House of Commons
CANADA

Standing Committee on Agriculture and Agri-Food

AGRI • NUMBER 049 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Tuesday, June 14, 2005

Chair

Mr. Paul Steckle

Standing Committee on Agriculture and Agri-Food

Tuesday, June 14, 2005

● (1005)

[*English*]

The Chair (Mr. Paul Steckle (Huron—Bruce, Lib.)): Ladies and gentlemen, make yourselves comfortable. We're in for a possibly long ride. Hopefully it can be a relatively short ride, but make yourselves at least comfortable in getting to our destination today.

With all those nice things behind us now, we get into this matter of clause-by-clause on Bill C-27, a continuation, and we made the decision a few days ago to try to wrap this up today. It would be my hope that by later today we could have this in all aspects completed as far as this committee is concerned.

We want today to look at what we haven't done, all those areas that we've stood. But before we go there, if we could, rather than follow the agenda, I believe there's material.... I didn't check with my officers.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Mr. Chair, I wonder if we can delay for a couple of minutes. I think we had a couple of people who went to the West Block rather than here for the meeting.

The Chair: While we're doing this we can find out what happens here.

There were a number of issues that were, in my opinion, the ones that we had to come to grips with, and if we couldn't resolve those then basically this bill wasn't moving forward. And the issue we talked about was new clause 43.1. We had used the word "compensation". That may not be the word we need to use in this bill, but at least we need to recognize that there needs to be some recognition of those, other than the agency itself, who should be privy to being absolved of cost, blame, if, for instance, they aren't found guilty. So that was one of the issues.

In fact, there were a number of other issues. One of the other issues was the word "thing", and perhaps while we're waiting for the officers to get us the material we're looking for....

Yes, Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): Mr. Chair, I gather they're going to have to photocopy the motions.

But I think on what is one of the key clauses in the bill—it is related to the compensation one. Mr. Séguin is with the alternative dispute resolution services of the CFIA. From the government perspective, we believe there is a process in place that in fact achieves what we want to do under compensation without having to go to a different review tribunal, which would mean we'd have to go for the royal prerogative in that.

I wonder if while we're getting the motion photocopied, which didn't get to Bibiane for some reason, maybe we could bring him forward and he could explain how the system does work, so that we understand how that system does work and then we're dealing with all the facts on the table.

The Chair: As your chair, I would welcome that. Is there any opposition to that? Can we hear Mr. Séguin?

All right. Let's bring Mr. Séguin up to the table and have him bring us up to speed as to what has been the historical background on areas where there have been requests for compensation or people have felt unjustifiably charged perhaps and costs were incurred.

In fact, I have no problem with Mr. Séguin remaining at the table, unless the other officers have a problem with him.

You may as well take a chair there and remain there at least during the duration of these questions.

Hon. Wayne Easter: May I make another comment?

The Chair: Yes.

Hon. Wayne Easter: On the NDP motion, I think a lot of people support the intent that there needs to be some kind of ability to pay individuals who've been affected, beyond the normal costs of CFIA doing its work—basically to compensate those individuals for either how they've been wronged or for expenses incurred by them. That's what we believe ADR, the alternative dispute resolution, does now.

I believe as well that the witnesses have with them examples of where, within 48 hours and longer periods of time, moneys have been paid out in certain instances.

I would say at this stage, on some of the other resolutions from the NDP in relation to people after they have been charged, or whatever, we will be opposing those, because that would set the timeframe much, much too long. In fact, sometimes there aren't even charges laid but people have incurred an expense, and we want to try to deal with those individuals as well.

So if we could go from there....

● (1010)

The Chair: Mr. Séguin.

Hon. Wayne Easter: Perhaps you could just explain how the system works.

Mr. Peter Seguin (Director, Dispute Resolution Services, Legal Services, Canadian Food Inspection Agency): Okay.

In the beginning of calendar year 1999, the agency executive took a view that, as a matter of course in business, it would be very useful to establish a dispute resolution service of the agency attached to the legal services branch. The agency set about approving a two-year pilot project to do that, to try to use the current practice of dispute resolution and alternative dispute resolution in the normal course of the agency's business and to see how that might unfold in a regulatory agency, whether or not this recent move within the court system and within many other areas of our society would work for a regulatory agency. They approved two years of a plan to do that, during which time they had the internal audit service of the agency audit the program in its first year to see how effective it would be.

Following on its success, it's now a permanent part of the agency's operations. The agency has a dispute resolution policy that's approved. It's on its website. In fact, for the period of time since the beginning of calendar year 1999, we have been effectively dealing with any issues that have arisen under any mandate the agency has, whether as a regulatory agent or even in terms of our powers and authorities to contract for services or hire employees.

Basically, for any complaint that arises within the agency, there is a dispute resolution service that provides advice and assistance to managers or people who make decisions. In addition, we deal with and have dealt with cases on everything from contracting for temporary employees all the way to huge external export of product to other countries, everything from boatloads of wheat to China, seed potatoes to Uruguay, Italy, and Morocco, bringing products into the country from mainland China, moving live animals to Mexico, the whole broad range of issues over the course of time.

Since 1999, we've effectively been given 95 disputes in total to try to resolve, and we have been successful in resolving 93 of those. There are two that are currently still in existence and in litigation, one on the east coast and one in Manitoba, but the program itself has been quite successful and has existed.

Essentially, my office operates as a liaison between the executive of the agency and the legal services department, and works hand in hand, no matter where the case may be. We inherited a number of these from the predecessor departments when the agency came into existence, and a number of them have arisen since the agency came into operation in 1997.

The Chair: Are there any questions?

Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): First off, who sits on this dispute resolution committee? Is it a committee? Is it a standing committee? What form does it take in the cases you've adjudicated since 1999? Have you ordered financial compensation in any of them?

Mr. Peter Seguin: There isn't a committee per se. The agency established a dispute resolution service within itself. It passed a policy and advertised it publicly to everyone we do business with. It said, “If you have a complaint, the agency, even though it doesn't determine the course of the complaint, will try to take the easiest road to resolution. If the other parties in the dispute want to take the easiest way to resolution, we're prepared to do that, whatever it happens to be.”

It's a dispute resolution service of the agency. Every case or complaint that comes in, no matter whether it's a letter to the minister's office, an actual statement of claim filed in a court, or an existing litigation case we may have inherited from predecessor departments, we take those and literally case-manage them. We want to make sure we take the easiest road. We take every opportunity to deal directly with the party who has the complaint and try to resolve it in face-to-face discussions.

I have been the director of that service since it started. My background and experience is all in the private sector. I had not worked in government before. I was a labour relations mediator for 10 years before the agency asked me to come in and see how it might apply to their business. That's what we've been doing since the beginning of 1999.

● (1015)

Mr. Charlie Angus: What about financial compensation?

Mr. Peter Seguin: The disputes have ranged in compensation from issues on the export of seed potato, to moving huge boatloads of wheat to China, to the contracting of employees. The settlements have all been by agreement with the other party and signed in minutes of settlement and done in face-to-face negotiations.

Wherever the agency has had any responsibility, it's taken that responsibility and paid out immediately. We've not forced people to drag us through protracted court battles. We get these cases when they arise. We try to put our best and most knowledgeable people on them—front-end loading, I call it—and then we try to resolve the cases before they become any bigger than they need to be. We try to keep mole hills, mole hills and let mountains be mountains.

Sometimes we're successful. Other times the parties just can't meet. We were unsuccessful in two huge cases now in litigation. But in the great majority, 93 out of 95, we've been successful in direct negotiations with the parties. These are not often just one-off situations. They're usually multi-party—three, four, five parties. You're dealing with producers, shippers, brokers, and international countries, so they're often complicated.

The Chair: Mr. Bezan, then Mr. Easter.

Mr. James Bezan (Selkirk—Interlake, CPC): Thank you, Mr. Chair.

You mentioned there are some that are caught up in litigation. One is in my riding. In straight negotiations, the ones that haven't gone to court, what's the biggest payout you've come across in recent history?

Mr. Peter Seguin: The largest payout....

Mr. James Bezan: In the litigation now going on with CFIA, because it was such a large dispute, it was forced into court. At one point it sounded as if it was going to be a negotiated settlement. Then CFIA decided to take it to court because it was such a large settlement.

Mr. Peter Seguin: The largest one that comes to mind was a recent case in southern Alberta. A grower and a shipper had arranged a shipment of seed potatoes to Mexico. That settlement ended up in six figures. I can't give you the exact amount because these things are intended to be confidential and we've signed agreements to that effect. But this one was between $350,000 and $450,000.

A grower's product had been part of a shipment to Mexico, and while it was in transit, lab results came back indicating that there was a disease present. The product had already been shipped; it was on its way. When it arrived at the Mexican border, the Mexican authorities would not allow it in. The product had to be trucked back into the U.S. and destroyed. The grower and the shipper were fully compensated, because there was a partial error on the part of our people in allowing the shipment to leave the country. It was given a phytosanitary certificate saying it was free of disease when in fact it wasn't.

Mr. James Bezan: So when you look at the normal dispute settlement in, for example, a meat processing facility, where for whatever reason CFIA has been found to be at fault and admits to it, how quickly would those settlements usually take place? That's one of the criticism we hear, that it takes a long time to come to some sort of resolution.

● (1020)

Mr. Peter Seguin: The longest period of discussion to resolve one of these things was in fact a day and a half. That was the longest. By the time we get the parties together, it usually takes anywhere between a half day and a day to come to the resolution. As part of those agreements, we sign a commitment to the parties that the payouts will be made within 30 days of the agreement being signed by those who have the authority, and that's what's done.

Again, the case depends on how quickly we can get all of the parties to the table or on the phone, and then on how quickly we can get to a resolution. My experience to this point, since 1999, has been that the actual discussions and negotiations take a day or a day and a half at most for the settlements to be arrived at.

The Chair: Mr. Easter.

Hon. Wayne Easter: Thanks, Mr. Chair.

Part of my question has been answered. I was going to ask you to give an example of a complaint, and you gave the one from southern Alberta.

Are there other examples you can give us? That's a fairly large one. Are there smaller ones where a person who is not in business in a big way has thought that he or she was wronged by the actions of the CFIA? Do you have an example or two in that area?

What's the process of getting there? Say I ship some of Mark's carrots and feel I've been wronged. What would the process be for me to get through the system to you to be able to come together with all the players involved to engineer a settlement?

Mr. Peter Seguin: The process is really designed to be extremely simple. We have personnel in the four area offices in the country plus here in Ottawa at national headquarters. It's their responsibility, the minute a complaint arises, to refer it through to the dispute resolution service. In addition to that, we track, on a quarterly basis, even those cases that have entered into the formal system. Doing a settlement sometimes depends on the willingness of the parties or on the economics at the time, so we don't just take a one-shot effort at it.

To answer your question, the minute a complaint arises, it automatically comes to us. We work with the managers and the people involved directly where the dispute is. We contact the other side and have a discussion right off the bat as to how they wish to proceed, and we remind people that we want to take this easier road to resolution. In some cases, it's just a matter of a few days.

An example of that is a case we had last year where a resident of this country was moving with his company from Toronto to a position in England for a couple of years and wanted to take the family dogs along with the rest of the family. He heard from our veterinary people about the requirements and paperwork that he was going to need to take care of in order to avoid having these family pets put into quarantine in England once they arrived. When the family arrived in England with the pets, unfortunately, one of the documents that recorded what the pets had been treated with hadn't been updated. The dates on it weren't satisfactory to the authorities in Britain, and the dogs were put in quarantine.

That family called back here to Canada and said, look, we've run into this problem. So the veterinary person in our Toronto operation called us, and we had a long distance phone call with the person in England in which we agreed that the documentation was our responsibility and our fault.

That person was sent a cheque within 30 days to compensate him for the cost of having to put the family pets in quarantine in England. He had done everything in advance. He'd checked with us and followed everything he was supposed to do, and it was a document one of our people had prepared improperly that caused the problem, a document the British authorities needed to have to indicate what treatments the dogs required. So they necessarily protected themselves by putting the animals in quarantine, just to be sure.

The Chair: Mr. Anderson.

Mr. David Anderson: I guess we haven't heard anything that we haven't heard before. We talked about this opportunity a few times. But I'm just wondering why there is such widespread suspicion and distrust around the whole process in the industry then.

One of the things we heard clearly—and everybody at the table here I think has heard it—is that they want some ability to appeal, some accountability, and the ability to receive compensation. From what I can tell, industry is not satisfied with or happy about the present process.

● (1025)

Mr. Peter Seguin: Perhaps your experience and mine, or your information and mine, would be different—working in it every day and coming from the outside, and seeing what's been done. There isn't a complaint that's received—whether it's a phone call or someone writing in with a handwritten letter, or filing an appeal when their animals are seized because the agency had to deal with a disease issue—there isn't a single issue where someone says, "I don't necessarily agree with this", whether it's one sentence in their handwriting or a formal complaint or a statement of claim filed in a court, that isn't dealt with, and dealt with almost immediately, as soon as we're aware of it.

Sometimes they get complicated; sometimes they're multi-party. But the agency has, of its own accord, said it doesn't make good business sense to be in this business as a regulatory agency and be dealing in these kinds of matters and not have a system where you can quickly resolve things that come up, because there are literally thousands of these decisions made every day, and they're not always going to go right. If you don't have the sense to see that, you need to build a system in place to deal with the oddball cases that go wrong.

There are literally thousands of cases that go through every day, in terms of the agency exercising its authority, and there are some that don't go right, but the response, as far as my experience with it in dealing with the parties on the other side is concerned, is that everybody is anxious to do this. The response from industry and producers and individual farmers, even when our internal audit people went out and asked them what they thought of this, was very positive. They think this is a good thing to do.

I'm not aware that there are people out there who don't think they've been fairly dealt with and who haven't brought it to our attention and who feel they've not had a response, or that someone hasn't gotten back to them to try to resolve the issue. I just don't have anything on which to respond to that. I don't have information; nothing tells me there is some pile of people out there who are unhappy with what we do and who haven't come forward and either said so or put it in writing, or said they have a problem, even in the simplest way.

If they've done that, then it's been looked at and we've tried to resolve it in the most expeditious way possible. We can't do it any other way.

The Chair: Mr. Angus.

Mr. Charlie Angus: I guess the question we're wrestling with is this. I think the dispute resolution service probably does work very well, but what happens in the odd instance when it doesn't? We're basically asking for a fair amount of policing powers here, and the agency is policing itself.

I have an example from some people I was phoned about involving a situation with a police services board, where police had come into a home, basically illegally—opened and came right into their bedroom illegally; there was no reason for it.

While 99% of the police complaints are dealt with in a speedy manner, because 99% of all police actions are fine, what happens in the 1%, when you go to the police and say to them "We have this complaint", and they say, "We looked at it and talked to our guys, and they're perfectly satisfied they did the right thing, so thank you very much"?

There is no outside person people can appeal to, outside the CFIA. That's our question: where in the bill does it give someone the assurance that if the dispute resolution fails, they have recourse, besides just having to go to law? Is there something we could put in place to ensure that there is an overseeing body that gives us just that little bit of extra comfort?

Mr. Peter Seguin: To be quite honest with you, Mr. Angus, I don't think I'm in a position to really respond to that. I don't understand enough of how regulatory agencies work in government with respect to these oversight bodies or that sort of thing.

I can tell you that my experience, having been asked to come in by the agency executive, who say "we want to try doing this on our own", is that agency inspectors and such people don't enter other people's premises without coming to them and saying, we need to do this, this is why, and here is the authority under which we do it. If people don't let them in, then they go away and get the necessary legal documents to say they have to do these things. I'm only aware of that happening on very rare occasions, because there is a great deal of cooperation when these things happen between the producers and the agency. No one wants things to happen with respect to animal diseases or contaminated food products. Everyone wants it dealt with and dealt with quickly, because it's in everybody's interest.

Again, I'm not capable of answering your concerns about this sort of oversight, because I have no experience or knowledge of it.

● (1030)

Mr. Charlie Angus: I understand. I guess our question is.... We see this resolution system and it works, but what we've been trying to wrestle with—and this is what we have to ask the committee—is whether what exists is enough, if we want to ensure, because of the policing powers we're putting in place, that there is at least....

We had put forward the review tribunal as an example, because it exists, of a body that people know they could go to that's outside this in-house CFIA, just so people have that assurance. I'm not sure whether we have that.

The Chair: Mr. Easter.

Hon. Wayne Easter: I really think we do, Charlie. It partly relates to David's question as well. When you consider the number of inspections on a yearly basis—and you're talking hundreds and hundreds of thousands—the complaints are not all that great. Certainly, when there is one, it's a problem for the individuals involved.

This process through the ADR, and what we'll be proposing as well—it's in the amendments that have now been handed out to you—is an ombudsman one could go to. You would then be referred to the alternative dispute resolution to try to deal with it internally and quickly. The ombudsman approach could direct people in the right direction and try to deal with the complaint as quickly as possible. Although it's an expensive and difficult area to get into, you always do have recourse to the Federal Court. That's spelled out very clearly in the legislation.

I think a number of other accountability areas also protect individuals, Mr. Chair. There's the oversight of the minister himself. There's the Minister of Health's oversight. We, as a parliamentary committee, have an oversight role. We've already talked about reinspection and we've put that in the legislation. If we go to an ombudsman and have the ADR, I think we have ways internally, within CFIA, of dealing with these concerns. Then above that you have the Federal Court. So I think we've gone a considerable distance.

If we look at other areas where there is something external, as members of Parliament we've all dealt with them. There's the veterans affairs review board, which works fairly well and gets something in and out of the system in about ten months. There's also the Canada Pension Plan disability. It has various appeal structures; I certainly wouldn't want to go that way, because I know that some cases have taken 40 months to be dealt with through that process.

I think this gives us the option of dealing with it quickly. Adding in the ombudsman can at least assist people and direct people in the right direction to get their complaints dealt with, and then you have the option of the Federal Court. I think we are going a considerable distance in terms of covering off the complaint issues.

The Chair: I think Mr. Bezan had one comment.

All right. Next is Mr. Anderson and then Mr. Bezan.

Mr. David Anderson: I'm disappointed, because we've talked about the need to be clear and the need for the agency to have some responsibility for compensation. You're not offering anything that isn't there already. The ombudsperson, or whatever, is not going to be the solution to the problems we've talked about. It's fine if you want to put that in—it just gives people another place to vent—but we were clear on clauses 43, 44, and 45 that there has to be some ability for compensation and some recognition that people need to be compensated when they've been unjustly treated by the agency, and I don't think we're going to change our position on that.

If you were to come back with an amendment that laid out this whole process as part of that, then we'd probably be willing to take a look at it, but it's not giving us anything that isn't there, and it's not giving the industry anything that isn't there.

I don't know why we would support it. There is still no recognition.... We'll talk later about the review tribunal, I'm sure, but there is no process for people to get any compensation either, and we need to talk about that when we get to it. People are left here having to rely on the CFIA's good graces to deal with these issues, and they're not willing to do that.

● (1035)

The Chair: Mr. Bezan, do you have anything further?

Mr. James Bezan: To follow up on what David was just saying, it sounds like it's all peaches and cream up there—everybody is negotiating in good faith and walking away from the table. You have to remember that after the negotiation, the only other recourse is legal action, and not every operator and not every processor can afford to go to court against the Government of Canada, so they're going to take what's being offered to them because they can't fight it in court.

I don't have a big problem with the ombudsman, but let's take it outside the department and have somebody who has some true independence there, acting outside the department.

We need a second level in there. If they can't come to a negotiation and want to have an appeal, or want an uninvolved, unbiased person to take a look at the discussion, then we need to go down that path. I have one guy in my riding right now who's in a major lawsuit with CFIA over a contract that was lost because of CFIA, and it's been in the court system for far too long. It should have been settled. I have another guy who just recently—this winter—had a chicken kill. He had half a day's supply thrown out because the inspector walked away from the line, not realizing there were more animals. There were animals coming down the line, and they all had to get tanked—and it didn't get settled in a day and a half; it took about a week, a week and a half. So it's not all peaches and cream out there.

The Chair: At some point I'm going to move forward, but I want to make sure everybody has a fair hearing.

Either we believe people around this table and ultimately place some trust in people.... I quite appreciate where we're all trying to go, where we're coming from, but, please, let's not cast disparaging views from time to time that would lead us to believe that some people may not be quite forthright in their statements. So, please, let's be truthful about these matters.

Mr. Eyking.

Hon. Mark Eyking (Sydney—Victoria, Lib.): Thank you, Mr. Chairman.

I think this independent ombudsman is a really good idea, but the reality is that person is really like a judge, and the judge is going to interpret the regulations. So technically that ombudsman can't overrule regulations. He's going to have the thing in front of him and say, well, has everything gone according to regulations?

So it is a good idea in a way, but it's only as good as the regulations or the compensation that is going to back it up going through. He's going to see if that person has been treated fairly.

I can see the opposition's point in a way, that this ombudsman is not going to be the end-all, because he has to look at the regulations and see if they're being followed.

The biggest issue here is compensation for a producer who has incurred an inconvenience or a loss of product or whatever when something happens. Did we put any amendments in here pertaining to that?

The Chair: Mr. Easter.

Hon. Wayne Easter: [*Inaudible]*...this process to the ADR.

Hon. Mark Eyking: And that's in place for the ombudsman to follow through compensation? Is that right?

Hon. Wayne Easter: Yes.

The Chair: Mr. Gaudet first, and then Mr. Angus.

[*Translation*]

Mr. Roger Gaudet (Montcalm, BQ): How many unpaid applications for compensation were there in 2003-04? How many such cases were there exactly?

[*English*]

Mr. Peter Seguin: In 2003-04 we resolved 38 out of 38 cases that were referred to us. Of those in which money was an issue, we paid out in every single one. There were a couple of cases there that had to do with things that had nothing to do with money, so there was no issue about compensation. Of the 38 that we had, all were resolved, and in those that involved compensation, the agency paid the part that everybody agreed was their responsibility.

[*Translation*]

Mr. Roger Gaudet: And how much time, on average, did it take to settle these claims?

[*English*]

Mr. Peter Seguin: Again, it's not going to be useful to tell you averages, Monsieur Gaudet. I can only use an example of something that happened.

We had a huge container ship of wheat go from the port of Quebec to mainland China. When the boat arrived there the Chinese inspectors discovered a disease in that boatload of wheat, and the Chinese government ordered that entire container ship of wheat to go out in the ocean and dump it. You're talking about a $13.5 million boatload of wheat. When the phone call came to the Canadian Wheat Board and to us the day it arrived in China, we immediately sent an expert from Canada over there to confer with the Chinese to assure everyone of what was going on with this disease they found.

Over the course of two weeks, with our experts and the lab people in China, we discovered that the contaminant was in only two of 11 holds on that boat. It had 11 different compartments, and it had affected two. The Chinese government immediately agreed to unload the other nine, and over the next six weeks, in providing information to them, we showed them that there was another use for that wheat; they could use it for another purpose. After about I think almost four months of back and forth with the shippers and Lloyd's of London, the total difference in value to that shipment turned out to be $389,000. That value, because it was less to the Canadian farmers, was split between the agency and the Wheat Board, and the whole thing went ahead just the way it had been planned.

Again, that took a total period of almost four months to resolve an issue that was a $13.5 million case, which ended up costing about $389,000. It didn't cost the Canadian farmers or growers a penny; their deal went through as it was originally intended. But it was very complicated, and it took multi-party, multi-country negotiations with people across tons of time zones to get to that resolution. Others are a matter of minutes or days.

Somebody raised the question earlier about a chicken producer slaughter plant that had a problem with animals arriving after the inspectors left. Again, within a week and a half of when that issue came up, we confirmed the details and that producer was paid out the value of those birds because that was a mistake.

It depends on the case. It depends on the complexity. It depends on how many people are involved. Sometimes you're dealing with other governments and other agencies and huge companies like shipping companies and Lloyd's of London and insurance people.

● (1040)

[*Translation*]

Mr. Roger Gaudet: If you were able to resolve your 13 million dollar case for an amount of 400 000 $ within four months, do we really need an ombudsman? If things are not working within the agency, we will have to look to an ombudsman. I am not sure. I do not want producers nor the industry to lose, but that does not mean that we should get tangled up in organizations that will be able to defend each other.

[*English*]

Mr. Peter Seguin: My sense now, as a professional who came into the agency to do this, is it isn't really necessary, but if it is there, it adds, as you say, another layer or two, and the concern seems to be the protection and access.

The thing that struck me, in coming from the outside, is that everything we do on these files has to be open and public. It's audited by the Auditor General; every payout we make has to be for valid reasons. We can't take government money and give it to people without a very clear reason. Before I do a settlement, I have an opinion from a justice lawyer that says it is the right and legal thing to do. Some of those little steps take time, but the reason is that these things have to have a very clear paper trail record showing that these payments are valid and reasonable and make sense.

Again, for doing the Food Inspection Act we don't want another fun time with someone like Mr. Gomery—all of a sudden we're an agency doling out government funds all over the place. It has to make sense. In order for it to make sense, you have to go through the discussions with parties and legal counsel from the other side and you have to exchange agreements that lawyers will want to look at and agree on.

The system now works as quickly as it possibly can. We recognize too that you're going to agree to disagree at times. Some producers and companies that come to us are not pleased; they're spitting mad at what we've done, and it takes time to just get everybody to do what an old Cape Bretoner I learned from used to say—you'll pardon me—"Fart and fall back a minute." Just whoa. You work at getting it together.

The Chair: Next we have Mr. Bezan, Mr. Miller, and Mr. Easter.

● (1045)

Mr. James Bezan: You were saying, Mr. Séguin, that you had a letter from the Department of Justice saying that setting up an ombudsman is the right way to go about setting us up in dealing with compensation. You just mentioned the letter in your last response?

Mr. Peter Seguin: No. In terms of any settlements that we do, in order that they comply with what makes sense, there has to be an opinion from a justice legal counsel saying it is in accordance with the law and it makes sense from the point of view of a government expending this money. It's clean, it's right, it's the right thing to do, and I have to satisfy the people who provide legal advice to the agency from Justice that this is a proper expenditure of federal funds. I don't have some loose pool of funds that I can just spread around. It has to be for a good, sufficient, justifiable reason, and there has to be a clean paper trail to show that.

Mr. James Bezan: Are you at all familiar with—

The Chair: You're not supposed to be in the speaking order right now. I've got Mr. Angus.

Mr. James Bezan: You said, “Mr. Bezan”.

The Chair: I apologize; it was supposed to be Mr. Angus, but since I've made that error, I'll allow you to ask the final question. Then I'll go to Mr. Angus.

Mr. James Bezan: I understand the USDA has in regulation a prescribed system such that if you've got such-and-such a problem, there's a scoring to determine compensation on any of these issues. We don't have anything like that in Canada, other than that it's a matter of negotiation?

Mr. Peter Seguin: I'll turn to Mr. McCombs. I'm not sure what the USDA has.

The Chair: You're on, Mr. McCombs.

Mr. Mark McCombs (Head and General Counsel, Legal Services, Canadian Food Inspection Agency): The United States' system is quite different from Canada in that the United States' system doesn't have a claims procedure unless they agree that they want to enter into it. So there is no right to sue the United States government. In Canada, because of the Crown Liability and Proceedings Act, you can sue the Canadian government. For the United States, you have to have permission to sue them, and they decide whether they give you permission or not. So they have a claims procedure that is prescribed by legislation, but it still is their decision to control the process as to whether they will enter into it or not.

Our process is one that meets the Crown Liability and Proceedings Act, which was enacted in the fifties and updated in the eighties. It allows the Government of Canada to expend funds for situations such as Mr. Séguin is entering into, whether it is for compensation for liability of the Crown, or, in a number of cases, where it's much more expeditious for the Crown to settle a matter than to go into litigation. We evaluate that in the process. Mr. Séguin provides advice to the Justice counsel as to the situation, the settlement proposal, and any contingencies with respect to that. Justice then gives an opinion to meet the Crown's liability requirements and the Auditor General's requirements to expend funds.

The Chair: Mr. Angus.

Mr. Charlie Angus: Thank you.

I believe this is coming out of our amendment of trying to have the review tribunal, and whether or not the review tribunal has the ability to take that function...whether it can be mandated to do that function.

I would suggest we would be willing to move forward on this if we had two things.

One is, we want it explicitly stated in 43.1, probably down around the eighth line, that if the person is found not guilty under this, they may apply for compensation. We want that language in there, that it's not just that they can bring forward a complaint. We want the language that they may apply for compensation, because it's not anywhere else in the bill.

Then the question is whether it's the alternative dispute resolution or now this new ombudsman who is being suggested. I think the ombudsman could work. My question, though, is why, in proposed new clause 29.1—and we're dealing with two amendments here—it would have to be drawn from the agency's employees?

I think, Mr. Séguin, you were brought in from the outside, am I correct? I would feel more comfortable if the ombudsman was appointed from outside CFIA—and learned the regulations and everything. Then I think we would be able to say there is an outside person; there is a person who is acting for industry and producers as an interface with CFIA. That would give us a fair amount of comfort if that new clause 29.1 was changed or struck.

● (1050)

The Chair: There is no amendment. We're talking about these things, but there is really no official amendment that has been moved on the table.

Mr. Charlie Angus: I think we would be willing to move forward if we had that explicit statement, that they may apply for compensation through the alternative dispute resolution, or to the ombudsman, and if the ombudsman was clearly someone from outside CFIA, I think that would be a good first step.

The Chair: All right.

Mr. Miller, and then Mr. Easter, for our last speaker. Then we're going to come to some conclusions as to where we want to go from here.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Thanks, Mr. Chairman.

Mr. Séguin, I was listening to your discussion when you were answering Mr. Anderson, I believe it was. Still, I get the thought that you still don't get it over there from the CFIA side, that compensation is what's needed in this, and it's needed for a number of reasons.

Mistakes can be made by well-intentioned inspectors, and then you get some inspectors out there, and this can be in anything—I've seen it in the ministry of environment in Ontario, I've seen it in other ones—where they're wannabe cops and the power goes to their head. That doesn't mean it's a big problem, but the odd time it can happen. We need to protect the producer and the chain. We're doing this for the consumer, and the consumer ultimately has to pay for those kinds of things.

Mr. Easter talks about the ombudsman, and what have you. I don't have a big problem with that. It's just that it's another way for someone to vet against it. But I do have a problem, Mr. Chairman, with receiving this thing here 10 or 15 minutes ago. If they didn't have the decency to send it out to us yesterday, it could have been faxed at 7 a.m. this morning, or some time. But enough on that.

We have to hear something when it comes to compensation. That's the ultimate goal. In my mind, we know everything else is covered, as far as this issue is concerned, except for that.

Mr. Peter Seguin: I can only tell you that since 1999 that's exactly what it is I've been dealing with at the agency, exactly those issues of compensation, the fact that in making thousands of decisions every week, sometimes the agency doesn't get it right—their inspectors or their responsible people. When that happens, my job is to go in and fix the problem, and to pay compensation where people are wrongly done by through the decisions of the agency. That's in fact what has happened since 1999.

Mr. Larry Miller: Okay, but there's wording in this new act that to me doesn't spell it out clearly enough. I'm not going to support it without this in it.

The Chair: Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair.

Although we're not dealing with the proposed amendment on complaints—we'll get to it specifically later, Mr. Chair—we really to a certain extent are.

I want to address a few of the points that have been raised. On Mr. Gaudet's point, it's really not setting up an ombudsman to be in competition with it; it would be complementary to the ADR process that is in place. The ombudsman would basically review, or attempt to bring the parties together so that they could be accommodated by, the alternative dispute resolution process and be dealt with in that fashion. As we said earlier, they always have the option of going to court if it doesn't work out.

Mr. Bezan, I believe it was, said earlier that there's a desire to have it separate from the agency, but what we are really doing is setting specific sections of the legislation that actually deal with complaints in a transparent, open fashion, with an ombudsman in place, that specifically name in legislation a complaints section and a process with which to deal with them.

James shook his head at one and a half weeks, but if you can settle a complaint of the magnitude of some of these—

A voice: [*Inaudible*]

Hon. Wayne Easter: That's the one that's going through the courts.

Some of them are going to be complicated like that, there's no question. You always have the court process. If you can settle something and get it financially paid out in one and a half weeks—even four and a half weeks—that, in my view, is pretty good progress.

We are in legislation trying to accommodate the whole compensation and complaint issue, putting it specifically in legislation and not having to go outside, which would require us to need the royal prerogative.

The last point, Mr. Chair, is on Charlie's point of wanting the ombudsman to be appointed from outside instead of from the agency's employees. I'm told, and maybe legal people can check, that if we were to do that, it would require a royal prerogative. The way it's designed here is to accommodate our concerns without having to go to a royal prerogative.

If somebody can check and come to a decision on whether or not we can go outside the agency for the purpose of that ombudsman and still pay for it within the agency, and can say that it doesn't affect our ability in having to get a royal prerogative, then I think we'd be willing to consider it. As it stands, I'm just telling you the information I have at the moment, and if somebody can clarify it for me, then please do.

● (1055)

The Chair: Can someone at the table give me some direction?

Mr. Mark McCombs: When you establish a process such as Mr. Angus is proposing, when you're saying you're going to create a new third-party body that's going to be the ombudsman, there has to be a mechanism for payment to be made to the ombudsman—a per diem—and once you're kicking into a per diem process, it requires a royal recommendation, because the royal recommendation is required to expend new money. This bill was supposed to be cost-neutral and was coming from agency revenue.

Hon. Wayne Easter: As one further point on that, Charlie, in case I wasn't clear enough, the ombudsman could actually come from outside but would be an employee of the agency and paid for by the agency. So that's possible to do.

Mr. Mark McCombs: In the same way that Mr. Séguin came from outside the agency, was hired by the agency, and as an executive of the agency reports to the president, that's possible. Also, when we get to the amendment, you'll note that it allows the ombudsman to arrange for mediation, meaning there could be a third party appointed to mediate.

The Chair: Mr. Angus, just quickly. I'm not taking a lot of speakers just to comment on that.

Mr. Charlie Angus: When I was saying I wanted an ombudsman coming from outside the ranks of the CFIA, it wasn't that they were going to remain permanently outside in a separate institution. They would then be part of the CFIA staff, but we would be looking to draw someone from outside.

So we're not just promoting an inspector to look after the complaints of the guys at the desk beside him. We're bringing someone in from the outside who has expertise, and then they would be appointed at the CFIA.

The Chair: Mr. Ritz.

Mr. Gerry Ritz (Battlefords—Lloydminster, CPC): Further to Wayne's point on how we would get around our royal recommendation, anything now that's paid out is basically handled in the supplementaries, if it goes beyond the budget's capability in the first go-round, right? Anything you settle would actually come into supplementary estimates (A) or (B), or whatever it takes to settle those complaints.

Is that how it's done now, Mr. Séguin, in terms of what you're doing?

Mr. Peter Seguin: Yes.

Mr. Gerry Ritz: So basically all the royal recommendation does is spell out up front that this may happen. It doesn't mean it's going to. It doesn't mean the money is actually going to be spent. It still could be done through the supplementary process on the claims. What we're arguing, then, is the cost of the ombudsman himself and his office.

Hon. Wayne Easter: Yes, the ombudsman and the office itself is what we're talking about on the royal recommendation. But if it's not outside, if what we have in resolution here to accommodate Charlie's point is that the person who's brought in comes from outside to be the ombudsman, he or she does become an agency employee.

I was taking it that he meant it needed to be outside the agency itself. But if it's within the agency, as here, if you bring in an outsider to be the ombudsman, that meets all requirements, as I understand it.

● (1100)

The Chair: That would not require a royal recommendation.

Hon. Wayne Easter: No.

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik (Executive Director, Liaison, Preparedness and Policy Coordination, Canadian Food Inspection Agency): Further to Mr. Ritz' question as well, actually Mr. Séguin's office already has a structure, a budget, and everything set up within the agency. That's basically how, since 1999, to access money to pay back costs.

Mr. Gerry Ritz: Is it an annual renewal? Are you on a three-year contract? How is that...?

Ms. Kristine Stolarik: I think it's permanent funding. So it's already there. The mechanism is in place. That's why we wanted to keep it within that structure, so we didn't have to go outside and get new moneys to do this.

It's already there. People can always draw against it.

The Chair: Have you any comments?

Mr. Gerry Ritz: As just another point on that, there's a lot of talk here about the bill being cost-neutral. The only reason we're worried about those parameters is because the minister made a promise to cabinet. It doesn't mean we cannot go outside of that and make a recommendation. Just because the minister said this is the way it's going to be doesn't mean that's the actual fact at the end of the day. We can make recommendations as a committee as well. Let's not be scared to do that, folks.

The Chair: Let's remember, if we go into a royal recommendation, we can't do that from the committee. That can be done at report stage.

Mr. Anderson.

Mr. David Anderson: I have a question about where the permission or the legislative ability to make those agreements comes from. Is it in regulation?

Mr. Mark McCombs: It's part of the process. In any settlement of any type of claim under the Attorney General's authority and the president of the agency's authority, you can enter into an agreement to settle a claim under the Crown Liability and Proceedings Act and the procedures that are in place.

Mr. David Anderson: And then it's done through regulation within the agency?

Mr. Mark McCombs: No. There's a policy in place that the agency executive endorsed with respect to that. In order to comply with FAA and crown liability requirements, we have to have a process that allows the parties to settle. It's called minutes of settlement. It's the same type of—

Mr. David Anderson: It's in policy then. It's not regulation. Where do we find it?

Mr. Mark McCombs: It's under the Crown Liability and Proceedings Act, and there is an Attorney General policy on settlement of claims. There is a regulation under FAA that deals with claims regulations.

Mr. David Anderson: So it's policy as far as CFIA goes, but it's legislated outside of it?

Mr. Mark McCombs: The external dispute resolution process is a policy of the CFIA. The process to pay is under FAA authority—crown liability authority. One other thing we should also mention is the ex gratia payment authority, which we haven't talked about. It is an authority to pay where there is no liability, and that's another tool we have to use.

Mr. David Anderson: We want to give the farmers the opportunity to have those tools as well and have them legislated—

Mr. Mark McCombs: The tools we're talking about using are all in existence now, and we exercise them now in accordance with the current authorities.

Mr. David Anderson: The discussion has been about the ease for producers in accessing that process. That's what we've been talking about basically all along.

Mr. Mark McCombs: I understand that.

The Chair: Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: Perhaps I do not understand how the complaints system works, but my impression is that this will bring about certain costs, because an ombudsman will require an office and staff. There will be no end to this. Are there numerous complaints that have not been resolved? I am intrigued. Mr. Séguin stated earlier that an ombudsman was perhaps not necessary, and I am wondering if that is the case.

Personally, after having heard each and every one of you, I am opposed to the idea of an ombudsman.

[*English*]

The Chair: Okay. I think we've come to the end, where we need to be moving forward. I'm prepared to take direction; if not, I'm going to give direction.

Proposed new clause 43.1 is the issue that's been surrounding our discussions this morning. Since it's fresh in our minds and we wouldn't ever want to think of going back and doing this all over again, should we forget, I think we need to deal with the proposed new clause 43.1 now. It's NDP motion 12.2, on page 53.1 of the amendments package.

Mr. Ritz.

Mr. Gerry Ritz: If we could, Mr. Chair, as we get into these that we stood, would it be possible to have recorded divisions?

The Chair: Okay, we can do that. What we can do here also, and what we will do, is.... I'm trying to get this one out of the way, because I think there's a lot of weight on this one. If we get this one out of the way, then we'll go back and try to go through them in the order we stood them in the last week, or two weeks ago, and try to clean up as we go. This will be the exception, unless there's a reason to break that rule as we go forward.

So let's deal with proposed new clause 43.1.

Mr. Angus, this is yours. It's been put on the table, so we don't—

● (1105)

Hon. Wayne Easter: This is what resolution? Is it NDP-12.2?

The Chair: It's NDP-12.2 on page 53.1, and it's a new clause; 43.1 is a new clause.

Mr. Easter.

Hon. Wayne Easter: Just to remake my point, Mr. Chair, that on —

The Chair: I'm sorry, before we do that, I thought this one had been moved, but it hasn't been.

Would you put it on the table?

Mr. Charlie Angus: I had said when we were discussing it.... Obviously we were talking about changes prior to it, so if I just put it on as it is, it's not really worth it.

Hon. Wayne Easter: I guess I'm—

The Chair: I'm certainly prepared, as the chair.... If you wish not to put it on the table, that's fine too—in reference to what we did on new clause 29.1.

Yes, Mr. Easter.

Hon. Wayne Easter: I wonder if Mr. Angus might withdraw NDP-12.2 and replace it with the amendment that is in the front page of government amendments: new clause 29.1, which is a government amendment that deals with complaints and an ombudsman and the approach of using the ADR. I think it accommodates the same thing and won't get us ruled out of order.

The Chair: That's the one that was put around the table this morning.

Before we do that, do you want to move it?

Hon. Wayne Easter: Yes, I do.

The Chair: Okay.

Mr. Easter, do you have any comments first?

Hon. Wayne Easter: I think Mr. Angus wanted in.

The Chair: Mr. Angus, and then we'll come to this side.

Mr. Charlie Angus: I would withdraw it in order to rewrite it, but I feel very strongly that new clause 43.1 has to be in there, whether it's as the review tribunal or the alternative dispute resolution with the ombudsman. The issue of compensation, as I said earlier, is not stated anywhere explicitly in the bill; it would only be stated in new clause 43.1. Clause 29 does not refer to the issue of compensation at all.

So if I could have a chance to rewrite the amendment, I'll bring it back. Based on what we've talked about this morning, it will not stand as it is, but I feel we need something there.

The Chair: You're talking about using the word “compensation”. Is that the area of grievance?

Mr. Charlie Angus: Well, it's in the paragraph under compensation. It's “ Where the owner of a regulated product or the person...is not found”.

The Chair: The person may apply....

Mr. Charlie Angus: The person “may apply for compensation”, and then either to say “either to the ombudsman or to the alternative dispute resolution”, but I want the wording about applying for compensation to be as explicit as the wording under new clause 43.1.

The Chair: Okay. Before we go to the effort of doing that, from the table officers, is this going to create a problem for us? We need to know that. We're trying to find accommodation in whatever way we can, but....

Ms. Stolarik.

Ms. Kristine Stolarik: I'll start, and then I'll ask Mr. McCombs to supplement.

Yes, the word “compensation” would be problematic. It would definitely put the big “R” on it. However, I think if we can use wording and maybe look at proposed new subclause 29.1(2), “if a person has incurred any costs as a result of the exercise of any power...he or she may file a complaint”, or a similar type of wording. I think that's what's problematic—having the explicit compensation—but if we can put in something like “if a person has incurred any costs as a result”. I think that's a little bit.... I'll leave it to my legal counsel to see if he has anything else to add.

Mr. Mark McCombs: It's more in accordance with what we have to do in order to avoid the royal recommendation. It accomplishes the same process, but compensation, in the agency's legislation so far, is under the Plant Protection Act and the Health of Animals Act, and both of them have a direct source of funding from the CRF.

The Chair: I'm sorry, we're doing some table talk here.

Are you on, Mr. Angus?

Mr. Charlie Angus: Yes. In relation to clauses 43, 44, and 45, which were very much written to absolve the agency of any liabilities under any circumstances whatsoever, I feel the word "compensation" needs to be in there to show that at least there's a balance. Saying they may file a complaint isn't the same thing as being eligible for compensation.

● (1110)

The Chair: You're suggesting we leave proposed new clause 43.1 as is, with the exception that the review tribunal would not be the body you would be referring to—it would be the ombudsman instead?

Mr. Charlie Angus: And the alternative dispute resolution, yes.

The Chair: Okay. Do you want to give it to the table? I will rule that admissible. If that's the case, then we will deal with it as you would amend it, and you would ask that it be amended.

Do the table officers have the wording? Do you want to write it down, Mr. Angus, and change that to "the ombudsman"?

Yes, Mr. McCombs.

Mr. Mark McCombs: I have a comment. The word "compensation" is problematic, because in law, compensation applies as a claim for damages. At that point in time, it then requires the source of funding and the royal recommendation. The committee has that option to support, as you've already ruled.

The Chair: I'm going to rule it admissible because I believe that sooner or later we're going to have to deal with it.

Mr. Easter.

Hon. Wayne Easter: I have just two points, because I guess we're going to be dealing with clause 43.1 as amended.

The point I want to make on the resolution from the government at new clause 29.1 is that I do think subclause 29.1(2) does really deal with compensation without using the word "compensation". That's part of our problem.

It says:

> If a person has incurred any costs as a result of the exercise of any power under section 25, he or she may file a complaint against the Agency with the ombudsman.

The next line goes on, and the back end of it says, "if appropriate, mediate or arrange for mediation of the complaint".

We could probably put in "including ADR" there. I don't know if you'd have to define ADR. That would be the problem. That would then get you to the process where you receive a financial settlement as a result of that complaint.

That really, in effect, deals with compensation.

The problem with the NDP resolution here is, number one, the royal prerogative, but number two, the process here is if "not found to have committed an offence under this Act". In the examples given, it has nothing to do with an offence—a shipment of potatoes where a producer was wronged by the agency because, for whatever reason, the documentation was wrong. There was no offence committed by the individual. So in Charlie's point here, or in amendment NDP-12.2, it relates only to "not found to have committed an offence under this Act".

You'd have to be charged. You'd have to go through a process. You'd have to be found not guilty. You're basically looking at the court system, whereas what we're proposing on the other side is that you don't have to have been charged with anything. You can have had a problem as a result of a lack of paperwork, or whatever, and have it dealt with. That's what I'm saying.

The Chair: We don't want to revisit—

Hon. Wayne Easter: So I'm saying defeat subclause 29.1(2) and go with clause 29.1.

The Chair: Are you saying, Mr. Easter, regarding clauses 43.1 and 29.1, that we cannot have both?

Hon. Wayne Easter: You can't have both.

Some hon. members: Sure you can.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: On Mr. Easter's point, I do take a little bit of umbrage with some of it. There's quite a substantive difference between "costs" and "compensation". "Costs" speak to the lawyers it's going to cost you to take it to court or to do the process, and maybe the product loss, but "compensation" speaks to the loss of business.

You talk about a load of potatoes. That costs me the marketplace, and I can't get back into that particular wholesaler that I wanted to. That's what compensation does. When I'm wrongfully accused and it brings my business to a screeching halt and takes me right out of the marketplace, they have to address that somewhere in this legislation. That's where we're bogging down. If it takes a royal prerogative, that's what it takes, but people out there have to be able to come forward and make those claims without it costing them the livelihood of their farms and their businesses. There's room for both.

● (1115)

The Chair: Mrs. Ur.

Mrs. Rose-Marie Ur (Lambton—Kent—Middlesex, Lib.): I don't know whether this new clause 29.1 is written clearly. Maybe I'm just misreading it or it's getting warm in here, but under subclause 29.1(2) it says, "If a person has incurred any costs as a result of the exercise of any power under section 25".

If you go to paragraph 25(1)(b), it says, "open any container that he or she believes on reasonable grounds contains anything referred". So it's the cost of opening up that container for that particular person, but that doesn't mean that person is going to be compensated. It's the cost of opening up the container, if there is a cost involved in it. You're not covering compensation when you're looking at cost.

The Chair: I'm in your hands, but we have to move forward.

Ms. Stolarik.

Ms. Kristine Stolarik: To respond to Mrs. Ur's question, yes, if you open up the container and the whole load goes bad, then you'll also get some costs for the whole load going bad. I think it's just the way you're reading it. That's what any cost incurred means. That's the way I interpret it.

Mrs. Rose-Marie Ur: Then the costs you're indicating also include compensation?

Mr. Mark McCombs: Clause 25 is the inspection power section. Any power exercised by an inspector, which includes the power of the inspector to certify a shipment, is a power the inspector has under clause 25, so if the shipper receives a document that is incorrectly filled out, as Mr. Séguin has dealt with, it would be a power under clause 25. It would allow the person to apply for the costs of the shipment that was wrongly sent to Uruguay and not properly inspected.

Mrs. Rose-Marie Ur: I guess we're just caught up in the words "costs" and "compensation", then.

Mr. Mark McCombs: In law, the word "compensation" means a claim for damages, which then requires adjudication by a section 96 court, which then means you have a court of record.

I must admit that the review tribunal Mr. Angus's amendment refers to is a section 96 court. However, the review tribunal's current role is not to deal with compensation; it is an adjudication body on appeals with respect to violations of the CFIA statutes, and that's all it has as a role—CFIA, PMRA. It would be a completely new function for the review tribunal.

The Chair: I have Mr. Angus and then Mr. Easter.

Mr. Charlie Angus: I believe new clause 29.1 is a very good clause to have in there. I support it because it covers the issue of costs; new clause 43.1 covers the issue of compensation. They're two different things.

We can sit and argue this until the cows come home, but I feel all of us around the table have really gone a long way to accommodate this bill. That wording of compensation—if it needs royal assent, it needs royal assent, if that's what it's going to take to get this thing passed. I say we just vote on it one way or the other.

The Chair: Okay.

Mr. Easter, you have the last word.

We're going to call the question on the amendment to the clause.

Hon. Wayne Easter: Fine, Mr. Chair.

I can't emphasize enough how strongly I oppose clause 43.1. It's because I think you are out of the realm of possibility in what the CFIA itself can deal with, and I can give you an example. There is a case involving the potato industry in Prince Edward Island and PVYn. It was thought...it felt it was wronged and wanted to be compensated for loss of market, so to speak. That had to go through the court process. I think in terms of compensation for an issue such as this, the court process is there to deal with that loss of market.

You can't expect a regulatory agency to go that far. There haven't been very many instances of great problems in that area. It is a regulatory agency that is trying to regulate the product to ensure that we market products worldwide. It is their credibility, in terms of how good that inspection is, the quality of product we sell, and so on and so forth, that in fact achieves those markets, and if you have this clause in here, an inspector has to be completely worried on the compensation side and the consequences of it, and I think you'll find them doing less of the job they were hired to do in the first place.

I strongly oppose proposed clause 43.1 because I think it's better left to other channels beyond that. It's the royal order that's required.

As well, I made the point earlier that you would have to be charged under the act and would therefore end up in the court process anyway.

● (1120)

The Chair: Okay, I've called the question.

I want to read the amendment change so that you understand what we're doing. On clause 43.1, we've changed the ending of that amendment to read "in the prescribed manner to the ombudsman or alternative disputes resolution".

Is that correct?

You've heard the.... Item number 2 is no longer part of that, so it's just proposed new subclause 43.1(1).

Does everybody understand what we're voting on here? I'm calling the question.

(Amendment agreed to)

The Chair: Clause 43.1 has carried and—

Mr. Charlie Angus: Mr. Chair, I have to leave for 15 minutes for another meeting.

The Chair: Clauses 44 and 45 were areas that caused some concern, but Mr. Angus has had to leave the room for a few minutes, so I think we'll go back.

We'll start at the beginning and work our way through—although we're not going to avoid some NDP amendments here; we can't wait for everybody.

In clause 2, we have amendment NDP-1....

We had stood that one. We'll leave that and move on to the next clause.

(On clause 3—*Minister may issue licences*)

Hon. Wayne Easter: Mr. Chair, what resolution are you on?

The Chair: We're on amendment G-3, page 8.

Hon. Wayne Easter: How come you're not starting at the front, Mr. Chair?

The Chair: We were going to stand those until all the others were done.

Mr. Easter, I think you had moved amendment G-3 before.

Hon. Wayne Easter: Basically, Mr. Chair, there was considerable concern raised by the committee that licences not apply to farming activities as such, and that's what the amendment is intended to do. It's not the intention of the licensing provision to get into farming activities themselves as such; it's to look at some of the other activities. The intention is to give the opportunity to license, say, medicated feed, which may be on a farm, and not to license a farm itself.

I don't think the amendment needs further.... It's really trying to address the concerns coming from committee members about licensing on the farm.

The Chair: I think it's pretty straightforward. It's sort of cleaning things up, making them more clear.

Mr. Gerry Ritz: I'm not sure it does.

The Chair: Well, I think it does. I think it does.

Mr. Gerry Ritz: It says in paragraph 3(d), “the sale of an agricultural or aquatic commodity in interprovincial trade”. In Saskatchewan, we export 99% of what we produce. It goes outside the province. So all of a sudden your farm is back in again.

● (1125)

Mr. David Anderson: Mr. Chair, I'd like to be put on the list, please.

The Chair: Okay.

Hon. Wayne Easter: We'd have to go back to the Health of Animals Act, I guess, to find the definition of an agricultural or aquatic commodity. Maybe our witnesses could help point it out.

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik: I'm just looking at the clause here. This is licensing the sale of an agricultural or aquatic commodity in interprovincial trade. So if you're licensing to sell, the people selling—this could be your retailers, your brokers—and you're selling directly...then absolutely you would be caught in that clause. This is to catch the current retailers and manufacturers who basically do sell their agricultural or aquatic commodities interprovincially.

Mr. Gerry Ritz: Ms. Stolarik, I have a real-life example to make that point. In Saskatchewan we sell a lot of our calves to the backgrounders in Alberta. That's a raw commodity going out, so I'm going to have to be licensed in order to do that. Then we ship the barley out to feed them, so I'm going to have to be licensed to do that. We ship out straw or hay—again, raw materials—and I'm going to have to be licensed to do that, because it's going outside the province.

These are raw commodities, not processed. I'm going to have to have a licence for my farming operation to do any one of those items.

Ms. Kristine Stolarik: Not unless it's going to be prescribed through regulation. If it's not currently licensed—

Mr. Gerry Ritz: But I don't see them exempted.

Hon. Wayne Easter: If I could, Gerry.

Mr. Gerry Ritz: Yes, please, I'm just looking for clarification.

Hon. Wayne Easter: It's an animal under the Health of Animals Act.

Mr. Gerry Ritz: Not barley.

Hon. Wayne Easter: Well, then it's probably under the Plant Protection Act.

That's not what this is talking about.

This is not new, is it?

Ms. Kristine Stolarik: No.

Hon. Wayne Easter: This has been in existence under various acts of the CFIA for however long these acts have been in existence, and they haven't been out there licensing farms, which the record would show is not their intent. As Kristine said, it's the sale.

Ms. Kristine Stolarik: If the committee allows, I'd perhaps like to run through what we currently have in the licences or permits system, because this is basically complementing what we already have and trying to cover a couple of areas where we have gaps. We talked about not having authority to license food importers; I don't have that current authority. This would capture that. But to go back to the producer, if I have a live animal and I want to ship it, or import or export, it, I have to obtain a permit right now under the Health of Animals Act to do that now, so that's now new. With this bill, that's not going to change; that permit provision is still going to exist. It's not new; it's an ongoing or current activity.

Under CAP, if I want to import or export my fresh fruits and vegetables via interprovincial trade, I require a licence to do that. That's not new; it already exists in that legislation. That's not going to change anything here.

Under meat inspection, I have to get my establishment registered and I need a licence to operate that establishment. That's not new; that's something that currently exists under the Meat Inspection Act.

I'm basically trying to capture the mishmash that we have between our permit system, our registration system, and our current licensing system, and to provide a licensing framework so that we can capture those activities. If it's currently happening under registration, a permit, or licence, that's not going to change. What this allows us to do is in areas where we do have gaps.... And we do have them—food importers I think is the one I've mentioned, and with some of our inputs, such as the fertilizer manufacturers, we register their products, but we don't license them to produce their fertilizer. That would be another area that's been a weakness in our link as well, which we'd like to capture.

I can walk you through each one of these and tell you where it applies, if that would be helpful. I'm trying to capture that a lot of this is not new, but existing. So the example of your producer needing a licence for his farm—that's not the intent. That's what the exemption clause is trying to do.

The Chair: Mr. Anderson.

Mr. David Anderson: We're not concerned about the intent, because intents change. We want the legislation to reflect what is actually going to happen. We've talked about this before, but “preparation” in paragraph 3(b) is still a problem; the definition of the word “prepare” is too broad. I appreciate that the government is trying to bring in something here, but this hardly exempts anything, because when you talk about growing and harvesting under the word “prepare”, you cover everything. So that needs to come out of there.

The rest of it is fine. You're talking about the kinds of things that go on in terms of preparation. You've got treating, slaughter, processing, storing, packaging, handling, assembling, grading, coding or labelling, and conveying those kinds of things for those purposes, which are fine, but the "grow" and "harvest" part of that definition needs to be removed; otherwise, everybody is included in the future. It doesn't matter what the intent is right now, because, legislatively, everybody's operation can, and probably will, be included in this in spite of your amendment today.

● (1130)

Ms. Kristine Stolarik: We also talked about "regulated product". I don't know if you want me to start there and then go into the definition of "prepare", because they go hand in hand.

I'll start with the definition of "prepare".

Once again, that's a consolidated definition that we basically created for the sake of this bill to facilitate things. So I'm not repeating that word everywhere or throughout.

Mr. David Anderson: My objection is that you've done that.

Ms. Kristine Stolarik: Except it's mix and match. The word "prepare" is going to have to work with the related commodity, or the activity under "prepare" is going to have to work with the commodity it relates to: I can't slaughter a tomato, which doesn't make sense.

The Chair: It's like the word "thing"; it's pretty hard to define definitively, in every situation, where the example would be exactly the same.

Mr. David Anderson: I'm suggesting some ways to limit that definition in a way that would be appropriate on a farm. That's the point I'm raising.

We could have it include everything, but I don't think the farmers want us to do that, and I don't think we want to. That's why I'm suggesting that we should revisit that word "prepare", take out "grow" and "harvest", and leave the rest of it the way it is.

I think it would be good then. It would allow the new subclause 3 (2) that you're bringing in here to actually have some merit and some use.

The Chair: Mr. Easter.

Hon. Wayne Easter: If you did that, Mr. Chair, then the Canadian Food Inspection Agency wouldn't have the ability to license all the operations they need to license in order to do their job effectively. I would suggest that if we were to go to Mr. Anderson's proposal, what we would do in the end is put some of our markets for primary producers at risk in this country.

The evidence is already there that even though the CFIA has a lot of that authority already—not all, but a lot—they're not out there licensing farms. So the proof is already there that their intent is not to do what these guys are suggesting.

I would call for the question.

The Chair: I'm just going to ask Ms. Stolarik if she could tell us something here.

We have the European Community, and I know we have the American example. On this type of thing, how far have they gone in licensing in the European Community? Is licensing the big thing we're making it out to be here?

Basically, are we following a script internationally rather than setting up a new prescribed way of doing business in Canada?

Ms. Kristine Stolarik: No, this is not new. This is an enforcement tool that is used by other partners as well. In the States, it's FSIS. The USDA uses their licences and permits, as do the EU countries. Australia, New Zealand—they all have permits and impose conditions on those permits as well.

If I may, I just want to steal the floor for two seconds longer. On the definition of "prepare", I can tell you exactly where each one of those words comes from. We're not inventing them.

"Treat" comes from the seeds regulations. "Mill" and "grow" come from the Seeds Act. "Slaughter" is found in CAPA and meat. "Process" is in CAPA, fish, and seeds. "Store" is in CAPA, meat, and food and drug. "Package" is in CAPA, fish inspection, meat inspection, and food and drug. "Handle" is in CAPA, and "assemble" is in CAPA.

So we've pulled these words from existing definitions in legislation to ensure that we had a term we could use to make sure we could license under the various acts.

The Chair: Okay, I'm going to draw this to a close.

Mr. Bezan has been promised a question, and then we're going to call the question.

Mr. James Bezan: Right now you're saying the intent isn't to go out and license farms, but we know that under the APF the expansion of the responsibilities and the actions of the department have been expanded quite substantially. If we want to make sure that the intent is not to license farms, then why don't we just say that in new subclause 3(2), that farming activities are exempt from any licensing?

● (1135)

Hon. Wayne Easter: That's what it's saying.

Mr. James Bezan: No, it doesn't say that, Wayne. Let's just say it's exempt. Let's make it plain language.

The Chair: Do you want to respond to that? If not, I'm going to call the question.

Mr. David Anderson: Mr. Chair, we suggest an amendment. Can we do that?

The Chair: It's awfully late to be bringing an amendment, but....

Mr. David Anderson: When should it be done?

The Chair: Is your amendment written?

Mr. David Anderson: It's a period.

Some hon. members: Oh, oh!

The Chair: We're dealing with an amendment, so yours would be a subamendment to the one Mr. Easter has proposed.

Mr. David Anderson: Absolutely.

The Chair: Okay, let's have it.

Mr. David Anderson: It would put a period at the end of the word "activities" and remove the rest. So now it would say:

Subsection (1) does not apply to farming activities.

The Chair: In my opinion, as your chair, that would not be a good amendment. But I'll accept it, because you've put it.

Mr. David Anderson: You don't have to vote for it, then, Mr. Chair.

The Chair: I hope I don't have to vote for it, but if I do, I know which way I'm going to vote.

Mr. Anderson has put that on the table. You've heard the subamendment—

[*Translation*]

Mr. Roger Gaudet: Could you read it again? I am not sure I understood correctly. There seems to be... [*Inaudible*]

[*English*]

The Chair: Mr. Anderson, please read it once more. I know what it is, but I want you to read it.

Mr. David Anderson: In English it would read:

Subsection (1) does not apply to farming activities.

The Chair: I call the question. Those in favour of the subamendment—not the amendment, the subamendment put forward by Mr. Anderson—that that last portion does not include farming activities.

(Subamendment negatived)

The Chair: Now to amendment G-3 as put forward by Mr. Easter.

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

(Clause 3 agreed to on division)

The Chair: The committee needs to decide whether we want to open clause 4. It was brought forward by the NDP. We don't have to do anything on that one now, and we don't have to anytime if we don't wish to, but it was reopened. It had been dealt with and then was reopened because another amendment was submitted.

We'll defer that until later.

(On clause 5—*Licence suspension or revocation*)

The Chair: Now to clause 5 and BQ motion BQ-3. I'm not sure whether Madame Rivard had moved that on the table. She has? Okay, it's on the table.

Any further discussions on BQ-3?

Mr. Easter.

Hon. Wayne Easter: I'm just trying to find where I am here, Mr. Chair.

● (1140)

The Chair: Clause 5, page 11.

Hon. Wayne Easter: Mr. Chair, what I'm proposing is that we oppose BQ-3 and we put in wording on G-4.

The Chair: G-4, which is—-

Hon. Wayne Easter: I think that would accommodate what the Bloc wants to do. What G-4 would really do—versus the BQ amendment—is allow for the creation of a review process through regulations that would be based on consultations with all stakeholders, as is normal in Canada's regulatory policy.

The issue of whether a review process should be independent of the agency could be addressed through appropriate cost-benefit analysis, which would determine additional costs that might be incurred.

The motion includes wording similar to the Bloc's wording, but the wording has been slightly amended to be consistent with the recall provisions that are in subsection 19(1) in the CFIA Act. So what I am suggesting is that G-4 is more in accordance with the CFIA Act and accomplishes what the Bloc wants to do with its amendment. It's a good approach the Bloc is taking. I understand the intent, and I think we've accommodated that through G-4.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: Wayne, the difference leaps off the page.

The problem is that in the Bloc amendment, the minister has to notify in writing what is wrong with the licence and why it has been revoked; in your amendment, there is no such thing. They don't tell the person why the licence has been revoked. If you can incorporate that, then you're covering the thrust of where the Bloc wanted to go with their amendment. But when you don't allow the licence-holder to know why it has been pulled, it's pretty hard to launch an appeal.

I would also like a better idea of the "prescribed time", as mentioned there twice. Are you talking about 30 days, or where are you going with the "prescribed time"?

Hon. Wayne Easter: "Prescribed time" is in the regulations. I wonder if—

Mr. Gerry Ritz: I understand that, but just for my own clarification, one is two or three years, depending on whether it's some of the acts, or the Seeds Act, and the other is 30 days, which we've mentioned as well. I'm just wondering which is which here.

The Chair: The prescribed time is—

Mr. Gerry Ritz: It's mentioned twice. In proposed subclause (2) we talk about "the Minister's decision within the prescribed time". That would be the two to three years. Then the final one in proposed subclause (4), "reviewing the decision, the President shall provide his or her recommendation". Again, what is the time?

The Chair: Ms. Dudley.

Ms. Jane Dudley (Counsel, Legal Services, Canadian Food Inspection Agency): To be consistent with the Federal Courts Act, we would make it a 30-day time period.

Mr. Gerry Ritz: Both of them would be 30 days?

Ms. Jane Dudley: Yes.

The Chair: Could that be added as "within the prescribed time of 30 days?"

Ms. Jane Dudley: Well, then we wouldn't need to prescribe the time. If we said "within 30 days"....

The Chair: Okay. Would that create a problem?

Ms. Jane Dudley: You might want some flexibility, depending on the type of product. If you want any flexibility to accommodate particular products, you would need to say "prescribed time"; if you put in 30 days, it's a straight 30 days.

Mr. Gerry Ritz: Okay. I understand that, but we do have prescribed times of two or three years in the case of the Seeds Act. So you could have your licence pulled and really have no control over it for three years.

Ms. Jane Dudley: Those time limits you just mentioned are for prosecutions. They have nothing to do with this kind of—

The Chair: It appears that has been covered off. In fairness, I think they've given us a good reason.

Mr. Gerry Ritz: That's fine, but it's not in the legislation.

Hon. Wayne Easter: On Mr. Ritz's question about a response from the president on the licence, I wonder if Christine or Mark could respond. I just assumed there would be a response there; maybe there's not.

Mr. Mark McCombs: If your licence is going to be suspended, the normal practice is that you're notified with respect to why it's being suspended. Licensees know why their licences are being suspended, because the process for.... Take a meat establishment, for example. The process is that the inspector goes in and identifies actions to be corrected. If the corrective actions aren't made because the problems were not corrected in the plant, then the notification is given and the licence is suspended. Reasons are always given in the process for the suspension. I'm not aware of any where they don't give reasons.

● (1145)

Mr. Gerry Ritz: Then there really is no reason not to have that in G-4, because if you put that in G-4, it does cover off the Bloc....

Mr. Mark McCombs: It's no problem.

Ms. Kristine Stolarik: For greater clarity, we can include it.

The Chair: We can put that modification in.

Mr. Anderson, did you have something?

Mr. David Anderson: Yes, I hope so.

I tend more to support the Bloc motion because I think it's a better, more balanced motion.

I have a question. In the government's G-4, the suggestion is that the minister will do the first action, and then if somebody doesn't like that, they can go to the president. I'm just wondering, what do you suppose the chances are that the president is going to overturn a minister's decision? There is virtually none. So it leaves people without even a decent review.

I think this Bloc amendment does a far better job of dealing with that. It's final. A minister makes a decision, the president makes a decision, the minister makes a decision—there's no other option. They're not going to contradict each other, and basically that person is out of luck.

Hon. Wayne Easter: Just some clarification, because I think one of the concerns—and I'm trying to remember what your concerns were—about the Bloc amendment when we had proposed the government amendment.... In the Bloc amendment, subclause 5(2) says "Except where a situation exists that poses an immediate risk to human or animal health, the Minister shall not suspend or revoke a licence unless the licence holder", and then you have (a) (b), (c), (d). Could the witnesses tell me if I am getting the meaning right or wrong?

With the exception in there, I see that basically it needs to be turned on its head, that the minister would be restricted from.... With the way it's worded, if I could put it that way, I believe the minister would be restricted from suspending a licence if there was a risk to human or animal health. Am I correct in that?

I don't think that was the Bloc's intent. If there is a problem with human or animal health, it's extremely important that the minister be able to revoke the licence. Just explain that further, because we have to be absolutely clear on that section. The whole purpose of the bill is to protect society.

Mr. Mark McCombs: Mr. Minister, that's exactly the problem with the process. If you were able to fix it by rewording it, then you get into a problem with the words "immediate risk". The minister's recall authority is with respect to posing a risk, but this refers to an immediate risk. So now you have the two situations in conflict. You can be in a situation where we're now recalling a product from an establishment that should actually be closed, and we're recalling a product because the word "immediate" is in there. Now we're stuck in a situation where the establishment is still going to be open and operating, but we're recalling all the products from it.

That's why the government amendment was proposed, in order to deal with the concerns the committee raised, to be legally sound, and to ensure that the system works with all the elements working together.

Hon. Wayne Easter: With that, Mr. Chair, I'm wondering if Madame Poirier-Rivard would be willing to withdraw her amendment in favour of the other amendment.

The Chair: This is the prerogative of Mrs. Poirier-Rivard.

If you feel your concerns have been accommodated in the government amendment, would you be prepared to withdraw your amendment BQ-3, rather than have two similar recommendations or amendments?

[*Translation*]

Ms. Denise Poirier-Rivard (Châteauguay—Saint-Constant, BQ): If you can give me the assurance that part (a) of my amendment will be incorporated in the amendment at G-4, I will withdraw my amendment.

[*English*]

Hon. Wayne Easter: Could I suggest, Mr. Chair, that in the proposed subclause 5(2), after the words "the licence holder may", we put in what Madame Rivard wants by including the words, "after being notified in writing of the reasons". I think that would cover it.

So what I would be proposing—

● (1150)

The Chair: Are you in the proposed subclause 5(2)?

Hon. Wayne Easter: In subclause 5(2), it would read this way:

> If the Minister suspends or revokes a licence under subsection (1), the licence holder may, after being notified in writing of the reasons, make a request

Mr. Gerry Ritz: That actually restricts the licence-holder, not the minister, when you word it that way. You're putting the onus on the licence-holder. He can't make an appeal until he's been notified in writing; if he never gets the notification in writing, he can't make an appeal. You've got the cart before the horse here, or we've just lost the horse.

The Chair: Let's see if we can get some assistance.

Mr. Mark McCombs: Put the notification provision in the first part of clause 5.

Mr. Gerry Ritz: "The Minister, upon notification in writing, may suspend or revoke". Then it's the minister; otherwise, you're limiting the licence-holder.

Hon. Wayne Easter: Okay, I see that.

The Chair: Do you want to read that to make sure Madame Poirier-Rivard understands what we're doing.

Mr. Gerry Ritz: Circle that part where Wayne said I was right! I want that highlighted.

The Chair: Let's listen to the change now.

Madam Dudley.

Ms. Jane Dudley: We would propose that the current clause 5 become subclause 5(1):

> By notice in writing, the Minister may suspend or revoke a licence if the Minister considers that its holder has contravened any of its conditions.

Mr. Mark McCombs: It becomes a condition that is precedent to the minister being able to revoke the licence. If he doesn't give notice in writing, then he can't revoke the licence, which I think is what the Bloc wanted.

The Chair: Is that okay?

I think we have found accommodation. Thank you very much.

Madame Poirier-Rivard has withdrawn amendment BQ-3, so that one is no longer on the table.

This would not be considered a new amendment, but a subamendment to G-4. You're making this part of amendment G-4 to clause 5.

Could you write it out and present it to the table, so that we have it here?

Mr. James Bezan: So we can vote on it.

The Chair: Mr. Miller.

Mr. Larry Miller: That's all I was going to ask about. Do we have it either read or—

The Chair: Yes, we'll have it read one more time so that we clearly understand what we've done. We want all people to feel accommodated here.

Madame Dudley, do you want to read clause 5?

Ms. Jane Dudley: What is now section 5 in the bill would become 5(1):

> (1) By notice in writing the Minister may suspend or revoke a licence if the Minister considers that its holder has contravened any of its conditions.

The Chair: Does everybody understand that?

Mr. Easter, do you want to move that before we vote on it?

Hon. Wayne Easter: Yes, I so move.

The Chair: We've had it moved.

We'll do the subamendment and then we'll do the whole amendment.

(Subamendment agreed to)

Mr. David Anderson: Mr. Chair, I would like to have more discussion on the amendment.

The Chair: On G-4? I thought we had gone through G-4.

Mr. David Anderson: There's a second problem with it, and that is the review process. There's a difference between the two amendments on that as well. The Bloc amendment said the person "may appeal the suspension or revocation in accordance with the regulations". This basically stops that from happening. You have to go to the minister, the president, the minister, and then you're done.

● (1155)

The Chair: Mr. Easter, or somebody at the table, can you help me here?

Mr. Mark McCombs: The president isn't an overruling authority; it's a recommendation power. So the process is that notification is given, the individual then has a right to a review process, which is more appropriately conducted at the presidential level than at the minister's level, and then the president provides recommendations to the minister with respect to the decision.

The Chair: Okay, you've heard the answer.

Mr. David Anderson: My question is whether that's adequate for licensing provisions in the entire sphere of agriculture in Canada. That's the only way you're going to be able to get or lose the licence, and once you've lost it you have no appeal process past the minister.

Hon. Wayne Easter: In our system you can always appeal to the minister in any event, Mr. Chair. It's the way our system works. The minister is ultimately responsible and accountable. There's also the Federal Court system as well.

The Chair: I'm going to call the question. Does G-4 as amended carry?

(Amendment agreed to)

The Chair: We have arrived at 12 p.m. We're going to suspend temporarily for 15 minutes while we do what we have to do. Mr. Gaudet is getting hungry, so let's eat, and then we'll be ready to go in 15 minutes.

● (1156)

——— (Pause) ———

● (1218)

The Chair: Order, please.

Okay, let's bring everybody back to the table.

We want to go to NDP amendment 4.2, page 15, related to clause 5.

Mr. Angus, this hasn't been put to the table. Do you want to put it, Mr. Angus?

Mr. Charlie Angus: We've been dealing with clause 5 up till now?

The Chair: Yes, we have.

Mr. Charlie Angus: In bringing this forward, I'd say it covers what we were dealing before, which was the need to have somebody they could appeal to. So the review tribunal might be excessive at this point; it could be that the ombudsman could fulfill that role.

> A licence holder, whose licence has been suspended or revoked, may, in accordance with the regulations, appeal the suspension or revocation to the ombudsman.

I think that might be simpler, because the intent of all these similar —

● (1220)

The Chair: I don't know. There are a lot of overlaps.

Mr. Charlie Angus: Yes, there are.

The Chair: We don't want to be overlapping more than we have to.

Mr. Easter.

Hon. Wayne Easter: Charlie was out for a minute. I think it was their intent to cover in the government resolution what he intends to do, and I believe it's already covered under the government resolution, as amended.

The Chair: We covered off Madam Rivard's amendment as well in the government amendment.

Hon. Wayne Easter: So I think it is covered.

Mr. Charlie Angus: Sorry, page 13, is that the amendment you're...?

The Chair: Yes, but there were some changes made. There was a subclause 5(1) added.

Mr. Charlie Angus: Added...?

The Chair: To G-4, the amendment of clause 5.

Mr. Charlie Angus: You said 5(1) was added. What was that?

The Chair: A short period covering off.... Ms. Dudley, do you want to reference this so Mr. Angus is brought up to speed?

Ms. Jane Dudley: You're asking me to reread subclause 5(1)?

The Chair: Yes, in reference to how it was changed to accommodate Madam Rivard's concern.

Ms. Jane Dudley: Okay. It would now be subclause 5(1), and it would say:

> By notice in writing, the Minister may suspend or revoke a licence, if the Minister considers that its holder has contravened any of its conditions.

Hon. Wayne Easter: Mr. Chair, I think we either defeat or withdraw NDP-4.2, because it's covered.

The Chair: Mr. Angus, we have covered up a lot of this territory in previous work today.

Hon. Wayne Easter: No, we haven't "covered up" anything, Mr. Chairman.

The Chair: Well, "covered up"....

Mr. Charlie Angus: On clause 5, I think replacing "review tribunal" with "ombudsman" would give a little extra security. I don't think it would conflict or overlap with what's already been passed. That's what I would recommend.

The Chair: Replace "review tribunal" with "ombudsman"?

Mr. Charlie Angus: Yes, so it would be "appeal the suspension or revocation to the ombudsman", period.

The Chair: Is there any problem with that at the table?

Mr. Easter.

Hon. Wayne Easter: I see it as unnecessary. The ombudsman is there for these very reasons.

The Chair: It's probably covered off somewhere, but—

Mr. David Anderson: Mr. Chair, I don't think Charlie got all of G-4. We basically adopted the rest of G-4, which provides the limited appeal process the government wants. I think this would actually extend it. It would be a help, but I'm not sure it's not in contradiction with what we just passed. What we passed said you can ask the minister to review it, and then the president will review it and report back to the minister, and that's the final decision.

I think this is a good addition, but I don't know where it would fit.

Mr. Mark McCombs: In the amendment we have a minister suspending a process, suspending a licence. The president then reviews it and provides recommendations to the minister. The minister then makes another decision, whereupon the review tribunal may be tasked to undertake an appeal process. After that, there's still a right of appeal or a review to the Federal Court. That's a substantial process of review, and in the case of perishable products it could be a real problem.

The Chair: I'm going to call the question on the NDP-4.2 amendment to clause 5.

Mr. David Anderson: Is this an amended version of it?

The Chair: Yes. We changed it to "ombudsman" rather than "review tribunal".

(Amendment agreed to)

● (1225)

The Chair: Next is amendment G-4.01, which is put forward by the government.

Mr. Easter, will you put that forward?

Hon. Wayne Easter: We withdraw that, Mr. Chair. It's covered under a previous one.

(Clause 5 as amended agreed to on division)

The Chair: Next is NDP-5 on page 16, adding new clause 5.1.

Mr. Angus, we stood that the last time so it's been put to the table.

Mr. Charlie Angus: I actually feel we've covered it off in the existing clause 5.1.

The Chair: That's been withdrawn by Mr. Angus. Page 16 is gone.

The next stood clause we will go to is new clause 11.1 on page 28, CPC-1.

Mr. Gerry Ritz: It's page 20 in our amendment book. Pages 20 and 21 are clause 8 on exchange of information. Are we skipping that or what?

The Chair: Clause 8 has been carried.

Mr. James Bezan: When did we do that?

The Chair: It was at one of our last meetings. I couldn't tell you what month that was, but we did it.

Mr. Gerry Ritz: We have amendments on pages 20 and 21 that are no longer—

The Chair: We're going to do all the stood ones and then we'll come back, if it's your wish, to deal with amendments that keep coming on almost a daily basis. But we can't open up everything today. Let's do the stood material and then come back and re-open the whole thing.

With a little cooperation I think we can get this done. Let's work toward that end.

Where are we here?

[*Translation*]

Ms. Denise Poirier-Rivard: Where are you exactly? Is it clause 28?

[*English*]

The Chair: You moved that?

Mr. James Bezan: I'll move my amendment.

The Chair: Mr. Bezan, do you want to speak to that?

Mr. James Bezan: One of the ongoing discussions we had at the table was that we need to move more quickly to have a national meat code. That's been an ongoing discussion for the past 10 years, and we still don't have any agreement between the provinces on how that's going to take place.

I want to put in some sort of timeline for the federal government to take the lead on this. Right now we have some desperate times, and I want to make sure we increase our slaughter capabilities and the movement of domestic product across this country to the regions that need it.

I'm particularly thinking about manufacturing beef, the cows, in a box form. So I think this brings about the requirement to take a hard look at this and come out with some sort of decision on how we proceed and put in place a national meat standard.

The Chair: Mr. Drouin.

[*Translation*]

Hon. Claude Drouin (Beauce, Lib.): Thank you, Mr. Chairman.

I have reservations about this motion because we would need to ensure we have agreement from the provinces. I am convinced it would be pretty difficult to get the agreement of Quebec. This is an area of shared responsibility and I do not think we can impose this. I would like to be sure I understand correctly, but I am very uncomfortable with this proposal.

[*English*]

The Chair: I think we have another problem too, if we look at the intent of that, because of the provincial and federal jurisdictions of meat inspection, where you don't have interprovincial trade on certain products that are provincially inspected. So I think that would be something that would be down the road some time.

We'll have Mr. Bezan, and then we'll go to Mr. Angus.

Mr. James Bezan: Actually in my first draft I was calling for a national meat code, and the parliamentary legal advice was that it was out of order. It was redrafted in this form so it didn't violate any interprovincial jurisdiction. So this puts the onus back onto the ministry to make sure that those discussions are held with the provinces and that a mutually acceptable decision is made for the provinces and the federal government.

● (1230)

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

Mr. Charlie Angus: I fully agree with the intent of it. I've got regional slaughter plants on the borders of my region, and we've got Quebec farmers who desperately want to use them, and CFIA will swat them down if they try. I guess my question is whether we can put it into legislation with the timelines, because it would presuppose in legislation that we could actually get all the ministers to the table and that within a year we could get a result.

I'm wondering if it's something the committee needs to be looking at as a bigger issue, in terms of trying to bring some direction to the minister. I'm not sure if you can actually just put it into legislation and make it so.

The Chair: Yes, that was a big concern I had too.

Yes, Mr. Easter.

Hon. Wayne Easter: I think a number of reasons have been given, Mr. Chair, as to why the amendment should be defeated. But I do want to point out, regarding Charlie's assertion that CFIA would "swat down" some provincial slaughter houses—I believe that was his expression. It's important that they do that, since in negotiations we have internationally to sell our meat, products have to meet CFIA standards.

What we're getting into here, Mr. Chair, is well-intentioned, but I think it does have a lot of complications. The minister would be required to go back to a cabinet committee to seek additional funding for this, and so on. The cabinet has recently approved funding for the CFIA to move forward with its meat inspection reform, which has been forecast as a three-year project, so some of it is indeed ongoing.

And it would basically be impossible to develop and implement national standards for agricultural products for human consumption, meat, fresh and processed fruit and vegetables, food, etc., within one year.

I think if you really got into the resolution, you'd find you'd need an amendment to the constitutional amendment approval act in order to accommodate it, so I—

The Chair: I think there is enough discussion on the table to make a wise decision on this amendment.

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

(On clause 14—*Recognition of results*)

The Chair: Now we move to clause 14. We have our first amendment on page 29 and the amendment is NDP-10.1.

Mr. Gerry Ritz: In this book it's page 9 in the bill, not 10.

The Chair: This is Mr. Angus's amendment. Do you want to move that amendment?

Mr. Charlie Angus: Yes, Mr. Chair. I don't like to keep editing myself at the last second, but I would be willing to replace "equivalent" with "similar", in case "equivalent" becomes the word people become hooked up on—"comparable" or "similar". We don't need to say "equivalent", that it's pound for pound exactly the same.

The Chair: Okay. Are there any other questions on this amendment? It's a good amendment, with one slight change—"equivalent" becomes "similar". With that amendment change, those in favour of the amendment?

Hon. Wayne Easter: Just hold on, Mr. Chair.

We say yes too often on this side, David. That's the problem.

Amendment G-5.1 really does the same thing. I'd ask Charlie to look at amendment G-5.1, because what we're trying to do in that is accommodate the NDP-10.1, but if you use the word "comparable" instead of "equivalent" in there, it would do it as well.

I'd just ask Charlie to have a look at that one.

Mr. Gerry Ritz: On that point, Mr. Chair, if I could....

The Chair: Yes, Mr. Ritz.

Mr. Gerry Ritz: I'm going to ask Mr. Easter why he's stipulating Governor in Council all of a sudden. Why not the minister or the president? We've been working with the president of the CFIA, who has the ultimate say, and then the minister and so on. Why all of a sudden are you going to Governor in Council?

● (1235)

Hon. Wayne Easter: They're regulations, and regulations do in fact come out of Governor in Council.

Mr. Gerry Ritz: So you have to go to that level in order to make a change or to identify—

Hon. Wayne Easter: Yes, if you want to make a change in the regulation. The regulations had to be approved by Governor in Council, so that's why it's named there.

The Chair: Mr. Angus, have you had a chance to look at that?

Mr. Charlie Angus: I'm looking at amendment G-5.1, and I don't see on my G-5.1 that there are any real similarities—unless I don't have the page here.

The Chair: Page 29.1 in the binder. It's G-5.1. Page 9, of course, as we refer to the clause in your bill.

Mr. Charlie Angus: Okay, I see.

I'm not being a stickler. I guess the only difference is that they designate them under subsection (1.1), whereas we're saying that if they are going to accept these standards from outside agencies, these standards have to be comparable to methodologies that we would rely on.

Hon. Wayne Easter: That's not a problem with me. If you feel sticky about it, then we're willing to accept NDP amendment 10.1, Mr. Chair.

The Chair: Are you prepared to withdraw yours, Mr. Easter?

Hon. Wayne Easter: Yes, but be clear that "equivalent" has been changed to "comparable", right?

The Chair: No, "similar".

Hon. Wayne Easter: Similar?

A voice: No, no.

What's the best legal word?

A voice: Comparable.

The Chair: That's a better word.

Okay, the word has been changed to "comparable" from "equivalent". That would be going to NDP amendment 10.1.

(Amendment agreed to)

The Chair: Amendment G-5.1 has been withdrawn.

(Clause 14 as amended agreed to on division)

(On clause 25—*Powers of Inspection)*)

The Chair: Clause 25 takes you to amendment G-6 on page 37.

Mr. James Bezan: It's page 12 in the bill.

The Chair: Are there any comments on amendment G-6?

Mr. Easter.

Mr. James Bezan: Are we doing G-6 or G-6.1?

The Chair: G-6.

Mr. James Bezan: Well, Wayne has two amendments here, and they're on the same clause and the same subject.

The Chair: Amendment G-6 was moved. The others are new amendments that have not yet been moved. We'll do the first one first, unless the mover—

Hon. Wayne Easter: Mr. Chair, what we tried to accommodate here is really in amendment G-6.1. We'll drop G-6.

The Chair: G-6 has been moved off the table.

Hon. Wayne Easter: What we're trying to accommodate with Mr. Ritz is time concerns, I believe, and we think we do that in G-6.1.

The Chair: You moved that one, did you?

A voice: New subsection 25(6) is the new time limit clause that—

Hon. Wayne Easter: Yes.

Mr. Gerry Ritz: It doesn't mean you got it right.

● (1240)

Hon. Wayne Easter: We just try to be so accommodating to you, so you know we wouldn't have it anything but right.

Mr. Gerry Ritz: I'm going to start calling you pretzel.

Hon. Wayne Easter: Go ahead. I've been called worse.

The Chair: There'll be no more name calling at the table.

Mr. Easter, while you're being so accommodating, is there anything else you want to say about this? I think they're ready to endorse what you've just told us.

Hon. Wayne Easter: No, I think it's fairly self-explanatory.

The Chair: Yes, Mr. Anderson.

Mr. David Anderson: I just have a question, and I hope it's a little thing. We had taken some time to get a definition of "thing", which was a big discussion, but through subparagraphs 25(1)(b) and (c) and other places, it says "anything". I'm just wondering if "anything" as one word is the same as "any other thing". We only defined "thing". I may be splitting hairs here, but I guess I have a concern about "anything" being outside the boundaries of what we've defined.

The Chair: Does anyone want to comment? We've spent a lot of time on this word "thing".

Mr. David Anderson: We've actually solved the problem with "thing". I don't know if we solved it, but we tried to deal with it. But you've also used the word "anything", one single word, and I guess I want to know if that applies.

The Chair: Ms. Dudley.

Ms. Jane Dudley: In my review of the case law and of existing legislation, they sometimes have "any" and "thing" separated and sometimes "anything" as one word. It seems to make absolutely no difference.

The Chair: Okay.

Mr. Ritz, do you have anything else on that?

Mr. Gerry Ritz: The amendment is going in the right direction, there's no doubt about that, but when we talk about a cancellation or a notice of cancellation, again, we're missing the timeline there. If there are costs incurred by the product holder, we're not addressing that. Or can we refer then back to the appeals process that's available to them—I mean the ombudsman? Do we have to rename all of that in this as well?

Mr. Mark McCombs: The amendment in which the ombudsman process was put in place deals with anything with respect to section 25.

Mr. Gerry Ritz: Do we name that in the bill or is it just a given?

Mr. Mark McCombs: The amendment we passed earlier I believe addresses that.

Mr. Gerry Ritz: I understand that, Mark. My concern is the ordinary producer out there who hauls his stuff to market and then it's held and then let go. Is he really aware of the fact...unless it's spelled out in here?

Mr. Mark McCombs: Sorry, I'm wrong. I guess we didn't pass clause 29.1 earlier, did we?

The Chair: Not yet.

Mr. Mark McCombs: So clause 29.1 addresses anything being exercised in here.

Mr. Gerry Ritz: Okay, so let's keep this in mind. If clause 29.1 doesn't pass, then we have to go back to this one. Can we highlight that?

The Chair: That's taken under advisement, yes.

Hon. Wayne Easter: [*Inaudible*]...because we're accommodating you here.

The Chair: Mr. Bezan, do you have anything to say quickly?

Mr. Gerry Ritz: Two half measures don't make a whole.

Mr. James Bezan: One of the things we're trying to address here with the amendment is a timeline. There are going to be times when some perishable products are going to be demanded to be held. I don't see in here that there's any timeline associated with those perishables.

The Chair: Mr. McCombs.

Mr. Mark McCombs: Subsection (6) addresses it but without a prescribed time limit. It says it will "last only as long as necessary", and "necessary" is with respect to perishable products and test results. That's all. It'll be done as quickly as possible in light of that. So you can't arbitrarily hold a product just because you don't feel like letting it go. You have to have a rationale for doing it, and "necessary", as used in there, will pertain to test results or inspection results. It can't be held up just because the paperwork is slow.

The Chair: Okay. Can we accept this on division?

I'm sorry, there's another amendment there, but I thought we'd—

Mr. Gerry Ritz: With the proviso that we're coming back here if 29.1 doesn't address it.

The Chair: Okay, and you have your CPC-4, but I think you've taken it off the table, or you plan to take it off the table.

Mr. James Bezan: I didn't take it off the table.

The Chair: I thought we were talking about that.

Mr. James Bezan: No. I was just talking about a timeline. CPC-4 on page 41 is again going back to the fear that was expressed at committee by witnesses that you'd have inspectors going in inspecting products that they might not have any training for. You could have a fish inspector looking at poultry, for example. So it is just making sure that the inspectors—and putting it in legislation so it's prescribed—will have the appropriate training for that.

Mr. Mark McCombs: Government amendment 13.4, where we added the word "qualified", covers the process. You now have a "qualified" inspector, which allows for the appointment. So the president would not be able to appoint an unqualified person to conduct the inspection, which effectively encompasses what you need.

Mr. James Bezan: And that was done when?

Hon. Wayne Easter: I think James had to be away the day that happened. There was an amendment made. It dealt with "qualified". It was done to cover this off.

What's the clause? Maybe we could go back to the clause as amended.

● (1245)

Mr. James Bezan: It is G-13.4.

Hon. Wayne Easter: Do you want to read it, Mark?

Mr. Mark McCombs: We'll go back.

Hon. Wayne Easter: Because I think it covers your concern, James.

The Chair: Okay, Mr. Bezan, we did that in G-13.4.

Mr. Gerry Ritz: We need to put it under the right heading. This is inspections, so we want to make sure these inspectors.... G-13.4 really doesn't address that....

The Chair: Do you want to withdraw that then?

Mr. James Bezan: I will withdraw it.

(Amendment withdrawn)

The Chair: CPC-4 has been withdrawn.

(Clause 25 as amended agreed to on division)

(On clause 26—*Pest, disease, toxic substance*)

The Chair: Now we move to amendment G-6.2, which proposes adding clause 26.1.

Mr. Easter.

Hon. Wayne Easter: Yes, I move it, Mr. Chair.

There was a concern, I believe in an NDP motion, where it was suggested that maybe all of the procedures, operations, etc., should be published in the *Canada Gazette*. That would be an unbelievably cumbersome process, so what we're doing here is making sure the agency does "make accessible to the public the manuals used by inspectors or officers exercising any power conferred by section 25". So these would be accessible on the CFIA website, etc., so that people would be able to see those procedures.

I think you have to keep in mind that procedures for avian influenza, or something like that, do change and they change fast. So this, we believe, covers off that area.

Mr. Charlie Angus: Thank you for that.

When we were discussing this the other day, one of the suggestions was that, wherever possible, these be posted on the net. Was that not discussed? I don't see the wording here, and I just want to know if it got dropped or if it could be elsewhere.

The Chair: That is on the CFIA website.

Mr. Charlie Angus: Okay, I can live with that.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: I'm just worrying about the placement of it. Why is it in that particular location in the bill? Is there not a better place to put it?

Ms. Kristine Stolarik: I think we put it there just to follow clause 25 on the powers of inspection. We just wanted to refer to all of the manuals related to the inspections that would be made available. I did bring some in if people want to see them, because they do have all the directives and guidelines and everything. I can circulate them, if people want to see them.

Mr. Gerry Ritz: Shouldn't it then be part of subclause 25(4)?

Ms. Kristine Stolarik: These are the manuals on seed potatoes—just for my friend Mr. Easter.

[*Translation*]

I have them in English and French, if people are interested.

[*English*]

The Chair: Okay, I think we've had that one cleared.

(Amendment agreed to on division)

(Clause 26 agreed to on division)

The Chair: We had adopted clause 29, but then we stood it.

Is there any other debate on clause 29 before we move on?

● (1250)

Mr. Larry Miller: It isn't in here.

The Chair: It's not in your manuals any more because we've taken it out. It was dealt with. Clause 29 is on page 15 of the bill.

Mr. Larry Miller: What's being proposed that's different?

The Chair: I don't have that in front of me at the moment.

Hon. Wayne Easter: On what we changed previously by amendment, in paragraph 29(1)(a), where it says "their powers" and "their duties", we changed that to "his or her powers", and "his or her duties". It was just to bring clarity and consistency to the bill.

The Chair: That was adopted, so basically there's no need to do anything further. We're not reopening that.

Clause 29.1 is the one we looked at this morning.

Mr. Easter, I'm going to get you to formally move it.

Mr. Gerry Ritz: That's Wayne's law.

The Chair: We had a long debate on it this morning.

Hon. Wayne Easter: I so move, Mr. Chair.

I think it's pretty well self-explanatory. I think we had a long discussion on it this morning.

There's maybe one thing I didn't emphasize strongly enough. It isn't just part of the ADR review. It clearly defines the process, when people have some difficulty, of where they can go to find out how to get their complaint dealt with, and the process to deal with it in a timely fashion.

Just to correct the record, this morning I said there were hundreds of thousands of inspection actions taken by the CFIA on an annual basis. It's between 2.5 million and 3 million.

So I think the discussion was held this morning. I encourage people to support this.

The Chair: I think we'll get to that in a moment.

Mr. Ritz is next, and then Mr. Miller.

Mr. Gerry Ritz: The concern we had in the discussion this morning was where it says, "from among the Agency's employees". We're saying it should be more arm's-length. Mr. Seguin was hired from outside and became part of the CFIA payroll. That's fine, but I think you need to go outside. You can't stipulate that it be from the agency's employees, because that really limits the scope. You may have a better person qualified for it than from within the agency's employees. So I think that has to be removed.

The other concern I have is the lack of a timeframe between subclauses (5) and (6). You talk about the ombudsman submitting a report to the president at least annually. That's fine. I would like to see it come to Parliament. It does that in subclause (6), we hope, but there's no timeframe as to how long that's going to take.

When an annual review is done in-house, when does it become public? That's my concern. Even taking it to the minister doesn't mean it has gone public.

Ms. Kristine Stolarik: I guess what we tried to do in subclause (6) was add "who shall make a copy of it public without delay". To me, "without delay" is pretty quick.

Mr. Gerry Ritz: I'm not questioning that. How long is it going to take the president to submit it to the minister?

Ms. Kristine Stolarik: There is a requirement to report annually.

Mr. Gerry Ritz: So it could be two years old.

Ms. Kristine Stolarik: No. I think every year we'd have to report on the year's activity. You know how our fiscal year works.

Mr. Gerry Ritz: Okay, but that's my point. The annual review gets to the president, and then somewhere down along the line, without a stipulation, the president turns it over to the minister. We don't have that timeline.

The minister then goes public with it without delay, whatever that means. It's an annual review, but there's no timeline for when the president hands it on to the minister. It could be another year.

● (1255)

Ms. Kristine Stolarik: So could we put "without delay" in both for greater clarity?

Mr. Gerry Ritz: That's fine.

It's pretty ambiguous right now.

Hon. Wayne Easter: The annual report is done within what period of time? So it would be basically the same procedure.

Mr. Gerry Ritz: We see those annual reports almost coming in to the next one. By the time we finally get a look at them it's all water under the bridge—it's gone. So I would like to see it be a little more timely than that.

The Chair: If we accommodate the wording "without delay" in the first part as well as the latter part, then I think we've accommodated that.

Mr. Miller.

Mr. Gerry Ritz: But we haven't addressed my first point.

The Chair: This morning we found a way of doing this without a royal recommendation. Let's go back to that and revisit it for a moment in terms of finding someone outside who is not currently but will now become an employee of the CFIA.

Hon. Wayne Easter: We explained this morning, Mr. Chair, that the president could go outside the agency to hire somebody for these purposes, but that person would then have to become an agency employee in order to get around the royal recommendation. I take it it's the committee's intent to do this. I guess anything other than what's in here will cause us to run into trouble, with the Speaker probably throwing it out or with it having to go to a royal recommendation.

Mr. Gerry Ritz: The point I'm making, Mr. Easter, is if you're going to limit the president in terms of needing to find someone "from among the Agency's employees", then he cannot go outside to find that person. He's not an employee until you find him and hire him.

Hon. Wayne Easter: He becomes an employee.

Mr. Gerry Ritz: Well, it doesn't say that. It says that he has to be an employee to become an employee.

Mr. James Bezan: Can't you just delete "from among the Agency's employees"? Why don't we just say that the president shall designate "a person"?

Mr. Gerry Ritz: Exactly—"The President shall designate a person".

Ms. Kristine Stolarik: We actually had that in originally. If he can designate "a person", the centre basically said we'd have to go outside the agency, get that person, and that would require the royal recommendation. So it provided advice to us that we had to consider, in doing this, which was to keep it internal and without the need for a royal recommendation, to basically keep it amongst the employees.

Mr. Gerry Ritz: So what you're saying then, Ms. Stolarik, is that every time you hire a veterinarian as an inspector, you've got to go outside and have a royal recommendation in order to do that? The president has hiring powers. You've got a budget to work within. You don't need a royal recommendation to hire anybody for the department.

Ms. Kristine Stolarik: No, he already has the authority to designate—

Mr. Gerry Ritz: Exactly. So why do you have to stipulate "from among the Agency's employees"? You don't need to.

Ms. Kristine Stolarik: It was identified as a machinery-of-government issue.

Mr. Gerry Ritz: Well, I think the machinery is a little rusty.

The Chair: Okay. We have Mr. Miller.

Mr. Gerry Ritz: What are we doing? The problem hasn't been solved. I would like an amendment that we remove those words.

Mr. James Bezan: Let's remove the words "from among the Agency's employees".

Mr. Gerry Ritz: Exactly. You've got to broaden the scope, and then he or she becomes an employee.

Mr. Mark McCombs: At that point you do have a machinery issue because you're designating somebody from outside, and you then are required to have the per diems; you have to put the financing in place in order to pay that person. The other process was recommended because the president has separate employer authority and he can hire from outside. Then the process is—

Mr. Gerry Ritz: But if you stipulate it with legislation like this, Mark, then he can't go outside.

Hon. Wayne Easter: Yes, he can.

Mr. Gerry Ritz: No.

Hon. Wayne Easter: Yes, he can. It's a regular hiring procedure. If he hires, as you said, a veterinarian and goes outside to do so, that person becomes the agency's employee.

I'm really concerned about the amendment, Mr. Chair, because of what can happen here. I think all of us have the intent to improve the complaint process. The ombudsman and moving towards the ADR is important in terms of that process. If we go with the amendment, I believe, given the information the legal counsel has been provided with from the centre, what we would find is that this amendment would be thrown out. Then we'd have defeated our own purpose in terms of trying to make a process easier for the farm community.

The fact of the matter is that as it's written now the president can hire from outside the agency and bring an individual in to be an agency employee, the same as was done with Mr. Séguin.

The Chair: Basically we're going to get back to the area where we're going to need a royal recommendation.

Mr. Gerry Ritz: No. We have a problem with one of the other amendments that came through that's going to be contingent on what we do with clause 29.1. If you limit the hiring of any person to inside the agency's employees—that's exactly what it says—you can never hire outside that sphere. That's wrong.

You can change the wording any way you want. Make it, "The President shall designate a person to become an employee as ombudsman", or however you want to do it, but you've got to be able to broaden the scope.

● (1300)

Mr. Mark McCombs: Perhaps I could clarify the president's appointment authority. I'll read the current section 13:

> 13. (1) The President has the authority to appoint the employees of the Agency.
>
> (2) The President may set the terms and conditions of employment for employees of the Agency and assign duties to them.

When the president hires, he has authority to hire from outside the public service if necessary. So he can hire. Then, once a person is an employee, he assigns duties to them, which is exactly the same process you have here. You can hire and then assign duties. You can't assign duties to someone who isn't an employee.

Mr. Gerry Ritz: How do you do terms of reference for a job description if the person isn't an employee?

Mr. Mark McCombs: Because the job description doesn't apply until the person is an employee.

Mr. Gerry Ritz: Okay, but that's my point.

Mr. Mark McCombs: In the process we're talking about in this section, the designation authority doesn't apply until the person becomes an employee. The president has independent authority under section 13 to hire anyone because he's not caught by the Public Service Staff Relations Act.

Mr. Gerry Ritz: He doesn't need a royal recommendation to do that.

Mr. Mark McCombs: No, because he's a separate employer.

Mr. Gerry Ritz: Then why are you using that excuse here?

Mr. Mark McCombs: If you read the section without that in it, it would read: "The President shall designate a person to act as ombudsman for the purposes of this section". That means any person, anywhere.

Mr. Gerry Ritz: Then change "a person" to "an employee", and you cover it all: "The President shall designate an employee to act as ombudsman". Then you have covered it all, and you can go outside the sphere.

The Chair: I'm sorry.

Mr. Ritz, I'm going to put you into my chair and I'm going to leave this meeting.

Mr. Gerry Ritz: Good. Then we can continue this.

The Chair: I'll carry out the business of this committee at another place.

Mr. Gerry Ritz: Do you want me to put that amendment on the floor before I take the chair?

The Chair: The problem is this. There's still debate on that amendment.

Mr. Gerry Ritz: Okay, but I want to table the amendment before I take the chair.

The Chair: Well, you can table the amendment. I can't stop you.

Hon. Wayne Easter: I'll make the amendment, if he can't.

Mr. Gerry Ritz: If he doesn't, I will. The amendment I would put forward is this: "The President shall designate an employee to act as ombudsman". Then you've got it all covered.

The Chair: Okay, the amendment has been put on the floor,

I'm giving you Mr. Ritz as your chair for the next hour, and then we'll see you in another place after question period. The committee meeting moves to the West Block for the afternoon meeting.

Mr. Charlie Angus: I've been trying to speak to this for the last 10 minutes and I haven't been able to.

The Vice-Chair (Mr. Gerry Ritz): Okay. We'll continue with debate on the subamendment, if there's any more debate.

Mr. Angus.

Mr. Charlie Angus: Mr. Chair, it seemed to me that we had come to a very clear understanding this morning on where we were going. It now seems that we're lost in the woods again.

On new clause 29.1, one line is: "The President shall designate a person who will become an Agency employee to act as ombudsman". That seemed to me to be what we agreed to this morning. We were going to hire someone from outside the agency and designate him as an employee. The wording as it reads now is that we're going to designate an employee who already exists.

We said we had problems with this because we didn't want to have an inspector promoted to look after his fellow inspectors. If the wording says "a person who will become an Agency employee to act as ombudsman for the purpose of this action", I don't think we need royal assent. I think this is what we had agreed to this morning when we passed new clause 43.1.

The Vice-Chair (Mr. Gerry Ritz): Point taken. Is there any more discussion?

That's a favourable amendment. I'll withdraw mine if you want.

Could you state that again for the record, Charlie?

Mr. Charlie Angus: Mine would be on new clause 29.1:

> The President shall designate a person who will become an Agency employee to act as ombudsman for the purposes of this section.

We're not micromanaging anything beyond that.

The Vice-Chair (Mr. Gerry Ritz): Okay, that's fine. Is there any discussion?

Mr. Easter.

● (1305)

Hon. Wayne Easter: The only concern I have is that the best ombudsman may or may not already be within the agency, but you disqualify that person. Do you disqualify that person by this or not?

Mr. Charlie Angus: No, the previous wording is very specific. It has to be an agency employee. We're talking about a person who will become an agency employee. Technically, when people apply for the test, if they're the best of the best and CFIA employees, I don't think the wording excludes them explicitly, whereas the other one would exclude other people.

Hon. Wayne Easter: Do you think it excludes them? Can you come up with wording that doesn't do that?

Perhaps you could write it as "who is or will become". No, the problem is with the words "who is or will become".

Mr. Charlie Angus: How about "The President has the authority to choose a person from outside the Agency who will become an employee"?

The wording, as it is, is specific that we are hiring within the CFIA gene pool.

The Vice-Chair (Mr. Gerry Ritz): What we're trying to do is encompass existing employees plus potential employees.

Mr. Charlie Angus: If we are splitting hairs on this, at the end of the day, if we have to pass over someone within CFIA, the intent of this was to have someone from the outside who people within the industry had comfort in. So I would prefer our friendly amendment.

The Vice-Chair (Mr. Gerry Ritz): The criterion here is to be seen as arm's length.

Mr. Drouin.

[*Translation*]

Hon. Claude Drouin: Thank you, Mr. Chairman. I have a suggestion that might provide clarification.

We could say that the president shall designate an employee or a person who would become an employee of the agency. This way, we could cover both aspects and it would solve the problem.

[*English*]

The Vice-Chair (Mr. Gerry Ritz): Mr. Miller.

Mr. Larry Miller: What I was going to say is basically being talked about now. As long as we cover existing employees and any potential new ones, I'm going along.

I have another amendment that I'm going to propose after this one is dealt with.

Hon. Wayne Easter: We could say, to cover them both, "who is or will become".

Mr. Charlie Angus: So that would be "a person who is or will become an employee".

Hon. Wayne Easter: That would cover it.

The Vice-Chair (Mr. Gerry Ritz): We have friendly amendments to friendly amendments to amendments.

Charlie, if we're going to change, we're going to have to withdraw yours. It's up to you. We can either vote on what you have now or withdraw it and then move to "who is or will become".

Mr. Charlie Angus: Mr. Chair, I'd prefer the language as it is, but I think—

The Vice-Chair (Mr. Gerry Ritz): Okay, then we'll call for a vote on the subamendment as it stands.

Mrs. Rose-Marie Ur: I have another one.

The Vice-Chair (Mr. Gerry Ritz): We have to clear this one off the floor first, Rose-Marie.

It would read:

> The President shall designate a person who will become an Agency employee to act as ombudsman.

That's Charlie's amendment.

Those for? Those against?

We have a tie.

I haven't voted yet. I guess I can still vote.

Mr. Charlie Angus: We can take a friendly amendment to that if we're at a tie.

The Vice-Chair (Mr. Gerry Ritz): I'm going to sit in abeyance on that vote, because it's tied. We'll take a little more discussion from Rose-Marie.

Mrs. Rose-Marie Ur: Okay. What about someone "who may or may not be within the Agency"? That covers someone—

Mr. Larry Miller: So the person may or may not be an employee of the agency.

Mr. David Anderson: On a point of order, Mr. Chair, you have to deal with the vote before you go on to any other discussion.

The Vice-Chair (Mr. Gerry Ritz): No. The vote is tied. We can take more debate.

● (1310)

Hon. Wayne Easter: This is parliamentary procedure by *Robert's Rules of Order*.

An hon. member: I've never heard of that.

The Vice-Chair (Mr. Gerry Ritz): Charlie.

Mr. Charlie Angus: I think the problem with that wording goes back to our original problem, which is that we had to make them an employee. The language has to talk about them becoming an employee, so we're not talking about extra spending.

I don't have a problem, at the end of the day, with saying "a person who is or will become an Agency employee". I think we could probably get almost unanimous support for that wording.

So it's "who is or will become".

The Vice-Chair (Mr. Gerry Ritz): Mr. Gaudet has one last point and then we'll take a vote.

Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: I do not know if I am jumping too far ahead, but it seems to me, if I read paragraphs 29.1(3) and 29.1(4), that more than one person can be designated. The ombudsman may delegate tasks to other individuals. If the principle I laid out this morning is confirmed, we will end up with a complete organization.

Subsection 29.1(3) reads: The ombudsman or a person authorized by the ombudsman to act on his or her behalf, shall review and attempt to resolve the complaint [...]

We are talking here about two different people. If I understand this correctly, if the ombudsman is unable to review the complaint, he delegates this responsibility to somebody else. Under subsection 5, it says that at least once a year, the ombudsman submits a report. This has to be done by the ombudsman himself. So we end up with a bureaucracy. Let me tell you right away that I am going to vote against this. As I said this morning, we are setting up a full-fledged independent organization. Mr. Séguin shared this view and it seems clear to me. We can have paragraphs 3 and 4 on the one hand, and paragraphs 5 and 6, on the other hand, are totally different things.

[*English*]

The Vice-Chair (Mr. Gerry Ritz): Thank you, Mr. Gaudet.

I held my vote in abeyance until I heard a little more discussion. I've heard that now. I will support Mr. Angus's subamendment.

(Subamendment agreed to)

Hon. Wayne Easter: Just so we're clear, Mr. Chair, what has been carried here is "a person who will become an Agency employee", right?

The Vice-Chair (Mr. Gerry Ritz): Right, so there's no royal recommendation required then.

Mr. Miller.

Mr. Larry Miller: Mr. Chairman, with all this I'm still not totally happy about the compensation issue, and I have a proposed subclause 29.1(7) to add to this amendment as a subamendment, "That the ombudsman may recommend an appropriate compensation", and I'm not sure whether I need to put in there "as specified in clause 43.1" or not. I'll leave that up to your judgment, but I believe just ending it at "compensation" is complete.

On discussion on that, Mr. Chairman, the reason I added "may" in there is I think "may" is the key word. Because it's a recommendation, we should not have to go for a royal whatever, and if the panel that actually looks at that wants to pursue that, then they can, but it's an option.

The Vice-Chair (Mr. Gerry Ritz): If you could, present that to the table here.

To the experts, is the word "may" a "get out of jail free" card in this instance?

Hon. Wayne Easter: I think you have a problem, because if it's "may", Mr. Chair, it means he or she can, and if he or she can recommend compensation, then you are beyond the prerogatives we have in dealing with this bill. I think you would find it tossed out as out of order.

Mr. Larry Miller: I'm saying we need to change the prerogatives.

Hon. Wayne Easter: Legal counsel can clarify that.

The Vice-Chair (Mr. Gerry Ritz): So it's there.

The amendment that has come forward would be proposed subclause 29.1(7), and it reads "That the ombudsman may recommend an appropriate compensation as specified in section 43.1".

Mr. Larry Miller: I stand to be corrected on that, Mr. Chair. I'm not sure that part needs to be in there, after hearing it.

The Vice-Chair (Mr. Gerry Ritz): Okay, but this is what you tabled.

Mr. Larry Miller: But I pointed out to Bibiane that it ended at "recommendation"; "may make a recommendation".

The Vice-Chair (Mr. Gerry Ritz): So you would delete "as specified in section 43.1"?

Mr. Larry Miller: Yes.

The Vice-Chair (Mr. Gerry Ritz): All right. So it would read, as proposed subclause 29.1(7), "The ombudsman may recommend an appropriate compensation".

● (1315)

Mr. Mark McCombs: Recommend to whom?

Mr. Larry Miller: Well, we have a panel, or to the president.

Hon. Wayne Easter: To the president or to ADR?

Mr. Mark McCombs: You're just setting yourself up for a process that could end up in the court system. Here's the problem. If you recommend to the president and the president has no financial authority to pay—because you've used the word "compensation"—then what you're setting yourself up for is a court action to force a recommendation that's been made to be implemented. It creates more problems.

Mr. Larry Miller: Mr. Chair, I would say to Mr. McCombs then, you're the lawyer, I'm not; tell me who we should put it towards. You know what my intent is.

Mr. Mark McCombs: I realize what your intent is.

Mr. Larry Miller: Okay, so you tell me the proper way to word this.

Mr. Mark McCombs: The problem you have with the legislation is that the royal recommendation is not on it and you use "compensation". Compensation is a claim for damages, which then requires a royal recommendation. I'm telling you that as a lawyer.

Mr. Larry Miller: I realize that, but we're here as legislators, so let's change the legislation.

The Vice-Chair (Mr. Gerry Ritz): Mr. Angus.

Mr. Charlie Angus: It seems to me we've already crossed that Rubicon because we did vote on new clause 43.1 this morning, as far as I can remember, and we had that word "compensation" in. Now, in new clause 43.1 it says he may apply to the ombudsman, and I think it's "and/or the alternative dispute...panel", so it doesn't necessarily say it's the ombudsman's role to decide compensation. It appears to me he can apply to the ombudsman to look at it, and I would think that it would go to the alternative dispute resolution. But we have "compensation" already listed in here, so if we're going to have a problem with the royal prerogative, it's going to be coming up one way or the other.

Secondly, whether we need to go any further in specifying the ombudsman has the power to do that...because it seems this would be going under dispute resolution.

The Vice-Chair (Mr. Gerry Ritz): Mr. Anderson.

Mr. David Anderson: I'd like to make the same point Charlie did. If the suggestion is amended that the recommendation go to the ADR, then that allows them to make a recommendation that's not binding. It comes into that situation. The ADR has extra information that they may need there.

I got a little frustrated when I heard you say this creates more problems, because from a farmer's perspective, from a producer's perspective, it actually creates more opportunities for solutions. I understand where you're coming from, but those are not always problems, because producers then have access to some solutions.

Mr. Mark McCombs: I don't disagree with you in terms of access, but it's making the process much longer than it currently is, and there's no way a payment can be made in a week and a half with that type of process.

Mr. David Anderson: Well, they don't have to go through an ombudsman. If they go through this person and they make a recommendation, the way it's set up right now it looks like they can go right to the ADR if they want, or whatever. The more help we can have for producers in this the better. I know where you're coming from.

Mr. Mark McCombs: I clearly understand your intention; however, the addition of another layer of bureaucracy will create more paper, and that layer of bureaucracy will hurt producers in the timeframes because the ombudsman will have his or her own process.

Mr. David Anderson: We've tried to put some sort of appeal process in here and we've been basically turned away at every turn. I don't think we should have to hear a lecture about putting another layer of bureaucracy in place because we want to get something that's accountable to producers.

Hon. Wayne Easter: I have a point of order.

Listen, Mr. Anderson—

Mr. David Anderson: Please, if you want to disrupt the meeting, go right ahead.

Hon. Wayne Easter: I'm on a point of order.

Mr. David Anderson: You don't have a point of order when I'm talking.

An hon. member: Yes, he does.

Hon. Wayne Easter: You asked legal counsel for their interpretation and they gave you an interpretation. You have no right to accuse them of giving you a lecture. They're basing it on their legal knowledge, by telling—

Mr. David Anderson: Then I'll give you the lecture, Mr. Easter, because you folks need to find it.

The Vice-Chair (Mr. Gerry Ritz): The point of order is taken, Mr. Easter.

Mr. Miller.

Mr. Larry Miller: My only point in the discussion on it was this. We have to remember that the word in here, and I think it's the key word, is “may”, not “shall”.

The Vice-Chair (Mr. Gerry Ritz): Mr. Angus, the last word.

Mr. Charlie Angus: What Mr. Miller is trying to do is something that we've been pushing for. It's in new clause 43.1. I think when he says “may apply”, that doesn't mean we're creating a new level of bureaucracy that has to be applied in all cases. This means that if he doesn't feel this situation is working he can go to the ombudsman. That's why we created the ombudsman. I don't think we're locking anybody into a long dispute resolution. We're saying that if he's not satisfied with how things are working he may apply to the ombudsman to speed this case along. I think that is why the wording is set out that way.

The Vice-Chair (Mr. Gerry Ritz): Thank you, Mr. Angus.

Mr. Easter.

● (1320)

Hon. Wayne Easter: On the subamendment proposed, on proposed new subclause 29.1(7), Mr. Chair, I am strongly opposed to it. I do think we run into more problems here with the royal prerogative. We already have one section that I think we'll find in dispute as a result of the expenditures and money. I would suggest that we defeat proposed new subclause 29.1(7) and go with the remainder, which puts an ombudsman in to do everything we're trying to do on complaints. I think one of our difficulties is we're trying to find a compensation process, which only the courts can deal with.

The Vice-Chair (Mr. Gerry Ritz): Thank you.

Mr. Anderson.

Mr. David Anderson: I think it's important that we put this in. It just gives one more opportunity. Otherwise, we put this ombudsman in and basically it's just a place for people to come and have their complaints dealt with, and nothing happens with them. I think it's important that we put some teeth in this person and give them the opportunity to make some of these recommendations.

The Vice-Chair (Mr. Gerry Ritz): And the key word is “may”.

All right, we'll call the vote.

I'll read the recommendation again. Under proposed new subclause 29.1(7):

> The ombudsman may recommend an appropriate compensation.

Hon. Wayne Easter: Before you call the question, could you read new clause 43.1? I don't have it in front of me, but I believe if you go back you'll find it refers to the ombudsman, so it would be absolutely unnecessary to restate it here in proposed new subclause 29.1(7).

The Vice-Chair (Mr. Gerry Ritz): Well, it doesn't actually specify that the ombudsman can make a recommendation in new clause 43.1, Mr. Easter, and this amendment would. It refers to the ombudsman and the dispute resolution.

All those in favour of the subamendment? Opposed?

We have a tie again.

I have to vote. As chairman I vote for the subamendment.

(Subamendment agreed to)

The Vice-Chair (Mr. Gerry Ritz): We have one little housekeeping issue here, to the witnesses at the end of the table.

The point was raised that you were going to put in some wording—that is, "without delay"—in new subclauses 29.1(5) and (6), in both those instances. It says in (6) that the president will submit a copy to the minister without delay, but we don't have that between the president and...or the ombudsman, and so on.

Were we going to try to work some wording in there? Have you done that?

You read it in? We don't have it up here.

Mr. Mark McCombs: Do you want it written?

The Vice-Chair (Mr. Gerry Ritz): Please; give us a refresher.

Mr. Mark McCombs: Fine, we'll write a....

The Vice-Chair (Mr. Gerry Ritz): We'll need it right away. We're moving on from this clause. We'll be voting on the full amendment.

Mr. Mark McCombs: Is the change in new subclauses 29.1(5) and (6), or just (6)?

The Vice-Chair (Mr. Gerry Ritz): We actually have it in (6) already.

Mr. Mark McCombs: Yes, but the concern was only with respect to the minister making it public without delay.

The Vice-Chair (Mr. Gerry Ritz): It's with respect to the president submitting it to the minister without delay, and then the minister making it public without delay.

I guess it could all be done within (6) if you say:

> The President shall submit the report to the Minister without delay, who shall make a copy of it public without delay.

Are you okay with that?

All right. We've got it.

If no one has a problem with that, we don't need to vote on that particular little amendment. It's a given.

We'll be voting on new clause 29.1, then, as amended.

(Amendment as amended agreed to on division)

(On clause 32—*Searches*)

● (1325)

The Vice-Chair (Mr. Gerry Ritz): Okay, folks, on page 48 in your amendment book you have NDP amendment 10.6.

Charlie, do you want to move that forward?

Mr. Charlie Angus: I do. And I believe the next one is fairly.... There are two amendments that have basically similar wording.

The Vice-Chair (Mr. Gerry Ritz): On pages 48 and 49?

Mr. Charlie Angus: Yes.

Hon. Wayne Easter: On that one, Mr. Chair, I think we agreed that we needed the case law explained, the "exigent" cases or whatever there.

Who's got it?

Mr. Mark McCombs: I can do it.

The question was with respect to warrantless searches and exceptions for exigent circumstances?

Hon. Wayne Easter: Yes.

Mr. Mark McCombs: Exigent circumstances are an exception with respect to section 8 of the charter. The courts have said that exigent circumstances are an exception. The ancient maxim that a man's home is his castle would be an exception because of exigent circumstances.

In case law, it came from the Supreme Court of Canada, in R. v. Grant, that exigent circumstances are often described as being circumstances where there is a risk of imminent destruction, removal, or loss of evidence.

I think that probably addresses the committee's concern.

Another one comes from R. v. Feeney, the Supreme Court of Canada, 1997:

> ...exigent circumstances arise usually where immediate action is required for the safety of the police or to secure and protect evidence of a crime.

I could keep going. There is a pile of case law.

If you go back to what I recounted from R. v. Grant, about the risk of imminent destruction, removal, or loss of evidence, or the safety of the enforcement officers, those are usually the criteria for exigent circumstances.

The Vice-Chair (Mr. Gerry Ritz): Thank you, Mr. McCombs.

Mr. Angus, are you withdrawing both of those?

Mr. Charlie Angus: Yes.

The Vice-Chair (Mr. Gerry Ritz): Both of those amendments? So pages 48 and 49 are no longer relevant? All right.

(Clause 32 agreed to on division)

The Vice-Chair (Mr. Gerry Ritz): The next clause that was stood was clause 44. That is on page 22. We have NDP-13 on page 54.

(On clause 44—*Costs for inspections, etc.*)

Mr. Ken Boshcoff (Thunder Bay—Rainy River): Mr. Chair, I only have a summary.

The Vice-Chair (Mr. Gerry Ritz): Oh, you don't have the big book. This is a whole book we've been working with, Ken. We have a copy here for you. The legislation itself is stand-alone as well.

Charlie, your amendment—13 on page 54.

Mr. Charlie Angus: Yes.

The Vice-Chair (Mr. Gerry Ritz): Okay. It's already moved; it's been stood. Any discussion?

Mr. Anderson.

Mr. David Anderson: I'd like to speak in favour of this. I think it's reasonable that there needs to be a conviction and an offence before this is applied.

Hon. Wayne Easter: I'll give you our reasoning for not supporting the amendment. The provision currently exists in the Health of Animals Act, section 50, and the Plant Protection Act, section 38. This protects the Crown and the CFIA from liability for costs, loss of damage, or having to pay any fee, rent, or other charge when a person is required to take action in order to comply with an agency-related act. I'll give you an example, and maybe the witnesses could give others.

If an importer does not have the required documentation when the product is imported, they may be required to store the product until such time as they gain possession of the documentation. That's an example of one of the things the CFIA has to do to carry out its duty. The witnesses may want to add something to that.

● (1330)

Ms. Kristine Stolarik: I'll add a food safety example. Suppose a major food safety problem is detected and CFIA approaches the company responsible and seeks its cooperation in removing the product from the marketplace and warning consumers about the risk. In the end, though, CFIA receives no cooperation from the company. So the minister orders a recall of the unsafe product and CFIA incurs significant costs related to the recall—locating the product, collecting the product, and disposing of the product. These costs should be borne not by the taxpayers of Canada but by the company that produced or imported the product subject to the recall—and then refused to take responsibility for it.

I can give you another example on importation. We get this quite often. Importation of a product is found to be infested with a pest or a disease, the importer refuses or gives up ownership of it, and the Crown is stuck with the disposal costs. In these cases, we'd like to be able to recover some of the costs from the people who bear the responsibility but fail to comply with the regulations.

Mr. Charlie Angus: On clauses 44 and 45, we were bringing amendments forward because of the wording in the language of the bill, which basically absolves the government of any liability for anything whatsoever. If those clauses could be rewritten, we would be willing to remove our amendments. We are concerned about allowing blanket freedom from liability. You don't cover the full range of what's being addressed here. We would like to see some wording to cover cases where a person shouldn't be liable for costs. There's nothing in this wording to protect a person who has been asked to do something and incurs phenomenal costs. If such a person goes to his ombudsman under section 43.1, they'll simply say, "Under section 45, 'Neither her Majesty in right of Canada nor the Agency is liable for any loss, damage or costs...'"

That language has to be rewritten. I'm willing to stay mine until we can get some wording in there, but clauses 44 and 45 have to have fairer language.

The Vice-Chair (Mr. Gerry Ritz): Thank you, Mr. Angus.

Mr. Easter.

Hon. Wayne Easter: Can we stand it down and look at it while we're at question period?

The Vice-Chair (Mr. Gerry Ritz): Certainly, Mr. Easter. I can see Mr. Angus's concern. Even the examples you folks gave are for people who were guilty of something.

On what Mr. Angus is seeking to do, someone who is found not guilty may still incur costs. There's really no reason why they should bear that liability when they had no control over it. So perhaps we can rework something like that while we're at question period, and then revisit it.

(Amendments allowed to stand)

Mrs. Rose-Marie Ur: What is that on?

The Vice-Chair (Mr. Gerry Ritz): It's on Charlie's amendments on pages 54 and 56 on clauses 44 and 45. We'll hold those until we're back after question period.

The next order of business is on page 62 in your green book. I sound like a choir leader at church.

● (1335)

[*Translation*]

Mr. Roger Gaudet: This one too has been set aside.

[*English*]

The Vice-Chair (Mr. Gerry Ritz): Amendment NDP-15 speaks to line 19 on page 25 of the bill.

Charlie.

Mr. Charlie Angus: I move it forward.

The Vice-Chair (Mr. Gerry Ritz): Is there any discussion?

Mr. Easter.

Hon. Wayne Easter: As I've said before, I don't think there's a bill with as many oversight and accountability bodies as we now have in this bill. If you recall, we did re-inspections as one. There's ministerial oversight by both the Minister of Agriculture and Agri-Food and the Minister of Health. There's parliamentary oversight through ourselves as a standing committee. There's the Auditor General's oversight.

The key reason why the government does not support this amendment is because the right to apply for judicial review to the Federal Court is contained in section 18.1 of the Federal Courts Act, which sets out the requirements and the process for applying for judicial review. Other federal legislation does not contain provisions that reference the Federal Court, but rely on the Federal Courts Act, which establishes the legal requirement for the Federal Court of Appeal in the Federal Court. This amendment would be inconsistent with the requirements that are set out in the Federal Courts Act. For all of those reasons, we oppose this.

The other point I could make—although it doesn't directly relate—is we are trying to set up an advisory board as well.

Mr. Mark McCombs: I'll just add to that. I think we discussed this when we originally brought this one. As Mr. Easter has said, this sets up a different mechanism. The Federal Court already has this type of jurisdiction, but when you set up an appeal mechanism it creates a new workload for the Federal Court, because the Federal Court will not be able to process these through its normal process. They will have to react the same way they reacted to the Health of Animals and Plant Protection Acts, by creating the assessor process.

With this process you'll be moving Federal Court judges out of the normal judicial review system into an appeal system under this legislation. That will then require the Chief Justice to assign Federal Court judges to deal with appeals under this Bill C-27, and it won't be a judicial review process.

So the current process in place under the Federal Court system that Mr. Easter spoke about would be the same as this, except for the fact that we would now use appeal.

Mr. Charlie Angus: I'm willing to hear if anyone else is willing to support it. Otherwise I'll....

The Vice-Chair (Mr. Gerry Ritz): Is there any more discussion? I can understand the purpose. Mr. Easter listed off all the checks and balances in the bill. You're speaking to the effectiveness of those.

Mr. Bezan.

Mr. James Bezan: The one thing we heard over and over again is that there had to be more oversight. So if we have extra checks and balances in here, I think that's a good thing. I support what Charlie is putting forward here as an amendment. I think we should take a hard, serious look at making sure we are addressing the concerns that were raised by witnesses throughout the hearings we held this spring.

One more step isn't going to hurt, Wayne, not one bit.

The Vice-Chair (Mr. Gerry Ritz): Is there any more discussion?

Hon. Wayne Easter: The fact of the matter is, though, Mr. Chair, I don't know who we're trying to fool here. It is inconsistent with other legislation. You always have the right to go to the Federal Court. It's one of the things that's in our laws in the country. I don't know why we need to restate it.

Mr. James Bezan: Because we still have a situation where producers and processors don't have the financial resources to take the Government of Canada to task all the time in the court system. People just don't have that deep a pocket.

The Vice-Chair (Mr. Gerry Ritz): Is there any more discussion?

Mr. Anderson.

Mr. David Anderson: I have one question.

First of all, Mr. McCombs, I want to apologize for my statements a few minutes ago; I realize you're the messenger carrying the government's message and there are other people who are responsible.

Wayne talks about fools or whatever, but again I see government replacing members who had the courage to stand up and vote as they should have on some of the amendments; they brought in other people to replace them who would probably be more compliant. But I want to ask the question, would this form, this application made within 30 days, the appeal, be anything different from what's presently available?

● (1340)

Mr. Mark McCombs: Any decision by any public servant in this country has a 30-day period where you can go to the Federal Court and ask for judicial review. So this particular amendment does create a separate process.

The Vice-Chair (Mr. Gerry Ritz): Mr. Angus.

Mr. Charlie Angus: Mr. Chair, I haven't heard it yet because my understanding is that people do have that right, but I don't see how this, by saying if they're not satisfied with what they have, they have 30 days to go to the Federal Court.... It's not obliging a separate mechanism of court; it's saying they can take it to the Federal Court. I haven't heard an argument yet as to why we're creating some other kind of track.

Mr. Mark McCombs: Can I respond, Mr. Chair? Effectively, what you're doing is conferring new jurisdiction on the Federal Court to deal with an appeal. What the Federal Court will then be required to do is seek resources in order to deal with this appeal mechanism, and again we're probably crossing into the royal recommendation piece.

The Vice-Chair (Mr. Gerry Ritz): Charlie.

Mr. Charlie Angus: Mr. Chair, we're talking about one of those rare instances, one of the one out of a hundred or something, where say a shipment of wheat—so millions of dollars—is at stake and their entire processing business is on the line here. If they're not getting satisfaction, they're going to have to be able to go to the Federal Court.

I don't see that we're saying we're going to create new powers for the Federal Court. The Federal Court has to be able to step in at that point. So if it costs the Federal Court money to look at a review of that situation, that's something the Federal Court would have to be willing to do. These would be major instances when you would be going to Federal Court. It would cost any producer, any processor, a fair amount of money to go to court. We're talking about those few instances where a lot of money is on the line and it's probably outside the purview of CFIA, outside of what their normal payment compensation plans would be. So I'm keeping it on the table.

The Vice-Chair (Mr. Gerry Ritz): Thank you for that, Mr. Angus.

Mr. Drouin.

[*Translation*]

Hon. Claude Drouin: I call for the vote, Mr. Chairman. I believe we have all the clarifications we need. Let us put it to a vote.

[*English*]

The Vice-Chair (Mr. Gerry Ritz): We will call the vote on amendment 55.1.

(Amendment negatived)

(On clause 56—*Regulations*)

The Vice-Chair (Mr. Gerry Ritz): I think we have time for one more. We have an NDP amendment.

Charlie.

Mr. Charlie Angus: I think we're a bit stuck on this one. We have been talking about this advisory board that we want to get back up and running, and get it mandated so that it just doesn't disappear when a new agriculture minister comes in. This is part of that. So I don't think we can go forward on that amendment until we've actually come to some final wording on whether or not we can mandate this advisory council.

The Vice-Chair (Mr. Gerry Ritz): So you want to stand this down at this point?

Mr. Charlie Angus: I think we have to at this point.

Hon. Wayne Easter: Mr. Chair, I think in fairness to Mr. Angus, we need to deal with the advisory amendment that the government has put forward. We can do that as soon as we come back.

The Vice-Chair (Mr. Gerry Ritz): Still on clause 56, we have a government amendment G-13 on page 64 of your book.

Wayne, did you want to move that?

Hon. Wayne Easter: Yes. What page?

The Vice-Chair (Mr. Gerry Ritz): Page 64, G-13.

Hon. Wayne Easter: Yes, I will so move, Mr. Chair. I think that was dealing with a concern that somebody raised on toxic substance, I believe. It's just basically housekeeping.

The Vice-Chair (Mr. Gerry Ritz): Is there any discussion?

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

The Vice-Chair (Mr. Gerry Ritz): All right. That went so well, we'll do one more quickly. NDP-16 on page 65, still in clause 56. We go quite a ways ahead in our books.

Charlie.

● (1345)

Mr. Charlie Angus: Yes. Sorry, I'm just finding it here.

The Vice-Chair (Mr. Gerry Ritz): You have it under paragraph (q) at the top of page 27.

Mr. Charlie Angus: Yes. I think we're mandating to come forward with the rules for what would be in terms of practices and procedures for renewal, amendment, or suspension. So yes, I move it forward.

The Vice-Chair (Mr. Gerry Ritz): All right. Any comment?

Mr. Easter.

Hon. Wayne Easter: We're opposed, Mr. Chair. What the amendment would really do would narrow the regulation-making authority to apply to only rules the minister must abide by or follow. So it would narrow the regulating authority quite substantially.

Either Mark or Kristine might expand on that, but that's what the government.... We are opposed.

The Vice-Chair (Mr. Gerry Ritz): Mark, do you have any comments?

Mr. Mark McCombs: Essentially, it's only the practice and procedure to be followed by the minister with respect to that. That's the narrowing piece. The words "establishing rules" are also narrow legal words in terms of narrowing what the authority was.

What paragraph (q) effectively was doing was allowing us to make regulations that would be open and accessible to the public so that people would be able to actually see the entire process. This would narrow the process. Anything falling outside of that would be done by policy guidelines.

The Vice-Chair (Mr. Gerry Ritz): So what you're saying, Mark, is if the word "Minister" was replaced by "department", it would be fine?

Mr. Mark McCombs: No.

The Vice-Chair (Mr. Gerry Ritz): It still wouldn't be good?

Mr. Mark McCombs: That would catch Agriculture.

The Vice-Chair (Mr. Gerry Ritz): Well, you said it was too narrow with just the minister.

Mr. Mark McCombs: With "establishing rules"....

Ms. Dudley is going to comment on that.

The Vice-Chair (Mr. Gerry Ritz): Ms. Dudley, go ahead, please.

Ms. Jane Dudley: Mr. Chair, with this proposed amendment you'd be losing the regulated parties. The way the provision is drafted, the practice and procedure would apply to the parties, not just the minister. This one would bind only the minister.

The Vice-Chair (Mr. Gerry Ritz): Right.

Charlie, go ahead, please.

Mr. Charlie Angus: If I took out "by the Minister" and had "establishing rules regarding the practice and procedures to be followed with respect to the renewal, amendment, suspension", blah, blah, blah, I would strike "the Minister" from that, and then that would cover the larger agency.

The Vice-Chair (Mr. Gerry Ritz): So you're proposing an amendment to your own amendment. It should be friendly.

Mr. Charlie Angus: It's an amendment to my own amendment. It's what I've wanted to do on many occasions.

The Vice-Chair (Mr. Gerry Ritz): We can't really do that. You'd have to withdraw what you have and then retable.

Mr. Charlie Angus: Okay. I will do that.

(Amendment withdrawn)

The Vice-Chair (Mr. Gerry Ritz): All right. Your original is withdrawn and now it has been retabled without "by the Minister".

Mr. Anderson, go ahead, please.

Mr. David Anderson: I think he's making it more complicated here than it needs to be, because it reads then "the agency...including regulations (q) establishing rules respecting". I don't know that we need regulations establishing rules respecting the licences. I just think it's getting one step too complicated there.

The way it reads presently from the preamble is "the purposes and provisions of this Act, including regulations...(q) respecting the renewal", blah, blah, blah. He's suggesting "regulations...(q) establishing rules respecting the...renewal". I think it's just too complicated.

The Vice-Chair (Mr. Gerry Ritz): Thank you.

Mr. Easter.

Hon. Wayne Easter: Could I ask Mr. Angus what he's trying to get at here, because I don't quite see the problem with paragraph 56 (q)? What issue are you trying to address with this amendment?

Mr. Charlie Angus: I think it was to establish that we have a very clear set of guidelines. If we are going to be suspending licences, what are those guidelines that we're looking to set up—clear and easy rules? We're talking about respecting...we're giving them the regulations to amend, suspend, revoke, or reinstate licences. I would like something a little more focused. We're giving them the power to set the guidelines so we can judge when a licence is revoked—

The Vice-Chair (Mr. Gerry Ritz): I'll refer it to Ms. Stolarik, and then we'll have to head for question period, folks.

Ms. Kristine Stolarik: I guess I can supplement or try to answer that concern, Mr. Angus. When we have a regulation-making authority to renew, amend, suspend, revoke, and reinstate, this will also include the procedures to be followed for the renewal, the amendment, the revocation, and the reinstatement. It's basically part of the regulation-making process.

Mark just suggested adding "and including procedures to be followed".

● (1350)

The Vice-Chair (Mr. Gerry Ritz): Are you adding or deleting from what we have here?

Ms. Kristine Stolarik: We're just suggesting that perhaps the way we could satisfy it in paragraph 56(q) would be to say "respecting the renewal, amendment, suspension, revocation, or reinstatement of licences and procedures to be followed".

The Vice-Chair (Mr. Gerry Ritz): Are you okay with that, Charlie?

Mr. Charlie Angus: I can live with that.

The Vice-Chair (Mr. Gerry Ritz): All right. Does anyone else have a problem with that?

A voice: So he's not going through with his amendment?

The Vice-Chair (Mr. Gerry Ritz): No, he's withdrawn his amendment. The experts are saying that paragraph 56(q) will then read "respecting the renewal, amendment, suspension, revocation, or reinstatement of licences and procedures", and Charlie has accepted that.

Does anyone else have a problem with that? We're good to go? Okay.

(Amendment agreed to on division)

The Vice-Chair (Mr. Gerry Ritz): The committee stands adjourned until 3:30 in room 371, West Block.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
http://www.parl.gc.ca
