I say “Here is what the statute says; there are many things that remain to be worked out through regulation and guideline, levels of specificity that are perhaps beyond the level of detail that parliamentarians want to deal with”. On the one hand I agree, you would want to address those. But I think that the statute itself probably is not the place where you need to do that. You would need to do that in regulation and then in guideline, and that's something that certainly the government of the day has some control over.

On the point of where you stop with all of this, I'm not sure I agree with you about the advantages of that kind of reach that you suggest. But if you think that's good, I would say that if you think that's where this leads—again, I'm not sure that would in fact be perfect—I would just say it's important not to let what you see as perfect be the enemy of the good. If this is good, the fact that there is something you think might be logically better or perfect is not a reason not to make a move on this.

Would it require further movement? No, of course not. You legislate as you see fit. You don't have to legislate any further than you do. You're never forced into legislating.

Mr. Dave Van Kesteren: But don't you see this as somewhat restrictive, or possibly even an attack on the mining industry when we have so many engagements with foreign nations, nationalities, and different cultures? Why this, why not that? Are we not trying to impose the—

● (1155)

Prof. Audrey Macklin: I wouldn't see it as an attack. I think it is the case that the extractive industries often find themselves in highly conflictual situations, because of course, unlike other industries, they can't choose to set up operations in the places that are necessarily the most—how should I put it—secure, with the most stable rule of law, infrastructure, and so on. They go where the resources are. So not surprisingly, extractive industries, more often than many other industries, find themselves in situations in which they are subject to allegations of the sort that Mr. Shrake described.

So I think it is that context of the extractive industries, not a particular demonization of the extractive industries, that might be a good place to start, if you will.

Mr. James Lunney: I want to quickly come back to a comment you made earlier, Ms. Macklin, about this being no more or less than a mechanism. We agree. We're talking about a mechanism for CSR accountability. Canada's very engaged in this. We all know about OECD guidelines, Equator Principles, International Finance Corporation mechanisms for accountability, and so on.

What I'm concerned about is that you said the minister has a mechanism to dispense with frivolous claims. What I find distressing about the scenarios that I see developing is just exactly what we see at the table today, where you have very vexatious allegations being made about a company, about who's responsible for what's going on there, about who's the victim and who isn't. Then you bring in a case involving a state itself that is now retracting on international obligations, investments, and contracts, and is taking back property, for example, that they had already committed to a project, thereby undermining its viability.

How do we expect our minister to be able to act quickly in a state like that, where witnesses may be intimidated and where allegations and who is actually accountable are not simple to sort out? Are we not then dragging the reputation of our state into the face of another state that may very well not appreciate that? We have mechanisms we're working on. Why not allow our CSR counsellor to take that position, rather than bringing the minister of the crown into this conflict to try to resolve something that may not be resolved quickly?

Prof. Audrey Macklin: As I understand it, one reason the minister is named here is that it's a private member's bill, and you can't set up an ombudsman with public.... I understand there are limits on what a private member's bill can propose. I don't take a position on whether the minister is necessarily the only person who could be doing this, but what I understand the special counsellor to be able to do is not the same as what is proposed in this bill.

Secondly, with the greatest of respect to Mr. Shrake, I'm not in a position, nor is anybody around this table, to make a decision about whether this is a frivolous or vexatious complaint. We just aren't.

Mr. James Lunney: So that was my point. Why would a minister be in a position?

Prof. Audrey Macklin: Right. That's why we would want somebody who is in a better position to do it. Exactly. We want somebody who can sit down and look at the allegations. Now, you say it's time-consuming. I expect that it is time-consuming, as is the whole trial by media that this company has already been undergoing.

So yes, things do take time. There's no getting around that. But this would not halt activity. It is going on concurrently with the activity that is taking place in the other country. So there's no kind of injunction that would be imposed to stop the activities of Pacific Rim while such an investigation was taking place. That's not how it would work. I stand to be corrected, mind you.

The Chair: Okay, I'm going to stop it right there. We're a little over time.

We'll move to Mr. Dewar.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, and thank you to our witnesses today.

I guess, Mr. Shrake, I want to start with you. I just want to get at some background. So you presently receive support from EDC, from the Export Development Corporation. No? Okay.

Have you had time to go through the whole bill? Have you read the whole bill?

Mr. Thomas Shrake: No.

Mr. Paul Dewar: I think that's important, because I understand why you want to be here, because of some of the things that were stated at committee, but our focus as legislators is the bill in front of us. Maybe to help you with this, I think you've already got a sense of where we're going. This is not about over-reaching the grasp of saying we're going to dictate terms. I think it was put forward quite correctly by the professor. We're actually looking at how we can put accountability into taxpayers' investment in the extractive industry.

I find it a little strange—maybe a bit of a non sequitur—and I'm not sure if all government members believe this, when they say, “Well, what about other sectors?” The fact of the matter is that Canadian mining companies have the largest reach in the entire planet in terms of their activities, so we think it's relevant to look at that. In fact, the government agrees, and their counsellor doesn't talk about the service industry. It doesn't talk about shipping. It talks about the extractive industries. That's their own policy. So presently they have a counsellor they've put in place.

Our predicament is that if you wanted to go to the counsellor right now, and it would be up to you to do so—the office is still getting set up, and that's another issue—you could go to Ms. Evans and say, “Look, we're being attacked by NGOs who have these outrageous allegations and we'd like you to look into it”. The problem for you is—as would be the problem for NGOs—you'd have to have compliance of the other party.

What we want to see, and where the professor is absolutely right, is that this bill says the minister. What everyone on this side believes should happen is what the round table proposed: to have an ombudsman who is outside of that ambit, so someone who can look at it, which is what industry and civil society agreed to. I guess what I want to say to you in terms of the context of this bill and where the spirit of the bill is and where we think it should be going is not about over-reaching in terms of our ability to dictate terms; it's about setting up the criteria for accountability.

In fact, in your case you can't have your situation dealt with by the counsellor who they've put in place unless the other party agrees to it. In other words, if you go to the counsellor right now and say “I'd like this to be looked into, because it's affecting our company's reputation”, they have to go to the other side with whom you have the quarrel, and they can say “No, I don't want to talk to you”, and the counsellor can't do anything, has no power. What we want to see—and this bill is the first step in contemplating and hoping that the government would adopt an ombudsperson—is to allow them to investigate independently. If the NGOs say “I don't want to look into this”, then you're shut down. We want it to be open.

I'm just wondering if you're aware of that process. That's the spirit of what we're talking about, at least from my perspective, and that's why I support the bill.

● (1200)

Mr. Thomas Shrake: I feel out of place. I came in at the end of the game, at the end of the movie. I really haven't followed this legislation. I have so many things to do that it's just not on my radar screen. I frankly work way too much at this point, and maybe I'm wrong for not paying more attention to the bill, but again, I'm an American. I feel like this is a sovereign issue. I'm not sure I should be commenting that much on what my opinion is. I'm here so that you can understand my example and so you can figure out how to deal with it, but I just want to make sure that everybody understands what really is going on.

Mr. Paul Dewar: I'll be frank with you, it doesn't apply to you, so I don't know why.... I understand your grievance of what was said, and that's a fair comment. You have to protect the reputation of your company. It's nothing against you, but it's a bit of a non sequitur to have you here if you don't receive Canadian funds and there's no applicability here of the bill.

You don't have to object. I'm just saying we have someone here the bill doesn't apply to.

Mr. James Lunney: It very much applies.

Mr. Paul Dewar: Well, I just want to be clear here. I just wanted to know, for the record, do you receive any money from the EDC? This bill applies to the EDC, so I don't know. You don't receive support from the Canadian government at all. No? Okay.

I don't know if Mr. Lunney's read the bill.

Ms. Macklin, I'll go to you on this. Do you understand the intention—I think you did in your comments—where we would like to see this in the hands of an ombudsperson? And would you prefer that over the minister in terms of legislation?

● (1205)

Prof. Audrey Macklin: I don't want to take a really strong view on this. I think there may be benefits to having this in the hands of somebody who is independent, if that is possible. Beyond that, I feel somewhat constrained in expressing a strong view.

I was a member of the round table. The round table thought there was merit in having an independent person deal with this. There are reasons that an independent decision-maker is beneficial to the government of the day. So saying that it should be an independent person is not a criticism of any particular government or minister; it's precisely so that no government of the day is subject to undue pressures in how something should be dealt with.

So that's a general endorsement of why independent decision-making can be appropriate or useful, and I think that was the thinking among those of us on the round table. I do want to remind you, of course, that the people on the round table were not just civil society or academics. They were people who are very active in the mining industry today and who are active as representatives of the organizations. These are not people who are going to endorse anything they felt to be inimical to the interests of their industry.

The Chair: Thank you very much. That concludes the first round.

I think we have time for two more interventions, so we're going to go to Mr. Abbott and then probably back to Mr. McKay and Mr. Pearson.

Mr. Abbott, for five minutes, sir.

Hon. Jim Abbott: Mr. Shrake, I think there's been a misunderstanding of your testimony, certainly on the part of some opposition members. The fact of the matter is that you have given us an absolutely classic example of the kind of thing that happens when there are unfair charges, and it is the position of the government that Bill C-300 would just increase the pile-on.

I believe that you have Canadian equity in your company; therefore, you would be subject to Bill C-300. As I say, there are already these egregious, unfair, and outrageous charges that have been made against you and your company that would be exacerbated very substantially by the imposition of Bill C-300. Now the interesting thing is that there has been a total ignoring of the function of the CSR counsellor, who is in place and is coming up to speed—notwithstanding the cynicism of my friends on the other side of the table. The fact is that all of the things they have said they want to happen under Bill C-300 are going to be happening, and are in fact happening, under the CSR counsellor. So I thank you very much for your testimony.

The question that I have of you is that it seems to me that you have come here with this story. If you were approached by the CSR counsellor with the claims of these NGOs, would it not be...? In fact I think you've indicated that it would only be responsible to respond to the CSR counsellor and that you would be very happy to react to that CSR counsellor. Given the fact that it is voluntary compliance, you would be pretty happy to volunteer, and any responsible company would be happy to volunteer, wouldn't they?

Mr. Thomas Shrake: I have volunteered and would volunteer in any forum put before me.

I did visit with the Canadian embassy in El Salvador and the American embassy. I've kept everybody informed as to what was going on. I've kept the Government of El Salvador officials informed as to what's going on. We've tried very hard to communicate, but once you get to the point where you've been damaged, where you really don't have enough money to fight the media campaign, you're way behind the eight ball.

Hon. Jim Abbott: Professor Macklin, I can't recall your exact words, but your implication was that Bill C-300 would not put an end to projects, or something of that nature. Is that a fair characterization? I just need to understand that first before I ask my question.

Prof. Audrey Macklin: It is directed at government support for projects. Whether that has the effect of bringing a project to an end, I simply couldn't say.

● (1210)

Hon. Jim Abbott: Okay, let's imagine for just a second that EDC was to withdraw $22 billion to $24 billion—that's with a “b”, as in billion dollars—in export funding that's backing up and supporting these exploration companies in a 12-month period. Do you think that might shut down a couple of projects, if not the vast majority of the projects that would have been the recipients of the $22 billion to $24 billion?

An hon. member: The sky is falling.

Prof. Audrey Macklin: Well, I guess I would meet your question with a question: Is Canada obliged to fund projects that are contrary to the principles it claims to hold regarding human rights, voluntary principles, security...? We have no obligation to give money.

I don't know the example that you're providing. I know that not that many companies—lots of companies don't—rely on EDC funding, frankly. So what they would have to do is seek funding from elsewhere. A lot of those other places where they might seek funding have their own principles—like the voluntary principles, like the equator principles—in place. They would have to meet those principles, they would have to meet those guidelines, with some other funder. If they can meet them, that's great. If they can find a funder who won't impose those requirements, well, then, I guess they can.

Hon. Jim Abbott: But, Professor Macklin, EDC's testimony.... If you had the opportunity to review the testimony that was made at this committee, you would understand; those are the standards that EDC is currently applying.

The difficulty is that in the legislation, in Bill C-300, the fact that EDC would be obliged to withdraw the funding that they had already committed puts them in an impossible position that they cannot go ahead and commit it in the first place. The worst possible time for EDC to be withdrawing funding is if a corporation happens, for a period of time, over a period of events, to be in non-compliance. That's the worst possible time, because the pressure that EDC can bring, on behalf of the Canadian people, is that we will withdraw. Under Bill C-300, they would be forced to withdraw. That forcing of a withdrawing is at the worst conceivable time. When they could be bringing financial pressure on the corporation, all of a sudden they have to withdraw; in fact, I submit to you that they would not be doing it in the first place.

Now, $22 billion to $24 billion is not an incidental amount of money. That's far more than anybody in this room can imagine. To suggest that withdrawing $22 billion to $24 billion of support by EDC in a 12-month period from the external exploration companies will not shut down some of the projects....

I don't want to be harsh, but I think that's kind of naive.

Prof. Audrey Macklin: If there are projects that EDC is funding that are perpetrating or are complicit in significant human rights violations, I would suggest to you that it is not in the Canadian public's interest to fund them. But—

Hon. Jim Abbott: But they're not.

Prof. Audrey Macklin: Let me finish my answer.

Under Bill C-300, as I read it, there is a space between complaint, investigation, and outcome that is available to be developed through, as I read it, the regulations and guidelines.

So it's not, as I read it, self-evident, as you suggest, that if a company is non-compliant, therefore these consequences must immediately follow. I could well imagine, and it appears to me just as a matter of statutory interpretation, that there is room in this legislation for saying, “You are falling out of compliance, so what is it you can do at this point to bring yourself back into compliance?”, or, “We will grant you this period of time to bring yourself back into compliance, and if you do not do so, certain consequences may follow.”

But it is not obvious to me, on reading this, that it is complaint, assessment—

Hon. Jim Abbott: But that's exactly what EDC is currently doing.

The Chair: That's all the time we have. We're over time.

We're going to move to Mr. Pearson.

Mr. Glen Pearson (London North Centre, Lib.): Thank you, Chair. I will share my time with Mr. Patry.

I have an observation, and it's for Mr. Shrake. I just wanted to welcome you to Canadian political football. That's the way it works up here.

Mr. Thomas Shrake: I think it works the same way everywhere.

Mr. Glen Pearson: Yes.

I think you've been a very good witness and a gracious witness. We realize the spot you're in. I think, when Mr. Dewar said—I don't know if he's technically correct or not—that this doesn't apply to you, it definitely does apply to you morally. We had somebody before this committee who had castigated your company and others, and I think you have every right to come to this committee to set the record straight.

Mr. Thomas Shrake: Thank you.

Mr. Glen Pearson: So I thank you for doing so, and in such a humble fashion.

Mr. Paul Dewar: I don't have any problem with that.

Mr. Glen Pearson: Yes, I know; I know, Paul.

The other thing I just want to say is that as somebody who's worked a lot overseas, in Sudan and other places, I believe in a lot of what Canadian companies do, and companies in general. I just think in this particular situation, my own opinion is that if Bill C-300 would have existed, you wouldn't have been in this spot.

Thank you, Chair.

The Chair: Dr. Patry.

● (1215)

Mr. Bernard Patry (Pierrefonds—Dollard, Lib.): Thank you.

I have just one comment for Ms. Macklin.

Ms. Macklin, you were one of the members of the round table. And on the round table you say one of the conclusions was the creation of an ombudsman with a lot of power, mainly in the investigation part. If they're coming out with a follow-up, and you see the recommendation to now create an ombudsman without any power at all—I mean, *c'est une coquille vide*, there is nothing in that ombudsman—do you really feel that if we had this ombudsman with powers of investigation, we'd still need Bill C-300?

Prof. Audrey Macklin: You're asking me to answer a hypothetical that I'm not sure I can completely answer. But it seems to me that with a proper investigatory power, which has to be properly resourced, then you are not just able to produce the kind of investigation and documentation that enables a reasoned response, but you're also able to satisfy all the parties—corporations, NGOs, civil society—of your credibility and legitimacy.

And it is crucial that whoever does this is sufficiently resourced and sufficiently skilled both to do the job competently but also to secure buy-in; that is, a feeling of credibility and legitimacy between both corporations and civil society. It certainly will not do to only have the approval, as it were, of one or the other of them. And that requires, certainly, an investment of energy, resources, competence, and so on, that have to go into things like investigation. And those, in my experience doing that, require expertise, independence, and resources.

Mr. Bernard Patry: Merci.

Hon. John McKay: Chair, may I finish up for five minutes?

The Chair: Yes.

Hon. John McKay: I just wanted to pick on the voluntariness of the CSR counsellor, because I don't think there is anybody around this table who wouldn't agree—well, maybe the government doesn't agree—that an ombudsman would be preferable. As I've said publicly, and I'll say it again, I'd withdraw my bill in a heartbeat if in fact the government introduced legislation that would implement the provisions of the round table. And then there would be a forum for the issues that Mr. Shrake and others would like to raise to be dealt with in a fair and open and transparent process that is consistent with the principles of natural justice.

Rather than being a pile-on or outrageous or all of these sorts of things, this actually then becomes a forum, if you will, a clearing house.

The problem—and I will ask you specifically, Professor Macklin, to comment on it—is with respect to the CSR counsellor, because no matter how well resourced she is, no matter how well intentioned she is, she still has to get Mr. Shrake's company to volunteer to an investigation. And while Mr. Shrake may be of good faith today and say he'll permit an investigation, he may have different legal counsel who would say “No, there is nothing in it for us”. Or the investigation may commence and at some point or another the company may withdraw its consent. Or the CSR counsellor gives a draft report to counsel for Mr. Shrake, and they don't like what they see and the consent is withdrawn.

So it seems to me that what the CSR counsellor is mandated to do is substantially at variance with what Bill C-300 proposes.

I'd be interested in your comments. And perhaps you could relate it to Mr. Shrake's situation, because I don't think there is anybody around this table who doesn't sympathize with his situation. And certainly Professor Steiner, when he made the comments he made a few weeks ago, I view them as comments made in good faith. He's not off-the-wall wacky.

● (1220)

Prof. Audrey Macklin: We're just not in a position to assess them, and I say that with no disrespect to Mr. Shrake. The whole point is that we can't make any assumptions here. We don't have the information, we haven't done the investigation. So we can't begin with the starting point that of course Mr. Shrake's view is correct and of course Mr. Steiner's view is a pack of lies. I'm simply not in a position to say that, and I don't think anybody around this table is in a position to say that. Though it may turn out to be the case, I just can't say it.

As for voluntariness, I think that would just gut the effectiveness of the counsellor. I don't think the idea that you only have to participate in the investigation on a voluntary basis is going to be productive.

Although Mr. Shrake can speak about his own willingness to participate, I suspect that the calculus that different actors make is going to vary. It's going to really hamper the ability of this body to establish itself as credible if nobody is going to participate in it. And then what happens to the accountability that is at the root of this, which is to say, don't we think that people and companies that receive government support ought to be accountable in a meaningful way for the funds they receive? EDC's capacity and the CSR counsellor's capacity to hold them accountable with their existing processes are simply inadequate. I don't deny that they are attempts or desires or are directed at the idea of accountability, but for various institutional and procedural reasons they simply aren't up to the task. Recognizing that, my view is that Bill C-300 offers a more effective mechanism of accountability. Why wouldn't we all want companies to be accountable for the receipt of Canadian funds in the same way that we want NGOs, civil society, and all other organizations that are the beneficiaries of government support to be similarly accountable?

The Chair: Thank you very much.

To our witnesses, thank you very much for taking time to come and visit us today.

We're going to suspend the meeting for just a couple of minutes to let the witnesses disperse and then we'll come back to discuss the business we've been talking about.

Once again, thank you very much.

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(Pause)

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● (1225)

The Chair: Let's get back to business.

We had a motion before the committee that Mr. McKay brought forward. Did you want to continue?

Hold on a second. Do you have a...?

Hon. Jim Abbott: Mr. Chair, I have a motion I would like to read. It seems to me that the motion Mr. McKay has put changes the orders of the day.

My motion is that, pursuant to Standing Order 97.1(1), this committee recommend to the House of Commons that the House not proceed further with Bill C-300, an act respecting corporate accountability for the activities of mining, oil, or gas in developing countries, because the committee has heard sufficient testimony that the bill will not properly address corporate social responsibility and poses an unreasonable risk to legitimate Canadian business interests operating abroad.

My argument for putting the motion.... I'm aware of the rules and that Mr. McKay has put his motion at the beginning of this meeting. But I'm suggesting, Mr. Chair, that in terms of the orders of the day, this motion I am proposing does not change the orders of the day, whereas Mr. McKay's motion does. I believe you should find that my motion should take precedence and be debated and handled first, before Mr. McKay's motion.

The Chair: I'm going to rule against you, Mr. Abbott. I want to say that we do have a motion on the table. We have been talking about Bill C-300, so his motion was well within it. So we are going to debate that particular motion at this particular time.

I would suggest that if your motion had come beforehand, we could probably have debated yours first.

I'm going to go back to Mr. McKay just to have his opening comments on that and then I will open that for debate. So we will be debating Mr. McKay's motion.

● (1230)

Hon. John McKay: Thank you, Mr. Chair.

As you know, this bill has been around since January or February of 2009, and because of prorogation we've had this before this committee somewhere in the order of at least a year. I'm sure members are getting heartily fed up with this bill. Nevertheless, it is a bill of great significance and of tremendous importance to a lot of people.

I dare say we've had pretty well as much testimony as the committee needs to hear, and frankly minds have been made up. The government has made it abundantly clear that it will not support this bill in any way, shape, or form. I could amend this until the cows come home and there still would be no area in which I can amend this bill to satisfy the concerns of the government.

We also have a drop-dead date of Friday, June 11, and my preference would be to give the committee an opportunity to amend the bill so it is stronger, so it does reflect some of the testimony we have heard. I'm sure, Mr. Chair, you've read the various amendments I propose, two of the most significant of which have to do with a grace period for the companies.

I think, given the testimony of people like Mr. Shrake and others, that my preference as a proponent and those who support Bill C-300 is that there be a grace period for companies to bring themselves back into compliance. We're proposing an amendment to create a grace period so that could happen.

The second most significant amendment, Mr. Chair, has to do with the Canada Pension Plan Investment Board. I do take the testimony of CPPIB at its face, which is that legislation cannot be unilaterally amended by this Parliament because it is joint legislation of the provinces and the federal government. Therefore, we have amended the legislation, Bill C-300, to reflect that testimony.

Effectively, Mr. Chair, we have responded, I think, in some manner, but the government has given its unequivocal view that there is nothing we can do to amend this bill in any way, shape, or form and will use whatever parliamentary procedures to prevent it coming before us to do a reasonable clause-by-clause—to wit, Mr. Abbott's latest motion in his attempt to jump precedence.

I'd ask, Mr. Chair, that we go to a vote more quickly than less quickly, because we are running out of time. There are about 25 minutes left in this session to deal with these clauses, so I'd ask for a vote at this point.

The Chair: Mr. Goldring.

Mr. Peter Goldring (Edmonton East, CPC): Thank you.

I tend to agree with the member when he says we're fed up with this bill. But I want to expand on a few of the reasons why. I'm not alone in this. I note a number of former Liberals from the other side, such as Mr. Don Boudria, who works as an expert on federal parliamentary procedure for Hill and Knowlton as a strategic communications consultant and as vice-president of the firm. On his blog he has a posting entitled Bill C-300. He happened to be out in the hall before this meeting, and I talked to him. He confirmed to me his concerns about this bill and how it might kill the mining industry. He related the example of Talisman. When Talisman moved out, China moved in. That same scenario could happen again and again.

Also, we had before us the Honourable James Peterson. He spoke against the bill here in committee and said it was flawed in its construction. It is highly prejudicial to Canada's mining sector. We have Bill Graham, another member, co-chair of the Canada-Mexico Initiative, a think tank led by Canadian Foundation for the Americas, FOCAL, which has said that Bill C-300 has to be in the running for the worst piece of legislation before Parliament. These are significant people commenting very negatively on this bill.

If we review the bill, we can see why these concerns would be put forth by even some of the former Liberals themselves. We can start with the title of the bill. I believe it had been suggested and talked about before. In question is the relevancy of why we would want to have something so constrictive affecting only one portion of industry, while leaving other types of industry wholly out of account. If you're going to have a bill on corporate social responsibility, I believe the operative word should be “corporate”. It should apply to any corporation that would be engaged in other parts of the world, not just mining, oil, and gas corporations. I think it was suggested that it could be the service sector, the shipping sector, the forestry sector. I would make the argument that the forestry sector would—

● (1235)

The Chair: We have a point of order.

Hon. John McKay: It would be appreciated if Mr. Goldring could go to the substance of the matter. The motion is whether we do or do not go to clause-by-clause. The views of the Liberals or former Liberals on this particular bill are not relevant. As far as I know, not one of them is sitting in the House as we speak. The second thing has to do with merit. Whether he likes the title or not is irrelevant. Mr. Chair, if you could direct your colleague to speak to relevance, to materiality, to the motion itself, it would be of great assistance.

The Chair: I would certainly like to direct all my colleagues to observe relevance at all times, but I don't think that's going to be possible.

I have another point of order.

Dr. Patry.

[*Translation*]

Mr. Bernard Patry: Thank you, Mr. Chair.

[*English*]

With all due respect to my colleague, if he wants to filibuster, we'll close the meeting, and that's all. It seems like that's going to be easy. If that's what you want, just tell us. That's it, that's all.

Hon. John McKay: Make it a part of the record. So we'll vote on the filibuster.

The Chair: Mr. Obhrai.

Mr. Deepak Obhrai (Calgary East, CPC): I've been sitting on this committee for a long time with Mr. Patry, Madame Lalonde, and everybody else. One of the purposes of this committee is to allow people to discuss the issues. You say you're going to go away if there's a filibuster. That is not the way this democracy works. We should be allowed to speak.

Mr. Goldring is speaking, putting down points that are relevant to this issue. Some of these points were made by former Liberal colleagues that he does not like. If you don't like something, you want to change the whole thing and shut him up to prevent him from saying what it is his democratic right to say. If you don't like what your former Liberals said—

The Chair: I don't think that's a point of order.

Mr. Deepak Obhrai: No, it's a point of order. He should be allowed to speak—

The Chair: Well, no, we're going back to Mr. Goldring. We're going back to him.

Mr. Deepak Obhrai: Thank you.

And Mr. Goldring, go ahead, you're doing a great job.

The Chair: Before we totally lose control here, there seems to be a good indication, because now I've got more than one person on the list, so I'm going to go back to what Mr. Patry says. If this is going to continue on, do we want to just call the meeting now? I guess that's the question. If we're going to continue to talk it out for another 20 minutes, we can decide if we want to go clause by clause on Thursday. But we've got Rights and Democracy, so I'm assuming that's not the case.

Mr. McKay has indicated he would like to make some amendments, which I'm sure the Speaker will take into account when this goes back to the House, because we haven't.

So it's your time. I'm here till one. I'm getting paid the same whether I'm here now or I'm here till one o'clock.

My question to the committee is, do we want to call the meeting on this point?

I'll continue on.

● (1240)

Mr. Peter Goldring: I still have a comment I'd like to make.

The Chair: Okay. Well, it looks like we'll get a chance to be right here till one.

Mr. Goldring.

Mr. Peter Goldring: Mr. Chairman, in all due deference to the opposition, we did have some witnesses who appeared here in the last session. Due to the constraints of how the meeting is conducted, I didn't have the opportunity to be able to have this discussion with them. There are some points of relevancy from some of the testimony from those witnesses that I would like to bring up and have a discussion on. I believe some of these relevancies have not been thoroughly threshed out before, so I'd like to have the opportunity to bring them up.

Mr. Paul Dewar: On a point of order, we're not here because of pent-up supply from anyone on the other side. We're here to discuss, on point and without making this committee a total joke again, why you were against the motion put before.

What Mr. Goldring seems to be saying is, "I didn't get to speak enough, and now I want to speak more". I think the cogent argument here from him should be why you're not in favour of dealing with this clause by clause.

Let's get it together. Let's grow up about how we behave around here. It's really—

Mr. Peter Goldring: Oh, I object.

Mr. Paul Dewar: No, no, I'm sorry, I'm not—

Mr. Peter Goldring: I object.

Mr. Paul Dewar: You should be focused on what your argument is against the motion, please.

Mr. Peter Goldring: If you will allow me, I will—

Mr. Paul Dewar: We have—

The Chair: Thank you, Mr. Dewar.

Mr. Goldring.

Mr. Peter Goldring: Thank you very much, Mr. Chairman.

One of the points that I did raise, and I spoke to him right afterwards, and one of the points of relevancy was that I know the bill is constructed to basically bring forward complaints that happen in the field, so to speak, but when I spoke with the presenter I asked him how many complaints he deals with, how many complaints has he dealt with in his own mining operation over five years, and I certainly think that this should be relevant to the issue of the bill here, because—

The Chair: Mr. Goldring, I've got another point of order.

Hon. John McKay: Mr. Chair, this looks like a filibuster, smells like a filibuster, feels like a filibuster, probably is a filibuster, so I would adopt your view, Mr. Chair, that we terminate this meeting without prejudice to my rights to submit amendments in the House. If we could proceed on that basis, then we would all save ourselves 15 minutes of the loquacious tones of Mr. Goldring.

An hon. member: That's what you do in Parliament.

Hon. John McKay: Oh, we have more loquacious—

The Chair: Okay, hold on a second.

Yes.

Hon. Jim Abbott: On the same point of order, does that mean that Mr. McKay is withdrawing his motion?

Hon. John McKay: I don't have to withdraw my motion, you—

The Chair: Nothing's been done. His motion's before us, but it doesn't seem like we're going to be voting on it.

Mr. James Lunney: I'd like to speak to the point of order.

Hon. John McKay: Which point of order?

Mr. James Lunney: Well, you've raised—

The Chair: Okay.

Mr. James Lunney: McKay's.

As recently as the last committee meeting, we had a discussion about what our agenda would be. Mr. McKay agreed to allow the bill to be reported without amendment and without clause-by-clause. That was as recently as the last committee meeting. So now all of a sudden—

Hon. John McKay: Ms. DePape couldn't find any witnesses.

The Chair: Just one second.

I just need to remind the members that we were in camera at the last meeting. As much as we'd like to talk about these things—

Hon. Jim Abbott: Thank you, Mr. Chair.

The Chair: —we really can't talk about these things. So for the benefit....

Mr. James Lunney: Anyway, the point is that it's disrespectful—

The Chair: Anyway, we had an agenda here that won't happen, it would appear.

Mr. James Lunney: We had an agenda that has been changed at the last minute, which hasn't given people adequate time to deal with this matter, respectfully. I think it's disrespectful to the committee to expect to change direction at the last minute.

The Chair: All right. I'm not sure that any of these are points of order, but I'm going to ask the committee one more time.

If you want to talk for another 15 minutes, we'll all painfully sit and listen to what you have to say, or not—or do we want to call the meeting now?

Mr. Abbott.

Hon. Jim Abbott: I would like to speak specifically to Mr. McKay's motion.

The Chair: Do you know what? We're going to have to put you on the list. I'm sorry about that.

I've got Mr. Goldring, Mr. Van Kesteren, Mr. Lunney, and Mr. Abbott. I've got the whole line here. If there's no consent to let this meeting adjourn early, we'll continue along with the pearls of wisdom from the other side.

Go ahead, Mr. Goldring.

● (1245)

Mr. Peter Goldring: Thank you very much.

This is with regard to dealing with the discussions about the frivolous and vexatious motions or actions that can be brought forward. My point is that we've been dealing with them seemingly as though they're independent or individual frivolous or vexatious issues that are brought forward, whereas in my discussion with the witnesses prior to this, when I asked how many would have been brought forward, in his own particular case he said, “Well, how many days are there in a five-year period?” The indication from him is that literally hundreds and hundreds of initiations could be brought forward. With wording on the bill like this, it could even encourage more to be brought forward. They could literally hold up processes—

The Chair: We have Mr. McKay on a point of order.

Hon. John McKay: I can see that Mr. Goldring is dying to engage in clause-by-clause, so I interpret his comments about the bill as support for the motion. Assuming that Mr. Goldring supports the motion before us, I see a majority here to support the motion.

An hon. member: That's not a point of order.

The Chair: Do you know what? I'm going to have to agree with that. This is not a point of order.

We'll go back to Mr. Goldring.

Mr. Peter Goldring: Thank you very much.

Furthermore, there's another issue that arises from what I would say is the narrowness of approach to this. Have we had a discussion on how it relates to the charter? Is there a form of discriminatory action here? This is certainly a restriction against one segment of our corporate society, and it leaves the rest of corporate society alone. So do we have an additional problem here that it is too narrowly focused and impinges upon the charter of rights of corporations to be able to function and operate? It's an additional concern I have that I don't think has been addressed.

Another statement that was made that's a real concern is about the NGOs in some of these countries. They were described as “rogue NGOs” that have little or no accountability. So we're setting up a process here that is very restrictive and constrictive on our corporations. But at the same time there is little application of what to do about what is really causing a lot of the problem, which is that a lot of the NGOs in various countries are viewing this as a reason to hold up the mining process.

I suppose one could ask about the motivation behind these NGOs, but there is nothing here in the bill that would be able to control, limit, or legislate, and I'm not sure how that could be done anyway in another country. The suggestion here is not about how to look at the NGOs to see whether there's credibility or a simpler process in order to be able to eliminate some of the problems.

Simply bringing all of this back here to the minister's office and department to look into what could conceiveably be tens of thousands of initiations could wear down these companies, as has been suggested. It could make them want to decide, like Talisman did, whether they even want to be in the business with a Canadian company, or go into another country to deal with these—maybe another country that doesn't have these tight constrictions.

I think it goes back to the heart of the matter that in the economics and period of time today, it behoves us to be very careful that we're not working on legislation that would restrict one of our major industries internationally, and our reputation internationally as well.

So I have concerns about going through it, as the member opposite has said. We can go through a litany of other issues. The very difficult one that I don't think has been discussed very thoroughly is how do you compel organizations to comply with international human rights standards when our Canadian government doesn't comply with some of them itself? How can you compel companies to be compliant with all international laws? We could possibly put another international law forward too, which would be sharia law, for example. How do you compel companies to adhere to different laws and procedures that our Canadian government itself possibly would not be too quick to adhere to?

So the member opposite is right that many of us are fed up with this bill, but I think it is so important to our industry and our economy that we need to have these types of discussions on each and every part of it.

With that, Mr. Chairman, I will conclude my comments. I'm very thankful to be able to make them, as I wanted to make some of those comments a little earlier too.

● (1250)

The Chair: Thank you.

I have Mr. Van Kesteren, Mr. Lunney, and Mr. Abbott.

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Mr. Chair, I'll cede my time to Mr. Lunney.

Mr. James Lunney: I made my point about going to clause-by-clause already, but I think there is something of relevance that does need to be stated for the record.

One of the witnesses was not able to participate today. All committee members have seen a letter from Barrick Corporation regarding testimony here at the committee. I would like to read into the record a few of the remarks they made in defence of some of the allegations that were made.

Mr. Paul Dewar: On a point of order, Chair, this isn't relevant to the motion in front of us.

The Chair: Yes, unfortunately—

Mr. Paul Dewar: I thank the member. We all got it. I read the letter.

Mr. James Lunney: Well, it should be on the record.

Mr. Paul Dewar: I read it, and it is. We have it. It was submitted to the committee, is that not correct?

The Chair: It's part of the documents.

Mr. Paul Dewar: It's part of the documents, so I'm not sure how relevant that is.

Mr. James Lunney: Points of relevance can be made by anyone.

Mr. Paul Dewar: It's a point of order on whether reading a letter from Barrick Gold has anything to do with the motion in front of us on whether or not you support going to clause-by-clause.

I'm asking the chair.

The Chair: I would say it doesn't have anything to do with it. But the member does have the time, and I'll ask him to make his remarks quickly.

By the way, it is in the record. That's also the case.

Mr. James Lunney: I'll be brief, Mr. Chair.

Hon. John McKay: Why don't you read it in French?

Mr. James Lunney: I could try that.

> Over the course of the consideration of Bill C-300...members of the Standing Committee on Foreign Affairs and International Development have heard testimony that has included numerous misleading and false allegations related to Barrick Gold Corporation's operations and conduct overseas.

They go on to state, and I quote:

> ...we regret that certain testimony has polarized this debate, rather than enhancing the collaborative dialogue on corporate social responsibility...underway within Canada and internationally.

I'll skip ahead to, “allegations of sexual assault by mine security personnel”:

> We wish to confirm that in May 2010, Chris Albin-Lakey from Human Rights Watch advised company representatives directly that there had been a series of allegations of rape by mine security personnel made to him by women during his recent visit to PNG.
>
> We are deeply concerned and PJV has commenced a formal investigation into these allegations.

They go on to say that:

> The information provided...during the course of the meeting was very general in nature and did not contain specific details that would enable a proper and thorough investigation. We recognize the sensitivities associated with providing concrete information of this kind; however, details such as time period and location would be very important to facilitate the investigation process.
>
> Barrick and PJV welcome the opportunity to work collaboratively with Human Rights Watch on this matter.

The Chair: Mr. Lunney, I have a point of order.

Mr. McKay.

Hon. John McKay: Thank you, Chair.

It's a shame that the CEO or the president of Barrick weren't able to come from Toronto to Ottawa today to directly refute whatever allegations they wish to refute, unlike the CEO for Pacific Rim, who I suspect flew in all the way from Vancouver to refute allegations made about his company.

Nevertheless, Mr. Chair, I see no materiality, no relevance to reading into the record something that is already part of the documentation that this committee has received.

In my final point, Chair, I wish the record to show that we have made every effort to go to clause-by-clause, that we have made every effort to put forward the amendments that I would like to put forward—and anyone else who wishes to put forward amendments—and that when this bill goes back to the House that we have every opportunity to present the amendments when it comes to report stage at third reading.

If members could keep their remarks somewhere remotely, approximately, close to the motion in front of us, I'd appreciate their support in that.

● (1255)

The Chair: Thank you, Mr. McKay.

I have another point of order from Mr. Abbott.

Hon. Jim Abbott: Mr. Chair, I want to speak specifically to Mr. McKay's point of order, not to the motion, but to the point of order.

I suggest that Mr. McKay is somewhat disingenuous in presenting the motion to go to clause-by-clause when there was less than a half-hour left in this meeting. I remind him that we have gone through three complete timeframes during which the legislation would normally be available for consideration by this committee: first, as a result of the extension; secondly, as a result of the prorogation.... In fact there has been more than ample time for the member to have raised a motion or brought to the steering committee a request that we go to clause-by-clause. That has not happened.

I suggest, with the greatest respect to my friend, that he is significantly disingenuous in bringing forward this motion at this time. He is then speaking on this point of order so that it's a matter of record on the Hansard of this session and he can go to the Speaker and say he tried to get to clause-by-clause.

Well, it's simply not genuine that he tried to get to clause-by-clause when he knew full well there was only one half-hour left in this time.

The Chair: Okay, do you know what? I think I've heard enough from both sides. It doesn't seem like we're getting anywhere.

I am going to adjourn the meeting.

Thank you.

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