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—
Chair

Mr. Bob Mills

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• (1530)

[English]

The Chair (Mr. Bob Mills (Red Deer, CPC)): Order, please.

I would like to deal with a couple of items before we get started and welcome our guests and so on.

First of all, regarding Bill C-377, we have received the Liberal, Bloc, and Conservative papers, which will be attached when I table this tomorrow. I understand that the NDP's paper will be completed shortly.

Is it ready now? Okay.

Anyway, if the members wish, we do have copies here. We need your permission to hand them around to everyone. No one has seen the others' copies of this. So what is your wish?

An hon. member: Sure.

The Chair: Mr. Bigras, is it okay if we pass yours around?

Mr. Cullen?

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Mr. Chair, we're just taking a look to make sure the French is verified with the English.

The Chair: Okay, so sometime during the meeting....

Mr. Nathan Cullen: Correct.

The Chair: Mr. Warawa, could we pass yours around?

Mr. Mark Warawa (Langley, CPC): Yes, please.

The Chair: Great. We'll get the clerks to pass these around.

So on Bill C-377, my plan is to table that tomorrow. You know the report. I think everyone has received a copy of the letter from us that's going with it; it basically summarizes what happened and why we're sending it back in the form we are.

Does anybody have any comments or questions about that?

Mr. Warawa.

Mr. Mark Warawa: Mr. Chair, I have not seen the report. Basically, the Liberals, the Bloc, and the NDP were in support of Bill C-377. My colleagues and I on this side of the table were quite concerned about Bill C-377 and that it doesn't do anything substantial for the environment. So we submitted our supplementary report.

It would be nice to know what the other parties are presenting. Would it be possible, before you table that, for us to have a chance to see it?

The Chair: Yes, we do have permission from everyone to pass that around. I think you heard that Mr. Cullen is in the final phases of checking the French version. So that is being handed around. It's the property of each party. I could table it without it being handed around, but I have received permission to hand it around. So you're getting that right now.

Are there any other comments?

Okay. I'm tabling it tomorrow then.

Just to let the committee know, we have had a request from China's National People's Congress environment committee to come before our committee on June 3. I feel it would be pretty meaningful to ask them questions about the environment. I can tell you that they have more serious problems than we do.

So we have tentatively booked them for that date. I just wanted to let you know that I did go ahead and do that. I think you'll find it pretty interesting to question them on the environment, particularly with the Olympics coming up and all the things that go with that.

An hon. member: And Tibet.

The Chair: I would suggest that maybe Tibet is not part of their number one issue regarding the environment, but you can ask about environmental perspectives. Anyway, I just wanted to let you know about that.

As far as the other dates, of course, today we're dealing with Bill C-474. On Wednesday we'll be dealing with Bill C-474. So today it's basically the scope, on Wednesday it's the structure, and on Monday it's the jurisdiction. We have confirmed witnesses for those three meetings.

Then I'm requesting that on Wednesday, May 7, we have the new Environment Commissioner come, and we've tentatively found that that would be possible, although that tightens the.... There is going to be a report on May 6 from the Auditor General, so it fits pretty well with our new Environment Commissioner, and then we have a deadline for amendments the following day. So after witnesses on Monday, it gives you three days to complete amendments and get them in to the clerk by the afternoon of Thursday, May 8. Then, of course, we'd begin clause-by-clause on the following Monday.

Yes, Mr. Cullen.

•(1535)

Mr. Nathan Cullen: I would like to comment about the commissioner coming before the committee.

A number of committee members over the years—the last two years in particular—have expressed concern with the reporting and the changes that were being presented by Ms. Fraser. I'm wondering if we would be able to focus some of the new commissioner's testimony that way, or at least give them advance notice from the New Democrats that the question will be forthcoming. Can the clerk make note of that?

The Chair: He begins work on May 5, so this would introduce him to all of us very quickly and hopefully give us the opportunity to let him hear both what we as the environment committee think and what the parameters of his job will be. Ms. Fraser will be here as well, so both of them can hear what we have to say. If you have any suggestions, there's no reason anyone here shouldn't give him advance warning about the sorts of things we might be asking him.

We have two other witnesses coming, and they should be here within about 10 or 15 minutes. We indicated that we would have some other business, so we will start unless people have other things they want to discuss.

The plan sounds okay then? Is everybody fine with that?

Yes, Mr. Warawa.

Mr. Mark Warawa: I'm just looking at the original plan.

Under the original plan for discussing Bill C-474, we had a total of five meetings before followed by two meetings of clause-by-clause. What you're proposing is three meetings instead of five. Is that correct?

The Chair: That's what I'm proposing, and then we would have the environment commissioner next Wednesday, which would come immediately on his beginning the new job.

•(1540)

Mr. Mark Warawa: The original proposal that came from the steering committee was that we have a total of five meetings of witnesses, as opposed to now having three.

Who are we missing? Who are we not going to hear from by having two fewer meetings?

The Chair: I've just consulted with the clerk. We had five meetings scheduled for Bill C-474, and we've already had one. In effect, if you look at it, we've probably added a meeting. It was three and two, and we've already had one.

The Clerk of the Committee (Mr. Normand Radford): That's right. We've added two. We added one for main estimates. We added one for witnesses. Now, in fact, we've added one more for clause-by-clause.

The Chair: Is everybody onside, and does everyone know what we're doing?

Hon. John Godfrey (Don Valley West, Lib.): So we'll get the revised schedule shortly?

The Chair: Yes. We'll get you a revised list with all of those dates that I've mentioned.

Of course, we do have main estimates, which we have to look at before the end of the month. We have in effect probably the 28th or thereabouts; that date would work.

Then we do have Bill C-469 as well.

Mr. Mark Warawa: On the estimates, the ADMs are available on the 26th or the 28th.

The Chair: Okay. So we'll confirm....

Yes, Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Mr. Chairman, could someone draw up another calendar for us?

[*English*]

The Chair: Yes. We will get you a calendar right away.

May is pretty much full at this point. We'll have to look at June and see where we're going to go. The steering committee can probably do that.

Mr. Nathan Cullen: I'm just wondering about our process here. I mean, meetings like the Chinese one sound very interesting...but have consequence to the other things. It's difficult for committee members to take it in, absorb what it is, and then say, yes, go ahead.

I'm wondering whether the subcommittee might be a better way to go—when we're adjusting and then looking to June—rather than this process.

The Chair: Sure. Why don't we get the calendar out and then we can set up a meeting. We can go through it from there.

Mr. Nathan Cullen: Perfect.

The Chair: Let's get started. Two of our three guests are here. I'm sure the third one will be here very soon.

I want to welcome you both. We've seen you before. Of course, we're looking at the scope of Bill C-474. That will be our focus today.

Following our usual procedure, I'd ask you to please try to keep it to ten minutes or less. Then we'll go around and all members will have an opportunity to ask the questions.

Pierre, I think you were here first, so let's start with you.

Mr. Pierre Sadik (Senior Policy Advisor, Sustainability Specialist, David Suzuki Foundation): Thank you.

I want to start by telling you how honoured and how excited I am about being here today to address this important piece of legislation.

This bill is based on a model national sustainability act that the Suzuki Foundation released in December 2006. When Dr. Thomas Gunton of Simon Fraser University and I co-authored this model, we could scarcely have hoped that it would receive such solid support and that we would find it before committee a scant 18 months after we released that report. For that and for enabling this bill to move forward again today, we have each and every one of you to thank.

Dr. Gunton and I drafted the proposed act because we asked ourselves why Canada is seemingly lurching from environmental crisis to environmental crisis of prairie droughts, record numbers of boil water advisories, devastating hurricanes and wind storms, forests ravaged by pine beetles, and ice storms. Why is the fabric of Canada's once pristine environment fraying at the edges? It is because our country does not have a national strategy to address the environment.

Canada made an international commitment to the UN in 1992 and another commitment in 2002 to introduce a national sustainable development strategy. While 20 of the world's top environmentally performing nations have already fulfilled the pledge they made at the UN, Canada is still not very much closer to fulfilling this promise.

I'm going to briefly offer a few specific observations regarding the purpose of a national sustainable development strategy and then briefly address just a couple of the key questions that were asked when the committee last considered this bill in March.

First—and I think this is obvious—the bill legislates only a process for obtaining a national sustainable development strategy. It does not in and of itself legislate even one ounce of reduced emissions or pollution prevention.

Second, a national sustainable development strategy is an evergreen policy. It will evolve. It will improve. It will be refined as governments and legislators gain experience with sustainable development policies. On that very issue, some might point to the Auditor General Act of 1995 and say that this bill represents a refinement of that act and the departmental sustainable development strategies that were brought in by that act.

Moving briefly to a couple of issues that were raised during the last session in March, there were a fair number of questions around how a national SD strategy would mesh with provincial jurisdiction and provincial SD plans. There are, of course, environmental issues that clearly fall within federal jurisdiction. There are other issues that involve overlapping federal-provincial jurisdiction, and there are areas, very clearly, that are exclusively within the jurisdiction and domain of the provinces.

A national SD strategy would apply to all areas that come within federal jurisdiction, but it would be designed in anticipation and hope that more provinces would introduce SDSs of their own and that the national strategy could dovetail with those provincial strategies. Quebec is an example of one of a few provinces that have adopted a provincial SDS, and as Ron Thompson told you when he was here in March, it is both conceivable and desirable that at some point down the road a federal and a Quebec environment commissioner could eventually cooperate in protecting the environment.

In areas of overlapping federal-provincial jurisdiction, I believe it would be desirable for the federal government to try to show leadership in those instances where the environment is being neglected. I would characterize the situation as one in which the national SD strategy would apply where necessary but not necessarily apply.

● (1545)

Ultimately, as is the case with CEPA, I would expect that, given the enormous public interest and the high stakes involved in protecting the environment, the two levels of government would be expected to engage in a team effort and cooperate on sustainable development.

There are, of course, those items that fall squarely within the provincial jurisdiction. Perhaps those items can be addressed nominally in the national SDS, but only with the explicit approval and cooperation of the provinces and the addition of wording such to that effect.

Finally, one component of the bill that is probably, or hopefully, beyond debate is the role that the national SDS would play in reporting to governments and Canadians on the state of our environment. Every three years the SD secretariat would report on the environment nationally and by region to give us a clear picture of the quality of our air and our water and the rest of our precious natural capital.

Thank you.

The Chair: Thank you very much.

Mr. Toner.

Professor Glen Toner (Professor, Public Policy, Carleton University, As an Individual): Thank you, Mr. Mills.

When I was before the committee last year, I made a substantive opening statement. I won't do that today. I'll just take a couple of minutes to share with the committee two quotes that help me maintain a sense of context and perspective when discussing institutional legal changes like the act before us today.

The first quote is by William Ruckelshaus, a former Republican head of the United States Environmental Protection Agency:

Can we move nations...in the direction of sustainability? Such a move would be a modification of society comparable in scale to only two other changes: the Agricultural Revolution of the late Neolithic, and the Industrial Revolution of the past two centuries. These revolutions were gradual, spontaneous, and largely unconscious. This one will have to be a fully conscious operation, guided by the best foresight science can provide. If we actually do it, the undertaking will be absolutely unique in humanity's stay on earth.

The World Commission on Environment and Development, in *Our Common Future*, offered this profound insight:

...in the end, sustainable development is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs. We do not pretend that the process is easy or straightforward.

Your inquiries on the Canadian institutional change process in this area prove that the change process, indeed, is neither easy nor straightforward. As a committee, you've received the 2006, 2007, and 2008 reports of the Commissioner of the Environment and Sustainable Development. Ron Thompson has said to you that the fundamental tools of the Canadian experiment—sustainable development strategies, strategic environmental assessment, for example—are essentially broken and incomplete in the absence of an overarching federal sustainable development strategy.

The bill before us is therefore not just another piece of legislation, but is a positive historic step, part of the iterative, transformative institutional change process both Brundtland and Ruckelshaus refer to. Therefore, I submit it is crucial to get it right and make the act meaningful.

Thank you.

• (1550)

The Chair: Thank you very much, Mr. Toner.

Our other guest isn't here yet, but I forgot to get you to adopt the supplementary report that I'm going to submit.

All in favour?

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

The Chair: Now I can report it officially. Thank you.

Let's go to questions. I might interrupt when Mr. Newman comes. We simply thought we'd take a little bit longer than what we did.

We will begin with Mr. Godfrey.

Hon. John Godfrey: By the way, I'm not anticipating exactly what Mr. Newman may say, but I suspect it may not be a lot. I would gather that he's here as a resource person.

I want to thank both of the witnesses for coming. You both have been associated with this for a long time. I'm assuming that both witnesses also saw the proposed amendments that I put forward to the bill, which tried to anticipate some of the comments that have been made, I think quite properly, by all members present and understand that those need to be rendered more concrete eventually by amendments that will come forward from individual parties.

I'd like to begin with the two of you and talk a little bit about the fact that there is a process that has been developed by the Canadian Council of Ministers of the Environment to develop Canadian environmental sustainability indicators and Canada-wide standards. I have some questions: How has that process gone? How is that process different from this bill we're looking at? Is there any way that we can, in the future, use the Canadian Council of Ministers of the Environment process to advance this bill?

Those are my three questions, and maybe Pierre would like to start.

Mr. Pierre Sadik: I'll take a shot at that one first.

The Canadian environmental sustainability indicators, also known as CESI—and I have a copy of the 2006 highlights here—are a start. It's a set of reports that I think are carried out by Statistics Canada, Environment Canada, and Health Canada. They gather information

about the state of the Canadian environment in various contexts, be it different geographic contexts, with different indicators—certain aspects of air quality, water quality, and greenhouse gases—and report that annually.

It is a start, but it's just that. It is not giving Canadians or the government a comprehensive picture of the state of our environment. I believe this bill includes tools to offer Canadians and governments a far broader and deeper snapshot of where the environment is at a given point in time.

The second component of your question, Mr. Godfrey, I believe goes to the Canada-wide standards that are particularly tied to the CCME. Those standards, again, are just that. They're voluntary. They're not mandated. They're not regulations. They're not targets, as that is a term of art. So while they are built on good intentions, they haven't led to follow-through, because there are no consequences for failure to follow through. They maintain a relatively low public profile as well.

This bill is really a pulling together of the literally two dozen or so environmental initiatives out there around reporting, around standards—a thin slice of Canada's environmental problem. It pulls all those things together and compels our leaders—you people—to come up with a comprehensive strategy for Canada.

• (1555)

Hon. John Godfrey: Thank you.

I don't know whether Mr. Toner has anything to add to that.

Prof. Glen Toner: Not really. Pierre certainly has described the CCME process to date, and its value. There are often cumbersome processes with the CCME, as you know.

When I think back to reporting, I think of the high-water mark in Canada, which was the state of the environment reports in the early 1990s—from the green plan days. We could aspire to those comprehensive documents looking across the board at the major ecosystems and major contaminants in the country and do a comprehensive assessment from coast to coast. That is a potential aspiration that perhaps could be met through this targeted assessment process.

Hon. John Godfrey: If you go back to those earlier days, did that process involve collaboration between the provinces and the federal government to get the national portrait of where we were? Is that a precedent for what we're trying to do, a way of moving forward?

Prof. Glen Toner: It brought together the best scientific knowledge from everywhere, not just provincial and federal agencies, but also universities and elsewhere. They were authoritative; no one disputed them. That would be terrific if we could once again bring together all of the insight. All of it was peer-reviewed. None of it could be put in the state of the environment report until it was assessed by the scientific experts in the country—coast to coast.

Hon. John Godfrey: So that's something to draw on.

Prof. Glen Toner: If possible, I would encourage the Library of Parliament staff to bring the 2000 or 2003 state of the environment reports to the committee. They were very impressive documents.

Hon. John Godfrey: Perhaps we could circulate those for our next meeting.

To what extent do either of you think that the criticism by the Commissioner for the Environment about the sustainable development reports is...? First of all, to remind ourselves, that criticism was essentially that nobody took the exercise seriously, that there were no consequences, that departments went through pro-forma exercises. I know Mr. Warawa felt the same, and the previous environment minister felt the same.

In terms of federal performance, in what ways do you think this bill gives us some teeth so we can overcome those criticisms? Everybody has made them; Mr. Dion, Ms. Ambrose, Mr. Warawa, and the commissioners have made them.

•(1600)

Prof. Glen Toner: If you carefully read the commissioner's work over the years, I think you'll find he didn't say that no one took them seriously. Some departments put some real effort into these things. They put in good management practices. They put in timely reviews within the three-year process. They did a lot of good things.

What happened, though, was that there was a disaggregation process. They weren't feeding into anything. They weren't contributing to a federal sustainable development strategy. This is the big difference. With this act, the departmental sustainable development strategies will be contributing to a Canadian sustainable development strategy, and the expectations will be higher. It will be harder for public servants to avoid doing the heavy lifting.

Rather than dumbing down the strategies to the lowest possible denominator, the standards set by the leading departments will have to be addressed. The government, the secretariat, and the cabinet will be looking to each of these strategies to make a strong contribution to the national strategy. You'll get a very different dynamic from the one that existed without the chapeau, without the separate strategies fitting into something. It will become multidimensional rather than unidimensional and departmental only.

Hon. John Godfrey: So you're satisfied that in the proposed structure, particularly in the amended version of the bill, the pieces fit in such a way that it would be hard not to...

Prof. Glen Toner: If I can find the clause that says...

Mr. Pierre Sadik: You mean the clause that says the departmental SDSs will feed into the bill?

Prof. Glen Toner: Yes, the ones that will feed in. There'll be some point to them.

Hon. John Godfrey: That's clause 11.

Prof. Glen Toner: There'll be some point to the sustainable development strategies.

Over the years, a perverse incentive occurred. The departments that tried to push forward and do some interesting things were audited and assessed and critiqued. So in those departments, there developed an incentive to lower expectations, to avoid committing to anything they couldn't easily do, so that they wouldn't be audited and criticized. The new bill, presumably, would create quite a different dynamic. Departments would be competing with one another to contribute to the national strategy as part of their departmental work.

Mr. Pierre Sadik: You're absolutely right about the common objective. The other thing we've seen, however, is that the departmental SDSs were often driven by nothing more than a

deputy minister's committee on the departmental SDSs. The committees changed and had a series of long, convoluted names. Sometimes the words "sustainable development" were in there and sometimes the terms "economic" or "prosperity" were in there as well. In any event, this bill mandates that there will be a central body, namely, a cabinet committee with a secretariat out of PCO overseeing the creation and performance of the departmental SDSs. This has a ring of effectiveness about it—more so than we've seen before.

The Chair: Thank you.

Mr. Newman, I apologize for giving you the wrong time.

If you wanted to make a brief statement, we could do that now.

Mr. Warren Newman (Senior General Counsel, Constitutional and Administrative Law Section, Department of Justice): Thank you, Mr. Chair.

I have a brief statement to make. As I understand it, it may have been distributed.

[Translation]

Mr. Chairman, it is a pleasure for me to appear today before your committee and to respond to questions from members of the committee with regard to the constitutionality of Bill C-474, as concerns the division of legislative powers between Parliament and the provincial legislatures.

Before getting into the subject matter, I should express a few words of caution. I am a constitutional lawyer in the Department of Justice of Canada, and as such, I advise the government of Her Majesty in Right of Canada on constitutional issues. I am thus a law officer of the federal Crown and not of the institutions of Parliament.

•(1605)

[English]

Moreover, Bill C-474 is a private member's bill, not a governmental measure, and you understand that I will abstain from commenting upon the wisdom of such a piece of legislation, or from rendering, on behalf of the committee, a legal opinion on the scope of the provisions it contains.

[Translation]

That said, I have read with interest the Hansard report of the debates on this bill and notably, the federal-provincial concerns expressed by the honourable Member for Rosemont—La Petite-Patrie, Mr. Bigras.

I shall be happy to respond, to the extent possible, to your questions concerning the division of legislative powers and the constitutionality of this bill.

Thank you.

[English]

The Chair: Thank you very much, Mr. Newman.

We'll go to Mr. Bigras, please.

[Translation]

Mr. Bernard Bigras: Thank you, Mr. Chairman.

The least we can say is that it was a nice segue.

If the federal and provincial governments sat down with the Canadian Council of Ministers of the Environment, I think they would likely spend more than four meetings discussing a bill the scope of which, to my mind, goes well beyond that of the usual federal initiative.

I have been an MP in Ottawa for 11 years. Although I am accustomed to seeing the Liberal Party table bills with a centralist bent, rarely have I seen a bill... When I look at the schedule which lists areas affected by the implementation of the sustainable development strategy set out in clause 8, I find that it takes in quite a bit, Mr. Chairman. Some of the items listed include recycling rates, as well as water, materials and energy consumption. Mention is also made of agricultural land. It is rather unusual for a federal bill to make mention of this. There is also a reference to urban land consumption—no small issue—and to public transit, not to mention livestock density and fertilizer and pesticide use in general, not just on federally-owned lands.

My question is for you, Mr. Newman. Do you find it unusual for a bill on sustainable development and the environment to include references to these specific items? For example, do you believe that recycling rates and targets should be set by Ottawa? Is it common to find such things in a federal bill?

Mr. Warren Newman: As I said, I cannot speak to the wisdom of this bill, the scope of which appears to be quite broad. That being said, given its pith and substance, so to speak, the bill primarily applies to federal institutions. Having read through the bill, my view—and again I am not giving a legal opinion—is that it applies to federal departments and agencies, even though broader objectives are identified. Parliament is at liberty to enact legislation that applies to federal departments, Crown corporations and so forth.

Mr. Bernard Bigras: That is precisely the point!

• (1610)

Mr. Warren Newman: The key ruling on such matters is the 1975 Jones decision handed down around the time of the passage of Canada's Official Languages Act which specifically applied to federal institutions and the Government of Canada. Mindful of the residual power under the Constitution to enact laws for the peace, order and good government of Canada, Justice Laskin held the following:

No authority need be cited for the exclusive power of the Parliament of Canada to legislate in relation to the operation and administration of the institutions and agencies of the Parliament and Government of Canada. Those institutions and agencies are clearly beyond provincial reach.

This particular clause of the bill ultimately applies to federal departments and agencies. It creates the position of commissioner and other agencies responsible for ensuring the enforcement of the act's provisions, but these agencies come under federal jurisdiction. Admittedly, if there was an attempt made to have the regulations apply more broadly, problems and questions could arise. In my opinion, even the regulatory authority does not provide access to a broad range of measures likely to have a direct impact on the actions of provinces, municipalities or municipal agencies. We are not dealing with regulations arising from criminal law, for example. This act is not based on criminal law.

Mr. Bernard Bigras: If the interpretation was such that this strategy applied to federal departments, then I would not have a problem with that. I think it is indeed time for some departments to embrace a sustainable development strategy. Rarely do federal departments have such a strategy in place and this is a major shortcoming.

However, clause 8 of the bill calls for the implementation of a national sustainable development strategy that includes “targets with respect to each item listed in Column 2 of the schedule;”.

One of the items listed in Column 2 of the schedule is “urban land”, not “federal land”. Subclause (b) proposes an implementation strategy for meeting each target and penalties for non-compliance.

Mr. Warren Newman: There may be a passing reference to them, but neither the bill nor the regulations create any prohibitions or impose any penalties.

Mr. Bernard Bigras: In your opinion, does urban land come under federal jurisdiction?

Mr. Warren Newman: No, it does not, but that does not mean that a federal act cannot contain a reference to urban land. The bill can refer to cooperation with municipalities or some other initiative to oversee spending power, for example. It is not unusual to mention items that do not fall under federal jurisdiction.

Having read the bill informally, I would say that it does not... Since this is not a government bill, you would have to ask the sponsor to explain the scope of the proposed legislation. As far as I can tell, this bill does not contain any provisions to regulate these areas. A commissioner will certainly report on whether or not the targets have been met, as the case may be, but no provision is made for direct penalties.

Mr. Bernard Bigras: The bill does not set out specific penalties for non-compliance.

Mr. Warren Newman: That is correct.

Mr. Bernard Bigras: That is your opinion.

Mr. Warren Newman: Yes, based on my initial reading of the bill.

• (1615)

Mr. Bernard Bigras: And yet, the following is noted on page 7:

8(2)(b) the implementation strategy for meeting each target, which may include, but is not limited to,

(iii) penalties for non-compliance [...]

Mr. Warren Newman: A strategy cannot be used to create a criminal law provision. It is up to Parliament to draft a criminal law provision that imposes a penalty. Even then, the penalty might be along the lines of a prohibition against dealing with agencies or corporations that do not comply with the targets.

From what I can see, the bill does not provide for criminal law sanctions, such as prohibitions or penalties for non-compliance. That would alter the substance of the bill. In pith and substance, this bill applies to federal institutions.

Mr. Bernard Bigras: Would you please repeat what you just said? In your opinion, this bill applies to federal institutions and does not go any further than that.

Mr. Warren Newman: Basically, yes. Of course, while I did read through the bill fairly carefully, it is not up to me to issue a legal opinion.

Mr. Bernard Bigras: However, your initial assessment is that this bill applies only to federal institutions.

Mr. Warren Newman: In my opinion, by virtue of its pith and substance, this bill applies to federal institutions. Of course, there could be some spin-off effects that will require some adjustments in the way the act is applied.

Mr. Bernard Bigras: What kind of spin-off effects are you talking about?

Mr. Warren Newman: I do not want to speculate because I have not looked at the implementation process as such. I still do not know the strategy that will be employed. I do not know if it will spill over or not into other jurisdictions.

Mr. Bernard Bigras: Could it possibly spill over?

Mr. Warren Newman: Any time an institution is given a mandate...

Mr. Bernard Bigras: ...a federal institution...

Mr. Warren Newman: Any mandate must take into account the fact that we live in a federation made up of provinces and that municipalities fall under provincial jurisdiction. Even federal documents must sometimes refer to the country as a whole. Nevertheless, I do not think we can go beyond the scope of this act, because we do not have the authority to do that. The constitutionality of such a move could perhaps also be challenged, although I do not want to get into that. This issue is already being debated in the case of bills C-377 and C-288.

How far can the federal government go in terms of intervening in areas under provincial jurisdiction? I do not think this bill attempts to do that. Rather, it applies more to the workings of federal institutions. It is up to Parliament to enact legislation for the peace, order and good government of Canada and its federal institutions.

Mr. Bernard Bigras: And does this legislation...

[English]

The Chair: Mr. Bigras, your time is up. You can have a second round.

Mr. Cullen, please.

Mr. Nathan Cullen: Thank you, Mr. Chair.

That was very interesting.

If I were to focus my questions, there would be a question of consequence and a question of focus. Let me start with the latter first.

In reading through this bill, I'm trying to understand the implications of what it would mean on the ground if this law were to exist today...or five years ago. What types of decisions would have been affected, and how? While I support this bill, my fear might be similar to Mr. Bigras' in terms of what we need to tighten up about this legislation to allow it the focus to give it consequence.

Let me be specific. I'll take subparagraph 8(2)(b)(iv) on implementation. This is similar to what Mr. Bigras just spent some time on. Ecosystem-based management—or EBM, as it is known in the industry—one of the foundations of the Great Bear Rainforest agreement in western Canada, is still being debated. It's still being contrived and trying to be understood by environmental groups, government, first nations, and logging interests, but there's no clear legal understanding of what it is, from my perspective.

What does it mean to put it into a piece of legislation if it is still a moving target in terms of regularly making decisions, provinces making decisions, and anybody involved being implicated under this bill? How can we allow for these uncertainties to be written into law?

Mr. Sadik, you can start off.

Mr. Pierre Sadik: Paragraph 8(2)(b) lists a panoply of tools that would be available to the government to help meet the targets. Are you saying in essence that there is an absence of a clear definition of EBM, or are we unable at this point to define what the parameters or EBM are in the specific context of the Great Bear Rainforest agreement? I think EBM is an understood concept.

• (1620)

Mr. Nathan Cullen: It's like sustainable development: there may be some definitions that are generally accepted, but the actual on-the-ground application is not. Therefore, if what we are doing is writing law and making the government available to a suit in court if in contravention of the law, I'm always wary of presenting law that is not defined. When we were working through Mr. Layton's bill there was a prescription to greenhouse gas emissions. We defined it to know exactly what it is, so if the government breaks the targets, the law, Canadians have a clear course for direct action.

I'm worried that in the motherhood statements of this bill—the general prescriptions for sustainable development enshrined into law—what dangers do we run in not having it prescriptive and defined? I'm worried that if it's too broad its application will be meaningless, which is certainly not the intention of Mr. Godfrey. In trying to cast such a wide net...

I want to get into a specific. If the tar sands were an undeveloped resource right now—just a known quantity, but we were unsure of its potential and full development—and Bill C-474 existed, how would we do it differently, or would we do it differently? Is there anything in here that would direct the hand of government in setting out the regulations for industry with respect to a project like that?

Mr. Pierre Sadik: Well, this is a legislative framework for sound environmental governance. It stipulates very little—with the exception of establishing a framework—and this paragraph 8(2)(b) is not an exhaustive list. It lists, by way of example, a suite of tools the government can avail itself of. Some of the tools may not even be known yet. They may not even be conceived of yet, so to speak, to the extent that policies are invented. But that's the nature of environmental management. The environment is constantly changing, and we have to use adaptive management even in managing and protecting the environment.

Mr. Nathan Cullen: Is there any danger in that? Take the example of greenhouse gases, where government says that they will regulate industry and they will set targets. Both of those terms, if left to broad definition, may give the public some assurance, though the government may choose regulations and targets that are virtually meaningless by being so lax and loose.

Mr. Pierre Sadik: Here's the beauty of this act. This act simply says that in some instances the government will have to regulate in connection with targets. And regulation could mean economic instruments; it could mean a cap and trade system, or a price on pollution. I think a lot of us would agree that's probably a sensible proposition. But then the act also says that the environment commissioner—an arm's-length, independent, credible body in our system—will assess the sustainable development strategy—

Mr. Nathan Cullen: Before it's applied.

Mr. Pierre Sadik: —before it is tabled in the House. The environment commissioner will assess it and will therefore be able to comment, bringing that perspective that she or he has on the anticipated efficacy of this action. And that may go some way toward your concern.

Mr. Nathan Cullen: It's interesting, and this might be something my Liberal colleagues may address when it comes to their round of questioning, because this is something that's met with great resistance from the Auditor General's office, in terms of looking into government plans and giving some comment as to where they're going.

I'm going to lose time here, and there is a question of consequence I would like to ask Mr. Toner. When we look back to the nineties, when government gave prescription on the deficit, when it gave direction to government administration to go out and clip such-and-such a percentage off of their total spending, it was effective in terms of achieving the end results. One could debate whether it was an effective government policy overall in certain instances.

How was that effectively done? What was the encouragement through the civil service that the results were proven, as opposed to—as you commented—so many reports from the Commissioner of the Environment suggesting that when we do it environmentally, the effects are found to be wanting?

• (1625)

Prof. Glen Toner: It's a bad comparison, in that it was crisis-driven. We were frightened—IMF threats of things—and it was extremely closely held from the centre. And basically the Minister of Finance and the President of the Treasury Board allocated the cuts to other ministers.

Mr. Nathan Cullen: What if ministers and deputy ministers just didn't follow through? What happened?

Prof. Glen Toner: Well, in that case there was some negotiation on the margins—

Mr. Nathan Cullen: Right.

Prof. Glen Toner: —including from the environment minister and deputy, who argued back that in fact because all of the cuts were supposed to be from pre-green-plan A-base funds.... There was one department that was able to make the argument that their ongoing operations were so intertwined with the green plan funds—which had been integrated into the department's activities over the previous

four or five years—that they couldn't separate them out. The only department where that argument carried was Environment Canada, and it was—

Mr. Nathan Cullen: But government-wide, it would seem to be that when the directive was given from the centre, people followed through with the instructions. We didn't get auditor reports coming back two or four years afterwards that said the government promised to cut spending and the government failed on its effort to cut spending. I don't remember reading any auditor reports like that. How were they able to do it?

Prof. Glen Toner: Prime ministerial and cabinet support, and the ministers were all onside and willing to do what they had to do in their own departments to ensure they met their reduction targets.

Mr. Nathan Cullen: It's interesting that you mention crisis, because oftentimes when we have witnesses before us here, with respect to issues like climate change or toxins in the environment, they do speak in terms of crisis, that inevitability of the momentum of the thing.

Is this bill meant to compensate for the lack of power that Environment Canada generally has when trying to apply broad, sweeping government initiatives like sustainable development?

Prof. Glen Toner: I think it's trying to change the locus of authority to the cabinet, to the cabinet committee, and to the PCO secretariat, in terms of getting the whole government marching in the same direction, so you have—

Mr. Nathan Cullen: Ultimately the Prime Minister.

Prof. Glen Toner: Absolutely, the executive.

Mr. Nathan Cullen: So in a sense, is the effort then to make the Prime Minister the Minister of the Environment?

Prof. Glen Toner: No. If anything, it would be to make the Prime Minister the Minister of Sustainable Development, which is much broader. The environment is a crucial part of it, but it's the activities and decisions taken in the agriculture, energy, mineral, and fisheries departments and others that have these huge environmental consequences you're speaking of.

Mr. Nathan Cullen: Just one point of clarification here, Mr. Toner. In your testimony you talked about these early peer-reviewed reports. You mentioned the early 1990s, and then later you said 2000 and 2001. Which were you referring to?

Prof. Glen Toner: I made a mistake there. In fact, those state of the environment reports I made reference to were a victim of program review cuts.

Mr. Nathan Cullen: In what year?

Prof. Glen Toner: I think they were in 1987, 1990, and 1993.

Mr. Nathan Cullen: Then cut after 1993.

Prof. Glen Toner: They were cut in 1995-96, regrettably.

Mr. Nathan Cullen: Again, Mr. Sadik, I'm trying to understand the implications of this bill through a current-day lens, if it were to exist today. Given the time, I'm not sure I got a sufficient answer. A project like the northern Alberta tar sands development project, how would it look if this bill were law? Would it have been different? Would it have cast the hand of government differently?

Mr. Pierre Sadik: I think we'd have a situation where.... We don't have an energy policy in this country.

Mr. Nathan Cullen: I've noticed.

Mr. Pierre Sadik: We would have looked at the tar sands, the oil sands, through the lens of a responsible energy policy, through the lens of sustainable development, with an assessment of the costs and benefits to Canadians today and future generations of Canadians.

Mr. Nathan Cullen: Would we have done the project?

Mr. Pierre Sadik: I can't say. A good bit of political will would have been and always will be needed. If the will wasn't there to do the project, or if the will was there to do the project regardless, the project probably would have gone ahead anyway. This is not a panacea, but this bill will make it more difficult for our leaders to step back from their responsibility to Canadians around the environment. Let's put it that way.

The Chair: Thank you, Mr. Cullen.

Mr. Warawa.

Mr. Mark Warawa: Thank you, Chair.

Thank you to the witnesses for being here. I think we've already heard some very good testimony. I've found it very interesting.

Mr. Sadik, I'm going to focus my questions initially on you. You're with the David Suzuki Foundation. What part did you and the foundation play in the bill we see before us, Bill C-474?

• (1630)

Mr. Pierre Sadik: Year after year, we'd been seeing the same Environment Commissioner reports that Glen talked about earlier. We'd seen the same critiques of the previous government and are seeing some of the same critiques of this government, around the dysfunctionality of the departmental SDS, sustainable development strategy system. So Dr. Tom Gunton and I decided that instead of just critiquing, it might be good to show where the gaps are and offer some solutions to the Canadian government around sustainable development.

In December 2006 we released this report, *Toward a National Sustainable Development Strategy for Canada*. Dr. Gunton and I drafted a model act that was appended to it. As I say, that was released in late 2006. I went around and spoke to various folks on the Hill about it. Then in the spring of 2000 the NDP member introduced essentially our model act as a private member's bill. Mr. Julian, I believe, was up later on the turn for private members' bills in the House, then Mr. Godfrey. Mr. Godfrey introduced it, I guess, in the late summer or fall of 2007, and of course came to the foundation to ask for some advice on how to structure the bill.

As I like to put it, we are like an open-source software; we provide advice to everyone and anyone. Seeing our proposals and our solutions implemented is the *raison d'être* of the David Suzuki Foundation, so we were happy to see such interest in this bill.

Mr. Mark Warawa: I read your paper and found it very interesting. If time permits, I'll have some questions about it. Fundamentally, it's Bill C-474 that we see before us. It's not your bill, but it is a bill that you helped bring to the House of Commons. Is that a fair comment?

Mr. Pierre Sadik: It's a bill that has now been substantially amended from the model legislation in the report we released in late 2006. As for bringing it to the House, I don't want to take too much credit, but whenever I was asked to help, I helped.

Mr. Mark Warawa: After second reading, the Speaker said the bill, as originally presented by Mr. Godfrey, would require a royal recommendation. Mr. Godfrey and I worked together, and I found the discussions interesting and fruitful. Have you been involved with proposed amendments to the first draft, which would require a royal recommendation? Have you been involved with this also?

Mr. Pierre Sadik: Absolutely. Whenever I was asked for help, I tried to offer whatever assistance I could.

Mr. Mark Warawa: The former Liberal government was held to account by the Commissioner of the Environment. The Commissioner, when last before this committee, said that during the last 15 years, approximately, the Government of Canada has had a hard time achieving its aspirations, delivering on the announcements that were made. Have you or the Suzuki Foundation had a working relationship with some of the same people who now are introducing Bill C-474? My ultimate question is, why was there no action over the last 13 years? Why now, when in opposition, are they introducing Bill C-474? Why was it not introduced when those same members were in government? Did they believe that it would not have passed muster. Would it not have been successful? Would it not have moved forward if it was introduced by the previous government? Why now, as the opposition?

• (1635)

Mr. Pierre Sadik: I'm scratching my head about that. Maybe it has something to do with the release of our report and model legislation in late 2006. However, I can't really say why the Liberals, the previous government, did not follow through on the commitments they made on the international stage.

Mr. Mark Warawa: I can't either. It's an interesting development, though, for them to bring legislation like this. We've agreed with the Commissioner that we need to do better as a government, and we've committed to this goal. We committed to a review, which will be reported in October. In the last report, there were 14 departments—nine were unsatisfactory, five have improved and are now satisfactory. We still have a lot of work to do as a government.

I find this bill very interesting and challenging.

I'd like to switch the focus of my questioning to the end of Bill C-474, where we have the schedule. I'd like to preface my comments with a reference to your paper. On page 7 it says:

Each federal department has a sustainable development strategy. The problem is that the strategies list a series of initiatives without showing how the initiatives will meet overall sustainability targets. This problem is caused by two deficiencies. First, measurable targets do not exist for most sustainability goals. Second, even where there are measurable targets, the strategies do not show quantifiably how the target will be attained.

This is the heart of my question. As we look at this grouping, when you expand on it, it's huge. How has it been prioritized? Has it been costed? What thought has gone into the creation of the schedule? How is it going to be paid for?

Mr. Pierre Sadik: In many respects, the schedule will pay for itself, Mr. Warawa. The items in the schedule are items for which the act stipulates short-, medium-, or long-term targets. Short-term is within one to three years, medium-term is within five to ten years, and long-term is 25 years.

Some of those targets would be undeniably positive for Canada. If we were to reduce the constituent components of ground-level ozone, if we were to clean up the water, and if we were to take certain harmful pesticides out of our food chain, the savings in health care alone would be in the billions of dollars.

There is some work being done around that kind of thing. Your Transport Canada department has recently done some work on the environmental burden of disease caused by motor vehicle emissions and quantifies that in terms of what harmful emissions from motor vehicles and other modes of transportation are costing Canadians and Canadian society. Then, of course, there are the priceless benefits, quite apart from the cost to our health care system, such as having your parents live longer, not having premature morbidity, and having healthier children.

• (1640)

Mr. Mark Warawa: I hate to cut you off, but I think my time just ran out.

Was an analysis done to prioritize the list?

Mr. Pierre Sadik: No.

Mr. Mark Warawa: Thank you very much.

Mr. Toner actually had a comment.

The Chair: Go ahead, Mr. Toner.

Prof. Glen Toner: It's to Mr. Warawa's question about why the Liberals are doing this now. I must admit that I've had the same thought.

You sometimes hear that governments are just too busy. When they were a government, a lot of us were telling them to make these changes, and they didn't make them. But it's sometimes said that governments are just too busy and that political parties have time to think when they're in opposition. So maybe they've learned from their mistakes.

The Chair: Mr. Scarpaleggia, on that note, go ahead.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): I would also add that situations evolve, and understanding and insights evolve. We're in real time here—

Prof. Glen Toner: Absolutely.

Mr. Francis Scarpaleggia: —in government and in opposition. We can't forget that every time we tried to move, we had a Prime

Minister who denied that climate change existed—sorry, who's now Prime Minister. We had a leader of the opposition who claimed that it didn't exist. Our chair, in fact....

Okay, I'll stop there and go on with my question.

Actually, I'd like to get down to this idea of information gathering. Information is so important in creating effective action, achieving targets, and so on. It's important in setting targets.

You mentioned the state of the environment reports of 2000 and 2003.

Prof. Glen Toner: Sorry, the dates were wrong. That was the early nineties—1993.

Mr. Francis Scarpaleggia: Were these reports comprehensive in terms of gathering information or in getting it from governments—municipal, provincial, and federal? To your knowledge, were there any problems gathering that information in the sense that some jurisdictions might not have liked to provide it, and so on and so forth? Was there real cooperation around that?

Prof. Glen Toner: I wasn't personally involved in these reports, but I think so. There was a general societal sense that we had to get a sense of the state of the place, and there was a real sense of cooperation in the scientific community. There would be something on water, but there'd also be something on the St. Lawrence. So there was an ecosystems orientation to it. They'd gather the information and tell the story about the state of the environment and how it was changing in these areas.

As far as I know, everybody was quite happy. All the scientists from all governments and elsewhere were willing to roll up their sleeves and pitch in. This was an early and open time, too. People were really enthusiastic at that time to contribute to expanding our knowledge about Canada.

Mr. Francis Scarpaleggia: Other supranational agencies, such as UNESCO, gather information, so I imagine it wouldn't be too much of a problem under this bill. For example, Statistics Canada gathers information on activities that are in provincial jurisdictions. They have reports on water consumption.

Perhaps Mr. Newman or the other two panellists would know this. Is there a legal requirement for entities operating in a provincial jurisdiction to report to Statistics Canada such things as water consumption or recycling rates or what have you, as Mr. Bigras mentioned? Is there some sort of legal lever that allows the federal government to get this information?

Mr. Pierre Sadik: Mr. Scarpaleggia, under various pieces of legislation, including CEPA, bilateral agreements are entered into by the federal government and the various provincial governments, for the provinces to aid in the reporting of the emission of items under the national pollutant release inventory. There is, in the interest of national environmental—

Mr. Francis Scarpaleggia: Under CEPA I can see that.

What about Mr. Bigras' point about recycling rates? We may not have a specific answer to that yet.

In terms of the Commissioner of the Environment's vetting these plans, it sounds almost as if we're being dragged into the debate we had about a year ago in this committee as to role the Commissioner of the Environment has. We're getting back into this potential conflict between Madame G elinas and Madame Fraser.

Do you think a Commissioner of the Environment or an Auditor General, under whom the commissioner would be working, might see it as a little too political to be judging the strategies of federal departments?

• (1645)

Mr. Pierre Sadik: Subsection 4(8) is the section in question. It deals with the national SD strategy. It says that—sorry, it's subsection 8(4):

The minister shall...submit a draft of the National Sustainable Development Strategy to the Commissioner for review and comment, including whether the targets and implementation strategies are capable of being assessed.

Mr. Ron Thompson, who reports directly to Ms. Fraser, was comfortable with that provision, and therefore so am I.

Mr. Francis Scarpaleggia: In a sense, it's a bit like Bill C-288, where the commissioner is being called on to judge whether certain steps in the process have been followed.

I have no further questions. I don't know if my colleague—

The Chair: Your time is up anyway, Mr. Scarpaleggia. Thank you.

Mr. Harvey, please.

[Translation]

Mr. Luc Harvey (Louis-H ebert, CPC): Welcome.

I only have five minutes. I think most of my questions can be answered by a simple yes, or no. That way, I can get in as many questions as possible.

The bill contains a reference to sustainable development, to energy consumption and to what is possibly the main source of GHG emissions, namely CO₂ or CH₄. In your opinion, is hydroelectricity a "sustainable" source of energy?

Mr. Sadik.

[English]

Mr. Pierre Sadik: The hydroelectricity generated through run-of-the-river types of facilities is certainly a sustainable and renewable source of energy, yes.

[Translation]

Mr. Luc Harvey: Mr. Toner.

[English]

Prof. Glen Toner: The same question?

[Translation]

Mr. Luc Harvey: Your answer is the same?

[English]

Prof. Glen Toner: Yes. The run-of-the-river stuff is very interesting.

I'm not opposed to dams and hydroelectricity power from dams if they're done well, thought out, and the implications for the rest of the ecosystem are taken into consideration. Hydro power, in that sense, is part of the energy mix.

[Translation]

Mr. Luc Harvey: We hear about traces of mercury in waterways, about changes to a region's aquatic fauna, such as fish that are unable to pass through dams.

Would you still equate hydroelectricity with sustainable development?

[English]

Prof. Glen Toner: Sure.

[Translation]

Mr. Luc Harvey: I see.

[English]

Prof. Glen Toner: Yes, as I said, if the ecosystemic implications are taken into consideration in the development of the project and things like that.

[Translation]

Mr. Luc Harvey: Is nuclear energy sustainable energy?

Mr. Sadik

[English]

Mr. Pierre Sadik: Sustainability involves taking care of our present needs without compromising the needs of future generations to take care of their own needs.

Given that no jurisdiction on the planet has yet found a way to deal with nuclear waste on a permanent basis, I can't see how nuclear power would come within the definition of sustainable development.

Prof. Glen Toner: I also would share that concern about the life cycle of the nuclear option and the problems with nuclear waste management.

[Translation]

Mr. Luc Harvey: What about biofuels?

[English]

Mr. Pierre Sadik: Biofuels are an exciting issue right now. We're seeing a lot about it in the media. There are two types of biofuels. There are lignocellulosic biofuels, which are taken, generally speaking, from the by-product of food crops or other crops that are non-food and grow extremely rapidly and with very few external inputs. Study after study has now shown that those kinds of biofuels give you a net energy improvement and a net greenhouse gas reduction. With other types of biofuels—the ubiquitous example is corn for fuel—study after study is showing that you may actually be coming out expending more energy than you're saving in bringing that kind of fuel to market. So that, again, does not come within the definition of sustainability.

• (1650)

[Translation]

Mr. Luc Harvey: I have reviewed your position on biofuels over the past five years and I still do not know if you are for or against them. Your position is somewhat unclear.

Regarding the coal industry, are you in favour of coal-fired plants?
[English]

Mr. Pierre Sadik: Coal is problematic for reasons I can explain, if you'd like. I think they're fairly obvious. Until carbon capture and storage technologies have been perfected, then coal is highly problematic, non-sustainable.

[Translation]

Mr. Luc Harvey: Would you agree with that assessment?

[English]

Prof. Glen Toner: Yes, I agree with that.

[Translation]

Mr. Luc Harvey: Aside from hydroelectricity then, there are really no other types of sustainable energy. There is wind energy, but many people in the Gaspé seem to be opposed to this form of energy.

Producing photovoltaic cells requires energy and it may take up to 10 years before these cells generate any power. Moreover, these cells must not break because that results in negative enthalpy.

Aside from hydroelectricity, what energy source should Canada be looking at to secure its development? Is this a feasible option?

[English]

Mr. Pierre Sadik: Well, no one is talking about stopping any type of energy fuel source tomorrow. What we're talking about and what we're looking at is a slow and well thought out consistent phasing out of non-sustainable fuel sources, while other fuel sources—including wind, solar, geothermal, tidal, run of the river—are ramped up. Couple that with demand-side management, which simply means that we use energy more efficiently and probably use less of it overall.

The Chair: Thank you.

Mr. Roy.

[Translation]

Mr. Jean-Yves Roy (Haute-Gaspésie—La Mitis—Matane—Matapédia, BQ): Thank you, Mr. Chairman.

My question is for Mr. Sadik whom I have been listening to closely from the outset. Does this bill apply strictly to federal departments and agencies?

[English]

Mr. Pierre Sadik: No, absolutely not. I have to disagree with Mr. Newman's statement, if that was in fact the statement Mr. Newman was making. This bill would apply to all federal departments, but also to federal policies, plans, and proposals. Otherwise, it becomes, really, largely another departmental SDS greening-of-government kind of strategy, which would be a waste of time.

[Translation]

Mr. Jean-Yves Roy: In your opinion, this bill is quite broad and allows the federal government to intervene in areas that fall under municipal and provincial jurisdiction. For example, the possible amendments for consideration include a reference to the following goal: "Canadian cities should become vibrant, clean, livable, prosperous, safe and sustainable".

How do you propose to accomplish this feat if the federal government does not assume the right to intervene in areas that fall under municipal jurisdiction?

You stated that the federal government would be able to intervene in municipal matters. I remind you that under the Constitution, municipalities fall exclusively under provincial jurisdiction. Under no circumstances can the federal government step in without the consent of the provincial governments concerned.

This bill does not just apply to federal departments and agencies. It opens the door for the federal government to intervene in areas that fall under provincial jurisdiction. Explain that to me, if you can.

You say that agreements will be negotiated. I understand that, but a provincial minister of the environment may see things differently. I am sorry, but this bill contains unacceptable principles and opens the door for the federal government to exercise powers that it does not have.

• (1655)

[English]

Mr. Pierre Sadik: By virtue of the Constitution, this bill can only apply to items that fall within federal jurisdiction. And a lot of items on which the government makes policies, plans, and proposals fall within federal jurisdiction. As I said at the outset, and as is stated in the proposed legislation itself in the proposed amendment to subclause 8(2), it is with the cooperation and approval of the province that this legislation could potentially apply to areas that come exclusively within provincial jurisdiction. And that's recognized in the proposed amendment to paragraph 8(2)(a), where it says, and this is referring to the targets, "while recognizing the respective roles and responsibilities of the federal government and the provinces and the territories".

We also have that in the proposed amendment to subclause 5(2): "The Government of Canada therefore, working with the provinces and territories and recognizing their respective roles and responsibilities, adopts the following goals".

So in each instance, any effort to usurp provincial jurisdiction would run into the barrier of the Constitution and would therefore fail.

[Translation]

Mr. Jean-Yves Roy: Mr. Toner, does this bill apply strictly to federal institutions and agencies? I put the same question to Mr. Sadik.

[English]

Prof. Glen Toner: Environment is a shared jurisdiction between the two levels of government. I understood it to apply to federal institutions, for sure, but I think it also applies to federal functions. The federal government spends a lot of money on shared-cost projects in various jurisdictions. Cities are massively important for sustainability in the 21st century. It seems to me that when the federal government is expending federal dollars in federal jurisdictions with respect to air quality and other things that are part of the consideration—navigable waters, fish, and so on....

More importantly, we want to be able to show Canadians what's happening across the board. What's the picture? What's the relationship between these general goals and the sort of concrete progress we're making?

[Translation]

Mr. Jean-Yves Roy: You mentioned “federal functions”. That opens up the door quite a bit wider. You maintain that under a tripartite agreement on infrastructures negotiated between the municipal, provincial and federal governments, the federal government could impose standards and refuse to sign such an agreement if ever it felt that the bill's stated goals were not being met.

[English]

Prof. Glen Toner: I think the federal government can already refuse to sign agreements if it's not happy with the conditions for the outcomes it's seeking to invest Canadian taxpayers' money in to pursue.

[Translation]

Mr. Jean-Yves Roy: Therein lies the problem. Basically, until such time as the various levels of government actually sign an agreement, it is difficult to spend money on infrastructure, to give you one example.

I will let you respond, Mr. Newman.

[English]

The Chair: Mr. Newman, if you could just finish up, our time is up.

Mr. Warren Newman: Frankly, I don't see any disagreement between Mr. Sadik's position and my own.

When I spoke of federal institutions, organizations, and crown corporations and the like, clearly that applies to the federal institutions. It applies to their activities. That's the whole point. It applies to their policy development. It applies to their orientation. How are they going to go about meeting this? It applies to them first and foremost. It doesn't apply directly to cities or anything else.

[Translation]

When I said that it applies to federal institutions, that is exactly what I meant.

[English]

Does it mean you can't spend money? No, I don't think it means that.

[Translation]

That could well be one of the activities targeted, to the extent that the federal government wants to exercise its spending power and encourage municipalities and provincial organizations to work with it.

Mr. Jean-Yves Roy: Cooperation with the municipalities is impossible.

[English]

The Chair: Mr. Roy, could we just move on?

We'll have Mr. Watson, please.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for being here.

I want to come back to the issue of an independent Commissioner of the Environment and Sustainable Development. Mr. Sadik, your answer was interesting. You felt that because Mr. Thompson was satisfied with the idea of vetting, therefore you're satisfied. I want to come back to this again, because essentially this would entail a pretty big departure from the traditional role of the Commissioner of the Environment and Sustainable Development. We're treading water on whether or not they become advocates and then turn around and audit their own advocacy. Whether or not an interim Commissioner of the Environment wants to change his own role, the question is whether or not it's advisable to change that role. So I'm not satisfied that you're satisfied with his answer.

Is it wise for us to be putting the auditor in the position of advocate as well and auditing his own advocacy for that matter? I think that proposes some real challenges, and I'm not necessarily sure that's the advisable way to go. So would you like to evaluate that again?

• (1700)

The Chair: Excuse me, Mr. Watson.

Mr. Godfrey and then Mr. Bigras, please. Point of order.

Hon. John Godfrey: It's really a question of point of order to Mr. Watson. I just want to make sure he's operating off the amended text I spoke to when I first presented, which removed all reference to an independent commissioner and envisaged using the existing power of the existing commissioner, because I don't want him attacking something I've already given up on, if you know what I mean.

Mr. Jeff Watson: Fair enough. I'm not sure we have any official amendments yet, Mr. Chair, so I am commenting on the bill.

The Chair: Yes, I believe a new edition has come out, Mr. Watson. It will eliminate that point.

Mr. Bigras.

[Translation]

Mr. Bernard Bigras: This brings me to another question about procedure. How are we planning to dispense with the amendments that have been brought forward? Must we take into account that these are proposed amendments to the bill, or have we already in fact deleted part of the bill and replaced it with this new draft?

[English]

The Chair: No. As I understand it—Mr. Godfrey, you can correct me—these changes have occurred. That is a new draft, if you want. They're not amendments. They won't be debated. They are simply a suggested new draft of Mr. Godfrey's bill, which he has accepted.

Is that correct, Mr. Godfrey?

Let's clarify this, Mr. Watson.

Hon. John Godfrey: As the proposer of the bill, in order to avoid wasting the time of the committee in having them advance changes I agree with, having heard their arguments in the House and elsewhere, I decided that in the spirit of advancing things, I would indicate the kinds of changes I would welcome, which could be put forward by any of the parties—the government, Monsieur Bigras. It does not have an official standing because we still have to amend the existing text that was originally delivered, and I'm also looking for improvements. So this is not an official document, but it shows where we might make improvements, and if there are other ideas, we would accept and review those as well.

The Chair: The amendments are due on the May 8. So these are suggestions Mr. Godfrey can live with to save going through—but they will, as he says, be amended in the official amendments that are due on the 8th.

Mr. Watson, I have subtracted that time, so if you want to, go ahead.

Mr. Jeff Watson: We have no formal amendments. The question is very much in order with respect to the legislation in front of us. And more importantly, we do have a comment for environmental groups that they would be satisfied, or at least there is some question about whether they're satisfied about that type of a role existing. I'd at least like their commentary on whether they want to clarify their position, whether that is something that would be a good situation or not a good situation. So I think the question is entirely in order. We'll deal with the amendments when they get here.

•(1705)

Mr. Pierre Sadik: The model act we drafted was principally around making some substantial progress in the way the federal government carries out sustainable development strategies. You're quite correct that in the original version of our draft we included a provision for an independent environment commissioner. That was in late 2006. Since then, I believe Mr. McGuinty introduced a measure to try to establish an independent environment commissioner, but that failed. I've seen objections to that provision in the bill, as introduced by Mr. Godfrey.

Seeing the writing on the wall and keeping our eye on what the principal objective of this bill is, we've stepped back from the belief that an independent commissioner is fundamental to the carrying out of this act. At the end of the day, we are satisfied with the clause Mr. Thompson approves of.

Mr. Jeff Watson: To all members of the panel, are the regulatory timeframes in the bill realistic? I'm looking at clause 10 especially, but there may be some others. Are some of these realistic, knowing how long it takes to craft draft regulations? Can I have your comments on that?

Mr. Pierre Sadik: I can offer one brief comment, and then leave it to my colleagues.

I believe the timeline in clause 10 is the one we had in the model act. The point about the 30 days to table the regulations for the targets has been raised a number of times. Over the three years the cabinet committee, chaired by the environment minister, has been working on the sustainable development strategy. The members would have had the regulations needed to carry out the objectives of the strategy in the backs of their minds. The presumption is that most

of the homework around the regulations will have been done by the time the sustainable development strategy is tabled in the House.

Prof. Glen Toner: It makes sense to me that this will be worked on for months before the bill is tabled...and presumably the government. But I don't know—30 days, 60 days—I don't have a strong point of view one way or the other.

The Chair: Mr. Regan.

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

I'd like to ask more about the federal-provincial relationships that are involved as a result of this bill. It seems to me that when the federal government funds infrastructure, it does so in a collaborative way in partnership with provincial and municipal governments. It seems reasonable, in seeing those federal dollars spent, and being accountable to the taxpayers from whom the federal government receives money, that it ought to try to ensure that money is spent in a sustainable way in relation to the environment. It's also reasonable to say that our objectives with this program are to do things that help green the country more, whether it's in Victoria, Halifax, Quebec City, or wherever.

Is it your sense that this bill imposes something on other levels of government, or is it a question of trying to find common ground? What are your comments on this?

Prof. Glen Toner: I think it seeks out ways to work together, recognizing that these are national challenges and they don't just operate in one city or one province—they're everywhere. Frankly, to make this a transformative process by which we really get the country on a sustainable path, it's going to require all governments to contribute, participate, and share. So I view it as a collaborative and positive opportunity for governments to work together.

Hon. Geoff Regan: Do you see another way to get the Government of Canada to do its part, in collaboration with other levels of government, to achieve these objectives?

•(1710)

Prof. Glen Toner: I don't think it relies on this law, but this law could hopefully facilitate an outreach from the federal government to other levels of government, and perhaps from cities and provincial governments to the federal government, to work collaboratively to green the country.

Mr. Pierre Sadik: I have a comment on that, Mr. Regan. We are dealt the constitutional hand that we are dealt in this country, and we have to work within the confines of the Constitution on a wide spectrum of issues.

There is a precedent for this type of policy, though, in the U.K. It had to deal with a situation where there was a series of devolved authorities. Yet, as a whole, the island of the U.K. wanted to come up with a sustainable development strategy. It has, in fact, come up with one that you may hear, from some other witnesses talking more about the international context, is held up as a bit of a gold standard of national SDSs. It managed to do that through this type of legislation, with cooperation and teamwork by the various jurisdictions that the U.K. comprises.

Hon. Geoff Regan: Mr. Chairman, it's a little hard for me to imagine any Canadian not wanting the Government of Canada to do its part to cooperate with other levels of government to achieve the objectives we're talking about here.

The Chair: Thank you, Mr. Regan.

Mr. Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Mr. Chair, I'm new here, obviously, but I'd like to make a couple of observations, as I've been listening today to the discussion about this bill.

I found it interesting that there doesn't seem to be any full costing of the bill, and I think we heard that a little bit earlier. There's no prioritization of the schedule yet, and there seems to be almost some disagreement on whom the bill even applies to.

But the thing that really concerned me, when we started talking about the application of the entire bill, is what it would mean in terms of consequences. I understand this means there could be no federal involvement with or support for things that ran contrary to this bill. I think it was Mr. Sadik who said there would be, basically, no hydro dam power across this country if this bill were fully implemented. There would be no nuclear power allowed in this country if the bill were fully implemented, or the federal government certainly could not be involved in it. There would be no biofuels, except for the cellulosic, which is not commercially available or viable right now. And there could be no coal power.

I'm concerned about the consequences. What we've got here is a classic opposition bill that really lays out massive costs and consequences with no need to be accountable, particularly for the opposition. I'd like to make that observation, and I'm willing to listen to anybody's comments on that.

The Chair: I'm certain our witnesses here may want to respond to that. I know Mr. Sadik would like to.

Mr. Pierre Sadik: As I said at the outset, Mr. Anderson, this bill does not stipulate or mandate one ounce of emission reduction or pollution prevention, in and of itself. The bill creates a framework, which then hands it to our leaders, you people, to sail the ship of sustainable development in the right direction, to bring forth a poor metaphor.

As I also said, Mr. Anderson, no one is suggesting or contemplating that any nonsustainable sources of energy would be turned off tomorrow. We would be looking at a phasing-out of nonsustainable sources of energy while sustainable sources of energy are being ramped up. Those two things would be done in such a fashion that the lights would come on every evening, the television would come on, and the transport—be it buses, subways, or cars—would go wherever it has to go every day.

This bill would require government to look ahead, to make its choices with its eyes wide open in terms of future consequences, and to the extent that it's possible—and that the political will is there—to take into account those consequences in the course of its day-to-day decision-making.

Prof. Glen Toner: I didn't see any prescribed outcomes either. What I understood the bill to be saying was that the federal cabinet would make and continue to make the decisions about how to

allocate resources in this country, but they'd do it with the best information possible, fully understanding all the implications from a sustainability point of view of the types of decisions they take.

● (1715)

The Chair: Thank you.

Mr. Anderson, have you finished?

Mr. David Anderson: Sure.

The Chair: Mr. Cullen, Mr. Warawa, and then Mr. Bigras.

Mr. Nathan Cullen: Thank you, Mr. Chair.

Just to pick up on that point, is there anything that prevents the government from doing this right now? What stops the government from...? As you said to Mr. Anderson's question, there's nothing in here that prescribes any pollution reductions, per se. It's asking the government to look through a sustainable lens when addressing decisions.

It boils down to this. We've had so many iterations of a plan. We've had so many subcommittees, cabinet committees, green plans, and intentions all well and good. If we made half the effort in the actual rollout of the plan and then the actual performance of the thing that we make in the announcing, we wouldn't be in the predicament we're in.

To my first question, is there anything added to the powers of government, the government in this moment? Can the transport minister not look through a sustainable lens when designing legislation? Can the industry minister or the finance minister?

Mr. Pierre Sadik: Right now the policy-makers, the legislators, are running off in 12 different directions. This is a template, just as we've had a template in the past—the one Mr. Toner referred to—a deficit-cutting template. This is a template for sustainable development that will impose on decision-makers a series of boxes they have to check and perform. They can still, of course, ignore the boxes, but there will be consequences. The bill talks about performance-based contracts. It talks about targets, and it talks about monitoring and very public reporting in connection with the targets, performance, and monitoring.

Mr. Nathan Cullen: Let me just dive down that.

Prof. Glen Toner: Can I just respond to your question? It's an interesting one.

If we read back through so many of the commissioner's reports over these past ten or eleven years, so often they have said there's no nerve centre; there's no one pulling all this together at the centre. It seems to me that one thing that was helpful about this act was that it would require a secretariat in the Privy Council Office to support a cabinet committee. There would be a nerve centre at the political level, a nerve centre at the bureaucratic level, which would tie all of this stuff together in an integrated way that is not being done now. We get, as a consequence of that, much more sectoral thinking, in terms of the decision-making system, when there are huge horizontal implications of these sorts of decisions for Canadians.

Mr. Nathan Cullen: I would assume—and forgive any cynicism of experience—that if a government lacks the political will to do these things, it can still, even with this as legislation, find its way around it and not do sustainable practices in its policy-making.

Mr. Pierre Sadik: It can't without there being a heck of a big stink about it.

Mr. Nathan Cullen: This is what I'm curious about. I've looked at the performance-based contract component of this bill. It's one of the smaller pieces—which disappoints me—and I'll be interested in how we can beef it up. When I've talked at this committee and other places about what the consequences are of bad performance or non-compliance, I'm a little suspicious that there isn't more push-back from government. I'll be honest with you.

For example, when we put through, as the committee will remember, a bill on phthalates, there were implications directly linked into the bill about banning a toxin out of the system. There was quite an extraordinary effort from within the civil service to and fro, saying “Don't do this” and “Don't do this”, because they were seeing implications to their work life. We went back and forth, and it took longer than many of us suspected to get the bill through. I'm not seeing any of that right now.

Mr. Pierre Sadik: That's because this does not mandate or stipulate one ounce of reduction or pollution prevention. It's just the next step. The battle will come when the first strategy has to be—

Mr. Nathan Cullen: Well, let's talk about that battle.

Mr. Pierre Sadik: Then the government can battle within itself, and the different parties and so on can battle.

Mr. Nathan Cullen: So on the performance-based contract side, as the only rock in the stream that I've been able to hold on to, in terms of consequences of failure, do you have any suggestions to enhance this component of the act to put the fear of God into some of these folks who are supposed to carry out these sustainable contracts?

• (1720)

Mr. Pierre Sadik: How do we get politicians to do it?

Prof. Glen Toner: Deputies and ministers—but particularly deputies—are now given performance-based contracts that designate certain activities that they have to do with respect to other statutory obligations. It would certainly be possible to list work in this area, but to be honest, I'm not privy to these things. I don't see them. I don't know what level of detail they would go into with deputies. But once a minister has made the commitment, and the deputy understands that, and it's serious, and it's written into their letter, they would then want to hold their senior management group within the department responsible for delivering in that area as well, you'd think.

The Chair: Thank you, Mr. Cullen.

Mr. Warawa.

Mr. Mark Warawa: I want to go back to the schedule at the end of Bill C-474. This will be for Mr. Sadik and Mr. Toner.

Mr. Toner, you said in your presentation that we have to get it right, and there have been a lot of questions and concerns raised today. This committee has a habit of rushing things. On the other end of the spectrum, things take a long time. What we want to achieve is

a balance. We want to get it right. This may take more than three minutes, or three meetings.

Mr. Bigras raised some interesting points that I didn't see when I first read this. He brought up urban development. In my municipal background, urban development zoning was covered by municipal government. The schedule refers to municipal waste—that's municipal government. Municipal government is created, at least partly, by the province, so ultimately it is a matter of provincial jurisdiction.

On turbidity in the water, the goal is for cleaner water. You want to reduce turbidity in water. Does this mean the federal government would be overseeing levels of turbidity in the rivers in Quebec below the dams?

We have an incredibly broad range of issues in this bill. Mr. Godfrey is open to amendments, and he has some amendments ready to introduce. But on this list of issues, the possibilities are vast. There are going to be vast financial and logistical implications from this: scientific capacity, training, equipment, human resources, monitoring systems. If we rush through this to get a bill in place before Mr. Godfrey leaves us—and we will all miss him, some more than others—there will be many questions. We have issues like livestock density. Why is this in there? Is it an appropriate thing to have on the list? Automobile dependence....

Mr. Toner, would a smaller list be a better strategy? This larger list raises a lot of questions and provincial jurisdiction issues.

Prof. Glen Toner: As for how many committee meetings you should have, I have no idea.

As for the size of the list, I had nothing to do with it. It materialized in the legislation. I guess one could go through and say yes, this is less controversial or causes less potential conflict with provinces in this case or that case.

I would really like to think that this has some national coverage from coast to coast to coast. We know that livestock density, feedlots, and other sorts of things can have serious implications for water quality, fisheries, and so on. I don't know. Is that the right one to have in? We'd have to go through this on a one-by-one basis, and I don't think you really want to do that.

I want to be sensitive to provincial concerns. I recognize that urban design issues are not under provincial jurisdiction, but they have huge implications for the sustainability of this country, given that 80% of Canadians live in cities. To the extent that the federal government is highly involved at the regulatory and financing levels for a lot of these sorts of things, including cities, it seems to me that it's not something we should get too concerned about. I think we need to have national coverage on this thing from all levels of government. If all these reporting systems are integrated in a reasonable way, we could get that coverage. How else do we compare ourselves with what the U.S. or the other OECD countries are doing in these areas?

The Chair: Thank you.

We'll go to Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: I will make it brief, Mr. Chairman.

Are all of the witnesses familiar with strategic environmental assessments? They probably all have some idea of what these entail. What does the Commissioner of the Environment have to say about this in his recent reports? The problem with Canada's sustainable development strategy is that federal departments are not required to carry out strategic environmental assessments.

In order to respect provincial jurisdictions and embrace a sustainable development strategy for Canada, would it not be preferable to require all federal institutions to comply with this directive that was issued over 25 years ago by the PMO and which is ignored when it comes to federal government policies, plans and programs? This requirement would ensure that federal areas of jurisdiction are respected, that a sustainable development strategy is in place. Furthermore, each time the government tables a plan, policy or program, inevitably, sustainable development concepts would be included...To my way of thinking, strategic environmental assessments are the most powerful tool we have to ensure a sustainable development strategy for Canada.

Does the solution not lie in making it a legislative requirement that federal institutions carry out strategic environmental assessments?

[*English*]

Prof. Glen Toner: I'll tell you that both in my own work and in the work I've done with the commission over these past ten years, one of the great frustrations has been the inability of the current model of SEA to work, to have any influence on decisions. Personally, I wouldn't be opposed to seeing it legislated. Whether it would have all those sorts of consequences you outline, I'm not sure. But yes, I think it would change quite fundamentally the nature of the decision-making around the cabinet table.

Mr. Pierre Sadik: Monsieur Bigras, I find it hard to imagine a sustainable development strategy that would not include a strategic environmental assessment under this legislation. That would be one of the tools for assessing projects, policies, and proposals in an SDS. It may be that it is one of the tools that is so prominent and so invaluable that it needs to be included in the act on a legislated basis. It's not inconceivable.

Mr. Bernard Bigras: Merci.

The Chair: Thank you, Mr. Bigras.

Mr. Godfrey, do you want to close off with a one-minute question?

Hon. John Godfrey: I guess this is my only question. If everybody agrees that we've had a problem with these SDS performance things, particularly at the federal level, and if everybody agrees that we need a more sustainable country, then who will take the lead and extend the hand of cooperation to provinces and municipalities, if not the federal government? It's a rhetorical question, I think. Are there any volunteers?

The Chair: The Pope was in town in March, I think. Anyway, I'm not sure you have an answer.

I would certainly like to thank our guests for being here and answering your questions. I think it's been a good round. Thank you very much.

The meeting is adjourned.

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