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Chair

Mr. Leon Benoit

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● (1530)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good afternoon, everyone.

We are here today to continue our clause-by-clause study of Bill C-20, an act respecting civil liability and compensation for damage in case of a nuclear incident. We had started our discussion on clause 15.

Is there any further discussion on clause 15?

Mr. Cullen.

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

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): If the committee recalls the last meeting we had, there was a question of a report that the government had commissioned in order to try to assess the risk and liability at nuclear facilities. I'm not sure whether you recall that, Chair, but there was a discussion about producing that report, which we now have. I have some questions regarding it, because what it does for, say, clause 15 in particular, but also again for clause 17, is set the context for what we're talking about in terms of where the government made assumptions.

I was looking to you for your recollection. Do you recall this conversation that we had at the last committee meeting?

The Chair: Absolutely. Go ahead, Mr. Cullen.

Mr. Nathan Cullen: I know you thought it was scintillating.

Here is a question to our witnesses. The report that was referred to —I'm not sure whether all committee members received it, but it's extremely informative—was a review of the coverage limit in the Canadian Nuclear Liability Act, task 5, final report, presented to the Canadian Nuclear Safety Commission on May 30, 2003, by International Safety Research in collaboration with Magellan Engineering. I'm not sure whether other committee members have this.

Do our witnesses have it with them today—or if not with you, do you have knowledge of it and know its conclusions?

Voices: Yes.

Mr. Nathan Cullen: For the committee's understanding—I think this is critical for understanding the clause in front of us, in terms of economic loss imagined under this bill—this report was commissioned and presented May 30, 2003, by government.

I want to make sure I'm right in assuming that this formed at least part of the government's thinking about the liability regime. Is that right, Mr. McCauley?

Mr. Dave McCauley (Director, Uranium and Radioactive Waste Division, Electricity Resources Branch, Department of Natural Resources): We had recommended the $650 million limit based on the international standard as well as the capacity of insurance that was available and the inflation associated with the liability limit in the existing act. Then we felt it was necessary to take a look at a design-basis accident to see what the results of it would be vis-à-vis the $650 million recommendation—how the two related.

It wasn't that we did the report and then set a limit, but rather that we had come to a decision on the limit and thought it would be helpful to do a risk assessment. The CNSC had actually commissioned the study, but we asked them to, because they have the expertise in this area.

● (1535)

Mr. Nathan Cullen: Just so I understand the chain of events in relation to economic loss considerations, the government had a desire to modernize the Nuclear Liability Act, because it had been in place for some years. The government then set up a piece of legislation, and when the question came to potential economic loss and what type of liability limits should be incorporated into the act, you commissioned—or you requested, or you funded—the CNSC to go forward and have International Safety Research and Magellan do such a study.

I want to get the time sequence right, to understand where you landed with this report.

Mr. Dave McCauley: What we did initially was a discussion paper on the issue. We consulted the stakeholders. Based on that, we moved forward and identified the limit of $650 million, but in assessing the limit and seeing whether it was appropriate, we also had the CNSC commission this study.

Mr. Nathan Cullen: Just to understand you right, then, the $650 million figure came prior to this report's being done. That was an internal government decision.

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: I assume that's based on looking around at international regimes.

Mr. Dave McCauley: We're looking at the limits in the International Atomic Energy Agency convention. That's right.

Mr. Nathan Cullen: With respect to clause 15, this report then seeks to understand what the costs would be of a nuclear accident, and two sites were chosen. Is that correct?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: Those sites were Gentilly-2 and Darlington.

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: There are two assumptions that are made in this report that then lead the government to assess what kinds of limits and economic losses might be effected. One assumption is that two reactors were chosen by location. The other assumption was that it was a contained type of accident, and we talked about this last time. It wasn't an accident that went beyond the barriers of the facility.

Mr. Dave McCauley: That's right.

Mr. Nathan Cullen: There are only two recommendations—and this is the important part for the committee to understand—that came out of this government-commissioned report, or the CNSC-commissioned report. One recommendation was that the analysis be repeated to cover the domain of what they call "severe" accidents, again using a probabilistic analysis approach to provide an accident coverage presentation for serious accidents at both Gentilly-2 and Darlington.

There are only two recommendations made out of this report. One of them was that the government should do another analysis to cover what they call "severe" accidents. Did the government do this analysis prior to the presentation of Bill C-20?

Mr. Dave McCauley: No, we didn't.

Mr. Nathan Cullen: May I ask why?

Mr. Dave McCauley: I think the philosophy was that the limit would be addressing foreseeable risks associated with design-basis accidents as opposed to severe or catastrophic risks.

Mr. Nathan Cullen: I understand that's the assumption you made, but the folks, the report writers, who did this study for you to assess the effects of nuclear accidents, the economic loss that might be incurred by a person, what we're studying in clause 15, told the CNSC, and through the CNSC to the government, that they should also do a study and analyze the effect of a "severe" accident. I don't understand why the government wouldn't do that.

Why maintain the assumption of a limited or small-scale accident? The report writers themselves said, that's fine, we've done this for you, this is where we think the limits should be, but you also must consider a severe accident, and yet the government doesn't go through with that consideration.

Mr. Dave McCauley: I think our rationale was that we understood that the act would not address a severe accident in terms of the liability limit. The legislation addresses any kind of an accident that would happen, but in terms of the liability limit, we set an amount that was based on an international standard and reflected insurance capacity and other parameters. We looked at what a foreseeable incident was and how the impacts associated with a foreseeable incident would relate to the $650 million limit.

Mr. Nathan Cullen: If Bill C-20 is not an act meant to address the event of a severe accident, and we're now on the compensable damage clauses, why is that not inferred in the act?

● (1540)

Mr. Dave McCauley: The act is meant to address severe accidents. It's meant to address every type of accident. In terms of the liability limit, however, we were seeing how the liability limit that had been recommended compared to what would be the impacts of a foreseeable nuclear incident, a design-basis incident.

Mr. Nathan Cullen: This is where I'm losing you.

You suggest that Bill C-20 is meant to also cover severe accidents.

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: The analysis that you had done was only on limited accidents. The authors of that analysis said that you should also go ahead and analyze what the cost would be of a severe one. The government doesn't do it, and it doesn't affect the act, which is meant to also cover severe accidents. This is the disjoint I'm having.

The authors of a report that the government asked for have said, "By the way, here's what our liability limits would be under a controlled accident at these two sites", and at the end the authors say, "But to be correct or comprehensive, you should study a severe accident." The government doesn't look to understand what a severe accident might cost and presents the bill anyway.

What am I missing here in terms of why, when we get down to clause 15—and clauses 16 and 17 also address this—we're only dealing with limited accidents when experts in this field say to please also consider serious or severe accidents as well?

Mr. Dave McCauley: Well, the act addresses any form of accident, but the purpose of the study was to define how the impact of a likely or a foreseeable incident would stack up against the limit we had identified. It was considered inappropriate to be setting a limit on the operator liability that would address an incident that was quite unlikely, unforeseeable. It was considered that to set the liability limit of the operator would be inappropriate.

Mr. Nathan Cullen: Maybe this is to my point. When you use words like "likely" and the government discusses them—that's the framing, "likely"—I assume the government has some sort of model they've looked at to say that it's in the one percentile of chances, or 99.9% not going to happen, and therefore they deem it unlikely.

Is that correct?

Mr. Dave McCauley: Not Natural Resources Canada, but the CNSC says that.

Mr. Nathan Cullen: The CNSC says that the likelihood of this happening, and therefore the economic loss that we're talking about here in clause 15 is...

You use terms such as "foreseeable". Isn't it the nature of accidents that they are sometimes unforeseeable; that they happen in such a way that, if they had been foreseen, they wouldn't happen? This is the reason Canadians get insurance for all sorts of things. It's in the event, however unlikely, of an unforeseen accident: "Thank goodness we have insurance on the home or the car so that we can get it repaired. I never thought this would happen."

Mr. Dave McCauley: You're right, but we didn't think it was appropriate to set a liability limit at the most unforeseen, catastrophic loss that could happen. That's not where you set the liability limit; you set the liability limit on an incident that would be foreseeable, as opposed to truly unlikely.

Mr. Nathan Cullen: This is what I need to understand in terms of “economic loss incurred”. We're trying to figure out where the parameters for economic loss should be measured.

Tell me the difference in this. I know I'm making comparisons between home and auto insurance, which might look very different from nuclear insurance. When somebody gets insurance for their automobile, they don't insure it for $100; they try to get insurance that might cover the replacement of the car. Isn't that correct?

Mr. Dave McCauley: Well, you choose an insurance level that you contemplate would address the likely risks. You don't choose a level of insurance that would include any foreseeable risk happening, regardless of how likely that risk is.

Mr. Nathan Cullen: Does it not give the government any pause, though, that when the...? I don't know these two companies at all, but I assume they know what they're talking about. International Safety Research and Magellan, I assume, are good.

● (1545)

Mr. Dave McCauley: Yes, they do work in the industry. They were recommended by the CNSC.

Mr. Nathan Cullen: So a group recommended by the CNSC, because obviously they're good at what they do, makes this recommendation that you should also look at severe accidents in drawing up this consideration. The government chooses to ignore that advice. These folks also understand—

The Chair: There is a point of order.

Mr. Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): I know Mr. Cullen wants to delay the bill, but he's gone around on this same issue about four different times, and I think he has had three clear answers on it. We can spend a lot of time discussing the same thing, but he keeps going back to the same issue. Maybe he'd like to move on to something else. We could move on to the next clause, if he feels it's been dealt with.

He has made the same points to the same witnesses. This is the third or fourth time. I don't think we need to continue. I don't know whether it's called badgering the witness or not—I hope he wouldn't do that—but he should understand by now that the consequences... He's talking about unforeseen accidents. As the witness pointed out, most accidents are—

The Chair: Mr. Anderson, you'll have to deal with that when you have your chance to question, which I hope is fairly soon, because we have two others who have asked to question.

Mr. David Anderson: On a point of order, Mr. Chair, I think it's time to move on.

The Chair: This is not a point of order.

Mr. Cullen, I've been listening to this, and you are beginning to go through a repetitive circle here. If you could, just get on with it. If you have any more questions, just ask them. We have two other people who have asked for the floor.

Oh, was there a point of order?

On a point of order, I'll hear Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle (Trois-Rivières, BQ): Excuse me, Mr. Chair. I have a point of order.

We received a document at Mr. Cullen's request. The document is in English only. I understand and respect Mr. Cullen's wish to learn, but the fact remains that this is against the rules of the committee. The two official languages must be respected. I therefore feel that I have to point out this omission.

[*English*]

The Chair: That's a good point. The document has been sent for translation; it was not distributed at committee, but it was sent to the committee and distributed through the committee. It should have been held until we had the French translation, actually. That was a mistake.

Mr. Mike Allen (Tobique—Mactaquac, CPC): I have a point of order, Mr. Chair. I don't have the document. Can I find out who distributed the document? I don't have one with me. I don't remember seeing the document or how big it is or what it is.

[*Translation*]

Ms. Paule Brunelle: Patrick Artelle is the person who sent me the document. I gather that it comes from the committees directorate. Possibly, he is the clerk's assistant.

[*English*]

The Chair: Yes, and I believe it was sent to everyone, but the translation apparently isn't finished. You're right about that, and I won't let it happen in the future. I gave the advice to go ahead and distribute it, but it should have been in both languages.

How do we take it back now? We just can't let it happen again.

Mr. Cullen, certainly repetitive questions going around in circles aren't going to help, but could you just continue? We have at least two others waiting, so go ahead, please.

Mr. Nathan Cullen: Yes, Chair. I'm being very cautious about not being repetitive and being very clear with what I'm speaking to, which is clause 15.

[*Translation*]

To answer Paule's question, I would like to make it clear that it is a Government of Canada document. It is a good question why such an important document, dated 2003, is available only in English. It is very strange. It is not the Government of Canada's normal way of doing things. That was one of the questions I wanted to ask today. First, they said that it was a completely open and public document. So the public should be able to have access to it. But a Government of Canada document written in one language only is clearly not public.

● (1550)

[*English*]

That was my next question. Reference was made to this document's being available to the public. It's a document that was prepared for CNSC, which is an organization that does all its work in both official languages, but it was prepared only in English and did not appear on any websites.

Chair, I'm focusing on this today because it's one of the critical pieces the government used to craft the legislation that's in front of committee. Why this wasn't presented to committee on the first day that we heard this bill, when we had government officials in front of us, is a little strange. Now we have it at essentially the eleventh hour, and we're in clause-by-clause consideration. It appears in only one language, which we also, out of respect to Madame Brunelle, find very irregular and not correct, yet the committee members are being asked to vote on these clauses with one of the most essential pieces of information appearing only now.

You suggested to me that I was being repetitive, but I'm trying to understand something. A document that the government itself commissioned made two recommendations; the government ignored both those recommendations. I'm trying to understand why. I have not yet received an answer as to why.

The Chair: Continue with the question, Mr. Cullen.

Mr. Nathan Cullen: Thank you.

The folks come back and say that you must look at severe accidents. The government says no. Can you tell me why? You don't do the research and you don't anticipate...

Okay, here's the question: does the government not—

Mr. David Anderson: I have a point of order.

The Chair: Go head, Mr. Anderson.

Mr. David Anderson: The witness already gave him an answer to that question. He asked that about 10 minutes ago, and they gave him an explanation. I don't know if Mr. Cullen is trying to disrupt the committee, but he got a clear explanation. If he wasn't listening, he should have been, or maybe he should go back and check the transcripts. He's going over ground that he's already covered.

They explained to him what happened. I think he should quit. You can call it harassing the witnesses or staying on this one point.

The Chair: Mr. Cullen, you are repeating a question you've asked before. You got a clear answer for it.

Mr. Nathan Cullen: Can you explain the answer I received, Chair? It was that the government chose not to have this study done. Why?

An hon. member: It's not necessary for the chair to repeat the answer—

Mr. Nathan Cullen: No, but the chair has told me I've received an answer, and I'd like to know what his interpretation of that answer is.

I'm being quite sincere about this. Mr. Anderson accused me of a few things that I've chosen not to respond to. I want to understand why the government chose not to look at severe nuclear accidents. Is that not a reasonable premise?

The Chair: Go ahead with the question, Mr. Cullen, but don't repeat and don't go around in circles. That's not acceptable.

Mr. Nathan Cullen: Does the government not anticipate severe nuclear accidents?

Mr. Dave McCauley: Yes, I think the CNSC... I think you'd really have to speak to someone from the CNSC, but I think in their analysis and their safety analysis and their regulatory reviews they regulate to avoid severe nuclear accidents.

Mr. Nathan Cullen: There's my question. So the reliance on the liability limit for economic losses is anticipated by the fact that the CNSC would simply not allow a severe nuclear accident to ever happen. Am I right?

Mr. Dave McCauley: Yes. It is unforeseeable, so it would be inappropriate to set a limit on the operator based on something that is extremely unlikely. The legislation addresses any kind of eventuality. It's just that the liability limit of the operator was set, and then we did the study to evaluate the impact of a foreseeable incident and how it relates to....

That was basically the rationale.

Mr. Nathan Cullen: Understood.

Chair, I just want to be clear. You said there were other people in line waiting to ask questions. Those were not for points of order but for other things?

The Chair: For points of order, we interrupt questions.

Mr. Nathan Cullen: So I'll yield the floor to allow others to ask questions.

The Chair: Madame Brunelle, did you...?

[*Translation*]

Ms. Paule Brunelle: No, thank you.

[*English*]

The Chair: Oh, you were on a point of order? I apologize for not recognizing that right away. I didn't catch that.

Mr. Anderson.

Mr. David Anderson: Mine was a point of order.

The Chair: Okay. Well, I guess that's what it was.

Mr. Nathan Cullen: I will not stand for this time-wasting, Chair. This is unacceptable.

Voices: Oh, oh!

The Chair: Mr. Allen.

Mr. Mike Allen: Thank you, Chair.

This is just to clarify this whole line. We heard during the testimony from CNSC, when they were here, that in 63 years they've never had an event, and it's because of the regulatory environment we have.

From your viewpoint, isn't that what insurance is all about? It's just like insurance that we buy for anything in our whole life: it's based on risk and probability. Given that we have a tremendous regulatory environment and that CNSC will be continuing to discharge that responsibility going forward, one could say that the risk is virtually nil going forward and that there will not be a catastrophic event, and because of our history and because of the type of technology we have and the containment structures we have, what Mr. Cullen is talking about is some hairy-fairy idea. It's a theoretical concept, and it's really not reality, given our 63-year history.

Is that true?

● (1555)

The Chair: Go ahead, Mr. McCauley.

Mr. Dave McCauley: That's basically the philosophy, when we look at the foreseeable accident: that the likelihood of a catastrophic, very serious accident in which we'd lose containment is so unrealistic that we don't set the limit on that basis.

Mr. Mike Allen: Thank you.

The Chair: Thank you, Mr. Allen.

Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle: Was this study on the likelihood of accidents, which allowed you to determine the maximum level of risk, done in 2000?

Mr. Jacques Hénault (Analyst, Nuclear Liability and Emergency Preparedness, Department of Natural Resources): The report you are referring to was published in 2003. It deals with design basis accidents. The likelihood of accidents of that kind is higher than for catastrophic accidents, but they are still—

Ms. Paule Brunelle: We will soon be in 2010. Do you believe that the age of the reactors could cause the data to change, together with your risk assessment? Or do you think that the data are recent enough that a reassessment is not necessary?

Mr. Jacques Hénault: There again, it is the commission that regulates the facilities. The risk remains the same. If the risk exceeds the limits of what we call design basis accidents, the facility does not receive its licence.

Ms. Paule Brunelle: Fine. Thank you.

[*English*]

The Chair: Mr. Cullen.

Mr. Nathan Cullen: I'm not sure if the expertise exists with you folks, but on that notion of design-basis accidents, can you explain the terminology so that I have some reference?

Mr. Jacques Hénault: This is probably a question that the CNSC should answer, but essentially, the way we understand it is that, during its environmental assessment and before a plant can have its licence, the CNSC has to consider design-basis accidents. The plants have to be designed in such a way that they can't have accidents beyond that. They have to address those types of accidents.

Again, in reference to the Magellan report, some of these catastrophic accidents that they say should perhaps be studied further are things in the order of one in a hundred million years. That's why the CNSC does not consider those accidents, because one in a hundred million years is not very frequent.

Mr. Nathan Cullen: Was something like Chernobyl a design-basis accident—

The Chair: Mr. Cullen, we are dealing with clause 15. Your questioning is not about clause 15; it's about that report. We're not here to deal with the report. Could you please limit your questions to clause 15?

Mr. Nathan Cullen: On the economic loss incurred by a person as a result of their bodily injury or damage, when the government was looking to set that liability regime it had some research commissioned. Did it update that research prior to this bill being introduced?

I want to get a sense of the shelf life of this bill. You mentioned that before this thing came out, you had set the framework for a liability regime and $650 million was what you came up with, the international standard in terms of economic loss. Was it then updated prior to the re-introduction of the bill this time?

● (1600)

Mr. Dave McCauley: No, I think the $650 million limit existed as well in a predecessor to this bill, which was Bill C-5. It wasn't updated prior to the introduction.

Mr. Nathan Cullen: In your other testimony you said this was produced in 2003.

Mr. Dave McCauley: Yes.

Mr. Nathan Cullen: The government came up with this liability limit prior to this report being done. Did I hear that right?

Mr. Dave McCauley: Yes, that's correct.

Mr. Nathan Cullen: Do you recall if it's 2003 as well, or was it 2002?

Mr. Dave McCauley: I can't remember exactly.

Mr. Nathan Cullen: Okay, so either 2002 or 2003. We're now going into 2010. There's been no refresh, I suppose, in understanding the international context for what kind of economic loss or liability the owner of a reactor may be subject to in those, now, eight years.

Mr. Dave McCauley: I think the liability limits are well represented internationally in terms of the international conventions. The limit is $300 million SDRs, which is somewhere around $500 million Canadian. I think it has stood the test of time.

Mr. Nathan Cullen: On the definition that's used, I know oftentimes—especially in legislation that has an international effect or relationship—the wording or phrasing is in legalistic language because this stuff eventually ends up in court if there's an accident. Was the definition that's used in “Liability for economic loss” here in clause 15 predicated upon the previous legislation? Did the government look to other national governments and their legislation to get the text and wording?

In particular, I'm looking at psychological trauma, which Madame Brunelle raised earlier. Is that the origin of this text or is it from the previous bill?

The Chair: Ms. MacKenzie.

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

The Department of Justice has drafted this legislation to be consistent with domestic terminology. We did in fact consider psychological trauma very carefully. We chose wording that is intelligible within the Canadian domestic system because this is domestic legislation.

Mr. Nathan Cullen: Just to be clear, it's the Canadian domestic legal system that you're referring to?

Ms. Brenda MacKenzie: Yes, the Canadian legislation, statutes and regulations and so forth. We looked at that very carefully and in consultation with experts within Justice.

Mr. Nathan Cullen: Here's a concern that I raise in terms of the definitions around psychological trauma. In this bill, in this section, I'm wondering, through this legislation does the government make nuclear reactors and the owners of those reactors potentially liable to someone coming forward with a petition claim saying, “I live in Toronto”—you studied Darlington—“it had an accident; I'm feeling psychological trauma and I will seek to prove that in court”? Does this clause in this bill allow that to happen?

Ms. Brenda MacKenzie: We considered that during the drafting of the bill. That is why, you will see, it doesn't just stop; you have to read the whole thing in context: “psychological trauma resulting from...bodily injury or property damage”. So it's linked to something you actually lost. If you're hurt psychologically as a result of you actually personally losing something, that is clearly compensable under clause 15.

Mr. Nathan Cullen: I read the rest of that sentence. Say somebody is living in the Darlington area, an accident happens, and they consider it, in their terms and for their family, no longer safe to live in because they say “Maybe the next one will be worse and we'll be affected”. No nuclear material landed on their front lawn. They weren't at the plant. They didn't get hit by a.... Nothing physically happened to them, but they deemed that they had to move because they no longer felt.... Would that stretch to the physical limitations? I would imagine that government would be very concerned with this clause.

Ms. Brenda MacKenzie: Clause 15, in fact, states “Economic loss incurred by a person as a result of their bodily injury or damage to their property”, so we're looking at some kind of a causal link to something that actually happened to them, not just general disturbance.

● (1605)

Mr. Nathan Cullen: Okay. Interesting.

Again, in the scenario I talked about, even for somebody living beside a plant that has a nuclear accident—it's in the news, the accident happened, everybody's concerned—and they say they feel like they're forced to move or they're moving for the safety of their family, they wouldn't be compensable under this act. Is that right?

Ms. Brenda MacKenzie: Under clause 15, they would have to persuade a court that they had somehow been injured, actually injured, or suffered damage to....

There are other provisions as well, but—

Mr. Nathan Cullen: For that—-

Ms. Brenda MacKenzie: That's right, there are other provisions that deal with psychological trauma, but we're just talking about clause 15 right now, and clause 15 is limited to actual psychological trauma, which is linked to a loss that you can identify.

Mr. Nathan Cullen: The reason I'm asking about this is I'm wondering, did the government look at all at Three Mile Island in terms of the results that happened within the community surrounding that facility? Many moved out. I've read a number of reports on that accident, and when you read the reports and the testimony from citizens who were in the vicinity, although they were never physically harmed by the radiation, it was serious. From my recollection, there was compensation that was made available to families to leave.

Mr. David Anderson: A point of order, Mr. Chair.

I think, again, Mr. Cullen, by his own admission here, has gotten off clause 15. As was just pointed out to him, it does talk specifically about bodily injury or property damage. He just acknowledged that there wasn't any at Three Mile Island.

So if he could maybe get back on track here, we'd appreciate it.

The Chair: I think he still is asking questions that are within clause 15. He's related it enough to the clause that it's relevant, I believe.

Go ahead, Mr. Cullen.

Mr. Nathan Cullen: I think there was an answer coming.

Mr. Jacques Hénault: I'll respond to that one. Yes, you're absolutely right. Under Three Mile Island there was an extensive lawsuit and finally the insurers did settle. It was a class action, and there was a settlement for psychological... I don't think it was called psychological trauma, but in that area. There were a lot of spurious claims with Three Mile Island, and they were settled, I think, not in a court judgment. I think it was settled out of court.

Mr. Nathan Cullen: So my question is that under this clause of this bill, such a similar settlement is exempted because the government, when drawing this up, tried to make a tighter loop around who could make claim for psychological damage. In the Three Mile Island incident the class action that went ahead—and I forget the figure, but it was quite significant in the end—was to help people move, primarily. That is not foreseeable in this bill. Am I right?

Mr. Dave McCauley: The total loss on Three Mile Island was shocking.

Mr. Jacques Hénault: The total loss was $40 million, and most of that I think was economic loss. I think the actual psychological trauma component of it was small.

Mr. Nathan Cullen: But regardless of its size, this clause 15 exempts that from taking place at a Canadian site. Is that right?

Ms. Brenda MacKenzie: Under section 15 that would not be covered. We do have other provisions that deal with psychological trauma, but under section 15 it is tied clearly to bodily injury or damage to that person's property. So the psychological trauma would have to be linked.

Mr. Nathan Cullen: Thank you.

What section is that, so I can make note of it? Clause 16? Okay.

Mr. Allen put a question to you, and I wasn't sure of the answer coming forward, Mr. McCauley. He said that the government assumes the risk is nil....

Mr. Dave McCauley: I think you'd have to ask the CNSC. The risk of what? The risk of a catastrophic loss?

Mr. Nathan Cullen: Correct.

Mr. Dave McCauley: I would say that it is virtually nil. I don't think you would say nil, but I think the CNSC would be better able to comment on that.

Mr. Nathan Cullen: So when it comes down to it, in order to study economic loss, the government, through liability, has to set some sort of boundaries as to where those losses can be compensated for and where they can't. One thing we've established, at least in this section—and I hear your point about further psychological damage and the rest that is contained here. In section 15 it is contained around physical harm that then causes trauma.

The second recommendation that came out talked in terms of economic loss. The recommendation from, again, its own study said don't just look at Gentilly-2 and Darlington, because the population concentrations around those plants are not that great. It says here to consider Pickering, which has within its vicinity a much larger population. Did the government take this recommendation and go and look at a higher concentration of population around a plant like Pickering?

● (1610)

Mr. Dave McCauley: No, we didn't.

Mr. Nathan Cullen: Was there any reason for that?

Mr. Dave McCauley: For basically the same reason that we felt the $650 million was a suitable level for establishing liability of the operator.

Mr. Nathan Cullen: Okay. So on the first point—and I'm not going back to it—you said the reason you didn't consider a severe accident was because the probability was so low that it wouldn't be fair to set an insurance liability rate so high. Probability isn't one of the main factors in setting insurance rates; usually the greatest factor in setting them is what amount of protection is actually required. I'm still confused about it, but I don't want to upset Mr. Anderson, so I'll leave it.

The question around not looking at Pickering, though, doesn't fall into the same rubric. If you're saying that the probability of a severe accident is too low in order for us to set a limit for it, the population is a legitimate concern that the authors of your report raised, saying that you've looked at far less dense sites than a site like Pickering and the government should also study Pickering. There isn't any probability regime we're talking about here; we're just talking about a site that may affect more people—many more people in the case of Pickering.

I'm trying to understand, when we're talking about economic loss incurred, why the government didn't choose to also look at a site that has a lot more people around it, as the authors have recommended. These aren't my thoughts; these are from the report itself. Do you follow me?

The report says to look at Pickering; there are many more people there. The consequences for government and for insurance might be different. The government didn't go look at Pickering.

Mr. Jacques Hénault: I would just perhaps refer you to an earlier part of the report, on page 8. The study realizes that, and I quote from this: "These sites"—Gentilly and Darlington—"are considered representative of the medium range of the potential costs because of their characteristic designs, location and demography." So essentially this study came out with a range of losses under these severe design-basis accidents that range from $1 million to $100 million. So considering a station like Pickering relative to that, I think it would still fall within the $650 million.

Mr. Nathan Cullen: You raise an interesting point here, because what was done when governments considered economic loss... You've decided that one of the barriers around where the limits are set is about probability. If the government deems a severe nuclear accident to be very rare, you don't set liability rates according to severe accidents. We've established that. Isn't that correct?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: We're now talking about population and proximity to what is anticipated in insurance, which is a nuclear accident.

That's why you set up insurance; it's in the anticipation of something going wrong. To quote from that same page, "The near range covers an area up to a radius of several tens of kilometers. For this analysis the near range was selected as 55 km." So the government has said, when constructing Bill C-20 and trying to understand where the economic loss may happen, that you're going to choose an area in a radius around the site of 55 kilometres.

Is that right, or is that exclusive to this study?

Mr. Dave McCauley: I think you're mixing the concept of economic loss with our review of the liability limit. The concept of economic loss applies across the board.

Mr. Nathan Cullen: There is no physical limit to its size?

Mr. Dave McCauley: There is no physical... It's defined as it is right here. It applies, as I indicated previously, in a foreseeable incident or in a very large incident. It's the same definition that we use.

● (1615)

Mr. Nathan Cullen: Right. The very next sentence says "The far range, which would extend beyond this 55 km", when considering economic loss. You make no distinction, because you deem that an accident is only going to happen on-site; that it's going to be what's called a design-basis accident.

Mr. Dave McCauley: A design-basis accident also involves a release of the contamination, of the radiation, off-site. So you may have an eventuality, I suppose, in a very unlikely situation, in which there may be contamination released from the facility, and anyone who is damaged as a result of that contamination would be able to receive compensation.

Mr. Nathan Cullen: So the economic loss incurred by a person under what is called a controlled release is imagined in clause 15. Is that right?

Mr. Dave McCauley: It's a controlled or an uncontrolled release; it's any release, any damage associated with radiation.

Mr. Nathan Cullen: Okay. I'm sorry. I'm starting to connect controlled release to design-basis accident.

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: You're also assuming non-design-basis accidents for an uncontrolled release. Is that right?

Mr. Dave McCauley: I'm saying that the legislation applies to any incident that's defined earlier in the legislation—foreseeable, unforeseeable, etc. But in terms of the limit of the operator, we only considered a foreseeable event, which is containment with controlled release.

Mr. Nathan Cullen: I just heard two different things from you, and I want to make sure I understand this.

Under this bill, and under this clause, we're talking about design-basis accidents. We've looked at economic loss, and what is imagined by government is only those foreseeable accidents that happen in a way such as you anticipate.

Mr. Dave McCauley: No. Under this bill, we are not looking at design-basis incidents; we're looking at all incidents. That includes design-basis and non-design-basis incidents. The limit is not, I wouldn't say, tied to a design-basis incident, but once we chose the limit, or once we made a recommendation of the limit, we did a study to see how that limit related to a design-basis incident. We didn't do a study to see how the limit related to a non-design-basis incident, because we didn't think one would be likely.

Mr. Nathan Cullen: Can that even be studied? That was one question I had for you today.

Mr. Dave McCauley: I don't know. There was a recommendation to look at a different kind of study, but I don't know.

Mr. Nathan Cullen: What we're driving at here is that when we look at economic losses and the different amounts of compensation people living in different countries with nuclear facilities can gain access to, the economic loss compensation that Canadians can get access to under clause 15 is predicated upon a certain set of assumptions. Isn't that right? That's what we're going through today.

Mr. Dave McCauley: The compensation for economic loss that they have access to is based on the definition here. This is the direction we give to the courts.

Mr. Nathan Cullen: Yes, exactly. And this entire section of compensable damages is based upon an assumption, we've already established, of a non-severe accident. That's the assumption I'm assuming we're going forward on here.

Mr. Dave McCauley: No.

Mr. Nathan Cullen: I thought we just went through that.

Did we not just go through that? I thought I was being even redundant in going through it. I thought we established that this is not covering severe accidents.

The Chair: Ms. MacKenzie, go ahead.

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

I think we are mixing up two concepts.

Mr. Nathan Cullen: Okay. Please help me understand.

Ms. Brenda MacKenzie: A lot of what my colleague here is explaining is the rationale behind the $650 million limit, which is not in clause 15. Clause 15 covers economic loss by a person who has been physically injured or has had property damage, and clause 15 doesn't discuss whether it's a design-basis accident or a catastrophic incident. So when we are talking about the distinction between a design-basis accident and a catastrophic incident, we're actually out of the scope of clause 15. Clause 15 is providing that somebody who's injured in this way gets compensated under the act.

Mr. Nathan Cullen: Right, but this is the connection point. When you say they're injured “in this way”, you mean that the whole thing is based on the idea of a non-severe accident or a controlled accident —the whole bill. Is it not?

● (1620)

Ms. Brenda MacKenzie: The $650 million limit—the number, which might change over time. But clause 15 just talks about the causation: you're injured in this way, so you're entitled to compensation under the act, whatever the limit on that day happens to be.

Mr. Nathan Cullen: So in looking at the economic loss incurred by a person, the government had its notions at least informed if not directed by a study that said you should also look at higher-density sites, such as Pickering. You told me earlier that this has not been considered. My question then was why not.

When I'm trying to understand economic loss, which then flows into our next conversation, which is around where that loss limit comes to, why not consider what the authors of this report have said, which is to look at Pickering, for example, to make sure that you were setting the bill up in the right direction?

Mr. Dave McCauley: It would have made no difference in our definition of compensable economic loss. Whether we had looked at Pickering or Darlington or Bruce or Gentilly, it would have made no difference. We defined economic loss as we've defined it here, and it is without respect to the type of accident; it's the injury that we were concerned about.

Mr. Nathan Cullen: And the notion of the types of losses—we talked about this in clause 13 around potential contamination of water....

Is clause 15 imagining a company or an individual...? Well, let me distinguish those. If a company, as part of its operations, requires clean water in order to operate and that water were contaminated by nuclear waste, I'm assuming that's imagined in clause 15. But I don't want to make the assumption; I want to make sure it's clear.

The Chair: Do you have a point of order, Mr. Anderson?

Mr. David Anderson: I'm not sure whether Mr. Cullen has run out of content for clause 15, but he's back to Monday's discussion now. I think he talked about this quite a bit on Monday. Maybe he'd like to let clause 15 pass; then he could go on to clause 16 and could bring in a whole new series of discussions.

The Chair: It's not a point of order, but Mr. Cullen....

Go ahead.

Mr. Nathan Cullen: I'm maybe keeping my good friend from something important.

You heard my question, I think, Mr. McCauley, about economic loss incurred by a person. I'm imagining that the owner of a company that has its water contaminated by an accident and requires water to do its business.... Would they also fall under this? All I'm seeing here is “person”. Person, I'm assuming, is also a business. Could it also be in the docket?

Mr. Dave McCauley: That's correct.

Mr. Jacques Hénault: Yes, I would assume that's a property loss.

Mr. Nathan Cullen: So an owner of a company wouldn't fall under the economic part but would fall under the property damage component of this?

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: It would be a question of fact. On the scenario that presents itself, they would have to establish that there was damage to their property, and we don't know that. Is the water their property? I don't know. It would depend on whether there was damage to their property. If there's damage to their property, then they're entitled to compensation for economic loss.

Mr. Nathan Cullen: This is important. I'm a little concerned when you say you don't know.

We're trying our best here because we have to go forward in imagined scenarios. I'm imagining an owner of a company whose business can't operate. We talked about this before for individuals, where they had to truck in water and the government might cover the cost of that for consumption. I'm talking about a business requiring water to do their business. Their water is contaminated. They're a brewery, they're unable to put toxic water in their product, so then they will have to ship water in or shut down.

Ms. Brenda MacKenzie: You're not in clause 15; you're in clause 16.

Mr. Nathan Cullen: Clause 16 is meant to anticipate that?

Ms. Brenda MacKenzie: We're on clause 15 right now.

Mr. Nathan Cullen: No, I understand that, but you're suggesting clause 15 doesn't address that issue at all?

Ms. Brenda MacKenzie: Clause 15 is tied to you showing that you have damage to your property.

Mr. Nathan Cullen: So a business owner could actually apply in clauses 15 and 16—if they say, my plant is contaminated or the water came in and it's lowered the value of my property and I seek damages.

Ms. Brenda MacKenzie: Yes, that's right. Each provision relates to a particular scenario.

Mr. Nathan Cullen: Thank you. And those are the scenarios I'm looking to understand.

I'll leave it at that, Chair.

● (1625)

The Chair: Thank you, Mr. Cullen.

A recorded vote on clause 15.

(Clause 15 agreed to: yeas 10; nays 1)

(On clause 16—*Costs and wages*)

The Chair: Is there any discussion on clause 16?

Mr. Cullen has asked for a little bit of time.

I would encourage you, Mr. Cullen, to prepare as much as you can before the meetings so that we can move through them a little quicker.

Mr. Nathan Cullen: I'm sorry, Chair. Is there someplace else you'd...?

The Chair: Are you finished?

Mr. Nathan Cullen: Not at all. I've got a question on 16.

The Chair: Okay, go ahead then.

Mr. Nathan Cullen: Getting into the proximity question.... We were just dealing with this in terms of compensable damages to businesses. Earlier on we heard that the bill imagines the contamination of water or soil—that is, under the definitions we've established so far in a design accident or a non-severe accident. I'm not sure how to term the accident that's anticipated, but anything—

Mr. Dave McCauley: Any accident.

Mr. Nathan Cullen: In any accident, severe or otherwise, one can anticipate the contamination of soil and water.

Clause 16 talks about the loss of property. If I'm looking at a site like Pickering, some 30 kilometres outside of Toronto, I'm looking again to understand why $650 million is going to cover off the contamination of a major body of water like Lake Ontario and how the department came up with the confidence to say that that's okay. I mean, just the property value alone....

You talked earlier about a contamination that is...are both controlled and uncontrolled releases anticipated here as well?

I know Chalk River is different. You've made mention that it's different—maybe not different, but it's a scenario you're not familiar with; you're dealing with electricity production.

Mr. Dave McCauley: No. This deals with Chalk River as well.

Mr. Nathan Cullen: Okay. If Chalk River is on the table then, there have been several controlled releases at Chalk River over the last couple of years—what the nuclear industry calls controlled releases, which is that there was a hole in the reactor. This committee heard that the contaminated water leaked out, was held in containers, and was eventually released into the Ottawa River. Right?

The anticipated compensation, if anyone were able to prove damages from an incident like that, is meant to cover off potential contamination of a body of water like Lake Ontario. I don't understand how clause 16 gives the government confidence. It seems very broad and it seems to catch a lot of different things, but then it arrives at a figure like $650 million.

Mr. Dave McCauley: The $650 million is the limit of liability of the operator. It was set recognizing the design-basis incident. It was evaluated according to that, but these provisions would also address an incident, however unlikely, that had damages in excess of $650 million.

● (1630)

Mr. Nathan Cullen: Where's the excess picked up?

Mr. Dave McCauley: Under this legislation there would be a report and then there would have to be a decision as to whether additional funds would be appropriated to compensate individuals.

Mr. Nathan Cullen: Ms. MacKenzie.

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

It was just to point out that the act, in other provisions, definitely provides for additional compensation to be paid in certain circumstances, and it provides how that money would be paid out. But clause 16 is merely identifying which kind of victim is eligible for whatever compensation is available elsewhere in the act. So once again the $650 million limit is not here in clause 16.

Mr. Nathan Cullen: Thank you.

In subclause 16(1) you talk about loss of wages under a nuclear accident. Has there been any research done by the department at all? Do those typically come out to be lifelong compensation packages? Do they tend to be smaller than that?

I guess what I'm trying to understand is when including this type of clause, is there potential for people who are deemed worthy? I'm not sure if it's a court or a.... Ms. MacKenzie, you referred to it earlier, where there's something set up after a nuclear accident. What's it called?

Ms. Brenda MacKenzie: Mr. Chair, that's again in other parts of the bill that deal with setting up a tribunal—

Mr. Nathan Cullen: Tribunal. Thank you.

Ms. Brenda MacKenzie: —in the event of a very large incident, and then that tribunal can establish priorities. But again, that's not under the heading “Compensable Damage”; that's elsewhere.

Mr. Nathan Cullen: No, of course. Thank you for that. I appreciate that.

So at the setting of this tribunal, I guess the question I have for the department is, have we looked at accidents of similar scope that are imagined in this bill and whether those compensations to employees who lost their wages tend to be towards the lifelong nature, or are they short term?

Mr. Dave McCauley: We did not look at the length of wage loss in terms of defining this head of damage; rather it was a question of this would be an appropriate head of damage to provide in the event of contamination.

Mr. Nathan Cullen: I don't see it here in clause 16. We're talking about workers and loss of wages. What does the bill say about the honouring of any collective agreements that may exist with employees who lost?

The reason for my questioning—

Mr. Dave McCauley: It's later.

Mr. Nathan Cullen: Later on we have collective agreement amendments?

Mr. Dave McCauley: Yes.

Mr. Nathan Cullen: Excellent.

Under non-collective agreements, if a business under subclause 16 (1) or (2) decides not to reopen as a direct result of what happened in a nuclear accident, is that imagined in subclause 16(1) or (2)? And now I'm not talking about the business owners; I'm talking about the employees at this point.

Mr. Dave McCauley: Yes, that would be considered here.

Mr. Nathan Cullen: Would an employee be open for compensation for earnings foregone because a business went out of business?

Mr. Dave McCauley: We had contemplated that when we developed this head of damage.

Mr. Nathan Cullen: Okay.

The reason I'm establishing this around subclauses 16(1) and (2) is because the clauses that we come to next are in terms of trying to identify cost again, and this has been sort of the framing of our conversation here today.

What I'm worried about is that an employee gets stuck in the middle of something like this, where a business says it's going out of business and the reason it's doing it is because of the accident that happened nearby. It certainly wouldn't be on the onus of the business owner, I would imagine, to prove that in court. They would no longer have any need to. They're not paying the employees. But the employees who worked there, would they have to go to court to establish that the reason they're out of work is because of this accident, and then seek compensation through this act, and then perhaps through Parliament?

It seems very awkward. I'm trying to understand. Are those folks more or less hung out to dry?

Mr. Dave McCauley: A business that shut down as a result of perhaps contamination or the loss of use of property would be compensable under the legislation. They would have to prove to a court or a tribunal that that is why they closed their business.

Similarly, an employee of that business would have to provide proof that their wage loss was due to the fact that the business ended.

● (1635)

Mr. Nathan Cullen: Just to finish this piece off, does this then open up the folks holding insurance here to compensating employees potentially for the rest of their lives until retirement? Could a court find this under subclauses 16(1) and (2)?

Mr. Dave McCauley: A court would have to make that decision. The court would have to evaluate how it was going to interpret the particular—

Mr. Nathan Cullen: But if a judge decided that, 16(1) and (2) would leave the government...I shouldn't say the government.

Mr. Dave McCauley: The operator.

Mr. Nathan Cullen: The operator—and if it goes beyond $650 million, then it's the government; that's why I interchange them sometimes. But it would leave the operator, and potentially the government, open to compensating people's salaries, if a judge decides, for the rest of their working lives.

Mr. Dave McCauley: If a judge were to decide that, yes, that would be a compensable damage.

Mr. Nathan Cullen: Okay, that's pretty big, potentially. I know we're only talking about scenarios, but the notion that the government would be on the hook for the salaries of a whole bunch of people until....

The Chair: Ms. MacKenzie, I see you want to add to that. Go ahead.

Ms. Brenda MacKenzie: It's a good point, and a lot of this has to be up to the discretion of a judge, and it is in fact no different under tort law or any other compensation that might be awarded by a court. They have to exercise their judgment in deciding what is a reasonable limit for the amount they're going to compensate. We have essentially left that up to the judgment of the courts. They would make their decision based on their practice in tort law, although this is outside the tort law scheme.

Mr. Nathan Cullen: It's interesting. They have to decide it in tort law, under which this doesn't exist.

Ms. Brenda MacKenzie: But they would apply the same logic to proximity and causation and all the things they normally decide—the things that judges do.

Mr. Nathan Cullen: So when the department discussed these sections on potential compensation for workers, this discussion happened.... This is all about risk exposure to the taxpayer ultimately as well as the operator, right? A liability act by definition tries to somewhat limit where the liabilities will extend for government. This liability is included. I want to be absolutely crystal clear on this. Okay.

I have a question about subclause 16(2). I will read it:

> If a nuclear incident occurs at a nuclear installation that generates electricity, the costs resulting from a failure of the installation to provide electricity are not compensable under subsection (1).

I know this is a serious concern in Ontario when there have been shutdowns of certain nuclear plants. Can you explain this section to me and the reason it's there? Is it for Ontario or any province operating a nuclear reactor? If a nuclear accident happens, the province has to go out and buy spot-market power to fill the void. The operator is not liable for that expense. Is that right?

Mr. Dave McCauley: That is correct. In the case of a reactor, if a reactor goes down, the power losses associated with that would not be compensable under the legislation. There would be no compensation.

Mr. Nathan Cullen: There would be no compensation at all. So oftentimes, and again I'm trying to get back to the notion of negligence....

The cascading power loss that started in the U.S.—I'm trying to remember the year. Was it 2004? It came across the border and we lost quite a bit. In that case, because there was a point of proven negligence south of the border—I don't think Canadians got in on the action at all—they sought compensation and were awarded compensation for negligence that was proved on the part of the provider of electricity. They said, you were negligent, and because of that power loss I lost all the food in my restaurant's fridge and my business had to go out of business for two days.

Under this law that would not be allowed—even in the case of a proven point of negligence, because this doesn't exist under any kind of tort law.

● (1640)

Mr. Dave McCauley: That's right. That would not be compensated.

Mr. Nathan Cullen: I want to see if this affects the regime right now. A nuclear power operator in Canada makes a mistake and goes offline. Has there been any compensation sought up to this point from any of the generators?

Mr. Dave McCauley: So it's not an accident? The reactor is shut down?

Mr. Nathan Cullen: Give me either scenario. Right now under Canada's law, if there is an accident and there's power loss, can compensation be sought? In an event where it's not an accident—they screwed up, something went wrong, but it's not an accident, the thing is just not working—can the utilities seek compensation from the...?

Mr. Dave McCauley: Do you mean can the homeowner or the purchaser of power seek compensation?

Mr. Nathan Cullen: I want to talk about the utility right now. A utility is buying power from Darlington and Darlington is not providing the power under a contract, which is what they established under. Can they seek any compensation?

I wish I could call our friends from the nuclear industry forward. They could answer it in a second.

The Chair: Ms. MacKenzie, go ahead.

Ms. Brenda MacKenzie: What you're asking is if there is an interruption in power supply from a nuclear plant, can they seek compensation under this act if it's not a nuclear incident.

Mr. Nathan Cullen: I am asking prior to this legislation taking place.... I want to know if subclause 16(2) changes anything fundamental about the way Canadians receive their power and the way utilities receive power from the nuclear industry. Does subclause 16(2) change much?

Ms. Brenda MacKenzie: I'm not sure if I understand. I'll explain what I understand the question to be. What you're asking is prior to this legislation, or under the existing Nuclear Liability Act, if there were an interruption in power from the nuclear power plant, and there is a contract, if somebody wants to sue under the contract, then you're out of the scope of the act. If it's not a nuclear incident, you are entirely out of the scope of the act, and tort law, contract law, applies.

Mr. Nathan Cullen: Is that the current situation?

Ms. Brenda MacKenzie: That's the current situation, and that's the situation under this proposed act as well. This legislation only kicks in when there is an actual nuclear incident. Other than that....

So subsection 16(2) then has no impact. This entire bill has no effect on existing contractual obligations outside of a nuclear incident.

Mr. Nathan Cullen: Right. What I want to understand, and this is perhaps my point.... If a nuclear power plant is unable for whatever reasons to provide power, if something goes wrong, if they shut down—we've had this experience in Canada before where a refurbishment takes too long or they go into an early shutdown or whatever happens—damages can be sought now under the contract they have with the power provider. I'm not talking about accidents. I'm talking about just something normal. If the provider were to call it a nuclear incident instead of just something going offline, do they not avoid potential damages? I want to make sure this doesn't create a loophole for the nuclear industry to say, well, you can't come back on us in the contract that we have with you because what happened last Saturday wasn't a mistake. It's what we are going to call a nuclear incident.

Ms. Brenda MacKenzie: Whether something is or is not a nuclear incident is not up to an operator to define. It's a question of fact.

Mr. Nathan Cullen: Is that question of fact found by CNSC?

Ms. Brenda MacKenzie: The legislation explains what a nuclear incident is, and if there were a dispute about it, it would be up to a court of law to determine whether there actually was a nuclear incident.

Mr. Nathan Cullen: If a company tried to call something a nuclear incident to avoid having to pay any compensation, they would have to go in front of a Canadian court—it wouldn't be that tribunal we talked about before. It would not be to prove subclause 16(2) but to prove that Bill C-20 now applies to their situation, and if they can prove it under the definition of what a nuclear incident is under this bill, then they would be forgiven any damages that they would normally have to pay under a contract. That is where that would get proven.

I'm trying to find out who would make that decision.

A voice: It would be a court.

Mr. Nathan Cullen: It would be a court. It wouldn't be the government. It wouldn't be CNSC to say it was a nuclear incident, and it certainly wouldn't be up to the operator alone.

Ms. Brenda MacKenzie: Assuming there were a dispute, typically if there is a dispute, that is settled in court.

Mr. Nathan Cullen: Yes, and the person who makes a decision on whether it was an incident or not is the judge?

● (1645)

Ms. Brenda MacKenzie: Absolutely.

Mr. Nathan Cullen: I want to clarify that, simply because there seem to be places in the nuclear industry, as it's a different type of business from other businesses, where decisions about what's an accident, what's a controlled release, or what's not a controlled release often aren't settled by a court but by the CNSC or by the government itself. I'm referring back again to what we saw at Chalk River. It took us weeks to figure out whether anything had escaped the plant or not.

I want to get into the question of nuclear installation. Can the definition that you use here in subclause 16(2) refer to a whole set of reactors, or is it just one reactor? The situation we have here, particularly in Ontario, is a little unusual in that we have so many reactors sharing the same safety systems. Pickering has eight reactors. Is the definition used in subclause 16(2) inclusive of that?

Ms. Brenda MacKenzie: A nuclear installation is defined in clause 2 as being one that's designated under clause 6. The definition in clause 2 says:

> "nuclear installation" means any site or means of transport that is designated under section 6 as a nuclear installation.

Being designated under clause 6 is what makes it a nuclear installation. Every time you see the words "nuclear installation" throughout, you're actually referring back to clause 6.

The Chair: Mr. Cullen, Mr. Regan has a question.

I'm going to go to Mr. Regan. If you have more, we'll go back to you.

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

On the question of subclause 16(2), I want to compare the situations that would exist, and I think this is what Mr. Cullen was doing.

I want to compare the situation that would exist with this provision—this act in law and this provision in law—to the situation in tort law at the moment with other power providers, such as a coal plant that shuts down by accident. I know there are cases in which the courts will find that the damage suffered by someone as an indirect consequence of something is too remote to be compensated. How would a situation that exists now in tort law if a coal plant or a hydroelectric plant shut down because of negligence compare to what would exist under this provision?

Ms. Brenda MacKenzie: Mr. Chair, I would say that in fact concepts of remoteness—for example, the one that you're mentioning here and that we understand in common tort law—are not displaced by this legislation. Just as in tort law, if damage is too remote, it would not be compensable. In any of the provisions under compensable damage, remoteness would be a factor.

Is that your question? It's not different.

Hon. Geoff Regan: Doesn't this mean that if it's at all remote—if it's a result of the failure to provide electricity, as opposed to the actual nuclear damage—you can't get compensated for it? Will a person still be able to sue the company, but not be affected by this act? I don't understand.

Ms. Brenda MacKenzie: I see your question now. You're referring specifically to subclause 16(2).

Hon. Geoff Regan: What does it do, compared to what the present situation is?

Ms. Brenda MacKenzie: This in fact excludes this type of claim altogether, so if it is a nuclear incident and it occurs at a power generating plant, then costs resulting from the failure of the plant to provide electricity are not compensable.

Hon. Geoff Regan: Would they be compensable if it were a coal-fired plant and it shut down by accident?

Ms. Brenda MacKenzie: Possibly.

Hon. Geoff Regan: It's not a situation in which it would be considered too remote by the courts in that case, and you're just doing the same thing by statute here.

Ms. Brenda MacKenzie: This is different. That's right; this is something that's different from tort law. It precludes the payment for this type of claim altogether.

● (1650)

Hon. Geoff Regan: What's the policy case for excluding losses from a failure to provide electricity in a case like this?

Mr. Dave McCauley: The intent is to ensure that the funds are preserved for those who have suffered more direct types of damage—physical damage, or damage as defined elsewhere—as opposed to what you described as more of an indirect loss associated with the fact that the reactor is no longer producing power. The intent was to preserve the funds for other forms of compensation.

Hon. Geoff Regan: So you basically want to focus on those who are more catastrophically affected, so to speak.

Mr. Dave McCauley: That's right. That's your word, but it would be those who have really suffered the damage in terms of bodily injury, property damage—

Hon. Geoff Regan: That's not an ideal word, because obviously a person could feel that other effects were catastrophic, but I suppose I mean the injury, so to speak.

Mr. Dave McCauley: The concern, though, is that the ramifications of a sudden loss of power might extend quite far, and that would be significant.

Hon. Geoff Regan: That's why I was asking about remoteness as a concept that might be related to this, but.... Anyway, thank you.

The Chair: Thank you, Mr. Regan.

Is there anything further on clause 16?

Go ahead, Mr. Cullen.

Mr. Nathan Cullen: I'm confused by part of your response to Mr. Regan's question. We started getting into a conversation about tort law and the notion of being too remote. I assume this whole thing exists outside traditional tort law.

The Chair: Ms. MacKenzie, go ahead.

Ms. Brenda MacKenzie: Subclause 16(2) just eliminates the argument altogether. We're just not going to cover that kind of damage. In subclause 16(1), for example, and throughout, when we're talking about types of compensable damage, a court would look at remoteness in deciding whether it was something that was worthy of compensation, just as they do in an ordinary tort law case.

Mr. Nathan Cullen: I see.

I want to get to the rationale, which I think is what we were approaching with Mr. Regan's question, for subclause 16(2). It isn't so much that the government doesn't acknowledge that there can be damages resulting from the loss of power to individuals or businesses; in a sense you've triaged the situation and given priority to those who are defined earlier as being directly, physically impacted by a nuclear accident, as opposed to those who have simply lost business because the power didn't show up.

Ms. Brenda MacKenzie: That is correct.

Mr. Nathan Cullen: Okay. I don't suspect it's about to happen, but if the committee did not accept subclause 16(2), and if the rationale for subclause 16(2) is to focus the funds towards people who are physically hurt—

● (1655)

Ms. Brenda MacKenzie: Directly affected.

Mr. Nathan Cullen: —directly affected, thank you—in the definitions that we've just seen, then I would assume that without subclause 16(2), the government, upon review of the bill, would have to alter the $650 million, simply because the bill would be opened up to damages to those who have also lost power. No?

Oh, I see; Mr. Regan said it would just be spread more thinly, but the courts don't work this way on this bill.

Let's say that with subclause 16(2) the claim came out to be $1 billion, and without subclause 16(2) the claim came out to be $2 billion; it wouldn't necessarily matter to the provider of nuclear energy, simply because their cutoff is $650 million no matter what. Could I be looking at subclause 16(2) as something that's meant to...?

You said that subclause 16(2) exists to be able to provide money more directly to people who are directly impacted. That's a priority over folks who are impacted through the loss of power when their business goes down and they lose money or something else happens. The reason for this section is then to say, if it weren't here.... The judge is not going to sit back and say that since we also have to compensate the people who lost power, we're going to give less money to you people who are physically ill or something. I don't think that's foreseen. The judges are going to compensate what they think is reasonable to people who are directly impacted.

Ms. Brenda MacKenzie: Yes.

Mr. Nathan Cullen: So is the spread-more-thinly argument actually true with respect to subclause 16(2)?

Mr. Dave McCauley: Under the legislation, there are a variety of ways that.... Excuse me, I was going on to the tribunal.

The Chair: Ms. MacKenzie, go ahead.

Ms. Brenda MacKenzie: If there is no tribunal and if we're just going to an ordinary court to resolve disputes, which might happen, then it's true; it's first come, first served. Therefore, if the first guy who showed up was somebody who had a claim for economic loss because of an electricity outage, then it's true that the $650 million could perhaps—perhaps—get taken up. This ensures that in that event, the money is preserved for people who are more directly affected. Of course we will see later, when we get to other provisions of the bill, that there are ways the tribunal can manage such a situation, but that's later.

Mr. Nathan Cullen: Okay. And I want to get to that court versus tribunal scenario because I think it's important, but I'll wait until it's there.

I'm confused. In the scenario you just described, let's say somebody shows up with.... I'm imagining subclause 16(2) not being here. If someone shows up with compensable damages, or a whole bunch of people show up, they eat up $500 million in damages right off the bat. The next person in line, or the next group of people in line, let's say, were more directly impacted and that went another $500 million. A judge has this law in front of him and knows there's more money to get. And Parliament can provide more money. A judge isn't going to say, “Well, for all you folks coming next in line, there's only $150 million. We're just going have to figure out the rest.”

Are judges limited under subclause 16(2) or under any part of this bill—I don't think they are—to only find $650 million worth of damages? That's not imagined. Correct?

Ms. Brenda MacKenzie: No.

If you're outside of a tribunal context, when people are going to court, the judge isn't doing that weighing that this claim is more worthy than that claim. The judge is just handling.... Whoever the judge is and in whatever court he is, he'll just deal with it on its own merits without regard to anybody else.

Mr. Nathan Cullen: That's right, without regard for the ultimate cost, etc.

Ms. Brenda MacKenzie: Correct.

Mr. Nathan Cullen: Subclause 16(2) states that anybody who is impacted because of the loss of electricity can't be one of those people in line. Full stop.

And I didn't quite understand your answer to Mr. Regan's question in terms of other sources of power. If a hydroelectric dam screws up and causes a whole bunch of power losses, or a coal-fired plant screws up, under regulatory law, I would assume they would end up in court if someone could prove damage. Is that true?

Ms. Brenda MacKenzie: Presumably. I'm outside the scope of the bill here.

Mr. Nathan Cullen: Okay.

The reason I'm asking is, as I said before, that sections like subclause 16(2)—if one were to look at other forms of Canadian law to see something of equivalency, where the government, through legislation, has prioritized some people who might be claimants—don't exist, because that's not the normal way a court goes through things. It says it seeks direction from the government to decide who's eligible to file a claim, because normally....

I'm thinking of an auto manufacturer at this point, or a maker of a product. If they make something that causes harm, I don't think there's any other industry that gets.... The auto industry doesn't get the government to say, “Well, if Ford makes a truck that breaks and hurts somebody, we will give Ford a limited liability.” Bill C-20 is limited liability. It's a special provision. Subclause 16(2) is a special provision offered only to the nuclear industry. In the event of an accident, they don't have to fork over any money for lost power.

Ms. Brenda MacKenzie: I'm sorry, I'm not prepared to do a comparative analysis of other legislation on this concept.

Mr. Nathan Cullen: Okay. Then my question is this. Did the Department of Natural Resources do any comparative analysis to other forms of energy when reflecting on subclause 16(2)?

Mr. Dave McCauley: When reflecting on subclause 16(2)? No. It was more in relation to reducing those damages that would be indirect as opposed to more direct, because this is a limited scheme of liability for the operator. And that was a consideration.

● (1700)

Mr. Nathan Cullen: I have a question for Ms. MacKenzie.

Can you help me find where the distinction happens and if it's anticipated coming forward? I'm trying to figure out where subclause 16(2) eventually lands and where it gets argued out. You mentioned earlier the notion of the court versus the tribunal. Does subclause 16 (2) get interpreted differently depending on whether it ends up at a court or a tribunal?

Ms. Brenda MacKenzie: No, it does not.

Mr. Nathan Cullen: It's the same application.

Ms. Brenda MacKenzie: It's the same application. You're out.

Mr. Nathan Cullen: Where in the bill does a tribunal get triggered, or is that in other standing legislation?

Ms. Brenda MacKenzie: No. It's triggered later on in the bill. It's at clause 31, under the heading “Nuclear Claims Tribunal”. It's clause 31 and on.

Mr. Nathan Cullen: Right. This is what sets up when and where a nuclear claims tribunal will happen. Subclause 16(2).... Sorry.

Ms. Brenda MacKenzie: But the types of damages that are covered under the heading “Compensable Damage” are the same whether it's a tribunal or a court.

Mr. Nathan Cullen: Does subclause 16(1) anticipate lost wages for those actually working at the facility itself, who just simply can't go to work for a certain amount of time?

Ms. Brenda MacKenzie: People who are working at the nuclear facility?

Mr. Nathan Cullen: Yes.

This is my question. Earlier in testimony, you talked about the fact that because it's limited liability, operators are not able to seek damages from parts suppliers, from contractors, in the event of an accident. We established that already, right?

Some of these plants employ quite a few people.

Ms. Brenda MacKenzie: May I come back to you later with that one? I don't want to mislead you.

Mr. Nathan Cullen: Mr. McCauley, do you have thoughts on this?

Mr. Dave McCauley: I'm thinking it might be covered in another section, actually.

Mr. Nathan Cullen: One reading of subclause 16(1) would allow for that type of compensation to be imagined. We talk about wage losses. Now the operator itself, especially if the employees are represented by a union...I'm not sure why, under this subclause, they would be....

I'm not imagining a one-week shutdown here, right? If we're talking about a nuclear accident, we're talking about something rather prolonged, in terms of when those folks can get back to work.

You've said that the operators themselves are excluded from seeking any damages under Bill C-20. They can't say the soil around Pickering is now contaminated and they want cleanup money under this compensation. That makes no sense, and the bill excludes it, but I don't understand....

Ms. Brenda MacKenzie: They would have to argue under clause 16 that despite the fact that damage to the operator's own installation is not covered, their employees can be compensated.

Mr. Nathan Cullen: This is what I'm trying to seek out. When the government thought to draft this bill—and I very much appreciate that you folks might not have been involved in that process because it's been a few years—again, the numbers can be quite significant. Looking at my friend from Bruce here, I can't remember how many employees—I can't ask you any questions—but there are quite a few folks working there. They're generally high-paying jobs. Again, a nuclear accident would anticipate a shutdown of some time. We're not anticipating a small glitch here. This is something significant. These folks are out of a job and they're awfully specialized. They have homes, etc. Are they able to seek compensation?

My reading of subclause 16(1) says yes, especially the second part, “and the resulting wage loss by that person's employees may be compensated”. But subclause 16(1) seems to take the vantage point or the viewpoint of the persons who own the property themselves. If that's what subclause 16(1) does, it's through the eyes of the operators and their employees. If their employees can't get wages compensated for it, it seems like an extra burden on them, certainly.

Again, I'm imagining an incident in Darlington or a place where the plant is a significant—if not the largest—part of the local economy. There's an accident, and there are ramifications from that, but also losing all of the wages from those folks at the same time is something I think this committee should consider.

This is what I'm asking for. I know you folks can't draft an amendment, but if there's a way the committee can consider protecting those folks in particular who work at the plant, I think that's an amendment the committee should consider in terms of compensable damages, lost wages. If you're working there and there's an accident, you're out of a job. Is there a way to make it more explicit? If you folks don't know, I want us to know before we vote on this thing, to be clear that we know what we're voting on, and we can turn to the folks who are working at those plants and say they're covered if something goes wrong.

● (1705)

Ms. Brenda MacKenzie: We would probably, in that scenario, be looking more at clause 28, which is a system of insurance that is not in the system of workers' compensation. Insurance you have for any other kind of work interruption is not limited or restricted.

Mr. Nathan Cullen: Okay.

Chair, I'm just not sure in terms of.... The witnesses have referred my question to a future portion of the bill, but the question is that I've raised a concern about this certain group of stakeholders. The witnesses have suggested that maybe clause 28 covers it, but I'm not sure that it does.

A voice: We can hold this clause and go on, if you want.

Mr. Nathan Cullen: Okay.

The Chair: I have other questions on this clause. Maybe we can go to Mr. Allen.

Mr. Nathan Cullen: Oh, I'm sorry. I didn't realize that.

The Chair: Go ahead, Mr. Allen.

Mr. Mike Allen: Thank you, Chair.

Just to comment on this and to get some clarity from the witnesses, to me, this clause is very similar to subclause 4(2) in application, where it “does not apply to damage to the nuclear installation”. To me, these two clauses are very similar, because if a nuclear incident occurs, it doesn't matter whether it's a nuclear plant, a coal plant, or a hydro plant. It doesn't really matter. The bottom line is that if that plant goes down, the operator of that plant, under whatever other contract they would have, would be responsible for that replacement energy.

It is quite likely, if they were smart, that they would have insured themselves against that loss if that were the case. The concern I have is that you could end up with a plant, a nuclear plant, for example, that is actually selling power a thousand miles away into the U.S. They have a contract. No one knows how that energy is flowing and where they get it from, but that is the contractual relationship. If that business cannot get their power, that load is still going to be there, and then somehow, in some way, someone is still going to have to make it up.

This bill is specifically related to something that happens and damages people in some way, in that form, but the energy supply is a completely separate issue. It would be a separate contract and there would be a separate insurance contract. Am I not right?

Ms. Brenda MacKenzie: That is correct. The point of the bill is that the operator not be able to make a claim against this insurance to compensate himself for his own damage. So damage to the operator's own installation is carved out of the bill, which means, since it's completely out, that normal contract and tort law applies to that installation, and that's out of the consideration of this bill altogether.

Then, when we get to the question of compensating that operator's employees, we have a future provision of the bill, clause 28, which clarifies that for whatever arrangements he has going, workers' compensation or insurance arrangements or whatever, they are not cancelled by anything else in the bill. Clause 16 is intending to and does cover losses of somebody other than the operator and covers the losses of somebody other than the operator's employees.

I'm sorry. I was confused about that. It's been a while since I thought about it.

● (1710)

The Chair: Are you finished, Mr. Allen?

Mr. Mike Allen: Yes.

The Chair: Go ahead, Mr. Regan.

Hon. Geoff Regan: What did you mean by that? I'm sorry. I'm confused by that answer.

You're still saying that it's not the operator. Subclause 16(2) isn't about preventing the operator from making a claim. It's about everybody else, right?

Ms. Brenda MacKenzie: Mr. Cullen had asked a question about subclause 16(1), which was about the operator's employees as in subclause 16(1).

In subclause 16(2), you're right, it's a different scenario. We're talking about something else then. We're talking about the failure to provide electricity from the plant.

Hon. Geoff Regan: This is anybody who is an electricity user who experiences costs because they've lost electricity, because their meat goes bad or whatever, right? They can't make a claim.

Ms. Brenda MacKenzie: That's right.

Hon. Geoff Regan: My concern, frankly, is that when a 600-megawatt power plant goes down, it's hard to replace that. If we move to 1,000 megawatts.... These plants are only going to get bigger, I expect. ACR will be 1,000 megawatts, right? If that goes down, that has a big impact. It's hard for the supplier to replace that from somewhere else and you're likely to have a blackout for a while.

I'm still interested in hearing a better argument for why that would not be compensable. I'm not clear on it. As I understand it, the company itself would be limited to $650 million. Now, of course, if the total damages were $400 million, then this would still not be compensable for the person who had lost their business due to the power outage during that period.

Mr. Dave McCauley: I think you had identified the issue previously. It's a question of the remoteness of the damage, and these aren't direct damages. They are more indirect and could be much broader. So the focus of the legislation was to address those people who would be directly affected.

Hon. Geoff Regan: But the remoteness question would be under tort law, applied anyway by the courts. The courts would decide which damages were too remote, and they would say some of these are too remote but some of them aren't. They could. This prevents them from making that decision. It overrides that and takes that process away, and the opportunity for someone to make a claim of that sort is gone, right, because there's a policy decision that what you're trying to do here is too remote.

Mr. Dave McCauley: But that isn't just reserved for this particular head of damage that exists throughout the legislation, where heads of damage are defined to reflect directness to the nuclear incident.

Hon. Geoff Regan: I will just go back for a moment. Once the operator's damages are paid, thanks to its insurer or whatever, $650 million, is there somewhere else that someone can look for damages or for compensation under the act? Does it then turn to government?

Mr. Dave McCauley: Yes, that's correct.

Hon. Geoff Regan: So, generally speaking, throughout the act, after that cap, the person can turn to government for compensation. But what you're saying is that the individual who suffers economic loss of this particular type due to the failure of provision of electricity can't do that.

Mr. Dave McCauley: That's right, and other areas as well, because there is—

Hon. Geoff Regan: And the reason is that you want to focus the taxpayers' dollars on the people who are most dramatically affected?

Mr. Dave McCauley: Correct.

Hon. Geoff Regan: This is quite similar to the way the courts have decided over the years to say, “Okay, we're going to choose; we know that when people are suing a company, the company may only have so much in terms of assets and resources, and therefore we're going to make choices about who is going to qualify as close enough to this and who is too remote, who we think are a little too far out.” So those who are most directly affected are the ones who are going to get compensated here, as they use up these resources, as they exercise a judgment, so to speak.

Mr. Dave McCauley: That's correct.

● (1715)

The Chair: Ms. MacKenzie.

Ms. Brenda MacKenzie: I have just a very small clarification. Of course, we cannot in our legislation and do not attempt to bind a future parliament, so obviously a parliament can appropriate money for whatever it wants to appropriate money for. We do not presume to tell a future parliament what it can or cannot do, but under this scheme, the limit is established.

The Chair: Yes, Mr. Allen.

Mr. Mike Allen: Mr. Chair, I just want to make sure that I'm clear. I thought I was clear and I thought you said yes when I asked the question, but I just want to make certain. This clause really is covered by other insurance. If I am a merchant plant who built a plant to provide energy to a customer somewhere and I have an incident, then the $650 million would be covered under this policy for things that happened. But for the supply of energy that I committed to and I contractually agreed to, that would be in a contract I have with that customer or those customers, and that would have its own set of clauses and damage clauses in it and carry its own insurance under that. And the same thing would happen with a utility who had a deal with another.... They would just have the flexibility within their system to draw from somewhere else to provide that. But that's covered under other insurance, private insurance policies, and there's no way we would ask the government to come in for that.

Mr. Dave McCauley: That's correct. If those policies exist, they stay in place. In fact, the legislation addresses that. It says that any contracts of insurance are not superseded by this legislation.

The Chair: Thank you, Mr. Allen.

Hon. Geoff Regan: Sorry, Mr. Chairman. Did you say the contracts of insurance, or do you mean the contracts between the customer and the provider of electricity? That's the contract he was referring to—the first contract, anyway.

Mr. Mike Allen: In a contract, typically, you have some insurance policy—

Hon. Geoff Regan: The first question is, is it under contract that the suit is taking place?

Mr. Dave McCauley: In either situation. If it was a contract of insurance, it would stay in place, and if it was a contractual obligation under which he is able to sue, then that doesn't do anything about that.

The Chair: Mr. Cullen, we're ready for the question.

Mr. Nathan Cullen: This is very helpful. I appreciate Mr. Allen's and Mr. Regan's questions here. We haven't heard this before. I'm curious as to why. Do all nuclear facilities have this private insurance for the potential loss of power to their customers?

Mr. Dave McCauley: I think the issue here is a utility-based contract between maybe a large user or another utility. I think that's what Mr. Allen was referring to. Maybe he should clarify.

Mr. Nathan Cullen: I'm misunderstanding Mr. Allen's point then. Is this the contractual arrangement between the nuclear energy provider and the utility, or the contract between the utility and its final end customer? I'm confused as to who we're talking about. You've said both in response to both questions. Mr. Allen might know.

The Chair: Go ahead.

Mr. Dave McCauley: I thought what Mr. Allen was referring to was if the owner of the facility was providing electricity to an end user—maybe that's a large industrial customer—or another utility, for example. There may be contracts in there, under which there are certain obligations, and there would be nothing in this legislation that would do anything to preclude any actions under those contracts to continue.

Mr. Nathan Cullen: It would be the supply contract to the actual generator.

Ms. MacKenzie, you said something very interesting—I think it was from reference to subclause 16(1)—about binding future parliaments. You said the legislation doesn't anticipate binding future parliaments to not go above and beyond and provide more money.

Ms. Brenda MacKenzie: We can't. Constitutionally, we cannot bind future parliaments in whatever they may choose to do.

Mr. Nathan Cullen: Or the present one, if this law were to exist under the present one.

Ms. Brenda MacKenzie: No legislation can.

Mr. Nathan Cullen: The reason I'm confused by the comment is simply because the legislation anticipates Parliament's addressing claims above and beyond the $650 million. We've asked the question about employees. I'm not totally sure about the answer yet. Maybe it will be clarified. We're not sure if the employees at the actual facility are covered for damages under subclause 16(1).

● (1720)

Ms. Brenda MacKenzie: In my view, they are not, because then the operator's own facility is excluded. And we also have clause 28, a future provision, that says contracts of insurance still stand, workers' compensation still stands, employment insurance stands, and all those things. The purpose of the bill is to make sure the $650 million is preserved for third-party victims.

Mr. Nathan Cullen: Sure. That's not the contention about those other forms of insurance, employment insurance. While we can foresee under subclause 16(1) a compensation for the resulting wage loss by somebody who is directly impacted, my question was about somebody who was also directly impacted, somebody who happened to work at the plant. Are they also on the list? It's got nothing to do with EI, regardless, because if somebody loses their job through no fault of their own, they collect EI for so many months. It didn't matter if they worked in the plant or out of the plant. My question was about those folks actually working at the facility.

I'm sorry, I don't know if I heard a direct answer that, yes, they're covered or, no, they're not.

Mr. Dave McCauley: They would be covered by workers' compensation.

Mr. Nathan Cullen: So they would be different from an employee of somebody working just down the road. Employees who are working within the plant are not covered under subsection 16(1).

Ms. Brenda MacKenzie: The system of workers' compensation would continue to apply to workers at the plant, yes.

Mr. Nathan Cullen: As it would to workers off-site.

The other insurance schemes we have are irrelevant to the conversation. The bill says those schemes will still apply. It doesn't matter where they work.

Mr. Dave McCauley: That's right. By virtue of the fact that the legislation does not apply to damage associated with the facility, the workers at the site—

Mr. Nathan Cullen: —would only be able to access.... Right.

Again, it's just a very specific question. Subclause 16(1) does not apply. Workers who work at the site would not be able to seek damages under Bill C-20.

Mr. Dave McCauley: Not under subclause 16(1), but they would under clause 28.

Mr. Nathan Cullen: I totally understand.

You mentioned that collective agreements are addressed later in the legislation. I can't find it.

Mr. Dave McCauley: I was thinking of clause 28, about the workers' compensation.

Mr. Nathan Cullen: I'll go back to my question around collective agreements. Are those foreseen in subclauses 16(1) or (2) at all?

I'll make my question more open. What does the bill speak to in terms of agreements between...? I'm not talking about on-site now, just to be clear; I'm talking about off-site. Are they mentioned or referred to? Usually in compensation legislation there's some modification or some effect on the collective agreement, whether it will continue to be honoured or not.

Ms. Brenda MacKenzie: We have not dealt with collective agreements in this legislation.

Mr. Nathan Cullen: Okay, so collective agreements are not dealt with.

I don't know what that means in terms of law. When you don't mention a group, is it then up to the courts to decide whether the legislation would incorporate collective agreements or not?

Mr. Dave McCauley: I imagine it would be, I suppose.

Ms. Brenda MacKenzie: The collective agreements are not dealt with under this legislation at all. So what happens on the plant is carved out of the legislation. All contracts, collective agreements, or whatever are in place and remain in place because we're outside of the scope of the Nuclear Liability Act for damaging problems that the operator has himself. So for people outside the site, I have difficulty seeing the relevance.

Mr. Nathan Cullen: Of a collective agreement?

● (1725)

Ms. Brenda MacKenzie: That's right, but to this scheme.

Mr. Nathan Cullen: The only reason I raise this is because we identified that other industries or other forms of power generation exist under different insurance schemes. Most collective agreements would acknowledge general tort law, general law. Government, in order to assist the nuclear industry or to allow it to function—as one of the witnesses said—has created a special limited liability law.

The question I put forward is, in terms of this special regime that has been designed by government, the application of something like a collective agreement doesn't anticipate these types of limited liabilities or workers' compensation formats. We have to recognize that we're addressing certain compensation for groups—understanding the unusual circumstances, the unpredictable circumstances of a nuclear accident—and we identified a whole pot of money that the government is insisting that the provider provide. It's saying they must cover $650 million. It also anticipates that if it's worse than that, Parliament will be able to provide more money.

The collective agreement scenario can't possibly imagine those types of things. I don't know how long EI lasts these days, but it would be some number of months; whereas for a shutdown at a plant that's had a nuclear accident, it's not months that we're usually talking about to get it back online.

I want to understand the court versus tribunal section. You said the tribunal is dealt with later on in terms of its establishment. The reason that's relevant to subclause 16(1) is that as we seek compensation, the decision about setting up a tribunal or just dealing with it through the court will be informative as to how the compensation eventually rolls out. Who makes the choice about setting up a tribunal versus staying with the court?

I want to clarify that you mentioned both of them can happen simultaneously. Is that true?

Ms. Brenda MacKenzie: No. Once the tribunal is established, that's it. The court procedure is stopped. It's one or the other, and it's established under clause 31 later on. But the actual types of damages that are compensable, whether it's an ordinary court or a special tribunal, that's the same.

Mr. David Anderson: A point of order, Mr. Chair.

The Chair: A point of order, Mr. Anderson.

Mr. David Anderson: We'd be glad to discuss clause 31. We'd like to move along. If there's any interest in doing that, and improving the clauses, we'd be willing to do that—

The Chair: Absolutely, we can rush directly to that and just pass the clauses as we go.

Mr. Nathan Cullen: I'm always thankful for good advice from my friend, the parliamentary secretary.

Mr. David Anderson: I'm wondering if the committee is prepared to do that.

Mr. Nathan Cullen: My question with respect to subclause 16(1) is that as the paths diverge between a court and a tribunal.... You said it's one or the other. If a tribunal is established, then 16(1) would apply in a tribunal. If not, it would go into the court. I think there are differences in the way they are viewed in our conversation so far.

Mr. David McCauley: Sorry—

Mr. Nathan Cullen: No, they're not?

Mr. Dave McCauley: Sorry, did you say that subclause 16(1) would go to the court?

Mr. Nathan Cullen: The application of 16(1) would end up in a court, right? We talked about compensable damages to people who are affected. We talked about a judge making that decision as to whether you or your property were directly impacted, right?

Mr. Dave McCauley: Initially all claims would go to the court unless the tribunal was established. So if a tribunal was never established, this would remain under the insurance company and court regime. If a tribunal is established, all court actions are stopped and everything goes into the tribunal.

Mr. Nathan Cullen: And the tribunal is established by government? Government makes that call?

Mr. Dave McCauley: That's correct.

Mr. Nathan Cullen: Is it by order in council or some such thing?

Mr. Dave McCauley: The Governor in Council makes the decision.

Mr. Nathan Cullen: That's the decision to say that we're going to go to the actual tribunal?

Mr. Dave McCauley: Yes.

Mr. Nathan Cullen: I'm going to save a question, with respect, because not being a lawyer.... This is challenging for some of us, just in terms of how tort law can apply to the power loss—because it's outside of this, it's some kind of contractual agreement—but does not apply, in a traditional sense, to damages, because we've imposed a limited liability on this. The normal regime of tort law, which wouldn't say “you can't sue”, which is what we've said here.... This group can and this group can't—that's what the bill establishes.... We'll save those for when we get into clause 17.

I have no further questions, Chair.

The Chair: Okay.

Shall clause 16 carry?

Mr. Nathan Cullen: Could the vote be recorded, please?

The Chair: We will have a recorded vote.

(Clause 16 agreed to: yeas 10; nays 1)

The Chair: It is 5:30. We will be back on Monday to continue with the clause-by-clause consideration of Bill C-20.

The meeting is adjourned.

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