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Chair

Mr. Paul Zed

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•(1535)

[English]

The Chair (Mr. Paul Zed (Saint John, Lib.)): I now call the meeting to order pursuant to the order of reference of Monday, December 13, on Bill C-26, an act to establish the Canada Border Services Agency. We're doing a clause-by-clause review of that act this afternoon.

Colleagues, before we actually carry the clause or not carry the clause, as would be your preference, what I thought I'd do is group them into clauses 2 right through to 15 and see if anyone has any specific questions on any of those.

I just want to let you know we have notice that our colleague Mr. MacKay has an amendment adding new clause 15.1. We might stand that until he actually gets here, if that's agreeable, but right at this moment, I'd ask if anybody has any questions relating to clauses 2 to 15 inclusive.

Mr. Wappel.

Mr. Tom Wappel (Scarborough Southwest, Lib.): I have a question on clause 9 and a question on clause 12.

The Chair: Go ahead.

Mr. Tom Wappel: Could I ask you to take a look at clause 9?

In the clause-by-clause analysis, under subclause 9(2), the analysis reads that the clause allows the president to designate individual persons or a class of persons as an officer. However, the actual section says "The President may designate any person, or person within a class of persons". Those two are not the same thing. The explanation says that the president will designate an individual person or a class of persons; the act says a person within a class of persons. I'm assuming that what the government wants is what's in the act.

I'm just bringing that to your attention because I think the analysis is incorrect, or at least the description is incorrect. So that's fine, as long as we get that through.

In regard to subclause 12(3), it says "The delegation of power to the agency, its officers and employees does not allow for the exercise of any power that is specifically allocated to the Minister under this act, nor does it authorize anyone but the Minister to make regulations."

The minister will give directions, but the minister's direction is not considered to be a statutory instrument, which means that this

direction is not subject to examination by the scrutiny of regulations committee. Can I ask why the government feels this should be the case?

Mr. Denis Lefebvre (Executive Vice-President, Canada Border Services Agency, Department of Public Safety and Emergency Preparedness): The minister who has responsibility for the agency has to have the tools to exercise her responsibility. Some of the directives or directions that she might give to officials or to the agency might not be of a regulatory nature. They could conceivably be related to some security matter that would not be properly published as a statutory instrument.

Mr. Tom Wappel: All right. Is there any precedent for that in existing legislation? In other words, do we have existing legislation, let's say, for the Solicitor General, or something like that, where this kind of directive is exempt as being deemed not to be a statutory instrument?

Mr. Denis Lefebvre: I believe there is. If you will give me a moment, I will find it.

Mr. Tom Wappel: We can move on, Mr. Chairman. When he finds the answer, that's fine. I'm just concerned because, as we know, the Statutory Instruments Act was amended in the last Parliament to significantly broaden the types of instruments that are examined by the scrutiny of regulations committee, so I was querying this. I can certainly understand that there might be secret matters and things of that nature. If it's merely a continuation from some other act or something like that, that's one thing. For it to be a new proposal, then I'd like some more explanation.

So if you don't mind, Mr. Chairman, while Mr. Dunbar is looking—

Mr. David Dunbar (Acting General Counsel, Department of Public Safety and Emergency Preparedness): I refer you to section 93 of the Immigration and Refugee Protection Act. It has an example of the same kind of thing:

Instructions given by the Minister under this Act and guidelines issued by the Chairperson under paragraph 159(1)(h) are not statutory instruments for the purposes of the Statutory Instruments Act.

Mr. Denis Lefebvre: I would add, Mr. Wappel, just as a supplementary, that these statutory instruments are reviewed and published—and very often pre-published—to give a chance to the public, who might be affected by such instruments. Often those instruments create rights and obligations for the general public, whereas here it's very specific to the agency.

•(1540)

Mr. Tom Wappel: Thank you, Mr. Chairman.

The Chair: Colleagues, from clause 2 to 15, if there are no further questions, shall clauses 2 to 15 inclusive carry?

(Clauses 2 to 15 inclusive agreed to)

The Chair: Mr. MacKay, we were sort of ragging the puck for you a bit.

Mr. Peter MacKay (Central Nova, CPC): Thank you, Mr. Chair. I have an amendment that I believe all members of the committee, yourself included, would have received.

Mr. Tom Wappel: I haven't received it, Mr. Chair. Is it in the package?

The Chair: It was circulated.

Mr. MacKay, would you like to speak to your amendment?

Mr. Peter MacKay: Yes, I would.

This amendment would add a new clause at page 7, clause 15, requiring the minister to table an annual report to Parliament by March 31 of each sitting year. It is worded so that if the House isn't sitting, it would be done within the first 30 days of the House sitting. It is an annual report for the operations of the previous year. The reason is that an examination of the operations of similar agencies shows they are required to report to the minister. In this case, the minister is the Minister of Public Safety and Emergency Preparedness. These annual reports, or departmental reports, are quite normal, and are part of the routine of agencies such as the RCMP. The RCMP's external review committee files an annual report, as do CSIS, the Canada Firearms Centre, Correctional Service Canada, and the National Parole Board.

When I read this legislation, it doesn't appear to me—and I stand to be corrected—that the legislation for the Canada Border Services Agency requires that an annual report be presented to Parliament. So in keeping with that tradition, in keeping with parliamentary oversight, and in keeping with the work of this committee and others, I would suggest this amendment should be accepted and should be included in this legislation.

The Chair: Mr. Cullen, did you want to speak to the amendment?

Hon. Roy Cullen (Parliamentary Secretary to the Minister of Public Safety and Emergency Preparedness): Yes, thank you, Mr. Chairman.

While I understand what the member for Central Nova is trying to accomplish, I think what he is proposing is redundant. I don't know if he's had a chance to review this report, which comes out every year under the auspices of the Treasury Board; it's a performance report for the Canada Border Services Agency.

On behalf of the ministers who preside over the departments and agencies identified in schedules 1, 1.1, and 2 of the Financial Administration Act, Treasury Board tables these reports; the Canada Border Services Agency is identified in schedule 2 to the Financial Administration Act. This report is very comprehensive; it deals with all the operations and performance of the Canada Border Services Agency; it is doing precisely what the member for Central Nova is asking, unless there's some other information that he'd be seeking.

We could look at that, and see if there's additional information that he'd like. As long as it doesn't infringe on any privacy or proprietary issues, and doesn't affect Canada's national security, we could have a look at that. This report is very comprehensive, and I think it deals with all the operations of the Canada Border Services Agency.

The Chair: Mr. MacKay.

Mr. Peter MacKay: Thank you, Mr. Chair.

I think the parliamentary secretary is completely missing the point. I'm not asking about the comprehensiveness of the report that would be the first report of this new agency. I'm saying it's not explicitly stated in the bill that the report be made annually. I have no issue, no objection whatsoever, to the content of the bill. I'm saying that like other agencies they simply be required to do so, and that it be explicitly stated in the legislation so it's not redundant. It's not explicitly stated anywhere that they have to do it. It's not in the bill currently, unless the parliamentary secretary can correct me and tell me where it is in the bill, because I don't see it.

•(1545)

Hon. Roy Cullen: Mr. Chair, the Canada Border Services Agency has already tabled this performance report for the period ending March 31, 2004. I don't know if you've had a chance to skim through it, but it's very complete. In fact, our government has been pushing for enhancing the performance reports, getting more accountability, and as long as this government is in power, you won't see that being diminished. I don't know what else the member would like in terms of information. This is an annual report. We've already had one out.

The Chair: Mr. Wappel.

Mr. Tom Wappel: Mr. Chairman, thank you.

Mr. Cullen, I wonder if I could ask you this. Is that Treasury Board document required by statute?

Hon. Roy Cullen: It's not required precisely by statute. What we could do.... At least I'll make this as a proposal. The government would be agreeable to wording that would suggest that the report is required, and the wording would indicate that this report would meet that requirement. We're happy to work with language like that.

Mr. MacKay, if you're asking for a separate report on the operations of the act per se, the agency could easily produce a report.... I'll let you chat first, and then I'll come back.

What I'm saying, Mr. MacKay, is the act before us, Bill C-26 itself, deals mostly with governance types of issues. You'd be asking the CBSA to report that the governance is much the same. In other words, it wouldn't be a report that would go into the kind of operating depth and look at performance standards, which I'm sure is what you're looking for. As a suggestion, we have some wording that we could circulate, if you're interested, that would say:

The Minister shall, as soon as possible after the end of each fiscal year, cause to be laid before each House of Parliament a report of the operations and performance of the Agency for that fiscal year.

And then subclause (2):

The obligation imposed by subsection (1) may be satisfied by the tabling of any reports required by the Treasury Board that contain the information required by that subsection.

That subsection deals with the operations and performance of the agency. I would argue that unless the member has some other specific informational requirements, this meets that test.

Mr. Peter MacKay: Mr. Chair, perhaps the parliamentary secretary can differentiate between the Canada Border Services Agency and CSIS and the RCMP and Corrections Canada and the Parole Board as to the necessity of tabling a report to Parliament.

Why would we not have the same requirement in the legislation?

Mr. Denis Lefebvre: We would have to review the five statutes with respect to the five agencies you mentioned to see whether they are schedule I, I.1, or II, because the reports Mr. Cullen is referring to are submitted by the President of the Treasury Board on behalf of ministers with respect to departments and agencies that are covered in Schedule I, I.1, or II of the Financial Administration Act.

That's why, when we worked on the drafting of the bill, we felt that we had just produced such a report as is required by the President of the Treasury Board from each minister pursuant to section 7 of the Financial Administration Act, which empowers the Treasury Board to manage the public service, including such reports. But as the parliamentary secretary has mentioned, we could introduce specifically a statutory requirement for the minister to table an annual report, but simply say that if this document or the annual report submitted by the President of the Treasury Board on behalf of the minister fulfils the requirements spelled out in the act, then there would be no need to have two reports—one that follows the standardized format prescribed by Treasury Board and a different one that would be separate.

• (1550)

Hon. Roy Cullen: If I may add, Mr. Chairman, the implication of that is there would be two alternatives. One is that the Canada Border Services Agency could take this report and put it in a different cover.

If you want to look strictly at the letter of the law, one could go through Bill C-26 and refer to the specific provisions of that act. I think what we're proposing is we understand the need to report against performance, various statistics, and operations of the Canada Border Services Agency. By inserting this clause, it would basically say that this report meets the test you're calling for. I think by any objective standard this report has a good and fulsome description of the operations of the CBSA.

The Chair: Mr. MacKay, do you like the explanation the parliamentary secretary is offering as a possible alternative? How do you feel?

Mr. Peter MacKay: Not really, but I understand the need to avoid duplication.

My point is still that there is nothing in the current statute that requires the annual reporting. That's the point. What was just read out to me—and I've just heard it, I haven't seen it—seems to me still somewhat permissive. If it meets the standards...and we'll get around to it as soon as possible. This agency, like the others, requires an annual reporting. If you want to give me an opportunity to look at that—I haven't seen it—it would accomplish the same thing. I'm not asking that the department duplicate or simply change the covers of the report; that would be redundant.

The Chair: In the interest of time, we ask Mr. Cullen to circulate that.

Mr. Tom Wappel: Sorry to interrupt, but perhaps while that's being done we could ask our researcher, Mr. Rosen, for his comments with respect to what has been suggested, based on his experience.

The Chair: That's a good suggestion, Mr. Wappel.

Hon. Roy Cullen: Have the researchers seen our proposed amendment?

While that's being circulated, Mr. Chair—

The Chair: I'm chairing the committee, so hold on one second.

Do you want to comment on that, or do you want to wait for a moment?

Mr. Philip Rosen (Committee Researcher): I'm not going to comment on the amendment, but I think Mr. Wappel would like me to talk a little bit about what these blue documents are that were held up and about the timing. I think that's the issue.

The performance report is part of the estimates process, and about 10 or 12 years ago the Treasury Board decided that the estimates process documents were not providing sufficient information. What they've done is they've divided them up into performance reports, which come out in the fall, and these indicate what an organization has done up until the end of the preceding fiscal year—in this case, fall 2004, for what happened up until March 31, 2004. The second type of document, which we will be getting shortly, is the report on plans and priorities. This is a forward-looking document. So you have the performance report that looks back at the performance of the organization in the preceding fiscal year, and the other document, which you'll get shortly, the report on plans and priorities, that is a forward-looking document that set out their plans and priorities.

This was intended, as I understand it, to replace annual reports. We have far fewer annual reports now than we had, say, 15 years ago. The difference between these documents and annual reports is that provisions for annual reports required that they be tabled in the House within usually 30, 60, and 90 days of the end of a fiscal year, whereas the performance reports are usually tabled in the House up to six months after the end of the fiscal year. So that's the difference.

They're rather uneven in their content, and not having seen the CBSA one, I couldn't tell you how good it is or how it can be improved. Some are better than others. But a lot of the information you'd normally find in an annual report you will find in the performance reports the parliamentary secretary was referring to.

• (1555)

The Chair: Go ahead.

Hon. Roy Cullen: As a brief comment, with regard to the report on plans and priorities the clerk referred to, the CBSA does one of those as well.

Coming back to Mr. MacKay's point about the clause being permissive, it says in subclause 15.1(1), "The Minister shall,"—in other words that's a requirement—"as soon as possible after the end of each fiscal year...". I think if you want to get a report that is comprehensive at the end of a fiscal year, you need a few months to prepare an annual report that says anything.

If I may, Mr. Chair, in subclause (2) it says "The obligation imposed by subsection (1) may be satisfied...". In other words, I think if it came to the point where members were not satisfied that this report was meeting the test of what was being required, then they could argue that it wasn't meeting the test. Frankly, that applies to every report that would be tabled. If Parliament doesn't feel the annual report is sufficient, then it can raise that issue and demand a better report.

The Chair: Mr. MacKay, do you want to consider this now? Should we stay on this for the moment, or are you ready to consider it now?

Mr. Peter MacKay: If we want to put it to a vote, I'm ready to consider it now.

I look at this and I still see "tabling of any reports". There's no explicit mention of the Canada Border Services Agency being required to file the annual report, either in this amendment or any other statute.

I'm sorry, I'm not prepared to take the parliamentary secretary at his word that this will just be one of the other reports that the Treasury Board will take care of. What could be simpler than having it explicitly stated in the bill that the agency will be required to file an annual report? I thought we should, at least at this instance, try to inject some simplicity and a straightforward commitment on the part of the government to file the report. What could be simpler than that? Why would the government object to it?

Hon. Roy Cullen: Mr. Chair...

The Chair: Mr. Cullen.

Hon. Roy Cullen: Oh, it's Mr. Wappel.

Mr. Tom Wappel: I'm sorry, I was going to simply comment.

Mr. MacKay, I'm having difficulty following your logic as you've just expressed it.

I've just seen this for the first time myself. As I see 15.1(1), it creates a positive obligation in a mandatory sense on the minister to file a report annually—whether you want to call it an annual report or whatever you want to call it—because it must be done after each fiscal year. And about what? About the operation and performance of the agency. To me, that is mandatory. That to me is a report. That to me is every year.

Mr. Cullen, in my opinion, is correct in pointing out that while the performance report—the agency would like to hope—would satisfy our committee on a yearly basis, that doesn't necessarily mean that our committee would be satisfied with the performance report on a yearly basis. We could bring the officials and the minister before us to ask for further and better information. I'm a little troubled with your logic with respect to your argument. It seems to me that the government has basically accepted your proposition, which is to

provide a report annually. They just are hoping to avoid, as I take it, excess paperwork. It is mandatory, and I won't repeat myself.

The Chair: Mr. MacKay, is there anything further you wish to add?

Are there any other colleagues who want to contribute to this debate before we consider it?

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): When I raised my hand earlier, I was going to ask the same question Mr. Wappel asked, and for the same reasons.

It does seem, Mr. MacKay, that the government proposal meets your objective. In the text you have proposed, I fail to see anything requiring a more or less extensive report than that which the government is prepared to suggest, except that it avoids duplication.

• (1600)

[*English*]

The Chair: Mr. MacKay.

Mr. Peter MacKay: Mr. Chair, I have no difficulty with subclause (2) that is being proposed by the parliamentary secretary, which in essence avoids the potential duplication of a Treasury Board report. On the wording as presented, my reading is that it's not as specific as the amendment that I put forward, which requires the annual tabling with respect to the timeframe. If the parliamentary secretary would like to move that subclause (2) be amended to the amendment that I've put forward, then I have no difficulty with that.

[*Translation*]

The Chair: Mr. Lefebvre.

[*English*]

Mr. Denis Lefebvre: I have one comment, Mr. Chairman.

Mr. MacKay, in your amendment, it appears that you are identifying the calendar year as the year with respect to which a report has to be made.

Mr. Peter MacKay: That's correct.

Mr. Denis Lefebvre: A report made for 90 departments and agencies in a uniform format is with respect to the fiscal year. To undertake a report in respect of an annual year and a fiscal year would be a huge amount of work on our part, to recast everything in a different format. If possible, all reports should be in respect of the fiscal year. That's why we have indicated that the minister shall with respect to the CBSA table as soon as possible after the end of the end. Last year, the report was tabled toward the end of October by the Treasury Board, because as Mr. Cullen mentioned, we need several months. Also, the tabling of the public accounts of Canada are normally tabled in September. This is followed by a comprehensive report on our operations and performance. Certainly subclause (1) mandates the minister every year after the fiscal year to table. You add the word "Agency" on the second line. It is a report with respect to the operations and performance of the agency. That's the CBSA.

Mr. Peter MacKay: Can you explain to me, Mr. Lefebvre, what "as soon as possible after the end of each fiscal year" could mean?

Mr. Denis Lefebvre: We thought of putting a date. As I mentioned, we hope this is adequate. Normally...last year it was seven months after the end of the fiscal year that the Treasury Board tabled the report in respect of all 90 departments and agencies. We hesitate to put a date. I don't think it would be a great risk in saying that it has to be done during the calendar year following when the fiscal year ends, but we are a bit hesitant to put a firm date earlier than that; it could cause difficulties.

The Chair: Mr. Cullen.

Hon. Roy Cullen: Coming back to Mr. MacKay, if I understand your concern, and forgetting about the timing, for the moment, of the calendar year versus the fiscal year, in proposed subsection (2)—I'm just throwing this out, and maybe officials could ponder this—if we said “may be satisfied by the tabling”.... I think maybe the term “any reports” might be causing you a problem. If we said “the tabling of performance reports required by the Treasury Board that contain the information required by that subsection”, could we live—

The Chair: I see Mr. MacKay nodding; I'm not sure what that means.

Mr. Peter MacKay: I think if it were more specific, that would suffice.

The Chair: All right. I'm hearing that people are moving towards a consensus here.

Mr. Lefebvre, do we want to just take a moment? Shall we just stand this particular clause? I'll continue, if people would like. I don't think there's any other burning thing until we get to clause 58. In the interest of time, let me just, as your chairman, barrel on.

(Clause 15.1 allowed to stand)

The Chair: I'm now going to group clauses 16 through 32, and ask if any of you colleagues have questions with regard to clauses 16 through to and including clause 32. Anyone, the officials or Mr. Cullen? Questions?

(Clauses 16 to 32 inclusive agreed to)

● (1605)

The Chair: All right. We're going to make a big leap this time, because we've got a whole page, but we don't get through to the major other amendment until we.... Colleagues, could I suggest going to clauses 33 to 55, which takes us through the whole next page? Are there any questions?

I see Mr. Wappel.

Mr. Tom Wappel: Yes, thank you, Mr. Chair.

On clause 41, the explanatory note indicates, and I quote: “This amendment removes the authority to designate officers under the Customs Act from the Minister of National Revenue, as this authority now resides with the president of the agency.” If I look at section 7, I don't see any mention of the Minister of National Revenue. So how is it that section 7 removes authority from the Minister of National Revenue, if the Minister of National Revenue is not mentioned?

The Chair: Ms. Breakwell, did you want to, or Roy?

Hon. Roy Cullen: I think they're just consulting now, digging up the relevant section.

The Chair: Did you say section 7, Tom?

Mr. Tom Wappel: Proposed section 7 is clause 41 of the act. It's amending a particular statute. I don't know what it is, but I think it's the Customs Act. I'm presuming that in the Customs Act—and I'm just guessing, but I'm hoping the officials will be able to confirm my guess—that section 7 of the Customs Act at one point authorized the Minister of National Revenue, and now it's going to be amended to authorize the minister in charge of the Canada Border Services Agency. I'd like some assurance that I'm guessing correctly.

The Chair: Mr. Ménard.

[Translation]

Mr. Serge Ménard: I do not understand the explanation about the section. It states that this power now lies with the president of the Canada Border Services Agency, but the clause states that the minister may designate any person. Is it the minister or the president of the CBSA who does this? From what I read here, it is the minister, and I imagine he is the person referred to at the beginning.

[English]

Mr. Denis Lefebvre: I'm sorry, but are we talking about the Canada Customs and Revenue Agency?

Mr. Tom Wappel: Monsieur Lefebvre, we're talking about clause 41 on page 18.

Mr. Denis Lefebvre: Yes, that's proposed section 7.

Mr. Tom Wappel: That's proposed section 7 of what?

Mr. Denis Lefebvre: Of the Canada Customs and Revenue Agency Act.

Mr. Tom Wappel: Right.

Mr. Denis Lefebvre: The Excise Act and the Excise Act, 2001 are the responsibility of the Minister of National Revenue.

Mr. Tom Wappel: Yes.

Mrs. Candace Breakwell (Director, Legislative Affairs & ATIP, Department of Public Safety and Emergency Preparedness): Under the CCRA Act, what we were doing was continuing the idea that the minister had the authority to designate.

Mr. Tom Wappel: Yes, but what you're saying in the note, as Monsieur Ménard points out, is that it's no longer going to be the Minister of National Revenue. The note says it's going to be the president of the CBSA. The section says it's going to be the minister. Is the note wrong?

Mrs. Candace Breakwell: It's wrong. It should have been...and the reason it is—

Mr. Tom Wappel: It should have been what, Ms. Breakwell?

Mrs. Candace Breakwell: It should have been the minister.

Mr. Tom Wappel: The minister of CBSA?

Mrs. Candace Breakwell: Of CRA.

Mr. Tom Wappel: Of CRA. Who is that? Ms. McLellan?

● (1610)

Mrs. Candace Breakwell: Mr. McCallum.

Mr. Denis Lefebvre: Yes, Mr. McCallum.

Hon. Roy Cullen: Mr. John McCallum.

Mr. Tom Wappel: Mr. McCallum? Then I don't understand. This amendment removes the authority to designate officers under the Customs Act from the Minister of National Revenue, who is Mr. McCallum, as this authority now resides—presumably pursuant to this clause—with the president of the CBSA. But proposed section 7, which is clause 41, doesn't mention the president of the CBSA, it only mentions the minister. I'm trying to figure out what minister we're talking about, number one, and number two, why the briefing note talks about the president.

Hon. Roy Cullen: Any answers?

The Chair: We're missing a minister.

Mrs. Candace Breakwell: Okay, I understand now.

This is the Minister of National Revenue. This is the CCRA Act. All we did was pull out the reference to the Customs Act. What it used to say was that the Minister of National Revenue could designate people under the Excise Act; the Excise Tax Act; the Excise Act, 2001; and the Customs Act. What we did was remove the reference to the Customs Act because, going back to paragraph 9 (2)(a), it's now under the Customs Act that the president of CBSA can designate officers.

So in clause 41, all we did was remove the reference to the Customs Act. It just maintains the continuation of the minister's responsibility to designate in CCRA.

Mr. Tom Wappel: Thank you. If that had been the explanation in clause 41, I wouldn't have asked the question.

Mrs. Candace Breakwell: Thank you.

The Chair: Are there any other questions?

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: We are on clause 41, but isn't the minister who enforces this act the new Minister of Public Security?

Mr. Denis Lefebvre: Look at the title above clause 34.

Mr. Serge Ménard: Oh, I see.

Mr. Denis Lefebvre: It reads: "Canada Customs and Revenue Agency Act". The section 7 in question refers to the Canada Customs and Revenue Agency Act. That section has been removed and replaced by the text in the bill. Only those who deal with taxes and excise duties may still be designated under the act.

Mr. Serge Ménard: They may be designated under the Excise Act, may they not?

Mr. Denis Lefebvre: Under the act, the Minister of National Revenue is responsible for the Canada Revenue Agency and, consequently, for the Excise Act.

Mr. Serge Ménard: Very well. You are talking about the minister referred to in section 7 of the existing act, which will be amended by clause 41.

Mr. Denis Lefebvre: That is Mr. McCallum.

Mr. Serge Ménard: All right, I understand.

[*English*]

The Chair: Are there any other questions for clauses 33 through to 55? No?

(Clauses 33 to 57 inclusive agreed to)

(On clause 58)

The Chair: Clause 58, Mr. Cullen, please.

Hon. Roy Cullen: Thank you, Mr. Chair.

This is the clause on which we heard from the Canada Employment and Immigration Union. They had requested a change.

By the way, I wanted to thank members of the committee for respecting the notification time for amendments. We have an amendment here.

I mentioned at the time that the government was happy in principle. There were just some wording issues. One of the wording problems was that, in the way it was written, "peace officer" would have applied to visa officers in our missions abroad. By making this change, it applies just to the immigration officers within the Canada Border Services Agency. We've talked to the union about it, and they're very delighted and thrilled that this is happening.

So that was the reason. This makes them peace officers, which is what they were looking for within the context of the Canada Border Services Agency.

• (1615)

The Chair: Does anybody wish to ask the parliamentary secretary specifics on the amendment? Take your time. I'm not rushing you, I'm just asking.

Mr. Ménard, please.

[*Translation*]

Mr. Serge Ménard: I am not sure I understood the explanation that I was given.

[*English*]

The Chair: Everybody wants to be sure that there's a fulsome appreciation for what you're suggesting. Let's just give them a chance.

Mr. Ménard, did you want to ask a question?

[*Translation*]

Mr. Serge Ménard: If I understand correctly, you do want to restrict the definition of peace officer to customs and excise officers when they are at a border crossing point. Did I understand correctly?

Mr. Denis Lefebvre: Mr. Ménard, in the wording put forward by the union, there was an attempt to include in the Criminal Code the individuals who enforce the Immigration and Refugee Protection Act.

Mr. Serge Ménard: Yes, but I thought there was also a reference to customs officers.

Mr. Denis Lefebvre: No, because customs officers are already included in section 2 of the Criminal Code.

Mr. Serge Ménard: Oh, we do not have that here.

Mr. Denis Lefebvre: Immigration officers were not included in section 2 of the Criminal Code. They are peace officers under the Immigration and Refugee Protection Act, so a wording was proposed to amend section 2 of the Criminal Code. This would have had an impact on all the officers who administer the Immigration and Refugee Protection Act. However, that was not their intention. Traditionally, the immigration officers who have been designated peace officers are those who look after removals, who work at the border and who deal with detention matters. Other immigration officers, for example, those who work in missions abroad, do office work, rather. They evaluate applications from immigrants to Canada and so on. We therefore changed the wording so that we could designate the officers who look after removals, those who work at the border and those who handle detention matters when they are working under the Immigration Act. That is the change. Its purpose is to set a limit.

Mr. Serge Ménard: Fine. I am trying to compare it with the current section in the Criminal Code.

[English]

The Chair: While you're comparing, Mr. Ménard...or do you have another question, a follow-up question? Sorry.

[Translation]

Mr. Serge Ménard: All you have added is the expression “any of those Acts”. Oh, no, you also added “within the meaning of”. It is difficult to find these additions. One of the definitions contained in section 2 of the current Criminal Code reads as follows:

(d) an officer or a person having the powers of a customs and excise officer when performing any duty in the administration of the Customs Act, the Excise Act or the Excise Act, 2001,

However, what you are proposing in this bill reads as follows:

(d) any officer within the meaning of the Customs Act... or a person having the powers of such an officer...

This is the small change added: “within the meaning of the Customs Act, whereas the earlier provision read “of a customs officer”.

M. Denis Lefebvre: Yes.

Mr. Serge Ménard: It comes to the same.

Mr. Denis Lefebvre: After this paragraph (d), which makes a slight amendment with respect to customs officers by identifying them now as officers within the meaning of the Customs Act...

• (1620)

Mr. Serge Ménard: Yes, I see.

Mr. Denis Lefebvre: ... we are proposing to add paragraph (d.1). Now, it reads: “an officer within the meaning of the Customs Act... or a person having the powers of such an officer”. So we would add paragraph (d.1), which would read as follows: “(d.1) an officer authorized...”

Hon. Roy Cullen: Do you have a copy of that, sir?

Mr. Serge Ménard: But where is it? I do not see it.

Mr. Denis Lefebvre: You have the text in French and English. We would add paragraph (d.1) after paragraph (d).

Mr. Serge Ménard: Oh, I see where you are.

Mr. Denis Lefebvre: This would be an addition to clause 58.

The Chair: Thank you.

[English]

Mr. Wappel, please.

Mr. Tom Wappel: Thank you.

I understand what you're doing here. I simply have a question. In the Criminal Code all other acts are referred to in general and no specific section is mentioned: Corrections and Additional Release Act, Customs Act, Excise Act, Fisheries Act, Aeronautics Act. This is the only occasion on which there's going to be a definition that is applicable to one particular section of the Immigration and Refugee Protection Act.

I don't have section 138 in front of me. I do have the minister's letter, in which she answered the questions put by the committee, and she refers to section 138, but not to any subsections. So my first question is how many subsections are there in section 138, and what do the others refer to? And then I'll go from there.

Mr. Denis Lefebvre: Section 138 (1) says:

An officer, if so authorized, has the authority and powers of a peace officer—including those set out in sections 487 to 492.2 of the Criminal Code—to enforce this Act, including any of its provisions with respect to the arrest, detention or removal from Canada of any person.

Mr. Tom Wappel: And how many subsections are there in section 138?

Mr. Denis Lefebvre: There are only two. Subsection (2) says:

An officer may, in cases of emergency, employ a person to assist the officer in carrying out duties under this Act. That person has the authority and powers of the officer for a period of no more than 48 hours, unless approved by the Minister.

It's a special power that does not deal with the issue of a peace officer.

Mr. Tom Wappel: So then your amendment would add that person to the Criminal Code and deem them to be police officers under the Criminal Code.

Mr. Denis Lefebvre: No.

Mr. Tom Wappel: Sorry, not “police officers”, but “peace officers”—

Mr. Denis Lefebvre: Yes.

Mr. Tom Wappel: —while performing the functions that are listed, and as you've read, in subsection 138(1).

Mr. Denis Lefebvre: One slight adjustment to what you've said is that it would not deem them. They would have to be designated or authorized. But once designated or authorized, they would become peace officers for the purposes of the Criminal Code.

Mr. Tom Wappel: Yes, just like a person is designated an fisheries guardian, for example. Yes, I understand, thank you.

Thank you, Mr. Chairman.

The Chair: Seeing no further debate, I will go to the question.

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

(Clause 58 as amended agreed to) [See *Minutes of Proceedings*]

The Chair: Colleagues, we'll now group clauses 59 through to and including 76. Are there any questions, please?

(Clauses 59 to 76 inclusive agreed to)

The Chair: The next grouping, colleagues—not to rush you, but in the interests of time—includes clauses 77 through to 98. Are there any questions on that group from clause 77 through to clause 98?

Mr. Sorenson, please.

Mr. Kevin Sorenson (Crowfoot, CPC): I have a question on clause 77, to replace the term “Minister” with “Solicitor General”. The Senate has before it right now a few questions regarding the Minister of Public Safety and Emergency Preparedness and exactly what’s happened to the Solicitor General. The Solicitor General is a crown...how did the Senate explain it to us? The Solicitor General’s a crown appointment and the other bill gets rid of it.

Does this contradict any of that?

• (1625)

Mr. David Dunbar: Is the question essentially why does this say Solicitor General instead of Minister of Public Safety and Emergency Preparedness?

Mr. Kevin Sorenson: Yes.

Mr. David Dunbar: The change of the names occurs in Bill C-6. Bill C-6 will make changes to all bills. It will change the name from Solicitor General to Minister of PSEP. Until the time that machinery change comes through, the reference still has to be to the Minister of the Solicitor General, because that’s what the Solicitor General Act says until the machinery change happens.

Mr. Kevin Sorenson: You’re saying that because the other bill hasn’t been finalized and because we still have a Solicitor General and not a Minister of Public Safety and Emergency Preparedness, you are going to amend this back to the Solicitor General basically pending whether or not the Solicitor General’s title is ever revoked or taken away.

Mr. Denis Lefebvre: You’re quite right. When we have a number of bills walking through Parliament at the same time, we have to engineer it so at the end it’s all right. During the process, we have to refer here to the current legislation. But there will be provisions in Bill C-6, as David mentioned, at the end when it’s passed to change all other acts. There will be an amendment there presumably that will say change all other acts to change the Solicitor General to the Minister of Public Safety and Emergency Preparedness.

The Chair: Mr. MacKay, did you have a question?

Mr. Peter MacKay: Maybe I can just ask one of the departmental officials if they know whether the term “Solicitor General” is found in the Constitution. I believe that’s where the Senate is going in its examination of this issue.

Mr. Denis Lefebvre: I had the opportunity to witness the exchange between Senator Cools and Bill Pentney yesterday in the Senate on that very topic. They debated at some length about it, and my understanding is that certainly Bill Pentney, who is the general counsel or Assistant Attorney General for the Department of Justice, mentioned that no, it’s not a constitutional statute, it’s a statutory matter.

Mr. Peter MacKay: Thank you.

The Chair: Are there any other questions? No?

(Clauses 77 to 147 inclusive agreed to)

The Chair: Shall the short title...? Sorry, I forgot you, Peter. How could I forget you?

Let’s go back to Peter’s clause 15.1 before we go any further.

Mr. Kevin Sorenson: Is clause 145 where we end?

The Chair: We went to clause 147, so we aren’t at the short title.

We’ll go back to you, Mr. MacKay.

I’m sorry. Mr. Cullen.

Hon. Roy Cullen: Thank you, Mr. Chair.

I think there have been discussions among those assembled, and there have been some words crafted in English and French that may meet the requirements of Mr. MacKay and other members of the committee.

I’ll just read clause 15.1 in English first. In lieu of what’s in front of us, it would say:

(1) The Minister shall, after the end of each fiscal year and before the end of the calendar year in which that fiscal year ends, cause to be laid before each House of Parliament a report of the operations and performance of the Agency for that fiscal year.

(2) The obligation imposed by subsection (1) may be satisfied by the tabling of any reports of the operations and performance of the Agency required by the Treasury Board that contain the information required by that subsection.

• (1630)

The Chair: So that is now the amendment.

Hon. Roy Cullen: Would you like me to read it in French?

The Chair: I think we’re okay.

[Translation]

Mr. Serge Ménard: I would appreciate that.

[English]

Hon. Roy Cullen: Just to make sure we have it in the French language, and maybe just to be more precise, Mr. Lefebvre, perhaps you could read that.

[Translation]

Mr. Denis Lefebvre: Subclause 15.1(1) reads as follows:

(1) The Minister shall, as soon as possible after the end of each fiscal year, cause to be laid before each House of Parliament a report on the operation and performance of the Agency for that fiscal year.

[English]

Mr. Tom Wappel: Mr. Chairman, on a point of order, I don’t believe I heard Mr. Cullen read the words “as soon as possible” in English, but Monsieur Lefebvre read

[Translation]

“le plus tôt possible” in French.

[English]

The Chair: Shame on you.

Some hon. members: Oh, oh!

Mr. Denis Lefebvre: Do you want me to add the words in English or delete them in French?

Mr. Tom Wappel: So which is it? Is it “as soon as possible”, or is “as soon as possible” out?

Hon. Roy Cullen: No, to deal with Mr. MacKay's point, we are saying "the Minister shall, after the end of each fiscal year and before the end of the calendar year in which that fiscal year ends". I think your concern was about putting in some timing.

Mr. Denis Lefebvre: So we'll drop

[*Translation*]

the words "as soon as possible".

[*English*]

The Chair: Mr. Sorenson.

Mr. Kevin Sorenson: You might even be able to wordsmith it a little more by saying "at the end of the fiscal year and by the end of the same calendar year".

Hon. Roy Cullen: Mr. Chairman, we say "and before the end of the calendar year in which that fiscal year ends".

Mr. David Dunbar: For clarity, I think you need to say that, because the fiscal year goes over two calendar years. To be absolutely precise, you should clarify which calendar year.

The Chair: So "as soon as possible" is out.

Mr. MacKay, am I to consider this as your amendment?

Mr. Kevin Sorenson: That's good.

Hon. Roy Cullen: Hang on, Mr. Zed, we're just—

[*Translation*]

Mr. Denis Lefebvre: I will read you the French of subclause 15.1 (2).

[*English*]

The Chair: Oh, I'm sorry.

[*Translation*]

Mr. Denis Lefebvre: (2) The obligations imposed by subsection (1) may be satisfied by the tabling of any report required by the Treasury Board that contains the information required by that subsection.

Is that all right?

[*English*]

The Chair: Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: Why not include "as soon as possible"? "As soon as possible" is not specific.

Hon. Roy Cullen: We could say "as soon as possible but before the end of..."

Mr. Serge Ménard: In your proposed amendment, you used the words "as soon as possible".

[*English*]

Hon. Roy Cullen: "...as soon as possible and before—"

Mr. Denis Lefebvre: "...as soon as possible after the end of the fiscal year and—"

Hon. Roy Cullen: "—and before the end of the calendar year". Does that do it? "The Minister shall, as soon as possible after the end of each fiscal year and before the end of the calendar year in which that fiscal year ends, cause to be laid..."

The Chair: Mr. MacKay, is that okay with you? It's your amendment.

Mr. Peter MacKay: Sure.

The Chair: So we have clause 15.1 amended, and we'll just present it as Mr. MacKay's amendment as read. It's a new clause.

Hon. Roy Cullen: This is actually our amendment, but it was your issue. If you want to take it as your amendment...

Mr. David Dunbar: It's a friendly amendment.

Hon. Roy Cullen: We'll give it to Mr. MacKay as a friendly amendment.

The Chair: Shall 15.1 carry?

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

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill to the standing committee?

Some hon. members: Agreed.

● (1635)

The Chair: Thank you.

Monsieur Lefebvre, Mr. Dunbar, Ms. Breakwell, thank you for your patience.

We're suspended for a short period.

[*Proceedings continue in camera*]

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