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Chair

Mr. Leon Benoit

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• (1535)

[English]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good afternoon, everyone.

We're here today to deal with Bill C-46, an act to amend the National Energy Board Act and the Canada Oil and Gas Operations Act. We will go through this bill today clause by clause.

From the Department of Natural Resources, to give us advice as requested by committee members, we have with us today Jeff Labonté, director general, energy safety and security branch, energy sector. Welcome to you again, sir.

We also have Terence Hubbard, director general, petroleum resources branch, energy sector. Welcome to you again, sir.

We have Christine Siminowski, director, energy safety and security branch, energy sector. Welcome to you.

We have Joseph McHattie, legal counsel. Welcome to you again, sir.

We'll get right to it. As you know, we are dealing with clause by clause. We'll start with the amendments in the order they apply to the clauses. So those that apply to clause 2 will be dealt with before clause 3 and so on. Some deal with many parts of a clause and extend over pages, but we'll keep them in order and deal with that.

We'll stand or postpone the short title until the end as usual.

(On clause 2)

We will start with NDP-1. I'll refer to them as they are listed on your sheets. On the sheets they indicate not only the clause the amendment applies to, but also the lines and page. I know that you have all gone through this and worked on it already, but from that you can follow along quite easily. I will keep you on track of where we are and what we're dealing with.

Let's start with NDP-1.

That was put forward by Mr. Caron.

[Translation]

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): We proposed this amendment because of how the term "ground disturbance" is defined in the bill. The idea is to regulate what goes on above ground so as not to overly restrict pipeline companies when it comes to what goes on underground.

Farmers need a clearer explanation of what they're allowed to do on their own land so they don't have to do all kinds of research to find out. In its brief, the Union des producteurs agricoles recommended that the two paragraphs in question be removed, which is what we are proposing.

[English]

The Chair: Okay. You all have the proposed amendment in front of you. Is there any further discussion on the proposed amendment?

Now we go to the vote on NDP-1, the proposed amendment to clause 2 on page 2.

Ms. Chris Charlton (Hamilton Mountain, NDP): A recorded vote, please.

The Chair: Okay, recorded vote.

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

The Chair: We go now to PV-1.

Ms. May, you're here to speak to that. It's put forward by you as the defendant. You get roughly a minute to speak to it if you need it. You don't have to use it all.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Mr. Chair.

I'm here, as the committee members will remember, due to a motion passed by this committee that deprives me of my rights at report stage by offering the opportunity to appear before the committee. Not to put too fine a point on it, that was something I found to be less than satisfactory, but I comply with your motion.

The first amendment that I'm presenting today is in relation to the definition of "ground disturbance". The committee will recall evidence from those involved, particularly Union des producteurs agricoles, that the cultivation of less than 45 centimetres below the surface of the ground could impede the planting of alfalfa which has occurred over quite a long period of time. Their belief is that they did not have a problem with the presence of pipelines in areas where they were cultivating alfalfa to depths of more than 45 centimetres. So they believe this proposed paragraph should be deleted from this legislation to avoid unnecessary conflict between agricultural producers and the pipelines as now defined as a "ground disturbance" under the definition section found at page 2.

I hope that's clear.

The Chair: Thank you, Ms. May. I think it is clear.

Is there any further discussion on PV-1?

Do you want a recorded vote?

An hon. member: Yes.

The Chair: A recorded vote.

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

The Chair: We go now to Liberal-1. We can't actually deal with Liberal-1 because it's identical to PV-1, which has been defeated, so that's off the table.

We now go to Liberal-2, and that is a proposed amendment to clause 2 on page 2.

Go ahead, please, Mr. Regan.

Hon. Geoff Regan (Halifax West, Lib.): Thank you, Mr. Chairman.

We heard from the same group to which Madam May just referred. This was a concern about the fact that you have some pipelines that are buried at 1.6 metres and you have others at 0.9 metres. They're not all going to be buried at the same level.

However, when the NEB is considering applications for pipelines it knows where they're going to be buried and what the plans are, and there is no reason that it couldn't make the decision about what the appropriate depths could be. This provision would allow the board to set the appropriate depth in each individual case.

It is clear, as they say with alfalfa, that the roots can go down six metres. I'm disappointed that we didn't pass the last amendment. I hope we'll pass this one.

• (1540)

The Chair: You have heard Mr. Regan's motion and his comments. Are there any further comments on this proposed amendment LIB-2?

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

The Chair: We go now to the private member's amendment PV-2 by Ms. May.

Go ahead, please, Ms. May. You can speak to your motion.

Ms. Elizabeth May: It's a small technical point, Mr. Chair, but I'm not a private member, and in this context "PV" has been chosen by the House of Commons to designate "Parti Vert". I think they didn't want us confused with the "G" that stands for government—until the day that Greens are the government, and then the G will work perfectly. So for now, "Parti Vert" is the reason we have the "PV".

I'm sorry for the interruption.

The amendment I've suggested here is in recognition of a lot of the testimony—the committee will remember it—on the concern that the act not denigrate from first nations' rights. The way my amendment would slot in is that on page 2, in the spot just above the proposed subsection 3(3), we would insert this paragraph, numbered as subsection 3(2). It speaks for itself:

For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982.

So it's a "for greater certainty" clause. I believe it speaks for itself, but it would go a long way to ensure that first nations did not have the concerns, which were expressed before this committee, that the bill would denigrate and abrogate from their rights.

The Chair: Thank you.

Is there any further discussion on this?

Ms. Block.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chair.

We will be opposing this motion, because we believe that this proposal is redundant for the very reason that legislation of this nature cannot do that: it cannot abrogate or derogate from the constitutionally protected rights contained in section 35 of the Constitution Act.

The Chair: Thank you, Ms. Block.

Is there any further discussion?

Do you want a recorded vote?

Ms. Elizabeth May: I don't believe I'm in a position to request it one way or the other. My motions are deemed to have been tabled, and I'm not a member of the committee, but I appreciate your asking.

The Chair: Okay. I'm not sure about how we determine this, but let's have a recorded vote.

(Amendment negatived: nays 5; yeas 4)

The Chair: Now all the amendments that were put forward for clause 2 have been disposed of.

(Clause 2 agreed to on division)

The Chair: Now, from clause 3 to 14 there are several clauses with no proposed amendments. Is it agreed that we pass these clauses together as a group?

Mr. Guy Caron: We want to separate clause 5 from them. Can you deal with clause 5 separately?

The Chair: Okay.

Shall clauses 3 and 4 carry?

(Clauses 3 and 4 agreed to)

(Clause 5 agreed to on division)

(Clauses 6 to 14 inclusive agreed to on division)

(On clause 15)

The Chair: The first proposed amendment to clause 15 is NDP-2. I believe it's Ms. Duncan's.

• (1545)

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Thank you very much.

The ones for “NDP” and “Duncan” are all NDP amendments, but I will speak to this. Thank you, Mr. Chair.

I'm proposing two amendments to clause 15. The proposal was to replace lines 5 to 7 on page 5 with a more delineated attention to the fact that safety and security of the public and company employees are quite different from the security of a pipeline itself and then the protection of property and the environment.

I simply divided those out to make clear, if you're going to mention a provision, that you're talking about impact upon people rather than infrastructure.

The second amendment merely simplifies. I found proposed subsection 48(1.2) extremely complicated to try to read. In keeping with plain language, which is now the approach in drafting, I simply amended to make more concise that there is the power to take action.

The Chair: Okay, you've heard Ms. Duncan's comments on her motion, NDP-2.

Is there any further discussion on that?

Do you want a recorded vote on all of them?

Mr. Guy Caron: No. We can just vote.

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

The Chair: We go now to PV-3.

Ms. May, go ahead and explain that proposed amendment.

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

In this amendment, what we're attempting to do again is to ensure that the way in which the bill is interpreted and applied will not be negative for first nations' rights.

The Assembly of First Nations' evidence before this committee was that they were concerned that aboriginal treaty rights are not included as factors for which the board may order a company to take measures under the section. The Assembly of First Nations is recommending that the National Energy Board be empowered to make orders to recognize, protect, and implement aboriginal and treaty rights.

That will be accomplished through the insertion at the end of subsection 48(1.1) of a paragraph (c), “the protection, recognition and implementation of aboriginal and treaty rights”, giving the National Energy Board the ability to order a company to take measures in respect of those considerations that are critical for the Government of Canada to ensure that first nations' treaty rights are protected by those dealing with pipelines in their territory.

The Chair: Okay. You have heard the comments of the mover of PV-3.

Is there any further discussion on PV-3?

Ms. Linda Duncan: I'd like to comment.

The Chair: Yes, Ms. Duncan, then Ms. Block.

Ms. Linda Duncan: I think it's a very good recommendation as it came from the Assembly of First Nations. When you are building or maintaining pipelines, or abandoning them, there are a lot of implications for first nation rights and title, which include the

movement of game such as caribou. I think we should definitely include this, as recommended by the Assembly of First Nations.

The Chair: Thank you, Ms. Duncan.

Ms. Block.

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

We will be opposing this motion, because we believe that by introducing it we are introducing an unnecessary redundancy. Ordinary legislation is interpreted to protect, recognize, and implement S-35, Constitution Act 1982 rights, and as such this proposal is redundant.

Thank you.

The Chair: Thank you, Ms. Block.

Is there any further discussion?

[*Translation*]

Mr. Guy Caron: I'd like a recorded vote please.

[*English*]

The Chair: Okay, you want a recorded vote on this.

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

The Chair: We go to PV-4.

Go ahead, please, Ms. May.

• (1550)

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

Again, this is a real life situation where I think the drafters weren't sufficiently cognizant of the ways in which the language could offend first nations. While that was not the intent of the language, what they've forgotten is that when you're on that territory and you're dealing with an abandoned pipeline, the authorities that are being exercised under proposed subsection 48(1.2) down to the end of that subsection end up creating a situation in which first nations could find themselves prohibited from doing things on their territory that would otherwise make sense, such as if they found themselves making contact with an abandoned pipeline. The authorities that would then be exercised against a first nation would actually be contrary to the constitution as well as numerous other potential treaty laws, depending on where the pipeline is found and what the status of that first nations territory is, whether under treaty, recognition of title, or still in the process of a recognition of title.

So, since the current subsections 48(1.1) and 48(1.2) authorize a company or any third party to “take any action or measure that they consider necessary” to protect an abandoned pipeline, it could set up a situation of conflict which is completely unnecessary.

Therefore, the effect of this amendment, PV-4, would be to eliminate the three clauses that would have that unintended effect.

The Chair: Thank you, Ms. May.

Are there any further comments on this?

Yes, Ms. Duncan.

Ms. Linda Duncan: I'd have to say I'm puzzled by this one because I think the measures are important. We have to remember too that for reserve lands I think it's the Indian Oil and Gas Act that applies, and in the north it's the COGLA law.

I think I'll just hold off on it. I would hate to lose these powers of the board and the delegated officials. Maybe it needs to be rewritten, but I'm concerned about losing the powers.

The Chair: Ms. Block.

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

Again, we will be opposing it for very similar reasons that Ms. Duncan raised. We believe these authorities are very important and they do provide clarity around how the NEB may take action.

We also believe it would remove a number of actions or measures the NEB may take that it considers necessary for the safety and security of the public, its employees, pipelines, and the protection of property and the environment.

The Chair: Those in favour of the proposed amendment PV-4? Opposed?

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

The Chair: On NDP-3, a proposed amendment to clause 15, on page 6, Mr. Caron.

[*Translation*]

Mr. Guy Caron: Our amendment seeks to make available to the public the outlines of monitoring plans and minimal emergency measures that companies must follow, particularly in the case of abandoned pipelines. We view this as important and feel that it would raise the level of liability around pipelines.

[*English*]

The Chair: Any further comments on NDP-3?

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

The Chair: There are no more proposed amendments to clause 15.

(Clause 15 agreed to on division)

(On clause 16)

The Chair: Clause 16 has most of the amendments. It could get a little bit confusing here at times, even for those who have been over this a few times because, as you'll see, we go through many pages in this clause, and then we go back again to deal with other amendments. We'll be going back and forth. That's the way it works.

Let's start at the beginning with PV-5, the first proposed amendment to clause 16.

Go ahead, please, Ms. May.

• (1555)

Ms. Elizabeth May: You did carry clause 15 on this side?

The Chair: Yes, we did.

Ms. Elizabeth May: We're on to PV-5. Sorry about that, Mr. Chair. I got caught.

This is to page 6, and I hope it doesn't get too confusing. This is again the same point of unintended consequences. And I agree, it is difficult when we are concerned about an issue for unintended consequences for first nations. I think this one may be sufficiently narrow that some of my colleagues in other parties can support it because what we're suggesting is that the references to "make contact with" should be referred to as "substantially interfere with", because at this point, on page 6, when you get to clause 16 what it suggests is that:

No person shall, without the Board's leave, make contact with, alter or remove an abandoned pipeline.

Given the proximity of abandoned pipelines to first nations territory, "make contact with" might not be something that was really intended by the drafters. So I'm suggesting language that's more to the point, which is to replace the words "make contact with" with "substantially interfere with". That's Green Party amendment five.

The Chair: Thank you, Ms. May.

Ms. Block, I see you want to comment on this.

Mrs. Kelly Block: Yes, thank you very much, Mr. Chair.

We will be opposing this amendment for the very fact that I would beg to differ with my colleague that "have no contact" and "substantially interfere" are two very different things. "Have no contact" is very clear on what we mean. "Substantially interfere" is vague and suggestive, and it almost suggests that any interference with a pipeline not considered as substantial would be acceptable, so we will not be supporting this amendment.

The Chair: Thank you, Ms. Block.

Ms. Duncan.

Ms. Linda Duncan: My argument would be exactly the opposite. I think the government should be thinking twice about the fact that somebody can be out in the wilderness. In fact, right at Lake Wabamun there are abandoned pipelines and abandoned well sites. Anybody out for a walk could "make contact with" by not even knowing what it is.

As Ms. May says, out on the land, first nations who are going... Many times these pipelines cross their traplines, so what does "make contact with" mean? Does it mean to touch it as you go under? I think this is going to end up being challenged, if anybody is ever charged with it.

The Chair: Are there any further comments on this proposed amendment PV-5?

(Amendment PV-5 negated: nays 5; yeas 4)

The Chair: The amendment PV-6 is defeated. Pardon me, it was PV-5 that was defeated. Now we'll in fact go to amendment PV-6.

This is very long, with several parts to the amendment. It carries through several pages.

Go ahead please, Ms. May, with your comments on this.

Ms. Elizabeth May: What I'll do, Mr. Chair, is try to make it succinct.

You may in fact be given to psychic powers, since you've announced that amendment PV-6 was already defeated before I started, but I'll plow into it as if there's some opportunity for it to pass. I will make it as succinct as possible, because it is complicated.

The effect of these various changes, found through pages 6 to 13, is to change proposed new section 48.12 so as to remove the liability limit for no fault and instead institute unlimited absolute liability. It removes all later references to a limit on liability and removes the minimum of 250,000 barrels a day.

As amended, after all the separate little changes that you see on the page for Green Party amendment PV-6, proposed subsection 48.12(1) would read:

If an unintended or uncontrolled release from a pipeline of oil, gas or any other commodity occurs, the company that is authorized under this act to construct or operate that pipeline is liable for

—and at that point you go straight to resuming the text as found at the top of page 7 of the bill—

(a) all actual loss or damage

etc.

• (1600)

The Chair: Okay.

You've heard the comments from Ms. May on amendment PV-6.

Are there any further comments?

Ms. Block.

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

We will be opposing this motion for the simple reason that it would negate the liability regime that underpins this bill.

The Chair: Thank you.

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

The Chair: We are on amendment PV-7.

Ms. May.

Ms. Elizabeth May: In this I'd be replacing, as you see, a few lines. The effect is to insert the concept that an aboriginal governing body would become a category of entity that could be reimbursed for reasonably incurring expenses in relation to a release.

As things now are listed, the only entities eligible to receive reimbursement for expenses that were reasonably incurred because of a release would be Her Majesty in right of Canada or a province, and then it includes "or any other person". But "person" doesn't seem to incorporate the notion of a first nation. That's why the amendment reads "aboriginal governing body" and then "or any other person".

The Chair: Ms. Block.

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

I would like to ask our officials to comment on this specific amendment that Ms. May has made, if they would.

The Chair: Mr. Labonté, are you the person who wants to comment?

Mr. Jeff Labonté (Director General, Energy Safety and Security Branch, Energy Sector, Department of Natural Resources): I'll at least give it my best effort. How's that? Thank you for the chance to comment.

The amendment proposes to insert what has been defined at the beginning of the bill as a term: "Aboriginal governing body". By including the term here, it would, as member of Parliament Ms. May has pointed out, include that an aboriginal governing body could be reimbursed for expenses they may incur in responding to an incident, presuming that those expenses were reasonable and recorded.

In this particular area, it certainly would expand, if you will, that particular aspect of the bill. However, it is established in the beginning part of the definition stage of the bill exactly what it would include.

The Chair: Ms. Duncan.

Ms. Linda Duncan: I have a question.

The Chair: You have a question on this?

Ms. Linda Duncan: No. I have a question to ask whether I can make an amendment to the amendment.

The Chair: Yes, you can propose one.

Ms. Linda Duncan: It's a friendly amendment, so we would have to agree to my amendment, right?

The Chair: Go ahead with your proposed amendment.

Ms. Linda Duncan: I would respectfully like to amend this provision, consistent with amendments I suggest later on, so that we add in, after "province", "municipality".

The Chair: Well, in this proposed section—

Ms. Linda Duncan: Can I speak to my amendment?

The Chair: Sure, go ahead.

Ms. Linda Duncan: The reason I'm adding this is that many of the pipelines, including abandoned pipelines, run through municipalities, and they are going to incur the expenses for damage to their lands. I think it is appropriate that... I don't know why we would remove that order of government, which may incur expenses "in taking any action or measure in relation to the release".

The Chair: You have heard the proposed subamendment. Would anyone like to comment on it?

Mrs. Pat Perkins (Whitby—Oshawa, CPC): Could we have the officials give us an explanation?

The Chair: Do any of the officials want to comment on what the proposed subamendment to amendment PV-7 would do?

Mr. Jeff Labonté: As the proposed amendment before us is an additional amendment to the amendment, it would obviously expand the groups. But I'm not an expert as to whether a municipality in different circumstances...and what the definition of that is. My understanding is that municipalities in law are part of the "province" in the provincial.... I would expect that not including it would not preclude a province from pursuing the costs that were incurred by a municipality, but may negate this. However, it's recognized that aboriginal governing bodies may have different distinctions between municipal and recognition under federal law.

•(1605)

The Chair: Okay.

I have Mr. Regan, then Ms. Duncan.

Hon. Geoff Regan: I want to point out that certainly municipalities are recognized in the Constitution. They're an entity that's recognized in section 92 as being under the jurisdiction of provincial governments. The meaning of them is quite clear in this country, so I don't see a problem in terms of the meaning of what a municipality is.

It's not 100% clear to me that a province could recover under this legislation a loss to a municipality and I don't see how it would hurt to add that word to this provision.

The Chair: Thank you, Mr. Regan.

Ms. Duncan, do you want to speak to this?

Ms. Linda Duncan: Yes, Mr. Chair.

In the testimony we had in the written submission from Martin Olszynski from the University of Calgary Law School, he raised this issue of not including municipalities and gave a number of very cogent arguments.

First, he stated that even though this ability exists in a lot of legislation, there's never been a case in which the federal government has actually sought this reimbursement. He raised the case of Lac-Mégantic. That, of course, was an explosion of a rail car, but it could have been an explosion of a pipeline. It was Mégantic that was having to deal with reparations to its town. They can, of course, turn to the federal or provincial government hoping they might help to meet those expenses, but municipalities face their own expenses. So the case was made by that legal scholar that it would be appropriate to add "municipalities".

The Chair: Ms. Perkins.

Mrs. Pat Perkins: I'm sorry to interject, but this is a very conflicted area when you get into municipal politics. Who they have to ask for things sometimes appears muddy, but when you have a disaster of any kind—there was the ice storm, for example, and so on—there's usually a formula that comes down from the federal government to the provincial government, and the municipalities then apply through that fund.

I'd just like some clarity. Is that how this would be applied, if there were a situation in which there was some sort of issue whereby the municipalities needed to find a way to make themselves whole again? Is what we're talking about that the federal government would provide an avenue through the provincial government and the municipality would apply, similar to the case after the ice storm?

The Chair: So for clarity, you're asking how it would apply before Ms. Duncan's subamendment?

Mrs. Pat Perkins: Yes.

The Chair: Okay.

Mr. Labonté? You can delegate.

Ms. Linda Duncan: You're only speaking to the subamendment right now.

Mrs. Pat Perkins: No, I'm not, I'm actually talking—

Ms. Linda Duncan: She can only speak to the subamendment because we're debating the subamendment right now.

Mrs. Pat Perkins: I want clarity between—

The Chair: She is.

Mrs. Pat Perkins: —what you're asking and what exists. That's what I need the clarity on.

Ms. Linda Duncan: So she is speaking to my subamendment.

Mr. Jeff Labonté: This is the beginning of the liability section of the bill. Essentially, this section sets out that the polluter pays. Those who are at fault or are negligent for a release, an unintended release, would be responsible for actual loss and economic loss, if you will, the costs and expenses reasonably incurred by Her Majesty and by the province and the aboriginal governing body, which was the amendment. The inclusion of the new amendment would extend that to municipalities, and then there's loss of non-use value. This would be the avenue by which a claimant would pursue a loss or damages—in this case, expenses—and a court would determine the applicability of those things.

I don't believe, in my understanding—and again, it's a policy understanding as opposed to a legal understanding, so my deficiencies are here before you—that it would preclude a province from recognizing this, as I think was the case with Lac-Mégantic, where the province and the federal government worked together to establish how to deal with the impacts and costs associated with not only the cleanup but also those things that were going on. Then, of course, there were civil and other aspects that were pursued. I don't believe that, as proposed, without "municipality" it precludes.... I'm not certain about adding it and what that might mean in the broader context.

This is the broadest aspect of the liability aspect, and then it kind of narrows in the different sub-provisions that follow and spells out other specific details, whether they're absolute liability or whether there are any limitations to that liability.

•(1610)

The Chair: Ms. Duncan.

Ms. Linda Duncan: It's my understanding in the rules of legislative interpretation—and perhaps the government lawyers at the table and the legislative clerk could speak to that—that when you become specific in a provision, you then take away the general. The government has chosen to be specific and say "Her Majesty in right of Canada or a province" and then "or any other person".

I think then it could be argued that you would be excluding a municipality because of the way that is drafted. If it simply said "any person may", that would include the governments. By nature, the way the government has chosen to draft this, I think it then necessitates that you have to add in "others orders of government", which would include municipalities and aboriginal authorities.

The Chair: We've heard Ms. Duncan's comment.

Ms. May.

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

I'm in a sort of limbo situation as I'm not a member of the committee, but this is my amendment, so I just wanted to put on the record that I find Linda Duncan's amendment friendly. I think she's also further fortified the argument for why the main amendment should carry, which is that when you list the province, list the federal government, and list a person, you could be excluding a first nation and a municipality. I appreciate the amendment.

The Chair: Okay. We'll go to the vote, then, on Ms. Duncan's subamendment.

(Subamendment negated)

The Chair: Now we we go to the amendment, to PV-7, to be specific.

Are we ready for the vote on that?

[*Translation*]

Mr. Guy Caron: I'd like a recorded vote, please.

[*English*]

The Chair: We will have a recorded vote.

(Amendment agreed to: yeas 9; nays 0 [See *Minutes of Proceedings*])

Ms. Elizabeth May: In four years of putting forward amendments, Mr. Chair, this is a first. Thank you very much to my friends across the way. Thank you.

Ms. Chris Charlton: Don't get used to it.

Some hon. members: Oh, oh!

Ms. Elizabeth May: I won't.

The Chair: Okay, let's not get....

On amendment PV-8, go ahead, please.

Mr. Rick Norlock: Don't be so quick to be judging—

Ms. Elizabeth May: No, listen, it took four years and I remained hopeful.

The next amendment gets to the issue of a question that I'm sure this committee has heard a great deal about. I certainly know from witnesses that you have heard that it is important to have legislation recommend environmental damage. The use of the words “non-use value” is recommended by a number of the witnesses you had before you, but I'm particularly going to cite the evidence of Professor Olszynski from the University of Calgary Law School. I'll quote from his evidence:

My first recommendation is that the third category of loss under the civil liability provisions be amended to refer simply to environmental damages.....coupled with an additional subsection defining environmental damages, as is the case in the sentencing provisions.

It would not only simplify the section and ensure its comprehensiveness, but it is also necessary to correct what appears to be an error in the current bill. That is the effect of my amendment.

There is one other part of my amendment that deals with another part of Professor Olszynski's testimony, which is that the Governor in Council should be required within a certain timeframe, or at least authorized, to make the regulation setting out a process for environmental damage assessment.

The Chair: Thank you, Ms. May.

Are there any further comments on amendment PV-8?

• (1615)

[*Translation*]

Mr. Guy Caron: I'd like a recorded vote, please.

[*English*]

The Chair: Okay.

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

The Chair: We will go now to amendment NDP-4, Monsieur Caron.

[*Translation*]

Mr. Guy Caron: Thank you very much.

When the witnesses and officials were here, we asked them a number of questions about the potential conflict that could arise between the liabilities set out in the bill and the provisions included in Canada's various civil codes.

We want to add subsection (1.1) to section 48.12 of the act to make sure that farmers or landowners will no longer be held liable for the actions of their contractors. The Civil Code of Québec already has those kinds of provisions. Not including them in the bill could give rise to a potential conflict between federal and provincial legislation.

What we're trying to do is make sure that a landowner will not be held liable for a leak unless it results from the gross or intentional fault of the landowner. That needs to be clarified because the Civil Code of Québec seems to differ from other provincial codes.

[*English*]

The Chair: Merci, monsieur Caron.

Is there any further comment on this?

Mr. Regan, go ahead, please.

Hon. Geoff Regan: Mr. Chair, I wonder if we could ask officials to comment on this and what its impact would be.

The Chair: Please go ahead, Mr. Labonté, or whoever would like to speak to that.

Mr. Jeff Labonté: My understanding is that this is aimed at avoiding a conflict between federal and provincial law. That said, in the areas in any province where there is a federal pipeline that is under federal jurisdiction, they're inherently federal works. The degree to which, and the potential for which, there would be a conflict wouldn't exist because they are federal in nature and not provincial.

I might be wrong about that from a legal perspective, but my Justice colleague might be able to add to that.

The Chair: Mr. McHattie, would you like to speak to that?

Mr. Joseph McHattie (Legal Counsel, Department of Natural Resources): Just to back up what Mr. Labonté is saying, this is federal legislation governing the federal matter of inter-provincial pipelines. So under this regime, those would be the rules that would apply. It's not quite a conflict with any provincial regime, because it would be under a special liability regime set up in this section.

The Chair: Thank you.

Are there any further comments on that?

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

The Chair: On amendment NDP-5, Ms. Duncan.

Ms. Linda Duncan: I want to thank the legislative lawyers for helping me with this one. My intention was to go in the direction that Ms. May went, and to make it mandatory for the government to issue the regulations clarifying non-use. It's a problem throughout this bill where a lot of the detail is left to regulation, which the government has a practice of simply stalling on promulgating. As I understand it, there is a problem in the courts where the courts are reluctant...in the case of the cabinet or the Governor in Council having the power to make the regulation as opposed to a minister.

What this provision does in the matter of non-use value, which is a significant matter that the government, in its wisdom, has chosen to add to the spill liability law, is clarifying exactly what they mean by non-use value. This simply adds the power to make regulations to clarify non-use value and provides for accountability. As a package, it is holding the government accountable so that if the cabinet decides it wants to delay clarifying this matter, it will have to account for that to Parliament.

This is about transparency.

The Chair: Thank you, Ms. Duncan.

Is there any further discussion?

Ms. Block.

Mrs. Kelly Block: I'll just make a couple of comments, Mr. Chair.

We are opposing this amendment. It is up to the courts to determine what value, if any, is appropriate to place on non-use value damage claims on a case-specific basis. Also, the current approach in Bill C-46, as with other federal legislation, will allow the courts to develop a body of precedents in the area of awards for non-use value damages.

I guess the third piece that's very important is that setting a time limit on the creation of the regulations could bind the regulatory process, which needs to include adequate periods of time to ensure appropriate consultations are undertaken.

The Chair: Thank you, Ms. Block.

Is there any further comment?

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

The Chair: We'll go to amendment Liberal-3.

Mr. Regan, go ahead, please.

• (1620)

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

As the Union des producteurs agricoles has indicated to us, proposed subsection 48.12(1) would make the agriculture or forestry producer liable if their operations cause a rupture in a pipeline. This conflicts with proposed paragraph 86(2)(d), which provides that a land accession agreement must include an "indemnification" clause. This proposed amendment would overcome that conflict and I think solve this problem that exists in the bill as it is.

The Chair: Thank you, Mr. Regan.

Is there any further discussion on that?

Ms. Block, and then Ms. Duncan.

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

We will be opposing this amendment as the regime in proposed section 48.12 makes all persons whose fault or negligence contributes to a spill liable for the effects of the spill. Polluter pays is therefore enshrined in law, and it does not create any exception to the polluter pays principle, as this amendment would do.

The Chair: Thank you, Ms. Block.

Ms. Duncan, you had a question for the officials?

Ms. Linda Duncan: I actually appreciate the fact that the member raised this. I think what he's doing is ensuring that there is consistency within the legislation. As it's troubling, I would look forward to what the government officials have to say.

My question would be, how are you defining "acquired"? Maybe the member could...?

Hon. Geoff Regan: I don't know.

Ms. Linda Duncan: You don't know. Okay.

The Chair: Was that question for Mr. Regan or was it for—

Ms. Linda Duncan: Well, section 86 applies to when the lands are "acquired". I'm not really sure but is that just a fancy word for "purchased" or "leased" or...?

Hon. Geoff Regan: That's the obvious meaning of the word. I don't know what other meaning you might give to it.

The Chair: Is there any further discussion on proposed amendment Liberal-3?

Hon. Geoff Regan: I suppose I could just answer the question, if I may, Mr. Chair.

The Chair: Sure. Go ahead, please, Mr. Regan.

Hon. Geoff Regan: There are other ways of acquiring property besides purchasing it. You could receive it in a will. There are a number of ways. I think "acquire" is a good word in that sense. It's a broader word.

The Chair: Thank you, Mr. Regan.

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

The Chair: We go now to amendment NDP-6.

All of these amendments are to clause 16. There are many more.

Monsieur Caron.

[*Translation*]

Mr. Guy Caron: Thank you.

I'll be quick. The provision establishes the limit of liability at \$1 billion. The amendment seeks to remove that limit to make the company wholly liable for any damage that may result from a pipeline incident. That's what amendment NDP-6 would do.

[English]

The Chair: Merci, Mr. Caron.

Is there any further discussion on NDP-6?

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

The Chair: We go now to amendment PV-9.

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

This is found on page 8 of the bill. This amendment deals with a section that actually removes access to Fisheries Act measurements of damages. Currently, proposed subsection 48.12(8) says:

The costs and expenses that are recovered by Her Majesty in right of Canada or a province under this section are not recoverable under subsection 42(1) of the Fisheries Act.

The question is, why would we limit liability under this bill? They would be otherwise recoverable under the Fisheries Act. The recommendation is to delete this section and to allow the recovery of damages under the Fisheries Act, leaving them recoverable under subsection 42(1).

The Chair: Thank you, Ms. May.

Is there any further discussion on PV-9?

Ms. Duncan.

Ms. Linda Duncan: Yes.

For the record I find it very disturbing that we would be reducing liability that is set forth in the statute already and has been relied on for probably 50 years.

The Chair: Okay.

Go ahead, Mr. Regan, yes.

• (1625)

Hon. Geoff Regan: Could we hear from the officials on their reaction to this and their interpretation?

The Chair: Mr. Labonté.

Mr. Jeff Labonté: Proposed subsection 48.12(8) addresses Her Majesty's costs and expenses as incurred. So a finite amount of costs and expenses would be removed from the government's ability to pursue it under the Fisheries Act.

It would be important to start with the Fisheries Act. It only applies where there is fish bearing water. Not all pipelines traverse or even are near fish bearing water. So the liability regime and the pipeline safety act's purpose is to set out a common, consistent liability regime for the entire country where all federal pipelines are found.

In terms of the Fisheries Act's application for government costs, it would only be appropriate in the event of an incident where that Fisheries Act would apply.

The second bit would be that the proposed subsection before this preserves the right to continue unlimited absolute liability under any

other act where that act has a higher amount. So the amendment's suggested removal of proposed subsection 48.12(8) would remove the government's abilities to avoid a conflict of government for pursuing things between the Fisheries Act and the pipeline safety act, but it does preserve unlimited absolute liability where it applies in another act, and that does apply in the Fisheries Act. My understanding is that it applies for commercial fishers who receive their livelihood from commercial fishing in areas where the Fisheries Act applies.

The Chair: Thank you.

Go ahead, Ms. May.

Ms. Elizabeth May: Linda Duncan can help me with this too, because in my understanding of the Fisheries Act damages are recoverable for more than commercial fisherman and damages are recoverable for damage under section 42.1.

It's not in conflict. We don't create a conflict for proposed subsection 48.12(7) by deleting proposed subsection 48.12(8). Rather, by continuing with the latter, it doesn't seem to me that there's any reason why damages should not be recoverable under subsection 42.1 under the Fisheries Act. Deleting proposed subsection 48.12(8) doesn't create any statutory interpretation problems with proposed subsection 48.12(7). The fact that they're also liable under any other act is no reason to remove access to section 42.1 of the Fisheries Act; it doesn't create a conflict, if you see what I'm saying.

So why take away the access to damages under section 42.1 of the Fisheries Act, which has been used as, Ms. Duncan says, for a very long time and as a pretty meaningful measure for environmental protection?

The Chair: Thank you, Ms. May.

Mr. Regan.

Hon. Geoff Regan: Mr. Chair, I'd like to ask Mr. Labonté if the department is suggesting that removing this proposed subsection 48.12(8) would lead to duplication of damages, because my impression is it would not.

Mr. Jeff Labonté: Removing proposed subsection 48.12(8) would remove the government's ability to pursue damages under either act. It provides that a pipeline incident would be pursued under the pipeline safety act, or the National Energy Board Act, I think, is where it will ultimately end up.

Hon. Geoff Regan: So, Mr. Chair, does that mean that if in the event—and hopefully this wouldn't happen—that the government's lawyers made a mistake and sought damages under the Fisheries Act, they wouldn't be able to do so and they'd have to start over, if this proposed subsection were left in?

Mr. Jeff Labonté: Prior to the bill being introduced the liability regime in the NEB Act is fairly broad and doesn't have a lot of specificity. As the amendments point out, we're introducing a high degree of specificity, including an operator being accountable for any fault or negligent activity in which an unintended release occurs. Then it continues throughout and gets down to proposed subsection 48.12(8) and says that in the event of the government being able to... which is proposed paragraph 48.12(1)(b), the government can receive its expenses and costs incurred under the pipeline safety act, rather than necessarily be covered under the Fisheries Act.

The coverage here is included in this bill and so it's removing it from that particular instance.

It does preserve...in the subsection before, and I didn't suggest there was a conflict between proposed subsections 48.12(7) and (8). It is between the latter and other bills. It does preserve that if absolute liability exists somewhere else, it is preserved at a higher amount, because proposed subsection 48.12(5) in this particular bill spells out the absolute liability and its limitations or how it applies to major oil pipelines.

• (1630)

The Chair: Thank you.

We go to the vote on PV-9.

[Translation]

Mr. Guy Caron: I'd like a recorded vote, please.

[English]

The Chair: Those in favour?

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

The Chair: As for NDP-7, it inadmissible. I am taking the advice of the legislative clerk on this.

But, Ms. Duncan, would you like to move your motion, NDP-7, first?

Ms. Linda Duncan: Yes, I would like to move it. Can I speak to it?

The Chair: Yes, go ahead and speak to it.

Ms. Linda Duncan: Consistent with what I've said previously, I am moving that proposed subsection 48.12(9) be amended to say not only federal and provincial, but also include municipal institutions, and that aboriginal governing bodies may institute proceedings to recover loss of a non-use value described in paragraph 1(c). I am proposing that to ensure that the law is consistent.

Proposed section 48.15 says that reimbursement may be sought by any federal, provincial, or municipal government institution or any aboriginal governing body. To not do so means that in some cases a municipality or an aboriginal body can seek restitution and in other cases they cannot.

I look forward to an explanation why there would be inconsistent rights and opportunities under the bill. In some cases municipalities and aboriginal governing bodies could seek recompense and in other cases not. The arguments I've heard previously against that puzzle

me, since they have specifically included them proposed section 48.15.

The Chair: Thank you, Ms. Duncan.

On the advice of the legislative clerk, I'll read the reason for my ruling that this is inadmissible.

The amendment seeks to broaden beyond Her Majesty in right of Canada and the province the category of actors who can institute proceedings to recover a loss of non-use value relating to a public resource. As *House of Commons Procedure and Practice*, second edition, states on page 766:

An amendment to a bill that was referred to a committee after second reading or a bill at report stage is out of order if it is beyond the scope and principle of the bill.

I agree with that advice given by the clerk.

I realize that we have allowed proposed amendments to be moved and debated and voted on that do broaden the scope. In this particular amendment it specifically says only Her Majesty in the right of Canada or a province. In the others it had already broadened it out by saying "or other persons". That allows us to debate those and to vote on them. In this case, it is inadmissible.

Ms. Linda Duncan: Therefore, if I could get clarification, a municipality may seek recompense for cause and expenses that they incurred in response to a spill, but not for non-use value. I mention this just so the government understands what they are saying.

The Chair: Thank you, Ms. Duncan.

Now, we go to PV-10.

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

This is very similar, so I'm having these little hopeful moments after the one that was passed earlier. The current language we find in proposed subsection 48.12(9), in clause 16 of the current bill. The way it currently reads is that "Only Her Majesty in right of Canada or a province may institute proceedings to recover a loss of non-use value as described" above.

My amendment seeks, once again, to suggest that a first nations government, as defined by aboriginal governing body found in the definition section of this act, would also be considered eligible to institute such proceedings. It's a small amendment in terms of language. It would read: "Only Her Majesty in right of Canada or a province or an Aboriginal governing body may institute proceedings to recover a loss of non-use value", etc.

• (1635)

The Chair: Thank you, Ms. May.

As you will probably guess, I will be ruling, for exactly the same reasons, that this proposed amendment is inadmissible. We are consistent.

We're now on NDP-8.

Ms. Linda Duncan: Thank you, Mr. Chair. I'll speak to that one.

This is a very straightforward amendment. I'm simply proposing that there be a provision added that the minister be obligated to coordinate with appropriate provincial ministers all proceedings to recover claims.

This is based on my personal experience with the Wabamun spill, the spill of 700,000 litres of bunker C into Lake Wabamun, and the abject failure of the two levels of government to respond properly to the spill or to coordinate. Of course, there have been many official reports written about this abject failure to coordinate. We are hearing now about the complaints about alleged lack of cooperation in responding to the spill in English Bay.

I'm simply proposing this as a proactive measure to alert the federal government that this is a role that they could step forward to deliver, particularly because we're talking about pipelines that are under federal jurisdiction.

The Chair: Thank you, Ms. Duncan.

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

The Chair: On NDP-9, go ahead, please, Ms. Duncan.

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

In essence, what is being recommended here is that the limitation dates be extended. I know from personal experience in assisting families and communities that have dealt with spills that often there are cases where they don't even become aware of it, because there could be a slow leak from a pipeline. There has been a lot of consternation in my province between landmen and farmers about this. I'm simply suggesting that there be a longer time period.

I make a differentiation here by saying "five years from the day on which the loss, damage, or costs and expenses" were actually incurred and "in no case after 10 years from the day on which the release" occurred. There can be a difference between when people are aware of the spill and seek to have it cleaned up, and it occurring and people not even discovering until too late.

In the case of an abandoned pipeline, this states that there be no limitation date, for obvious reasons. One may not be aware for quite some time of the impacts of a spill or a leak or a release of any kind from an abandoned pipeline.

The Chair: Thank you, Ms. Duncan.

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

The Chair: We'll go now to PV-11.

Ms. May.

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

This amendment deals with the issue that's currently found on page 9 in proposed subsection 48.12(12), that:

Proceedings in respect of claims under this section may be instituted

—so we have some time limitations here—

within three years from the day on which the loss, damage or costs and expenses were incurred

The concern that the Green Party has with this amendment is that sometimes, and it's not hard to imagine the times, when the loss or damage may have occurred, or even started to occur sometime earlier, even more than a year ahead, you will then find yourself with the clock ticking and you're statute-limited in launching your claim. What we're suggesting here is that the section should be amended to

include the words "discovery of" as opposed to being time limited from the time the loss or damage started to occur. It would be from the day on which the discovery of the loss or damage was made or on which costs and damages were incurred, and then in no case more than six years from the day on which the discovery was made.

It certainly is common, in many statutes where time limitations are being put in place, to time the complainant's access to a claim for damages not to the moment when the damage occurred but from when they discovered it. I can refer the committee back to evidence in this regard from *Union des producteurs agricoles*. They are very concerned that a pipeline could be leaking contaminants for some years but it would only be discovered sometime later.

I hope this amendment might be considered favourably.

• (1640)

The Chair: Thank you, Ms. May.

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

The Chair: We still have another two proposed amendments on this same proposed subsection 48.12(12).

Mr. Regan, Liberal-4.

Hon. Geoff Regan: Mr. Chairman, this amendment would have the same effect as the amendment that was just defeated, the amendment from Ms. May. Of course, I'm confident that my colleagues on the opposite side will find this more attractive because it's nice and briefer wording. You never know, it's worth a shot.

The Chair: Thank you, Mr. Regan.

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

The Chair: We can always hope.

Next is NDP-10. That's yours, Ms. Duncan.

Ms. Linda Duncan: Thank you.

Very succinctly we're dealing with a good number of statutes here, the Indian Oil and Gas Act, COGLA, the NEB Act, and so forth. So I have added in these words to try to be consistent. I'm adding in specifically:

...in the case of debris, from the day the installation or structure in question...

And so on and so forth. My understanding is that it's consistent with other legislation.

The Chair: You want a recorded vote. We'll go to a recorded vote.

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

The Chair: NDP-11, Monsieur Caron.

[*Translation*]

Mr. Guy Caron: The purpose of our eleventh amendment is to remove the references to the various financial tools that companies can use to secure the amounts to be repaid in the event of a leak. The recommendation comes from, among others, the *Union des producteurs agricoles*, which indicated in its brief that the government should have taken guidance from the board's decision further to the hearings on the set-aside and collection mechanisms developed in May 2014 in order to standardize practices.

We're concerned that it will be difficult to ensure follow-up of all these financial tools and that, because of their complexity, it may not always be possible to access the required funds quickly.

The Chair: Thank you, Mr. Caron.

[English]

That is clause 16 on page 9 at the bottom.

Any further discussion on that?

Yes, Mr. Regan, then Ms. Duncan.

Hon. Geoff Regan: I'd like to ask the officials what the implications, the impact, of this proposed amendment would be?

The Chair: Go ahead, please, Mr. Labonté, or your designated responder.

Mr. Jeff Labonté: The general premise behind the financial requirements aspect of the bill is to provide some assurance that the particular operator of the pipeline who is seeking the certificate has the financial wherewithal, and that those things are listed. Here we are following other federal statutes, which list, for illustrative purposes, what might be considered. We would expect that there will be a regulatory step that will spell out in greater detail and greater precision those requirements that will be sought from operators to ensure that they maintain the fiscal prudence that's expected to comply with the legislation.

•(1645)

The Chair: Okay, thank you.

Thank you, Mr. Regan.

Ms. Duncan.

Ms. Linda Duncan: Consistent with the comment I made previously, Mr. Chair, my concern here is that this provision specifies information which the board may consider. By the nature of statutory interpretation, that means they couldn't include other matters. That, I understand, is the rule of statutory interpretation, and I think Mr. Caron has raised a concern that there may be other matters that should be considered, but because they are not included in that exclusive list the board could not consider them, whereas if it were left wide open, the board could consider all matters in this discretion including those matters.

The Chair: Thank you, Ms. Duncan.

Mr. Regan.

Hon. Geoff Regan: I'd like to know how Ms. Duncan interprets the words "among other things", because to me when it says, "The Board may consider, among other things, the company's financial statements", etc., it is in fact doing the opposite of what Ms. Duncan is saying. It is leaving it open to the board to consider other things.

The Chair: Thank you, Mr. Regan.

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

The Chair: We go now to amendment NDP-12.

Monsieur Caron.

[Translation]

Mr. Guy Caron: Our twelfth amendment also seeks to make changes to clause 16. It amends section 48.13(6) of the act, with respect to pipeline abandonment, to require the company to obtain leave from the board to abandon the operation of a pipeline before doing so, as well as leave from the board to stop maintaining the necessary funds or security.

The purpose of the amendment is to ensure that the requirement to maintain funds or security doesn't automatically end as soon as the company abandons the pipeline, making it necessary to obtain the board's authorization for both of those things beforehand.

The Chair: Thank you, Mr. Caron

[English]

Is there any further discussion on amendment NDP-12?

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

The Chair: Now we're on amendment PV-12.

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

This may be the most important of the amendments I have the honour of tabling before you today, and it's on proposed section 48.15 on "Reimbursement by Company". It currently reads,

If an unintended or uncontrolled release of oil, gas or any other commodity from a pipeline occurs, the Board may order the company that is authorized under this Act to...reimburse

and so on.

As one of the witnesses before this committee, Ian Miron of Ecojustice, pointed out, "as currently drafted, the bill can best be described as 'polluter might pay'". So, in order to ensure the polluter pays, I have a straightforward amendment. It changes the language from discretionary to mandatory: "the Board shall order" the company responsible to pay for and reimburse any federal, provincial or municipal government institution, any aboriginal governing body, and so on.

The Chair: Are there any further comments on amendment PV-12?

Ms. Duncan.

Ms. Linda Duncan: You'll see that in the next amendment, I've amended it in a different way.

My concern here is, frankly, with the way it's drafted. Usually the procedural rules will be ancillary to the statute, and they will specify the parties who can apply for costs to be reimbursed and they will give criteria regarding the costs that can be reimbursed.

The problem here is that if you make it mandatory, they may not even have asked for a reimbursement.

I'm not opposed to the direction Ms. May is going in, but it's—

Ms. Elizabeth May: You prefer your amendment.

Ms. Linda Duncan: Well, I'm not sure they'll like either of them, but I understand where you're going. I don't know how the courts would hold that to being mandatory, but I think they might do that for a board as opposed to for the cabinet.

The Chair: Ms. Block.

Mrs. Kelly Block: I would like the officials to comment on this amendment.

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

Mr. Jeff Labonté: In this particular instance, it is the orders of the board to reimburse for costs that fall within the category of expenses incurred. The board may require the company in question to do so, and in doing so, it would take into account the “polluter pays” principle and the components that are consistent with the particular incident that may be dealt with.

In this particular case, it doesn't necessarily mean the board wouldn't need to examine what those costs and circumstances might be, but certainly the way it's constructed it in no way limits the board's ability to do so, and it would be typical and normal in legislation to see it that way.

• (1650)

The Chair: We will now vote on amendment PV-12.

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

We're now on amendment NDP-13.

Ms. Duncan.

Ms. Linda Duncan: Mr. Chair, I've taken a different approach here to the previous amendment. Certainly in my jurisdiction of Alberta the energy boards deal with claims where it's specified in law, and usually it's under regulation where you can make a claim.

I simply amended the provision to provide that where a claim for cost recovery is made by one of those parties—and again I note it includes municipalities as well as aboriginal governing bodies—that “the Board shall order” the company to pay. It's clarifying that the board can't out of the air say, “Oh, I think you should compensate this aboriginal body, who, by the way, didn't intervene and didn't even seek recovery”.

The Chair: Thank you.

Is there any further discussion?

Those in favour of amendment NDP-13?

Mrs. Kelly Block: What happened to PV-12?

The Chair: It's gone. It was defeated on division.

We'll start again. Amendment NDP-13.

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

The Chair: We go now to amendment NDP-14.

Ms. Duncan.

Ms. Linda Duncan: As I mentioned during the hearings, and in the dialogue on the testimony before our committee, this legislation in some cases will provide for reimbursement after the fact where people suffer damage or incur costs when they're dealing with the cleanup of the spill.

Unlike provincial legislation, it does not provide for any advance payment of costs. This has caused unfairness to a number of community members, including aboriginal communities, as I've mentioned in the case of Wrigley in the Northwest Territories. It wasn't until the NEB came to a Dené gathering where the Wrigley

chief was, who stated his frustration.... They were trying to deal with with damage of a spill and to understand what the government was doing, what the company was doing, and what they were required to do. The NEB then said that they would come up with some money somewhere.

This amendment would put greater fairness in the process and make it a more constructive process. The board would then have the power only in the application by an aboriginal governing body or a person affected by a release. It would be up to the board to decide if they had been affected, which would allow them to make an advance payment. The board could then order the company to reimburse to pay those costs.

The Chair: Thank you.

Are there any further comments on amendment NDP-14?

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

The Chair: Now we have amendment PV-13. Ms. May has indicated she wants to withdraw it. She can't, because it's been moved and is before the committee. So it's up to the committee. Shall we just go straight to the vote on amendment PV-13?

Is there unanimous consent to withdraw amendment PV-13.

(Amendment withdrawn)

The Chair: Next is amendment PV-14.

Our mover isn't here, but we go ahead still with such motions, as they're deemed to have been moved. Is there any discussion on amendment PV-14?

Ms. Block.

• (1655)

Mrs. Kelly Block: Mr. Speaker, we will be supporting this amendment. Our government has consistently indicated that we will pursue companies to make them pay in the case of a spill. Bill C-46 seeks to codify the polluter pays principle into law to ensure that all companies operating pipelines are absolutely liable and able to pay for costs and damages resulting from an incident.

This proposed change would be consistent with the government's intent.

The Chair: Is PV-14 carried unanimously?

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

The Chair: We go now to NDP-15.

Ms. Duncan.

Ms. Linda Duncan: Thanks very much, Mr. Chair.

My amendment simplifies proposed subsection 48.18(2) and removes the codicils. I would instead simply say: “A pipeline claims tribunal is to be established if the release has caused extensive damage, compensation is sought in respect of that damage and it is in the public interest to do so.”

I don't see any clear rationale or purpose in adding all those codicils to that. Why should it not just simply be based on “in the public interest to do so”?

The Chair: Thank you, Ms. Duncan.

Is there any further discussion on NDP-15?

(Amendment negated)

The Chair: We'll go to amendment PV-15. Is there any discussion on that?

Ms. Duncan.

Ms. Linda Duncan: This is something that I don't really have clarification on. Is it the intention of this legislation that each time there's a spill there's going to be a new tribunal, or is there going to be a permanent tribunal? The legislation is very confusing. It's not clear on that.

If there is a permanent tribunal, I think the recommendation is a good one. If there's going to be a separate tribunal every time there's a spill, then it would only logically make sense if treaty or aboriginal rights are potentially impacted.

Maybe we could turn to the government officials or someone to explain to me exactly how this legislation will work.

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

Mr. Jeff Labonté: Proposed section 48.18 establishes that the Governor in Council can establish a tribunal, or may designate a circumstance in which the government needs to intervene, and in those circumstances when it's in the public interest, it could establish a tribunal. The legislation does not intend to establish a tribunal in a permanent fashion, nor for every spill, but only when a spill is of such significance that it would be efficient to have a tribunal.

The Chair: Thank you.

Mr. Jeff Labonté: That's the rough policy logic behind it: where needed.

The Chair: Thank you.

We'll go to the vote.

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

The Chair: Is there any discussion on PV-16?

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

The Chair: We'll go to the vote on PV-17.

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

The Chair: Now we go to NDP-16. This is the last amendment proposed for clause 16.

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

This is similar to the previous amendment that I made to ensure accountability in the promulgation of regulations. The regulations as referenced here are very important to give substance to the bill, and this simply provides that there be a reporting on why no regulations have been coming forward within two years of the coming into force of the bill.

• (1700)

The Chair: Thank you, Ms. Duncan.

Is there any further discussion?

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

The Chair: Now we go to the vote on clause 16 as amended.

(Clause 16 as amended agreed to on division)

The Chair: We go now to amendment NDP-17, which is dealing with clause 32 on page 32.

My apologies. We have to deal with all the clauses that have no proposed amendments before we go to that.

Shall clauses 17 to 31 carry?

(Clauses 17 to 31 inclusive agreed to on division)

(On clause 32)

The Chair: Now we go to amendment NDP-17 on clause 32, which is on page 32.

[*Translation*]

Mr. Guy Caron: Amendment NDP-17 would add subclause 93 (7) to clause 32, imposing a two-year deadline on the arbitration process. If the committee was unable to reach a decision in two years, the board would be required to provide an explanation.

Here again, the amendment is based on a recommendation made by the Union des producteurs agricoles. In its brief, the UPA indicated that, combining all the timeframes allotted for each of the steps, the process takes 30 months, undermining the credibility of the process.

So we are proposing amendment NDP-17 further to a recommendation from the UPA regarding a measure that will directly affect farmers.

[*English*]

The Chair: Thank you.

Is there any further discussion?

We'll get a recorded vote on NDP-17.

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

(Clauses 32 and 33 agreed to on division)

(On clause 34)

The Chair: We have amendment PV-18.

Is there any discussion on PV-18?

Mr. Guy Caron: Can we just have two seconds?

The Chair: Sure, go ahead.

There is no discussion? Okay.

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

(Clauses 34 to 36 inclusive agreed to on division)

(On clause 37)

The Chair: We have NDP-18 as a proposed amendment to clause 37.

Go ahead, please, Monsieur Caron.

[*Translation*]

Mr. Guy Caron: Thank you.

Amendment NDP-18 would amend section 132(2)(f) of the act to require the court to consider, at the time of sentencing, the fact that the offender was subject to the order of an authority and that the offence was committed as the result of such an order.

The purpose of the amendment is to prevent situations like the one in Lac-Mégantic, where the engineer was by himself for the trip and had to leave the train unattended in order to sleep. The engineer was alone as a result of the employer's instruction and was nevertheless found liable. So the amendment seeks to keep that kind of thing from happening in the case of pipelines.

• (1705)

[*English*]

The Chair: Thank you, Monsieur Caron.

Is there any further discussion on NDP-18?

We'll go to a recorded vote.

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

The Chair: We have another proposed amendment to that clause.

On NDP-19, go ahead, please, Monsieur Caron.

[*Translation*]

Mr. Guy Caron: The purpose of the amendment is to prevent companies subject to a court order or conditions imposed by the court, further to a leak, from applying for new authorization under the National Energy Board Act until all of those conditions have been lifted.

[*English*]

The Chair: Merci.

Is there any further discussion?

Ms. Block, go ahead, please.

Mrs. Kelly Block: Mr. Chair, I would like to ask the officials to comment on this amendment if they would.

The Chair: Mr. Labonté.

Mr. Jeff Labonté: The purpose or intent of the bill in this set of clauses is obviously to give some guidance to what might be sentencing provisions. In this particular instance it essentially says that the offender may not apply until the period the court considers appropriate. There is the potential circumstance of what one might call "habitual offenders" and there might be circumstances in which the court may wish to recognize that there is a regular or systemic issue, as opposed to simply meeting the conditions and releasing one's conditions.

The Chair: Is there any further discussion on NDP-19?

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

The Chair: We have one more proposed amendment to that clause, NDP-20.

Go ahead, please, Monsieur Caron.

[*Translation*]

Mr. Guy Caron: Thank you.

We are proposing amendment NDP-20 to ensure that the notion of liability is indeed adhered to and that the offender has met his or her obligations further to the offence and met all of the conditions imposed by the court in relation to a pipeline incident or leak.

The Chair: Thank you, Mr. Caron.

[*English*]

Is there any further discussion on NDP-20?

Ms. Duncan.

Ms. Linda Duncan: Yes, I would appreciate an explanation from the officials of why they would limit that to three years. I've never seen anything like that before.

The Chair: Mr. Labonté.

Mr. Jeff Labonté: I'll turn to my Justice colleague for this question.

Mr. Joseph McHattie: Thank you, Mr. Chair.

This is part of the penalty provisions. All penalty provisions have a mix of punishment, deterrence, and reform. The mix of all of those is different in each context. In this particular context, this legislation says that a three-year period of constraint on an offender's behaviour is sufficient for the purposes of this act.

The Chair: Is there any further discussion on NDP-20?

Ms. Duncan, you have further comments?

Ms. Linda Duncan: If I look at (f), does that mean then the bond would only be in effect for three years?

Mr. Joseph McHattie: Sorry, which bond are you referring to?

Ms. Linda Duncan: I'm looking at proposed paragraph 132.1(1)(f).

• (1710)

Mr. Joseph McHattie: Mr. Chair, I would refer you to proposed section 132.4 in this bill, called "Recovery of fines and amounts". In this case, this provision says that a "prosecutor may, by filing the conviction or order, as the case may be, enter as a judgment the amount of the fine or the amount ordered to be paid, and costs, if any, in any court". This provision saves any type of order to pay money, so an offender can't simply not pay for three years and then get off free.

The Chair: Thank you.

Ms. Linda Duncan: So all of the provisions of proposed subsection 132.1(1) would be limited to a three-year time period?

The Chair: Go ahead, Mr. McHattie.

Mr. Joseph McHattie: Not all of the provisions. The provisions governing behaviour and conduct of an offender will be subject to the three-year limit. The orders to pay fines would be subject to proposed section 132.4.

Ms. Linda Duncan: I don't read the law that way, but that's what he's saying.

The Chair: Those in favour of NDP-20?

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

(Clause 37 agreed to on division)

(Clauses 38 to 47 inclusive agreed to on division)

The Chair: Now we'll go through the rest.

Shall clause 1 carry?

(Clause 1 agreed to 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 I report the bill as amended to the House?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Thank you all so much for your cooperation. There was some good discussion and there were some amendments made.

Ms. Chris Charlton: Chair, could we adjourn?

The Chair: I just want to thank the officials first.

Thank you very much for being here. We appreciate it.

Ms. Charlton.

Ms. Chris Charlton: Thank you, Chair.

I think there have been some rumours, although I don't think there has been any confirmation, that the minister may be here on Tuesday for the estimates. I wonder when we would know our agenda for Tuesday. We take the estimates process seriously. We would like time to prepare, and I think it is incumbent upon us to leave here today knowing the business for next week.

The Chair: Ms. Block, as parliamentary secretary, would you like to comment on that? I know that the minister has indicated that he will accommodate us before the deadline.

Go ahead, please.

Mrs. Kelly Block: Mr. Chair, I am pleased to confirm that the minister will be here on Tuesday, May 5.

Ms. Chris Charlton: For how long—

The Chair: Usually the minister appears for an hour, and then we have officials for another hour.

Ms. Chris Charlton: Fair enough, but Tuesday is not May 5, so what is the business of the committee on Tuesday?

The Chair: We're going to see if we can get witnesses for the forestry study and continue with that. It's awfully short notice, but would you like to do that?

We'll work on it.

Very good, thank you all very much. Have a good weekend, all members of the committee.

The meeting is adjourned.

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