



House of Commons
CANADA

Standing Committee on Canadian Heritage

CHPC • NUMBER 062 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Tuesday, November 15, 2005

—
Chair

Ms. Marlene Catterall

All parliamentary publications are available on the
"Parliamentary Internet Parlementaire" at the following address:

<http://www.parl.gc.ca>

Standing Committee on Canadian Heritage

Tuesday, November 15, 2005

•(1105)

[English]

The Chair (Ms. Marlene Catterall (Ottawa West—Nepean, Lib.)): I'm calling to order this meeting of the Standing Committee on Canadian Heritage. We are dealing this morning with Bill S-37, An Act to amend the Criminal Code and the Cultural Property Export and Import Act.

Just for the committee's information, Mr. Angus has informed me that he cannot be here today. He would like to defer consideration of his motion.

Ms. Oda, did you want to deal with yours at another meeting, or today...?

Ms. Bev Oda (Durham, CPC): I'm prepared to deal with it today, Madam Chair, at your discretion.

The Chair: And Mr. Kotto, your motion?

[Translation]

Mr. Maka Kotto (Saint-Lambert, BQ): I would like us to look at it today.

[English]

The Chair: Merci.

We will then proceed. We have witnesses from the department to tell us all about Bill S-37.

Ms. Lyn Elliott Sherwood (Executive Director, Department of Canadian Heritage): Thank you, and good morning. My name is Lyn Elliot Sherwood. I'm executive director for the heritage group in the Department of Canadian Heritage. With me is Kathy Zedde, the senior policy adviser in the heritage group; Christopher Ram, from the criminal law section of the Department of Justice; and Marie-Lise Julien, also with the Department of Justice but with the group that's with the Department of Canadian Heritage.

Am I sufficiently audible?

The Chair: You are.

Ms. Lyn Elliott Sherwood: I can bellow, if need be.

If everyone has a copy of the deck we've provided to the committee, I would like to go through it just to introduce you to the underlying concepts.

[Translation]

I will make my presentation in English, but obviously, you may speak in the language of your choice.

[English]

What I would like to do is provide a brief overview that hopefully will provide the context for consideration of the bill itself, starting with the fact that the underlying instrument is the 1954 Hague convention.

It was developed by UNESCO in response to destruction and displacement of built and moveable heritage during World War II and sets out a series of measures for the protection of heritage in anticipation of and during armed conflict. There are 114 states parties to the convention, including Canada.

Canada joined the convention in 1999, as part of its human security agenda at the international level. The most direct impact on the country of joining the convention relates to the reinforcement of respect for and protection of heritage by Canadian armed forces operating abroad. That instrument is in place and has been in place for six years at this point.

There are also two protocols or annexes to the convention. The first protocol was also developed in 1954. It deals exclusively with the export of cultural property from occupied territories and the deposit of cultural property for safekeeping by one state in another during conflicts. Under the convention, cultural property is defined quite broadly. The definition of cultural property is annexed as a schedule to the Cultural Property Export and Import Act in Bill S-37.

There are 91 states parties to the first protocol, but Canada is not yet one of them. We did not join in 1999 because of particular legal impediments that existed at that time but have now largely been resolved. Those legal impediments dealt with the lack in the Canadian legal framework of a framework for prosecuting offences that occurred outside the country. That framework has now been established, and I will come back to this.

The second protocol was developed in 1999 to rectify significant weaknesses and vague concepts in the convention, particularly with respect, for example, to when a country might cease to be able to claim the protection of cultural property for a given site. For example, if it had created a military centre of operations in a cultural building, it could no longer claim that kind of protection. It also set out, as I'll note later, some obligations.

The second protocol responds to changes in armed conflict and risks to heritage since World War II and establishes a number of new measures, including an intergovernmental committee for the protection of cultural property in the event of armed conflict and a new regime of enhanced protection for certain heritage by which countries can designate proposed particular cultural property for enhanced protection. It also requires states that are party to the convention to pursue and prosecute those who damage, destroy, or misappropriate cultural heritage during conflict.

It was developed in 1999. Following its ratification by 21 countries, it came into force in March 2004. There are currently 35 states parties to the second protocol, again not including Canada and, I would note, at this point not including any of the G-8 countries. Canada would be the first G-8 country to join the second protocol.

The first protocol, which deals with the export, safeguarding, and return of cultural property, is consistent with the Canadian values that have already been expressed and adopted by Canada in the enactment of the Cultural Property Export and Import Act in the late 1970s.

Canada also played a very significant role in developing the second protocol, largely as the result of the expertise of our armed forces developed during various peacekeeping missions. DND personnel were involved in the expert committees at that time.

• (1110)

In order to join these two protocols, we need to establish the capacity to fulfill all of the obligations, and that is what Bill S-37 is intended to do.

Some of the pieces are already in place, and the most serious violations of the protocols would be prosecuted under existing provisions, either of the National Defence Act or of the Crimes Against Humanity and War Crimes Act. There are a few elements that still need to be enacted through legislative amendments, and what Bill S-37 proposes is the necessary amendments to the Criminal Code and to the Cultural Property Export and Import Act.

The amendments to the Criminal Code, summarized briefly, are that certain acts against significant cultural property that are currently offences committed within Canada would also become offences if committed outside Canada by Canadians, persons ordinarily resident in Canada or permanent residents. Those offences include: theft, arson, robbery, fraud, fraudulent concealment, and mischief.

In all cases except one, the same penalties are proposed for offences committed outside Canada as those committed inside Canada. There is a modification with respect to mischief or vandalism, and that is the option to pursue as an indictable offence a sentence of up to 10 years. Convictions under summary offences still exist, but the indictable offence provision is there as an option, in the case of mischief, without the requirement to determine the value of the cultural property that's been damaged.

As is the case under the code with other offences committed outside Canada, Bill S-37 creates an option for prosecution either by the Attorney General of Canada or the attorneys general or solicitors general of provinces.

With respect to the Cultural Property Export and Import Act, which has existed for some 28 years, the act already allows prosecution of those who import cultural property that has been illegally exported from a country with which we have a cultural property agreement, which would include membership in the Hague Convention. What Bill S-37 adds is a prohibition on the illegal export of cultural property from an occupied territory that is a state party to the second protocol.

The difference is that under the existing act, if someone, for example, were to loot an archeological site and bring the artifacts back to Canada, we could charge them. What we could not do is charge them if they looted an archeological site and disposed of the artifacts in an international market before coming back to Canada. By allowing us to deal with offences outside Canada, Bill S-37 would now allow for prosecution of a Canadian who stopped off at a world market on the way home. It also creates a mechanism that's similar to the one already in the act, allowing measures to return property to the country of origin.

Those are the primary features of Bill S-37, and we'd be more than pleased to respond to any questions, Madam Chairman.

The Chair: Where shall we begin?

Ms. Oda.

• (1115)

Ms. Bev Oda: Thank you, Madam Chair.

Thank you for being here today.

I think I understand Bill S-37, and certainly your explanation has helped fill in some of the areas for me.

I have one question. How does this act fit with the rules, guidelines, and regulations of the military itself? I would suspect the military itself—I've been informed—must have some guidelines and rules regarding similar acts.

Ms. Lyn Elliott Sherwood: I'll give you a general answer, and then turn it over to my colleague, Ms. Zedde, for a more detailed answer.

The requirements for military regarding respect for cultural property are actually set out in two conventions that Canada is already a member to. One is additional protocol I to the Geneva Convention, which Canada has belonged to for some 30 years. Second, in the Hague Convention itself, which we joined in 1999, Canada accepted the particular provisions with respect to the military. The military does have training and regulations with respect to this, and I ask my colleague, Ms. Zedde, to fill in on those.

Ms. Kathryn Zedde (Senior Heritage Policy Analyst, Department of Canadian Heritage): What I should say is that DND has worked with us throughout this file. They consider joining the protocols not to represent any additional operational or legal burden for them. The code of conduct for Canadian Forces personnel includes, as one of its rules, respect for cultural property, which references the additional protocol to the Geneva as well as the Hague conventions. The mechanisms are already very well in place, not only to train forces about their obligations, but also, within the legal framework of the Canadian Forces, to ensure that targets are not chosen in a way that would violate international law, including the Hague Convention or the Geneva protocol.

Ms. Bev Oda: Do I understand that this act would specifically be enforced regarding non-military citizens? And is there an obligation, since it's the Canadian military that are there, and an understanding about reporting or identifying acts that would fall under this?

Ms. Lyn Elliott Sherwood: Yes. The second protocol clarifies the rules of engagement with respect to military targets, or it reinforces the existing regime. But this act would also apply to private citizens. For example, in the example I gave of a looted archeological site, this would also apply to private citizens.

Ms. Bev Oda: So there is an understanding internationally that all the forces who have signed the agreement have a responsibility to report such actions.

Thank you.

The Chair: Maka.

[Translation]

Mr. Maka Kotto: Thank you, Madam Chair.

Good morning, and thank you for being here to enlighten us. If I understand correctly, this is a bill that follows in the vein of the Crimes Against Humanity and War Crimes Act, which allows for individuals having committed crimes during an armed conflict to be prosecuted. We in the Bloc Québécois support this bill. In fact, we have wholeheartedly supported this bill since 2000. However, we are obliged to come to the conclusion that the Canadian government has been dragging its feet on this issue for a long time. Canada did not join this convention that goes back to 1954 until 1998, as you stated earlier.

Moreover, it took seven years for the government to propose the legislative amendments necessary to comply with the two protocols to which, unless I am mistaken, we are still not party.

Could you give us a concrete explanation as to why this required seven years of thought?

Ms. Lyn Elliott Sherwood: Consideration of the protocol took place within the context of our respect for the multilateral instruments.

[English]

The general principle underlying this is that important cultural property that is damaged is not just damage to an individual country but is damage to all of humankind. That's a core principle underlying the UNESCO conventions. In this domain, the protocols themselves would simply complete the suite of instruments we've already adopted in respect of international respect for cultural property and

would continue to demonstrate Canada's leadership in the area of these multilateral arrangements for culture.

[Translation]

Does that answer your question?

• (1120)

Mr. Maka Kotto: Certainly.

[English]

The Chair: Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): What we're discussing here today is extremely important, when we look at some of the tragic events that happened during World War II, when you look at the city of Dresden. I had the pleasure of one time visiting Dresden and was shocked and horrified that the city was almost 90% destroyed. It really was a jewel of Europe. Luckily, in the last few years it has been rebuilt, not quite to the same scale as before, but it has been remarkably rebuilt. We look at what happened not too long ago with the Taliban as well, and the destruction of those giant Buddha carvings in the rock, in relief, and how the world was quite horrified by that. There are regimes and governments and sometimes even wars that take place that destroy so much of that cultural heritage—and you're right, it's world heritage. The question is how we can put in place whatever protections we can to make sure this does not happen and that the world community comes together collectively in horror, but also to stop these acts.

My big fear is, and I know over the course of a number of years UNESCO has designated several cities and sites as part of the collective world heritage.... I question how strong these conventions are that we're also party to. How much do they have teeth? Is it just simply words and paper? Do they actually have some type of force behind them?

Ms. Lyn Elliott Sherwood: I'd like to ask my colleague, Ms. Zedde, to speak of a recent conviction with respect to the former Yugoslavia.

Ms. Kathryn Zedde: Thank you.

Of course, the general answer is that the more countries adhere to them, the stronger these types of instruments are. Personnel at UNESCO have indicated their hope that the Hague Convention will eventually have so many states party to it that it will end up being considered customary international law, so the obligations would be seen to be on countries whether or not they had actually taken the steps to join.

In terms of teeth, one of the main things we have seen is a growing willingness to prosecute acts that do occur in violation of these instruments. The case that my colleague referred to took place recently at the International Criminal Tribunal for the former Yugoslavia. Former members of the Yugoslav military were convicted of war crimes in connection with the attack on Dubrovnik as a part of the attacks on Croatia during the breakup of Yugoslavia.

There is certainly a growing awareness and a willingness in those types of international tribunals to identify these types of acts as war crimes, violations of the Hague Convention and the additional protocol I to the Geneva Convention.

One can debate the type of deterrent effect they have. I think this is the case, the more countries join the instruments, but certainly the international community has served warning that, based on these types of international agreements, those types of acts will not go unpunished.

Mr. Mario Silva: That's a very positive development, really, to move toward the whole world understanding and appreciating that what is lost is not just lost to one country but lost to all of humanity for all time—you're right. So that being the case, it has to be given the same severity I think as if a life has been destroyed, because they really are destroying something that is very precious to all of us.

It's good to hear these incidents. I'm hoping this is going to be the case in the future, that in fact this type of destruction is seen the same way as the destruction of life, because they are really destroying something that is of quite profound importance to the world.

Thank you.

• (1125)

The Chair: Are there any other questions?

I have just a couple of points. I'm a little bit concerned that we have several acts interacting here. On page 7 you say that the most serious violations of the protocols would be prosecuted under existing provisions of either the National Defence Act or the Crimes Against Humanity and War Crimes Act. I'm not sure how those two mesh with this or whether penalties under the National Defence Act are equivalent to the same penalties for the same misdeed under the other act.

Ms. Lyn Elliott Sherwood: I'll ask my colleague from the Department of Justice to address that.

Mr. Christopher Ram (Legal Counsel, Criminal Law Policy, Department of Justice): I can give I think a partial answer to that. We cross-checked this in terms of the question of whether this particular legislation increases the liability of members of the Canadian Forces. The way military justice generally works in Canada, the National Defence Act establishes a code of service discipline, which has service offences that are particular to the military, and then it incorporates by reference all of the offences from the Criminal Code. When it does that, it subjects military personnel to exactly the same punishments.

The crimes are triable by military tribunals, but the outcomes are the same. The only difference is that in the case of a service offence—theft, for example—the jurisdiction to prosecute is extraterritorial. So members of the Canadian Forces were already subject to extraterritorial jurisdiction if they committed theft outside of Canada while they were on duty, whether it was cultural property or not. The only other difference is that in the penalty clause in the National Defence Act, in addition to the Criminal Code penalties there is included the additional penalty of dismissal from the Canadian Forces with disgrace.

The other half of the question, the relationship between the application of war crimes offences for which the jurisdiction is

universal and the Criminal Code offences—I don't think anyone at this stage is that clear where one ends and the other begins, because we don't have an extensive body of case law on war crimes. For that reason, when we reviewed the sentences in the Criminal Code amendments to make sure they were adequate, we made sure there was a broad range of sentences, right from the bottom of the summary offence range up to anywhere between 10- and 14-year maximums, so that whichever way a particular case proceeded through the justice system, there would be adequate penalties in place.

The Chair: Thank you.

Ms. Bulte, and then Ms. Ratansi.

Hon. Sarmite Bulte (Parkdale—High Park, Lib.): I have a couple of questions.

I heard you say that none of the G-8 countries have ratified. Why not? Canada would actually be a leader in this, if we ratify. I'd be interested to find out why the other G-8 countries haven't ratified.

For a point of clarification, Mr. Silva raised the fact about the Taliban and the statues. I think it's important to understand that this legislation would not catch that.

I think it's important that people know what it will catch and what it won't catch. This is not somehow going to be seen as a great way to retrieve the Elgin Marbles and get back into that debate. For the record, I think it's important to ensure what it will catch and what it won't catch.

Ms. Lyn Elliott Sherwood: Let me deal with the second question first.

It's limited to occupied territories, although they're defined in a number of international instruments, including article 42 of the regulations respecting the laws and customs of war on land, annexed to the Hague Convention IV of 1907. A territory is considered occupied when it's actually placed under the authority of the hostile army. You're quite right that in the case of Afghanistan it was the Afghanistan leadership. That is not a circumstance in which this would apply.

On the issue of things like the Elgin Marbles, as is the custom with most legislation, this has no retroactive application. These are not instruments that apply generically to questions of repatriation. The issues of repatriation are very narrowly defined as relating to material that is exported from occupied countries. It's limited both geographically, with the definition of territory, and temporarily in terms of the application not being retroactive.

With respect to your first question on the G-8 countries, a number of countries have faced some of the same issues that Canada has with respect to the legal framework for prosecutions for offences committed externally to the country. Great Britain has formally signalled its intentions to join the protocols and the convention and is actually coming to Canada for legal advice on the instruments that Canada has introduced as a means of dealing with extraterritorial offences. Japan has also signalled its intention to join.

• (1130)

The Chair: Ms. Ratansi, and then Mr. Schellenberger.

Ms. Yasmin Ratansi (Don Valley East, Lib.): Thank you.

This is a very important piece of legislation that I am interested in.

I have a practical question. The practicality deals with the fact that in a war or in conflict, armed forces from the United States, Canada, etc., have to go and protect the people.

Let's take Yugoslavia, for example. Bosnia had the most beautiful heritage sites, and those heritage sites were bombed in the name of protection. How does this affect the country? What recourse do they have to come to the international community and say that their heritage site was bombed?

Following on what Ms. Oda asked and what Mr. Silva asked, where are the teeth? Have we been successful? How are we going to protect the sites? There is armed conflict or peacekeeping is turning into armed conflict, and we are destroying heritage sites in different parts of the world.

If you can help me out, what happens practically here?

Ms. Lyn Elliott Sherwood: The second protocol outlines the provisions. I'll turn to Ms. Zedde for an answer on that, with an invitation to our colleague from the Department of Justice to leap in at any time.

Ms. Kathryn Zedde: Thank you.

I think it's important to point out that this does not oblige military forces to never target cultural property or to never do anything that will inflict any damage on cultural property. There are specific circumstances under which cultural sites lose their protection.

For example, in Iraq we saw recently a minaret being used by a sniper as a base to attack troops. Once that sniper or once any military force uses a cultural site in support of its military activities, that site loses its protection. It is rendered a legitimate military target under international law. During the first Gulf War, Saddam Hussein parked jets beside world heritage sites. He therefore rendered those sites legitimate military targets.

So one of the benefits of these agreements is that they draw a very clear box around the circumstances under which cultural property loses that protection. One of the circumstances is that if someone is shooting at Canadian troops from the window of a museum, they are allowed to protect themselves and shoot back. So there are very specific circumstances outlined not just in these agreements but in international law—the 1907 Hague Convention, the Geneva Convention protocols—under which the military is no longer obligated to protect cultural property. The fact that some cultural sites do see damage would depend on the individual circumstances.

But again, within our armed forces there is a very sophisticated mechanism to determine what is called a “proportionality analysis” in each case, not only to determine whether a target is a legitimate legal target under international law, but also to take into account, even if that target is not cultural, whether what is called “collateral damage” could be inflicted on a cultural site.

So all of those things are taken into account, but under international law there are very specific circumstances under which cultural sites lose their protection.

The Chair: Thank you.

Ms. Ratansi.

Ms. Yasmin Ratansi: I think he was first.

Mr. Christopher Ram: If I may, Madam Chair, in very practical terms, as the question was phrased, if there is a connection to Canada, if the property turns up here or if the offender is found in Canada, the countries can ask for the property back under the cultural property amendments. They can ask us to prosecute the offender here using extraterritorial jurisdiction, if this is the most convenient place for such a prosecution; they can ask us to extradite the offender under article 18 or under another treaty or arrangement to face justice wherever the offence was committed; and they can also ask for mutual legal assistance—we can help them with their investigation if we have evidence they don't have, that sort of thing. At a very practical level, a lot of it engages only if there's some connection to Canada.

● (1135)

The Chair: Mr. Schellenberger, and then perhaps we can move to clause-by-clause consideration.

Mr. Gary Schellenberger (Perth—Wellington, CPC): I have just a quick question.

You said that there are no G-8 countries involved in the second protocol. I do understand, as you said, that Great Britain has pretty well signed on and they've been coming here. So that means that Canada is also in the same position, roughly.

If we pass this, then, does that make us a part of the second protocol?

Ms. Lyn Elliott Sherwood: The next step following passage of the bill would be a deposition of the instrument of accession by the Minister of Foreign Affairs or his delegate. But yes, for all practical purposes this is the trigger; this is the last remaining piece in terms of Canada's accession.

Mr. Gary Schellenberger: Which are the 35 states that are part of the second protocol?

Ms. Kathryn Zedde: I have a list.

At the moment, the 35 countries are: Argentina, Austria, Azerbaijan, Belarus, Brazil, Bulgaria, Costa Rica, Cuba, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Finland, the former Yugoslav republic of Macedonia, Gabon, Greece, Guatemala, Honduras, Hungary, Iran, Libya, Lithuania, Luxembourg—

The Chair: Do we really have to read the list, or could we just table it with the committee, please?

Mr. Gary Schellenberger: We're almost at 35 anyway.

Again, they are a lot of third-world countries, correct?

Ms. Kathryn Zedde: We are seeing more and more European countries join—Switzerland, for example.

The Chair: Is there anything more, Mr. Schellenberger?

Mr. Gary Schellenberger: No. Let's go to clause-by-clause.

The Chair: Shall we proceed?

You all have a briefing book. You have a copy of the bill at tab 2, and starting at tab 3 you have a description, clause by clause, of what it's supposed to accomplish.

Mr. Mario Silva: We should just wait for Madam Bulte. She probably has some....

The Chair: She may have.

Mr. Mario Silva: Just before she speaks, I have a question in terms of clause-by-clause. The words “Attorney General” had, I thought, been replaced now. We still have here the words “Attorney General”. We don’t have a minister of the Attorney General any more.

Maybe you could clarify that for me.

The Chair: Mr. Ram.

Mr. Christopher Ram: With regard to what the bill does in respect of the definition of “Attorney General”, section 2 of the Criminal Code defines “Attorney General” as the minister of either the federal government or the provincial government who is responsible for prosecution. The Minister of Justice is the political minister responsible for the criminal law. The Attorney General is the chief prosecutor and the legal adviser to the government.

The term is still used.

Mr. Mario Silva: It's an unofficial title, but it's still used within—

Mr. Christopher Ram: The reason this bill amends it—there's an amendment in clause 2 and there's another consequential, because there's another amendment before Parliament that would affect the definition as well—is to assign concurrent jurisdiction. Right now, the Criminal Code says Attorney General means the provincial Attorney General for all offences under the Criminal Code. This bill, then, says for the offences covered by this, it means either the federal Attorney General or the provincial Attorney General.

The Chair: That is all clause 1 does.

(Clause 1 agreed to)

(On clause 2)

• (1140)

The Chair: Clause 2 is at page 3 of your section 3. It defines who this applies to.

Hon. Sarmite Bulte: If I may, Madam Chair, through you, clause 2 actually extends the jurisdiction for offences committed outside of Canada. Again, this is what Ms. Elliot Sherwood spoke about. The legal framework is in place now to allow that, and that's what we're doing with clause 2.

The Chair: I have two questions on this, if I may.

I'm not sure why a permanent resident, i.e. a landed immigrant, must be resident in Canada when that condition doesn't apply to a Canadian citizen. The reason given is that a permanent resident may also be a citizen of another country. So may a Canadian citizen be.

Why is that exception there?

Mr. Christopher Ram: Thank you, Madam Chairman.

First of all, this framing is consistent with all of the other extraterritorial extensions we use. As a matter of policy, the Government of Canada doesn't extend jurisdiction, especially in criminal matters, extraterritorially except to the extent that it's required by each treaty. So each one is framed around the treaty. This

particular treaty refers to nationals, which is a slightly more general concept.

The concept of permanent resident is a Canadian one. It doesn't exist in most other countries or in international law. In practical terms, we take jurisdiction over our own citizens because we're required to by the treaty, because it says nationals. We take jurisdiction over persons who are not a citizen of any state and ordinarily resident in Canada because we may be the only country that's in a position to prosecute them. No other country is responsible for them, and they're here.

The third option with permanent residents is we take jurisdiction, because, again, we may be the most convenient forum to prosecute. But at the same time, they are also nationals of another country, and we would not want to have to extradite them back to Canada, so we take jurisdiction only if they're actually here.

I'm not sure if that answers—

The Chair: No, it doesn't. It tells me that's the way it's done; it doesn't tell me why that's the way it's done. As a permanent resident, you have all the rights of a Canadian citizen. Why do you not also have all the responsibilities and penalties if you act against the laws of Canada?

Mr. Christopher Ram: You have the rights and the responsibilities, but if you had a situation where a person committed an offence outside of Canada—that is the only situation where this would apply—and they were a national of France but ordinarily resident in Toronto, the French government might well prosecute them for this offence because they would be their national.

The Chair: The same thing would apply for one of our citizens if they also happened to be a citizen of France.

Mr. Christopher Ram: Yes, but the treaty requires us to take jurisdiction for our own citizens.

The Chair: Nationals...I'm sorry, but I really don't find the explanation very satisfactory.

Mr. Mario Silva: I will still move it.

The Chair: He will still move it.

I want to ask if the definition as referred to in proposed subsection 7(2.02) is consistent with the recent UNESCO treaty and any definitions in there on cultural property.

Ms. Lyn Elliott Sherwood: I'd be happy to answer that, Madam Chairman.

We do have a colleague from Foreign Affairs who may be able to add further clarification, or, to quote somebody else, further obfuscation of what was otherwise clear on the question of residency.

Ms. Sabine Nolke (Deputy Director, United Nations, Human Rights and Humanitarian Law Section, Foreign Affairs Canada): My name is Sabine Nolke. I'm the deputy director in the United Nations, human rights, and humanitarian law section at Foreign Affairs.

I may be able to shed a little bit of light on this issue. Traditionally, as a matter of international law, there is a series of heads of jurisdiction, as it is referred to, under which states can be asked or can be expected to take jurisdiction over offences or individuals. Those traditionally link either to territory or to nationality.

The case of the permanent resident is a little bit of a hybrid between those two. Ordinarily, states do not take jurisdiction for extraterritorial offences over individuals who are not their citizens if those offences were committed abroad. In the case of permanent residents, precisely for the reason you have mentioned—namely that we don't want to have such individuals escape justice simply because they haven't taken on Canadian citizenship yet—we do take jurisdiction over them, but we still need an additional link, in that case, to take our jurisdiction.

The link in that case is established by habitual residence. That is a very standard head of jurisdiction under international law. You find it referred to in a number of international treaties. That refers to persons ordinarily resident in the states taking jurisdiction. So it's not a question of discrimination really, but it's a question of Canada extending its jurisdiction to the extent that has been accepted by the international community.

• (1145)

Ms. Lyn Elliott Sherwood: I'm sorry, but on your question about the linkage to the convention with respect to the diversity of cultural expression, that convention does not include a definition of cultural property. There's a definition of cultural activities, goods, and services, but that is not the same as the definition provided in article 1 of the convention.

The Chair: Ms. Oda.

Ms. Bev Oda: I'm not a lawyer, so I may be asking this question at an inappropriate time. It's regarding being an accessory after the fact. If someone were to acquire a cultural property in good faith because it had been transported through a number of hands, would that person potentially be an accessory after the fact, subject to this bill? Maybe just a legal definition of what that...

Mr. Christopher Ram: Without consulting the Criminal Code sections dealing with accessories, the short answer is no. The essential safeguard against that and other innocent behaviour is *mens rea*. It's the mental element of the offence. You have to have intention or knowledge of the elements of the offence that make it a crime. You would have to know it was cultural property. You would have to know that you were stealing it, fraudulently concealing it, or some such, to be convicted.

Ms. Lyn Elliott Sherwood: If I could add, under the Cultural Property Export and Import Act amendments, if property were seized there would be the option for the court to grant compensation.

Ms. Bev Oda: I know this isn't clause-by-clause. It's just a clarification for me, Madam Chair...being a viewer of the *Antiques Roadshow*. Is this retroactive, or is it on a going-forward basis?

Ms. Lyn Elliott Sherwood: Going forward.

The Chair: Thank you.

Is there anything further on clause 2? Shall clause 2 carry?

(Clause 2 agreed to)

(On clause 3)

The Chair: On clause 3, which is at page 6 of this section of your binder, are there any questions?

Ms. Bulte.

Hon. Sarmite Bulte: Just for clarification, clause 3 amends the Criminal Code to establish the new hybrid offence of mischief in respect of cultural property.

The Chair: Thank you.

(Clause 3 agreed to)

(On clause 4)

The Chair: We move to clause 4 on page 7.

Ms. Bulte.

Hon. Sarmite Bulte: Again, Madam Chair, through you, clause 4, again, is the key part of the legislation. It amends the Cultural Property Export and Import Act to prohibit certain acts against cultural property that constitute violations of the second protocol to the 1954 Hague Convention and to implement the obligations of the first protocol as well.

The Chair: Thank you.

(Clause 4 agreed to)

(On clause 5)

The Chair: Clause 5 is on page 16 of your book.

Ms. Bulte.

Hon. Sarmite Bulte: This, again, is a key element. It adds the illegal export offence from an occupied country, without bringing it to Canada, stopping on your way to London.

The Chair: Thank you.

(Clause 5 agreed to)

(On clause 6)

The Chair: Ms. Bulte.

Hon. Sarmite Bulte: I'd like to point out to members, Madam Chair, that this schedule actually gives the definition of cultural property as found in the conventions. That's what this schedule is.

• (1150)

The Chair: Thank you.

(Clause 6 agreed to)

(On clause 7)

The Chair: Ms. Bulte.

Hon. Sarmite Bulte: Clause 7 is a very technical and consequential amendment to the Criminal Code. As acts are being changed, we are going from paragraphs (b.1) to (g), hopefully before some other piece of legislation is passed, otherwise (g) will become something else. So this is very, very technical.

The Chair: Clause 7 is in your bill, but it's not in your book. It's on page 5 of the bill.

Hon. Sarmite Bulte: Again, it's very technical. It just adds an extra initial to what's in the Criminal Code already. So we're adding another thing.

The Chair: Okay.

(Clause 7 agreed to)

The Chair: Shall the schedule to the bill carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Do you have any comments on the title, Ms. Bulte?

Hon. Sarmite Bulte: I've been known to argue titles in this committee before.

The Chair: I'm sure.

Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Mr. Mario Silva: Madam Chair, I wish to have a recorded vote.

The Chair: Mr. Silva has requested a recorded vote.

(Bill S-37 agreed to: 9 yeas; 0 nays)

The Chair: Shall I report the bill to the House?

Some hon. members: Agreed.

Hon. Sarmite Bulte: Report it immediately.

The Chair: I think we might have to wait until tomorrow afternoon. Routine proceedings are finished.

Hon. Sarmite Bulte: Okay, sorry.

The Chair: Thank you all very much, committee members.

Hon. Sarmite Bulte: For the record, Madam Chair, I think this gives the committee an opportunity to bring this bill back into the House as soon as possible. Perhaps we could speak to our own House leaders as to what we do with third reading, times being what they are. I think it would be great to have this bill move forward again. It would show Canada as a leader in the G-8. Since it has come from the Senate, it doesn't have to go back to the Senate, but we do need royal assent. So I would urge all parties to speak to their House leaders, get this before the House and debate it, or just vote on it so it can get royal assent, this week if possible.

The Chair: That's a very good point. May I ask that perhaps the critics of the other parties might talk to their House leaders as to whether this is one of those bills that could be done by consent? I understand things are not quite normal now, but there are more significant things that I think we might want to be spending House time on than a bill that everybody agrees on. I'll raise it.

Hon. Sarmite Bulte: My concern is that we still need royal assent for this to become law, and time may be of the essence.

The Chair: Could be!

And that is precisely the topic of our next discussion, if you don't mind. We have three outstanding motions. I think they do not appear on our agenda for today. However, Mr. Angus tabled a motion. Ms.

Oda then tabled a motion, and then Mr. Kotto. Have I got the order right there, Mr. Clerk?

Mr. Angus cannot deal with his motion today. Ms. Oda is—

Mr. Mario Silva: Given the fact that...maybe I'm wrong, but the only thing I had on the agenda today was basically this bill. Is there something else?

• (1155)

The Chair: It is on the agenda that was circulated.

He's asked that we defer it to Thursday. I pointed out to him that we have Telefilm as our witnesses on Thursday. We only have a two-hour meeting, and I felt with Telefilm as our witness on Thursday we would not have the time needed to discuss his motion. He's agreed with that.

Mr. Mario Silva: Maybe I'm wrong. I may be not looking at this properly. This all still has to do with the CBC deputation we had.

The Chair: Yes.

Mr. Mario Silva: It would be good if you could deal with them as a package as opposed to individually.

There's a second thing I would request, Madam Chair, if it's possible. Given the fact that we have already asked CBC senior management to come before the committee, I think it's only fair we should ask labour as well to come before the committee, before we actually deal with these issues. So that would be a request on my part.

The Chair: In other words, a request to defer Ms. Oda's motion?

Mr. Mario Silva: I would ask that all motions be dealt with together and that they also be dealt with after we have deputations from labour.

The Chair: Yes, Madam Oda.

Ms. Bev Oda: Madam Chair, I recognize that the motion by Mr. Angus also relates to the CBC but on a totally different specific matter. I would suggest also that consideration of the employees who have requested an appearance before committee relating specifically to an event or a certain action does not necessarily impact this motion, which is very much a wide scope motion, and certainly this motion shouldn't weigh on necessarily the outcome of the other motion or the request.

I think these are three separate and distinct issues, and I would request that my motion be considered.

Mr. Mario Silva: I have no problem considering Ms. Oda's motion, if I could actually see the motion. Unfortunately, I only have Mr. Kotto's motion. If all members of the committee could get the motion, they could see what we're doing. Unfortunately, I don't have it with me.

An hon. member: We are trying to look for it.

[*Translation*]

The Chair: Mr. Kotto.

Mr. Maka Kotto: I fully support Ms. Oda's comments that our two motions are not contradictory, nor even connected to any result that might come from a meeting with the employees of the CBC.

My motion concerns the satellite radio issue. It was alluded to when Mr. Lafrance more or less convinced us of the necessity of being part of the new satellite broadcasting age, rather than being apart from it. We cannot help but note, in light of what we have heard from the stakeholders involved, that there is concern as far as the cultural sovereignty of Canada is concerned. This is what inspired my motion.

[English]

The Chair: Merci.

Ms. Oda's motion is legitimately before the committee.

Mr. Silva, did you want to move a motion? But can I first ask, is it the general will of the committee that we should in fact invite the Media Guild in front of the committee?

• (1200)

Hon. Sarmite Bulte: That's a different issue.

The Chair: I understand, but Mr. Silva linked the two.

Mr. Mario Silva: I figured that maybe we should deal with all the motions at the same time, but I understand Ms. Oda's motion is different. Maybe we could hear from the parliamentary secretary to get her view before I make a decision.

The Chair: Ms. Bulte.

Hon. Sarmite Bulte: I'm happy to let Ms. Oda speak to her motion first. Then I'd be happy to reply, and then we can have some discussion based on our positions.

The Chair: Ms. Oda.

Ms. Bev Oda: Thank you very much, Madam Chair.

I think there is no question that the CBC/SRC public broadcaster is an integral part of our broadcasting system and our country. I think we recognize the services provided to communities all across Canada, and we've certainly had occasion on which to reaffirm our value and support of the CBC more recently.

I'm also aware, and will put this into context, that the broadcasting environment and technology have been rapidly changing, at a speed more rapid today than ever before. We want to ensure that the CBC, as the nation's public broadcaster, remains relevant and continues to serve Canadians across the country.

I believe this is a timely motion, in recognition of the fact that the CBC's network licences are up for renewal in the year 2007. In their appearance before this committee, the management of the CBC indicated to this committee that they would be preparing their work on the renewal application next spring, in order to file their completed application in the fall. Consequently, the ability to have a fulsome discussion on the CBC and its mandate and the service it will be continuing to provide to Canadians is...

I propose to this committee and Parliament that that this review is not only timely but is also very important and very urgent. It would certainly allow the public to demonstrate to Parliament and to the CBC what it values in the service and how it sees the service meeting its needs and demands as we go forward.

So I would ask the committee to consider supporting this motion and to indicate to the government the expeditiousness with which this is important to CBC and to the service.

The Chair: Thank you.

Discussion?

Ms. Bulte, you were the first to indicate your interest in this, and then Mr. Kotto.

Hon. Sarmite Bulte: Thank you very much.

Let me begin, Madam Chair, by saying that I agree with much of the preamble that Ms. Oda stated about the importance of the CBC and how integral it is. However, I have some concerns with the motion. Let me just give you my concerns, and then we can discuss it and maybe find a solution.

Many of you may recall that over a two-year period I think the Standing Committee on Canadian Heritage actually did a review of the Broadcasting Act. That report affectionately became known as the Lincoln report because it was chaired at that time by Clifford Lincoln. It was an exhaustive study on the Canadian broadcasting system. That report has a very important chapter on the CBC—something that we as a committee have not really looked at. There's also a very important chapter on accountability and board appointments.

The committee—I add that it was the committee, not a task force, not experts—and parliamentarians have already studied that. We went through many of the things Ms. Oda has asked to look at. Whenever I hear the words “task force”, I think who is going to appoint these so-called professionals or mavens who are going to come in? I think it's our job as parliamentarians, not some experts to be drawn upon by whomever, to review the CBC.

That report was tabled in June of 2003. Of course, with the House proroguing, there was no time for a reply. You'll remember, Madam Chair, and I'm sure members of the committee will remember, that we retabled that report. There was a response, but we've never really even had the minister come and speak to us about that. I understand that we've talked about it, and I'm not saying it hasn't been a priority, but it's never happened.

I urge you to read that; I certainly read it when we were preparing for it. It has fabulous information, but there are great recommendations that have never been acted upon. I know many members of the broadcasting and art communities have come to me and asked what has happened to the report and why we aren't doing anything about it. Again, it's no one's fault. We've been very busy with our schedule. But I think before we move ahead to appoint a brand-new task force yet again, we should take the time to examine what has been said and whether there are other things that we need to move on. Again, that could be used as a document for parliamentarians to look at.

The committee did make a number of recommendations. I said its main recommendation with regard to the CBC was in fact that Parliament provide it with increased, stable, multi-year funding, so it might adequately fulfil its mandate as currently expressed in the Broadcasting Act.

The government will say it has taken action on a number of recommendations. For instance, it did recognize the power of the new media as a means of reaching audiences, particularly youth, and it regarded the CBC's innovations in this field as a positive and legitimate means of delivering on its mandate.

With regard to Ms. Oda's rightful concern about technology in the digital age, we invited the CBC to submit a plan for the transition to digital.

It also noted the request from the CBC board of directors for a strategic plan for its main English and French television services that would focus on providing high-impact Canadian content that creates a common cultural experience among Canadians. Members of the committee will recall that when Mr. Stursberg was before us he talked about how to make that connection to English Canadians and that he had a plan. We asked for that plan, but we didn't get it in the letter we received yesterday.

I guess my concern is that this motion, if implemented, would mean that three major reviews of the CBC would have been undertaken within a short period of time: that of the committee, one by a new task force, and also the licence renewal process, which Ms. Oda herself addressed. The risk of such a scenario is that the concrete actions under way at the CBC, and by the government, following the Lincoln response, will again be delayed pending outcome of these exercises.

To stress again, my concern is who is going to be on this task force? Why don't we as parliamentarians, who have done this great work, build on the work we've done?

•(1205)

Anyway, Madam Chair, those would be my concerns, and I welcome discussion to be told otherwise.

[*Translation*]

The Chair: Mr. Kotto.

Mr. Maka Kotto: Thank you, Madam Chair.

I have no objection to the debate resulting from this motion which focuses particularly on the issue of CBC/Radio-Canada. This is a pressing matter. We are talking about the Lincoln report. Actually, I have not noted that the authorities or the crown corporations affected by this report comply with it. One need only refer to the recent decision by the CRTC on granting licences for satellite broadcasting to ascertain it.

I believe it is relevant to support this motion as we speak, because beyond this room, it will inspire a societal debate that should happen. There is a departure from the mandate of the CBC and of other crown corporations regarding culture in the broadest sense. There have been many violations of the Broadcasting Act, and the discussions that this motion will give rise to will bear testimony to that.

That is all I had to say.

•(1210)

[*English*]

The Chair: Yes, Ms. Oda.

Ms. Bev Oda: Madam Chair, I certainly welcome the discussion, and I take very seriously the comments made by the parliamentary secretary. I do not diminish in any way the work done by previous committees on the Lincoln report. It's a substantial amount of work. It certainly has recommendations that are very worthy of action.

However, I do point out that Parliament has asked two ministers of this government for a response, and that in fact the first response by the first minister was deemed to be inadequate. Consequently, this committee rebtable the report and asked the current minister for a response.

I also want to point out that we have asked the CBC to file plans and there has yet to be any response by the government on the local/regional plan, etc. So my concern is that, in the fullness of time, there's little confidence that the response by the government would be adequate or would respond to the demands we've made on behalf of the people.

I also want to point out that I certainly have some concern, as most recently—I think within the past few days—the minister herself has indicated that even within the party of the government in the Quebec policy gathering there was a motion passed on the floor asking for such a review, and the minister herself, contrary to the wishes of a very important section of this country and her party, has chosen to disagree with the party motion. So the confidence of the people, the people of this committee and also the people of Canada, that we are going to get any response to the Lincoln report in a timely fashion to prepare the CBC for their licence renewal I think can reasonably be in question.

I also want to point out that we as parliamentarians do have a responsibility. We have a responsibility to use the information we have, and to have listened to the public, but I think it's critically important in this particular case that we allow the public to speak. The only way we can allow the public to speak on their own in every region of this country is to have such a review.

I have had the opportunity to discuss the CBC and its mandate in two different venues, one as a member of Parliament and one as a former CRTC commissioner. I understand that the process of the committee and the committee's work is certainly defined clearly, in fairness, but I also understand the difference between the public having the ability to respond to questions, to make statements as to what they really believe and value about the CBC, in less than five minutes, and what would be in all fairness a fuller discussion that should happen in a public forum. So consequently, I ask again that this committee support my motion.

The Chair: Mr. Silva.

Mr. Mario Silva: Madam Chair, what a predicament. We have been given two very good arguments, both by the parliamentary secretary as to why we shouldn't do it and some very good arguments from Ms. Oda as to why we should do it.

I think all of us realize there are concerns that we all share with the CBC, certainly, in what happened. All of us would like to have more in-depth discussion and debate on this issue. There's no question about that. The parliamentary secretary raised some very good points about the important work that was done in the Lincoln report—although I think it was a very all-encompassing sort of report, but still, there was important work that could be delayed by having another study.

I would ask Ms. Oda, in moving forward with this motion, whether it's really essential that it has to be an independent task force, as opposed to maybe a committee that invites people from the public.

• (1215)

The Chair: Ms. Oda.

Ms. Bev Oda: In response to Mr. Silva's question, I suggest that this would be deemed by the public as the forum in which they would choose to have their debate about the mandate of the CBC. I think that certainly because it's a public broadcaster—and I know this current minister is very, very concerned about political interference in the public broadcaster, and to ensure that it retains its independence is the reason why, for me, a critical part of my motion is the independence of the review panel.

Mr. Mario Silva: The other thing is that the motion, as I read it, is a request for the government. You can't authorize it. It's simply a request to the minister.

Ms. Bev Oda: It would be a request to the government, because it clearly indicates there's a resource need in order to do this job adequately and satisfactorily. Consequently, it is a request to the government.

The Chair: I have Mr. Obhrai first, then Ms. Bulte.

Mr. Deepak Obhrai (Calgary East, CPC): Madam Chair, if I recall correctly, during the CBC strike that took place here—

Voices: The lockout.

Mr. Deepak Obhrai: The lockout. Sorry. We had a tremendous amount of statements, including from the parliamentary secretary, asking for the resignation and firing—

Hon. Sarmite Bulte: I did not ask for the resignation. With all due respect, I have never asked for the resignation, and let the record be clear on that. I have never asked for the resignation.

Mr. Deepak Obhrai: What I'm trying to say is that a lot of—

The Chair: I'm sure Mr. Obhrai wishes to withdraw that comment, having been informed that it's not accurate.

Mr. Deepak Obhrai: It's withdrawn; it's withdrawn.

What I wanted to say was that we had a lot of statements being made, and many of them were critical in nature. I think when you have an institution like the CBC, we cannot in the morning, just because something has happened, start making statements that really do not reflect.... So I think in all fairness, this independent task force would give a clear indication or picture for the long-term future of the CBC, not simply getting up one morning, because there was a lockout and for political expediency, and making all those statements. We have statements made by the NDP, as well as....

Some of the statements that we read were coming based solely on political considerations and other things, and maybe other points.

So I think this motion is very timely for the long-term issue, to see that when these little things flare up, how things happen, that we do not really go and start shaking the whole foundation of an institution that we want to maintain in this country. For that reason, I think it is quite appropriate that we support this motion. Therefore, I'm asking you to call the question, Madam Chair.

Hon. Sarmite Bulte: On a point of order, or a point of privilege, Madam Chair—

The Chair: This is obviously important. This is going to be a very expensive proposition if it actually gets adopted by the government, and I think it's worth some debate. So I'm not going to cut people off just yet, Mr. Obhrai.

Hon. Sarmite Bulte: I'm not even going to debate this. With all due respect, Madam Chair, I take very serious exception to the statements made by Mr. Obhrai to imply that I've been making statements in terms of political expediency.

Mr. Obhrai, I respectfully suggest that you go back to my opening speech in Parliament in 1997, where the Prime Minister gave me the opportunity to make the opening motion for the address in reply to the Speech from the Throne. I spoke about the importance of the CBC at that time, and I have continued—you can check Hansard from 1997 forward—to be a huge advocate of the CBC. To claim that I used political expediency during this lockout is absolutely...it's unconscionable. I find it personally offensive.

What we have done in this committee is to work as a whole; we've worked together. Then to say that....

I'm sorry, Madam Chair, but I find that without fact, based on fiction, and I'm very surprised and deeply hurt by what Mr. Obhrai has said.

• (1220)

The Chair: Thank you, Madam Bulte.

Are there any other comments on the motion?

Ms. Ratansi.

Ms. Yasmin Ratansi: I have a question for Ms. Oda.

I need some clarification. When I look at it on paper, it seems very reasonable to ask for the establishment of a task force. I heard the parliamentary secretary say that it was parliamentarians who did the report and it was parliamentarians who took ownership and came up with recommendations.

Number one, what will the task force do? What is its mandate? If it is going to review the mandate, role, and services of the CBC, I want to see what the delivery will be, what the timetable will be, and how much it will cost the government to do that.

Is it analysis paralysis? I really want to move forward with recommendations. I'd like to see where we go from here. Being in the public sector, we keep on producing report after report to paralyze recommendations. Is this going to do that? I'm a little concerned that we'll have more and more analysis when we move forward.

Ms. Bev Oda: I welcome your question. I'd certainly be happy to clarify the reason and what the motion is asking for.

I think we have to understand that when the report was tabled in 2003, the information would have been based on information gathered prior to the tabling of the report. I looked at the report as recently as yesterday and two days ago over this past weekend. If you look at the report, I would suggest to you that a lot of the data would have been collected. The Stats Can data would have been the 2001 information, etc.

If we look at the changes from 2001 to 2005, where we are today, we see the introduction of a number of new services. We see the extension of broadband technology. We see the introduction of video now being able to be received on personal mobile facilities. I know the private sector broadcasters are looking at this. I think it is particularly important that on a going forward basis we understand that we have reaffirmed the mandate and the role of the CBC in light of the changes that have happened.

This is not unusual. If you look back, the CBC has been scrutinized and looked at many times. We want to ensure that the CBC as the public broadcaster, as it said itself, wants to be ahead of the game. It should take a leadership role on being where the public wants it to be, utilizing the technologies, etc., that it has to adopt as we go forward. Consequently, we want to make sure that the service and the programming, as defined not by a parliamentarian but by CBC itself in consulting with the people, will then remain relevant and meaningful as we go forward.

As for the cost, I think it will be determined by the government. We're making a request of the government here, and I cannot respond to the actual cost.

The Chair: I have Mr. Kotto, Monsieur Schellenberger, and Mr. Silva. It's then back to you, Madam.

[*Translation*]

Mr. Maka Kotto: Madam Chair, until further notice, I believe we live in a democracy. Public things, public goods generate a legitimate interest in the population concerning what in truth is due them. In fact, it should be pointed out that this motion is timely, because the discussion of even just the programming component of CBC is being called for by the public.

I do not want to dwell on it. I will simply say, once again, that we should support this motion on the basis of democratic wisdom.

Thank you.

•(1225)

[*English*]

The Chair: Mr. Schellenberger.

Mr. Gary Schellenberger: Again I have to go back to something I said earlier on, in the spring, about this committee and about some of the reports we send in to the ministry and the minister.

My question to the ministry people who were here at that particular time was whether this committee was relevant. Is it relevant when it comes to some of the decisions that are made? The Lincoln report was sent in; it was 800-and-some pages and it had 97

recommendations. We got three pages back. That was an insult to this committee.

We then reintroduced it. It went to the ministry. They've had it again for a year. What has really been put into policy out of the Lincoln report to make things go? We've had the CBC here at various times and we are forever asking, "How is the funding?" The answer is, "We need secure, long-term funding", and everything.

I've asked the president how much money there should be. The question of how much the money should be is fine, but what is the mandate? Are we as a government asking the CBC to give us \$2 billion worth of work for the \$1 billion they're getting? I don't know.

I don't think the minister or the ministry has taken us seriously as a committee. The reports go in, and I don't know where they go. I think they get filed on the back shelf.

So I'm ready to follow this motion.

The Chair: I'm going to Mr. Brown, because he hasn't intervened yet, and then Mr. Silva wanted to speak.

Mr. Gord Brown (Leeds—Grenville, CPC): Thank you, Madam Chair.

I just want to pick up on Mr. Schellenberger's comment. When we had the president and the vice-president of CBC here, I asked how much money they actually wanted to be able to carry out this mandate. We're not really sure what it is.

I want to support this motion, because I think we're going to request the government to do this and move forward. I want to read this Lincoln report to see what's in there, because clearly there isn't anything really happening on it right now. It's unfortunate that it took this lockout and that event to bring us to this, but I think Canadians are looking for us to move forward and deal with all of these issues. I think this is quite a reasonable request. I support it.

The Chair: Mr. Silva.

Mr. Mario Silva: Madam Chair, I think it's clear that all of us are concerned and care about the CBC. It's obvious that some of us—I think maybe all of us—and certainly I would like to state that I would love to see a review of the mandate and role and service of CBC. There's no question about that. In my mind it's very important.

The question is, how do we achieve this? A request for the government...? Right now, let's face it, it's not going to go anywhere. There are a million and one things right now that they're dealing with, including a possible election soon.

I think what is realistic and achievable is not to make a request of the government, but right after the committee reviews the feature film policy, which we want to make sure we finish as soon as possible, we should go into the review and the mandate and role of the CBC. I think that's what we can do as a committee. We don't need the government to do anything about it; we can do it ourselves. I think that would be very worthwhile, and I think it's something that's achievable and is within our mandate.

The Chair: Ms. Bulte.

Hon. Sarmite Bulte: Reading Ms. Oda's motion and listening to Ms. Oda speak, it wasn't clear whether what we're to be talking about here is public hearings. I guess it's an opportunity...

Correct me if I'm wrong, Ms. Oda—through you, Madam Chair—but what really you're intending, from how you spoke, is giving people the opportunity to make submissions.

The mandate of the CBC is found in the Broadcasting Act itself. When people speak of what the mandate is, if you turn to the Broadcasting Act it's outlined there. I guess we're looking at changing the Broadcasting Act; this may be something that could come out of this. But there is a clear mandate, and it's in the Broadcasting Act. And while this study, and I will agree with Ms. Oda on this, was done from 2001 to 2003, at that time it basically confirmed that mandate. There was some question whether “regional” should include local, and that might be something we want to raise again.

My concern here is—and I'm struggling with this, because I don't completely disagree with what Ms. Oda is requesting—when we talk about public hearings, whether or not we are talking about doing town hall meetings. Is not the CRTC the place—and I'll defer to Ms. Oda's expertise here—where Canadians and the public have an opportunity to talk about the role of the CBC? Their licence renewal is coming up in 2007. Is this not a time that we should be asking Canadians to make submissions to the CRTC as they prepare?

I'm trying to find a solution here....

• (1230)

The Chair: Thank you.

Ms. Oda, please.

Ms. Bev Oda: Thank you.

I certainly appreciate the consideration the members opposite have given in recognizing my motivation for putting forward such a motion.

Regarding the process, I just referred to public hearings because I was referring to an experience I've had. Even the actual process.... I think Canadians will let the government know what process they would find satisfactory. We've had written processes. We've had processes where there were maybe just three or four regional centres. Certainly this government has put forward smart regulation, efficiency, etc., so I think in light of that, this government, I'm sure, should be able to come forward with a process that will meet its goal of efficiency and yet be satisfactory to the public. I say a “reasonable opportunity” for the public to have input, so it's not calling for public hearings right across the country.

I would thank you for recognizing also the experience. However, in order to look at this, separate and above, through the CRTC, I think we have to remember that the CRTC has a framework that already exists in the Broadcasting Act. An independent forum, I would suggest, takes it outside the existing act and the existing CRTC procedures, limitations, etc. This, for me—and the reason for my recommendation in this way—allows for a more fulsome discussion.

Yes, we do have a CBC mandate articulated in the Broadcasting Act. However, the challenge for the CBC is to fulfill its interpretation of that mandate with regard to what services, what categories of programs—I'm not talking specifics, but categories, themes, etc. And it is constantly struggling, because that mandate has

to be reviewed. As Mr. Brown and Mr. Schellenberger have indicated, we have to look at what Canadians want the CBC to be and do before we can decide how much money it needs to do what Canadians want. So to just keep asking the CBC how much money it needs.... We have to put it before the people and allow the government, Parliament, the CBC, and the CRTC to have a clear understanding of what the service is that Canadians want and demand of its public broadcaster.

The Chair: As a totally neutral chair, I know Mr. Obhrai wants the last word, and maybe he wants to perhaps apologize to Ms. Bulte. I have a couple of technical questions, really, Ms. Oda.

One is a grammatical syntax question. Could I ask that instead of “what's in front of us,” the second line of your motion read “to establish the role the public broadcaster must have and the services it must provide in light of...”?

• (1235)

Ms. Bev Oda: It is the second “to establish”, right?

The Chair: Yes, “to establish the role the public broadcaster must have and the service it must provide in light of”, etc. It makes more sense.

Ms. Bev Oda: Okay, but I don't think substantively.

The Chair: And could I ask exactly what you meant by that last line, that the membership reflect that of this committee? Do you mean four men and the rest women? Do you mean certain representation from Atlantic Canada? From Toronto? I certainly hope you don't mean partisan representation? That's hardly an—

Ms. Bev Oda: I was hoping we could establish—and this would be under the advisement of the Standing Committee on Canadian Heritage—that there would be at least some input by the committee about the makeup of the group.

To respond to your question directly, yes, that would be one of the concerns—

The Chair: About the partisanship of the group?

Ms. Bev Oda: Yes, of the group. I would never put forward that it be male-female. I think it should be on merit and expertise, and it should ensure that Canadians believe it is a balanced panel.

The Chair: I need to be clear. By having the membership reflect this committee, do you mean the political representation?

Ms. Bev Oda: The membership, yes.

The Chair: That settles that for me. Thank you.

Ms. Bev Oda: That, to my mind, reflects the electoral results of the public speaking.

The Chair: Mr. Obhrai, I think, wants to move that the question be put.

Mr. Deepak Obhrai: If she is fine with the change to the motion, then put the question.

The Chair: Thank you.

On the motion, Mr. Silva.

Mr. Mario Silva: Madam Chair, unfortunately, I didn't make mine a motion, but given that I didn't hear any input on it, I would like to move it as a motion, or an amendment, that in fact it would be this committee—as said in Ms. Oda's motion—as opposed to an independent task force.

The Chair: So you are proposing an amendment that replaces the words, “the government should undertake to establish an independent task force” with “That this committee”—

Mr. Mario Silva: That the committee, the heritage committee, establish a task force to review the mandate.

The Chair: Or that this committee review the mandate and role, not....

Mr. Mario Silva: That's right. I'm talking about this committee; it doesn't have to be a task force.

And it should be following the final report of the feature film policy review.

[*Translation*]

The Chair: In French, the amendment seeks to replace the following words: “That the government should undertake to establish an independent task force to review the mandate [...]” with the words: “That the committee review the mandate [...]”.

[*English*]

And in consequence, if that were adopted, it would change other sections of the motion.

Mr. Deepak Obhrai: Do we need to put a timeframe in there?

The Chair: Do any of us know what our timeframe is, Mr. Obhrai?

An hon. member: One week?

The Chair: Is that clear, Mr. Clerk?

All in favour of the amendment?

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

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

The Chair: Ms. Oda.

• (1240)

The Chair: It's carried—with certain syntactical amendments.

Ms. Oda.

Ms. Bev Oda: Just on a matter of procedure, do we have to make a motion for you to report this to—

The Chair: If the committee wishes, you may.

Ms. Bev Oda: Okay. Could I then put forward a motion that the chair report this motion to the House at the earliest possible opportunity?

(Motion agreed to)

The Chair: Thank you.

Now we have 15 minutes, Mr. Kotto. I don't think that's....

[*Translation*]

enough time to deal with your motion. We could do so at the next meeting or at a subsequent meeting.

[*English*]

Meanwhile, I have certain things I need to resolve with the committee.

For starters, if I may, we have Telefilm Canada on Thursday. We're in room 237C. Does the committee wish that to be televised?

Some hon. members: Agreed.

The Chair: Monsieur Kotto.

[*Translation*]

Mr. Maka Kotto: I have not made any comments regarding the motion. I do not believe that the motion requires so much debate. In fact, we could proceed more quickly. It has already been postponed several times now. What may happen at the next meeting or at a subsequent meeting, is that it is not discussed at all.

[*English*]

Hon. Sarmite Bulte: Madam Chair, I have a number of submissions to make on this motion, so I'm not ready to vote on it. I think this will also require discussion. We can start, but....

[*Translation*]

The Chair: Personally, Mr. Kotto, I have a few questions regarding the consequences of the motion. I also would like to ask a few questions, which would take more than five minutes.

Mr. Maka Kotto: What guarantee is there that it will be debated during the next meeting, given that this is the third time it is being postponed? Is this not an obstruction strategy?

The Chair: I know, but this is the committee's decision.

Mr. Maka Kotto: No, the committee has not given its opinion on the issue, Madam Chair.

The Chair: Unless the committee would like to continue sitting past one o'clock—

Mr. Maka Kotto: Without impugning anyone's motives, I understand that in light of Ms. Bev Oda's motion, there is some obstruction going on. This is obvious. On the other hand, in light of what you have said and of what you have to do to conclude the meeting, I would like us to consider debating the motion the next time. If not, I will bring it up in public, personally.

Thank you.

[*English*]

The Chair: Perhaps I can just deal with a couple of other matters.

Telefilm Canada is coming on the Thursday. We may or may not want them back again on November 22. Is that a decision the committee wants to wait to make until after our first meeting?

Once is enough? Okay.

We have the round table coming on Monday afternoon and evening.

On November 24, next Thursday, if we're still here, we had the minister scheduled to appear on the estimates, but that can no longer happen. She is chairing a cabinet committee that morning.

Ms. Bev Oda: Well, can we ask the minister for three dates that she would be available for us, for a reasonable amount of time, and then bring it to committee to see what the committee thinks? I think we have to have had the minister before us before—

• (1245)

The Chair: Ms. Oda, she is available on November 29.

Ms. Bev Oda: Okay, sorry.

The Chair: If she is available, we could try to do a committee meeting on the afternoon of November 23, if you wish, or possibly she'll be available on November 22. But that's also a cabinet meeting day, so it might be more difficult.

Hon. Sarmite Bulte: But cabinet sits on Thursdays.

The Chair: Cabinet committees sit on Tuesdays, I think.

Look, in any case, I regard the estimates as something extremely important for committees to do, and I really want to see the minister before us.

The bigger issue is this: given the precipice that we are all living on, what does the committee wish to do about our report on film? Our analyst feels that a report could be prepared for us to consider next week, for tabling on November 29—if that's all the time we have.

Hon. Sarmite Bulte: I've been told, Madam Chair, that the cabinet now has been changed to Tuesdays. That's all I've been told. I am told on a need-to-know basis.

The Chair: Ms. Oda, would you please accept my good faith that I think this is an important thing for the committee and that the minister has to be here for the consideration of her estimates, even if it is supplementary estimates, and that I will do my best to arrange a time for that to happen that is as soon as possible?

Ms. Bev Oda: I certainly will.

Mr. Gary Schellenberger: Is the round table still on Monday?

The Chair: The round table is still on Monday.

Mr. Gary Schellenberger: What's the round table going to do to the report that we're going to bring in if the report's already ready?

The Chair: Well, that gives us and our analyst another few days that week, if there is a preliminary draft, to work into the report the input from the round table. What it does not do is give us time,

obviously, to go through the report paragraph by paragraph to make changes. It means putting a lot of faith in our analyst to understand what we've been saying over many months. If in fact we see a draft and we don't find it satisfactory for whatever reason, we can just refuse to table it, refuse to adopt it.

Hon. Sarmite Bulte: Madam Chair, again, I do object to that. In any committee that I have ever sat on we have gone page by page by page. On the Lincoln report we set evenings aside. We went through it and we discussed it. While I have complete faith in our analyst, it's our report; it's not the analyst's report. If that report is important to us, we are going to have to find an evening where we come in here, we sit with sandwiches or whatever, and we just do it. I know we're all busy, but I think it's also important that we finish our job.

The Chair: Madam Bulte, I agree with you completely. That's why I'm putting this issue before the committee, so we can see in fact how we're going to handle it. I don't think any of us wants to see months and months of very intense work and the involvement of hundreds of people across this country in contributing to this report... I don't think any of us wants to see that lost simply because an election may be upon us.

Ms. Bev Oda: I think the reality is in order to accomplish...I totally support Ms. Bulte on her comments that we all want to finish this. I think certainly if we can be notified of the dates ahead of time, then we've got a better chance of rescheduling our commitments. If we pick a date for the evening, I think inevitably we're going to need the extra time. So let's get a date, put it in there, and I think the rest of us will do everything we can to accommodate the chosen date. I think even with the round table on Monday, if we could have had a little notice, it would have been cleared. We agree we're going to need the extra time, so let's find a date.

The Chair: I don't personally think an evening is going to do it. What I might want to suggest is that right now, tentatively—and I haven't discussed this with our analyst directly—we might book either November 23, right through from after question period until whatever time it takes in the evening, or November 24, which is Thursday. That's Wednesday and Thursday of next week.

• (1250)

Ms. Bev Oda: I think the sooner the clerk can get notices to our office...because obviously I don't determine those things.

The Chair: Okay. That's helpful. Thank you very much.

The meeting is adjourned.

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>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.