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Chair

Mr. Mark Warawa

Standing Committee on Environment and Sustainable Development

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● (1535)

[*English*]

The Chair (Mr. Mark Warawa (Langley, CPC)): I call the meeting to order.

This being the 52nd meeting of the Standing Committee on Environment and Sustainable Development, our task this morning is to review certain clauses of Bill C-45.

I want to report to the committee before we hear from the witnesses, because the hope was that we would have some additional witnesses. We called every witness recommended both by the opposition members and by the government members and, unfortunately, because of the short notice, we were not able to get any additional witnesses.

We reached a time—yesterday at noon, approximately—when we made the judgment call that it was too late to try to continue searching for some witnesses. My apologies: we did try, but for every name that we got, the people weren't available or they did not want to come as witnesses.

We do have the witnesses from the department here for an hour, and then the plan is to break. With more witnesses, we were going to hear from them for an hour and a half; I've made a judgment call of just an hour with the witnesses, and then we'll go in camera and discuss Bill C-45.

Do I have your okay on that?

An hon. member: Yes.

The Chair: Ms. Leslie.

Ms. Megan Leslie (Halifax, NDP): I appreciate that it must have been very hard to arrange witnesses to come to speak. I've spoken to some of the witnesses whose names we submitted. The fact is, for example, that Mr. Doyle teaches at this time, so it's impossible for him.

However, I think it's really important that we do hear from other witnesses. We have a situation where the witnesses who are before us are very well informed, but they are the same people, coming from the same department that would have drafted this section of the budget bill. So if we are to suggest amendments to the finance minister or the finance committee, we don't have anybody here with an objective lens to say, “Well, here's how these pieces could be stronger, or better, or clearer”, because we're hearing from the folks who drafted....

I am seeking unanimous consent that we try our best to get some witnesses on Monday. We have one hour with the minister on supplementary estimates (B) and then we have another hour. I'm seeking unanimous consent to dedicate that second hour to hearing from other witnesses.

I know that on this side of the table MPs are certainly willing to deal with the report back in a subcommittee; we're willing to figure out an extra half-hour or hour, if we need to do that, to try to make it work. But I think it's going to be really challenging for us to give fulsome and adequate recommendations to the finance committee.... Sorry—is it the finance chair or the finance minister?

The Chair: The letter will go to the finance chair.

Ms. Megan Leslie: The chair—thank you.

I think it's going to be really difficult for us to give proper recommendations to the chair unless we actually hear from people other than those from the department.

● (1540)

The Chair: Now, what I'd like to do at this point—I've recognized Ms. Leslie—is show respect to the witnesses that we do have here, if we could hear from them and open it up for questions for them.... We aren't going to get any more witnesses today.

Is it okay if we proceed? We can hear from the witnesses and question the witnesses, and then we will proceed to see what additional input we may or may not have. Is that okay?

Okay.

Thank you for being with us today. You have up to 10 minutes with your testimony and then we'll open it up for some questions.

Ms. Helen Cutts (Vice-President, Policy Development Sector, Canadian Environmental Assessment Agency): Thank you very much.

My name is Helen Cutts. I'm the vice-president of policy development at the Canadian Environmental Assessment Agency. It's my pleasure to be with you this afternoon. My opening remarks will not take 10 minutes. That will give us more time for questions.

Division 21 in part 4 of the budget implementation act makes a minor technical amendment to the Canadian Environmental Assessment Act, 2012, or CEAA 2012, as it's known in the short form.

[*Translation*]

In order to provide some context for members of the committee with respect to the amendments proposed by Bill C-45, I will briefly describe the main features of the CEAA 2012.

This new act was brought into force in July shortly after Bill C-38 received royal assent.

[*English*]

These recent changes to federal environmental assessment are part of the responsible resource development plan. The objectives of this plan are to provide for more predictable and timely reviews, to reduce duplication for project reviews, to strengthen environmental protection, and to enhance consultations with aboriginal groups.

CEAA 2012 focuses on major projects. "Designated projects" is the term used in the legislation. Designated projects are identified in the project list regulations. The Minister of the Environment may also require the environmental assessment of a project not on the list. This scheme replaces the "all in unless excluded" approach of the former act.

[*Translation*]

Responsibility for environmental assessment has also been consolidated with the Canadian Environmental Assessment Agency, the Canadian Nuclear Safety Commission and the National Energy Board. This replaces an approach that saw the act implemented by 40 to 50 federal authorities each year.

[*English*]

There are additional mechanisms for federal-provincial cooperation. A provincial environmental assessment may substitute for the federal process. At the end of the environmental assessment, the Minister of the Environment makes a decision, informed by the provincial report. Before approving substitution, the minister must be satisfied that the core requirements of CEAA 2012 will be met.

The Governor in Council may also declare a provincial environmental assessment to be equivalent, exempting the designated project from application of the act. The conditions for substitution must be met in this case as well.

The Governor in Council must also be satisfied that the province will make a determination as to whether the designated project is likely to cause significant adverse environmental effects. It will ensure implementation of mitigation measures and a follow-up program.

There are now legislative timelines for environmental assessments: 365 days for an assessment by our agency; 24 months for an assessment by a review panel.

[*Translation*]

The minister may extend timelines by three months. Additional extensions may be granted by the Governor in Council. There is authority for regional environmental assessments that move beyond a project-specific focus. These are intended to assist with the assessment of cumulative environmental effects.

[*English*]

Finally, unlike the former act, CEAA 2012 includes enforcement provisions.

[*Translation*]

The amendments proposed by Bill C-45 are intended to address minor inconsistencies in the text of CEAA 2012 that have come to our attention over the past four months of implementation.

● (1545)

[*English*]

Clauses 425 to 427, as well as clauses 429 and 431, are intended to ensure concordance between the French and English versions of the act.

Clause 428 corrects an oversight with respect to conditions that can be put in a decision statement. At the end of an environmental assessment, a decision statement is provided to the proponent of a project. This statement sets out the conclusion as to whether the project is likely to cause significant adverse environmental effects. It also sets out conditions that are binding on the proponent; these are mitigation measures and requirements for a follow-up program.

[*Translation*]

The amendment proposes broader language with respect to the conditions to ensure that a decision statement can include administrative requirements such as reporting on the implementation of mitigation and follow-up.

[*English*]

Clause 430 clarifies that the obligation for federal authorities to ensure their action with respect to projects on federal lands do not cause significant adverse environmental effects is limited to the environmental effects caused by the components of the project that are situated on federal lands.

Finally, clause 432 proposes to close a loophole in the transition provisions. Currently, there is potential for a project to be exempted under the transition provisions even though it would have required an environmental assessment under the former act and would normally be subject to the new act. Where a proponent of a project was advised under the former act that an environmental assessment was not likely required, the transition provisions in CEAA 2012 exempt it from application of the new process.

This exemption would hold, even though a trigger under the former act—that is, a federal decision about a project—might subsequently be identified. The proposed amendment would subject a designated project, exempted under current provisions, to the requirements of the act if it is determined prior to January 1, 2014, that the project requires a federal decision that would have resulted in an environmental assessment under the former act. This amendment would ensure equitable treatment of similar designated projects under two different legislative schemes.

Thank you.

The Chair: Thank you very much.

We'll begin, I believe, with Ms. Rempel. Are you going first?

We have a point of order.

[*Translation*]

Mr. François Choquette (Drummond, NDP): I have a point of order.

I assert that the Standing Committee on Environment and Sustainable Development lacks the authority from the House to propose amendments to Bill C-45 or to issue a report to the Standing Committee on Finance and therefore that we should not participate in this clause-by-clause hearing.

Let me remind this committee of where we, as a committee, derive our authority to do the things we do. We derive our existence and our authority from the House of Commons itself. The House creates our committee specifically through Standing Order 104, and the Standing Orders further regulate how our committees are constituted and governed under Standing Order 106.

The House also sets out the specific mandate of each standing committee under Standing Order 108. An excellent summary of this regime can be found in the book entitled *House of Commons Procedure and Practice*, commonly called O'Brien and Bosc. On pages 960 and 962, referring to standing committees, the document reads:

> They are empowered to study and report to the House on all matters relating to the mandate, management, organization and operation of the departments assigned to them. More specifically, they can review:
>
> the statute law relating to the departments assigned to them;
>
> the program and policy objectives of those departments, and the effectiveness of their implementation thereof;
>
> the immediate, medium and long-term expenditure plans of those departments, and the effectiveness of the implementation thereof; and
>
> an analysis of the relative success of those departments in meeting their objectives.
>
> In addition to this general mandate, other matters are routinely referred by the House to its standing committees: bills, estimates, Order-in-Council appointments, documents tabled in the House pursuant to statute, and specific matters which the House wishes to have studied. In each case, the House chooses the most appropriate committee on the basis of its mandate.

Please note that all the abilities cited in this citation flow from the House, not from another committee.

So let us look at what we have here with Bill C-45.

On October 18th of this year, following the adoption of Ways and Means motion 13, the Minister of Foreign Affairs moved, on behalf of the Minister of Finance, that Bill C-45 be read a first time and printed. In October, the Minister of Public Safety moved that Bill C-45 be read a second time and referred to a committee, and after using time allocation, the debate on the second reading of Bill C-45 ended with the passage of the following the motion on October 30th of this year:

> that Bill C-45, A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures be now read a second time and referred to the Standing Committee on Finance.

Hansard on October 30th, immediately following the passage of the motion in the House, specifically quotes the Speaker saying:

> I declare the motion carried. Accordingly, the Bill stands referred to the Standing Committee on Finance.

The reference of this bill to committee was always only to the Standing Committee on Finance. The motion passed in the House referred only to the Standing Committee on Finance.

This is important, Mr. Chair. Under the legislative process that the House of Commons follows, a bill can only be referred to a single committee, the committee assigned by the House itself. This does not preclude any other committee from studying the subject matter of the sections of this omnibus bill. The official opposition has always advocated that this bill be split up, and effectively studied. The official opposition actually proposed a series of motions in the House to split this bill, using the same method as was used to pass Bill C-46, the MP pension plan provisions. Sadly, the House did not adopt those motions.

Those motions would have allowed this committee to actually study the separate bills which would have been referred to them, and then each committee could legitimately hold hearings, calling a variety of witnesses, with multiple viewpoints, and then, after hearing these points of view on the sections of the bill referred to them, could formulate reasoned amendments for debate and decision in a clause-by-clause meeting, and then the decision of the committee would be reported to the House in due course.

● (1550)

The traditional practice of committees to allow witnesses to be called from a variety of sources is being overridden by this fake belief that our committee will somehow have a meaningful clause-by-clause consideration of the parts of the bill referred to them by the Standing Committee on Finance.

There is another problem. We are being asked by the Standing Committee on Finance, not the House, to study and propose amendments to a bill, on such a short time line that, as we have seen, there is no opportunity for reasoned debate. In fact, we were not able to invite some witnesses to our meeting today, given the very short timelines. The process has been corrupted.

I wish to relate to you all one line from O'Brien and Bosc on committee reports. On page 985, it says:

> In the past, when a committee has gone beyond its order of reference or addressed issues not included in the order, the Speaker of the House has ruled the report or a specific part of the report to be out of order.

I submit to you, as the Chair, that the Standing Committee on Finance is unable to refer any parts of Bill C-45 to anyone. Their only duty is to study this bill and to report back to the House with or without amendment.

Let me review quickly how a committee is supposed to deal with a complex bill referred to it by the House after second reading.

Normally, after passage at second reading, the committee which received the bill would organize its time, call for a variety of witnesses based on the lists provided by the recognized parties in proportion to their representation at the committee, hear the witnesses, formulate amendments, schedule a clause-by-clause meeting, call each clause, hear amendments to the clauses, vote on the amendments and the clauses, and then vote on the bill. The results of these decisions would then be reported to the House.

The House, in its wisdom, has even provided a mechanism to allow for a variation on this normal progress of a bill through committee, which it called the motion of instruction.

I refer once more to O'Brien and Bosc, this time in the chapter on legislative process on page 752:

> Once a bill has been referred to a committee, the House may instruct the committee by way of a motion authorizing what would otherwise be beyond its powers, such as, for example, examining a portion of the bill and reporting it separately, examining certain items in particular, dividing a bill into more than one bill, consolidating two or more bills into a single bill, or expanding or narrowing the scope or application of a bill. A committee that so wishes may also seek an instruction from the House.

So, if the government was interested in following the rules of this place, and wanted to have a variety of committees study this bill, then it could have moved to instruct any variety of those committees to conduct a review of the portions of the bill, allow amendments to those portions, and to report them separately. But the power to authorize this variance in the legislative process rests with the House of Commons, not the Standing Committee on Finance.

Because we have not received any order of reference from the House, and because there has been no instruction from the House subsequent to the passage of the bill at second reading, I submit to you that it is out of order for this committee to have any vote on any amendment relating to C-45. Unfortunately, our work will have been in vain.

I also submit to you that this committee has the right to initiate a study on the subject matter. In fact, it is really important to do so with the help of witnesses with different points of view. But we do not have the authority to report to another committee, only to the House.

While committees have the power to meet jointly with other committees, a report from a joint committee must report only to the House, not to another committee such as the Standing Committee on Finance.

Once again, I would like to quote O'Brien and Bosc on this. On page 983, when referring to a joint committee, it says:

> If a report is adopted during a joint meeting, each committee may present to the House a separate report, even though the two reports will be identical.

So, according to O'Brien and Bosc, Mr. Chair, the report goes to the House, not to another committee.

Mr. Chair, I also refer you to the same chapter, pages 984 and 985, dealing with the way in which a committee can report to the House:

● (1555)

> In order to carry out their roles effectively, committees must be able to convey their findings to the House. The Standing Orders provide standing committees with the power to report the House from time to time, which is generally interpreted as being as often as they wish. A standing committee exercises that prerogative when its members agree on the subject and wording of a report and it directs the Chair to report to the House, which the Chair then does.

It is really very clear. I will continue reading:

> Like all other powers of standing committees, the power to report is limited to issues that fall within their mandate or that have been specifically assigned to them by the House. Every report must identify the authority under which it is presented. In the past, when a committee has gone beyond its order of reference or addressed issues not included in the order, the Speaker of the House has ruled the report or a specific part of the report to be out of order.

I must remind you, Mr. Chair, the words come from O'Brien and Bosc.

We have rules for committees that show the committees receive their authority from the House, and that also say that committees report their information to the House. The request for us to somehow become subcontractors to shoddy work by the parliamentary assistant to the Minister of Finance should not be given any credence.

I suggest to you, Mr. Chair, that our job is to hear witnesses on Bill C-45 and report findings to the House. I do not believe that we should entertain any amendments to C-45, because the bill was never envisioned by the House as being dealt with at any committee other than the Standing Committee on Finance. I have already made reference to this, and it is very well explained in O'Brien and Bosc in the passages I have referred to above.

I further submit that it flies in the face of all our basic principles of being a committee if we agree that committees should receive their mandates from another committee—that is unheard of—and should then report to that committee rather than to the body which gives us authority, the House of Commons.

With that, I humbly await your ruling and decision on the matters I have just discussed.

● (1600)

[*English*]

The Chair: Thank you very much.

I think in the interest of time, I will address the point of order myself rather than open it up for further input, because this is our opportunity to hear from the witnesses in the form of questioning.

The standing committees are, as we've all heard, creatures of their own, and they can decide what they want to do. I'll read from page 1004 of O'Brien and Bosc:

> The standing committees may themselves initiate, without first obtaining the prior approval of the House, any study they feel it advisable to undertake, insofar as it falls within the mandate provided to them by the Standing Orders. The committees then undertake to define the nature and scope of the study, to determine how much time they will devote to it and whether or not they will report their observations and recommendations to the House. These studies represent a large part of the work done by committees and the reports they present to the House.

As well, Standing Order 108 says that standing committees are

> empowered to study and report on all matters relating to the mandate, management and operation of the department or departments of government which are assigned to them from time to time by the House. In general, the committees shall be severally empowered to review and report on:

And it goes on from there.

This committee made a decision to study these clauses. This committee then called witnesses. The committee has the right to do that. The committee also has the right to not respond or to respond back to the finance chair with recommendations or no recommendations. This right is totally with the committee.

With that in mind, thank you for the point of order. We will continue.

Now, who...?

I believe it was you, Ms. Rempel, who I gave the opportunity to—

Ms. Michelle Rempel (Calgary Centre-North, CPC): I would also like to deal with the point of order—

The Chair: I've already ruled on that point of order. I've made a decision. Now, if somebody disagrees with that, that decision could be challenged.

[*Translation*]

Mr. François Choquette: Mr. Chair. Thank you for your ruling on my point of order. I would just like to add one thing. I did not understand your reply about the matter of a committee reporting to another committee.

[*English*]

The Chair: Just to clarify, if the committee wants to do that, they can. If the committee had decided not to do this review of these clauses, that is their right. I would have responded back to the chair saying that we're not going to do that and thank you for the opportunity. But the committee decided that they did want to review these clauses and call witnesses. This is what the committee decided to do.

That leaves us with two options—actually, three. We could not respond, or we could respond by saying that we do not have any recommendations, or we can respond with recommendations.

That is what the committee has decided to do. We've called witnesses. With your permission, I will move on to giving an opportunity to question the witnesses.

● (1605)

[*Translation*]

Ms. Anne Minh-Thu Quach (Beauharnois—Salaberry, NDP): I have a point of clarification, Mr. Chair.

[*English*]

Ms. Michelle Rempel: [*Inaudible—Editor*]...I'm on the speaking order?

The Chair: You are on the speaking order.

Ms. Michelle Rempel: Thank you.

The Chair: Madam Quach, is this a point of order?

[*Translation*]

Ms. Anne Minh-Thu Quach: No, it is a point of clarification.

[*English*]

The Chair: If it's not a point of order, I'm going to ask you to wait your turn.

Ms. Rempel, you have seven minutes.

This is not on a point of order. I've already ruled.

Ms. Michelle Rempel: So this is my speaking time to the witnesses.

The Chair: Yes, it is.

Ms. Michelle Rempel: Well, my apologies to the witnesses. I would like to thank you for coming out today to talk about the amendments, but I do have to address some of my colleague's points here.

We started our meeting off today with my colleague opposite asking for additional time on Monday to have further witnesses, which I, Mr. Chair, am amenable to. I am more than happy to allow this to happen, to look at other times to deal within a subcommittee, but I have a conflicting message from my colleague here and, frankly, I am outraged.

We have a history of working well in this committee. We have witnesses sitting here who are ready to talk to.... I think there are only eight clauses here, seven of them minor concordance issues, but we have the opportunity today to look through this. We made a decision as the committee to review this component of the bill, and yet we've just spent half an hour of the time of the witnesses who proposed these.... In fact, we have the vice-president of policy for the Canadian Environmental Assessment Agency here to look at these clauses today, and we just spent half an hour talking about why we shouldn't be looking at them. I'm not sure what the NDP's message is on this, frankly.

Do you want to review these clauses or not? Frankly, I do. I cannot believe that we just sat here talking about this after we've been trying to find additional time for witnesses to come out and to work collaboratively to review these amendments. Frankly, I'm flabbergasted.

As committee members, we've had over a week with this letter in front of us, whereby we could all do our due diligence on the technicalities of each aspect of the clauses. I've certainly done that. I know that my colleagues down the way have done that as well. They've sent me questions that we've been trying to work back and forth on in trying to get clarification to make sure that it's consistent with the existing legislation—point blank, doing our jobs as legislators instead of sitting here and talking about whether or not we should be looking at this.

I'm just not sure what the message is today. I cannot believe that we just spent half an hour doing that.

Mr. Chair, I do appreciate your ruling on this, but the last point I'm going to make on this is something that I want on the record, and that's that my colleague said that we have a fake belief for meaningful discussion on these clauses here today. We gathered here as a standing committee of the Parliament of Canada to review these. It was a decision that our committee made, and to say that in front of witnesses who are here, and who are technical experts on the subject, is frankly outrageous. I certainly hope that my colleagues will get their message in alignment, that will work with us.... If there are additional witnesses we need to have on Monday and work on a subcommittee on Monday afternoon—whatever—to meet the deadline that has been tasked with us by the finance committee, I am more than amenable to that. I will put that on the record right now, Mr. Chair.

I certainly hope that we can take the rest of the time to review the amendments with the witnesses who are here. Let's move on.

Ms. Cutts, do any of the proposed amendments to CEAA 2012 in Bill C-45 represent a change in policy intent?

Ms. Helen Cutts: No. These are technical amendments. None of them change the policy intent of the original act.

Ms. Michelle Rempel: I want to look specifically at clause 430 with regard to the review of EAs on federal lands. I understand the intent of the clause, but perhaps you could give the committee an example of what type of project this would apply to and whether it undermines the environmental assessment process at all.

Ms. Helen Cutts: As you know, there is an obligation in the act that federal authorities examine projects that are non-designated and happen to be on federal lands.They need to determine that there are no significant adverse environmental effects of their actions.

Now, what we felt we needed to clarify was that when we said "federal lands", did we mean only the portion of the project on federal lands, or did we mean there was an obligation by federal authorities to look at the whole project? The example you'd be looking at would perhaps be a transmission line that crosses federal lands, for instance, where several kilometres of it is on federal lands through the corner of a park. This amendment says that the only obligation of the federal authorities is to look at the portion on federal land; it's not appropriate that we look at the other portion.

This does not reduce the standards. This was fully the intent of the original provision. It's for greater clarity in case someone would think that the clause meant something broader than it really does mean.

● (1610)

Ms. Michelle Rempel: One of the questions we had in our preparation for this meeting was on how to ensure that the clause doesn't weaken or reduce the provision of the environmental assessment for the portion on federal lands. My understanding of what you're saying today is that the portion would still be reviewed. Is that correct?

Ms. Helen Cutts: It in no way weakens the standards we use for environmental assessment under these federal authorities. We refer to them as "federal stewardship".

Ms. Michelle Rempel: That's great.

We're in a process of transition right now, so what would be the impact of this change—or any of these changes—on the transition provisions that we've already outlined with CEAA 2012?

Ms. Helen Cutts: There are some transition provisions that indicate the possibility of exempting a project from the act. We don't think that our new change, which addresses this issue in order to create more fairness, will have a significant impact in terms of the number of projects being subject to the act. It's mainly a technical change on order to make sure that a project that would have been subject to the former act because a trigger was found subsequently would still be subject to the new act.

It's not something where we expect to have huge implementation changes, in that the number of projects or the way we look at them would change. It's a minor adjustment to deal with the intricacies of transition, of going from a trigger-based system to a non-trigger-based system.

Ms. Michelle Rempel: I'm sure you've consulted with stakeholders and you've had reaction from stakeholders on these changes. Could you tell the committee a bit about any reaction you have had from stakeholders on these changes to date?

Ms. Helen Cutts: The reaction has been very muted. We were doing a tour with our provincial colleagues, and they understood fully that these were technical changes.

We had some consultations in the summer that were broader—on the project list—but at that time, these elements were still under the radar because they had not been tabled in the House, so we were not able to discuss them broadly with stakeholders this summer in the course of our other stakeholder engagement.

The Chair: Your time has expired.

Ms. Leslie, you have seven minutes.

Ms. Megan Leslie: Thanks very much, Mr. Chair.

Thanks very much for your testimony.

In regard to my first question, I'll tell you that I'm a little worried that we have amendments to one piece of legislation twice.... Well, I was going to say twice in the same year, but I need to remember that the first round with CEAA wasn't an amendment, but a new bill. I'm a little worried about amending a bill that essentially was just tabled this spring.

With these.... I mean, it's good and it's due diligence that there are going to be corrections made to this bill, but one correction that I was actually surprised not to see was anything to do with abrogation or a derogation clause, because I have had some feedback from first nations groups who are saying that surely to goodness this new act—in particular, when it comes to the notice provisions—doesn't apply to them with regard to consultation.

I wonder if you have any feedback about any discussion you've had or any future plans for that kind of clause or even if you've had the same feedback that I have.

● (1615)

Ms. Helen Cutts: We had, as I say, some conversations with first nations in the summer. There was a general comment that the process in the spring had been inadequate from their point of view, because they had not been consulted on the new act before it had been tabled.

More broadly in terms of consultation activities, we have not had any of the first nations complain about consultation on a project-by-project basis. The way we proceed with consultation is that it is the same process under the new act that it was under the old one. We interact with them early and frequently.

I'm just not fully aware of the feedback that you had. Mr. Mongrain might want to add something.

Mr. Steve Mongrain (Senior Policy Advisor, Policy Development Sector, Canadian Environmental Assessment Agency): Yes. I could add to that.

The legal duty to consult is constitutionally founded, as you know. The government has chosen to use the EA process as a means, to the extent possible—

Ms. Megan Leslie: The what process? I didn't hear.

Mr. Steve Mongrain: Sorry: the EA process, the environmental assessment process.

Ms. Megan Leslie: Thank you. It was just that I didn't hear it.

Mr. Steve Mongrain: The government has chosen to use the EA process to deliver on the legal duty to consult to the extent possible, but there is nothing in CEAA that can diminish that obligation or take away from aboriginal rights.

Ms. Megan Leslie: The feedback I was getting was specifically about the amount of time—I think it was 15 days—when the information is gazetted and you're looking for feedback. That's where I was getting some concern—pressure is too strong a word—from various groups saying that surely that didn't apply to them because of the case law that's out there, because of the duty to consult.

Mr. Steve Mongrain: There is a 20-day period—

Ms. Megan Leslie: Twenty days? Thank you.

Mr. Steve Mongrain: —once the agency has received a project description from a proponent and we review that to make a determination on whether to require an EA or not. If an EA is not required, that does not take away the legal duty to consult if the federal crown is contemplating conduct. Similarly, the 20 days is a new consultation period; it didn't exist under the old act. We're trying to open it up to the public and to aboriginal groups earlier than what has occurred under the old CEAA.

We also, as the federal authority that helps deliver on the legal duty to consult, endeavour to contact potentially affected aboriginal groups and give them as much advance notice as possible. Where practicable, that may involve contact even before that formal project description phase.

Ms. Megan Leslie: Thanks.

Ms. Cutts, you were talking about the movement from a trigger-based system to a non-trigger-based system and that transition. I can only imagine how difficult that is to navigate from a technical perspective.

In developing the new project list that came into force in July, was there consultation about the project list or was it just a cut-and-paste from the old—

The Chair: On a point of order, Ms. Rempel.

Ms. Michelle Rempel: We are here today to review the clauses that are outlined and tasked to us by the finance committee. I understand that there are broader issues, but I think our study should be focused on questions related to the specific clauses that are laid out in front of us.

The Chair: Are there any speakers to that?

Ms. Leslie.

Ms. Megan Leslie: Thanks, Mr. Chair. This relates directly to the transition provisions that our witnesses spoke to. They raised this issue in their testimony.

The Chair: Both witnesses and questioners, though, do need to keep our focus on clauses 425 to 432 inclusive.

Proceed.

Ms. Megan Leslie: I'm unclear on your ruling.

The Chair: I just want to make sure that we are dealing with the mandate, with what the committee decided was the scope of our questioning and review.

Ms. Megan Leslie: Okay.

I can link it back to clause 432. I am interested in knowing who was consulted on the project list, and I think that's relevant, because I'm wondering if there was feedback from them about the technicalities of the transition as well. As I noted, the situation we're in is very complicated and complex.

● (1620)

Ms. Helen Cutts: The answer has two parts. In terms of the actual project list that came into force on July 6, at the same time that the act came into force, that was making use of the comprehensive study list, a regulation that was already in place. That regulation listed projects and types, such as a mine of a certain size. There was no consultation, because we were taking one regulation and essentially repeating it.

We did, however—

Ms. Megan Leslie: For what it's worth, that's what I figured. I'm glad to have that clarified.

Ms. Helen Cutts: Yes.

Then the second part of the answer is that, recognizing that that was put in place in order to ensure that the act could be implemented, we began immediately in July to contact aboriginal groups, environmental NGOs, the provinces, and industry associations. Our letters went out in early July to invite them to talk about the project list. We brought people together face to face, answered their questions, and explained how it worked in the context of the act. They all provided feedback by the deadline in August.

Ms. Megan Leslie: Thanks.

The Chair: Your time has expired.

Ms. Rempel, you have another seven minutes.

Ms. Michelle Rempel: Thank you, Mr. Chair.

With regard to the clauses we're reviewing today, clauses 425 through 432, do any of these clauses impact any of the environmental permitting or legislation that's related to CEAA 2012? Specifically, with regard to clause 428, as I read through this, it seems as though it clarifies the need for follow-up on decision statements, but perhaps you could spend a little bit more time walking us through that. Perhaps you could walk us through the follow-up that's typically undertaken with the decision statement as well.

Ms. Helen Cutts: In terms of the government's approach to responsible resource development, it obviously sees an integrated system. The environmental assessment process comes first, and often there is federal permitting that comes after it.

Clause 428 refers to a follow-up program. That follow-up program is not a follow-up related to permitting, so I think what you may be asking is what's really happening in clause 428 in terms of the requirements in the decision statement.

At the end of an environmental assessment, the minister prepares a decision statement that indicates whether or not there are significant adverse environmental effects. It also indicates what conditions are imposed on the proponent in terms of mitigation conditions and also what is expected of the proponent in terms of a follow-up program.

The follow-up program is very interesting. It is a scientific exercise that asks this question: do the mitigation measures as proposed have the effect that we expected them to have? For example, if there were some measures that were to be taken to prevent erosion, it wouldn't be sufficient for a proponent just to put in place certain measures if they didn't have the effect of preventing the erosion. The follow-up program needs to ask the question: did the mitigation succeed?

What we want to ensure by putting forward clause 428 is that the decision statement not only has those core requirements that we want to impose on the proponent—a follow-up program and mitigation conditions—but that we could also ask for other administrative requirements, such as the requirement the proponent actually report to us on the results of its follow-up program.

● (1625)

Ms. Michelle Rempel: How was that received by some of the stakeholders or project proponents that utilize the act?

Ms. Helen Cutts: On the operations side, we've really had a handful of proponents that have come through under the new act—fewer than 10—and the feedback has generally been very, very positive. They're obviously not at that stage of the process, but they haven't raised concerns about entering into a process.

Ms. Michelle Rempel: On the follow-up process that's outlined in clause 428, how does that compare to other jurisdictions?

Ms. Helen Cutts: In Canada, the provinces also generally have required follow-up programs of proponents. In other countries, it's a standard measure that's seen internationally as a good practice.

The follow-up has another purpose as well. I've talked about ensuring purely for that project that all the mitigation measures are working, but it also has an advantage to us at the agency, because if we have been recommending a certain mitigation measure and we learn from a particular project that the mitigation measure is not working, then we're not going to recommend that for the next project of a similar type.

I know that the Auditor General has been very concerned that Canadians benefit from information of that nature and has asked us to ensure that the results of follow-up programs are integrated into future decision statements.

Ms. Michelle Rempel: That's great.

Going now to clause 430, in my previous round we spoke a little bit about an example of a project that would go through that. Could you maybe walk us through in a bit more detail, in the example you gave us, the process a proponent would go through with respect to the federal component of the EA?

Ms. Helen Cutts: An environmental assessment is something required for projects that have gone through a screening, that were a part of the designated project list. That's a list in the regulations. Clause 430 is a special federal stewardship clause that is for non-designated projects, so the process is going to be very different, and I'm hesitant to refer to it as an environmental assessment process, so as to avoid confusion with the one for designated projects.

First of all, we're talking about projects that are not on the designated list. These are the smaller ones. Suppose a federal authority has to make a decision on crop-grazing on agricultural land and has to provide a crop-grazing permit or some other type of permit for the use of that reserve land. That federal authority would get details from the proponent about the nature of the environmental effects. It would look at the duration of the effects, the intensity of the effects, and what those effects were in terms of federal interest—whether a fish habitat was disturbed, for example. Then it would have to determine if those effects were significant or not.

In our experience with screenings, we found that the vast majority of them did not generate significant adverse environmental effects, but it is possible that a smaller project on federal lands could generate significant effects. We've held the requirement high, so that if that project is to be approved in spite of those significant effects, that federal authority would have to go to cabinet to see if those effects were justified.

The Chair: Ms. Duncan, you have the last seven minutes.

● (1630)

Ms. Kirsty Duncan (Etobicoke North, Lib.): Thank you very much.

Thank you to the witnesses for coming.

I'm going to pick up on some of what my colleagues have said. Could you describe the consultation process followed since the tabling? Just give us an idea who was consulted, the numbers, and feedback, please.

Ms. Helen Cutts: Sure. This summer we invited approximately 20 environmental NGOs. We invited the 10 provinces and 3 territories, approximately 20 industry associations, and 3 national aboriginal organizations.

Ms. Kirsty Duncan: Of those who came, who was involved? I would like to know who the actual participants were.

Ms. Helen Cutts: Of the provinces, all were able to come to our initial meeting, except for P.E.I. and Quebec. Quebec held a separate telephone call with us, after the fact.

There was an extremely good turnout for the environmental organizations. I can't remember, but some of them sent replacements, so that while we sent out about 20 invitations, we ended up with more than 20 participating.

Ms. Kirsty Duncan: Could you table who came to that, please?

Ms. Helen Cutts: Yes, I could do that.

Ms. Kirsty Duncan: That's great.

Ms. Helen Cutts: The process was that each of the sessions were held independently, with each of the four different types of stakeholders. It was set up as a three-hour meeting with a break in between.

We spent the first hour and three-quarters or so going through the act to make sure everybody was on the same footing. After the break, we explained the regulation as it stood on July 6 with the new project list. We opened the floor to comments on that project list, but we knew that since people were still adjusting to it, they would need more time.

We gave everybody four weeks from their session; the sessions were staggered so everybody had a different deadline.

We had about 45 responses, Steve...?

Mr. Steve Mongrain: There were fifty-five.

Ms. Helen Cutts: We had about 55 formal responses come in from people who had been at the sessions, and then we received some letter campaigns related to it that were from the general public.

Ms. Kirsty Duncan: This really helps. When you table it, if you're willing, would you outline who came and if there's a way to say what their concerns were? I think it would be helpful to the committee.

I'm going to come back to that, because I do want to ask about clause 432.

Ms. Helen Cutts: I do have a summary document of the concerns, organized by the themes of the project list.

Ms. Kirsty Duncan: It would be terrific if that could be tabled. Thank you.

Ms. Helen Cutts: Yes.

Ms. Kirsty Duncan: I'd like to ask about clause 432 regarding the transitional provisions. I'm wondering how many designated projects will require a federal environmental assessment. Was this provision added to address any project in particular? If so, which project was it, please, and why?

Ms. Helen Cutts: Okay. Well, certainly, this is one where, from a policy point of view, it made a lot of sense to add it. When we were asked how many projects it would cover, we actually took a lot of time trying to figure out how many projects could be captured. The problem is that up to this point these are projects for which no trigger has been found, so the potential number of projects that would be caught by this provision depends on whether there would be triggers found in the future.

Up to now, we're at zero. There could potentially be any number between now and January 1, 2014, so we're basically 14 months away. For a project under the old act, a federal authority typically would indicate yea or nay as to whether there would likely be a fisheries authorization. If there was a fisheries authorization, then the act could be triggered, but sometimes it took some conscious work that was very difficult in order to determine whether there was a Fisheries Act trigger. There could be delays in finding out that sort of information, and there could be delays for several months.

Right now, we are several months past the July date. No triggers have been found. It could be that as we get further and further into the future, there's a likelihood that DFO or another department would say that they remember a case from last April and their fisheries experts have found that there is a trigger that would have caused the act to be in force last year. Now we want to make sure that's subject to the act.

The Chair: You have half a minute left.

Ms. Kirsty Duncan: Thank you.

● (1635)

The Chair: Thank you.

I want to thank the witnesses for being with us today.

Colleagues, we will suspend for a moment and then move in camera.

[*Proceedings continue in camera*]

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