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Chair

Mr. Leon Benoit

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● (0845)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good morning, everyone. Welcome to committee. We're here to do clause-by-clause study of Bill C-22, an act respecting Canada's offshore oil and gas operations, enacting the Nuclear Liability and Compensation Act, repealing the Nuclear Liability Act and making consequential amendments to other acts.

With us today to give us guidance and to answer any questions members may have, we have witnesses from the Department of Natural Resources.

We have Mr. Labonté here again. Thank you very much.

We have Tyler Cummings, deputy director, frontier lands management division, petroleum resources branch. Welcome.

We have Dave McCauley, director, uranium and radioactive waste division, electricity resources branch, energy sector. Welcome.

We have Jean-François Roman, legal counsel, legal services. Welcome.

Also, there is Joanne Kellerman, general counsel and executive director, legal services. She will be here, will she?

Mr. Jeff Labonté (Director General, Energy Safety and Security Branch, Energy Sector, Department of Natural Resources): She'll be here in a few minutes.

The Chair: That's perfect.

From the Department of Indian Affairs and Northern Development, we have Michel Chenier, director, petroleum and mineral resources management directorate, natural resources and environment branch, northern affairs.

Thanks very much to all of you for being here. We know there will be questions.

We will now start the clause-by-clause study.

We will start by standing the title until the end, but before I go there, actually, I do want to say that there is a package of amendments. I guess they're not separated, but the independent Green member has presented a package. Yesterday, she withdrew three of the proposed amendments, so they will not be brought forward today. They're not considered moved. They are PV-8, PV-15, and PV-16. They are removed from the package. If you could just strike those so you remember that.

We have an e-mail noting that the independent member from the Green Party will be arriving late. I think we have to continue in the process here. I just want to remind members that we've agreed to go until we're finished, whatever time that takes. We have the meeting room beyond the normal time of 11 o'clock.

Mr. Regan, did you have a question?

Hon. Geoff Regan (Halifax West, Lib.): What are the numbers for those amendments that are not being put forward?

The Chair: They are PV-8, PV-15, and—

Hon. Geoff Regan: And PV-16?

The Chair: That's right. They are removed from the package and they will not be moved.

Have you found those amendments, or do you want me to give you the page numbers?

Ms. Linda Duncan (Edmonton—Strathcona, NDP): PV-1 and PV-2 are the first ones.

The Chair: PV-8, PV-15, and PV-16 are the three that are removed from the package.

Hon. Geoff Regan: Pages 30 and 31 are the last two...?

The Chair: Yes, and the first one is on page 11.

As usual, we will start by postponing the title, clause 1, until later, pursuant to Standing Order 75(1).

(On clause 2)

The Chair: Are there any proposed amendments for clause 2?

This one is deemed moved. We don't really....

● (0850)

Hon. Geoff Regan: They're deemed moved?

The Chair: Well, all of them that have been presented and haven't been removed by the time we deal with clause 1, even though it is moving it to later....

Hon. Geoff Regan: So PV-1 has been moved. Is that how this works?

The Chair: Yes.

Hon. Geoff Regan: Thank you.

The Chair: This is clause 2, with any proposed amendments.

Is there any debate on PV-1? I guess the member isn't here. Is there discussion on PV-1?

Go ahead, please, Ms. Duncan.

Ms. Linda Duncan: We clearly support this proposed amendment. There are very strong objections stated by the Government of British Columbia that this provision potentially would allow for the use of dispersants that they're deeply concerned about and that could be illegal under the federal Fisheries Act. They simply don't support the way the bill is drafted. They would support this amendment, I understand.

It seems reasonable to us as well. Since the BP spill in the Gulf of Mexico, there are increasingly deep concerns about the effect of these dispersants. Having personally witnessed the disastrous response by the Alberta and federal governments to the bunker C spill in Alberta, I can attest to the fact that when you use the wrong substance, you end up with a disaster. In that case, they used sawdust, and the bunker C sank to the bottom of the lake, which causes greater damage.

The concern with a lot of these dispersants is that they in fact do cause the sinking and more biological damage. I've taken a close look at this amendment and it seems to be a very sensible one.

The Chair: Is there any further discussion on that?

Ms. Crockatt.

Ms. Joan Crockatt (Calgary Centre, CPC): I spoke on this in the House. I have some familiarity with dispersants. I'm sure the member opposite has read the bill and understands that dispersants and all spill-treating agents in this bill will only be used in the event that there's a net environmental benefit. In fact, that is the test.

Are we ready for questions? I'm sure that our officials from Natural Resources could speak further to that.

The Chair: Would one of you or more like to make a comment on that?

Mr. Jeff Labonté: Our read of this particular amendment would be that it removes “except in section 25.4” of the bill, which is a section that references the ability to conduct research on STAs, spill-treating agents, to demonstrate and to understand how they would be affected in the natural environment and how they work.

To the honourable member, the rest of the clause that remains would still permit the use of STAs under the conditions in which the bill spells it out. STAs can only be used when there's a net environmental benefit. They can only be used if the STAs are listed on regulations that are posted by the Minister of the Environment. They can only then be considered for use when the company puts them in their plan and lays out all of the conditions under which the plan would allow for their use. They can only be used when the conservation officer of the offshore board then approves that the plan may be used and invoked with the STA that's listed in the regulation because there's a net environmental benefit.

This amendment would still permit the use of STAs. It would not allow for the research on STAs to occur. That's at least according to the read that we have of the amendment.

The Chair: Good, thank you.

Ms. May, so you're aware, we're dealing with your first proposed amendment. The officials have just given an explanation as to how the issue of various spill-treating agents are handled in the bill. I don't know whether you heard the explanation.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): No, Mr. Chair.

Members of the committee, I have to apologize. We were having a session in the Centre Block which I was chairing, and I left before it was over. I apologize for being late to committee for clause-by-clause consideration of this bill and my specific amendments. Quite honestly, I didn't get here in time to hear the official's explanation.

The reason we've brought forward this amendment is based on evidence that the committee has heard, particularly from Ecojustice, that by exempting the effects of spill dispersers that are used in response to an environmental emergency, we can actually have other environmental damage. It was the lawyer for Ecojustice, Will Amos, who expressed the concern about the elimination of the relief from liability of the dumping of these particular toxic chemicals.

I understand how they're treated in the bill, and I understand the rationale behind it; however, the reality is that spill-dispersing agents are also toxic chemicals that can have negative impacts on the marine environment. Even though their purpose is to avoid environmental damage, they can in fact add to it. It's a question of exemption from liability. The Green Party is recommending, based on the evidence that the committee has heard, and through my first amendment, that we remove the exemption for spill-treating agents.

Thank you for the opportunity to speak to it.

● (0855)

The Chair: Mr. Regan.

Hon. Geoff Regan: Mr. Chair, can I ask Ms. May if it's her view, and would it be the result of this amendment, that absolute liability would be found in terms of use of a dispersant that had a deleterious effect? Or, is it her view that there should only be—the thing is that there some appropriate uses—liability where there's negligence?

The Chair: Go ahead, Ms. May.

Ms. Elizabeth May: Thank you, Mr. Chair, for the latitude.

The effect of this amendment would be to remove the exemption, which would mean it would revert to absolute liability. I can be corrected, but that's how I understand it would work.

The reality is that the science around the dispersant agents is still evolving. By creating the carve-out exemption in Bill C-22 as is currently being proposed, there'd be no effective pressure on manufacturers to consider that the spill-dispersant agent they're using could have a negative impact. It could be even more of a disaster than the spill they're trying to clean up. By maintaining that they're not exempt from environmental damage, there will be more pressure to ensure that spill-dispersant agents are both effective in dealing with a spill and don't become yet another source of problems.

The classic example is what happened with a spill-dispersant agent used after the *Deepwater Horizon* disaster in the Gulf of Mexico. Some of the spill-dispersant agents themselves contributed to long-lasting negative environmental impacts.

The Chair: Thank you.

Let's go to Ms. Duncan.

Ms. Linda Duncan: Through you, Mr. Chair, I wonder if I could ask Ms. May this question. My understanding is that what you are doing in this amendment is removing the part of the revision that encompasses the area where the government can authorize certain spill-treating agents. My understanding in that case is that there could be a defence of officially induced error.

Is that part of the argument that is being raised?

The Chair: Ms. May, go ahead.

Ms. Elizabeth May: Thank you, Mr. Chair.

Yes, exactly. Thanks, Linda.

The goal here, and I have a number of consequential amendments to this specific issue, is that by removing the words "except in section 25.4", we're treating spill-dispersant agents without having them be categorized within that broad exemption in 25.4.

The Chair: Okay, thank you.

I call the question on amendment PV-1.

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

(Clause 2 agreed to)

The Chair: There are no more proposed amendments from clauses 3 to 13. Is it agreed that we handle situations like this by voting on all of those clauses as a group? In this case we'd vote on clauses 3 to 13 as a group. Is that agreed?

An hon. member: That sounds way too efficient.

The Chair: It's way too efficient? Well, we can back off and go to.... No, okay. We'll handle it that way, then.

(Clauses 3 to 13 inclusive agreed to on division)

(On clause 14)

The Chair: This is the second proposed amendment by Ms. May, independent, Green.

Go ahead, please, Ms. May.

● (0900)

Ms. Elizabeth May: Thank you, Mr. Chair.

The PV sometimes throws people off, but it's Parti vert. That's the convention that's been used since I've been subject to the committee motions in every committee to come to committees to present amendments without being a member of the committee.

This amendment is clearly consequential to the amendment that was just proposed and just defeated and was in order to ensure that we've removed the regulatory power for variation or revocation of an approval referred to in new paragraph 25.1(1)(b). This is, again, related to how we handle spill-dispersant agents.

The Chair: Right.

Is there anything else on that, or have we pretty much had the discussion?

I'll call the vote on amendment PV-2.

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

The Chair: Now we go to amendment NDP-1 from the New Democratic Party, the official opposition.

Ms. Moore, would you like to speak to that?

Ms. Christine Moore (Abitibi—Témiscamingue, NDP): To sum it up, this amendment adds a clause to define and account for loss of non-use damage. We're doing that to use the regulatory window to include the environment in assessing the scope and cost of harm to the environment.

I have two quotes to support this amendment.

One is from Martin Olszynski, who said:

> ESSA limits the right to recover non-use values to the federal, provincial, and (through operation of s 35 of the Interpretation Act...which seems strange in light of the focus, with respect to "actual loss or damage" on what are essentially Aboriginal use-values, and in light of the fact that several First Nations have Aboriginal title claims in coastal waters...

There's also a quote from Mr. Amos:

> However, there are no regulation-making powers associated with non-use values, damages, and that really does ultimately restrict the government or the crown in how it can move forward to enunciate specifically what types of non-use damages will be claimable under what conditions.
>
> There's a lack of specificity in the legislation itself, which isn't necessarily problematic, but the fact that there's no regulation-making power around it doesn't enable that specificity to come into play. I think that additional aspect should be entertained.

The Chair: Thank you very much, Ms. Moore.

Is there any further discussion on NDP-1?

Seeing none, we'll go to the question.

Ms. Christine Moore: Can I have a recorded vote?

The Chair: Yes, you can have a recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We'll now go to proposed amendment LIB-1.

Go ahead, please, Mr. Regan, if you would like to discuss that.

Hon. Geoff Regan: Thank you, Mr. Chairman.

As you know, this is the second of three proposed amendments that would have essentially the same effect. They are in line with what Mr. Amos was saying about the importance of the inclusion of loss of non-use values. Clearly, impacts to the environment do have a value to Canadian society and should not be ignored. There should be authority to assess those damages and to ensure that those who infringe against the act or who cause or are responsible for damages are liable for those as well.

That is the intent of this amendment as well.

● (0905)

The Chair: Thank you, Mr. Regan.

Ms. Block, and then Ms. Duncan.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Mr. Chair, I'd like to ask the officials if they would be able to speak to this proposed amendment.

The Chair: Who would like to do that?

Mr. Labonté.

Mr. Jeff Labonté: Perhaps I could start.

The amendment calls for the ability to create regulations that would allow for, I guess, determining the nature and approach to calculating non-use value. In the context of the policy direction of the bill, the policy direction of the bill indicates, of course, that non-use value will be recognized. It's recognized in several parts of the bill, and allows for governments, whether they be provincial or federal, to proceed to put forward claims for non-use value. It then would allow the courts to determine the nature and specifics around each case that would allow there to be an evidentiary and values-based discussion and a court-based discussion as to what those values are, how they might be calculated, and what's most appropriate in the circumstances.

The regulation-making authority, of course, would allow for government to consider how that would happen in advance, a priori. I think the policy direction of the bill proposes that it be something to be examined when it's appropriate to examine it.

The Chair: Thank you very much.

Thank you, Ms. Block.

Ms. Duncan.

Ms. Linda Duncan: I've listened to the explanation, but I don't find the explanation to be adequate. I think it's really disappointing that this is not included here. I think it shows intent not to give consideration to the non-use value.

I actually have an amendment that I would like to propose to yours, Mr. Regan. The reason for this is that in the majority of cases, we speak of the non-use value because of first nation or aboriginal interests. In those cases, I don't think they would really accept that they are “public” resources.

The Chair: Could you please specify what your proposed change is first?

Ms. Linda Duncan: Sure.

My recommendation would be to delete the word “public” so that the last line would read simply “non-use value relating to a resource”. It's my understanding that in most cases, non-use value references cultural and traditional uses and so forth. In those cases, I don't think there would be recognition that it is a “public” resource.

That's my proposed amendment.

Hon. Geoff Regan: Chair, can I accept that as a friendly amendment?

The Chair: Is it agreed that it be accepted as a friendly amendment?

A voice: It's a subamendment.

The Chair: Let's go to a vote on the subamendment to remove “public” from Mr. Regan's LIB-1 proposed amendment.

(Subamendment negatived)

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

The Chair: Now we go to PV-3.

Go ahead, please, Ms. May.

Ms. Elizabeth May: Thank you, Mr. Chair.

This is on the same topic, and I'm glad we've brushed the surface of it. It is really a commendable aspect of Bill C-22 that sees the recognition that non-use values are explicitly identified as a new category of damages, and that if you have damage in a non-use value, you are, under proposed section 26 of the act, opening up the environmental or natural resources damages that affect something that's categorized as a non-use value, such that they are now open to compensation.

The gap here—and my amendment seeks to address this gap, just as the previous NDP effort did—is that while recognizing that damage to a non-use value is open to compensation within Bill C-22, there is no parallelism in the regulation-making powers to ensure that there can be a consequential implementation of that non-use value. For instance, we definitely need to know about baseline ecological information and inherent difficulty in assigning monetary values to environmental values. Without having that information, it's very hard to know how the spirit of the law would translate practically in saying that we can recognize non-use values as opening up a door to compensation following damage. If you don't have any way of evaluating that, of finding a way to monetize that, then it becomes a fairly ineffective protection of “non-use value”.

Very simply, what the Green Party proposes is that in clause 14 a new paragraph be added. We have proposed paragraphs 14(3)(h.1), (h.2), and (h.3) already in the bill. To create the opportunity to evaluate such value, we would insert, at the very top, proposed paragraph 14(3)(h.01), creating the opportunity concerning the calculation and recovery of damages for a loss of a non-use value. We really do need to put some meat to the bones of the new and commendable effort to include non-use values within the category of damages for which compensation can be claimed under the polluter pay principle.

Thank you.

● (0910)

The Chair: Thank you, Ms. May.

You've heard the proposed amendment and the rationale. Is there any further discussion on the amendment?

Seeing none, I'll go to the question.

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

The Chair: On PV-4, Ms. May.

Ms. Elizabeth May: Thank you, Mr. Chair.

Committee, we're still on clause 14 and also still on page 9 of the bill. PV-4 proposes to delete lines 4 to 9.

The effect of this is to remove ministerial discretion as it applies to the absolute liability limit. This is again based on evidence that the committee heard from Ecojustice that eliminating the discretion of the Minister of Natural Resources to reduce absolute liability levels to below the legislated level of $1 billion, and this is also.... Ecojustice cited advice from the National Energy Board in finding that this was not appropriate. There should not remain a ministerial discretion to reduce the levels of absolute liability below $1 billion.

Thank you, Mr. Chair.

The Chair: Is there any further discussion on PV-4?

Mr. Calkins.

Mr. Blaine Calkins (Wetaskiwin, CPC): Chair, this proposed amendment that is being brought before us today would strike out proposed paragraph 14(3)(h.2). I would wonder why such an amendment would be brought forward when it concerns the National Energy Board's capabilities in making recommendations to the minister. I'm just wondering if the officials here could give us some clarification on why proposed paragraph 14(3)(h.2) is there and why it may or may not make sense to remove that discretion from the minister.

The Chair: Go ahead, please, Mr. Labonté.

Mr. Jeff Labonté: I think I understand the spirit of the amendment. The spirit would be to remove the ability of the board to make the recommendation. However, this part of the bill provides the ability to make regulations that would set in clear terms what the elements of a recommendation to reduce absolute liability would be based on. If you will, it's the criteria, and the determination of the framework around which the board will consider how it might make a recommendation to the minister to reduce the absolute liability provision in circumstances where it's clearly demonstrable.

The framework would allow for explaining how and why that might occur. It's a way of shaping, if you will, how a recommendation could be brought forward. We've already testified that we see this, in our estimation of it, as a fairly exceptional authority that would not be one that would be exercised quite frequently. It is the regulation-making authority that would, if you will, put the parameters around that.

The Chair: Thank you, Mr. Labonté.

Thank you, Mr. Calkins.

Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, I'd like to put a question through you to the officials.

If in the wisdom of the government they want to allow for cases where there is not absolute liability—because we're talking about potentially massive impacts to public resources—does it not make more sense that those conditions and criteria be in the statute and publicly debated, as opposed to being in regulations that are not debated by parliamentarians? Is there a reason it was decided that the criteria would be set forth in the regulations and not in the statute?

● (0915)

The Chair: Mr. Labonté.

Mr. Jeff Labonté: I think the belief was that there would be the opportunity for the board and for members of the offshore Atlantic boards, because the bill does cover the offshore and the NEB's responsibilities beyond Atlantic Canada, to work with the community, to work with interested parties, and to determine what some of the circumstances would be.

Of course, the regulation-making authority does have public consultation through the *Canada Gazette* process. The belief here is that there would be an opportunity to look at this in the coming period of time, once passage of the bill occurs. We put the regulation-making authority in the bill so that there would be parameters around this, but there would be some thoughtful and more thorough discussion on that as we go forward.

Ms. Linda Duncan: Through you, Mr. Chair, as a follow-up, in the law as it stands right now, I don't recall that there's an obligation on those authorities to consult with the public. Is there?

Mr. Jeff Labonté: It would happen through the regulation-making authority.

Ms. Linda Duncan: No, that's what I'm saying. Are you saying that it would be through the cabinet, not through the offshore boards? You just said that the offshore boards would consult.

Mr. Jeff Labonté: In the regulation-making process, there is public consultation involved in the publishing of the draft regulations, if you will. That allows for comment. The government has to then formally comment on the comments that are provided, and then it's provided as a final draft and goes forward.

There are several executive legislative steps, if you will—excuse me if I have the wrong terminology, but my colleague from Justice will correct me—that allow for that to happen, and it happens in a very formal way.

The Chair: Perhaps I can remind the member that the scrutiny of regulations committee of the House of Commons can choose to examine regulation from any legislation.

Ms. Linda Duncan: That wasn't what I was speaking to. He had mentioned that it would provide the opportunity for those offshore boards and so forth to consult. But in fact he's saying that it would not be them, that it would be the federal cabinet, which does not tend to consult.

Thanks.

The Chair: All right.

Shall amendment PV-4 carry?

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

The Chair: Shall clause 14 carry?

Ms. Christine Moore:*Avec dissidence*.

(Clauses 14 and 15 agreed to on division)

(On clause 16)

The Chair: We have proposed amendment PV-5.

Ms. May.

Ms. Elizabeth May: Thank you, Mr. Chair.

It will not be a surprise to people following the clause-by-clause study that, based on the explanation I gave for my first amendment, we're seeking throughout the bill to remove “subsection 25.4(1)”.

If you look at the language in my amendment and compare it with the language in the existing bill, you will see that I am proposing to the committee that we amend clause 16 by simply removing “subsection 25.4(1)”.

This is a consequential amendment to the amendment that was already defeated, so I suspect I know how this will go.

The Chair: Shall we vote on it anyway?

Ms. Elizabeth May: It's fun for me to watch my amendments go down to ritual slaughter. I enjoy the process enormously.

The Chair: You have some pass, Ms. May; you have some pass.

Ms. Elizabeth May: Yes.

Thank you very much.

The Chair: Shall proposed amendment PV-5 carry?

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

The Chair: Shall clause 16 carry?

Ms. Christine Moore:*Avec dissidence*.

(Clauses 16 to 18 inclusive agreed to on division)

(On clause 19)

The Chair: We have proposed amendment PV-6 by Ms. May.

Ms. May, you can speak to that, if you'd like.

● (0920)

Ms. Elizabeth May: Thank you, Mr. Chair.

We're moving to a different set of concerns.

I think a number of witnesses appeared before the committee who spoke to the fact that the $1-billion cap on absolute liability is too low, that we can look at a number of recent disasters in the oil and gas sector with such things as *Deepwater Horizon* and its catastrophic costs to the U.S. economy, what it cost them to pay for the cleanup. It was far above $1 billion.

In terms of nuclear liability and nuclear accidents, we know that $1 billion wouldn't begin to cover the Canadian equivalent of something like Fukushima, should we ever have the misfortune of having it occur here. With the principle of polluter pays, which is stronger in this bill on the oil and gas side than it is on the nuclear side, what we're attempting to do in amendment PV-6 through replacing the lines as outlined in the amendment is to remove the $1-billion cap on absolute liability so the polluter will be dealing with what the costs really are, and not putting the costs of cleanup from these accidents onto the general revenues of the Government of Canada, and therefore the taxpayer. The industry itself would bear the cost of an accident.

Thank you, Mr. Chair.

The Chair: Thank you.

Is there any further discussion on that?

Ms. Crockatt.

Ms. Joan Crockatt: Mr. Chair, it's regrettable that Ms. May wasn't here for some of the testimony that we heard, but I'm hoping that the officials could recap the average spill so we understand the kind of risk management we're looking at in Canada.

The Chair: Go ahead, Mr. Labonté.

Mr. Jeff Labonté: I'll start, and my colleague will find the exact numbers while I speak.

The Chair: Right. Go ahead.

Mr. Jeff Labonté: We did a fair bit of work establishing and evaluating them, and I know that the committee heard us speak to this, but certainly the $1-billion absolute liability cap is really only the absolute without fault or negligence. Of course the damages that are due from any company who is at fault or negligent are unlimited and continue to be unlimited, consistent with the polluter pay principle.

The focus on the absolute liability is really for the amount that's considered without fault or negligence. In that particular instance the $1-billion amount for Canada would be quite consistent with, if not among, the highest in the world. The other countries that are of a similar nature and have a similar offshore regime have much smaller amounts and use strict liability. Some, like Australia, have neither.

In the instance of our offshore, thankfully we only have a number of projects. The projects have been developed by fairly large operators that have safe and very effective regimes in which they operate. We've only had a limited number of incidents in which there's been a release of oil into the environment. I think the largest one was—

Mr. Tyler Cummings (Deputy Director, Frontier Lands Management Division, Petroleum Resources Branch, Department of Natural Resources): The largest spill in Canadian history was 1,000 barrels of oil.

Mr. Jeff Labonté: Recognizing that does not necessarily mean there isn't the potential. The potential always exists, and that's the reason the cap is established and that there is an absolute liability amount. That amount is quite significant, and we expect that it motivates operators to be extremely safe and to continue to drive at ensuring that their operations are appropriate for the environment and for the safety of the workers. I think that's the context of how we've established the amount. It's one in which we recognize that Canada operates within a global context, and it's one in which we have to be consistent. It's one in which we have a rigorous regime, and it's benchmarked among the best in the world.

The Chair: Thank you.

If there's no further discussion on that, we'll go to the vote on PV-6.

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

The Chair: We also have amendment NDP-2 under clause 19, proposed subsections (2.31) and (2.32).

Ms. Moore, would you like to speak to that, please?

● (0925)

Ms. Christine Moore: If I can summarize this amendment, it gives the National Energy Board the power to conduct risk assessment with every authorization, and if it's determined to be necessary, it can raise the liability limit for specific projects.

[*Translation*]

As we have seen, some projects may well have higher risks and costs. This could be the case for projects in the Arctic, for example. That is why I believe we have to keep the door open for some projects. We have to be able to increase this liability limit. I feel that it is perfectly appropriate to keep the door open. In the future, we may receive proposals for projects that involve major risks and I feel that we must be able to adjust the liability limit to a reasonable amount.

[*English*]

The Chair: Okay, *merci.*

You've heard the proposal, and I believe Ms. Duncan would be next.

Go ahead, please, Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, I listened to the officials' arguments about the previous amendment. I think it's important that we understand it's not just the volume of the spill that is of significance in the capability of recovery or the potential damage—

The Chair: Ms. Duncan, are you speaking to the previous—

Ms. Linda Duncan: I'm speaking to the rationale—

The Chair: —amendment, or are you speaking to this one?

Ms. Linda Duncan: I'm speaking to this amendment—

The Chair: Go ahead, then.

Ms. Linda Duncan: —and giving consideration to the explanation provided graciously by the officials—

The Chair: Certainly.

Ms. Linda Duncan: —showing that they've obviously given thoughtful consideration to this. We're proposing this amendment because in the case of unconventional oil and gas development, which includes offshore development, in each situation you have a different circumstance. We're now moving towards the potential for offshore development in the Arctic. There have been debates about whether or not you need the back-up well immediately. There's the issue of recovery under ice.

We think that what we're proposing is very reasonable, which is that for each application there should be a specific individual assessment. That's not to say in all circumstances it would always vary, but it would give the NEB the opportunity to require the proponent—again it's a private proponent—that is going to be putting at risk public resources to show cause that the liability that's assessed under the legislation is fair and reasonable and that there are no specific circumstances. This gives the power to the National Energy Board to vary that if there are specific circumstances where the operation would be more risky.

The Chair: Thank you, Ms. Duncan.

Mr. Regan on NDP-2.

Hon. Geoff Regan: Chairman, I'm going to ask in a moment for a comment from the officials, if I may, on the first of the two paragraphs proposed in this amendment. I am certainly concerned about the idea particularly of drilling under the ice in the Arctic where we would not have the capacity to contain or clean up a spill. That would be a huge concern if the government were actually to go ahead and permit that without those kinds of capabilities. Obviously, there are reasons to assess that risk, but I'd like to ask officials what impact this would have on the bill.

The Chair: Go ahead, please, Mr. Labonté.

Mr. Jeff Labonté: Our understanding of this particular provision is that proposed subsection 26(2.3) provides the Governor in Council with the ability to raise the absolute liability amounts. This is the clausing that perhaps ought to have been in the legislation when it was passed in the 1980s. It would have allowed liability to have risen without necessarily amending the bill, if you will, as we're doing today. That was the origin of proposed subsection 26(2.3).

The amendment proposes subsection 26(2.31). It would require that the board review every project, which it currently does. Part of the review that the board does under the Canadian Environmental Assessment Act, 2012, is to establish the understanding of what the environmental considerations are, what the risks are, how they might be mitigated, and what the plan is to address those risks. The element of reviewing each project for the risks would occur today, and does occur today, absent this amendment. The element of the amendment that I think is unique is the element that would then, based on that assessment, provide the power to the NEB to increase the absolute liability amount. If they conducted a review of a project in the Newfoundland and Labrador offshore and determined that this project had a set of circumstances, I'm presuming what would happen under the bill, if this amendment passes, is that they might establish that there ought to be a $1.5-billion absolute liability amount.

I think the policy direction of the bill is that the establishment of an absolute liability amount is a legislative element. It's in the bill and it's legislated. The board does work under the frame—to reinforce the point today—that in any circumstance in which there's an incident, liability is unlimited, and the companies are responsible for those. The board, in the bill as it stands now, does have the ability to suggest and to require that an operator demonstrate more than $1 billion of financial capacity. While the absolute liability amount is $1 billion, that is really just the amount that they would be subject to without fault or negligence. They do have unlimited liability. The board could require a company to demonstrate $3 billion of financial capacity before providing an authorization to proceed. That could be done on the basis of their assessment of that particular project, whether it was in the north or whether it was in Atlantic Canada or elsewhere where there might be an application.

We have provided the board authorities that allow for the requirement of more, but we have not provided in the bill, as you would know, the ability for the board to increase liability. We've left that in the hands of the government of the day.

● (0930)

The Chair: Thank you, Mr. Regan.

Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, through you to the officials, this raises two questions. Of course, the intent of our amendment is precautionary, in keeping with the precautionary principle, rather than after the fact, after this disaster occurs, and then you're trying to assess liability. This is talking about giving consideration to the level of risk of unconventional projects.

The question for the officials, through you, Mr. Chair, is that when we think about severely risky projects, such as drilling in the Arctic, how did you come up with a figure of $1 billion?

Mr. Jeff Labonté: I think I would say that I, like you and hopefully most Canadians, believe that the board, with their expertise and their reviews, is in the business of ensuring that risky projects don't go forward. So should and when a project proposal come forward for drilling in the Arctic, which may or may not occur sometime in the near future, the board will evaluate those projects. They'll have public consultations. They will hold the companies accountable for demonstrating how they plan to deal with incidents, should they occur, including the short drilling season that exists in the north and the standing requirement for a relief well, which remains part of the National Energy Board's requirements.

I'd hope, first off, that risky projects don't go forward. I'd hope that the review projects under the board continue to evaluate projects, as they do today; that there is an appropriate discussion among stakeholders, and that the first nation communities, aboriginal communities, and Inuit and northern communities who would be most affected and impacted would contribute to those discussions; that the board would make a determination independently, based on the science and the evidence, of whether the project should proceed; that, if it should, the board would determine whether or not the financial capacity requirements should be higher than the minimum $1 billion, which is what's required in the legislation once this bill passes, should it pass.

Ms. Linda Duncan: Well, Mr. Chair, it's sounding like the officials like our amendment.

I appreciate that explanation, but it didn't answer my question. I wonder if the officials can provide to the committee members their rationale for the $1-billion limit.

Mr. Jeff Labonté: I think we've testified on this point before. With regard to the $1-billion absolute liability amount, again, liability remains unlimited when a company is at fault or negligent. The difference between the two things is the amount of liability a company is responsible for if it is without fault or negligence. That is the $1 billion. If it is at fault or negligent, it is responsible for an unlimited amount of liability. In the north, as it is in Atlantic Canada, the amount remains unlimited. The $1 billion was not set to establish whether or not a certain project of a certain nature or a certain incident in the north would occur and would be covered by absolute liability. That was not the determination that we used to set the amount.

● (0935)

The Chair: Thank you.

Let's go to the vote on amendment NDP-2.

Ms. Christine Moore: Mr. Chair, could we have a recorded vote?

The Chair: We'll have a recorded vote on this.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: Now we go to the vote on clause 19 unamended. Shall clause 19 carry?

An hon. member: On division.

(Clause 19 agreed to on division)

(On clause 20)

The Chair: We have amendment PV-7.

Ms. May, you may to speak to that if you'd like.

Ms. Elizabeth May: Mr. Chair, this amendment is consistent with the others that the Green Party has been proposing. It comes from the testimony that the committee heard.

I do note and I appreciate Ms. Crockatt's comment earlier that I wasn't able to attend all the committee meetings. For anyone watching, it's because I'm not allowed to be a member of any committee, nor am I allowed to speak before committees except in response to the committee motion passed at this committee and all other committees which summons me at moments like this to present amendments without being able to move them or vote on them. So I'm in a rather unusual position.

Given the opportunity I have, and having looked at the evidence before the committee, I'm trying to pick the salient pieces that can improve the legislation. We heard testimony from Ecojustice, from their lawyer Will Amos, who is quite a distinguished lawyer in the environmental field.

I will digress at this moment, Mr. Chair, to note that three graduates of Dalhousie law school are here at this table: Mr. Regan, Ms. Kellerman, and me.

Ms. Linda Duncan: And me.

Ms. Elizabeth May: I'm sorry, Linda. There are four. Dalhousie law school rules; I'm just saying.

Drawing on my deep legal experience and by osmosis that of all my colleagues from Dal law, I'm presenting an amendment to remove the absolute liability from part 1 of the bill. It was one of the main recommendations in Ecojustice's brief. It's on page 3 of their brief. To accomplish that goal, we would collapse two subsections of the current 26.1 dealing with financial resources that are necessary to pay for the absolute liability limits in (2.2).

I don't think I need to go into further details. The intent of my amendment is clear, and I appreciate the opportunity to present it.

Thank you.

The Chair: Thank you.

The Chair: Mr. Regan, would you like to speak to amendment PV-7?

Hon. Geoff Regan: Yes, Mr. Chairman.

I have a question for Ms. May. When I was looking at this last night, I noticed that it says, about two-thirds of the way down, “mines an amount under subsection...”. I suspect that the intention was to say “minus”.

Ms. Elizabeth May: No.

Hon. Geoff Regan: It's “mines”, is it?

Ms. Elizabeth May: May I speak to that, Mr. Chair?

The Chair: Go ahead, please, Ms. May.

Ms. Elizabeth May: If you go to line 16, we're picking up from the line above, which is hyphenated after “deter”. So that is actually not “mines” but “determines”.

Sorry about that.

The Chair: Shall we go to the vote on amendment PV-7?

All those in favour of PV-7, please raise your hands.

Ms. May, you're not allowed to vote.

Ms. Elizabeth May: I know.

The Chair: There was a mischievous....

Those opposed to amendment PV-7, please raise your hands.

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

The Chair: Amendment PV-8 is withdrawn.

Ms. Elizabeth May: Yes.

The Chair: We go now to amendment PV-9, and we're still on clause 20.

Ms. May, go ahead and speak to amendment PV-9.

Ms. Elizabeth May: Thank you very much.

Again, this is an attempt to remove absolute liability from the bill. If people want to go back to find the committee testimony that led to this amendment, it was from part 4, recommendation 4 in the Ecojustice brief. As you can see, the amendment adds after line 31 on page 16:

> (2.1) In determining the amount under subsection (1) or (2), the National Energy Board shall assess the potential liability of the applicant in the event of a severe incident with extreme and significant environmental effects and consequences.

It creates more specificity around what the National Energy Board should review before determining the amount of liability commensurate with potential liability following a catastrophic spill.

Thank you.

● (0940)

The Chair: Seeing no further discussion on that, we'll go to the vote on PV-9.

(Amendment negatived)

The Chair: Still on clause 20, we now go to NDP-3, the proposed amendment by the official opposition. Go ahead, please, Ms. Moore.

Ms. Christine Moore: This amendment gives the minister the authority to allow the National Energy Board to take environmental degradation and laws of non-use value into consideration during the assessment process. I'll add a quote from Mr. Amos that supports this amendment:

> However, there are no regulation-making powers associated with non-use values, damages, and that really does ultimately restrict the government or the crown in how it can move forward to enunciate specifically what types of non-use damages will be claimable under what conditions. There's a lack of specificity in the legislation itself, which isn't necessarily problematic, but the fact that there's no regulation-making power around it doesn't enable that specificity to come into play. I think that additional aspect should be entertained.

That's why the official opposition tabled that amendment.

The Chair: Thank you, Ms. Moore.

Is there any further discussion on NDP-3?

Seeing none, we'll go to the vote.

Ms. Niki Ashton (Churchill, NDP): I'd like a recorded vote, please.

The Chair: (Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We have one more proposed amendment to clause 20, and that is PV-10. Ms. May, would you like to speak to PV-10?

Ms. Elizabeth May: Mr. Chair, yes, I would like to speak to PV-10.

Again, this is consistent with earlier efforts to amend the act, in this case returning to the discussion we had earlier of non-use values. In subclause 20(3) of C-22, in determining the amount of liability and proof of financial wherewithal to deal with potential damage, the National Energy Board is specifically directed:

> When the National Energy Board determines an amount under subsection (1) or (2), the Board is not required to consider any potential loss of non-use value relating to a public resource that is affected by a spill or the authorized discharge....

My amendment is very straightforward. It alters the paragraph 180 degrees to say that as an affirmative responsibility, the National Energy Board is required to consider any potential loss of non-use value. This amendment also comes from the brief by Ecojustice and was presented as their fourth recommendation.

Under Bill C-22, we're asking that the industries that operate within these new liability limits have proof of financial resources to pay for damages up to the absolute liability. We're not requiring them to show that they have financial resources to deal with the potential for unlimited at-fault liability, which of course remains, as we've heard from the officials.

When you don't have to consider potential costs associated with environmental losses, or so-called non-use losses, damaged ecological systems, and so on, when determining whether they have the financial wherewithal to pay, you've left out a significant part of what the ultimate damages may be.

I think the effect of my amendment is clear. If the act is to be serious about suggesting there will be liability for non-use values, environmental values, and loss of cultural and traditional rights within the act, then we really should be removing the “not” that appears in subclause 3.

Thank you, Mr. Chair.

● (0945)

The Chair: Thank you, Ms. May.

Seeing no further discussion, we'll go to the vote on PV-10.

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

The Chair: Shall clause 20 carry unamended?

(Clause 20 agreed to on division)

The Chair: Clauses 21 to 50 have no proposed amendments. As per our agreement at the start of the meeting, shall clauses 21 to 50 inclusive carry?

(Clauses 21 to 50 inclusive agreed to on division)

(On clause 51)

The Chair: First of all, on clause 51, we have proposed amendment G-1. Would someone like to speak to that proposed amendment?

Ms. Block.

Mrs. Kelly Block: Mr. Chair, this amendment we are proposing is to clause 51. We propose adding after line 6 the following: "It includes any physical activity that is incidental to the physical activity described in paragraphs (a) to (d)." This amendment is technical in nature to correct an omission that occurred during drafting.

In the text, the words "incidental activities" are unintentionally omitted from the description of what the respective offshore boards would consider in an environmental assessment. The amendment ensures that the accord acts are consistent with the Canadian Environmental Assessment Act, 2012. The inclusion of incidental activities ensures that the environmental assessment considers the activities or structures related to or required for the proposed project, as per the Canadian Environmental Assessment Act, 2012, as well. It also is a prerequisite to provide the offshore boards with all of the powers necessary to be designated as responsible authorities for environmental assessments under the act and with the ability to assess the entirety of a project.

The Chair: Thank you, Ms. Block.

You've heard the proposed amendment and the reason for it.

I'll go first to Ms. Duncan and then Mr. Trost.

Go ahead, please, Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, through you to Mrs. Block, I don't understand how this fits in the legislative drafting. You're sort of throwing in a sentence after all the criteria. Is that what you're proposing, or is it additional criteria? We have proposed paragraphs 138.01(2)(a), (b), (c), and (d), and then we have this sentence. I don't understand what it relates to. Does it relate to all of the above?

Mrs. Kelly Block: It relates to physical activity that is described in proposed paragraphs (a) to (d).

Ms. Linda Duncan: Is that all right? It seems like odd drafting. Maybe the officials would like to explain it.

The Chair: Mr. Trost has a....

Are you going to the officials and asking them? We'll go to Mr. Trost, then.

Mr. Brad Trost (Saskatoon—Humboldt, CPC): Mr. Chair, my basic question was, could the officials give—we were going in the same direction—a more fulsome and complete description?

The Chair: Go ahead, please, Mr. Labonté.

Mr. Jeff Labonté: This is a drafting omission, so it's ours in terms of missing something that we wanted to ensure. It is an "all of the above".

To the honourable member's question, proposed subsection 138.01(2) describes the physical activity in question and lays out four elements. The insertion of this amendment says that any incidental activity related to those four elements is also in scope for the environmental assessment.

● (0950)

Ms. Linda Duncan: Mr. Chair, through you, I'm not questioning what the intent is. I'm questioning the drafting.

I just don't understand how you draft a clause like that. Does it not make sense instead for it to be proposed subclause 138.01(2.1) and then you would say this? Otherwise, I don't really.... It's not usually the way you draft a provision, to just add on a sentence after the criteria.

The Chair: Go ahead, Mr. Labonté.

Mr. Jeff Labonté: I'll ask my Justice colleagues to answer that one.

Voices: Oh, oh!

Ms. Linda Duncan: I worked as a legislative counsel so I looked at these things.

The Chair: Go ahead, please, Mr. Roman.

[*Translation*]

Mr. Jean François Roman (Legal Counsel, Legal Services, Department of Natural Resources): This is a drafting technique that we used. In the French version, after the words "activité concrète", we indicated, between dashes, what the concept of "activité concrète" includes, that is to say, the specific activities that are incidental to the main "activité concrète". It is the equivalent of a definition of "activité concrète".

In the same way, in the English version, simply indicating before the four criteria listed that—

[*English*]

physical activity includes a physical activity that is incidental. There are different techniques to provide this definition, and this is the one that was adopted in the drafting room to simply keep...instead of having a reference that will be somewhere else and would be more difficult to access.

Ms. Linda Duncan: Through you, Mr. Chair, I don't want to belabour it. I agree with the way it's done in French, but in English it seems nonsensical. We should take out the "It", and simply say "including any physical activity", which would be the same as the French.

In the French version it simply carries on from the "physical activity in question is a physical activity that" blah, blah, blah.

I'm sorry. I have to vote against it because it doesn't make any sense. I'm trying to offer redrafting suggestions, but I'll let it go. I'm trying a friendly amendment. I could propose a friendly amendment.

An hon. member: Go ahead.

Ms. Linda Duncan: I had suggested that you simply make it subclause (2.1), and that would be "it includes any physical activity" and so forth.

The Chair: You have heard the proposal.

First of all, maybe we could have commentary from the officials on that.

Mr. Jeff Labonté: I think you're proposing that we mirror the French perhaps in the English opening. Is that what the proposal is?

Ms. Linda Duncan: It's a stand-alone provision, but the way you have drafted it is it's just something out there and it's not connected really to anything.

You may want to revisit it, and bring it forward when it comes for third reading. My suggestion is that you simply make that provision a subclause (2.1).

We could come back to it maybe, and let them think about it.

Mr. Jeff Labonté: Perhaps while—

The Chair: Let's just deal with it.

Go ahead, please, Mr. Labonté.

Mr. Jeff Labonté: —committee continues, we can do some caucusing here among our Justice colleagues and perhaps reference CEAA 2012 to make sure there's a consistency.

The aim here is to be consistent with CEAA 2012 and what's being provided for in the future for the board, so perhaps we could do so. Perhaps we could return to it, Mr. Chair.

The Chair: Yes. We could stand that clause until later.

Mr. Calkins.

Mr. Blaine Calkins: Just for clarification, would not adding this clause that it includes any physical activity that is incidental to the physical activity described in paragraphs (a) to (d) not take on item (e) in the sense of the drafting? Do we need to explicitly state that?

I think Linda's question is this. Is this sentence actually added on to the end of the paragraph itemized (d), or is it proposing a new paragraph, item (e), which would make more sense to me, which would be implied in the legislative process? Or is it a sentence that's actually hung at the end that belongs in the preamble or the start of proposed subsection (2), which I believe would also make the same amount of sense if we were to re-word it in the definition of what a physical activity includes, because it's trying to define the physical activity as any physical activity that's incidental as well to those physical activities outlined in items (a) through (d).

By putting (e) on it, I think actually captures the spirit or intent. Would it not?

● (0955)

The Chair: Mr. Labonté, do you want to respond to that? If it would be helpful, I could ask the committee if you would like to stand this clause until later, and we could come back to it, or do you feel satisfied you're ready to respond right now?

Mr. Jeff Labonté: There are two things. I appreciate the attempt to clarify. Adding an (e) would actually make it separate so it's not what would be intended.

We just referenced CEAA 2012, and this actually mirrors CEAA 2012, so the language in the bill here is identical to what's in CEAA 2012 in this descriptive area.

The Chair: Thank you.

Ms. Linda Duncan: So it's wrong there too.

The Chair: Let's go then to the vote on amendment G-1.

(Amendment agreed to)

(Clause 51 as amended agreed to on division)

(Clauses 52 to 86 inclusive agreed to on division)

(On clause 87)

The Chair: We have a government amendment, G-2.

Ms. Block, go ahead, please.

Mrs. Kelly Block: Thank you very much, Mr. Chair. I'll be brief.

As you can see, this is the same amendment. The rationale is that this is the same as the previous motion in a different section.

The Chair: Okay.

Ms. Linda Duncan: This registers the same concern with different English and French drafting. I had suggested an amendment. I would suggest the same amendment for this one, which can be considered maybe at the end. The amendment would be that it be revised to say "clause 2.1" and then say "it includes any physical activity" and so forth.

The Chair: Thank you, Ms. Duncan.

Shall we go to the vote on G-2?

(Amendment agreed to)

(Clause 87 as amended agreed to on division)

(Clauses 88 to 117 inclusive agreed to on division)

(On clause 118)

The Chair: We go to clause 118. We have proposed amendments to clause 118. The first one would be PV-11.

Go ahead, please, Ms. May.

Ms. Elizabeth May: Mr. Chair, in the interest of the committee's time, since both PV-11 and PV-12 are consequential amendments to other efforts that have already been defeated, I'm not going to speak to them at this time. I think we know the substance of them. Consequential amendments to things that have already been defeated are, I think, fairly moot at this point.

The Chair: We will go to the votes.

All in favour of amendment PV-11?

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

The Chair: All in favour of amendment PV-12?

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

(Clause 118 agreed to on division)

(Clause 119 agreed to on division)

(On clause 120—*Enactment*)

The Chair: There are several proposed amendments, the first one being G-3.

Ms. Block, would you like to speak to amendment G-3?

Mrs. Kelly Block: Thank you very much, Mr. Chair.

It's a fairly lengthy amendment.

This amendment is required to ensure that the bill fully aligns with the international Convention on Supplementary Compensation for Nuclear Damage. The drafting instructions for the nuclear liability and compensation act specifically require that the operator of a nuclear installation be absolutely liable for nuclear damage that has been caused by a nuclear incident involving nuclear material coming from or being sent to that operator's nuclear installation.

This amendment clarifies the rules regarding transporting goods between member countries. It clarifies the operator's liability for nuclear damage in Canada and its exclusive economic zone that has been caused by a nuclear incident involving material coming from or sent to that operator's nuclear installation.

● (1000)

The Chair: Thank you.

Mr. Trost, and then Ms. Duncan.

Mr. Brad Trost: Mr. Chair, while I appreciate what Mrs. Block said, I would like to ask the departmental officials if they have anything they'd like to clarify or add with regard to her remarks. It would be helpful for some of us.

The Chair: Go ahead, please, Mr. Labonté.

Mr. Jeff Labonté: The proposed amendment, as was referenced, spells out a number of what would be some inconsistencies and some clarifications and some omissions in the drafting. The review of the bill, and the continued assessment of the elements, identified that there was a requirement for us to propose to the government that they clarify elements of how nuclear materials would be transported and how liability exists.

It is a fairly technical and complicated part of the bill. It's trying to describe the movement of goods between a member country of the convention and another member country of the convention, as well as the movement between, if you will, where there are non-member countries. It's trying to describe how liability happens and manages within that framework of moving something from one place to another place when both places are parties to the convention.

It attempts to do this in more clear language. Most of the amendments included here are of that nature: language changes.

My colleague from Justice could speak to more specific questions, should the committee have those.

The Chair: Ms. Duncan, go ahead.

Ms. Linda Duncan: Mr. Chair, I have a procedural question. It's my understanding that changes to definitions can only occur after we've reviewed all the substantive provisions of a bill. You go back to the definitions after you've gone through the substantive provisions to see if there are any necessary amendments to the definitions to make sense of the bill. That's my understanding of what's necessary.

I'm not saying I'm necessarily for or against the amendment, but it's my understanding that you don't amend definitions in the bill until you've completed the review of the bill. Then you go back to see if you need to amend any of the definitions to clarify the changes.

The Chair: Actually, I should have mentioned that clause 120 is the start of part 2 of this legislation, which is a new—

Ms. Linda Duncan: Definitions section.

The Chair: It's a new bill, actually; it's considered a new bill.

Ms. Linda Duncan: Right, and I'm simply saying that to my understanding, those are the procedural rules in the review of a bill.

Could we have clarification from the clerk?

The Chair: Sure.

Ms. Linda Duncan: We could just visit it at the end.

The Chair: The legislative clerk will respond to that.

Mr. Philippe Méla (Procedural Clerk): I'll provide some information, if I may.

What you're stating is exactly right in the case of a regular bill. If it were clause 2, let's say, of a regular bill amending an act, then that would be the case.

Here, however, clause 120 of this bill is a new act. It's considered a clause, and you can amend any part of a clause. That's why we can amend the definitions in it.

Ms. Linda Duncan: It's only if it's a completely new bill.

Mr. Philippe Méla: That's correct.

Ms. Linda Duncan: Okay, thank you.

The Chair: That's what I was trying to say, but not very clearly, I guess.

We are now on the nuclear liability and compensation act, which is clause 120.

Is there any further discussion of amendment G-3?

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

The Chair: We now have LIB-2, which is a proposed amendment to clause 120 as well.

Go ahead, please, Mr. Regan.

Hon. Geoff Regan: Mr. Chairman, this flows from the comments of Mr. John Barrett, president and CEO of the Canadian Nuclear Association, who said at committee, or perhaps in a follow-up:

> ...we seek clarification of the term "nuclear installation". We detect a difference between the interpretation provided in the bill and that provided in the backgrounder that accompanies the bill. In the backgrounder, nuclear installations are defined as "Canadian nuclear facilities such as nuclear power plants, nuclear research reactors, fuel processing plants and facilities for managing used nuclear fuel". In the bill however, the definition of nuclear installation is potentially much broader. If the backgrounder is correct in identifying only these four types of installations, then the legislation should be made equally clear.

This is what I'm attempting to do with this amendment.

● (1005)

The Chair: Thank you, Mr. Regan.

Is there any further discussion on LIB-2?

Ms. Crockatt.

Ms. Joan Crockatt: Could we have the officials speak to this and give us some more information on that, please?

The Chair: Mr. Labonté, go ahead, please.

Mr. Jeff Labonté: The first comment we would make would be that the backgrounder that described the introduction of the bill was perhaps a summary as opposed to a direct quoting of the bill. Any difference between the bill and the backgrounder would be the difference between a communications product generally describing the bill, versus the bill which is more precise.

I'll turn to my Justice colleague, who can probably explain a little bit better what the "nuclear installation" definition is and what we propose to do.

The Chair: Ms. Kellerman, go ahead, please.

Ms. Joanne Kellerman (General Counsel and Executive Director, Legal Services, Department of Natural Resources): The definition of "nuclear installation" in line 10 links to designation under clause 7. To understand the extent of the definition, you have to consider the scope of clause 7.

Clause 7 is an authority for the Governor in Council to designate those installations by regulation. The criteria are set out in clause 7. Those two criteria are that there would be a licence issued by the Nuclear Safety Commission under the terms of the Nuclear Safety and Control Act and that the site clearly contain nuclear material. Those are the two criteria that are set out that would be incorporated into this definition of "nuclear installation" that's in the bill you have before you.

The Chair: Mr. Regan, go ahead.

Hon. Geoff Regan: What you're saying, I guess, is that all of the specified facilities that are mentioned in this proposed amendment would be covered under that definition. Is that right?

Mr. Jeff Labonté: What's proposed in the amendment will be spelled out in the regulations in addition, to a greater degree of precision. I think the witness suggested that there was some variation between the backgrounder and the bill, and that there were potentially some broader elements of the activities that occur in Canada that need to be captured, if you will, by the bill. We would be more specific in the regulations in spelling out all of the elements of what's in an installation.

Hon. Geoff Regan: Am I right to say that you would include all these installations and perhaps some others that I've missed? Is that fair?

Mr. Jeff Labonté: Yes, that's correct. That's fair.

The Chair: Thank you.

Mr. Calkins on amendment LIB-2.

Mr. Blaine Calkins: Through you, Chair, to the officials, it would seem to me that the proposed amendment by my colleague Mr. Regan would actually limit the definition and basically take away, in some aspect, the expertise of the Nuclear Safety Commission, which is responsible for those designations through regulation, through clause 7. Am I not reading that correctly?

If there were something that would be brought to bear, such as a new technology or whatever the case might be, we would want the Nuclear Safety Commission to make that determination as to what is a nuclear installation through a more nimble process, such as a regulatory process, rather than requiring a legislative change.

The Chair: Okay, Mr. Regan. I'm going to allow if you want to add to that, but I don't want to stray there too often. Then we'll go to the answer.

Hon. Geoff Regan: Mr. Chairman, having heard the comments of Ms. Kellerman and Mr. Labonté, I have come to the same conclusion as Mr. Calkins, and therefore I withdraw this amendment.

The Chair: Does the committee agree to have that proposed amendment withdrawn?

Some hon. members: Agreed.

(Amendment withdrawn)

● (1010)

The Chair: Thank you, Mr. Regan.

Now we go to NDP-4, which is again a proposed amendment to clause 120. I want to note that if NDP-4 is adopted, PV-13 can't be proceeded with due to the line conflict. If amendment NDP-4 is defeated, then so is PV-13, because it's very similar. That was a determination by our legislative clerk.

We'll now go to NDP-4.

[*Translation*]

Ms. Christine Moore: In this amendment, we want to add the polluter pays principle to the part dealing with the nuclear industry. I feel that adding that principle could help the industry develop best practice safety standards and minimize risks. It would allow Canada to commit to the polluter pays principle. In our meetings, many witnesses proposed adding this principle in the part dealing with the nuclear industry. They included Mr. Stensil, Ms. McClenaghan, Mr. Amos and Mr. Edwards. I feel it would be particularly worthwhile to add it.

The Chair: Thank you, Ms. Moore.

[*English*]

Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, as my colleague mentioned, at least three of the witnesses who appeared here—and we fast-tracked this review; there should have been many more witnesses—but of the witnesses that we did hear from, both Ms. McClenaghan and Mr. Stensil, and in the briefs from some other witnesses who were not able to appear because of the shortness of the review, pointed out the anomaly and the inconsistency that the government is requiring the polluter pays principle be applied to the oil and gas sector but not to the nuclear sector. For simple purposes of consistency in public policy, why would we be giving greater advantage to the nuclear industry over the oil and gas sector, or frankly other sectors, where the polluter pays principle is applied?

Clearly, the government has given recognition to the fact that Canada has ratified the polluter pays principle. Canada presumably applies the polluter pays principle because they have ratified this international convention but have chosen specifically to exempt the nuclear industry from the polluter pays principle.

The government in its wisdom has specifically amended this bill on page 2, in clause 3, to add “accountability in accordance with the 'polluter pays' principle” to apply to the oil and gas offshore sector, but has chosen in its wisdom or lack thereof to exempt the nuclear industry from the polluter pays principle.

We're giving the opportunity to the government. I'm sure it was simply missed in the drafting process. I think everyone here would agree that our nation is bound by the polluter pays principle. I don't think the government of the day would want to say that they think the nuclear industry should be exempt from this principle and given greater advantage than other sectors. Therefore, it is a very reasonable amendment that many of the witnesses pointed out was missing from this section of the bill.

The Chair: Thank you, Ms. Duncan.

Is there any further commentary on NDP-4?

Go ahead, please, Ms. May.

Ms. Elizabeth May: Thank you, Mr. Chair.

I understand I'm not allowed to participate in other people's amendments but as you sketched, the fate of PV-13 hangs on what happens to NDP-4.

I want to reiterate that it is extremely important, given the government's commitment to the polluter pays principle, that part 1 of the bill, which embraces the polluter pays principle, must be reflected in part 2 of the bill. Under the purposes of the proposed act —and my amendment is slightly different from the approach taken by the NDP—I would amend the purpose of the nuclear liability and compensation act to make it crystal clear that the polluter pays principle applies equally to the nuclear industry as it does to the oil and gas industry. There's no rationale offered, nor has any commentary or witness suggested that there's an acceptable explanation for the failure to treat the nuclear industry exactly the same way that the government proposes to treat the oil and gas industry.

Thank you, Mr. Chair.

● (1015)

The Chair: Thank you.

Let's go to the vote on NDP-4.

Ms. Christine Moore: I'm asking for a recorded vote.

The Chair: Let's go to a recorded vote on NDP-4.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: As NDP-4 is defeated, PV-13 is also defeated.

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

Hon. Geoff Regan: Mr. Chairman, this is similar to the one that I withdrew a moment ago. I'm going to ask the officials whether or not it would have the same effect and whether their answer would be the same.

The Chair: Ms. Kellerman, go ahead.

Ms. Joanne Kellerman: My answer would be that yes, it would have the same effect.

Hon. Geoff Regan: In that case, Mr. Chairman, I'll withdraw this amendment, if I may.

The Chair: Is it agreed that amendment LIB-3 be withdrawn?

Some hon. members: Agreed.

(Amendment withdrawn)

The Chair: We'll go then to amendment NDP-5. I'll just note that if NDP-5 is adopted, PV-14 can't be, due to line conflict, and if NDP-5 is defeated, then so is PV-14. It's identical.

Go ahead please, Ms. Moore, if you'd like to speak to NDP-5.

Ms. Christine Moore: Yes.

In summary, this amendment deletes “and no person other than an operator”, and brings the supplier into the liability process.

[*Translation*]

As the testimony showed, the current legislation poses a real problem because only the operator is held liable in the event of an accident. Suppliers providing services in the nuclear installations would not be held liable, for example, in the event of negligence or a poorly executed operation.

This is a major problem that absolutely has to be fixed during the study on Bill C-22. Of course, the operator must be held liable, but if the suppliers of goods or services with whom the operator is doing business have no liability in the event of an accident, I see a major problem. This absolutely must be corrected.

[*English*]

The Chair: *Merci*.

Is there any further discussion? No, I'm not going to allow it, Ms. May.

Mr. Regan, on a point of order.

Hon. Geoff Regan: Mr. Chair, on a point of order, as you mentioned at the beginning, this amendment is the same as Ms. May's amendment, so it seems appropriate to me that she be permitted to speak to it.

The Chair: Except that the NDP took precedence here. The discussion is the same, but the Green amendment PV-14 would be defeated. It's identical.

Hon. Geoff Regan: What I'm saying is in view of that, I would certainly not have any objection to Ms. May's speaking. To me it seems appropriate that as this is going to affect her amendment, she should be able to do so.

The Chair: Just let me take a quick read of the committee.

Some hon. members: Agreed.

The Chair: Go ahead, please, Ms. May.

Ms. Elizabeth May: Thank you, members of the committee, for that.

Thank you, Mr. Chair.

I will not take long, but I just want to again emphasize that the nuclear section of the bill is quite different from the way we're treating the oil and gas sector. There is no rationale provided for why suppliers and contractors in the nuclear industry should be treated differently from suppliers and contractors in the oil and gas industry. In this section, what we're seeing by use of the phrase "and no other person than the operator" is that you could actually have a situation where, above the absolute liability cap, in the case of fault and negligence, the fault and negligence is found with a supplier or contractor, and they are completely removed from responsibility under the act.

There is no rationale offered. I think it's very clear how it's being handled on the oil and gas side. Why it's treated differently under nuclear liability, particularly when we do know that the subcontractors can be responsible for significant incidents should they exercise negligence....

Thank you, Mr. Chair.

● (1020)

The Chair: Are you suggesting, Ms. May, that the oil and gas sector is being picked on unfairly once again?

Some hon. members: Oh, oh!

Ms. Elizabeth May: Yes. I was hoping I would strike—

The Chair: The chair is out of order. I rule the chair out of order.

Ms. Elizabeth May: No, the chair has put his finger on the problem. I'm tired of the oil and gas sector being beaten up in this fashion.

The Chair: Hey, whoa.

Anyway, the chair was out of order with that comment.

Some hon. members: Oh, oh!

The Chair: Mr. Regan, go ahead, please.

Hon. Geoff Regan: Now there's a quote, Mr. Chairman, I'll tell you.

May I ask the officials if they could tell us why this section is different from how it is in the oil and gas part of the bill?

The Chair: Mr. Labonté.

Mr. Jeff Labonté: Sure. At its simplest level, in the nuclear portion of the bill liability is exclusive to the operator of the installation and is not contained within the subcontracts or in the relationships between the operator and other parties. It maintains that exclusivity to ensure there's clarity in the bill on the accountability of who's liable in the instance of liability.

The Chair: Thank you.

Ms. Duncan, did you have something else?

Ms. Linda Duncan: It doesn't give us an explanation for why you're treating the nuclear industry differently from the oil and gas sector. You've told us what the implications are of doing this, but why was there the decision to treat the nuclear industry differently from the oil and gas sector? Do we not care? Do we not think that suppliers and subcontractors should be made accountable by potential liability?

The Chair: Ms. Kellerman.

Ms. Joanne Kellerman: My response to this would be that in the principles that are included in the bill you have before you, liability on an operator is exclusive. It is correct to say what that means is that contractors to that operator are not liable.

This is consistent with the international conventions in this area and it's consistent with the legislative framework, for example, in the United States, where liability is also channelled economically to the operator. So this is consistent with international comparison.

Ms. Linda Duncan: That's a very fulsome explanation. Thank you.

The Chair: Mr. Calkins.

Mr. Blaine Calkins: For further explanation then, it doesn't mean that any contractor for whom there might be the responsibility of an incident should it occur, it just means it will be captured through the operator. Is that correct? There is no gap here; there is no hole in the legislation where somebody could—

Mr. Jeff Labonté: That's correct.

Mr. Blaine Calkins: —potentially get away with or be off the hook for something. It's just putting the exclusive liability through proposed section 10, which subsequently follows here, on the operator for the ease of identifying who is responsible through the legislative process.

Mr. Jeff Labonté: That's correct.

The Chair: Thank you, Mr. Calkins.

We'll vote on amendment NDP-5.

Ms. Niki Ashton: A recorded vote.

(Amendment negatived: nays 5; yeas 3 [See *Minutes of Proceedings*])

The Chair: Amendment NDP-5 is defeated. Therefore, so is amendment PV-14. Amendments PV-15 and PV-16 were not submitted.

We go to amendment NDP-6.

Ms. Moore, go ahead.

● (1025)

[*Translation*]

Ms. Christine Moore: Basically, a part of the amendment would include the supply chain in the liability process. This is along the same lines as the previous amendment.

[*English*]

The Chair: Is there any further debate or discussion on amendment NDP-6? Seeing none, we go to the vote.

Ms. Niki Ashton: A recorded vote.

(Amendment negatived: nays 6; yeas 3 [See *Minutes of Proceedings*])

The Chair: Next is amendment NDP-7.

Ms. Moore.

[*Translation*]

Ms. Christine Moore: This is another amendment that seeks to extend liability to anyone at fault, including people in the supply chain, in the case of negligence.

This also means the suppliers of services, and not only the operator. It must be understood that it applies in cases when anyone providing a service would have demonstrated real negligence. We want to make it possible for liability to be extended to anyone in that situation.

[*English*]

The Chair: Thank you for that explanation.

Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, I wonder if I could ask the officials if they could provide to the committee the international convention—if they can't right now, then at a later date—and the section that Canada presumably.... Has Canada ratified that convention? If Canada has ratified that convention, can they provide the provision wherein the officials have advised that suppliers cannot be held liable? It goes to this provision as well. I wonder if they can tell us if Canada has ratified that convention.

The Chair: Mr. Labonté, go ahead.

Mr. Jeff Labonté: I'll do my best. My colleagues from Foreign Affairs, Trade and Development have the responsibility, but I think we have formally signed the convention. We don't necessarily ratify the convention until the bill passes and comes into force. Then it's deposited, if you will, because the regime has to be in place as law before we can formally be members of the convention. We've signed it, which says we're on the path to get there, if you will. Excuse me for being a little bit vernacular, but....

Ms. Linda Duncan: I understand that process. Canada has expressed its intent to ratify—

Mr. Jeff Labonté: That's correct.

Ms. Linda Duncan: —and it is doing that by legislating. Just so we are well informed when we're voting on it, I wonder if we could be provided the provisions wherein we're told that once we sign onto that international convention, we have agreed that we will not legislate a liability by suppliers and contractors.

Ms. Joanne Kellerman: May I speak to that now, Mr. Chair?

The Chair: Yes, go ahead.

Ms. Joanne Kellerman: The convention that I am referring to is the Convention on Supplementary Compensation for Nuclear Damage, which is the convention referred to in the definition section of the bill that is before the committee. I am referring to article 3, which is in the annex. It makes clear that the "operator of the nuclear installation shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident...". It's article 3 of the annex to the convention.

Ms. Linda Duncan: Mr. Chair, that doesn't exclude suppliers. That simply imposes liability on the operator.

Ms. Joanne Kellerman: Perhaps as a point of clarification, in the reference I made to international principles, I was also referring to the Vienna convention and the Paris convention, which are defined in the supplementary compensation convention.

● (1030)

The Chair: Thank you for that explanation.

Mr. Calkins, do you have further discussion on NDP-7?

Mr. Blaine Calkins: Perhaps Ms. Kellerman would be best posed to answer this question.

If we were to accept these amendments that have been proposed by the NDP to include suppliers, notwithstanding the fact that it would add a layer of potential confusion as to who would ultimately be responsible, which seems to be contrary to the bill.... If we actually signed on to these amendments and passed them, that would put our bill potentially in a conflict with the ratification of the convention. Would I have that correct?

Ms. Joanne Kellerman: Yes, that's correct.

Mr. Blaine Calkins: It's interesting. That's good research.

The Chair: Those in favour of NDP-7, please raise your hands.

Ms. Niki Ashton: A recorded vote, please.

(Amendment negatived: nays 5; yeas 3 [See *Minutes of Proceedings*])

The Chair: We go now to amendment LIB-4 on clause 120.

Hon. Geoff Regan: Mr. Chairman, this deals with two things. One is non-use value, as you can see in our proposed subparagraph 11.1(1)(iii), and it also deals with the issue of suppliers and contractors. I want to quote Ms. McClenaghan:

> Both aspects of the bill channel supplier and contractor liability to the operator or the licence holder for that absolute liability portion, but only on the oil and gas side is liability ever possible against suppliers and contractors in their negligence. On the nuclear side, that's never possible.

The nuclear suppliers to that entire supply chain never have to consider the consequences of the decisions they are making around risk. On the nuclear side, as well as the oil and gas side, decisions are made every day around risk. In spite of the international conventions, I find that a persuasive argument, and therefore I have offered this amendment, Mr. Chairman.

The Chair: Thank you, Mr. Regan, for that explanation.

Is there any further discussion on amendment LIB-4?

Then we go to the vote.

Hon. Geoff Regan: Could we have a recorded vote, please?

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 5; yeas 3 [See *Minutes of Proceedings*])

The Chair: We go now to amendment PV-17.

Ms. May, go ahead, please.

Ms. Elizabeth May: Thank you, Mr. Chair.

Amendment PV-17 inserts an entirely new and somewhat lengthy proposed subsection 11.1(1), which would extend the liability beyond operators to contractors, subcontractors, and suppliers.

Having been privileged to sit at this table as you've been going through clause-by-clause study, and having heard the explanations given by officials, I would echo what Linda Duncan has pointed out. The rationale has been that this is what other people do under international law. We didn't have that as evidence so far. We really have only been told that the current legislative framework leaves out operators. We're currently amending the legislative framework. No reason has been given to exclude suppliers and contractors in the nuclear sector when suppliers and contractors in the oil and gas sector are given the same treatment in terms of unlimited liability for fault or negligence.

My proposed amendment PV-17 would be:

> 11.1(1) Where damage...is caused by a nuclear incident...
>
> (a) the operators or persons to whose fault or negligence the nuclear incident is attributable or who are by law responsible for others to whose fault or negligence the nuclear incident is attributable are jointly and severally liable, to the extent determined according to the degree of the fault or negligence proved against them, for
>
> (i) the compensable damages described in sections 14 to 23 of the Nuclear Liability and Compensation Act,
>
> (ii) the costs and expenses reasonably incurred by....

The crown is also covered. The amendment continues:

> (iii) all loss of non-use value related to a public resource...affected by a nuclear incident.

These are sensible amendments that carry through the thrust and purpose of the act as found in other parts of Bill C-22. I hope the committee will consider that this is where we set the legislative framework. With all due respect to our expert civil service representatives here at the table, I find the response to why subcontractors and suppliers in the nuclear industry are treated differently from those in the oil and gas sector essentially a tautology —they're not included because they're not included—but I don't find it persuasive as an explanation.

● (1035)

The Chair: Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, it has occurred to me that for all these amendments we've dealt with—the NDP, the Liberal, and now Ms. May's, and going forward to the next amendment that you'll deal with from the NDP—we've had circumstances in which people have intentionally taken aircraft into installations, which has increased investment by government agencies around the world in electrical installations, nuclear installations, and so on. I find it incredible that under this bill there isn't any thought given to other persons who may cause, through intent or negligence.... We could simply have somebody flying an aircraft and not paying attention or whatever, or running out of gas and ramming into a nuclear installation. These various amendments allow for persons other than the operator to be held liable.

It seems logical that there would be some kind of broader provision in the bill to hold persons other than the operator of a nuclear facility...whether it's a waste management facility, a refining facility, or so on. You could have people breaking into a nuclear waste facility and stealing nuclear material. It just seems logical that if we can't specifically say "suppliers or contractors", there should be some kind of mechanism to allow for the liability of other persons who cause harm through damage to nuclear facilities.

The Chair: Thank you.

Ms. Block, do you have something to add to that?

Mrs. Kelly Block: Mr. Chair, as was noted, this amendment is fairly similar to the one that was just defeated. Reference has been made to the one we will be looking at.

I would like to give the officials another opportunity to confirm for us again why we have chosen to draft the bill the way we have.

The Chair: Go ahead, please, Mr. Labonté.

Mr. Jeff Labonté: The bill does provide for exclusive absolute liability for the operator. It then, if you will, channels that liability such that the operator ensures that the contractors and the people working on the installation are accountable; since they are accountable for the billion dollars, they certainly recognize and manage that. The regulator also does the risk assessment and the evaluation of the facilities and regularly monitors the facilities. I think that's an important element of the aspects.

Several proposed sections in the bill address the issue of other persons and other parties. Proposed section 5, proposed subsection 5 (1) and 5(2), and proposed sections 12 and 13 address results from proposed subsection 5(1), "an act of war, hostilities, civil war, or insurrection".... It does not apply to damage during construction.... Proposed sections 12 and 13 are on page 139 of the bill. Proposed section 12 states, "An operator is not liable for damage that is suffered by a person if that person intentionally caused the nuclear incident wholly or partly...". It does recognize that certain elements are addressed.

The focus of the bill is to channel the liability and to hold it exclusively to the operator. It sits within a regulatory framework that, I would suggest, has a fairly rigorous and regular process that evaluates the facilities. Certain elements of the bill address, I think, what would be extraordinary circumstances as they are defined here: "act of war", "civil war", heaven forbid.

● (1040)

The Chair: Okay.

Ms. Duncan, do you have something further on that?

Ms. Linda Duncan: Thank you for the clarification. Of course those are exemptions to liability by the operator, but it doesn't impose liability on anybody else.

I am advised that India, which has ratified the convention, has imposed liability on suppliers. I'm looking forward to reading the convention to see if this is an absolute prohibition if you've ratified the convention.

The Chair: Thank you.

We go, therefore, to the vote on PV-17.

Mr. Blaine Calkins: Mr. Chair, I believe Mr. McCauley had a comment with regard to what Ms. Duncan said. I would like to hear that.

Mr. Blaine Calkins:

Mr. Dave McCauley (Director, Uranium and Radioactive Waste Division, Electricity Resources Branch, Energy Sector, Department of Natural Resources): Thank you very much.

It's with respect to the Indian situation. They have signed the convention for supplementary compensation, but they have not yet ratified it. One of the issues associated with their failure to ratify it is the fact that they have not channelled all the liability to the operator. They give right of recourse to suppliers and contractors, and they also open up liability under other legislation in India against the operator. This is quite contrary to the various principles contained in the convention.

The Chair: Thank you.

Ms. Linda Duncan: Through you, Mr. Chair, do our officials know in which direction Japan is going?

The Chair: Go ahead, please, Mr. McCauley.

Mr. Dave McCauley: Yes. We expect Japan will sign the CSC, the convention on supplementary compensation, before the end of this calendar year and then proceed to ratification.

The Chair: Thank you.

Now we will go to the vote on PV-17.

(Amendment negatived)

The Chair: Now we move to NDP-8. Just a note that if NDP-8 is adopted, then PV-18 cannot proceed due to the line conflict.

Go ahead, please, Ms. Moore.

Ms. Christine Moore: The goal of this amendment is to allow the operator to seek recourse against any person whose gross negligence causes an accident. Proposed section 13 in clause 120 of Bill C-22 nullifies common law practice, and by deleting lines 35 to 39 we remove the part in the bill that goes beyond common law practice. If the responsibility is only with the operator, this will ensure the operator will be able to....

[*Translation*]

We want to make sure that the operator will be able to seek recourse against a subcontractor who has demonstrated negligence and responsibility for an accident. This amendment is quite important. It reflects the discussions that have been held as this bill has been studied, specifically in the testimony from Mr. Stensil.

[*English*]

The Chair: Ms. Duncan, go ahead, please.

Ms. Linda Duncan: Through you, Mr. Chair, I wonder if the officials could give us a rationale for why they would be precluding the operator of the facility from taking legal recourse in the case of gross negligence. Why is it only intentional actions?

The Chair: I think Ms. Kellerman is first. Go ahead, please.

Ms. Joanne Kellerman: I'm just looking at the wording in proposed section 12, which does refer to circumstances amounting to gross negligence.

As I understand the policy, the policy of the government has always been that an operator should have recourse against any party who would intentionally cause damage to an installation.

The point about gross negligence would be that the principle of the bill is that liability of an operator is exclusive and absolute, and that therefore the issue of negligence of other parties does not arise at all in terms of proof of damage. Causation in terms of nuclear accidents can be very complicated to prove, so the principle is that it is absolute and exclusive.

● (1045)

The Chair: Ms. Duncan.

Ms. Linda Duncan: Through you, Mr. Chair, we're not talking about a criminal action, we're talking about a civil action in damages against somebody who through their gross negligence causes damage to a nuclear installation.

My question remains, why would we deny the right of the operator of the facility of seeking recourse against a party who, through their gross negligence, causes damage to the nuclear installation? Is this prohibited in the convention, or is this just something the government has decided? It is really limiting civil liability.

The Chair: Go ahead, please, Mr. McCauley.

Mr. Dave McCauley: The bill mirrors the convention in this regard on these two items. The operator has no right of recourse against any person other than an individual who intentionally caused the nuclear incident by an act or omission. There has to be intention there to cause the nuclear incident by act or omission.

As I indicated, both proposed section 12 and proposed section 13 reflect the principles contained in the convention.

The Chair: Thank you.

On NDP-8, then, we'll go to—

Ms. Christine Moore: A recorded vote, please.

The Chair: —a recorded vote on NDP-8.

(Amendment negatived: nays 5; yeas 3 [See *Minutes of Proceedings*])

The Chair: We've been working on this for two hours now. We'll take a break and come back in five minutes to continue with our clause-by-clause discussion on Bill C-22.

● (1045)

(Pause)

● (1050)

The Chair: We'll resume the meeting. I'll just wait for everyone to get to their chairs and then I'll turn the floor over to Ms. May for PV-18.

Ms. May, would you like to speak to that?

● (1055)

Ms. Elizabeth May: Yes, and Mr. Chair, this won't surprise anyone at this time. PV-18, as in previous efforts, attempts to ensure that liability will extend to suppliers and contractors in the nuclear industry. This is based on testimony. Certainly, the committee heard from a number of witnesses, who came from law associations, Greenpeace and others, that there's no rationale provided for shielding nuclear reactor suppliers from liability.

I would just note very quickly that in the attempts at explanations that we've heard from officials, essentially, they have said that we don't have to worry on the nuclear side because we're channelling the liability to the operator. The operator will ensure that the supply chain is held responsible because they're ultimately going to be liable for a nuclear accident. That same explanation would work on the oil and gas side.

One could say the project proponent, the operator, will make sure that all suppliers and contractors are responsible and accountable because the ultimate liability and costs will rest with them.

Again, I don't think we really have an explanation for why the nuclear industry is being treated differently, except for the fact that, historically, and I mean going back to the 1950s, the nuclear industry has always been treated differently in this country. It probably stems from the fact that nuclear materials were seen to be a military target. We had a lot less transparency around the nuclear industry.

Traditionally, the nuclear industry has been the recipient of billions of dollars in subsidies and it tends to continue, under Bill C-22, to be treated differently from the more private sector industries in this country. Of course, as the nuclear industry in Canada is being operated now by more private sector companies, as the role of AECL has changed, there's less and less excuse for treating the nuclear industry differently from the way we treat other sectors in the economy.

The Chair: Seeing no further discussion on PV-18, let's go to the vote.

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

The Chair: We're on amendment NDP-9.

Ms. Moore, do you want to speak to NDP-9?

[*Translation*]

Ms. Christine Moore: This amendment removes the $1 billion absolute liability cap and implements unlimited liability. This is in accordance with the polluter pays principle and demonstrates some fiscal responsibility in making sure that Canadian taxpayers do not have to pay should an accident happen. Of course, we heard a number of remarks in connection with this matter during the various testimonies. Ms. McClenaghan specifically said the following:

[*English*]

> ...the amount of $1 billion is far too low to provide assurance of the ability to adequately compensate victims of a severe accident in both the offshore oil and gas as well as the nuclear energy sectors.

[*Translation*]

During the study, we found out that, although the $1 billion amount could cover certain accident scenarios, in other cases it was possible that it would not cover the damages caused by an accident. The officials even admitted it. That is why I believe that it would be more prudent to remove the $1 billion absolute liability cap and make liability unlimited.

[*English*]

The Chair: You've heard the proposal.

Mr. Regan and then Ms. Duncan.

Hon. Geoff Regan: Mr. Chairman, can we ask the officials for an indication of what the impact of this would be?

● (1100)

The Chair: Go ahead, please, Mr. Labonté.

Mr. Jeff Labonté: Part (a) of the amendment would essentially change the limit to the financial security section. Parts (b), (c), and (d) all sort of ripple through.

It says “not limited to”; it doesn't specify. Proposed section 27 specifies....

I'm not sure I quite fully follow it, but it replaces the $1 billion. It replaces the amount that is referred to in proposed subsection 24(1), which is the $1-billion limit on absolute liability.

Ms. Joanne Kellerman: It would also have the effect of changing the liability limit.

Proposed paragraph 24(2)(b) allows that the Governor in Council could prescribe a lower liability limit. As an example, that flexibility is in the bill for universities that have Slowpoke research reactors. The effect of this would be to impose unlimited liability on all classes of nuclear installations.

The Chair: Ms. Duncan is next.

Ms. Linda Duncan: Mr. Chair, the essence of this amendment and a number of amendments coming forward relate to the concern expressed by a good number of the witnesses who appeared before the committee.

Mr. Kleinau said that Japan had a $1-billion package, which, after the Fukushima I meltdown, proved to be not even close to what the final costs were.

Mrs. McClenaghan expressed deep concern.

Professor Amos stated that the provision restricts the polluter pays principle, which the government is bound to whether they choose to put it in the legislation or not, which is reprehensible...by having an absolute liability of $1 billion and therefore is inappropriate, because what it does is it transfers the liability, then, from the operator to the Canadian public.

There was a brief provided by Dr. Gordon Edwards. He wasn't given the opportunity to appear. I understand the brief has been translated and distributed. Dr. Edwards shared with us that even by the most conservative estimates, the financial costs of off-site damages from Chernobyl are measured in the tens of billions. Some estimates of the off-site costs of Fukushima are measured in the hundreds of billions. It was his concern that to approve this limited liability is to agree in advance that the liability is passed over to the taxpayers of Canada. By imposing a liability of $1 billion we're, first of all, not even recognizing the reality of what the costs of these incidents have been in both Chernobyl and Fukushima, and the result is that Canadian taxpayers would have to pay.

Dr. Edwards also was concerned that there's no clear calculation provided by the officials on where the $1 billion comes from. It seems to be a figure pulled from a hat. There should not be any limitation whatsoever, given the significance of the potential damage from a nuclear incident. Why impose $1 billion? Why not just simply say absolute liability?

We are simply reiterating the concerns expressed by witnesses who came before the committee and the evidence of the scale of damage as a result of incidents that have occurred and that Canada could be susceptible to.

The Chair: Ms. Duncan, the explanation of how $1 billion was arrived at has been given many times. Perhaps some of it was at a meeting that you weren't at, but it has been given several times.

Ms. Linda Duncan: The witnesses have suggested that it's inadequate.

An hon. member: One witness—

The Chair: Order.

We'll go to the vote on NDP-9.

Ms. Christine Moore: A recorded vote, please.

(Amendment negatived: nays 6; yeas 3 [See *Minutes of Proceedings*])

The Chair: We are now on amendment PV-19.

I would just note that if PV-19 is adopted, NDP-10 can't be proceeded with, due to the line conflict.

Ms. May, go ahead, please.

● (1105)

Ms. Elizabeth May: Thank you, Mr. Chair.

Mrs. Kelly Block: Just a point of clarification on that.

If it's defeated, what happens to NDP-10?

The Chair: If PV-19 is defeated, then NDP-10 should go ahead.

Ms. May.

Ms. Elizabeth May: As members of the committee will know, PV-19 is an attempt to respond to some of the expert legal testimony that was put to the committee, particularly from the Canadian Environmental Law Association, about the nature of the liability. Ms. McClenaghan spoke to the concern that the limits that appear in clause 120 are too low.

As the bill reads now, it's "$650 million for a nuclear incident within one year after the day...". This is for the compensation for those affected. In proposed paragraph 24(1)(a), it's $650 million. In (b) it's "$750 million for a nuclear incident arising within one year after the year referred to...". In (c) it's $850 million, and in (d), it's $1 billion.

In relation to those liability limits, my amendment moves them all up in sequence. The lowest would move from being $650 million to being $1 billion. The next level would be $5 billion. The next level after that would be $10 billion. The level that now reads as a $1-billion nuclear incident absolute liability limit would be raised to $20 billion.

Given the experience with nuclear incidents, these are certainly much more realistic levels and reflect what we understand are the costs of real situations should we have, and we obviously hope we never will have, a nuclear incident that's catastrophic.

The Chair: Seeing no further intervention on PV-19, we'll go to the vote.

(Amendment negatived)

The Chair: We go to amendment NDP-10.

Madam Moore, would you like to speak to that?

[*Translation*]

Ms. Christine Moore: This amends the bill to ensure that the fault placed on the operator cannot be reduced.

I would like to remind committee members of Mr. Edwards' remarks when he pointed out that taxpayers must also be considered.

[*English*]

He said, "While the act limits the ability of the operator, it does not limit the liability of the taxpayer. The exposure of the Canadian taxpayer is unavoidable under this legislation and it's unlimited".

[*Translation*]

When a bill like this is passed, taxpayers must also be considered. If we reduce the operator's liability and simply send an invoice to the taxpayers, we are no further ahead. In my view, this in no way observes the polluter pays principle.

I would also like to make another comment.

We have had little time to study Bill C-22. As the transcripts of the meetings have not yet been translated, I can only quote the remarks in English. If I mangle some of the quotations sometimes, I apologize. It is more difficult for us francophone members to quote those remarks because we still do not have the official translation of previous meetings.

The Chair: Thank you, Ms. Moore.

[*English*]

Mr. Calkins.

Mr. Blaine Calkins: Chair, I just wanted to point out that I believe the exemption that this bill would be removing was for those particular facilities which would be at our academic research institutions. I just want further clarification on this.

As a proud graduate of the University of Alberta, I believe the University of Alberta does have one of these facilities. It's located in Ms. Duncan's riding. If the liability amount was held the same for the University of Alberta, as well as McMaster or any of the other places where these particular facilities happen to be held, that would require those particular universities or the operators thereof, to do one of two things. One would be to shut down their facilities, because they wouldn't be able to afford the insurance that would come with the absolute liability of $1 billion. Given the magnitude and the scope of what those facilities are actually capable of doing, does it actually make sense to hold them in the same category or classification as a nuclear power generation facility?

I am wondering if department officials can confirm what I'm saying.

● (1110)

The Chair: I think it's kind of been said, but go ahead, please, Mr. Labonté.

Mr. Jeff Labonté: Yes.

The removal of this would eliminate the possibility that the Governor in Council may recognize that university research reactors, called Slowpoke reactors, which have a different profile in terms of how they handle and deal with nuclear issues, would not be able to have a lower level of liability. Therefore, they would have a much higher cost structure and may not be able to operate. They are located, I think, at the University of Alberta, École Polytechnique de Montréal, and McMaster University. There's one in the military as well, and I believe I'm missing one...at the Saskatchewan Research Council. It provides for the different classes. Some classes might merit further attention and some examination of liability.

The Chair: Okay.

Ms. Duncan.

Ms. Linda Duncan: Well, Mr. Chair, in truth, that is not what the provision says.

The cabinet could make that decision, in its wisdom, to exempt facilities. This would put my constituents at risk from an installation that was put in place with zero consultation with the adjacent neighbourhood. I don't think they would be happy that the cabinet is empowered to exempt the operator from liability even if it might be the University of Alberta or some federal agency.

The provision, in fact, gives cabinet full discretion, by regulation, to reduce the amount of liability from any nuclear installation or class of nuclear installations. What's been revealed is that it's going to be the intention of cabinet to exempt those facilities.

Where is the consultation on this? Where's the guarantee that people who are potentially impacted by these exemptions are going to be directly consulted?

Even in the review of this legislation there were people who were not allowed to come forward to speak to concerns about this bill. I have zero confidence that the current cabinet is going to bend over backwards to consult with communities who are potentially impacted by a lessening of liability.

This gives a very broad power to the cabinet to exempt any facility. It could be a reduction or exemption of liability for all kinds of nuclear installations or for the transportation of nuclear material. It is a very broad-brush exemption and reduction of liability and it's, frankly, reprehensible.

The Chair: Before we go to Ms. Moore, Ms. Duncan, I resent the comment you made that certain individuals have not been allowed to come. In fact, each party gave its list, prioritized, and that's the way we proceeded to invite witnesses. That's the way it was handled. It was handled fairly. It's up to each party to prioritize its list in a way that's likely to have certain witnesses come. I do resent that comment. It's not the way it was handled and it's not an accurate reflection.

Ms. Moore—

Ms. Linda Duncan: With all due respect, Mr. Chair—

The Chair: Ms. Moore, go ahead, please.

Ms. Linda Duncan: —there should have been more extensive hearings on this important bill so that everybody who wanted to testify could testify.

The Chair: Except, Ms. Duncan, we agreed to a certain number of meetings and that was widely supported.

Ms. Linda Duncan: Well, the majority voted.

The Chair: It was completely agreed and it was widely supported by the NDP.

Go ahead, please, Ms. Moore.

[*Translation*]

Ms. Christine Moore: Although we agreed to hold a certain number of meetings, it must be noted that the last one was shortened because of activities going on in the House. That upset the schedule of committee work.

[*English*]

The Chair: Let's get to the debate on the proposed amendment.

[*Translation*]

Ms. Christine Moore: Yes, Mr. Chair. I just wanted to point out that the meeting had to be shortened.

I will now speak to the proposed amendment.

Paragraph 24(2)(*b*) of the bill reads as follows:

> reduce the amount of liability applicable to an operator of a nuclear installation, or operators of a class of nuclear installations, having regard to the nature of the installation and the nuclear material contained in it.

This in no way specifies the categories of nuclear installations that could benefit, so to speak, from a reduction of this kind. The wording of the sentence is very vague and anyone can benefit. I see that as a major problem.

If the government were in agreement, we could easily adopt my amendment and come up with something else that would specify the categories of installations. We would, of course, agree that educational institutions could benefit from a reduction of this kind.

If the government is open to that idea, we would have to correct this afterwards in order to make sure that only some categories of installations could benefit from a reduction of this kind. We must not leave this part of the paragraph as vague as it is at the moment. Specifically, it means that anyone could benefit from a reduction of this kind, which I see as a mistake.

● (1115)

The Chair: Thank you, Ms. Moore.

[*English*]

Mr. Calkins.

Mr. Blaine Calkins: Only for clarification, because it's being intimated at this table by some that this is some new provision, some new scheme by the government to have this exemption. Can the department officials confirm that this is actually widely what was done before this new piece of legislation that is being enacted...that it's consistent with what the current complement of legislation and regulations is in regard to governing these research reactors?

The Chair: Mr. McCauley, go ahead, please.

Mr. Dave McCauley: Thank you very much.

Yes, under the current legislation low-risk facilities, such as the Slowpoke reactors or other research reactors at educational institutions, have a lower limit of liability under commercial insurance they're required to carry. Then the federal government covers the difference between the amount of commercial insurance they are required to carry and the full liability limit of the legislation.

The same will happen under the proposed bill. Proposed paragraph 24(2)(b) provides that that will be done by regulation, that there will be a regulation that will establish lower limits for certain low-risk facilities, and they would be required to only purchase a certain amount, a lower amount, of commercial insurance and the government would backstop that up to the full liability.

The issue is that these facilities would be incapable of ever creating an accident that would come close to a billion dollar liability.

The Chair: Thank you.

Thank you, Mr. Calkins.

We go to the vote now on NDP-10.

Ms. Christine Moore: A recorded vote.

(Motion negatived: nays 6; yeas 3 [See *Minutes of Proceedings*])

The Chair: We go now to PV-20.

Ms. Elizabeth May: Thank you, Mr. Chair.

This amendment speaks to proposed subsection 26(1) that requires the minister to review the liability limits that will be passed in Bill C-22 at least once every five years. Then there are subsections as to what the minister should have under his or her consideration when reviewing at least once every five years whether the liability limits are keeping up with reality and keeping up with both the industry and the Canadian economy.

My amendment speaks to a very long-held experience of anyone who has observed the nuclear industry in this country, that it's certainly not transparent, not accountable, and there are very, very few opportunities—and I'm not speaking of any one administration or any one party—but historically for a very long time the nuclear industry operates in a fashion that is immune from most normal processes of public consultation and engagement.

In fact, in the preparation of this bill, witnesses who spoke before the committee said Natural Resources Canada had done very little in terms of outreach to civil society and to critics of the nuclear industry.

In this case what I'm proposing is that when the minister conducts the five-year review-—and I hope this is non-controversial and that there might be a chance of this amendment passing—the minister would undertake that review publicly and in consultation with non-industry stakeholders.

This is a critical piece to bringing the nuclear industry...to drag it kicking and screaming to some place of public accountability in this country. It's not for five years that the review would take place.

I urge all members in all parties to pass this amendment. It can do no damage whatsoever to the bill, but it does give a future minister the responsibility to make sure this review on the liability limits takes place in public with non-industry stakeholders having a right to be considered and consulted.

Thank you.

● (1120)

The Chair: Mr. Regan.

Hon. Geoff Regan: Mr. Chair, I don't have a problem with the intent of this amendment, except that it appears to me to exclude industry stakeholders, and it seems to me we would want to include industry stakeholders as well.

If it were amended to say “with industry and non-industry stakeholders” I would have no problem supporting it.

The Chair: You've heard the proposed subamendment by Mr. Regan. The discussion now is on the proposed subamendment.

Ms. Elizabeth May: For what it's worth, I would consider that a friendly amendment.

The Chair: Okay.

Yes, Ms. Moore.

[*Translation*]

Ms. Christine Moore: Can you repeat the subamendment?

[*English*]

The Chair: Sure.

Go ahead, Mr. Regan.

[*Translation*]

Hon. Geoff Regan: The subamendment reads: “The review must be conducted publicly in consultation with industry and non-industry stakeholders.”

So we would be adding the words “industry and”.

[*English*]

The Chair: Yes, Ms. Moore.

[*Translation*]

Ms. Christine Moore: My impression is that this subamendment is very similar to amendment NDP-11. Our amendment reads: "… with stakeholders, including stakeholders that are not linked with the nuclear industry."

We need to check that.

[*English*]

The Chair: Okay, *merci*.

Mr. Regan.

Hon. Geoff Regan: I agree with...

[*Translation*]

I agree that the effect would be similar, but it would not be expressed in the same way. My subamendment does not preclude amendment NDP-11.

[*English*]

The Chair: So we go to the vote on the Liberal subamendment to amendment PV-20.

Go ahead, Mr. Trost.

Mr. Brad Trost: Mr. Chair, it's a friendly subamendment, so are friendly subamendments not automatically accepted?

The Chair: We hadn't agreed to that, and we had further discussion, so we'll go to a vote on it.

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

The Chair: We go now to amendment PV-20 unamended.

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

The Chair: We now go to amendment NDP-11.

[*Translation*]

Ms. Christine Moore: This amendment is similar to the one we have just voted on. Its wording is just more open. It is about consulting with stakeholders linked to the nuclear industry and publicly consulting with people who are not directly linked to it. The wording of this amendment is a little more open than the one we have just voted on.

In the event of a review, it is important to hold open public consultations. It is important to consult both people linked to the industry and those who are not directly linked to it.

● (1125)

[*English*]

The Chair: Ms. Crockatt.

Ms. Joan Crockatt: I should have raised this on the last point as well, Mr. Chair, but I think it's really important to raise it here. There's nothing in this legislation that prevents the inclusion of non-industry stakeholders, so they are, by virtue of not being excluded, included.

The Chair: Thank you.

Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, the reason these amendments are necessary is that the practice has been not to confer widely with the public in consultation on regulations.

If you look to modern environmental statutes at the provincial level and at the federal level, the governments in their wisdom have now been specific in saying that when the government is contemplating regulations or guidelines or new standards, there will be public consultation. In this circumstance with the nuclear industry I think it's important to follow suit and specify that when the government is promulgating regulations, they will consult with impacted persons.

If the government wishes to expand the parameters of who might be consulted, that would be excellent, but this is simply showing the government's intent. Why would we treat the nuclear industry differently than we do, for example, in the Canadian Environmental Protection Act, the Canadian Environmental Assessment Act, and so forth, where there is very specific provision that the public will be consulted? There seems to be, by omission here, the intent is not that there will be an obligation to consult.

The Chair: Seeing no further discussion, we'll go to the vote on NDP-11.

An hon. member: A recorded vote, please.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We'll go to amendment NDP-12.

[*Translation*]

Ms. Christine Moore: The object of this amendment is to increase, to 50 years after a disaster, the amount of time in which someone may submit claims regarding bodily injury, or illnesses that may have taken some time to develop.

As we know, diseases like cancer can, in some cases, take some time before they develop or are detected. That is the reason why I think it is reasonable to establish a 50-year limit.

The Chair: Thank you.

[*English*]

Is there any further discussion?

Ms. Duncan.

Ms. Linda Duncan: I'm wondering Mr. Chair, if the officials could give the rationale for why they've limited it to 30 years. Do they have medical evidence showing that any impacts would be found within 30 years?

The Chair: Mr. Labonté, go ahead, please.

Mr. Jeff Labonté: I think I'll turn to my colleague, but one element is certainly consistency with the international context, and another would be that the bill does propose 30 years, which is a change from the current 10-year provision in the existing legislation.

Ms. Linda Duncan: Could I follow up on that, Mr. Chair?

The Chair: Go ahead, Ms. Duncan.

Ms. Linda Duncan: Do we have any medical evidence that all health impacts would be identified within 30 years? The impacts from other incidents have turned up much later. Was the number just pulled from a hat? You can always exceed an international convention; you simply can't be “less than”. The convention says that it's at least 30 years. There's no reason that you can't say 50.

The Chair: Mr. McCauley.

Mr. Dave McCauley: In the current legislation, the limit is 10 years for a bodily injury. We recognize, because of the scientific evidence, that certain cancers are only experienced or are latent until some 20 to 23 years after radiation exposure. That is why we have moved, similar to the international conventions, to the 30-year limit. The problem with extending it even further is that it becomes very difficult to prove causation at much longer periods, and you'll find that the insurers certainly don't insure beyond the 10 years because of the problems of proving causation.

● (1130)

Ms. Linda Duncan: It's pretty weak.

The Chair: Ms. Moore.

[*Translation*]

Ms. Christine Moore: In terms of—

[*English*]

Ms. Linda Duncan: Protect the insurance companies—

The Chair: Order, please.

[*Translation*]

Ms. Christine Moore: In terms of the physical damage that can be detected only after a number of years, we might think of damage affecting reproductive functions.

Take, for example, a person who might have been the victim of an accident at a very young age. It could be that they would be only aware of a problem with their reproductive system 30 or 40 years later when they tried to have children. Some damage does not reveal itself immediately because life situations mean that one does not recognize it immediately.

In my view, including a 50-year period would cover the totality of physical damage that might take some time before it becomes known or recognized.

[*English*]

The Chair: We'll go to the vote on amendment NDP-12.

Ms. Christine Moore: A recorded vote, please.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We go now to government amendment G-4.

Go ahead, please, Ms. Block.

Mrs. Kelly Block: Mr. Chair, before I speak to amendment G-4, I'm wondering when I might have an opportunity to clarify something in regard to amendments G-1 and G-2.

The Chair: You could do that now. It's a translation issue, I understand, so perhaps you could just mention that now.

Mrs. Kelly Block: I did have an opportunity during the health break to speak with our legislative clerks to find out if in fact the French and English versions mirror one another. I was told that they don't mirror one another, but that they essentially say the same thing. I do have a statement written in French that I believe would actually more closely mirror what the English version says.

I have been taking French for about four years, but I will not attempt to read it into the record at this meeting. I might ask my colleague to read it in, if that's appropriate, or I could hand it to the legislative clerks, whatever you would prefer.

The Chair: Either way; if you have a copy here, it might be a good idea anyway.

Mrs. Kelly Block: I do have a copy.

The Chair: Yes, if we could do that, and then....

Mrs. Kelly Block: Do you want Mr. Trost to read it and then give you the hard copy?

The Chair: We do have an issue here. We've adopted the clause. We'll have to have agreement to go back to that.

I didn't realize it. Maybe we should wait until we finish with this clause and then we'll go back to that.

Ms. Linda Duncan: Didn't we defer a vote on those clauses, or is this a different one?

Mrs. Kelly Block: No, this is the one that we were referring to.

Ms. Linda Duncan: We deferred the vote. We didn't vote. We were going to have the vote at the end, as we do with all the others.

The Chair: No, all we've deferred is the title. We had finished with the others.

Go ahead, please, Ms. Block.

Mrs. Kelly Block: Before I speak to amendment G-4, I have to note that there is one word missing in the text that's been circulated, and it's under (b). The following line should say, “if the damage that is suffered”. The word that should be there is the word “if”.

Ms. Christine Moore: Does your correction only concern the English version?

Mrs. Kelly Block: Yes.

The Chair: Is it just a word missing in the English version only?

Mrs. Kelly Block: I can't tell you if it's missing in the French.

The Chair: The French seems to be okay is the advice from the legislative clerk.

● (1135)

Mrs. Kelly Block: Okay.

Someone suggested that I needed to amend this—

Ms. Linda Duncan: Do you want to protect your amendment?

Mrs. Kelly Block: —to add the word “if”.

The Chair: Yes.

Ms. Linda Duncan: Before she tables it, is she changing it?

The Chair: First of all, can we have the word added that was missing in the English version of amendment G-4, which was again...? I'm sorry.

Mrs. Kelly Block: It's “if”.

The Chair: So it's at the start, “if”.

Yes, you moved it with the “if” in, so that's fine.

Mrs. Kelly Block: Yes.

The Chair: We don't have to do it that way.

Is there any further discussion on amendment G-4, with the wording that Ms. Block presented?

Yes, Ms. Block.

Mrs. Kelly Block: I would like to provide the rationale for it.

The convention provides for access to supplemental compensation from member countries to the convention. Wording in the bill references the minister's request for supplemental funds, not to the amount established when Canada ratifies the convention, but to the liability limit of the operator, which is also $1 billion. While this is not an issue today, because both numbers are the same today, for example, $1 billion, should the government decide to decrease the liability of the operator in the future, the minister's request for supplemental compensation will be inconsistent with the policy.

The Chair: You've heard the discussion. Is there any further discussion on amendment G-4?

Yes, Ms. Duncan.

Ms. Linda Duncan: I'm trying to follow this amendment, which is kind of peculiarly worded. You have “When”, and a big blank.

What precisely is being changed? Simply (b) under proposed subsection 71(1)?

Mrs. Kelly Block: The text that is in front of you is what's being changed.

Ms. Linda Duncan: The text in front of me says, replace with subsection “71.(1) When”, and then nothing. So you're removing everything else in section 71 and paragraph (a)?

Ms. Joanne Kellerman: Could I assist the committee?

The Chair: Go ahead, please, Ms. Kellerman.

Ms. Joanne Kellerman: The motion is to replace the first two lines, lines 26 and 27, with the word “When” so it reads, “When a call for public funds is made under subsection 72(1) those funds are to be used to compensate...”. Then (b) says, replacing lines 30 to 32 with the words, “the damage that is suffered”. The way it would read is, “When a call for public funds is made under subsection 72(1), those funds are to be used to compensate the damage that is suffered...”.

The word “if”, in fact, is not intended to be part of the motion. That's a point of clarification.

Ms. Linda Duncan: It's very confusing.

Ms. Joanne Kellerman: You have to track that line by line for this to make sense.

Hon. Geoff Regan: What is the damage that is suffered? You deleted.... It is confusing.

Ms. Joanne Kellerman: Then the paragraphs (a), (b), and (c) continue as they are in the document before you.

The Chair: Ms. Block, do you want to make your proposed amendment with the “if” out as it was written?

Mrs. Kelly Block: Yes.

The Chair: Okay.

The amendment, if agreed, we'd remove the “if” as it was written originally.

Mr. Regan.

Hon. Geoff Regan: I just want to make sure I understand this. I'm trying to see what we're doing, because we're taking out lines 30 to 32 and putting this in so it would read, if I'm not mistaken, “If in the minister's opinion, a nuclear incident for which the tribunal or any other Canadian court has jurisdiction will result...or is the damage that is suffered necessary to compensate the damages that are caused...”.

I don't see how that makes sense. I'll go over that again. I'm just waiting for Ms. Kellerman. It doesn't seem logical.

The Chair: There is some discussion at the back.

Ms. Block.

Mrs. Kelly Block: Perhaps I could provide the clarification.

● (1140)

The Chair: We should wait, Ms. Block, until the discussion at the back is ended.

Mrs. Kelly Block: Except that it's my amendment.

It doesn't make sense because I believed that we needed to remove the word “if” and we don't.

Hon. Geoff Regan: It says, “or is the damage that is suffered necessary to compensate the damages that are caused.”

That doesn't make any sense.

Mrs. Kelly Block: We're removing that.

Hon. Geoff Regan: No, we're removing lines 30, 31, and 32. When you do that and put this in, that's what you get. You get, “or is the damage that is suffered necessary to compensate the damages that are caused.”

Mrs. Kelly Block: No, that's not correct.

Hon. Geoff Regan: Well, if you remove the lines that start with the words, “likely”, “exceeds”, and “subsection,” which are lines 30, 31, and 32, which is what this says, then you're left with, “or is the damage that is suffered” and then on to line 33, “necessary to compensate the damages.”

It doesn't make any sense.

The Chair: Ms. Block, could you respond to that, please?

Mrs. Kelly Block: First, it doesn't say, “remove”, it says, “replace.”

We are replacing lines 30 to 32. Line 29 stays, “those funds are to be used to compensate...”. We're replacing lines 30, 31, and 32 with the words, “if the damage that is suffered.”

It's already there, but we're saying we're replacing all those lines with the single line, “if the damage that is suffered”, and then you go into (a) “occurs in the territory of a Contracting State”.

The Chair: Mr. Labonté.

Mr. Jeff Labonté: Maybe we could aid the committee or at least try to fix what we started.

This is on page 156. It turns out that page 157 has a paragraph with almost the same language, so I think we were on different....

The Chair: Thank you.

Ms. Duncan, go ahead.

Ms. Linda Duncan: I wonder if we could have clarification of why these changes are made and what the implications are.

The Chair: Sure.

Mrs. Kelly Block: I read the rationale, but I'm going to ask the officials to give a further explanation.

The Chair: Go ahead, please, Mr. Labonté.

Mr. Jeff Labonté: Certainly.

The policy intention under this element of the act is that if there's an incident that exceeds the liability limit in Canada, the minister may call on the convention to draw supplemental funds from other countries. In the drafting, we referenced the domestic liability limit, which is a billion dollars, which is also the amount that will be registered in the convention. It makes perfect sense and is reasonable today. Should we ever increase that limit in the future, for example, after the five-year review by the government of the day determines that the limit should be a billion and a half dollars, we will be inconsistent with the international convention when we can call on it, because the call is made when we exceed our domestic amount. Because we are referencing the domestic amount, not the amount that we ratified, we will have a gap.

It's to avoid a future problem should the liability limit increase, which is part of the review process of the bill.

Ms. Linda Duncan: That has not answered my question.

Can you simplify for us what the law as tabled right now says, and what changes this will make to that?

Mr. Jeff Labonté: The law says now that we can—

Ms. Linda Duncan: I don't mean the law. It's the bill.

Mr. Jeff Labonté: The bill now says that we can call on supplemental public funds to the convention when a billion dollars' worth of damage is exceeded.

In the future, should we ever raise that domestic amount, we will not be able to make the call until we exceed the domestic amount, even though we ratified the convention at a billion dollars, which is the point at which we will make the call.

Ms. Linda Duncan: Okay, that's what the bill says, but what does the change do?

Mr. Jeff Labonté: The change will link our ability to make the call to the amount that we reference when we ratify.

Ms. Linda Duncan: I'm not following it.

The Chair: Mr. Regan.

Hon. Geoff Regan: Mr. Chairman, to achieve what you're trying to achieve here, it seems to me that what you ought to be saying is those funds are to be used to compensate for the damage that is suffered if (a), (b), or (c) occurs, because without that it simply says those funds are to be used to compensate for the damage that is suffered if (a) occurs in the territory of a contracting state, or (b) occurs, or (c) occurs.

You've gone right down, and you know what you've done in terms of replacing lines 30 to 32, so unless you add the comment "if it" at the end of what you've got here in the proposed amendment, I don't see how this works with (a), (b), and (c).

Am I wrong? I certainly was last time, so....

● (1145)

The Chair: Ms. Block.

Mrs. Kelly Block: Perhaps I could what the amendment would say again.

It's proposed subsection 72(1).

Hon. Geoff Regan: That's where I am, proposed subsection 72 (1). No, we're on subsection 71(1).

Mrs. Kelly Block: We're on proposed subsection 71(1). Okay, just a second.

We're dealing with lines 30 to 32, so that's actually proposed subsection 72(1).

Hon. Geoff Regan: No, what you mean is it refers in proposed subsection 71(1) to 72(1), but—

Mrs. Kelly Block: Yes, but what is actually being changed is lines 30 to 32—

Hon. Geoff Regan: Exactly.

Mrs. Kelly Block: —which falls under proposed subsection 72 (1).

Hon. Geoff Regan: Yes, but the point is that this proposed subsection 71(1) would now say, "When the damage exceeds the operator's liability set out in subsection 24(1)—

Mrs. Kelly Block: No.

Hon. Geoff Regan: —and a call for public funds is made under subsection"—

Mrs. Kelly Block: No, I'm sorry.

Hon. Geoff Regan: Can I finish? Your amendment says "replacing lines 30 to 32 on page 156, with the following".

I'm on the right page now, page 156, and you're deleting the words "the damage that is caused and the circumstances"—and I say deleting, because if you replace, that means you remove what's there and put this in place—"set out in subsection 9(1), (4) or (6), if the damage that is suffered...".

That comes out, and instead it reads "a call for public funds is made under subsection 72(1), those funds are to be used to compensate the damage that is suffered".

Mrs. Kelly Block: No.

Hon. Geoff Regan: That's what—

Mrs. Kelly Block: No, I said we needed to put the word “if” back in.

Hon. Geoff Regan: The point is that the officials have said that you shouldn't have the word “if” there. Also, in my view, it doesn't make sense to have the “if” at the beginning of that phrase. It makes sense if you say.... I'll read it again. If you put it the way you're suggesting, it would read, “Those funds are to be used to compensate if the damage that is suffered occurs in the territory of a contracting state.”

That's not bad, but I think it would be better to say, “Those funds are to be used to compensate the damage that is suffered, if it occurs...”. I think that's a clearer wording.

Mrs. Kelly Block: You want “if in (a) and if in (b)”?

Hon. Geoff Regan: No. I'm simply saying that it would be better wording if your amendment said you were replacing line 32 on page 156 with the following, “the damage that is suffered, if it...”.

I wonder if the officials agree with me.

The Chair: Ms. Block—

Hon. Geoff Regan: No, I'm asking if the officials agree with me.

The Chair: Okay.

Go ahead and respond.

Ms. Joanne Kellerman: It would be grammatically correct in the English version.

The Chair: Is it agreed that we handle it like that, or shall we proceed with discussion on government amendment G-4 as it is?

Hon. Geoff Regan: To say, “Those funds are to be used to compensate if the damage is suffered...”, the point is it's what they're compensating, right? The point is those funds are to be used to compensate the damage that is suffered. That's much better, much clearer. That's why you leave the “if it” until the end of that phrase, because you're compensating the damage that is suffered.

The Chair: We could have the clerk read this.

Go ahead and read it as Ms. Block has presented.

Mr. Philippe Méla: I could read the two versions from Ms. Block and Mr. Regan.

The Chair: Sure, let's do it that way, but read the way Ms. Block has it first.

● (1150)

Mr. Philippe Méla: I'm going to remove the first part as well, the “When”. It would read, “71.(1) When a call for public funds is made under subsection 72(1), those funds are to be used to compensate...if the damage that is suffered (a) occurs in the territory...”, and and then (b), (c), (d).

The second option would be, “71.(1) When a call for public funds is made under subsection 72(1), those funds are to be used to compensate...the damage that is suffered, if it” and then (a), (b), (c).

The Chair: Yes, Ms. Block.

Mrs. Kelly Block: I like Mr. Regan's version.

The Chair: Okay. Is it agreed that we go with the second proposal read by the clerk, which was proposed by Mr. Regan?

Some hon. members: Agreed.

The Chair: Great. So amendment G-4 as modified by Mr. Regan's friendly amendment, passes.

We'll have a vote on G-4 as amended.

(Amendment as amended agreed to)

The Chair: We now have amendment NDP-13.

Ms. Christine Moore: This amendment would give the minister the authority to review and if necessary repeal set liability limits in a timely manner.

[*Translation*]

This would allow a process involving an independent review in order to assess whether the limits of liability should be adjusted. We need a body independent of the department to consider whether it is appropriate to adjust those limits.

The Chair: Thank you.

Ms. Duncan, you have the floor.

[*English*]

Ms. Linda Duncan: Mr. Chair, again, this is consistent with the majority of environmental statutes that have been passed by the federal government. Clearly this legislation deals with potential massive environmental and human impacts. It's only reasonable. The government, since first coming forward with these bills, each time has raised the liability, but in many people's perspective not high enough. We still don't know what the costs of Fukushima will ultimately be. Anything could happen in the next five to ten years. We think that it's reasonable, similar to other environmental statutes, that the minister be required to undertake an independent review of the statute and to cause a report to be tabled in the House based on whether or not we think that the changes as they're made suit public interest.

The Chair: We will go to the vote on amendment NDP-13.

● (1155)

Ms. Christine Moore: A recorded vote.

The Chair: It will be a recorded division on amendment NDP-13.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: That is defeated.

I will just note before we go to the vote on clause 120 as amended, that we will come back to government amendments G-1 and G-2 after we deal with schedule 4, which is coming up soon.

(Clause 120 as amended agreed to on division)

(Clauses 121 to 128 inclusive agreed to on division)

(On clause 129—*Order in council*)

The Chair: On clause 129, there is a government amendment G-5.

Go ahead, please, Ms. Block.

Mrs. Kelly Block: Thank you very much, Mr. Chair.

You have the amendment in front of you. I do not propose any changes to what has been circulated to you. We are amending clause 129. The reason would be that the wording in the bill ties Canada's contribution to supplemental compensation when the minister has determined that compensation exceeds the amount made available by the member country. This is incorrect as it should reference the amount made available by the member country when it ratifies the convention. This is similar to the discussion we've had.

This motion will reference Canada's contribution to supplemental compensation when the minister has determined that compensation exceeds the amount made available by the member country when it ratifies the convention.

The Chair: Is there any further discussion on government amendment G-5?

(Amendment agreed to)

Shall clause 129 as amended carry?

[*Translation*]

Ms. Christine Moore: On division.

[*English*]

The Chair: (Clause 129 as amended agreed to on division).

Shall schedule 1 carry?

Ms. Linda Duncan: On division.

(Schedule 1 agreed to on division)

The Chair: Shall schedule 2 carry?

Ms. Christine Moore: On division.

(Schedule 2 agreed to on division)

The Chair: Shall schedule 3 carry?

Ms. Christine Moore: On division.

(Schedule 3 agreed to on division)

The Chair: Shall schedule 4 carry?

Ms. Christine Moore: On division.

(Schedule 4 agreed to on division)

The Chair: Now I would need unanimous consent of the committee to go back to amendments G-1 and G-2 for the translation issue.

One more time, is there unanimous consent?

Some hon. members: Agreed.

The Chair: Ms. Block, could you make those proposals clear one more time? Then we can go to a vote on that.

Mrs. Kelly Block: My concern would be that the amendment that was made is correct in the English version, but not in the French version. It's accurate but it's not as closely accurate as it could be, so we have suggested wording that we would like. I think it would be helpful for the rest of the committee to hear it so that they will know what we are proposing.

The other issue is where it's placed in the bill. In the French version it's in a different spot from where it is in the English, so we want to make sure there is an English clause with a corresponding French clause so that they're in the same place in the bill.

I'm going to ask Mr. Trost to read the statement that we believe more accurately reflects the English version.

The Chair: Go ahead, please, Mr. Trost.

[*Translation*]

Mr. Brad Trost: The sentence reads: “Elle comprend les activités concrètes qui sont accessoires à l’activité concrète qui remplit ces conditions”.

[*English*]

The Chair: You have heard the proposed amendment to the French translation.

Ms. Moore.

Ms. Christine Moore: In the discussion we had, I understood that the French version was okay but the English version did not correspond to the French, so why are we not correcting the English but we are correcting the French? I am confused.

The Chair: Ms. Block.

Mrs. Kelly Block: It's because the English version is actually what I wanted to say, so I want the French to reflect the English, not the other way around.

The Chair: We should talk about where it would be placed then, Ms. Block. The proposal is for G-1, it would be on page 57, to be inserted after line 12.

Mrs. Kelly Block: My understanding is that in the French version it would follow right after that first statement and in the English version it would come at the end. I think we want them to be in the same place.

The Chair: I don't understand that then.

Mrs. Kelly Block: I would recommend that the statement be placed at the end, in the French version, as it is in the English.

The Chair: Okay, it's the same place in the French as in the English.

Is it agreed that G-1 and G-2 be amended and inserted in the bill as explained?

● (1200)

Ms. Christine Moore: On division.

(Amendments as amended agreed to on division)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall the title carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall the Chair report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use by the House at report stage?

Some hon. members: Agreed.

The Chair: I want to thank you all very much for your cooperation and some good debate, and a better bill as a result of what we have done today.

The meeting is adjourned.