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Chair

Mr. Leon Benoit

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● (1540)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good afternoon, everyone. It's great to be here today dealing with clause-by-clause of Bill C-20, An Act respecting civil liability and compensation for damage in case of a nuclear incident.

We have today as witnesses, from the Department of Natural Resources, Dave McCauley, Director, Uranium and Radioactive Waste Division, Electricity Resources Branch, and Jacques Hénault, Analyst, Nuclear Liability and Emergency Preparedness.

Welcome to both of you.

From the Department of Justice, we have Brenda MacKenzie, Senior Legislative Counsel, Advisory and Development Services Section.

Welcome.

Thanks to all of you for being here today.

We'll get directly to the bill. We're going through clause-by-clause consideration today, of course. As usual, pursuant to standing order 75(1), consideration of clause 1 is postponed, so the chair calls clause 2.

(On clause 2—*Definitions*)

The Chair: I'll just take the time required, so indicate if you need a little more time at any point. I know that there are a lot of papers to follow.

Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): You asked if we needed just a little more time. There's one clause I'm looking at that I wouldn't mind just another second with.

If I may, Chair...?

The Chair: Go ahead, Mr. Cullen.

Mr. Nathan Cullen: This is more a question to our witnesses. Just prior to line 13, I'm trying to understand.... I know this is legal terminology, but on "nuclear incident" itself, it doesn't become very transparent to me as to what a nuclear incident is. What I'm reading here is that a nuclear incident "means an occurrence or a series of occurrences having the same origin that causes damage for which an operator is liable under this Act".

It seems almost too broad and not specific enough to the issue of it being connected to a nuclear reaction. We're not talking about a hammer falling off a scaffolding here. I'm wondering if our witnesses could tell us if this is a standard code definition.

The Chair: Ms. MacKenzie, go ahead, please.

Ms. Brenda MacKenzie (Senior Legislative Counsel, Advisory and Development Services Section, Department of Justice): Thank you.

What we've done in this bill is a modern style of drafting, which means that the substantive provisions are found throughout the act. The purpose of the definitions is really just as a shorthand that you refer to during the reading of the act.

You will find that in reading the act it becomes clear exactly what the operator is liable for and in what circumstances. You will not find it in the definitions, essentially; you'll find it in the act.

The Chair: Is there any further discussion on clause 2?

(Clauses 2 and 3 agreed to)

The Chair: I hear no objections and a lot of positive reaction.

(On clause 4—*Limitation*)

The Chair: Yes, Mr. Cullen. Take your time.

Mr. Nathan Cullen: Again, if I may, I have a question for our witnesses, Chair.

The Chair: Go ahead, Mr. Cullen.

Mr. Nathan Cullen: Subclause 4(2) states: "This Act does not apply to damage to the nuclear installation of an operator who is responsible for that damage or to any property at the installation that is used in connection with the installation".

I'm trying to understand what we are seeking to exclude from this clause. What kind of damage or what kind of liability is it? Who is it that we're speaking of right now?

Mr. Dave McCauley (Director, Uranium and Radioactive Waste Division, Electricity Resources Branch, Department of Natural Resources): Thank you.

What we're trying to exclude are damages to the actual site of the facility or the installation, such as the property damage, for example, of the operator. For example, if it's a nuclear reactor, we would not want to be paying for damage to the actual reactor itself or to the actual site.

● (1545)

Mr. Nathan Cullen: Can you tell me why not? Why are we seeking to not have liability for that covered? If there's damage done to a site, either through deliberate or non-deliberate action, why would we want to exclude that from the operator?

Mr. Dave McCauley: Because the focus of the legislation is on damage to other parties, so it's damage not to the owner, but rather to third parties.

Mr. Nathan Cullen: So this is essentially excluding the operators from seeking any compensation from Parliament or from their own insurance companies.

Mr. Dave McCauley: Exactly.

Mr. Nathan Cullen: I see. Thank you.

Mr. Jacques Hénault (Analyst, Nuclear Liability and Emergency Preparedness, Department of Natural Resources): If I may add to that, Mr. Chair, operators generally have property damage to cover that type of loss.

The Chair: Thank you.

(Clause 4 agreed to on division)

(Clause 5 agreed to)

(On clause 6—*Designation of sites*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: We have some questions about existing versus new licensees. Subclause 6(3) says that the "regulation can be made before a licence has been issued but it may not come into force before the day on which the licence is issued".

Where exactly in the bill does this address existing licensees? I'm trying to understand the sequence of contracts around a licence being issued for a new build reactor, for a green site versus a brownfield site. Does it make any difference in this bill?

The Chair: Mr. McCauley, go ahead.

Mr. Dave McCauley: Thank you.

The purpose of this provision is to ensure that when a new installation is brought into operation the operator has gone ahead and organized himself vis-à-vis third party liability. The provisions of his insurance, etc., would not come into force until such time as the facility in fact is operating.

Mr. Nathan Cullen: I'm trying to just reference this to other commercial activities. In a sense, this like a homeowner getting insurance lined up before a mortgage is signed in terms of the licensing from the Canadian government.

Mr. Dave McCauley: That's it exactly.

Mr. Nathan Cullen: Okay. Again, on the first part of my question on brownfield sites versus green sites, does the bill make any distinction between a new build on an existing nuclear reactor property versus a build on what is typically called a greenfield site? Does the insurance apply differently? Some of the witness testimony we heard talked about there being a strong difference in how nuclear operators look to attempting to build on a greenfield site versus a brownfield site.

Mr. Dave McCauley: No. The legislation wouldn't make any difference between those. For example, if you were building a new nuclear reactor at the Darlington Nuclear Generating Station, that site would have to be designated by the government in order for it to come under this legislation. I guess you would consider that a brownfield site, so it would still have to be designated.

Mr. Nathan Cullen: Then again, the insurance would have to be all in order before the government could issue the licence.

Mr. Dave McCauley: That's right. That's the intent. It's so that everything is in order.

Mr. Nathan Cullen: Just to be explicit, is the bill insistent that the insurance be in place prior to licensing? I'm just reading the language here, and I know that with legal language, the "mays", the "shalls", and the "cans" sometimes can mean different things. Must a nuclear operator have the insurance in hand under this act in order to receive their licensing from the government?

The Chair: Go ahead, Ms. MacKenzie.

Ms. Brenda MacKenzie: Thank you, Mr. Chair.

Those requirements would be actually under the Nuclear Safety and Control Act, under which the CNSC operates, because they are responsible for ensuring that all requirements of any legislation, on whatever subject, are met in issuing a licence.

Mr. Nathan Cullen: This is essentially a referential act, so it relies on the CNSC act in order to make this apply in every case. I just want to make sure that there are not any unintentional loopholes being created about the sequence of licensing for a new build reactor.

● (1550)

Ms. Brenda MacKenzie: No. That is a very important question and it's a good one to ask. In fact, this provision in subclause 6(3) was put in as a result of our discussions with the CNSC to ensure that there would be no gaps.

The Chair: Is that it, Mr. McCullen?

Oh, sorry, Mr. Cullen

Mr. Nathan Cullen: McCullen?

Voices: Oh, oh!

Mr. Nathan Cullen: That's scary. My family had to give that up years ago—

The Chair: We're not even close to Robbie Burns Day or anything like that.

(Clauses 6 and 7 agreed to on division)

(On clause 8—*Liability*)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Yes. We have an amendment to this.

I'm not sure how you'd like to proceed through this, Chair. Would you like me to explain the amendment. Do you want committee members to read the clause first?

The Chair: Actually, this amendment, I believe, on advice from the legislative clerk, is not in order.

Mr. Nathan Cullen: Can I get some explanation for that? We didn't receive that advice.

The Chair: Yes. The reason is that Bill C-20 establishes a liability regime that makes nuclear operators absolutely and exclusively liable in the event of a nuclear incident. This amendment proposes to extend liability to persons other than nuclear operators, so what it does is really contrary to the principles laid out in the bill.

Mr. Cullen.

Mr. Nathan Cullen: If I may just comment on this, I think the confusion we have is that, in fact, in the law that's being proposed, in making it exclusive, in the event of a nuclear accident Canadians can only sue a certain group—the operator of the facility and potentially eventually the government—but a Canadian individual is excluded from suing other folks who may be party to the accident.

For example, if a nuclear accident happens and it is shown that there is a part within the facility that was in effect the cause of the accident or that a contractor was negligent in their duties when fulfilling a contract in regard to an accident, they are by this act excluded, which goes against the tradition of Canadian law.

You simply can't make it illegal to sue a certain individual if they're shown to be liable. I'd like some clarification on why actually conforming to constitutional law is deemed out of order at committee. It seems a strange moment, if you will.

I don't know if our witnesses can answer my question. What we're trying to do is say that if something goes wrong and, in the aftermath, the investigation proves that it was right here at this moment, that it was a contractor or that it was a part made by a specific supplier who wasn't the operator, why would a Canadian be prevented from also seeking damages and compensation from the person who caused the accident? It seems counterintuitive, and if not that, then unconstitutional at the very least.

The Chair: Mr. Cullen, I've made the ruling. I think you've heard the arguments on it.

Mr. Nathan Cullen: Right.

The Chair: As I explained, I think it does inappropriately amend the bill. I've explained why, so if you have a problem with the chair's ruling, you should raise that as an issue.

Mr. Nathan Cullen: Okay. I'm not at that point of wanting to challenge the chair, but I guess I would ask committee members to understand what in effect we're doing, then. I know of no other place in Canadian text or law that you can do this: that you can give exclusive liability over one source or another and just exempt everybody else who happened to be involved because they're not written into an act in Parliament. That's a little odd. It creates an environment that I'm concerned about, in which a contractor says, "I'll never be liable". A parts manufacturer will never be liable under this act.

I don't know if committee members or the witnesses can explain that. I understand the ruling in terms of the principle of the act, but what a strange precedent it is to create under law and to exclude a whole bunch of people who in the end might be the ones proven to be the cause of the accident, if you follow me.

The Chair: Mr. Regan, did you have a comment on this?

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

I'm very curious about this as well. With the explanation as you read it, it wasn't really clear.

I didn't understand or follow quite what the objection is, precisely, and I would like to know from the department what the situation is in relation to a parts manufacturer, or whatever, and why they wouldn't be... Is this partly because of the strict liability that applies to the operator? What's the idea here?

I would like to have the answer to that, but I understand that you may make a ruling that—

● (1555)

The Chair: Again, the intent of this legislation is to make nuclear operators absolutely and exclusively liable. The change that Mr. Cullen has made could, I believe, change the intent of the legislation, and of course, you're not allowed to make amendments to legislation that change the fundamental intent.

Mr. Nathan Cullen: Maybe Mr. Regan has hit my point here. There's nothing in the bill that talks about exclusivity for the operator; it says that it's seeking to make operators liable in the event of a nuclear accident. That is the intent of the bill.

There was never any notion in the preamble—and we were trying to be careful in reading through this—that said "exclusively they are liable", because if that were in fact the intent of the bill, then the Canadian government would also be excluded from that liability chain, which is not the intent. In the bill that we've read and in all of our testimony so far, there are only two that are being talked about. It was to make the operators liable, but never liable exclusively. That, we don't understand, because we have not done it in any other industry or in any other form of law.

I'm not a lawyer, so I understand that I'm on thin ice in terms of the legal precedent, but I just don't understand its incongruity. I don't see that exclusivity part as the intent of the bill. I guess that's what I'm asking about.

The Chair: That's your interpretation of this.

Mr. Anderson, did you want to comment on this?

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Obviously, the point of the bill is that, between the industry and those concerned with the industry and with the liability issues, they wanted to have this focused on one thing, which is the operators.

The operators are responsible for the construction and the suppliers. They've been willing to take on that responsibility. That is the point of the bill. That's why the bill has been put forward. This has been deemed to be an important aspect of it. I think it brings us in line with international conventions as well.

The Chair: I've probably allowed this discussion to take place when I shouldn't have. I made a ruling on the amendment that it isn't in order. I want to allow the committee to work, but if every time I make a ruling we have a debate on it, then it'll cause some problems.

Mr. Nathan Cullen: I respectfully seek to challenge the ruling, then, Chair.

The Chair: Mr. Cullen has challenged the ruling of the chair.

The question to the committee is, then, shall the ruling of the chair be sustained?

(Ruling of the chair sustained: yeas 9; nays 1)

The Chair: The chair's ruling is sustained. We will carry on and I will ignore a few of the comments that are going on here.

We're back to clause 8. Is there anything further on clause 8?

Clause 8 is carried.

Mr. Nathan Cullen: Mr. Chair, you said "carried", but I want to make sure on this. I voted against.

The Chair: Sorry. Are you voting against clause 8?

Do you want it on division?

Mr. Nathan Cullen: I'd like this recorded.

The Chair: Okay. We will go to a recorded division on clause 8.

(Clause 8 agreed to: yeas 9; nays 1)

(Clauses 9 and 10 agreed to)

(On clause 11—*Individual responsible for nuclear incident*)

● (1600)

The Chair: Mr. Cullen, is there something on clause 11?

Mr. Nathan Cullen: Could I just have time some time?

The Chair: Yes.

Mr. Nathan Cullen: Could I have the department give an explanation on this clause, please?

The Chair: Sure.

Go ahead, Mr. McCauley.

Mr. Dave McCauley: Thank you.

The explanation here is that the operator is not liable for the damages sustained by the individual who may have caused an incident intentionally. However, the operator would continue to be absolutely liable for any third party damages. But the individual who actually caused the damage would not be compensated by the operator.

Mr. Nathan Cullen: May I, Chair...?

The Chair: Go ahead, Mr. Cullen.

Mr. Nathan Cullen: Just to be more explicit, is this one of those clauses attempting to catch acts of terrorism or acts of...? Is that what we're speaking about here?

Mr. Dave McCauley: That's correct. Excuse me, it's not necessarily terrorism, but any kind of—

Mr. Nathan Cullen: Sabotage?

Mr. Dave McCauley: —sabotage, etc. That's right.

Mr. Nathan Cullen: Where exactly is that proven or not proven? Is it in a court of law? Where is it decided that this person intentionally went about causing an accident to take place?

A voice: In a court of a law.

Mr. Dave McCauley: It would be in a court of law.

Mr. Nathan Cullen: This is a question I've had for a while. What kind of court does that? What level of court is it? Where does it happen? Who sues whom?

A voice: It would start in the superior court.

Mr. Nathan Cullen: Would it start in the superior court?

A voice: [*Inaudible—Editor*]

The Chair: Okay. Let's let the witnesses answer the questions, please.

Order, please. Let's have the witnesses answer the question.

Ms. MacKenzie, were you indicating that you wanted to speak?

Ms. Brenda MacKenzie: Actually, the answer that has been given is in fact correct. It would be in the normal way that any tort law is settled in Canada, except in the case of a nuclear claims tribunal being established, in which case that would be the court that would decide.

Mr. Nathan Cullen: A nuclear claims tribunal?

Ms. Brenda MacKenzie: Yes, if one were established. But if one is not established, then it's the just ordinary courts, in the way any other dispute of that sort is settled.

The Chair: Is that all right, Mr. Cullen?

Mr. Nathan Cullen: Thank you.

(Clause 11 agreed to)

(On clause 12—*No recourse*)

The Chair: Is there anything on clause 12?

Mr. Cullen.

Mr. Nathan Cullen: Again, I have a question. Going back to clause 11, referring to this individual who was found, why put this exclusion back in of no operator "other than an individual described in section 11..."? What is this clause about?

Ms. Brenda MacKenzie: Clause 12 is part of the notion that the operator is absolutely and exclusively liable. It's logically part of that notion. We are simply clarifying, by saying "other than an individual described in section 11", that we're not overwriting section 11. It's only for clarity.

Mr. Nathan Cullen: I simply want to understand. In clause 11, it's in case somebody intentionally causes an accident at a nuclear site. You're writing in clause 12 to prevent any misconception that this could be extended to anybody...? I'm trying to understand why you put the clause in.

● (1605)

Ms. Brenda MacKenzie: If you look at clause 11 again, you'll see that it's saying that the operator doesn't have to pay somebody who deliberately sabotaged a plant. Clause 12 is saying that the operator can't go after anybody else to pay for third party liability, except the guy who may have done something deliberately to damage things.

Mr. Nathan Cullen: So this is a question I had, because this was raised by others at the committee. In terms of other contractors, other operators who work within the facility, does this prevent the operator from going after those individuals if it is proved that somebody was negligent, if it is proved that somebody gave faulty equipment? Does it limit the liability in terms of those operators and contractors?

Ms. Brenda MacKenzie: Yes. Here you're speaking of the part of clause 12 that says, “No operator has a right of recourse against any person...in respect of damage caused by a nuclear incident”. That is the part that stops the operator from going after a supplier, for instance.

Mr. Nathan Cullen: Again, if I may ask, is this standard liability legislation? After hearing the testimony and trying to understand all the moving parts within a nuclear operator.... If a contractor is proven to be negligent or a part is proven to be faulty, the operator is not able to seek compensation from that contractor or supplier, except in a case of intentional negligence, even if in a particular case that contractor or supplier may have directly caused the accident to take place. Is that right?

It seems strange. I'm trying to understand why we would limit the operator's ability to go after a parts supplier, of which there are many in the construction of a nuclear facility, when they are facing many hundreds of millions of dollars in lawsuits.

In the normal course of business, if a company gets sued because a car accident happened and the car's brakes were proven to be faulty, in some cases the individual will go after the car company and the parts supplier. But sometimes the car company will go after that parts supplier themselves to offset their compensation, saying that it wasn't really their fault. Why is that not true here?

Ms. Brenda MacKenzie: Mr. Chair, as we've already discussed, absolute and exclusive liability is a fundamental principle of the bill. Indeed, it's not a constitutional principle, actually. It is a common law principle that's overwritten in here.

Mr. Nathan Cullen: Common law. Thank you. I knew I was misspeaking.

Ms. Brenda MacKenzie: As for the policy reasons behind it, perhaps Dave would like to answer the question.

The Chair: Mr. Cullen, is there anything else?

Mr. Nathan Cullen: Could I hear from Mr. McCauley?

The Chair: Mr. McCauley, do you want to respond as well?

Mr. Dave McCauley: No, not necessarily.

Voices: Oh, oh!

The Chair: Okay. I thought you had indicated.... I'm sorry. That's fine.

Mr. Cullen, is there anything else?

Mr. Nathan Cullen: The question that was passed over was on the policy initiative, so again, it's the exclusivity. I'm getting to this point. I understand now that we've had a ruling and the bill is seen to be an exclusivity liability bill, but I don't understand just in a common sense kind of way. If somebody sells a faulty part to a nuclear operator, and that causes an accident, the nuclear operator is not able to seek compensation or damages from the supplier. It seems counterintuitive.

Mr. Dave McCauley: On the issue of exclusivity, the reason that in Canadian and frankly all schemes of nuclear liability the operators are absolutely liable is that the intent is to ensure, number one, that it's easy for victims to claim compensation. There's no need to prove negligence and so on. If there were an incident and they sustained damage, the owner or the operator of the facility would be liable; there's no need for the victims to prove negligence.

Another reason is that it's important to.... Because there's not a lot of insurance capacity available to insure the nuclear industry, what has been done is that it has all been channeled to one individual, the operator. Whereas all other entities in a normal tort scheme might be liable, it's all focused on the one operator.

Mr. Nathan Cullen: If I'm following you, a supplier of parts to a nuclear operator is unable to get the kind of insurance it might need if it were also deemed potentially liable in the event of an accident. You free that up by locating it all with the operator. Is that it?

● (1610)

Mr. Dave McCauley: That's right. In fact, all insurance... Your homeowner insurance actually states that you will not be able to get any home insurance to protect you against third party nuclear damage because it's all focused on the operator. It's the operator who has the coverage.

Mr. Nathan Cullen: I just want to complete this chain. It also extends to contractors on a site. They don't have to pick up any kind of insurance for faulty work. The parts suppliers also are outside this normal tort scheme.

Mr. Dave McCauley: They cannot get insurance to insure against third party damages.

Mr. Nathan Cullen: There's no insurance available to them.

Mr. Dave McCauley: That's right. All the insurance is provided to the operator.

Mr. Nathan Cullen: It's fascinating.

The Chair: Mr. Cullen, we have another person with questions.

Mr. Nathan Cullen: I'm sorry, Mr. Chair.

The Chair: If you want to come back, that's fine. I want these questions answered, of course. That's what we're here for.

We'll go to Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): For the benefit of Mr. Cullen, I'll ask a question of Mr. McCauley. Perhaps he can clarify.

Mr. McCauley, is it not the case, as you've just stated in an indirect way, that nuclear operators would not be able to get parts for their operations because suppliers would not be willing to take the risk of providing parts? They can't get insurance to cover the parts that would be used in the nuclear facility.

Without this exclusive liability falling on the operator, there'd be no way to function as an operator. Nobody would be willing to give you parts because they could be held partially responsible. They can't get insurance, so they would put their entire operation at risk by providing a single part to an operator. Is that not correct?

Mr. Dave McCauley: That's correct.

The Chair: Just before we carry on with this, the bells are ringing. There will be a vote at 4:38, I believe. How much time do we need to get over there for the vote? How much time would you like? When would you like me to suspend the meeting? We'll come back after the vote.

A voice: Make it 15 minutes after that.

The Chair: Okay. We have a few minutes until then.

We'll go back to Mr. Cullen on clause 12.

Mr. Nathan Cullen: I'm trying to figure out the chicken and the egg in terms of nuclear liability. What comes first?

One of the questions we had for witnesses was about the notion of whether the industry can exist without these types of restrictive and exclusive insurance schemes. The answer was no, because from the get-go in the event of a nuclear accident, the costs are so extreme in terms of liability and compensation. They're so big that the notion of an individual company or a parts supplier, as Mr. Hiebert has said, having enough insurance to cover off that eventuality makes it an impossible industry to....

Under normal circumstances, the government wouldn't get so involved in an industry's insurance scheme. We don't do it for auto. We don't do it for other forms of energy, not that I'm aware of, anyway. I don't know of any other legislation we deal with at the natural resources committee....

A voice: [*Inaudible—Editor*]

Mr. Nathan Cullen: Strip mining maybe...?

Hon. Geoff Regan: Strict liability provisions exist under... [*Inaudible—Editor*]...laws.

Mr. Nathan Cullen: Okay. So I guess my specific question, then, is whether it is because of the size of the potential compensation that we've set up an exclusivity regime that then allows the nuclear industry to exist, and without it we couldn't, only because the liability is so large and potentially diverse. Am I reading this right?

The Chair: Thank you, Mr. Cullen.

Who would like to answer that?

Mr. McCauley, go ahead.

Mr. Dave McCauley: Thank you.

I think there are a couple of considerations. When the whole regime was first established in the 1950s or 1960s, the concern was that there was not a lot of knowledge of this new technology, and insurers were very uncertain about being able to provide insurance to the industry. Therefore, the only way they were willing to provide insurance was on a channelled basis, whereby they consolidated all their capacity and provided it to one individual. That was the operator.

There was also a concern that because this was a new technology and it would be very difficult for victims to prove the operator was negligent, etc., it was determined that to ease that compensation it would be an absolute liability regime.

I want to point out also that there's a similar kind of regime in the marine transport of oil.

● (1615)

Mr. Nathan Cullen: I have two quick questions.

Well, the first one's quick. Just in terms of “channelled”, I want to understand the legal definition of “channelled liability”. Maybe you want to answer that first before I get to the second one.

Mr. Dave McCauley: I'll do my best. Basically, the operator is absolutely liable from a legal perspective.

In the United States, there's such a thing as economic channelling, whereby all the insurance policies point toward the operator but everybody could be considered liable. All the insurance policies point toward the operator.

In Canada and virtually every other nation that has such a regime, the liability is legal channelling—an absolute liability.

Mr. Nathan Cullen: So that's my follow-up question. With respect to that challenge, what is the difference between the U.S. regime and our regime as imagined in this bill? You talk about this economic challenge, and we heard some testimony about this, but it was never clear.

Americans can go beyond the scope, beyond the operator. Is that true?

Mr. Dave McCauley: That's right, but all the insurance policies then are directed toward the operator and compensation from the operator, so the operator in effect becomes totally liable.

Mr. Nathan Cullen: Essentially it tries to accomplish the same thing, but in a different way, and is that because of tort concerns?

Mr. Dave McCauley: I think historically that's the way the American system was developed. I believe the German system was also based on economic channelling, but then it moved away and adopted legal channelling.

Mr. Nathan Cullen: This is the second part of the question around recourse. I'm trying to understand. The exclusivity of what we've offered up to nuclear industry is in effect a reaction to the fact that the burden of proof is not the same as it would normally be—you mentioned this just a few minutes ago—to prevent individuals from having to prove the direct damage caused.

There's a concern I would have if I were a nuclear operator and there's an accident and everybody and their dog claims damages and there's class action and it's large, and cities and provinces come on board. What is the level of burden of proof imagined in this bill, or is it under the CNSC as well, where it's at court, or it's under these courts that are set up once an accident happens?

Ms. Brenda MacKenzie: Yes, it's under this bill. Then, as we've already explained, it would follow the normal court process, which means you'd have to prove causation. That would be your big... Did the accident happen and did you sustain damage? That would be what would have to be proved, not who's at fault.

Mr. Nathan Cullen: Right, but I'm a little confused.

Mr. McCauley, you said earlier in terms of the origin of this type of liability regime that it was set up in more of an unknown time and to prevent the public from having... I can get the blues later, but you said something to the effect of having to prevent the public from going out and proving direct causality. Or am I misunderstanding what you said?

Ms. Brenda MacKenzie: Causality? I'm sorry.

Mr. Dave McCauley: It wasn't causality. It's negligence. They don't have to prove negligence.

Mr. Nathan Cullen: So then here's my question: is the burden of proof around negligence any different under a nuclear accident imagined in this bill? Because committee members are being asked to vote, in this particular one, on any kind of damage coming up. If we're being asked to set up that liability regime, knowing what the burden of proof is going to be like just in terms of...you're saying that it's not causality, but...?

Mr. Dave McCauley: I'm saying they prove causation.

Mr. Nathan Cullen: They don't have to prove the negligence.

Mr. Dave McCauley: But they don't need to prove... It's a lower burden of proof.

Mr. Nathan Cullen: It's a lower burden of proof.

Mr. Dave McCauley: It's much lower.

Ms. Brenda MacKenzie: It's much easier to prove. You just have to prove that it actually happened and that you actually suffered damages from—

Mr. Nathan Cullen: Yes, some effect from it. So is that why they get such an exclusive... I don't want to use any loaded terms here, but the nuclear industry gets special treatment in terms of the insurance regime, because the burden of proof on negligence is lower than it would be for an auto manufacturer? Or am I connecting two dots that aren't to be connected?

I'm trying to understand. I understand that the accidents are real big when they happen and they can get real expensive, so we've set up a different insurance regime than we would for other industries—outside of oil transportation and the massive costs that would happen if an oil tanker were to hit shore.

You said the burden of proof on negligence is different than it would be under a normal lawsuit. Is that not right?

Mr. Dave McCauley: There is no requirement to prove negligence, so it's very

Mr. Nathan Cullen: There's no burden of proof?

Mr. Dave McCauley: It's very tough on the operator, okay?

Mr. Nathan Cullen: You're right. From an operator's perspective—

Mr. Dave McCauley: From a liability perspective, it's very tough. The quid pro quo, I guess, is—

Mr. Nathan Cullen: That's what I'm trying to understand.

Mr. Dave McCauley: —that it's very tough on the operator. They are liable if there's an incident. If the victim says there was an incident, and the victim was damaged, they are liable. The quid pro quo is that their liability is limited.

● (1620)

Mr. Nathan Cullen: Yes, to whatever is set within the limit of this bill, which is $650 million, and in other regimes, to whatever it happens to be.

Mr. Dave McCauley: That's right.

Mr. Nathan Cullen: That's very instructive. Thank you very much for that.

The Chair: Is there anything else on clause 12, Mr. McCauley? Sorry, I mean Mr. Cullen.

Mr. Nathan Cullen: I'm going to start to develop a complex or at least a split personality.

The Chair: Well, Mr. McCauley....

Mr. Cullen, are you finished?

Mr. Nathan Cullen: Yes, thank you.

The Chair: Thank you.

We will have a recorded division on clause 12.

(Clause 12 agreed to: yeas 9; nays 1)

The Chair: I think we should leave for the vote now. Let's suspend the meeting until after the vote. When most of us arrive back after the vote—or all of us, hopefully—we will resume the meeting.

● _____ (Pause) _____ ●

● (1700)

The Chair: Let's resume the meeting.

We had just passed clause 12, so we'll move to clause 13.

(Clauses 13 and 14 agreed to)

(On clause 15—*Liability for economic loss*)

The Chair: Mr. Cullen has something on clause 15.

Mr. Nathan Cullen: I have a question about this. Economic loss doesn't necessarily go as far as the environmental damages are concerned. We're wondering about this. Potentially I'm looking at a nuclear accident that takes place near a water source and the extension of environmental damages to a region, thereby incurring economic losses. Would such a thing be contemplated here?

The Chair: Who would like to respond to that?

Mr. McCauley.

Mr. Dave McCauley: The extent of environmental damage that would be included would be those environmental damages for which a competent authority requires cleanup or requires reparations. So to the extent that it affected a water body, for example, if a competent authority would suggest that there had to be reparations associated with the water body, then that would be a compensable head of damage.

● (1705)

Mr. Nathan Cullen: On my question, though, I'm imagining Lake Ontario getting contaminated after an accident, and in my reading of this, I don't know who would be seeking the economic loss. Would it be the municipalities and the residents who are unable to drink the water?

Do you see what I mean? In all of my reading through this, it doesn't come through clearly in terms of compensation for environmental damage and environmental cleanup if a person loses their drinking-water supply.

You mentioned cleanup. How long would it take for the cleanup of the nuclear contamination of a water body like Lake Ontario?

Mr. Dave McCauley: In terms of the compensable damages, if there were an issue associated with contamination of a water supply, for example, there would be an associated damage in that there would have to be expenditures to bring in fresh water.

Mr. Nathan Cullen: We're going to get to the limits of the bill in terms of what can be sued for. I don't know of any cleanup scenario that allows for the cleanup of a nuclear-contaminated body of water. I'm getting back to this.

I'm reading from clause 15, which says, “Economic loss incurred by a person as a result of their bodily injury or damage to their property caused by a nuclear incident...”. To compensate the loss to the communities that rely on Lake Ontario for their water supply would immediately be in the billions, and we're taking that sentence to mean that, if I'm hearing your interpretation right.

The department said that $650 million would cover off clause 15 if it were applied. I'm confused. If this does in fact capture something like drinking-water contamination, which is what I'm hearing, then I'm not sure how the department arrived at the figure of $650 million, at that kind of a figure.

The Chair: Would anyone like to respond to Mr. Cullen's comment or question?

Hon. Geoff Regan: Mr. Chairman, can I help on that?

The Chair: Yes, I'll allow you to make a comment. I've also recognized Madame Brunelle.

Would anybody like to respond to Mr. Cullen's comment?

Go ahead, Mr. McCauley.

Mr. Dave McCauley: The bill provides that if there is contamination to the property and economic loss associated with their livelihood, for example, they will be compensated for it.

Mr. Nathan Cullen: I'll let the others go ahead. I have another question.

The Chair: Thank you, Mr. Cullen.

Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle (Trois-Rivières, BQ): I have a question about psychological trauma. This clause indicates that it may be compensated. At the last meeting of this committee, last Thursday, it seems to me that the insurers said that they did not cover psychological trauma. I have not had time to read through the blues, but I found it curious that they would have said that.

The bill says that psychological trauma may be compensated, but the insurers said that this is not so. Perhaps I misunderstood. What are your thoughts on that?

The Chair: Thank you, Ms. Brunelle.

Mr. McCauley?

Mr. Dave McCauley: There are damages that insurers can cover, but there are also damages that the government has decided to cover, to make sure that compensation is provided. In circumstances like those, the government is responsible for compensating the damages through reinsurance.

● (1710)

Ms. Paule Brunelle: So the government pays for psychological trauma with reinsurance? That is why the insurers told us what they did.

Mr. Dave McCauley: Exactly.

The Chair: Thank you, Ms. Brunelle.

[*English*]

Mr. Regan.

Hon. Geoff Regan: I view this clause as one that, in a sense, expands coverage. I don't see this as restricting coverage. There are times when economic loss is not covered; for example, when a person loses their job as a result of something else that happens and their business is affected or whatever. This clarifies that in cases where courts might not otherwise accept them as being compensable, they are in fact compensable. I think this is a positive thing.

The Chair: Thank you, Mr. Regan.

Mr. Cullen, do you have more on clause 15?

Mr. Nathan Cullen: We're saying that the government is allowing for compensation due to economic loss, and my question references drinking water, or even contamination of soil. One can imagine a farming region where the soil is contaminated. The court assigns a certain amount of compensation for that loss, but would one be able to argue that the loss of drinking water is an economic loss to an individual? That's my concern.

I'm trying to understand where in the bill—if not here—we can identify what are often referred to as economic or biological services, environmental services. In a community, the loss in the value of a home with contaminated drinking water is a very difficult thing to assign. When I look at properties where I live and the difference between a house with reliable drinking water and one without.... It's a problem.

The loss of drinking water to a region with the size of Lake Ontario's water basin, by all anecdotal information, would be in the many billions, would it not, if Lake Ontario were contaminated in the event of nuclear accident? Again, I'm going back to referencing where this bill starts. It says that $650 million should be enough. That's ridiculous. That's what I'm trying to understand.

Could the contamination of Lake Ontario be seen as being caught under clause 15 here? I'm hearing no, that it wouldn't be derived as an economic loss to the City of Toronto....

The Chair: Mr. McCauley.

Mr. Dave McCauley: First, I think it's a very unlikely situation that all of Lake Ontario would be contaminated as a result of a nuclear incident. On the issue of a farmer's field being contaminated because of a release stemming from a nuclear incident, that would be compensable. His lost wages, as well as the cleanup of his property, would be compensable under the proposed bill, and that's an improvement from the previous bill.

If there were concerns about the level of contamination in a source of drinking water, the damage that would be compensated would be for the measures the individual would have to take to replace that drinking water.

The Chair: Thank you.

Mr. Anderson, go ahead, please.

Mr. David Anderson: I was just going to point out that clauses 13 through 18 all talk about the compensation, but clause 17 specifically talks about the costs of remedial measures to mitigate environmental damage. As Mr. McCauley mentioned, that's particularly covered if you're acting under federal or provincial authority, or any direction from them. So that would certainly cover most of these major environmental catastrophes that Mr. Cullen seems to be intent on predicting here.

The Chair: Thank you, Mr. Anderson.

Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle: I would like clarification on something. You told us that psychological trauma is covered by government reinsurance. If water is contaminated, for example, does the $650 million ceiling still apply? A court decides. A lot of people will file claims if there is a nuclear incident. I understand that a court decides who gets what.

But, in all those cases, is the ceiling always the same? Whether the money comes from the operator, the operator's insurance, or from the government, is the ceiling always the same? I am not sure if my question is clear.

● (1715)

Mr. Dave McCauley: Yes. The $650 million amount is the amount of compensation for all eventualities.

Ms. Paule Brunelle: Okay. Thank you.

[*English*]

The Chair: *Merci, Madame Brunelle*.

Mr. Cullen, is this still on clause 15?

Mr. Nathan Cullen: Yes, sir. I have a small comment and then a question.

In terms of Mr. Anderson's last point about my being intent on predicting disaster—I'm not sure what he said—I meant to say at the beginning of my questioning that the whole reason this thing exists is for the eventuality of a nuclear accident. You don't create insurance for something if it's impossible for it to happen; there's no need for such insurance if it's impossible for the thing to happen.

So I think it's incumbent upon all of us, however distasteful it is, to imagine something going wrong, and then being able to say that if something were to go wrong, the bill we created was the very best possible thing that we could have done, in the event of that accident. That's the reason that governments get involved in this, I would imagine.

So while I'm an optimistic person by nature, I think when it comes to this type of legislation we all have to take on a certain amount of seriousness about making sure we're making the right kind of legislation.

I understand that clause 17 deals with some of the environmental contaminations and the eventual cleanups, which can be extraordinarily expensive. My question on this one is because it is about economic impacts; what I'm trying to understand is the economic impact of something like the loss of drinking water.

I'm not sure, Mr. McCauley, just in terms of your prediction, that contamination of part or all of Lake Ontario is not possible. Could you offer to the committee where you derived that? Is that from studies that the government has done around the sites located near the lake? Why does the government feel assured in that commitment?

The Chair: Go ahead, Mr. McCauley.

Mr. Dave McCauley: In doing our analysis for the bill, in setting the limit we undertook a study, a kind of risk assessment in terms of what kinds of incidents, what kinds of risk scenarios we should be considering. In effect, when we looked at a worst-case scenario, a worst-case design-basis incident at a facility, in those situations we found that in fact the radionuclides were maintained within the facility, and they were vented in a controlled manner. So it would be unlikely that you would have a situation where you would be contaminating a large water body.

Mr. Nathan Cullen: This is helpful. I know that the government has enlisted an external company in order to review the sale of AECL; it's the Rothschild report that we've heard much about. Was this risk assessment done in-house for the department or was it done as a contract through somebody else who does this type of work?

Mr. Dave McCauley: Yes, it was done through an external contractor.

Mr. Nathan Cullen: I see. Has the risk assessment study ever been made public? Is there a plan to make that public?

Mr. Dave McCauley: That study has been made public.

Mr. Nathan Cullen: When was it released? Can you remind me?

Mr. Jacques Hénault: I should clarify that. It hasn't been made public, but it is available for anybody who is seeking to look at it.

Mr. Nathan Cullen: So to understand then, is it on a website or—

Mr. Jacques Hénault: No, it's not on a website. With government, if you decide to publish something you need to have it translated in both languages, and at the time the study was done for the department, and we kept it inside. But there have been people who have asked to have a look at the study and we've made it available.

Mr. Nathan Cullen: I know we're at the eleventh hour here, but is it possible for this committee to see that study?

● (1720)

Mr. Jacques Hénault: Yes, certainly.

Mr. Nathan Cullen: Okay, and prior to our next meeting, hopefully, because it may inform some of our discussions around this bill. That would be very helpful.

To go back to this study, I take your word for it on the conclusions the department came to, and it arrived at this figure. The bill, then, has assumed that a nuclear accident is contained within the site. Is that what I'm understanding? You said that no radionuclides would escape containment, essentially. Is that...?

Mr. Dave McCauley: What the study described was a situation where there was controlled venting of radionuclides after an incident, but the contamination was controlled, contained.

Mr. Nathan Cullen: In terms of a reference point for the committee, then, would a contained or a controlled venting look similar to the venting that happened at the Chalk River facility when it had a leak and there were so many kilograms released through the air and some through the water? Is that what you mean?

Sometimes I find that within the nuclear industry there's a certain terminology, like there's a spill but it's contained, or it's not a spill, it's a leak. Terminology that I would pass as normal means something else in the nuclear field, so when you say “contained venting”, what does that mean?

Mr. Dave McCauley: I don't think I would be the best person to go into the details of it, of making the comparison, but that was the basis when we were looking at in terms of the limit. That was one of our considerations; it was kind of a risk assessment of an accident at a nuclear facility.

Mr. Nathan Cullen: So then again, the scenario under which this bill was drawn up...and this bill was first drawn up in 2004-05, is that correct?

Mr. Dave McCauley: That is correct.

Mr. Nathan Cullen: So in 2004, if I could pick a time, the scenario in which we ran through potential compensation for Canadians or communities affected was that if there were a nuclear accident, there was contained and controlled venting onsite, with no great loss, no explosion, no Chernobyl, no anything like that.

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: Is that assumption safe to make in the sense that...? Is it physically impossible with the systems we have developed under AECL to have a nuclear accident that goes beyond a contained accident?

Mr. Dave McCauley: It's extremely unlikely.

Mr. Nathan Cullen: So when we deal with risk insurers and assessments, there's always the probability of trying to understand. Is it a 5% risk or a 2% risk or is it 10%?

I guess what I'm trying to understand is, if the assumptions made at the beginning of an experiment or a thought exercise, are such... When you say extremely unlikely, I don't know what that means.

Mr. Dave McCauley: When we were developing the legislation and developing the limits, there was no consideration of providing a limit on the operator that might address an incident that was extremely unlikely, using Canadian technology, a Canadian regulator, etc.—western technology—and I think you would find that's the same with most legislation around the world.

Mr. Nathan Cullen: This brings me to a second point. Was it also imagined that other than CANDU technology...? I would assume it also fits under this legislation. If someone were to bring another technology to Canada and run nuclear operators, does it assume that?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: I still don't quite have a definition on what... I know anecdotally what “extremely unlikely” means, but are we talking 5%—

The Chair: Mr. Anderson has a point of order.

Mr. David Anderson: We seem to be getting quite a ways off the clause that we're looking at here. I think Mr. Cullen is welcoming a general discussion about the bill, but we're really dealing with one clause here. I wondered if we could possibly come back to it and then perhaps we can move on.

The Chair: Yes, Mr. Cullen.

Mr. Nathan Cullen: Thank you.

On Mr. Anderson's point of order, I've been attempting to be very diligent about this particular clause. This clause, clause 15, talks about economic loss incurred. If the economic loss incurred we're talking about is based upon some assumptions that the committee has not yet heard... I remember talking to you, Mr. Anderson, about how an exclusive meeting with the officials, rather than the 20 or 30 minutes we got after the minister's testimony, would have alleviated some of my questions.

I'm here now with this bill. Some of the testimony I've been hearing today I'm hearing for the first time, just in terms of what the economic assumptions were. We're dealing with a clause on the economic loss incurred by a person, loss that is caused by a nuclear incident. I heard for the first time today that it's contained within site. That's interesting and important in terms of setting the actual limit, which is what this bill is designed to do.

I'm trying to be as diligent as I can in staying on the topic that we've been given.

The Chair: Okay, Mr. Cullen.

Please do ensure that that what's happening. Sometimes it's just a little tough to say.

Mr. Anderson, go ahead.

Mr. David Anderson: Maybe I can offer Mr. Cullen some help before the next committee meeting. In the previous Parliament we did pass this bill through committee, and there was a lot of testimony given there. Maybe he would want to read that. He would then see that some of these are been addressed here and he'd be educated on them when he comes to the next meeting.

● (1725)

The Chair: Thank you, Mr. Anderson.

Continue, Mr. Cullen.

Mr. Nathan Cullen: Thank you.

I thank Mr. Anderson for his very wise and sage advice. We did look at the previous testimony of three and a half days.

In terms of the question about the economic loss incurred by a person, what does the bill imagine in clause 15 in terms of any cross-border disputes? Again, we're imagining contamination. I've heard what you've said about contamination being incurred only within site, but I can't see anywhere in this bill where it says that, where the liability regime imagined here will only happen within site.

So I, as a legislator, have to imagine some contamination going off-site. You talk about venting through the air, for example, and I only have Chalk River as the last current Canadian example of a reactor having a problem. It's vented through the air. It was also vented into the river—the Ottawa River, in fact. That's where some leaks happened. What happens with respect to the United States in particular with their citizens claiming some sort of compensation?

Mr. Dave McCauley: In the event that there was contamination that travelled to the United States and there was damage in the United States, U.S. victims would be able to make a claim against our legislation under our legislation.

Mr. Nathan Cullen: Is Canada subject to any U.S. laws in that respect? I know that through the Great Lakes Water Quality Agreement and some others, sometimes we've had claims sought through U.S. courts. Canadians have done the same. Canadians have sought damages through Canadian courts of a point source that was actually in the U.S.

Are we aware of any of that in terms of this liability? I'm looking at economics again. I'm looking at somebody coming forward from New York state saying that he's been economically hurt but choosing to go through the American system where there's a much higher pool of funds. Is that imagined in this bill at all?

Mr. Dave McCauley: No.

What this legislation does is provide a means for Canadian victims to obtain compensation and any countries where we do have a reciprocal agreement.... We do have a reciprocal agreement with the United States now, such that American victims would be able, under the existing legislation, to come and make claims against our existing legislation. Similarly, we are able to make claims under U.S. legislation in this area.

Mr. Nathan Cullen: So in the predecessor to Bill C-20, it's imagined both ways. While it's not mentioned in this bill, this bill just assumes that continuation?

Mr. Dave McCauley: This bill also provides for reciprocal arrangements.

Mr. Nathan Cullen: Is it being referenced in this clause?

Mr. Dave McCauley: It is in clause 64.

The Chair: Mr. Cullen, we can deal with clause 64 when we get to it.

It is 5:30, so we will adjourn the meeting for today.

Mr. Cullen, you can certainly continue at the next meeting if you'd like.

Thanks to all of you for waiting for the vote and for being here to answer the questions. We'll see you again on Wednesday to continue with clause-by-clause of Bill C-20.

The meeting is adjourned.

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