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CANADA

## Standing Committee on International Trade

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EVIDENCE

**Tuesday, June 1, 2010**

—  
**Chair**

**Mr. Lee Richardson**



## Standing Committee on International Trade

Tuesday, June 1, 2010

• (1630)

[*English*]

**The Chair (Mr. Lee Richardson (Calgary Centre, CPC)):** The orders of the day, pursuant to the order of precedence of Monday, April 19, 2010, are Bill C-2, An Act to implement the Free Trade Agreement between Canada and the Republic of Colombia, the Agreement on the Environment between Canada and the Republic of Colombia and the Agreement on Labour Cooperation between Canada and the Republic of Colombia, clause-by-clause consideration.

**An hon. member:** Point of order.

**The Chair:** Pursuant to Standing Order 75(1), consideration of clause 1 is postponed.

**An hon. member:** Point of order.

**The Chair:** We will have a point of order as soon as—

**An hon. member:** [*Inaudible—Editor*]

**The Chair:** Will you please stop interrupting? I will just finish this sentence and then you can have a point of order.

**Mr. Peter Julian (Burnaby—New Westminster, NDP):** Monsieur Laforest—

**The Chair:** Monsieur Laforest was never recognized to have the floor, Mr. Julian. We're not accepting this rudeness any further.

**Mr. Peter Julian:** You cannot—

**The Chair:** Clause 2: we are going to clause 2—

**Mr. Peter Julian:** There are points of order—

(On clause 2—*Definitions*)

**The Chair:** We are now on clause 2. I'm happy to hear the points of order, but I just wanted to be very clear that the committee, regardless of your filibuster, is moving on.

**Mr. Peter Julian:** You have to hear points of order—

**The Chair:** We are at clause-by-clause.

**Mr. Peter Julian:** Point of order.

**The Chair:** We are discussing clause 2. Do you have a point of order on clause 2?

**Mr. Peter Julian:** No, it's not a point of order on clause 2, Mr. Chair. You can't simply cherry-pick points of order.

**The Chair:** Well, you have the floor now. You have a point of order. Go ahead.

Or shall I hear Mr. Laforest first? He was the first to interject.

Monsieur Laforest, do you have a point of order?

[*Translation*]

**Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ):** Mr. Chairman, I raised a point of order because you interrupted Mr. Julian, saying that you had already heard his arguments on this point of order. What I was saying was that I do not approve of your decision, because Mr. Julian's arguments are—

[*English*]

**The Chair:** Whether you agree or disagree is not a point of order. That is debate. Do you have a point of order, Monsieur Laforest?

[*Translation*]

**Mr. Jean-Yves Laforest:** Yes, I am just trying to explain. In his arguments, Mr. Julian talked about tyranny and, in my opinion, that is exactly what we were seeing. You do not consider it to be a point of order, Mr. Chairman, but I say that what Mr. Julian is doing is demonstrating, relying on precedents, that there are very clear situations where Committee chairs or the Speaker of the House have made ruling that are completely contrary to the spirit of your rulings today.

So, that is the reason why I am speaking to this issue. The point of order I am making now is in support of what Mr. Julian was saying. In my view, he should continue to explain the precedents, because they are extremely relevant and clearly show that others have an opinion which is exactly the opposite of your own.

[*English*]

**The Chair:** Very good. Thank you, Mr. Laforest.

Okay: clause 2.

Oh. Mr. Julian, on a point of order...?

[*Translation*]

**Mr. Peter Julian:** In fact, I would now like to raise a point of privilege which, as you know, has to do with all the other issues that are before the Committee.

As you know, Mr. Chairman, you are required to hear these points of privilege. So, I will begin by addressing exactly what that involves, particularly in light of what has just occurred in this Committee today. My rights as a member of Parliament have been seriously violated by your actions, Mr. Chairman. I harbour no personal resentment against you, obviously. Far be it from me to question your many contributions to this country and to the House of Commons, but today, you have clearly violated my privileges as a member of Parliament sitting in the House of Commons.

We are governed by these rules, by the procedure in the House of Commons and in committee, as well as by the Standing Orders which apply to everyone in Committee. In the case that we are concerned with, at the beginning of the meeting, there was a refusal to acknowledge points of order which, in fact, are part and parcel of the procedural rules we must abide by. All members of this Committee must respond to points of order and have a clear understanding of them. Yet at the beginning of this meeting, points of order were not acknowledged.

Following that, Mr. Laforest spoke to this. I have no doubt that he will probably raise a point of privilege himself, later on, because his rights have been seriously violated. After that, the many questions raised about what occurred are such that privileges were breached.

Furthermore, there was a refusal to acknowledge points of order which were duly and properly raised before the Committee. Then a motion was suddenly bypassed in favour of the other motions, in spite of the fact that it had been tabled at 5:39 p.m., Eastern time, last Friday, after the three other motions that are before us. So, recognizing one member rather than the others, when there is no unanimity, breaches the privileges we enjoy in the House and in committee. It is our privilege to receive equal treatment, based on precedents. In fact, motions are to be debated one after the other, according to the time when they were tabled—

• (1635)

[*English*]

**The Chair:** Excuse me, Mr. Julian. You are again being repetitive. You've said this before.

I should just clarify with you that we have consulted with the clerks right up the line and there is no precedent for...or we need to go in the order of when they arrived.... The motions do not have to be done subsequently. So I'm just telling you that. You can carry on with this, but we have ruled on the matter.

[*Translation*]

**Mr. Peter Julian:** Mr. Chairman, I will continue to address the breach of privilege. Although you played a major part in the debate, today, you are out of line. I will keep going.

I know that Mr. Laforest will raise the matter of a breach of privilege with respect to the right to consult the clerk which, once again, is one of our fundamental rights as members of Parliament. We have the right to say that we will consult the clerk. That is why he is here. I will give Mr. Laforest an opportunity to address that.

Mr. Chairman, we have a motion before us that I believe is in order. You ruled that Mr. Keddy's motion is in order. At least three Committee members stated that they wished to speak to the motion. We raised many points of order, but were unsuccessful.

Mr. Chairman, the term "infringe" is not strong enough. You even refused to hear those points of order. We are talking here about rules that were introduced and then completely ignored.

This is the fourth time that we have raised a point of privilege. This did not only happen once. A series of privileges have been breached. Considering the long history of this legislative body and of those that came before it, it is obvious that these rules and procedures were not just written on the back of a napkin. These procedural rules were developed over a thousand years. Mr. Chairman, as you know, the rules have been adjusted, amended and enhanced over time, in order to preserve the principles of privilege whereby members of Parliament, whether they are in the majority or the minority, have the same rights and responsibilities.

Sometimes, as you know, that means that the government cannot just get what it wants by snapping its fingers. It means that the government cannot crush its minority MPs because, under our democratic system, we have certain privileges as members of Parliament. Mr. Chairman, these are things that have existed for many years now. And in a situation like this, it is precisely those privileges and rights that we retain as members that make the difference.

Now, when we quote the rules, what are referring to? To studies conducted in Committee? What would have to happen for something to be deemed a violation of a member's privileges? To answer that question, Mr. Chairman, we have to go back to 1996.

Mr. Chairman, I am going to talk now about someone you know well, I believe. I refer to the former member for Crowfoot, Mr. Ramsay, who did, in fact, raise a point of privilege before the Standing Committee on Justice. At the time, there was the same problem of minority MPs being crushed under the weight of the majority. At the beginning of my intervention, I said that this behaviour—crushing the opposition, infringing their rights and taking away their right to speak, a right established under the Standing Orders, as well as in O'Brien and Bosc—began at the outset of the meeting and has continued.

•(1640)

It is about an inability to acknowledge our desire to raise a point of order and about the four violations of privilege I talked about earlier. At the time, Mr. Ramsay was not alone, because the member for York-South—Weston, John Nunziata, had also raised this. He is a former Liberal member of Parliament who later sat as an independent. He said that, in the context of studies conducted in committee, there is a need to ensure that the chair acts in such a way as to achieve balance. I know that this is not easy, that it can be controversial and that it is really a challenge, Mr. Chairman. We are all strong MPs who know how to argue a point. I may not agree with Mr. Trost or Mr. Holder on a particular issue, but we express ourselves—we all say what we have to say and, occasionally, using fairly strong terms. The exchange we had earlier shows the lengths we are prepared to go to be able to express our views, but the fact that every MP has his own perspective, that he represents a political party and that viewpoints differ from one person to the next may cause problems. What, then, is the chair's role? As was noted at the time by the Speaker of the House, Mr. Parent, he must always give very serious consideration to any questions dealing with the privileges of MPs, and particularly anything that could constitute contempt of the House. He even said that, although the Speaker's preference is always to avoid interfering in the affairs of a committee, there are rules that apply, and you, as chair, as well as all members of the Committee, are required to follow the appropriate rules and procedures.

What did Mr. Ramsay say at the time? Well, he quoted from the sixth edition of Beauchesne, saying that: "The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers'." He added the following: "As members of Parliament know, these are highly valued privileges. They exist to ensure that members of Parliament, individually, and the House of Commons as a whole, are able to properly fulfill their role as the elected representatives of the Canadian people". And those same privileges are vested in every member of Parliament that sits in the House of Commons, in order to maintain the authority and dignity of the House and of its committees. While the questions before us are serious, I am inclined to believe that this is a serious grievance that justifies other considerations. That was the answer given at the time, Mr. Chairman, namely that the Committee has the power to examine and amend bills and, as required, report them to the House with or without amendment. Those were the committee privileges invoked at the time, as the Speaker so clearly stated, by many members of Parliament in response to the points of privilege that were raised. While it is often said that the committees are masters of their own proceedings, they remain subject to the House and cannot substitute themselves for it.

•(1645)

[English]

**The Chair:** There's a point of order here, Mr. Julian. You know, we do love to hear points of order.

Mr. Julian?

[Translation]

**Mr. Peter Julian:** You cannot interrupt a point of privilege, Mr. Chairman. The only thing that can interrupt a point of privilege

is a motion to adjourn the committee. It may be acceptable to simply adjourn the meeting. That way, Mr. Cannan and myself can go and play soccer. In the meantime, I will continue with my point of privilege because this is an important element.

At the time, Speaker Parent said that the committees remain subject to the House and cannot substitute themselves for it. Our Committee is subject to the House of Commons. The current rules cannot be denied. We cannot simply adopt procedural rules. The motions that have been established are very clearly defined in the documentation.

In this case, it is perfectly clear that this is a situation where these motions cannot—

[English]

**The Chair:** [Inaudible—Editor]...privilege.

**Mr. Dean Allison (Niagara West—Glanbrook, CPC):** On a point of privilege, Chair, I guess the concern I have is that the information, now that we're not in camera anymore—

**An hon. member:** [Inaudible—Editor]

**The Chair:** You may want to hear this, Mr. Julian.

**Mr. Dean Allison:** Now that we're not in camera anymore, the information that Mr. Julian is talking about happened in camera, so I would like a ruling on that, because he is now on my privileges...that information is to be kept in camera and we're not in camera anymore so....

**The Chair:** Well, I think it's a very valid point.

You're abusing the privileges of all the committee members by revealing matters in public that occurred in camera. You know the rules very well, Mr. Julian, and you know that you can't speak of matters in public that occurred in camera.

That point of privilege is well taken and accepted, Mr. Allison.

•(1650)

**Mr. Peter Julian:** I have another question of privilege....

[Translation]

**Mr. Jean-Yves Laforest:** Mr. Chairman, it is a point of privilege. We asked that this meeting be public and you refused to discuss the motion.

My point of privilege relates to freedom of expression. I consider that my freedom of expression was infringed when you called the vote on Mr. Keddy's motion without giving us—myself and Mr. Guimond—an opportunity to speak to it. We had things to say.

On page 89 of the *House of Commons Procedure and Practice*, there is a discussion of freedom of speech:

The rights, privileges and immunities of individual Members of the House may be categorized as follows:

- freedom of speech;

[...]

By far, the most important right accorded to Members of the House is the exercise of freedom of speech in Parliamentary proceedings. It has been described as:

[...] a fundamental right without which they would be hampered in the performance of their duties. It permits them to speak in the House without inhibition, to refer to any matter or express any opinion as they see fit, to say what they feel needs to be said in the furtherance of the national interest and the aspirations of their constituents [...]

That final paragraph is taken from the First Report of the Special Committee on Rights and Immunities of Members, presented to the House on April 29, 1977. This right is also extended to witnesses appearing before parliamentary committees. So, this is not something recent.

The issue today is the right to speak in Committee.

You called the vote on Mr. Keddy's motion, and all the Conservative and Liberal members voted. You did not agree to address my motion, requesting that the meeting be public. Now we are meeting in public, and that is perfectly appropriate. It is abundantly clear that we are not the ones that prompted that change.

The *House of Commons Procedure and Practice* states the following:

Much has been written about this over the centuries in Great Britain, Canada and throughout the Commonwealth.

In *Odgers' Australian Senate Practice*, this privilege [we are still talking about the freedom of speech] is expressed in broader terms as immunity of proceedings from impeachment and question in the courts. It is also stated that this is the only immunity of substance possessed by the Houses of Parliament and their Members and committees [and their Members obviously] in relation to what is said during proceedings. Odgers asserts that there are two aspects to the immunity:

First, there is the immunity from civil or criminal action and examination in legal proceedings of members of the Houses and of witnesses and others taking part in proceedings in Parliament [...] Secondly, there is the immunity of parliamentary proceedings as such from impeachment or question in the courts.

A similar position has been adopted in Canada in a decision of the Commission of Inquiry Into the Sponsorship Program and Advertising Activities, which indicated that allowing transcripts from a committee to be used in a public inquiry to question witnesses could result in the proceedings in the committee being questioned or impeached. This decision was upheld by the Federal Court.

That is taken from the Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Who is responsible?: Fact Finding Report (hereinafter referred to as Gomery)*, Vol. 1...

[English]

**The Chair:** *Je m'excuse, monsieur Laforest.*

I'm sorry, but could I simply ask you the relevance of this? What does the Gomery commission have to do with your question of privilege?

[Translation]

**Mr. Jean-Yves Laforest:** I was simply quoting people who said what I had just said. This can be found in the *House of Commons Procedure and Practice* and it has to do with the reason why I raised my point of privilege regarding the right to freedom of speech.

[English]

**The Chair:** Monsieur Laforest? Excuse me, Monsieur Laforest.

**Mr. Jean-Yves Laforest:** *Oui.*

**The Chair:** I am giving you some courtesy here. You are also abusing the privileges of other committee members by speaking of things that happened in camera. I can call you out of order. I'm

giving you the courtesy to express your point of view. Get to the point or I'll have to move on.

You are in contempt of the committee by speaking of things that occurred in camera. If you have something else to say, go ahead.

• (1655)

[Translation]

**Mr. Jean-Yves Laforest:** My views are such, Mr. Chairman, that I raised a point of privilege with respect to freedom of speech—and I explained why earlier.

I am currently quoting the observations made in the Rules and Procedure, and it is my right to accurately quote any and all observations dealing with freedom of speech in the House of Commons and in committees.

The right to freedom of speech is protected by the *Constitution Act, 1867* and the *Parliament of Canada Act*. The statutory existence of parliamentary privilege in relation to freedom of speech dates from the adoption of the English *Bill of Rights* in 1689. Though meant to counter the challenges of the Crown, it also prohibited actions of any kind by any person outside the House against Members for what they might say or do in Parliament. Article 9 of that statute declares that "the freedom of speech and debates or proceedings in Parliament are not to be impeached or questioned in any court or place out of Parliament".

Generally considered to be an individual privilege, the courts have confirmed that freedom of speech is also a collective privilege of the House.

Therefore, it is also a collective privilege of the Committee.

Motions carried by the House are expressed collectively by its Members and therefore cannot be challenged in a court of law.

Under the section on proceedings in Parliament, it says:

The privilege of freedom of speech is generally regarded as being limited to "proceedings in Parliament". No definition of "proceedings in Parliament" is contained in the English *Bill of Rights* and there is no statutory definition in Canada. May defines it as follows:

The primary meaning of proceedings, as a technical parliamentary term, which it had at least as early as the 17th century, is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision. An individual Member takes part in a proceeding usually by speech, but also by various recognized forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee, most of such actions being time-saving substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. Strangers may also take part in the proceedings of a House [...]

We saw that this week—or last—when the President of Mexico was present. I imagine that would be an example.

[...] for example by giving evidence before it or one of its committees, [...]

That is the case when we receive witnesses.

[...] or by securing the presentation of a petition.

The Parliament of Australia enacted the *Parliamentary Privileges Act, 1987* which defines "proceedings in Parliament" as follows:

[...] all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

- the giving of evidence before a House or a committee, and evidence so given;
- the presentation or submission of a document to a House or a committee;
- the preparation of a document for purposes of or incidental to the transacting of any such business; and

d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

From the numerous court cases where the law of parliamentary privilege has been applied in Canada, it is clear that the courts understand the meaning of the term and see it as part of the law of Canada. However, the courts have been reluctant to extend the immunity deriving from the rule of free speech beyond the context of parliamentary proceedings. In other words, despite the fact that the role of a Member of the House of Commons has evolved considerably since the 17th century when the rule was formulated in the *Bill of Rights*, the courts have, with few exceptions, confined the scope of this immunity to the traditional role of members as debaters and legislators in Parliament.

● (1700)

I come now to the importance of freedom of speech, Mr. Chairman, and this is the key point:

Freedom of speech permits Members to speak freely in the Chamber during a sitting or in committees during meetings while enjoying complete immunity from prosecution or civil liability for any comment they might make.

Freedom of speech permits Members to speak freely in the Chamber during a sitting or in committees during meetings while enjoying complete immunity from prosecution or civil liability for any comment they might make. This freedom is essential for the effective working of the House. Under it, Members are able to make statements or allegations about outside bodies or persons, which they hesitate to make without the protection of privilege. Though this is often criticized, the freedom to make allegations which the Member genuinely believes at the time to be true, or at least worthy of investigation, is fundamental.

What follows is extremely important:

The House of Commons could not work effectively unless its Members were able to speak and criticize [...]

In light of the events we witnessed today, when Liberal and Conservative Members, in cooperation with you, Mr. Chairman, went ahead and called the vote before the other Members had an opportunity to express their views on the motion, it seems quite clear to me that our freedom of speech was restricted.

I will continue the quotation:

There would be no freedom of speech if everything had to be proven true before it were uttered. In ruling on a question of privilege in 1984, Speaker Bosley affirmed that "the privilege of a Member of Parliament when speaking in the House or in a committee is absolute, and it would be very difficult to find that any statement made under the cloak of parliamentary privilege constituted a violation of that privilege".

This right is also extended to individuals who appear before the House or its committees in order to encourage truthful and complete disclosure, without fear of reprisal or other adverse actions as a result of their testimony. In 2005, the Federal Court of Appeal ruled that the testimony of parliamentary witnesses fell within the scope of parliamentary privilege because it is necessary for the functioning of Parliament for three reasons: "to encourage witnesses to speak openly before the parliamentary committee, to allow the committee to exercise its investigative function and, in a more secondary way, to avoid contradictory findings of fact".

In 2004, questions arose as to whether counsel at a commission of inquiry could cross-examine witnesses on the basis of statements made before a standing committee. The House of Commons was asked by a commission of inquiry if it would be prepared to waive parliamentary privilege in order to permit the use of committee evidence in this way. After the matter was deliberated in two standing committees, the House reaffirmed to importance of the privilege of freedom of speech, resolving that the proceedings and all evidence, submissions and testimony by all persons participating in the proceedings of the Standing Committee on Public Accounts continue to be protected by all the privileges and immunities of this House. Upon being informed of the House's resolution, the commissioner heading the inquiry ruled that parliamentary privilege precluded counsel from using that testimony in cross-examination. This decision was subsequently upheld by the Federal Court.

In 2007, the Federal Court again upheld that a witness's testimony before a House committee is protected by parliamentary privilege:

*[...] although witnesses before a parliamentary committee are not Members of Parliament, they are not strangers to the House either. Rather they are guests who are afforded parliamentary privilege because, as with Members, the privilege is necessary to ensure that they are able to speak openly, free from the fear that their words will be used against them in subsequent proceedings [...]*

The Court confirmed that parliamentary privilege "precludes other entities from holding Members of Parliament or witnesses before committees liable for statements made in the discharge of their functions in the House."

The Federal Court also determined that it did not have jurisdiction to rule on whether parliamentary privilege applied to police investigations, since such investigations fall under the jurisdiction of provincial superior courts. The Court was reluctant to interfere with the RCMP's decision to pursue a criminal investigation: "It is clear that any issue with respect to parliamentary privilege remains alive and that the admissibility of any evidence which derives directly from the Applicant's testimony before the Public Accounts Committee will have to be addressed when the criminal investigation unfolds".

Although the testimony of a witness before a parliamentary committee is protected by parliamentary privilege, allegations that a witness has lied or misled a committee are taken seriously and may be pursued by the committee.

● (1705)

In 2006, the Standing Committee on Public Accounts prepared a comparative analysis on discrepancies in the testimony of certain individuals who had appeared before it during the Thirty-Seventh Parliament (2001-04) and also before the Commission of Inquiry into the Sponsorship Program and Advertising Activities [...]. Thereafter, the Standing Committee adopted a motion to recall some of the witnesses to explain the discrepancies. On June 6, 2007, two of the witnesses appeared before the Committee, made opening statements and answered questions.

If a committee determines that a witness has given untruthful testimony, it may report the matter to the House. In 2003, the Standing Committee on Government Operations and Estimates concluded that the former Privacy Commissioner, George Radwanski, had deliberately misled the committee in his testimony and should be found in contempt of the House.

This is taken from the Committee's Fourth Report, presented to the House in 2003.

The House alone is responsible for deciding if the witness has deliberately misled the committee and is in contempt of the House, as well as for determining the appropriate punitive action.

The House found the former Privacy Commissioner, Georges Radwanski, to be in contempt of the House in 2003 for deliberate misleading testimony before the Standing Committee on Government Operations and Estimates. However, given that Mr. Radwanski apologized to the House in writing, no sanctions were applied. In 2008, the House found Deputy RCMP Commissioner Barbara George in contempt for providing false and misleading testimony to the Public Accounts Committee, but did not order any further action "as this finding of contempt is, in and of itself, a very serious sanction".

If the House determines that a witness has lied while testifying under oath and the House deems it appropriate, it may waive its privileges over the testimony and refer the matter to the Crown to determine whether there is sufficient evidence to charge the witness with perjury for deliberate lying to a parliamentary committee.

The next part is entitled "Limitations on Freedom of Speech - Remarks Made Outside of Debate".

The privilege of freedom of speech is not limitless and grey areas remain. Members may be confident of the protection given to their speeches in the House and other formal proceedings, but can never be certain how far their freedom of speech and parliamentary action extend.

By way of example, I will continue quoting this passage:

In 2008, the Conflict of Interest and Ethics Commissioner was requested to determine whether Robert Thibault (West Nova) had breached his obligations under the *Conflict of Interest Code for Members of the House of Commons* by participating in a review by the Standing Committee on Access to Information, Privacy and Ethics into the Mulroney Airbus settlement, given that the former Prime Minister had initiated legal proceedings against the Member for libellous comments made during a CTV television show.

(The Code requires Members to disclose any private interests they may have in a matter before the House or a committee and to refrain from participating in debate or voting on the matter.) In her report to the House, the Conflict of Interest Commissioner found that a lawsuit constituted a liability and thus a private interest for purposes of the Code. She determined that Mr. Thibault had consequently breached sections 8, 12 and 13 of the Code, although it was deemed an error of judgment made in good faith. [...] Subsequently, Derek Lee (Scarborough–Rouge River) raised a question of privilege to question the validity of the Code being interpreted in such a way as to limit Members' freedom of speech and right to vote in the House and in committee. In particular, Mr. Lee took issue with the Commissioner's contention that being a defendant in a libel suit was tantamount to having a private interest in the matter. In ruling the matter *prima facie*, Speaker Milliken stated: "... when the mere filing of a libel suit against a Member, whatever the ultimate disposition of the suit may be, has the effect of placing restrictions on the ability of that Member to speak and to vote in the House and in committee [and that is pretty close to what we witnessed today], it appears reasonable to conclude that the privileges of all Members are immediately placed in jeopardy." The House adopted a motion to refer the subject matter of the ruling to the Standing Committee on Procedure and House Affairs for consideration. The Thirty-Ninth Parliament was dissolved before the Committee could present a report to the House on the matter. The House amended section 3(3) of the Conflict of Interest Code to clarify that a Member is not considered to be furthering his or her own private interests if the matter in question consists of being a party to a legal action relating to actions of the Member as a Member of Parliament.

● (1710)

I come back now to the main text. It states the following:

The parliamentary privilege of freedom of speech applies to a Member's speech in the House and other proceedings of the House itself, but may not fully apply to reports of proceedings or debates published by newspapers or others outside Parliament. For example, parliamentary privilege may not protect a Member republishing his or her own speech separate from the official record. Members should be aware that utterances which are absolutely privileged when made within a parliamentary proceeding may not be when repeated in another context, such as in a press release, a household mailing, on an Internet site, in a television or radio interview, at a public meeting or in the constituency office. Members also act at their peril when they transmit otherwise defamatory material for purposes unconnected with a parliamentary proceeding. Thus, comments made by a Member at a function as an elected representative—but outside the forum of Parliament—would likely not be covered by this privilege, even if the Member were quoting from his or her own speech made in a parliamentary proceeding.

This was one of the main issues in a famous case involving the Hansard which notes: "A Member cannot claim parliamentary privilege for the content of a householder because it is not a publication ordered by the House to be printed."

See also Speaker Parent's ruling on November 16, 1999.

In that case, a bulk mailing sent out by a Member containing material critical of the Senate became the subject of a civil suit launched against the Member by a senator. The Member claimed that his privilege of freedom of speech had been breached by the lawsuit. The Speaker ruled that since the matter involved information contained in a document not considered to be a proceeding in Parliament, the Member's privileges had not been breached.

I will keep going then:

Telecommunications, including technologies such as electronic mail, facsimile machines and the Internet, should therefore not be used to transmit otherwise defamatory material.

The publication of defamatory material has been considered by most courts to be beyond the privileges of Parliament when such publication was not part of the parliamentary process to begin with. Even correspondence between one Member and another on a matter of public policy may not be considered to be privileged. Courts take a distinctly "functional" approach to the interpretation of parliamentary privilege by relating any novel situation in which a Member may become involved back to the function and purpose that parliamentary privilege

was originally intended to serve: the need for Members of Parliament to be able to fearlessly debate issues of public policy in Parliament.

In 2006, the Federal Court confirmed that since communications to constituents are not part of a parliamentary proceeding, they are not protected by parliamentary privilege. The privilege of freedom of speech is an extremely powerful immunity and on occasion, Speakers have had to caution Members about its misuse. Ruling on a question of privilege in 1987, Speaker Fraser spoke at length about the importance of freedom of speech and the need for care in what Members say: "There are only two kinds of institutions in this land to which this awesome and far-reaching privilege extends—Parliament and the legislatures on the one hand, and the courts, on the other. These institutions enjoy the protection of absolute privilege because of the overriding need to ensure that the truth can be told, that any questions can be asked, and that debate can be free and uninhibited.

Absolute privilege ensures that those performing their legitimate functions in these vital institutions of Government shall not be exposed to the possibility of legal action. This is necessary in the national interest and has been considered necessary under our democratic system for hundreds of years. It allows our judicial system and our parliamentary system to operate free of any hindrance.

● (1715)

Such a privilege confers grave responsibilities on those who are protected by it. By that I mean specifically the Honourable Members of this place. The consequences of its abuse can be terrible. Innocent people could be slandered with no redress available to them. Reputations could be destroyed on the basis of false rumour. All Honourable Members are conscious of the care they must exercise in availing themselves of their absolute privilege of freedom of speech. That is why there are long-standing practices and traditions observed in this House to counter the potential for abuse.

During debate, as well as during Question Period and other House proceedings, Members are bound by the Standing Orders and practices of the House with respect to the content of speeches and remarks. For example, Standing Order 18 prohibits the use of disrespectful or offensive language in debate. Moreover, personal attacks, insults, obscene language or words...

[English]

**The Chair:** *Je m'excuse, monsieur Laforest.* We have bells. The bells are now ringing so we are going to have to suspend the meeting until 6:30 sharp, after the vote. We will resume at 6:30.

We're suspended for the vote until 6:30.

Thank you.

●

\_\_\_\_\_ (Pause) \_\_\_\_\_

●

● (1840)

**The Chair:** We are resuming our meeting.

Just prior to our suspending, Monsieur Laforest had the floor on a question of privilege. I might say that we've heard very much of it.

I think we get the gist of it, Monsieur Laforest. I'm prepared to allow you to speak as long as you want, but as it's becoming a bit redundant and you're just getting into additional precedents, I really wonder whether or not there's any validity to it. I'm prepared to rule on the question of privilege at any time.

Just to keep the committee up to date, we have passed two motions at this point. The motion that we're dealing with now is the committee stage of Bill C-2. We are on clause 2. Before we hear further points of order or questions. I just wanted to let the committee know that this is where we are on the matter.



Pursuant to the motion that we passed earlier in the day at 4:01, limiting the debate to six hours, we will conclude the debate at 10:01, at which time we will move to votes on the amendments as submitted, one at a time. Those amendments and the votes on the clauses are not debatable pursuant to the motion passed by the committee.

With that, I think we're ready to continue. We will hear the end of the most recent question of privilege and, at some point, hopefully we can return to the business of the committee.

I might say that if we find that the points of order and/or questions of privilege have been heard or are redundant, or if it appears that the points in question are simply irreconcilable, I think that in the interests of the committee and the members of the committee, and the privileges of other members, we'll have to rule that we move on.

It doesn't seem that there is any middle ground being suggested here. On this committee, we have heard more witnesses than on any other matter put before the House or a committee, and I think most of the committee members have determined their views on the matter. I haven't noticed from any of the interjections made so far that there's any change in that sense, so in the interests of the committee and those officials who we have gathered here to answer questions, and of getting on with it, we will get on with it at some point....

But we certainly wouldn't want to impose on the privileges of any member to speak, so if you want to take the time of committee with your personal views at some point you're at liberty to do that. But when we've heard them all, or they become redundant, or it's simply a matter of irreconcilable matters, we will rule that way and carry on with the meeting.

I would also like to say that at this point I'm going to pass the chair to Mr. Miller. Mr. Cannis, our vice-chair, is not here yet, so until he gets here I'm going to ask for the—

**An hon. member:** Point of order, Mr. Chair.

**The Chair:** In a moment.

I'm going to ask the consent of the committee to replace—

**Mr. Peter Julian:** You don't have consent—

• (1845)

**The Chair:** We don't need your consent. I'm just asking for the consensus of the committee, so I'm asking if the committee would approve of me having Mr. Miller substitute at this point.

**Mr. Peter Julian:** On a point of order, Mr. Chair—

**The Chair:** Mr. Julian, I'm happy to hear from you, if you would just not be quite so rude and interrupt me in the middle of my speaking—

**Mr. Peter Julian:** You cannot proceed this way.

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

**Mr. Peter Julian:** Yes, Mr. Chair.

**The Chair:** And that is...?

**Mr. Peter Julian:** Mr. Chair, you cannot choose out of a hat who is presiding over committee.

**The Chair:** Well, I'm not choosing out of a hat. I'm choosing a chairman of another committee of the House who is well versed in these matters, and it's hardly with a hat.... I am, however, asking consent of the committee to replace me in the short term.

**Mr. Peter Julian:** Mr. Chair—

**The Chair:** Mr. Julian, I've heard your point of order.

**Mr. Peter Julian:** Mr. Chair—

**The Chair:** Are you going to be redundant again?

**Mr. Peter Julian:** The committee has already chosen. There are two vice-chairs for this committee.

**The Chair:** I'm aware of that.

**Mr. Peter Julian:** There is a vice-chair, Mr. Cannis, and you're absolutely right: he is absent. There is also vice-chair Mr. Laforest, and in the event where you are leaving the chair and Mr. Cannis is not available, it would normally be Mr. Laforest. That is the process. And—

**The Chair:** Thank you. I've heard your point of order.

**Mr. Peter Julian:** If you could consult the clerks on this, I think you will find that they are aware of the precedents.

**The Chair:** I appreciate your advice, but I am the chair, and I've heard your point of order.

**Mr. Peter Julian:** I've asked for a ruling from the clerks, Mr. Chair.

**The Chair:** Well, you can ask all you want. I'm running this committee. I make the judgment. If there's any consulting to do, I'll consult, if I choose to—

**Mr. Peter Julian:** Mr. Chair—

**The Chair:** —not at your choice.

**Mr. Peter Julian:** —the committee has already made the decision—

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

**Mr. Peter Julian:** —and the decision is that we have appointed two vice-chairs.

**The Chair:** Mr. Keddy.

**Mr. Gerald Keddy (South Shore—St. Margaret's, CPC):** Yes, Mr. Chairman. Respectfully, I think there's an agreement among the four party whips that anyone the chair chooses may replace the chair. It does not have to be an opposition member. I think that is what's at stake here.

**The Chair:** Well, we're going to ask the committee for their agreement. If there is agreement, we'll proceed.

**Mr. Peter Julian:** Mr. Chair, a point of order.

**The Chair:** I've heard your point of order.

We have a question. May I ask the committee if they're in agreement that I should have Mr. Miller replace me here at this time?

**Mr. Peter Julian:** I've asked you to ask the clerks.

**The Chair:** I've heard you, Mr. Julian. I've—

**Mr. Peter Julian:** I've asked you to please consult the clerks. That's why they're here, Mr. Chair: so we don't get into the kind of trouble we're already in—

**The Chair:** We're in no trouble at all, Mr. Julian.

**Mr. Peter Julian:** —about violating the fundamental Standing Orders that we're governed by. We're already in trouble enough, Mr. Chair—

**The Chair:** That is your opinion and I've heard your point of order.

**Mr. Peter Julian:** I think the report is in difficulty. There's no doubt about that—

**The Chair:** Mr. Julian—

**Mr. Peter Julian:** So the Standing Orders say very clearly that you have a president, a vice-president—

**The Chair:** Those in favour of allowing Mr. Miller to replace me in the chair for a couple of hours, please raise their hand.

**Mr. Peter Julian:** On a point of order, Mr. Chair—

**The Chair:** Those opposed?

**Mr. Peter Julian:** —this is absolutely obscene, Mr. Chair—

**The Chair:** I have heard your point of order, Mr. Julian.

**Mr. Peter Julian:** —absolutely obscene.

**The Chair:** You're voting in favour?

Thank you.

**Some hon. members:** Oh, oh!

[*Translation*]

**Mr. Jean-Yves Laforest:** We are opposed, Mr. Chairman. We voted against this. So, no, we are not in favour.

[*English*]

**The Chair:** Okay. There you go.

Monsieur Laforest, before I leave the chair, I'm going to turn the meeting back to you. You are speaking on a question of privilege.

[*Translation*]

**Mr. Jean-Yves Laforest:** I am to continue to address the breach of privilege, Mr. Chairman.

I believe that, before leaving the Chair, the Chairman said that he was inviting me to continue to make my comments; that is what I understood. Before we were called to the House for a vote, I was discussing rulings by former Speaker Parent. In fact, with respect to what you were saying earlier, Mr. Chairman, which was that my comments are redundant and repetitive, I invite you to consider the fact that I am currently referring to the Standing Orders of the House. If I am repetitive, it is because the Standing Orders are as well, and I believe they govern our proceedings as a whole. Therefore, I consider your comment to be rather cavalier.

Speaker Parent also emphasized the need for Members to use great care in exercising their right to speak freely in the House.

[...] paramount to our political and parliamentary systems is the principle of freedom of speech, a member's right to stand in this House unhindered to speak

his or her mind. However, when debate in the House centres on sensitive issues, as it often does, I would expect that members would always bear in mind the possible effects of their statements and hence be prudent in their tone and choice of words.

Speakers have also stated that although there is a need for Members to express their opinions openly in a direct fashion, it is also important that citizens' reputations are not unfairly attacked. In a ruling on a question of privilege involving an individual who is not a Member of the House, Speaker Fraser expressed concern that the person had been referred to by name: "But we are living in a day when anything said in this place is said right across the country and that is why I have said before, and why I say it again, that care had to be exercised, keeping in mind that the great privilege we do have ought not to be abused".

That was also quoted in a ruling by Speaker Parent.

In a later ruling, Speaker Fraser observed that the use of suggestive language or innuendo with regard to individuals or an individual's associations with others can provoke an angry response which inevitably leads the House into disorder.

Specifically referring to individuals outside the Chamber, he agreed with a suggestion that the House consider restraining itself "in making comments about someone outside this Chamber which would in fact be defamatory under the laws of our country, if made outside the Chamber. As Speaker Milliken noted in 2003: Speakers discourage members of Parliament from using names in speeches if they are speaking ill of some other person because, with parliamentary privilege applying to what they say, anything that is damaging to the reputation or to the individual is then liable to be published with the cover of parliamentary privilege and the person is unable to bring any action in respect of those claims.

Under the sub judice convention [which is a paragraph under the heading "Freedom of Speech"], there are other limitations to the privilege of freedom of speech, most notably the sub judice ["under the consideration of a judge or court of record"] convention.

It is accepted practice that, in the interests of justice and fair play, certain restrictions should be placed on the freedom of Members of Parliament to make reference in the course of debate to matters awaiting judicial decisions, and that such matters should not be the subject of motions or questions in the House. Though loosely defined, the interpretation of this convention is left to the Speaker. The word "convention" is used as no "rule" exists to prevent Parliament from discussing a matter which is sub judice [...] The acceptance of a restriction is a voluntary restraint on the part of the House to protect an accused person or other party to a court action or judicial inquiry from suffering any prejudicial effect from public discussion of the issue. While certain precedents exist for the guidance of the Chair, no attempt has ever been made to codify the practice in the House of Commons.

The sub judice convention is important in the conduct of business in the House. It protects the rights of interested parties before the courts, and preserves and maintains the separation and mutual respect between the legislature and the judiciary. The convention ensures that a balance is created between the need for a separate, impartial judiciary and free speech.

The practice has evolved so that it is the Speaker who decides what jurisdiction the Chair has over matters sub judice. In 1977, the First Report of the Special Committee on the Rights and Immunities of Members recommended that the imposition of the convention should be done with discretion and, when there was any doubt in the mind of the Chair, a presumption should exist in favour of allowing debate and against the application of the convention. Since the presentation of the report, Speakers have followed these guidelines while using discretion.

We move now to the authority of the Speaker.

● (1850)

A further limitation on the freedom of speech of Members is provided by the authority of the Speaker under the Standing Orders to preserve order and decorum, and when necessary, to order a Member to resume his or her seat if engaged in irrelevance or repetition in debate, or to name a Member for disregarding the authority of the Chair and order him or her to withdraw.

Let us now look at waiving the privilege of freedom of speech.

The House determines how it exercises its privileges and if it wants to assert these privileges or not. There have been instances where the House has been asked to waive, in particular, its privilege of freedom of speech to allow its proceedings and transcripts of proceeding to be examined in courts or elsewhere. On two occasions, in 1892 and in 1978, at the request of a judicial body, the House chose not to insist on its privilege of freedom of speech.

In the late 1880s, Thomas McGreevy, (Quebec West) was accused of abusing his position by taking bribes and offering to use his influence to help the firm of Larkin, Connolly & Co. secure a dredging contract for the harbour of Quebec City.

Just what kind of member of Parliament was he anyway! We have seen similar things recently, it seems to me.

The matter was referred to the Standing Committee on Privileges and Elections where Mr. McGreevy was asked about his relationship with the firm. The Member refused to answer. Mr. McGreevy was subsequently expelled from the House and charges of conspiracy were contemplated against both Mr. McGreevy and Nicholas Connolly. In order to obtain the warrant to formally charge the two men, the Crown prosecutor filed the transcripts of the committee evidence with the magistrate. The magistrate refused to consider the transcripts on the grounds that the evidence was protected by parliamentary privilege. On a judicial review, the High Court also indicated that the House could choose to waive its privileges. On April 12, 1892, the House of Commons resolved to allow the evidence to go before the magistrate, stipulating that in allowing this limited use, it was not giving up any of its privileges.

In 1978, the Standing Committee on Justice and Legal Affairs held hearings into alleged wrongdoings by members of the RCMP. In the course of its proceedings, certain witnesses requested and were granted permission to testify *in camera*. Months later, a commission of inquiry was established to investigate the allegations and, in the course of its inquiry, the Commission requested access to the tapes and transcripts of the *in camera* proceedings. On December 14, 1978, the House of Commons ordered that "the Committee be authorized to make such evidence adduced *in camera* available to the Commission of Inquiry [...] under such terms as may be established by the committee". The Committee was concerned about releasing its evidence given that it had assured the witnesses that they would be able to testify *in camera*. The Committee wrote to each of the witnesses, requesting their permission to allow the Commission to examine their testimony. Upon receipt of the witnesses' permission, the Committee released the transcripts to the Commission, on the condition that they be examined *in camera* and returned to the Committee forthwith.

In 2004, the House of Commons was again asked to waive its privilege of freedom of speech. A commission of inquiry (know as the Gomery Inquiry after its commissioner, Justice John Gomery) had been established to investigate and report on questions raised in the November 2003 Report of the Auditor General with respect to the sponsorship and advertising activities of the Government of Canada. Questions had arisen as to whether counsel at the commission could cross-examine witnesses on the basis of their statements before the Standing Committee on Public Accounts during its hearings into the Report. The Standing Committee on Public Accounts considered the request and presented a report to the House on the matter on November 5, 2004. The Committee recommended that the House resolve to reaffirm all of its privileges, powers and immunities, as provided by section 18 of the *Constitution Act, 1867*, section 4 of the *Parliament of Canada Act*, and Article 9 of the *Bill of Rights, 1689*, as well as the extension of those privileges to committees of the House and to anyone participating in their proceedings. In addition, the Committee recommended that the question of when privilege may be waived, and whether it may be waived in the case of the Gomery Inquiry, be referred to the Standing Committee on Procedure and House Affairs. In its Fourteenth Report presented to the House and concurred in on November 18, 2004, the Standing Committee on Procedure and House Affairs recommended that the privileges and immunities as set down in the Third Report of the Standing Committee on Public Accounts be reaffirmed and that the proceedings, evidence, submissions and testimony of all persons testifying before the said Committee continue to be protected by the House. In particular, the Committee stated:

● (1855)

*Some witnesses who appeared before the Standing Committee on Public Accounts were given written or oral assurances and others could assume that their testimony would be protected by parliamentary privilege. To withdraw such protection after the fact would be unfair to them as individuals. Moreover, as a matter of principle, it would be contrary to the best interests of Parliament and parliamentary rights. Members of Parliament and other persons participating in*

*parliamentary proceedings must be assured that there is complete freedom of speech, so that they are able to be as open and forthright as possible.*

In 2007, the House was again asked to waive its privilege of freedom of speech in order to allow the testimony of a witness who had appeared before the Standing Committee on Public Accounts with respect to its inquiry into the administration of the RCMP's pension and insurance plans, to be admitted as evidence in a criminal prosecution. The Committee considered the request and recommended that the House reaffirm the parliamentary privileges and immunities of freedom of speech, which preclude the use of testimony before a parliamentary committee in any other legal proceedings or process, including investigations undertaken for possible criminal prosecution. In addition, the Committee recommended that the House not waive parliamentary privilege in this particular case. The House concurred in the report the same day.

The Parliaments of the United Kingdom, Australia and New Zealand have each established committees to consider whether or not, and to what extent, a legislature could waive the protections of Article 9 of the *Bill of Rights, 1689*. All three committees concluded that, absent clear authority, the privileges could not or should not under any circumstances be waived:

The provisions of Article 9 are a matter of public importance and were enacted for the protection of the public interest and, absent statutory amendment, cannot be waived;

To allow waiver by a simple majority, the question could be open to abuse by a majority at the expense of a minority or a single Member;

A waiver could stifle free speech since at the time of testifying, the person will not know whether at some future date the protection of the privileges of the House will not be withdrawn;

A waiver could lead to further and more frequent requests for waivers; and

The provisions of Article 9 do not only constitutionally grant the right of free speech to the House but also constitutionally restrict the jurisdiction of courts and other places. It is not certain that the House alone, by waiving its privileges, can enlarge the constitutionally circumscribed jurisdiction of the courts.

Mr. Chairman, I have mentioned these various points in support of my question of privilege. Indeed, I believe that my freedom of speech has been infringed. I stated that at the very beginning of my comments. Having read all of the observations made in this document, which is like the bible for parliamentary institutions, the federal government, the federal Parliament, committees and the House, I consider that my question of privilege is perfectly relevant and that my right to freedom of speech has been infringed. The fact is that, a little earlier, the Chairman called the vote on a motion which had been introduced, without recognizing our privilege to express an opinion. He prevented both myself and Mr. Guimond from expressing our views. It is for that reason, Mr. Chairman, that I believe my privileges have been breached, and I would ask that you rule on this issue because such a flagrant deviation from the democratic process is completely unacceptable.

Thank you.

● (1900)

[English]

**The Acting Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)):** Mr. Laforest, I am going to rule on it. I've only been here for 15 minutes and I think you seem to be the only one who has been speaking, so I certainly don't agree that your freedom of speech has been impeded in any way while I've been here or before that.

**An hon. member:** [Inaudible—Editor]

**The Acting Chair (Mr. Larry Miller):** So I'm going to rule negatively to you.

Mr. Allison.

**Mr. Dean Allison:** If there are no more comments, I think we should try to get to clause-by-clause.

**The Acting Chair (Mr. Larry Miller):** Mr. Guimond.

[*Translation*]

**Mr. Claude Guimond (Rimouski-Neigette—Témiscouata—Les Basques, BQ):** Thank you, Mr. Chairman.

Don't worry; I will not be long.

My colleague spent quite a few minutes discussing a member of Parliament's right to freedom of speech. We have been talking about democracy for several hours now, with respect to parliamentary rules, and I have to say that I am disappointed with the way we were treated in the first hour of this Committee meeting.

I raised my hand several times. The Chairman heard me but never recognized me. I have been sitting on this Committee for a year and a half now. I have never abused my right to speak. I have always shown great respect for the Chairman performing those duties.

That is why I want to take this opportunity to say that I am very disappointed at what occurred. It is no different from Bill C-2 which we are examining today. It concerns a free trade agreement between Columbia and Canada which does not have unanimous support and is highly controversial. It is very much like what we are witnessing today. It is unfortunate, because I believe we are part of a great democracy; today, however, we were not given a great example of Canadian democracy.

Thank you.

[*English*]

**The Acting Chair (Mr. Larry Miller):** Mr. Guimond, I'm certainly not going to comment on your relationship, or lack of it, with the regular chair of your committee. I wasn't here for those meetings, and I urge you to take that up with Mr. Richardson.

As far as the procedures with this committee, you've obviously made your point. I guess you really haven't asked for anything; you just made a point.

We're going to move on. I heard a suggestion from Mr. Allison to move to clause-by-clause.

Mr. Julian.

[*Translation*]

**Mr. Peter Julian:** Thank you very much, Mr. Chairman.

I am raising a point of privilege because we were not given the right to consult the Committee Clerks. Mr. Chairman, you are surely aware, having worked in other committees, that Committee Clerks are professional. In that regard, Mr. Chairman, I would like to quote from O'Brien and Bosc:

The Clerk of a committee is a professional from Procedural Services of the House of Commons who serves at the committee's procedural and administrative officer. The Clerk is the Committee's principal advisor regarding parliamentary procedure, especially committee procedure. [...] As a non-partisan and independent officer, the Clerk also provides advice to all members of the Committee.

Earlier, Mr. Chairman, we were treated to a real procedural disaster. We saw our rights as members of Parliament infringed, we

were not given an opportunity to consult the Clerks, and we were not able to raise points of order. All of these fundamental rights were taken away from us, even though they are laid out in all the rules and Standing Orders which we, as members of Parliament, are required to follow.

Mr. Chairman, in light of parliamentary standards, it is quite clear that our rights as parliamentarians were systematically breached. As you know, there are clearly differing viewpoints, as we were elected in different parts of the country, and often from different political parties. Moreover, we have the ability to represent our constituents and present their views in the House of Commons and, of course, in committee. All of these rules should be observed. In the past, they have been cited on a number of occasions. In some cases, the Speaker of the House of Commons has refused to accept reports tabled by committees because the principle of respect for parliamentarians was not observed.

In light of all these points, the very least that can be said is that the current procedure is illegitimate. It is a process that does not comply with the rules, no more than it follows O'Brien and Bosc. All of these rules and the different codifications of those rules have been around for many years. All of us are required—just as you are, Mr. Chairman—to observe and abide by those rules.

Mr. Chairman, nowhere do I see in the rules governing committees that the Chair has the right to refuse to allow Committee members to consult the Clerk. I have never seen that before. I have been a member of this Committee for six years and it has never happened. Parliamentarians have never been prohibited from invoking the rules of procedure or raising points of order. Never have the rules been so poorly applied, or so completely ignored.

•(1905)

Now the public is asking that we comply with those rules and follow the established procedures.

At the very least, Mr. Chairman, it is clear that there is a problem. You refused to hear Mr. Laforest's point of order. You also refused to hear Mr. Guimond's point of order. I suppose that by accepting them, you would have been acknowledging that they were right on the question of respect and the point of privilege. It is one thing to let someone talk for a few minutes, but it is another to raise an issue and say that what is clearly laid out in the rules has not been followed.

•(1910)

[*English*]

**The Acting Chair (Mr. Larry Miller):** I have a point of order raised.

[*Translation*]

**Mr. Peter Julian:** A point of order cannot—

[*English*]

**The Acting Chair (Mr. Larry Miller):** I have a point of order—

[*Translation*]

**Mr. Peter Julian:** It's a question of privilege, Mr. Chairman. A point of order cannot be raised when a question of privilege is being addressed.

[English]

**The Acting Chair (Mr. Larry Miller):** A point of order, Mr. Trost.

**Mr. Brad Trost (Saskatoon—Humboldt, CPC):** Mr. Chair—

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, you're out of order for a second. I will get back to you.

Mr. Trost.

**Mr. Brad Trost:** This could be either a point of order or a point of privilege.

I believe Mr. Julian is referring to things that were done in camera. That's my understanding of what he's saying. As such, they cannot be repeated here.

**The Acting Chair (Mr. Larry Miller):** I'm making notes. I know that some of the things he has said absolutely did not happen while I was here, so you may be correct.

I would point out, for the benefit of Mr. Julian, that if you are referring to stuff in camera, I guess you're at your own peril.

You have the floor.

[Translation]

**Mr. Peter Julian:** Thank you very much, Mr. Chairman.

You were here when the Chair refused to let us consult the Clerk. You are well aware of that; you were here, along with the public. Now we are in front of the real public.

[English]

**The Acting Chair (Mr. Larry Miller):** That's not what I was referring to, Mr. Julian. I will respond when you're finished.

[Translation]

**Mr. Peter Julian:** Thank you, Mr. Chairman. You were here. I saw that you were here a little earlier, when we asked that the Clerk be consulted and the Chair of the Committee refused. That is precisely the issue I am addressing in my point of privilege. Because the Clerk and the services of the Clerk belong to all Committee members, the Chair cannot unilaterally decide that members will not request the Clerk's opinion.

Requests were made several times, but you don't seem to take these questions of privilege seriously. As you know, Mr. Chairman, you normally are required to consider them, to gather the facts and to dig a little deeper. That is normally your responsibility, when a question of privilege is raised.

Now if you do not follow proper procedure with respect to questions of privilege, the entire process loses its legitimacy. This process allows us to report if we want Bill C-2, an Act to implement the Free Trade Agreement Between Canada and the Republic of Columbia, the Agreement on the Environment Between Canada and the Republic of Columbia and the Agreement on Labour Cooperation Between Canada and the Republic of Columbia, to reach the report stage. It's the third step in a lengthy process that some would say is a nuisance.

In my opinion, Mr. Chairman, it is precisely when a bill is controversial that it is even more important to respect the right of minorities and allow members sitting at this table to consult the

Clerk, who is very clearly available for that purpose according to O'Brien and Bosc. That is also stated, albeit with less clarity, in the regulations.

All of these things must be done in the proper order and according to the process, as you well know, Mr. Chairman.

We have made all these points. That means that there will be an effect on everything that happens for the rest of the evening. The former Chair said that we have a few hours for the clause-by-clause consideration, but the fact is, Mr. Chairman, that you have not considered the matters raised by Mr. Laforest and Mr. Guimond. This is not just going to end here; that is obvious. In their case and in my own, you could have said that you would look at the facts, take the time to do so, and possibly ask the Committee to suspend debate in order to get to the bottom of this.

If you systematically ignore the questions of privilege that have been raised today, we will be forced to report this to the Speaker. As we said earlier, Mr. Chairman, and as all the precedents clearly demonstrate, the Speaker of the House has the right to refuse a report that is not consistent with the rules.

Ordinarily, Mr. Chairman, you could have said, when Mr. Laforest finished speaking, that you would look at this—not that you weren't here and would not accept these points of privilege. That is not your role, Mr. Chairman.

●(1915)

[English]

**The Acting Chair (Mr. Larry Miller):** Carry on, please.

[Translation]

**Mr. Peter Julian:** Excuse me, Mr. Chairman.

And it is the same thing for Mr. Guimond; you could have said debate would be suspended while you looked into these matters. Questions of privilege are not often raised, Mr. Chairman. In my case, this is the second time in six years that I have raised a point of privilege. As for Mr. Laforest or Mr. Guimond, I am not aware whether they have raised a question of privilege previously or not.

Mr. Laforest and Mr. Guimond are signalling to me that they have not. This is not an insignificant matter; this is not something that can be brushed aside in that manner. It is a question of enormous importance, and if Mr. Allison and Mr. Keddy raise points of privilege, it will be equally important to consider them, because these are substantial issues. For all these reasons—and you were in the room when Mr. Laforest and myself asked to be given the Clerk's opinion—and after all the questions that have been raised, I think you have things to consider now. This truly is a question of privilege.

Mr. Chairman, I am therefore asking that you rule on these three questions of privilege. If you refuse, in addition to the fact that you arrived late, we will find ourselves in a situation where everything that follows is not legitimate. Having said that, we will try to start the clause-by-clause consideration, but that does not change the fact that what happened today is not legitimate and that this will not stop here. It is obvious that it cannot stop here. For that reason, and because of the issues that have been raised, the entire process surrounding Bill C-2 is now tainted and, as you know, Mr. Chairman, the public takes a great interest in this. There have been a lot of public meetings about this and it was standing room only; so, there is no doubt that the public will also want to have its say on these matters. We are calling on you, Mr. Chairman, just as Mr. Laforest and Mr. Guimond have done. This is truly a question of privilege and I hope that you will take it seriously.

Thank you, Mr. Chairman.

• (1920)

[English]

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, I always consider committee work very seriously, and I remind you, with less than three hours left, to treat your time seriously and use it to your best order.

On your points of order about not being recognized, again, I can't speak to what happened before I was here, but while I was here, Mr. Richardson did eventually recognize your point of order, so you're mute there.

As far as respect, you made a suggestion, and Mr. Laforest as well, about respecting democracy, and you made a statement as well that democracy is illegitimate. Democracy is how it works. I don't have a Webster's dictionary with me, but I believe that if you look in there, democracy is the will of the people. Whether or not you like 50 plus one, a majority is democracy. The fact that you don't agree with it, Mr. Julian, is tough luck. I mean, that's the way it works, at least in this country.

As far as consulting with the clerk...they're here as resources. In my role as chair, I use them on a regular basis when necessary, and I'm sure that Mr. Richardson does as well, although I'm not going to speak for him.

You also mention about Mr. Laforest and Mr. Guimond raising a point of order—not while I was in the chair. Mr. Laforest was already speaking when I took the chair, and after that, I already had Mr. Allison and then Mr. Guimond. So I took Mr. Guimond. Again, mute point.

With that, you have until 10 o'clock here. I'd advise you to use it to the best of your ability.

I've had a suggestion to go to clause-by-clause, and we will now do that.

Shall clause 2 carry?

Mr. Julian.

**Mr. Peter Julian:** Mr. Chair, I don't think I need to spell out the process for you; I know you have a lot of experience.

What this committee hasn't done, of course, because we didn't have full committee hearings into Bill C-2.... There are a whole bunch of organizations that have asked to come before the committee that have not, and I'm sure those organizations will be voicing their concerns in the coming days now that it's out in public. Organizations like the Canadian Labour Congress, the Public Service Alliance of Canada, and many other organizations, are not coming forward. They are being denied their right to speak on Bill C-2.

I think as you know, Mr. Chair, the normal process in a healthy democracy is that we go to the clause, see if there are any questions for the guests here tonight, have debate on it...and then we would go to clause 2.

Mr. Chair, for the record, I will be asking for a recorded vote on every amendment and every clause.

**The Acting Chair (Mr. Larry Miller):** That's your prerogative, Mr. Julian.

**Mr. Peter Julian:** Thank you very much, Mr. Chair.

I'd like to say that just once. Hopefully that's acceptable to you, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** As we come to it you'll have to indicate that for each one, as is normal.

**Mr. Peter Julian:** Sorry, Mr. Chair?

**The Acting Chair (Mr. Larry Miller):** You will have to ask for a recorded vote on every vote. I'm not going to surmise that you may or may not change your mind.

**Mr. Peter Julian:** Well, if I change my mind, I'll certainly tell you, Mr. Chair.

Mr. Chair, since we are on clause 2, I would like to ask the people here tonight—and we appreciate their coming, though normally they would be coming during the day after full committee hearings.... We apologize for the fact that there weren't full and comprehensive hearings into this bill.

I'm interested in the agreement on labour cooperation between Canada and the Republic of Colombia. I would like to know, in the case where there are continued murders of trade unionists in Colombia, is it true that ultimately the recourse of those trade unionists and trade organizations that are subject to that murder rate and continue to raise concerns about it—

• (1925)

**Mr. Gerald Keddy:** A point of order, Mr. Chair.

**Mr. Peter Julian:** I'm asking a question.

**The Acting Chair (Mr. Larry Miller):** There's a point of order.

**Mr. Gerald Keddy:** Thank you, Mr. Chairman.

Mr. Chairman, I believe when we asked our experts, who we've invited here this evening, to hear the clause-by-clause.... The question actually has to deal with the clause we're asking about. I don't see any of that in this clause.

**Mr. Peter Julian:** Well, clause 2 actually cites—

**Mr. Gerald Keddy:** It contains a number of definitions.

**Mr. Peter Julian:** —“the Agreement on Labour Cooperation between Canada and the Republic of Colombia”.

My question is very simple. Does the Colombian government have to pay a fine outside of Colombia, or does the money go to the Republic of Colombia?

**Mr. Gerald Keddy:** What does that have to do with clause 2?

**Mr. Peter Julian:** We're allowed to ask questions, Mr. Keddy.

**The Acting Chair (Mr. Larry Miller):** You're saying it's on paragraph 2(b), on the agreement on labour cooperation?

**Mr. Peter Julian:** Yes.

**The Acting Chair (Mr. Larry Miller):** Then what is your specific question?

**Mr. Peter Julian:** I've asked it, Mr. Chair. They're just responding now.

**The Acting Chair (Mr. Larry Miller):** Again, what is your question?

**Mr. Peter Julian:** I just asked it, Mr. Chair, and they're now looking for the response. They'll be giving their response forthwith.

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, I always like to make the most of our time. Do you have a—

**Mr. Peter Julian:** I asked the question.

**The Acting Chair (Mr. Larry Miller):** I know. I was going to ask you if you had another question for one of the other witnesses. I thought maybe you could ask that while they're finding you the answer. That's all I was going to suggest.

**Mr. Peter Julian:** Not on this clause, I don't.

**The Acting Chair (Mr. Larry Miller):** That's fine. Then I'll just wait until we get the answer to Mr. Julian.

Then I'll come to you, Mr. Laforest.

[*Translation*]

**Mr. Jean-Yves Laforest:** I have a question for you—I'm not sure whether the witnesses or the Clerks can answer—regarding clause 2.

Clause 2 deals with definitions and interpretation. Reference is made to the Free Trade Agreement and related agreements. It also talks about the Agreement on the Environment Between Canada and the Republic of Columbia, the Agreement on Labour Cooperation Between Canada and the Republic of Columbia, a Joint Commission and the federal law.

However, on May 27, an agreement on annual human rights reports and free trade between Canada and the Republic of Columbia was signed, although it is not mentioned in the bill.

Should it be mentioned and why is it not included? I am just wondering. It talks about related agreements, but is that not one as well? It seems to me that is important, and I don't understand why it is not mentioned here.

That is a question and not a proposed amendment.

• (1930)

[*English*]

**The Acting Chair (Mr. Larry Miller):** I'll try to get an answer to that. I'm going to ask the clerk.

Do any of the witnesses have an answer to Mr. Laforest's question?

**Mr. Matthew Kronby (Director General, Trade Law Bureau, Department of Foreign Affairs and International Trade):** Perhaps we could clarify who exactly is asking the question and which question is being asked. With all the debate going on, I think we've lost track of what exactly it is we've been asked to answer.

**The Acting Chair (Mr. Larry Miller):** It looked as if the three of you were digging into finding the answer to Mr. Julian's question.

Mr. Laforest asked a question in regard to another agreement from May 27, which I'm not aware of. If you have the answer to Mr. Julian's question now, let's get it out of the way.

Mr. Bouchard.

**Mr. Pierre P. Bouchard (Director, Bilateral and Regional Labour Affairs, Department of Human Resources and Skills Development):** In regard to Mr. Julian's question on the account, this is dealt with in clause 43. Should we wait until we get to clause 43 before giving an answer?

**The Acting Chair (Mr. Larry Miller):** I believe we have our witnesses here, Mr. Julian, to answer that. So when we get to clause 43...

Mr. Julian.

**Mr. Peter Julian:** I understand the point he's making. Certainly, though, we're talking about two different clauses. My preference at this point would be to have the answer while we're on clause 2.

**The Acting Chair (Mr. Larry Miller):** The specific question was on the fines paid, I believe, and whether they are paid internationally. Was that the way you worded that, Mr. Julian?

**Mr. Peter Julian:** Yes, but are they paid to the...?

**The Acting Chair (Mr. Larry Miller):** Is that a yes or a no?

**Mr. Pierre P. Bouchard:** Yes, I can give the answer.

The answer is found in clause 43, but we have no problem giving the answer now. It's specifically part of this bill in clause 43.

I believe the question is whether the monetary assessment of the financial penalty that would be paid as a result of a complaint—let's say in a case where the complaint is against the Government of Colombia—would be paid to another account within the Government of Colombia or whether it would leave the country.

According to this, if the complaint is against the Government of Colombia, the money would be paid into a special account that would be set up within the Canadian consolidated revenue fund. So that account would be set up to either receive monetary assessments that are paid by other countries or also be credited for a monetary assessment that Canada could pay if Canada is the object of the complaint. The answer is that the money would leave Colombia in this regard and come into a special account of the consolidated revenue fund.

**The Acting Chair (Mr. Larry Miller):** Does that answer your question, Mr. Julian?

**Mr. Peter Julian:** Sorry, Mr. Chair, I have a supplementary on this. This is only in the case where Canada is the object of the complaint.

• (1935)

**Mr. Pierre P. Bouchard:** In both cases: when Canada is the object of the complaint but also where Colombia is the object of the complaint. It says it clearly:

...any monetary assessments to be paid into an interest-bearing account designated by the Ministerial Council and for these monies to be expended at the Council's direction on initiatives to rectify the non-compliance. Section 19.1 of the Act creates such an account in the Consolidated Revenue Fund. The account may either receive monetary assessments that are paid by other countries or be credited with a monetary assessment that Canada must pay. Interest accumulates and money is paid, as directed by the Council, at the request of the Minister of Labour.

**The Acting Chair (Mr. Larry Miller):** Okay, Mr. Julian.

Don't you like the answer?

**Mr. Peter Julian:** No, I've heard the answer, Mr. Chair. I did want to ask a quick question on the....

[*Translation*]

**Mr. Jean-Yves Laforest:** Did you hear my question earlier? I don't think so, because you were looking for something.

**Mr. Pierre P. Bouchard:** Sorry.

**Mr. Jean-Yves Laforest:** No, it's all right; I understand perfectly. In any case, when something happens without warning, it can be a distraction. You can't do two things at once.

I was just saying that clause 2, which we are discussing now, provides definitions... It says: "The definitions in this section apply in this Act." It talks about the Agreement on the Environment Between Canada and the Republic of Columbia, the Agreement on Labour Cooperation Between Canada and the Republic of Columbia, a Joint Commission, and so on. However, on May 27, an agreement was signed regarding annual human rights reporting and free trade between Canada and Columbia. Why is that agreement not mentioned here? Why isn't it in the bill? Should it not be, to validate the Act? If the Act refers to related agreements, but no reference is made to an agreement that was signed afterwards, could that cause a problem? That is my question. Should it not be included? If it should, I suppose the bill will have to be more closely scrutinized than what we are doing now.

[*English*]

**The Acting Chair (Mr. Larry Miller):** Can somebody answer that?

**Mr. Matthew Kronby:** The question seems to be, and I'm paraphrasing a little bit here, why the agreement concerning annual reports on human rights and free trade between Canada and the Republic of Colombia is not mentioned in the definitions section here or not mentioned in the bill as a whole.

I suppose if someone wanted to table an amendment to do so, they could. There's nothing here right now that requires that the agreement be referenced in the implementing legislation.

[*Translation*]

**Mr. Jean-Yves Laforest:** When you draft a bill and include definitions for interpretive purposes—and, in a way, they are the meat and potatoes of the bill—it's to indicate that the bill deals with

this or that matter, which are to be defined and interpreted in a specific way. Agreements have been negotiated, they are included in the bill drafted by the government and, in the meantime, another agreement is negotiated but nobody thinks of including it.

That seems rather odd to me, because it basically means that we sign agreements and draft a bill at the same time without necessarily making the important connection between the two. As the term suggests, these are related agreements, which means there is an important cause-and-effect relationship between the bill and the Agreement. That means that the bill as a whole—even if an amendment were brought forward today to include it, it would simply be an amendment that is tacked on—was not drafted with that Agreement in mind. That is also what this means. So, even if we pass amendments, we will have forgotten an extremely important element in drafting this bill. That means that the bill—yes, we can pass an amendment, people could propose something and we expect that they will—or that the legislation as a whole and the different clauses it includes, do not refer to that. It's rather odd and somewhat anachronistic to simply add something without actually amending any other clause in the bill. It seems a little ad hoc.

• (1940)

[*English*]

**The Acting Chair (Mr. Larry Miller):** That was more commentary than anything. You asked a question. You got the answer. You obviously don't like the answer, but you got the answer.

Mr. Brison.

**Hon. Scott Brison (Kings—Hants, Lib.):** For Monsieur Laforest, there will be amendments, which have already been submitted, that will refer specifically to the human rights treaty signed by the Republic of Colombia and the Government of Canada on May 27. Your concern will be addressed in the amendments. We will certainly welcome your support.

**The Acting Chair (Mr. Larry Miller):** Mr. Julian.

**Mr. Peter Julian:** On a point of order, Mr. Chair, the amendments that I have are the amendments at committee stage. Are there other amendments that haven't yet been distributed to the committee?

**The Acting Chair (Mr. Larry Miller):** There are pages 8.1 and 11.1. Apparently they were passed around, Mr. Julian. They're two separate amendments. They'll be coming up at a later date.

Is there no further discussion on clause 2?

Mr. Julian.

**Mr. Peter Julian:** Mr. Chair, I did ask for a recorded vote earlier.

**The Acting Chair (Mr. Larry Miller):** We'll have a recorded vote on clause 2, as asked for by Mr. Julian.

(Clause 2 agreed to: yeas 4; nays 3)

(On clause 3—*Interpretation consistent with agreements*)

**The Acting Chair (Mr. Larry Miller):** Mr. Julian.

**Mr. Peter Julian:** Thank you, Mr. Chair.

We'll be asking for explanations of some of the clauses, and we would certainly appreciate hearing from our witnesses what the explanation is for the elements that clause 3 brings.



**The Acting Chair (Mr. Larry Miller):** Can anybody respond to that?

**Mr. Matthew Kronby:** This is a standard clause in our FTA-implementing legislation. It's just designed to ensure that the provisions of the implementing legislation are interpreted in a manner consistent with the agreements they implement.

• (1945)

**The Acting Chair (Mr. Larry Miller):** Does that answer your question, Mr. Julian?

**Mr. Peter Julian:** Mr. Chair, I'm sorry if...

**The Acting Chair (Mr. Larry Miller):** Does that satisfy your...? No, that's the wrong way to phrase that. Do you have another question? You already have an answer to the question.

**Mr. Peter Julian:** Thank you, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** Do you have another question?

**Mr. Peter Julian:** I have a supplementary, yes, Mr. Chair.

Is this the standard wording? I'm thinking back to previous bilaterals, and I can't say offhand—I don't have those previous bilaterals with me—but...

**The Acting Chair (Mr. Larry Miller):** I believe the answer you just got is that this is a standard clause to have in an agreement, Mr. Julian. If you have another question—

**Mr. Peter Julian:** These are similar to clauses that we have seen in other bilateral agreements.

**Mr. Matthew Kronby:** I can clarify, if you like, that we haven't always necessarily referred to “related agreement”, but the idea of the provision is exactly the same as the provision we've had in other FTA-implementing legislation. I believe it's identical to the one that was in the Peru legislation.

**Mr. Peter Julian:** The difference here is that the “related agreement” is inserted into the text, but I'm just thinking back to...

**The Acting Chair (Mr. Larry Miller):** Okay. Your questions are answered, Mr. Julian?

**Mr. Peter Julian:** Yes, thank you, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** I call the vote on clause 4.

**Mr. Peter Julian:** Mr. Chair, I'd like to ask for a recorded vote. It's clause 3, actually.

**The Acting Chair (Mr. Larry Miller):** Clause 3, I'm sorry

A recorded vote has been asked for by Mr. Julian.

(Clause 3 agreed to: yeas 4; nays 3)

(On clause 4—*Non-application of Act or Agreement to water*)

**The Acting Chair (Mr. Larry Miller):** Is there discussion?

Mr. Julian.

**Mr. Peter Julian:** Let me ask our witnesses to explain this clause, clause 4, and if they could, to reference the other agreements we have signed in which this particular clause exists. I'm thinking primarily of agreements such as NAFTA, in which I believe the wording is different.

**Mr. Matthew Kronby:** There has been wording along these lines, not necessarily identical but to the same effect, in the implementing legislation for all of Canada's FTAs, going back to the NAFTA, designed essentially to make absolutely clear that natural surface and groundwater is not part of, not subject to the free trade agreement or the act itself.

• (1950)

**The Acting Chair (Mr. Larry Miller):** So this would basically prohibit the sale of water.

**Mr. Matthew Kronby:** The provision does not prohibit the sale of anything. There was concern at the time of the NAFTA, certainly, that somehow the NAFTA was allowing the sale of water in its natural state, and the provision was inserted at the time to make absolutely clear that this was not the case. A similar provision has been inserted in FTA-implementing legislation ever since.

**The Acting Chair (Mr. Larry Miller):** And this basically strengthens it, when it comes to water?

**Mr. Matthew Kronby:** You can question whether it had to be strengthened or not, but it makes it clear that it does not.

**The Acting Chair (Mr. Larry Miller):** Okay, and Mr. Julian's colleagues are always ready to stand up and try to pretend that water was for sale in the NAFTA, so I think he would be very happy to have this clause in here.

Are there further questions on clause 4?

**Mr. Peter Julian:** Thank you, Mr. Chair. I believe that was argumentation that you just made.

Coming back to our witnesses, let me ask how “natural” is defined and at what point the “surface or ground water in liquid, gaseous or solid state” is no longer in a natural state.

Let me give you an example. If there is a licence issued to move that natural surface water and bottle it, would that not mean, depending on how “natural” is being defined, that this bottled or bulk water would then apply to the trade rules that many have been concerned about?

**Mr. Matthew Kronby:** Since I'm not able to provide legal advice to the committee, I won't opine on the definition of “natural”, but I can certainly say that Canada has exporters of bottled water. There are those who export water in bottles commercially, so I think you may be able to draw your own conclusions on what water is or is not considered natural or in its natural state.

**The Acting Chair (Mr. Larry Miller):** Just to clarify that—and then we'll come back to you—it cannot be sold in bulk; it's bottled water in containers of limited size. Would that be correct?

I know it to be correct, but I would like to hear you say it.

**Mr. Matthew Kronby:** In fairness, I don't believe that's what this provision is intended to address. This provision is intended to address water in its natural state. I think that's about as far as I can go.

**The Acting Chair (Mr. Larry Miller):** Okay, Mr. Julian, go ahead.

**Mr. Peter Julian:** Thank you, Mr. Chair.

That's a little bit disturbing, then, because if what we're saying is that "natural state" ends once that water is bottled or put in a tanker for bulk export, then that would mean that indeed that—

**A voice:** Mr. Chair, there are no bulk exports allowed. There are none.

• (1955)

**The Acting Chair (Mr. Larry Miller):** That's a moot point, Mr. Julian. He is correct.

**Mr. Peter Julian:** I'm sorry, I missed that, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** I said he corrected you: there are no bulk exports. He is right on that. It is a moot point.

**Mr. Peter Julian:** Mr. Chair, I beg to differ. There's an issue of whether or not there have been bulk water exports up until now, and, as you know, Mr. Chair, in a whole bunch of provinces, including my own, including Newfoundland, including Quebec and Ontario, there have been battles around bulk water export permits.

The issue that exists is that because there isn't an ironclad definition of what water is subject to those trade rules and subject to the investor-state provisions that exist in the Colombia trade deal, as they do in other trade deals, the problem is that once those bulk water exports start—and it doesn't matter which province does it—then, according to the definition we've been getting here, it would mean that yes, trade rules would apply and the investor-state provisions may apply.

Certainly, Mr. Chair, in my province the reason Sun Belt was able to bring an investor-state suit against the provincial government is that this opening is there. Fortunately, the former B.C. NDP government banned bulk water exports, but if the current government changes that, then we could be in a situation in which water that is in a bulk water container is subject to the provisions around investor-state and provisions around trade rules.

So this is a matter of some concern. This isn't a moot point; I beg to differ. It is a point that is quite substantial. Surface or groundwater, when we don't talk about a "natural state", would protect those water resources to a much greater extent. If we're saying "natural" and we are defining "natural" as up until the point that it is put in containers —

**Mr. Gerald Keddy:** I have a point of order.

**The Acting Chair (Mr. Larry Miller):** There is a point of order.

**Mr. Gerald Keddy:** Thank you, Mr. Chairman.

Mr. Chairman, I appreciate that when Mr. Julian has a question of clarification to the witnesses, that's the reason we have witnesses. Once that question and clarification have been received, we need to continue with clause-by-clause.

**The Acting Chair (Mr. Larry Miller):** And on the point that you were just talking about, Mr. Julian, this government has been very clear about exports of water. I will give the previous government credit. When a permit in my province of Ontario was approved—I can't remember the year—it was quashed, which I'm very happy about.

Recently, I believe in 2005 or early 2006, when there was an application to take water in your province of B.C., I and a number of

MPs across Canada banded together and basically that proposal was scrapped.

I think that history speaks for itself, so it is a moot point.

Do you have another question on clause 4?

**Mr. Peter Julian:** Mr. Chair, I will be intervening, because after our questions are finished, of course, we have debate on the clauses. I will be intervening on the debate. But I believe Mr. Laforest has a question.

**The Acting Chair (Mr. Larry Miller):** Of course. It's your time. You can waste it how you want.

Mr. Laforest.

[*Translation*]

**Mr. Jean-Yves Laforest:** Thank you, Mr. Chairman.

I would like someone to explain this clause. You say that it is excluded—and I guess that's what it means—exports of water, which is found in large quantities in Canada and Quebec, whether we're talking about surface or groundwater, in a liquid, or gaseous state, and so on. Is that actually what this defines? Does this restrict exports of water, meaning that the Agreement does not provide for excessive exports?

And I have a sub-question. It refers here to natural surface water. All lakes and rivers and all the large lakes are fed by rainwater. Why is there no protection given to rainwater in Canada? It could be excluded. If rainwater is collected before it reaches the ground, it is no longer surface water; it's water from the sky. If someone collected rainwater, could it be exported if there is a prohibition on exports of surface water?

• (2000)

[*English*]

**Mr. Matthew Kronby:** I think perhaps there's a bit of a misunderstanding as to what this provision does.

This provision does not prohibit water that has been turned into a product from being treated as any other product, from being exported—or imported, for that matter. The provision essentially clarifies that there is nothing in the act or the agreement that obliges Canada—we're talking about the Canadian implementing bill—to exploit its water for commercial use or to export water. There's nothing that says you have to do so.

Whether it is natural surface water or groundwater, it does not deal with water that has been turned into a product, like bottled water that may be, and is in fact, exported or imported.

[*Translation*]

**Mr. Jean-Yves Laforest:** With respect to my question on rainwater, I was saying that all surface water starts out as rainwater.

Why do these agreements never include provisions to protect that sort of thing? A company that became aware of this clause and wanted to export water could assume that, if the water is collected before it hits the ground, it can be exported. Why is this kind of situation never addressed?

[*English*]

**The Acting Chair (Mr. Larry Miller):** And you're serious?

[*Translation*]

**Mr. Jean-Yves Laforest:** Yes, I am serious.

[*English*]

**The Acting Chair (Mr. Larry Miller):** I'm just checking.

**Mr. Matthew Kronby:** As I say, once water—

**A voice:** I've heard just about everything now.

[*Translation*]

**Mr. Jean-Yves Laforest:** Didn't you understand what I was saying? There are some twisted people on this earth who might try to circumvent the rules.

**Mr. Matthew Kronby:** As I said—

**Mr. Jean-Yves Laforest:** I agree that it seems a little far-fetched. I heard the Chairman ask if I was serious. However, you have to admit that it could happen.

[*English*]

**Mr. Matthew Kronby:** As I said, this provision does not deal with the exportation of water—with the treatment of water that has been captured for commercial use, however that water may be captured. This deals with water in its natural state and it says there is no obligation to permit the exploitation of that water.

**The Acting Chair (Mr. Larry Miller):** Thank you.

I'm going to call the question on clause 4.

You'd like to ask for a recorded vote, Mr. Julian?

**Mr. Peter Julian:** No, Mr. Chair. As I signalled earlier, we've had some questions, and now we'll move to debate on clause 4.

**The Acting Chair (Mr. Larry Miller):** You have the floor, Mr. Julian.

**Mr. Peter Julian:** Thank you, Mr. Chair.

This is pretty serious, because the question that Mr. Laforest asked around water is something that has come up in Bolivia around some water contracts that have been issued. Tragically, trade agreements seem to be getting further and further away from the principle of water as a human right. Here we have a case where only natural surface water or groundwater is exempted from the act, but the moment I bring my bottle of water and fill it up in an industrial way, the moment I move to export bulk water, then it's no longer in its natural state. As a result, because of the wording of this particular clause, I think we're putting ourselves in a situation in the agreement where the kinds of issues that you raised earlier and the kinds of issues that Mr. Laforest raised continue to be a problem.

You very clearly, Mr. Chair, raised the point that you and other members of Parliament, and actually other members of the legislative assemblies across the country, all raised the issue around the possibility of bulk water export permits. The reason activists in every single province have had to intervene so forcibly is because there isn't a clear protection for water in this country.

I understand you may want to intervene, Mr. Chair, and raise the issue as well. There is not protection. It's very clear, when we see this particular agreement, which exempts only natural surface water or groundwater, that water is not protected. Once there's a bulk water

export permit, once there's an industrial bottling permit that is issued, then all of a sudden, bam, we're simply out of the scope of exemption. That's a real problem, Mr. Chair, and it's a problem that has been ongoing in provinces across the country.

Now we have a trade agreement, and of course it's not one that's had a fulsome hearing in front of a trade committee. Certainly, I know there will be much debate in coming weeks and months around the advisability of what the committee may choose to move forward, and certainly, the Speaker will have to rule on it as well. But we have here a smoking gun, a clause that very clearly puts us in a situation where bulk water export permits or industrial bottling plants remove water from that exemption. That means they're subject to the investor-state provisions in the agreement. Mr. Chair, that is a fundamental problem that we cannot avoid.

If we are doing the appropriate due diligence on this agreement, even though as a committee we have not heard the many witnesses who have asked to come before this committee, then we have a smoking gun of a clause that's brought before us that clearly indicates a problem, since the definition of "natural" is water that is not commercialized, whether through industrial bottling or through bulk water. We have a problem. This clause again puts us on that slippery slope towards potential for bulk water exports, or that slippery slope for potential for industrial bottling. This is something that increasingly organizations are speaking out about—the Council of Canadians is speaking out about it, and other organizations across the country have been speaking out about it. As a result, Mr. Chair, as you well know, there is a degree of public concern around this issue that we have to take into consideration.

This is a real problem. This clause 4 is an issue. It's an issue in my province. It's an issue in Quebec. I'm sure we may have some other speakers on this issue as well. We simply cannot pass this clause as is.

How do we fix it? Well, Mr. Chair, that's a real problem, a real conundrum.

●(2005)

**The Acting Chair (Mr. Larry Miller):** Do you have an amendment?

**Mr. Peter Julian:** Well, if you can suspend debate for just a moment, I'll ask our visitors how they might suggest that clause 4 would be amended in such a way—

**The Acting Chair (Mr. Larry Miller):** If I suspend debate, it will be to call the question.

I just asked you a question. You talk about not liking the wording. There are two ways around that: you either vote against it or you propose amendments.

Which is it, Mr. Julian?

**Mr. Peter Julian:** Well, Mr. Chair, I'll say right now that I will finish my intervention at some point. I'd like the clerk to register me for a second intervention, because I'll be asking a question at the end.

As you know, Mr. Chair, the whole issue—

**An hon. member:** [*Inaudible—Editor*]

**Mr. Peter Julian:** Despite some of the heckling I'm receiving, Mr. Chair, as you well know, the types of motions that cannot be moved in committee include the previous question. The committee, as you well know, has a responsibility to hear from members who still want to speak. That's why I'm officially letting our clerk know that I'll be speaking again, once I've finished asking my question.

So the issue that I am raising—and I'm now registered, and it's been publicly identified that I'd like to speak again on this issue—is that if there are suggestions from our witnesses about how to change the language so that we do not have a situation where the definition of “natural” ends when industrial bottling or bulk water exports begin, I'd be very interested in hearing their comments.

I'll put myself back on the list.

Thank you, Mr. Chairman.

●(2010)

**The Acting Chair (Mr. Larry Miller):** No, I'll put you back on the list. You're still on the list at this point, so you don't need to be put back on it.

Did you have a question?

**Mr. Peter Julian:** Yes. I just asked it, Mr. Chairman.

**Mr. Matthew Kronby:** I'm not going to tell you how to improve this legislation or even tell you if it requires improvement, but I certainly can say that this provision not only doesn't prevent governments, whether federal or provincial, from taking measures to conserve resources and impose the normal kinds of constraints and licensing procedures, and what have you, on the exploitation of resources, but also that the provision originates to ensure that nothing in the implementing legislation or the FTA itself, going back to the NAFTA, impedes or impairs the ability of a government to engage in or take those kinds of measures to protect resources, water in particular here.

**The Acting Chair (Mr. Larry Miller):** Mr. Brison.

**Hon. Scott Brison:** Thank you, Mr. Chair.

The whole issue of investor-state provisions is based on the principle of national treatment, so I think, Mr. Kronby, what you're saying—and I just want to clarify this—is that if a state or a national or subnational government brings in environmental legislation on water, the legislation would simply apply to foreign companies, as it would to domestic companies. As such, this agreement in no way compromises the ability of sovereign governments to regulate their treatment or control of a natural resource like water, for example.

Is that accurate?

**Mr. Matthew Kronby:** That's correct.

And this provision is not aimed specifically at national treatment or at the investor-state rules in chapter eight of the agreement, but it certainly does apply to those rules and this provision.

That's exactly right. It does say that nothing in this agreement interferes with the ability of government to regulate or protect water specifically in its natural state here.

**Hon. Scott Brison:** So there's no threat that Canadian-based multinational corporatists, in their voracious thirst for water, will exploit Colombia's water supplies as a result of this agreement.

**Mr. Matthew Kronby:** I think we can say that this agreement would not give them the right to do so.

**Hon. Scott Brison:** Thank you.

**The Acting Chair (Mr. Larry Miller):** Is there further discussion on the motion, Mr. Julian?

**Mr. Peter Julian:** Thanks, Mr. Chair.

This agreement would mean that the other provisions of the agreement would apply once water is industrially bottled or is bulk exported.

**Mr. Gerald Keddy:** There are no bulk exports of water allowed in this country.

**The Acting Chair (Mr. Larry Miller):** You are correct, Mr. Keddy.

**Mr. Peter Julian:** Mr. Keddy should be aware of all the problems that activists have had to raise and the fights they've had to stop certain companies from wanting to export water. The only reason there are no bulk water exports is because a lot of people have been standing up and saying this is the kind of thing that should not be happening. Once the bulk water exports start, then the provisions of investor state kick in. Mr. Keddy should know that. I'm sure, as an intelligent parliamentary secretary, he would know that. He would know there are no provisions in—

**Mr. Gerald Keddy:** [*Inaudible—Editor*]

**Mr. Peter Julian:** Mr. Keddy, there is no such thing as a previous question at committee stage.

The issue is very clear. We have to look at wording that protects the provisions from applying once bulk water exports begin—

●(2015)

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, I'm going to rule here. You are getting repetitive. Either propose an amendment or I'm going to call the question.

**Mr. Peter Julian:** Mr. Chair, the problem we have with this rapid and reckless pace is that we're not able to work out the amendment that identifies the problem that has come up during this committee. We've started, article by article.... Normally, what would happen in a case like this, Mr. Chair—

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, I know exactly where we are in this. You seem to think you're knowledgeable about the issue you're talking about. You're getting repetitive, and I'm going to end it unless you propose an amendment or speak on something we haven't already talked about. It's your call. Then I'll make mine.

**Mr. Peter Julian:** Mr. Chair, we have had in South America a number of cases where bulk water exports have been issued. As you well know, Mr. Chair, in the city of Cochabamba, Bolivia, a water contract was applied that actually forced people to pay money to even go and get the water that came down from above. That was a water contract that was signed. In South America this is an issue that has been fought over.

The issue of what impacts investor-state provisions may have in particular in cases of rural Colombia, where those water resources are subject to the pressures of paramilitary organizations.... We've seen from some of the witnesses we've had, Mr. Chair.... You've not been around the committee table, but many witnesses have requested to come and have not had the opportunity, and we had other witnesses who did come. They have flagged that these are the kinds of issues, particularly human rights concerns in rural Colombia, among aboriginal people, among African Colombians, who are seeing systematically their land taken...and that includes water resources, Mr. Chair.

If we're in a situation where we are opening up this exemption, the moment that paramilitary organizations connected to the Uribe government decide to run people off the land, which has happened systematically—most recently we've seen the connections of the brother of President Uribe to these murderous paramilitary gangs—then we are subjecting rural peasants, rural aboriginal people, rural African Colombians, who are seeing this kind of violent threat on their land, to yet another component.... What happens, and what could happen, and what we have to foresee as members of this committee, is that quite likely we could see the paramilitary gangs choose to put in industrial bottling or choose to look at a bulk water export permit.

According to this, once it's removed from that natural surface state it's all of a sudden subject to investor-state provisions, so we've doubly hit or triply hit those rural areas. This is not an anodyne problem. What you need to do, Mr. Chair, when a situation like this comes up, normally, is suspend the hearing and look to work out some amendment that would actually address this issue, because obviously we're in a situation—

• (2020)

**Hon. Scott Brison:** Mr. Chairman, may I just—

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, you're going on and on. If you have a fear of something, and we know that you or your party would never do anything based on fear, then propose something to change it. This is the second time, and it's going to be the last if you continue to do it. It's moot.

Mr. Brison.

**Hon. Scott Brison:** Mr. Chair, in fairness, I think Mr. Julian raises a very interesting point, and I want him to help me with it.

Is Mr. Julian suggesting that this free trade agreement could lead to Colombians abandoning low margin products, like cocaine, for instance, and switching production over to the bulk export of water to Canada? Is that one of the unintended consequences of this agreement, as you see it?

**Mr. Peter Julian:** That's not a point of order, Mr. Chair.

**Hon. Scott Brison:** No, no, I'm just suggesting there must be some logic to Mr. Julian's intervention.

**The Acting Chair (Mr. Larry Miller):** I think he's on your side. He's just trying to—

**Mr. Peter Julian:** It's not a point of order, Mr. Chair, so normally you would disallow it. It's not a point of order, but he could certainly put himself on the list, as it's a point of debate.

I did have the floor, Mr. Chair, as you know, and I'll continue.

Mr. Brison raises the most important point of what happens with free trade agreements when we're talking about rural areas. Mr. Chair, as you well know, we have to look at the example of Mexico. We heard the same kind of cheerleading around NAFTA, that it was going to transform rural Mexico, that a rising tide lifts all boats. In rural Mexico, we were going to see unprecedented prosperity, Mr. Chair—

**An hon. member:** Columbia.

**Mr. Peter Julian:** Well, no, I'm answering the very important point by Mr. Brison. I wouldn't want his important question to be left without an answer.

What have we seen? We've seen, Mr. Chair, through the course of the last few years, particularly—

**The Acting Chair (Mr. Larry Miller):** No, he didn't ask what you'd seen there. He asked you specifically about Colombia.

**Mr. Peter Julian:** He was asking about rural areas, and that's very illustrative, because we have heard testimony, Mr. Chair, around this issue of what happened to rural Mexico. Since the latest changes under NAFTA, corn tariffs were taken off. What we've seen is a meltdown in rural Mexico. In fact a million Mexicans have lost their ability to put bread on the table. And what has happened, Mr. Chair? Well, gee whiz, in what many people are referring to as the Colombianization of Mexico, rural Mexicans now are finding violence in the drug trade, present like never before, Mr. Chair—

**The Acting Chair (Mr. Larry Miller):** A point of order, Mr. Brison.

**Mr. Peter Julian:** —and NAFTA was supposed to address this issue—

**The Acting Chair (Mr. Larry Miller):** A point of order.

**Hon. Scott Brison:** On the point, I've been provided with evidence, Mr. Julian, that in fact one of the reasons why Mexico's drug wars have escalated is the success of the Uribe government in taking on and reducing the drug trade's control over Colombia, and that these international drug cartels—

**Mr. Peter Julian:** That's not a point of order, Mr. Chair, but he should certainly put himself on the list.

**The Acting Chair (Mr. Larry Miller):** I'm not a lawyer, as Mr. Brison is, but I'm sure it's relevant to the point we were discussing.

**Hon. Scott Brison:** I'm an investment banker.

**Mr. Peter Julian:** It's not a point of order, so he certainly should put himself on the list. I'm sure he has lots to say, Mr. Chair, but if I can continue—

**Hon. Scott Brison:** I'm just trying to help my colleague.

**Mr. Peter Julian:** What we've got is a situation where those cheerleaders like to say it always works; it's just great. Not only has real income fallen in Canada and the United States, but in Mexico we see the real problems that exist when we have the kinds of terms that we see in the Colombia trade deal.

Getting back, Mr. Chair, to the issue around water resources, this is not an anodyne subject. This is a subject that has immense repercussions for the people who are most impacted by this trade agreement. Mr. Chair, the people that members of the other parties have allowed to come before this committee have all said very clearly that the big risk in this is not in Bogota; it is primarily in rural areas. It is primarily in areas where people will need to have some sort of oversight and protection.

What does this have to do with the current wording? What it does is subject these exports or industrial bottling to issues of investor-state challenges. What would happen, Mr. Chair, if we had a situation where in rural Colombia an aboriginal community decided it was going to refuse industrial bottling, refuse bulk water exports, and a neighbouring community decides that, because the paramilitaries are there and they've got guns in their faces, they don't have a choice, they're going to have to allow this industrial bottling? Mr. Chair, what these provisions mean is that in one case you've got industrial bottling; in the other case you've got the use of investor-state provisions, which often act as a kind of bully mechanism for those who have deep pockets. A small aboriginal community in Colombia may be forced to either pay compensation they cannot afford or they may be forced to allow—

•(2025)

**The Acting Chair (Mr. Larry Miller):** On a point of order, Mr. Brison.

**Hon. Scott Brison:** To help my colleague, if investor-state provisions were in place, it would simply mean that the same rules would apply to the foreign company as would apply to the domestic company. If there were a decision by any subnational government not to industrialize their water supply, then that would stand. I'm certain he would be interested in how that would apply.

**Mr. Peter Julian:** That's not a point of order, Mr. Chair, as you know.

**The Acting Chair (Mr. Larry Miller):** I was just about to rule that, but continue.

**Mr. Peter Julian:** Mr. Chair, I wanted to actually hear you say it.

**The Acting Chair (Mr. Larry Miller):** I know you did.

**Mr. Peter Julian:** I appreciate your good humour in this circumstance, Mr. Chair. I haven't actually been at a committee where you've been presiding. Despite the fact that this is quite illegitimate as a process, I find you're being amiable.

**The Acting Chair (Mr. Larry Miller):** I'd missed you so much in the last year and a half, Mr. Julian.

**Mr. Peter Julian:** Me too, Mr. Miller.

So we have this problem, and unfortunately Mr. Brison is wrong. If the investor-state provisions applied in the way he says, then the Ethyl Corporation compensation would never have been paid. It wouldn't have seen the investor-state provisions brought in against the Quebec government.

Obviously you have to look for precedents. You have to look at the real cases. Unfortunately, they contradict what he's just mentioned. I know he mentions it in good faith, but the reality is that the truth is a completely different issue. We have seen a number of these problems coming up with investor-state provisions.

In fact, this very committee looked into that issue. It raised concerns around the use of investor state and what that meant for the autonomy of regional governments and for provincial governments as well.

So here we have a clause that is problematic. Normally, Mr. Chair, in a civilized approach, after having heard the witnesses who have come forward, we would sit down and hammer out a clause. Now we have a situation where the clause itself clearly does not work; it clearly causes problems.

Members of this committee have raised this issue, and obviously we need to make the necessary changes.

You, Mr. Chair, could be part—

**The Acting Chair (Mr. Larry Miller):** I agree wholeheartedly, so what is your proposed change?

**Mr. Peter Julian:** Mr. Chair, I think we would need to sit down with our witnesses for 15 minutes and work it out.

**The Acting Chair (Mr. Larry Miller):** I think we've been on it for half an hour.

Since Mr. Julian has indicated he has no amendment, I'm going to call the vote.

**Mr. Peter Julian:** Mr. Chair, a recorded vote.

**The Acting Chair (Mr. Larry Miller):** A recorded vote, Madam Clerk.

(Clause 4 agreed to: yeas 6; nays 3)

(On clause 5—*Construction*)

**The Acting Chair (Mr. Larry Miller):** Mr. Julian.

**Mr. Peter Julian:** I'm going to ask our witnesses to provide some explanation and guidance on clause 5.

•(2030)

**The Vice-Chair (Mr. John Cannis (Scarborough Centre, Lib.)):** Let's move on.

Mr. Julian.

**Mr. Peter Julian:** I have asked my question, Mr. Chair—and welcome.

**The Vice-Chair (Mr. John Cannis):** It's nice to be here. Don't take advantage of my kindness or I'll call my friend Larry.

The floor is yours.

**Mr. Peter Julian:** Well, thank you, Mr. Chair. I'd asked a question to the witnesses. I think they're preparing a response.

**The Vice-Chair (Mr. John Cannis):** Oh, okay.

Please.

**Mr. Matthew Kronby:** This is a standard article of construction in FTA-implementing legislation. It says essentially that nothing affects Parliament's legislative authority to implement the FTA and the related agreements.

[*Translation*]

**The Vice-Chair (Mr. John Cannis):** Mr. Laforest, please.

**Mr. Jean-Yves Laforest:** Is the definition of this clause intended to show that Parliament remains sovereign in relation to all the clauses which may or may not be in this bill? Is that really what this clause means? Mr. Kronby, you were saying that this clause appears in every bill dealing with free trade agreements. Is that what you said?

[*English*]

**Mr. Matthew Kronby:** Yes. It's a provision that just clarifies that nothing that's contained in this act or that is omitted from this act is to be understood as affecting Parliament's ability, Parliament's legislative authority, to implement any provision of the free trade agreement or the related agreement, or to give effect to the obligations that Canada has undertaken under those agreements.

[*Translation*]

**Mr. Jean-Yves Laforest:** Are there identical clauses in other free trade agreements that Canada has signed with other countries? That is my question. Is this a standard clause that appears in every free trade agreement that Canada signs with other countries? Or, depending on the agreement with the other country, are there special provisions that apply, so that a clause like this, which is sort of standard, might be worded differently because things are added?

The question I asked originally was whether this means—yes or no—that Parliament remains sovereign in implementing the free trade agreement.

[*English*]

**Mr. Matthew Kronby:** I don't think the clause speaks to the scope of Parliament's authority so much as it speaks to how this act is to be constructed. We're not talking about a provision that's found in the FTAs themselves, in our other FTAs. They're found in Canada's other FTA-implementing legislation. It's a provision just to make clear that where this act speaks and where it doesn't speak, it doesn't interfere with the ability of Parliament to take action to give effect to Canada's obligations under the free trade agreement or the related agreements. It's just a clarifying provision of construction.

• (2035)

[*Translation*]

**Mr. Jean-Yves Laforest:** In this part, it says: "For greater certainty, nothing in this Act, by specific mention or omission [...]" I understand that. Basically, no clause can interfere with the powers of

Parliament. When it says "by specific [...] omission", that is very broad. That means even with respect to something that is not included in the legislation.

Do you have any examples of an omission that could have an impact on a decision by Parliament? Under other agreements, has this question arisen in the past because of omissions in the bill?

[*English*]

**Mr. Matthew Kronby:** I'm not aware of any. My understanding is that this provision is simply there to provide certainty as to how this legislation is to be constructed, rather than to deal with any specific problems that have arisen under previous FTA-implementing legislation.

Does that answer your question?

[*Translation*]

**Mr. Jean-Yves Laforest:** That is fine for now.

[*English*]

**The Acting Chair (Mr. Larry Miller):** Mr. Guimond.

[*Translation*]

**Mr. Claude Guimond:** Thank you, Mr. Chairman.

I need further clarification. On line 24, it says: "[...] fulfill any of the obligations of the Government of Canada [...]". What is an obligation of the Government of Canada? Give me an example, Mr. Kronby.

[*English*]

**Mr. Matthew Kronby:** I don't think this provision was drafted with specific examples in mind, but the free trade agreement is full of obligations, including, for example, Canada's obligations to reduce or phase out tariffs over time. That is one of the obligations Canada has taken on under the free trade agreement. That would be an example, but I don't want to leave the impression that this provision was inserted to deal with any problem related to that. As I think I've said several times now, it is a provision of "construction" for certainty. It's just to be clear that when the act speaks or doesn't speak, it doesn't interfere with Parliament's ability to enact legislation, to give effect to those obligations, or to otherwise fulfill any of the obligations.

**The Acting Chair (Mr. Larry Miller):** We'll call the question on clause 5.

Mr. Julian, do you want a recorded vote?

**Mr. Peter Julian:** No, actually, I'm speaking on the clause, Mr. Chair—

**The Acting Chair (Mr. Larry Miller):** Are you? Okay. Go ahead.

**Mr. Peter Julian:** The questions by Mr. Laforest and Mr. Guimond were extremely interesting and provoked other questions. It's good when members of Parliament actually engage in a clause-by-clause examination, Mr. Chair. As I'm sure you know, part of why we're paid to be here is to ensure that we actually ask the relevant questions clause by clause, and not simply rubber stamp bills, which would be completely inappropriate.

**The Acting Chair (Mr. Larry Miller):** Of course, and listening intently with amazement is very good.

**Mr. Peter Julian:** Well, I know you are, Mr. Chair, and I appreciate that.

So the issue is that “nothing in this Act...is to be construed to affect in any manner the right of Parliament to enact legislation” or to fulfill the government's obligations under the agreement. But if we come back to the issue that's arisen around the investor-state provisions, which is a matter of some real concern, it would not cover the right of Parliament to enact legislation, which would still be subject to provisions such as the investor-state provisions. Is that not correct?

**Mr. Matthew Kronby:** I'm not quite sure I follow the question. When you say the right of Parliament to enact legislation is subject to the investor-state provisions, could you maybe be a little more specific?

● (2040)

**Mr. Peter Julian:** Well, for example, the right of Parliament to legislate against neurotoxins was, in a sense, affected by NAFTA provisions. In the investor-state lawsuit that was launched then, what we ended up seeing were individuals, the taxpayers of Canada, having to cough up money to this company, Ethyl Corporation, that was challenging the right of the Government of Canada and Parliament to make those rules.

So what I'm saying is that the right of Parliament to enact legislation or the right of the government to make a decision is circumscribed to a certain extent by investor-state provisions. Is that not true?

**Mr. Matthew Kronby:** I'd just like to focus on this provision, if I may. This provision says that nothing in this act prevents Parliament from implementing a provision of the agreement or fulfilling obligations of the government under the agreement. I don't want to get into a debate about your characterization of the case you mentioned, and without accepting that characterization, this provision does not say that the government, by virtue of this act or by mention or omission in this act, is entitled to breach obligations in the free trade agreement. If the breach of those obligations were to give rise to a claim under your example of investor-state provisions, that's the way it is. That's what happens when you take on obligations. This provision doesn't address that, though.

**Mr. Peter Julian:** Could you identify for us the later clauses in the bill that deal with breaches of the agreement, just so we know? I ask because you certainly have a good knowledge of the legislation, and that's why we bring you forward. We appreciate that.

I just ask so that we can flag these clauses later on. I have my own feelings on this, but it would be helpful to have you provide us with the clauses of Bill C-2 that deal with breaches.

**Mr. Matthew Kronby:** Maybe we could do that as we get to those clauses. I wouldn't want to overlook anything here. So maybe rather than going through all of Bill C-2 now and discussing what it does or doesn't do, it would be easier to address that when we get to a clause.

**Mr. Peter Julian:** That's a fair comment. Of course, this illegitimate process doesn't really allow us to work our way through in a way that a responsible committee normally would, but I certainly understand your point.

**Mr. Gerald Keddy:** I think we're ready for the question.

**The Acting Chair (Mr. Larry Miller):** Mr. Laforest.

[*Translation*]

**Mr. Jean-Yves Laforest:** Thank you, Mr. Chairman.

In clause 5, it says “[...] nothing in this Act, by specific mention or omission, is to be construed to affect in any manner the right of Parliament to enact legislation to implement any provision of the Agreement or a related agreement [...]”.

Does that mean that Parliament can pass or conclude related agreements that are not included in this legislation? We discussed this earlier, with respect to the definitions and interpretation section. It talks about related agreements negotiated by Canada, but it does not refer to the related agreement on human rights that has just been signed with Colombia.

Does this clause mean that Parliament can adopt related agreements that contain provisions that say the opposite of what some of the clauses in this bill say? In a way, this clause says that at no time can the provisions of an act interfere with the power of Parliament, which remains sovereign in relation to its choices, decisions, and even signing related agreements that would conflict with clause 4, for example, which we were discussing earlier, and which says that “nothing in this Act applies to surface or groundwater”.

Supposing Canada signs a related agreement, that is not currently included in the legislation, that conflicts with clause 4, which we were discussing earlier. Canada could ultimately do that; Parliament could adopt a related agreement. Parliament decides to do that, and it conflicts with one or two provisions of the Act. So, what is the point of enacting legislation if a Parliament is then given the power to contradict itself by signing another agreement—in particular, a related agreement?

The perfect example was given earlier. I asked why no one had thought of immediately including the related agreement on human rights in this bill. What that means is that the entire bill was drafted on the basis of the related agreements that are mentioned—in particular, the ones dealing with labour cooperation and the environment—even though a great many witnesses told us last fall that respect for human rights is a considerable problem in Colombia. That means that this bill was drafted without any consideration being given to that issue and that a related agreement could be signed after the fact that does consider it. It looks as though it wasn't even considered, since no clause actually refers to it. That has the effect of utterly diminishing its importance.

Is that what this clause means?



• (2045)

[English]

**Mr. Matthew Kronby:** What this clause means is what it says. What it says is that nothing in this act, whether by mention or omission, affects in any way Parliament's power to implement legislation in respect of the agreement or related agreements, or to fulfill obligations that these agreements prescribe. It does not cover breaches of, or derogations from, obligations in those agreements. It simply doesn't address that. It is there for certainty, as a matter of construction, so that it is clear that Parliament has the authority to implement legislation to give effect to the agreement and the related agreements. The related agreements are the ones defined in the legislation.

[Translation]

**Mr. Jean-Yves Laforest:** I still find this odd. I go back to the example of a related agreement, which I cited earlier, that was not included when this bill was drafted. You have answered me, but your answer does not entirely satisfy me. The major issue is whether there will be others, whether other related agreements will be negotiated later with Colombia dealing with something that is not included here. The government could then sign an agreement that would conflict with certain aspects of this legislation. Clause 5 means that the government could ultimately conclude a related agreement which would create a conflict between this legislation and the agreement.

I may be wrong, but this provision doesn't satisfy me.

[English]

**Mr. Matthew Kronby:** This is not a conflicts clause. This is not a clause that addresses any real or perceived conflicts between different agreements the government may enter into. That's not what it's about. It's about making clear, just as a matter of construction, that Parliament has the authority, whether the act says so or doesn't say so, to implement by legislation provisions of the agreement or related agreements, or to fulfill obligations that Canada has undertaken under those agreements. That's what it says.

• (2050)

[Translation]

**Mr. Jean-Yves Laforest:** Fine.

[English]

**The Acting Chair (Mr. Larry Miller):** Thank you.

All those in favour of clause 5?

You're in favour, Mr. Julian?

**Mr. Peter Julian:** No, I'm asking for a recorded vote.

**The Acting Chair (Mr. Larry Miller):** Clerk?

(Clause 5 agreed to: yeas 6; nays 3)

(On clause 6—*Binding on Her Majesty*)

**The Acting Chair (Mr. Larry Miller):** This is a fairly complicated one.

Mr. Julian, you have a question.

**Mr. Peter Julian:** I just wanted to ask our guests to explain the clause.

**The Acting Chair (Mr. Larry Miller):** It's your prerogative, Mr. Julian. I like your thoroughness.

**Mr. Peter Julian:** I'm sure you're just as interested in this as I am.

If we had the time the committee should be spending on this, we could be much more thorough.

**Mr. Matthew Kronby:** I want to preface this by saying I'm not an expert in constitutional law; I'm a trade lawyer. But as the explanation says in the clause-by-clause guide, the Supreme Court of Canada has interpreted section 17 of the Interpretation Act to mean that in order for the crown to be bound by legislation, the legislation must say so expressly. That's what this provision does.

**Hon. Scott Brison:** I have very little experience in binding queens, but I would agree with Mr. Kronby's intervention. I think that would be accurate constitutionally.

**The Acting Chair (Mr. Larry Miller):** Thank you.

All in favour of clause 6?

**Mr. Peter Julian:** I'd like to request—

**The Acting Chair (Mr. Larry Miller):** You're in favour of it?

**Mr. Peter Julian:** I'd like a recorded vote.

(Clause 6 agreed to: yeas 6; nays 3)

(On clause 7—*Purpose*)

**The Acting Chair (Mr. Larry Miller):** We have—surprise—a number of proposed amendments by Mr. Julian. The first one is NDP-01, reference 4461815.

Mr. Julian, you have the floor.

**Mr. Peter Julian:** Thank you, Mr. Chair.

I'd like to start by asking our guests to explain the purpose of clause 7.

• (2055)

**The Acting Chair (Mr. Larry Miller):** It states that Bill C-2 in clause 7 be amended by replacing line 18 on page 3 with:

(h) promote sustainable development including sustainable human development.

**Mr. Peter Julian:** Sorry, Mr. Chair. I was asking our guests to explain the purpose of clause 7. After that we'll move to the amendments.

**The Acting Chair (Mr. Larry Miller):** It's your wish.

**Mr. Peter Julian:** Thank you, Mr. Chair. You're very kind and amenable.

**Mr. Matthew Kronby:** The purpose of the clause is to describe the purpose of the bill. As stated in the clause-by-clause guide, it is an expression of why the Government of Canada is introducing the bill. It is to implement the Canada-Colombia free trade agreement and the related agreements. It could also serve as an aid to interpreting this legislation after it is passed, if it is passed.

**Mr. Peter Julian:** If no other members of the committee have questions....

**The Acting Chair (Mr. Larry Miller):** Mr. Laforest.

[Translation]

**Mr. Jean-Yves Laforest:** Without wanting to repeat myself, clause 7 says: “The purpose of this Act is to implement the Agreement and the related agreements, the objectives of which, as elaborated more specifically through their provisions, are to [...]”

What follows is a series of paragraphs where it talks about establishing a free trade area; expanding reciprocal trade; promoting economic activity; providing fair conditions of competition; substantially increasing investment opportunities—that refers to a related agreement—; contributing to the removal of barriers to trade; enhancing and enforcing environmental laws and regulations—that, too, refers to another related agreement—; protecting, enhancing and enforcing basic workers' rights; strengthening cooperation on labour matters and promoting sustainable development.

At no time is mention made of another related agreement that may have been negotiated, that is not part of this agreement and which is not mentioned in the legislation. Once again, a specific clause in this bill clearly shows that it was not properly drafted because another related agreement is being negotiated at the same time, and in defining the purposes—including what the related agreements mean—there is no mention of the new agreement that has been negotiated.

In my opinion, that is rather odd. Once again, that was the point I was trying to make, and I am still wondering why no provision was made for inclusion of other items relating to human rights.

[English]

**The Acting Chair (Mr. Larry Miller):** Mr. Laforest, it's in clause 43. It was pointed out a couple of times. You may have stepped out when we were talking about that.

[Translation]

**Mr. Jean-Yves Laforest:** That is not at all what this means.

What I am trying to say is that clause 7 refers to related agreements—the ones discussed in clause 2. And the fact is that another related agreement was negotiated and signed on May 27—in other words, very recently. There is a whole series of paragraphs in clause 7. Clause 43 does not deal with this.

[English]

**The Acting Chair (Mr. Larry Miller):** Mr. Laforest, the one you're referring to from May 27 will be dealt with in an amendment—no, I'm sorry, not in clause 43—that is coming forth later that Mr. Brison referred to. Maybe Mr. Brison can help me out here. He's back to the agreement.

Is that correct, Mr. Brison?

• (2100)

**Hon. Scott Brison:** Yes, there will be an amendment tonight. In fact, it's already been submitted.

**The Acting Chair (Mr. Larry Miller):** Circulated?

**Hon. Scott Brison:** Yes.

**The Acting Chair (Mr. Larry Miller):** And I believe you have a copy there. Okay?

[Translation]

**Mr. Jean-Yves Laforest:** Yes, I have a copy. We haven't discussed it yet. But the bill was drafted...

[English]

**The Acting Chair (Mr. Larry Miller):** So what is...?

[Translation]

**Mr. Jean-Yves Laforest:** They certainly did not draft this bill with the expectation that Mr. Brison would be bringing forward such an amendment. It seems like a bit of a sham to have a clause in the bill that refers to related agreements, but not to the one that was signed afterwards and which Mr. Brison will be referring to in his amendment. I am simply wondering why—

[English]

**The Acting Chair (Mr. Larry Miller):** So are you happy that it's being addressed or not?

[Translation]

**Mr. Jean-Yves Laforest:** — why no provision was made for this in the bill. It seems to me that would have reflected a certain consistency with the testimony we received here regarding the importance of protecting human rights in Colombia. That is the question I am asking.

[English]

**The Acting Chair (Mr. Larry Miller):** Mr. Brison, do you want to speak to that?

**Hon. Scott Brison:** I'll draw to the attention of my colleague the human rights treaty signed on May 27 by both Colombia and Canada in Bogota at 11 a.m. Bogota time. And that's a binding agreement on both Canada and Colombia. The amendment, which my colleague has a copy of, refers to that agreement. But it's a binding treaty with the same powers of a trade agreement or any other agreement between two sovereign countries.

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, you indicated you were ready to move on to your amendment.

**Mr. Peter Julian:** Yes, I am, Mr. Chair. Thank you very much.

The first is, of course, amendment NDP-01, and it would amend paragraph (h), from “promote sustainable development” to add the words, “including sustainable human development”, Mr. Chair. And I'll speak to that.

From the partially aborted hearings we had, which excluded a number of the organizations that wanted to come before this committee, it was very clear that neither the agreement as is nor any of the so-called amendments to it really dealt in a fundamental way with the issue of human rights. People from a wide spectrum of backgrounds—from human rights organizations, from labour organizations—are concerned that this agreement does not in any way respect the broad concerns that are out there in Canadian society about the human rights situation in Colombia.

The fact that we have the secret police of the government, the paramilitary, and military forces systematically killing with impunity—those are the words used by these human rights activists—shows that issues such as this need to be dealt with.

So the issue of promoting sustainable development goes beyond that to sustainable human development, which allows the appropriate definition of human development as being quality of life. It allows the people of Colombia to live in a state where their human rights will be fundamentally respected. Having the Colombian government report on itself is not any vehicle to have the actual issue—

**A voice:** That's not correct, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** There is a point of order.

**Hon. Scott Brison:** I have a point of order, Mr. Chair.

I draw attention to and can provide a copy to the honourable member of the agreement signed between Colombia and Canada. In fact it requires the Canadian government to do a report on—

**Mr. Peter Julian:** That's not a point of order.

**Hon. Scott Brison:** No, but it's a point of truth, which the honourable member ought to acquaint himself with periodically.

**Voices:** Oh, oh!

**An hon. member:** We have to be accurate.

**The Acting Chair (Mr. Larry Miller):** I think it is a point of order, because it corrects something that's on the record. Thank you, Mr. Brison.

Mr. Julian.

**Mr. Peter Julian:** Thank you, Mr. Chair.

Of course, as Mr. Brison knows, if he really wanted to hear from human rights organizations or labour organizations, he would have allowed them to come before the committee.

The evidence was pretty preponderant that folks were giving a thumbs down to this idea that the Colombian government report on itself. That is why, Mr. Chair, we're now in the state we are in, in which the Speaker is going to have to rule to what extent—

• (2105)

**The Acting Chair (Mr. Larry Miller):** There is a point of order.

**Hon. Scott Brison:** If in fact human rights organizations believed my colleague that in fact this agreement was one that only required Colombia to report on themselves, I wouldn't blame them for making the wrong conclusion, because they were being provided with the wrong information. If they in fact read the agreement, which I suspect some of them will in time, they will probably see the merit of it.

But again, if they were to base their decision concerning the merit of the agreement on the information, or rather misinformation, of Mr. Julian, then I wouldn't blame them for drawing the wrong conclusion.

**The Acting Chair (Mr. Larry Miller):** That may not have been a point of order, but it was a great clarification. Thank you, Mr. Brison.

Mr. Julian.

**Mr. Peter Julian:** Thank you very much, Mr. Chair.

Actually, as Mr. Brison knows, letters are starting to come in, because finally, after many weeks and many people asking him, there is information out there. It will be interesting to see, as

certainly the e-mails I've been getting even this evening have indicated that people have read the agreement and realize that it does exactly as many people feared: it allows the Colombian government to report on itself. People don't find that particularly strong, given the depth and breadth of the human rights violations that are ongoing in Colombia, Mr. Chair.

That's the point. That's why I'm offering this amendment, among many amendments that hopefully we'll be considering over the course of the next few hours, Mr. Chair.

In a committee hearing that is responsible and does its due diligence, it would take many, many hours to go through this agreement and provide the kinds of amendments and adjustments that would ease the many, many concerns that have been raised across the country, Mr. Chair.

I've been to many public meetings. They've always been full. With very few exceptions, people who have raised concerns about Colombia have been 98% or 99% of the people present at these meetings. I have not seen any similar meetings of the public at which the public has said they feel the Colombian government's reporting on itself is an appropriate way of dealing with the human rights violations.

Be that as it may, Mr. Chair, providing a sustainable human development is—

**The Acting Chair (Mr. Larry Miller):** There is a point of order.

**Hon. Scott Brison:** Mr. Chair, again I draw the honourable member to the binding agreement, the treaty between Canada and Colombia, which in fact requires Canada to report on human rights in Colombia and the impact of the FTA, and also the Colombian government, and of course on Canada as well.

The honourable member is either obtuse or dishonest, and I will assume it's the former, because he is an honourable member. I am certainly trying to be constructive and help him understand this. It's in plain black and white and signed in English, French, and Spanish. I would urge him to read that agreement, because I'm certain he wouldn't intentionally disseminate information that he knows is false.

**Mr. Peter Julian:** That's not a point of order, Mr. Chair, and I was actually completing my comments on the amendment, but Mr. Brison's intervention has, of course, made me react by citing what was in the document that was tabled in the House. I'll read it very clearly, Mr. Chair, so that it's there for the record: "The Agreement concerning Annual Reports on Human Rights and Free Trade will not require additional resources." It "will not require additional resources", Mr. Chair. If that's not vacuous—saying that what we get is rubber-stamping of a report produced by the Colombian government—I don't know what is.

But as I say, Mr. Chair, I think the public, now that it finally has a copy of it, will be weighing in on this. It has been withheld for far too long and only brought out as closure was being pushed upon the committee—I think understandably, because Mr. Brison knows full well that witnesses coming before this committee would have ripped this cheap and tawdry amendment to shreds.

• (2110)

**Hon. Scott Brison:** Mr. Chair, I've been called cheap and tawdry by better people than the honourable member.

**Mr. Peter Julian:** That's unparliamentary.

With that, Mr. Chair, I will move my amendment.

**The Acting Chair (Mr. Larry Miller):** Okay, and it's such a good one, I'd like to call the vote on it.

**Voices:** Oh, oh!

**Mr. Peter Julian:** Mr. Chair, I would ask for a recorded vote on that.

**The Acting Chair (Mr. Larry Miller):** Okay. There's a first for everything.

Madam Clerk.

(Amendment negated: nays 6; yeas 2)

**The Acting Chair (Mr. Larry Miller):** We move on to amendment NDP-1.

**Mr. Peter Julian:** Yes.

So we go back to page 2, Mr. Chair, line 36. It would read “the harmonious and sustainable development of” as opposed to “harmonious development of economic relations between Canada and the Republic of Colombia”.

Mr. Chair, I'll speak very briefly to this. Of course, the issue around environmental devastation in parts of Colombia is something that came up in the aborted hearings this committee started to have prior to closure and to what we've gone through today, which of course will be decided in another place, Mr. Chair.

Most Canadians believe in sustainable development, and I think adding that to the purpose of the agreement would help in some small way to address the egregious problems that have been identified with the agreement.

**The Acting Chair (Mr. Larry Miller):** Okay. Is there discussion on the amendment.

All in favour of amendment NDP-1—

**Mr. Peter Julian:** Mr. Chair, if I could....

I'm sorry...?

[*Translation*]

**Mr. Jean-Yves Laforest:** We would like a recorded vote, Mr. Chairman.

[*English*]

**The Acting Chair (Mr. Larry Miller):** You're voting in favour of it?

Oh, he has asked for a recorded vote.

**An hon. member:** I have a point of order, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** Yes?

**Mr. Gerald Keddy:** Yes, I very clearly heard you ask for a recorded vote. I realize there are a number of committee members who want to delay and obfuscate and mislead the general public, who are now able to listen to this discussion, but the reality is that we have to respect the chair, and we also have to respect every other member of Parliament at this committee table.

The reality is, Mr. Chairman, that you very clearly asked for a vote. Anyone who had an intervention prior to that should have made that intervention. We can't continually back up all evening and ignore the chair and then ask after the fact to intervene. It would be the same as if we went back and revisited the questions we had already voted on.

**The Acting Chair (Mr. Larry Miller):** Mr. Keddy, I agree on that. Actually, Mr. Laforest asked for a recorded vote.

[*Translation*]

**Mr. Jean-Yves Laforest:** On a point of order, Mr. Chairman.

I simply asked for a recorded vote. I don't see why Mr. Keddy is getting on his high horses. I did not ask to speak; I asked for a recorded vote.

• (2115)

[*English*]

**The Acting Chair (Mr. Larry Miller):** Madam Clerk, call the recorded vote, please.

(Amendment negated: nays 7; yeas 3)

**The Acting Chair (Mr. Larry Miller):** We'll now move on to NDP-2.

Mr. Julian, do you want to read your amendment into the record, or would you like me to? It would be better if you did, I think.

**Mr. Peter Julian:** Well, you speak very well too, Mr. Chair, but it might be easier, just because I'm matching it up.

It is that line 14 on page 3 would be changed to read:

[work]ers' rights, including the right to collective bargaining, strengthen cooperation and build

The issue of the right to collective bargaining, Mr. Chair, is fundamental to this. Even though many of the largest labour associations in Canada, including the Public Service Alliance of Canada, the national union of provincial government employees, and the umbrella group, the Canadian Labour Congress, were all denied the opportunity to come before this committee, and even though, Mr. Chair, not a single non-governmental, non-regime-linked labour union was able to testify on Bill C-2 before this committee, which many, I think, Mr. Chair, will suggest is an absolute outrage....

In fact, they are quite right in that. It is outrageous that not a single Colombian labour union—

**The Acting Chair (Mr. Larry Miller):** Mr. Brison.

**Hon. Scott Brison:** Chair, I believe that in fact Walter Navarro gave testimony before this committee on Bill C-2 on behalf of 12 private sector unions in Colombia, the private sector unions that are actually impacted by free trade agreements, as opposed to the public sector unions, which only have an ideological relationship with their brethren and comrades to these kinds of agreements.

I just wanted to clarify, because I think the honourable member might remember that.

**The Acting Chair (Mr. Larry Miller):** Thank you. I wasn't here, but I will take your excellent memory for what it is.

Mr. Julian.

**Mr. Peter Julian:** Thank you, Mr. Chair. It's so sad—it boggles the mind—that Mr. Brison at this point would not be aware that the regime-linked unions represent fewer than 10% of the workers who are still unionized in Colombia, subject as they are to significant paramilitary action, killings, threats, on an ongoing basis.

To suggest that the regime-linked unions in some way credibly speak for the entire Colombian labour movement and that this committee was right to deny all Colombian unions that are not regime-affiliated the ability to come to speak before committee, or that it's somehow permissible and acceptable to have the CLC denied, the Public Service Alliance of Canada denied, NUPGE denied, and other labour unions and labour representatives in Canada who wanted to come before the committee—that somehow that's all okay.... I'll have to vehemently disagree, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** On a point of order, Mr. Brison.

**Hon. Scott Brison:** Mr. Chair, if Mr. Julian is suggesting that everybody in Colombia who supports these FTAs is regime-linked, then I would draw his attention to the recent round of presidential election votes in Colombia, where the Polo party garnered only 8% or 9%, I think it was.

• (2120)

**Mr. Brad Trost:** It was 9.16%.

**Hon. Scott Brison:** So is he suggesting that 91% of Colombians who support these FTAs are regime-linked?

**Mr. Gerald Keddy:** Democracy is wrong, I'm telling you right now.

**The Acting Chair (Mr. Larry Miller):** It is great factual information. Thank you, Mr. Brison.

Mr. Trost, did you have a point of order?

**Mr. Brad Trost:** I guess the question that I was going to ask is on the point Mr. Julian seems to be making that his clause is needed to protect union workers—maybe I'm wrong and maybe he can answer this—who are opposed to the regime, in his terminology, whatever that means. But my understanding is that there have been union leaders who have been killed because they supported the free trade agreement with Canada. In fact, my understanding is that some union leaders apologized to Minister Blackburn when he was down there that they couldn't have many people meeting with him because they were at a funeral for a union leader who was killed by leftists because he'd supported the free trade agreement.

My point is, is he building in protection just for those opposed to the agreement, or is he building in protection for people who are union leaders who are also supportive of the agreement?

**The Acting Chair (Mr. Larry Miller):** On a point of order, Mr. Guimond.

[Translation]

**Mr. Claude Guimond:** Could I comment on what Mr. Trost just said? I don't think that by not unionizing Colombians—

[English]

**The Acting Chair (Mr. Larry Miller):** Mr. Julian has the floor. You can after that.

**Mr. Peter Julian:** Mr. Chair, I'm

[Translation]

stunned. That is the only word I can use in a case like this. To suggest, in any shape or form, that it is acceptable for someone to be killed because of a union connection is something we are vehemently opposed to. Everyone's human rights must be respected.

I am not aware of the case mentioned by Mr. Trost, but it would be just as bad in any case, whatever it might be. We will certainly be following up on this, but the reality is that, in this Committee, we didn't hear from people representing the Canadian union movement, and particularly the largest central union bodies, nor did we hear from the umbrella group that represents Canadian unions. And we didn't hear from any Colombian union that is not connected to the current regime.

Personally, I support the fact that the regime-linked union testified, because it is important to hear from all union groups. But to say that we are simply going to wipe off the map all those who are against the aims of the current regime is quite another thing.

I will let representatives of the union movement make their own comments in the coming days. There is no doubt that everyone is going to be disturbed by the decisions that were made today.

[English]

Just before I turn things over to Monsieur Guimond, I'm coming back to the fact that the right to collective bargaining is a fundamental right, and we should be putting it in the purpose of the agreement if we believe in labour rights.

**The Acting Chair (Mr. Larry Miller):** Okay.

Mr. Guimond.

[Translation]

**Mr. Claude Guimond:** Thank you, Mr. Chairman.

I, too, am stunned at hearing these kinds of comments. As I understand it, if we don't want any union activists to be killed, all we have to do is ensure that no one else is going to be unionized in Colombia. It absolutely bowls me over to hear comments like that, Mr. Chairman.

I believe Mr. Julian's amendment, which would appear on line 19 of the French version of the clause we are considering, would be a fabulous gift for the people of Colombia. If we could add to the current wording, which says "protect, enhance and enforce basic workers' rights", by including the right to collective bargaining, what harm could it possibly do to us? It would be a wonderful gift for them.

Personally, I am a farmer in Quebec, I have been a union activist all my life, and I am happy to have had that right. We have built some great things in Quebec and Canada thanks to unions.

Why not offer this to the Colombian people? I really don't understand these kinds of comments, Mr. Chairman. Why not accept this amendment? I don't understand.

[English]

**The Acting Chair (Mr. Larry Miller):** Mr. Keddy, on a point of order.

**Mr. Gerald Keddy:** Mr. Chair, we are so far off the amendment and off the subject. There are two points I'd like to make fairly quickly.

The first is in defence of Mr. Trost's statement. It was an expression about the violence that's inherent in Colombian society, and the way you change the violence that's inherent in Colombian society is to allow people to find jobs and opportunity and pick themselves up.

Finally, Mr. Chairman, on the issue of the labour agreement, I would have thought that certainly the socialist party would have read it—I'm not sure they have—and I would have thought the Bloc might have even taken the time to read the labour agreement as well. Certainly, collective bargaining is a key component in it.

• (2125)

**The Acting Chair (Mr. Larry Miller):** Thank you.

Mr. Laforest.

[Translation]

**Mr. Jean-Yves Laforest:** Mr. Chairman, I simply wanted to say to Mr. Julian that I fully support his amendment with respect to the right to collective bargaining for workers.

When a society in which workers and everyone else see their rights infringed, as is the case in Colombia... When you see all the social progress that occurred in Canada and Quebec as a result of wide-spread unionization and workers being given the right, through legislation in Canada, to collective bargaining, well, there is no doubt that society has improved. And it's the same—

**The Active Chair (Mr. Larry Miller):** Mr. Laforest—

**Mr. Jean-Yves Laforest:** I don't understand why you are cutting me off.

[English]

**The Acting Chair (Mr. Larry Miller):** Mr. Laforest, you're basically repeating what Mr. Guimond said, and I think your point is taken. This is not a debate about unions; it's a debate about the amendment.

[Translation]

**Mr. Jean-Yves Laforest:** No, I am not repeating what Mr. Guimond said. I'm sorry, Mr. Chairman, but I am going to raise a point of order. I'm sorry, but I am not at all saying what Mr. Guimond said. He said what he had to say. Mr. Guimond—

Yes, it's a point of order.

[English]

**The Acting Chair (Mr. Larry Miller):** Get back to the point or I'm going to rule you out of order.

[Translation]

**Mr. Jean-Yves Laforest:** Mr. Guimond said he had been a unionized worker and that he had experienced certain things as a result. What I am saying is that society as a whole, in Quebec and Canada, progressed from the moment when we enshrined the right to collective bargaining and the rights of workers.

What Mr. Julian is proposing in his amendment is to provide the same thing to Colombian workers. I do not see how anyone could oppose this kind of proposal, when we know that a lot of people who appeared before us said that their rights are being infringed—

[English]

**The Acting Chair (Mr. Larry Miller):** Mr. Laforest, you're away on a tangent and I—

[Translation]

**Mr. Jean-Yves Laforest:** It is absolutely on the topic of the amendment, Mr. Chairman.

[English]

**The Acting Chair (Mr. Larry Miller):** I appreciate your passion, but let's get back to the amendment that's out there. We're not talking about unions in Canada.

[Translation]

**Mr. Jean-Yves Laforest:** I am talking about the amendment. I am making a comparison, Mr. Chairman. I'm trying to demonstrate why an amendment such as this is important. I am referring to Canadian unions because of the experience we have had here, obviously. I did not go to Colombia; I was not part of the Committee.

I think we should use our own experience in Canada and Quebec and give others an opportunity to benefit from it; we should be using a free trade agreement to promote progress in that society as well. We don't even have the courage to do that, and yet it says here: "protect, enhance and enforce basic workers' rights". There is one important way of doing that, and that is to say that they have the right to collective bargaining. But you don't want to do that. You prefer to remain silent, even though this is extremely important.

[English]

**The Acting Chair (Mr. Larry Miller):** Very good.

Mr. Julian.

**Mr. Peter Julian:** Mr. Laforest was completely in order, as you know, Mr. Chair. This is the fundamental heart of this issue. We have in Colombia what has been described as the worst situation for organized labour for free and collective bargaining on the entire planet. We have seen the killings on a regular and ongoing basis of unionized workers, labour representatives. As a result of all of this, what we have seen is a driving down of collective bargaining. More trade unionists are killed in Colombia than anywhere else on earth, Mr. Chair.

I'm sure all members of the committee, if they don't understand that at least at this point, they certainly haven't been listening to witnesses, the few witnesses we've had, before this committee, or a certain two parties around this table, invoked closure and tried to shut down all of the trade unionists and labour representatives who wanted to come forward.

The right to collective bargaining is pretty fundamental. Mr. Laforest and Monsieur Guimond have spoken very eloquently about that issue. And this is really the heart of whether or not we have members around this table who understand the dynamics in Colombia and understand that one of the fundamental problems is that the right to collective bargaining does not exist.

• (2130)

**The Acting Chair (Mr. Larry Miller):** Do you have a point of order, Mr. Cannis?

**Mr. John Cannis:** We sit around this committee wanting to move forward and do the country's business, but not to get insulted. When the witnesses came, when the president came, when other people came, on both sides, I think I understood what they told us. Mr. Julian is entitled to cite his statistics. Whether they are true or false, I'm not going to say. But we saw statistics that show that these crimes—the kidnappings, the murders—had been continuously declining over the years. For Mr. Julian to make that statement, I think, is inaccurate and it impugns the fairness of this committee.

**The Acting Chair (Mr. Larry Miller):** Thank you.

Mr. Brison, you had a point of order.

**Hon. Scott Brison:** No, I would like to ask our witnesses, Mr. Bouchard or Ms. Bugailiskis, for their views on two questions.

First, how robust is the Colombia labour rights agreement compared with others Canada has signed? Second, do Colombians have the right to collective bargaining? I'm asking these questions of our witnesses.

**The Acting Chair (Mr. Larry Miller):** Order, please.

Mr. Brison, I'd like to hear, too. But I want to be fair here, and Mr. Julian had the floor. If he'd give you time to get the answer, that would be fine.

**Mr. Peter Julian:** I know Mr. Brison is feeling sensitive because his amendment is not working too well, but the reality is that there are no collective bargaining rights when you risk your life by pushing for them.

**The Acting Chair (Mr. Larry Miller):** Order! I'm going to ask once: if any members want to go and have a meeting, please leave the table. Thank you.

Go ahead, Mr. Julian.

**Mr. Peter Julian:** Collective bargaining rights do not exist when you put your life in jeopardy by pushing for a collective agreement. If you try to push for better health and safety standards or a collective agreement, and you pay for that activity with your life, then free and independent collective bargaining does not exist. That is the point that many labour unions—

**The Acting Chair (Mr. Larry Miller):** Mr. Brison has a point of order.

**Hon. Scott Brison:** I would appreciate an opinion from our witnesses, our experts on Colombia, on whether or not Colombians have the right to collective bargaining, whether or not there are labour laws that are respected in Colombia, and whether or not the labour agreement that Canada has signed with Colombia is robust. I think, Mr. Julian, it would be important to hear from our witnesses.

**The Acting Chair (Mr. Larry Miller):** I'm not a judge, and likely never will be, but I would like to hear the answer to this. I think it's pertinent.

**Mr. Peter Julian:** It's not a point of order.

**The Acting Chair (Mr. Larry Miller):** No, it's not, but because you're being repetitive and our points of order or non-points of order are repetitive, in the interest of moving forward, I'm going to ask the witnesses. I want to hear the answers.

Mr. Kronby? Mr. Bouchard?

**Mr. Pierre P. Bouchard:** Thank you, Mr. Chair.

For the first question, yes, the right of collective bargaining is clearly laid out in Colombian law and, on top of that, Colombia has ratified the relevant ILO conventions with regard to that.

In Colombia, are labour rights respected? Colombia is a developing country. It is making its best effort to respect labour rights. We believe the government is making its best effort. We are supporting them and, through the labour agreement, they've certainly committed to a very high standard against which they can be evaluated.

With regard to the third question on how this labour agreement compares to other labour provisions negotiated in the context of free trade agreements previously by Canada, and by other countries with Colombia, this is, without any doubt, the most comprehensive labour agreement that has been negotiated in the world right now.

I'm going to make a distinction here that I think even some witnesses who appeared before this committee would not question. When I talk about comprehensive, I talk about the level of obligation. On the level of obligation, nobody disputes that in the commitments that were made on the level of obligation, we went beyond what was negotiated by any other country.

We now are starting informally to see the text of what was negotiated by the European Union with Colombia. The Canadian agreement goes much further than that. It even surpasses what was negotiated with the United States.

There is some debate as to the robustness of the agreement. We think it's very robust—just as robust—but there is an argument out there in civil society over the availability of trade sanctions to ensure compliance. We have mechanisms that ensure compliance by forcing government to pay penalties and resolve the issue, which we think in many cases actually would make the agreement more robust, but we acknowledge the debate out there on this particular point.

• (2135)

**The Acting Chair (Mr. Larry Miller):** Thank you, Mr. Bouchard. That does correct your statement—

**Mr. Peter Julian:** It certainly does not, Mr. Chair. It certainly does not. I will go further, Mr. Chair. Now, you've been amenable, so I allowed you to do that little circus act—

**The Acting Chair (Mr. Larry Miller):** Scott, you have the floor—

**Hon. Scott Brison:** Mr. Chair, the—

**Mr. Peter Julian:** Mr. Chair, every single trade union—

**Hon. Scott Brison:** Mr. Chair, the honourable member should not—

**Mr. Peter Julian:** —that has come before this committee from Canada has said very, very clearly that this was a matter of—

**The Acting Chair (Mr. Larry Miller):** Order.

**Hon. Scott Brison:** Mr. Chair, the honourable member has called the testimony of a senior public servant a circus act.

**An hon. member:** It's unbelievable.

**Hon. Scott Brison:** If that's the New Democrats' way of treating senior public servants when they appear before committee, I, for one, don't want to have any part of it. These are senior public servants who bring to committee their expertise and their passion for Canada and for our role in the world. They should not be referred to as a circus act.

**An hon. member:** That's right.

**The Acting Chair (Mr. Larry Miller):** I agree.

Mr. Julian.

**Mr. Peter Julian:** Mr. Chair, the point I'm making—and I hope Mr. Brison absorbs this because certainly the labour movement and labour representatives will be contacting him over the next few days—is to say that when every single labour movement that comes before this committee says very, very clearly that this issue of collective bargaining rights is fundamental, and that collective bargaining does not exist in Colombia when you have the ability, as paramilitaries have regularly, to kill those who are fighting for labour rights, that is a fundamental problem.

So we can throw around any types of terms that we want—

**The Acting Chair (Mr. Larry Miller):** Point of order, Mr. Keddy.

**Mr. Peter Julian:** —there is no validity from a single labour representative—

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, I have a point of order. Respect that. You know—

**Mr. Gerald Keddy:** Mr. Chair, with respect, we have witnesses here who are being abused atrociously. We have members who can't interject and get a chance to debate. We're repetitive on the issue. We have an amendment before us. With respect, I suggest we vote on it.

**The Acting Chair (Mr. Larry Miller):** And that's where I'm coming back....

Mr. Julian, you may not like the answer you got, and that's okay—

**Mr. Peter Julian:** It's not that I don't like the answer, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** No, Mr. Julian, hear me out.

**Mr. Peter Julian:** It's that every single—

**The Acting Chair (Mr. Larry Miller):** You have commented on it.

**Mr. Peter Julian:** Allow me to speak, Mr. Chair—

**The Acting Chair (Mr. Larry Miller):** If you have another point that you want to bring up, Mr. Julian, then I will allow it because you have the floor. If you're going to harp on the same thing, I am moving on to Mr. Guimond, end of story.

**Mr. Peter Julian:** I'm saying very clearly that every—

**The Acting Chair (Mr. Larry Miller):** Are you moving on to another point?

**Mr. Peter Julian:** No. I'm completing my point, Mr. Chair—

**The Acting Chair (Mr. Larry Miller):** Okay. Mr. Guimond, you have the floor.

[*Translation*]

**Mr. Claude Guimond:** Thank you.

[*English*]

**Mr. Peter Julian:** —which I have the right to do.

**The Acting Chair (Mr. Larry Miller):** No, you don't. Mr. Guimond now has the floor.

**Mr. Peter Julian:** Yes, I do, to complete my point—

**The Acting Chair (Mr. Larry Miller):** Mr. Guimond.

[*Translation*]

**Mr. Claude Guimond:** Thank you, Mr. Chairman.

Don't worry; I don't intend to repeat what I already said. I am simply trying to understand. Mr. Julian's amendment strikes me as extremely positive.

There is something I wasn't able to understand by asking a positive question, so I will try to put it in the negative. Why don't the Conservatives and Liberal want to accept this amendment? I would like to understand why. So, with your permission, Mr. Chairman, I would like to put the question to Mr. Keddy and Mr. Brison, so that I can understand. Why will they not accept an amendment which I see as extremely positive?



• (2140)

[English]

**The Acting Chair (Mr. Larry Miller):** Mr. Keddy, you've been asked a question by Mr. Guimond on why you don't want this amendment.

**Mr. Gerald Keddy:** Because the amendment—I'll answer the question quite quickly—is redundant. It doesn't take into effect how the bill works. It doesn't take into effect how collective bargaining works.

Actually, it's abuse of members' privilege; it's a delaying tactic, and nothing more than a delaying tactic, in this process.

**The Acting Chair (Mr. Larry Miller):** The amendment is pretty clear. I'm going to call the vote on the amendment.

All those in favour of the amendment?

**Mr. Peter Julian:** Mr. Chair, you cannot call the vote when there are still members who want to speak to the amendment—

**An hon. member:** [*Inaudible—Editor*]...vote.

**Mr. Peter Julian:** You cannot call the vote, as you know, Mr. Chair—

**The Acting Chair (Mr. Larry Miller):** Do you have another issue to bring up? If you're going to be repetitive—

**Mr. Peter Julian:** I'm not being repetitive, Mr. Chair, as you well know.

**The Acting Chair (Mr. Larry Miller):** Well, then, I'll wait until I hear your next few words.

**Mr. Peter Julian:** I am speaking to the testimony that this committee heard. Every single labour representative disagreed—

**An hon. member:** Not true—

**Mr. Peter Julian:** —with any interpretation of the labour side agreement as being—

**An hon. member:** Point of order.

**Mr. Peter Julian:** [*Inaudible—Editor*]...from Canada and every—

**The Acting Chair (Mr. Larry Miller):** I have a point of order here. I have Mr. Cannis and then....

**Mr. Peter Julian:** —single—

**The Acting Chair (Mr. Larry Miller):** On a point of order, Mr. Cannis.

**Mr. Peter Julian:** Mr. Chairman—

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, when I call a point of order, please zip it.

**Mr. John Cannis:** Mr. Chairman, thank you, sir.

I apologize.

We're prepared to hear, but I personally, sir, am not prepared to sit here and listen to inaccurate statements. I'll be polite; I don't like to use the word "lies" because it's not parliamentary, but these are inaccurate statements.

Please....

**The Acting Chair (Mr. Larry Miller):** Mr. Keddy, you had a point of order as well.

**Mr. Gerald Keddy:** I totally agree with Mr. Cannis' intervention. The reality is that we heard from a number of union leaders. We heard from a number of union members, not only at committee here, but in the last Parliament as well; we also heard from union members and union representatives when we had committee hearings in Colombia in the last Parliament. We've heard and heard and heard....

What we have here, Mr. Chairman, is strictly a delay in the parliamentary process because we have two parties in this House who cannot get what they want by any means other than obstruction and delay. They do not believe in democracy; they fundamentally are against it. It doesn't work for them. When they're outvoted on that issue, then we have a conflict—

**The Acting Chair (Mr. Larry Miller):** Thank you. That's not a point of order.

**An hon. member:** It's not a point of order.

**The Acting Chair (Mr. Larry Miller):** It's very clear to me. I mean, I don't want to or like to end debate, especially if I think it's fruitful, but it is very clear what the outcome is from the people here. I am going to call the vote. All those in favour of the amendment?

**Mr. Peter Julian:** Point of order, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** Are you asking for a recorded vote?

**Mr. Peter Julian:** Mr. Chair, I'm saying—

**The Acting Chair (Mr. Larry Miller):** You're not asking for a recorded vote?

**Mr. Peter Julian:** —you cannot call the previous question—

**The Acting Chair (Mr. Larry Miller):** Are you calling for a recorded vote?

**Mr. Peter Julian:** I want to speak on the—

**The Acting Chair (Mr. Larry Miller):** You're not? Okay. All those in favour of the amendment?

**Mr. Peter Julian:** Mr. Chair, you cannot call the previous question. I have a point of order: page 1,055—

**The Acting Chair (Mr. Larry Miller):** All those in favour of the motion?

**Mr. Peter Julian:** Point of order, Mr. Chair—

**The Acting Chair (Mr. Larry Miller):** All those opposed to the motion...the amendment? All those opposed?

**Mr. Peter Julian:** Point of order—

(Amendment negated)

**The Acting Chair (Mr. Larry Miller):** The amendment is defeated. We now move on to NDP amendment 3.

**Mr. Peter Julian:** Point of order, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** It's not a point of order.

**Mr. Peter Julian:** Yes, it is a point of order, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** No it isn't.

NDP amendment 3—

**Mr. Peter Julian:** Mr. Chair, I'm asking you to ask the clerks whether a previous question can be put in the manner that you just did when a member of the committee has indicated they want to speak on the issue.

**The Acting Chair (Mr. Larry Miller):** I gave you the chance to speak; you just want to be repetitive.

**Mr. Peter Julian:** Could you please consult the clerks on that issue, Mr. Chair?

**The Acting Chair (Mr. Larry Miller):** Amendment number 3: do you care to read it into the book, Mr. Julian?

**Mr. Peter Julian:** Mr. Chair, the point of order stands. I've asked you to consult—

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, do you want it or not? If you don't read it in, we're moving on to the next one.

**Mr. Peter Julian:** You cannot, Mr. Chair, simply throw out the rule book.

**The Acting Chair (Mr. Larry Miller):** It's not a matter of throwing it out—

**Mr. Peter Julian:** Sorry, the rules are there to be followed, Mr. Chair. I've asked you to ask the clerks—

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, do you want to read amendment number 3 into the books?

**Mr. Peter Julian:** I've asked you to ask the clerks whether you or members of this committee have the ability to call the previous question when a member of the committee has indicated they want to speak an amendment to a motion.

**The Acting Chair (Mr. Larry Miller):** It has already been called. I gave you a chance. You didn't want to speak to a new part of it that hadn't been spoken to.

**Mr. Peter Julian:** [*Inaudible—Editor*]

**The Acting Chair (Mr. Larry Miller):** I moved on to Mr. Guimond. I gave you another chance. You're still not there, so—

**Mr. Peter Julian:** Mr. Chair, I said repeatedly that I wanted to speak to this issue.

**An hon. member:** Challenge the chair.

**Mr. Peter Julian:** There were fundamental inaccuracies—

**The Acting Chair (Mr. Larry Miller):** Challenge the chair.

**An hon. member:** Are you challenging the chair?

• (2145)

**Mr. Peter Julian:** No. I'm asking you to ask the clerks. I'm asking directly. I am directing—

**The Acting Chair (Mr. Larry Miller):** If I need to ask the clerks something, they're right here, I know. They're very close by, Mr. Julian.

**Mr. Peter Julian:** Mr. Chairman, you already have the... [*Inaudible—Editor*].

**The Acting Chair (Mr. Larry Miller):** Amendment number 3, Mr. Julian, if you want—

**Mr. Peter Julian:** For that very reason—

**The Acting Chair (Mr. Larry Miller):** You're out of order, Mr. Julian. That is it—

**Mr. Peter Julian:** Mr. Chair, you have to respect the rules of order.

**The Acting Chair (Mr. Larry Miller):** That's right, and you respect them, too. You either call to overrule me—

**Mr. Peter Julian:** I've asked you to ask the clerks whether you can—

**The Acting Chair (Mr. Larry Miller):** Do you want amendment number 3 in the books or not?

**Mr. Peter Julian:** I've asked you to ask the clerks. The clerks are here for all of us.

**The Acting Chair (Mr. Larry Miller):** If I need advice or a resource I know where to find it, Mr. Julian, and it sure as hell won't be you.

**Mr. Peter Julian:** The clerks are there for all of us—

**Hon. Scott Brison:** Mr. Chair, I really hate it when you two fight. I just wish you would get along.

**Some hon. members:** Oh, oh!

**The Acting Chair (Mr. Larry Miller):** Thank you.

We are now on to the next amendment if you care to go ahead with your amendment, Mr. Julian.

**Mr. Peter Julian:** Mr. Chair, we have not considered the last amendment.

**The Acting Chair (Mr. Larry Miller):** Mr. Cannis.

**Mr. John Cannis:** Mr. Chairman, you know, I've always been known to be a fair and transparent person. I think you could give Mr. Julian a slight opportunity, providing, of course, that he's accurate with his statements. I will agree to that. But the first moment I detect he's being inaccurate with his statements, then you cut it off. Is that fair?

For example, the previous statement he made was inaccurate—

**An hon. member:** This won't take long.

**Some hon. members:** Oh, oh!

**Mr. John Cannis:** Well, I'm just trying to find a solution to this.

**The Acting Chair (Mr. Larry Miller):** First of all, it's nice of you to offer that olive branch. However, I'm not going to hear anything on the same rhetoric as we heard before, from either side. If you have something new.... I mean, we've already passed this, or I should say defeated it, so I really don't even like to—

**Mr. Peter Julian:** We didn't even have a vote on it, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** Oh yes, we did have a vote on it: you just chose not to.

**Mr. Peter Julian:** Mr. Chair, you did not allow a vote on collective bargaining and that is something that will be out in the public domain, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** Well, of course we did: you just chose not to vote.

**Mr. Peter Julian:** You did not allow a vote on collective bargaining and that will be out there.

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, you're going to have a chance here, by the good graces of myself. If you want to come forth with another argument, you have 30 seconds to do so. Now start.

**Mr. Peter Julian:** On the collective bargaining issue—

**The Acting Chair (Mr. Larry Miller):** Yes. Now start, and it had better be different, or I'm going to cut you off again. It's as simple as that.

**Mr. Peter Julian:** On the collective bargaining issue...?

**The Acting Chair (Mr. Larry Miller):** If it's repetitive, I will cut you off.

**Mr. Peter Julian:** And, Mr. Chair, just so you can explain your ruling, then, explain what you consider to be repetitive—what categories. Now, I've talked about a number of different areas. Explain to me which areas you consider repetitive.

**The Acting Chair (Mr. Larry Miller):** I'll let you know when I hear it.

**Mr. Peter Julian:** Well, Mr. Chair, that's not very fair, is it?

**The Acting Chair (Mr. Larry Miller):** Well, I think it's very fair.

**Mr. Peter Julian:** Certainly not, Mr. Chair, I beg to disagree.

**Some hon. members:** Oh, oh!

**Mr. Peter Julian:** On collective bargaining—

**The Acting Chair (Mr. Larry Miller):** Let's not play on words here—

A point of order, Mr. Bezan?

**Mr. James Bezan (Selkirk—Interlake, CPC):** Yes, on a point of order, I'm just going to quote from the rules and procedures that govern us as parliamentarians. I'm going to start back at chapter 20, on page 1,030, with the procedural responsibilities of the chair. Essentially, the chair presides over the meeting and oversees committee work: "They are responsible for maintaining order and decorum in committee proceedings, and rule on any procedural matter that arises, subject to an appeal to the committee".

You've made a ruling. The committee can appeal. So I'll go back to our privileges and immunities as members, in chapter 3, on pages 150 and 151, where it states, "The role of the Chair in such instances is to determine whether the matter raised does in fact touch on privilege and is not a point of order, a grievance, or a matter of debate".

That is what you've already done. You've moved on. It goes on:

If the Chair is of the opinion that the Member's interjection deals with a point of order, a grievance or a matter of debate, or that the incident is within the powers of the committee to deal with, the Chair will rule accordingly, giving reasons. The committee cannot then consider the matter further as a question of privilege.

Should a Member disagree with the Chair's decision, the Member can appeal the decision to the committee (i.e., move a motion "Shall the decision of the Chair be sustained?"). The committee may sustain or overturn the Chair's decision.

So you're disagreeing with the chair's decision. We've already gone past it. The chair has made a decision. Let's move on to the next amendment.

**The Acting Chair (Mr. Larry Miller):** Thank you.

Actually, on that, Mr. Julian, the clerk just was telling me that before Mr. Bezan started to speak.

We are on NDP amendment 3. The other one was defeated four to zero and we have moved on.

**Mr. Peter Julian:** Mr. Chair, as you said—

**The Acting Chair (Mr. Larry Miller):** So what Mr. Bezan said has been confirmed, so we are on...

Do you care to move amendment 3?

**Mr. Peter Julian:** On NDP-2, Mr. Chair, I have concluded my arguments, and I call—

**The Acting Chair (Mr. Larry Miller):** We already concluded that one.

**Mr. Peter Julian:** No. There was no vote allowed. I call for a recorded vote on NDP-2.

Mr. Chair, I call for a recorded vote on NDP-2 on collective bargaining.

**The Acting Chair (Mr. Larry Miller):** Mr. Julian, if you don't want to call this amendment—

**Mr. Peter Julian:** I call for a recorded vote on NDP-2.

**The Acting Chair (Mr. Larry Miller):** —I am now going to call clause 7.

(On clause 7—*Purpose*)

Is there discussion on clause 7?

**Mr. Peter Julian:** Mr. Chair—

**The Acting Chair (Mr. Larry Miller):** We have no amendments, so we have clause 7 as a whole.

● (2150)

**Mr. Peter Julian:** Mr. Chair, I called for a recorded vote on NDP-2 and I now accept your decision on collective bargaining, so I have concluded my arguments. May we proceed to the vote that has not been allowed on collective bargaining?

**The Acting Chair (Mr. Larry Miller):** No. As I said, the clerk reminded me of that. We had already moved on and we have the total, Mr. Julian, so we are now on to....

If you're not moving this.... I'll give you one last chance for NDP-3, but if you don't want to move it then we're moving on to clause 7 as a whole.

**Mr. Peter Julian:** I will move NDP-3, Mr. Chair. We did not vote on collective bargaining. I think in the public there will be great concern about how this committee has acted. That will be out in the public domain over the next few hours, Mr. Chair.

On NDP-3, I certainly hope there will be votes that will actually occur, that will actually allow the vote on sustainable development. Now—

**Some hon. members:** Oh, oh!

**The Acting Chair (Mr. Larry Miller):** I'd ask you to please read the amendment, Mr. Julian.

**Mr. Peter Julian:** Thank you, Mr. Chair.

Paragraph (h) currently reads: “promote sustainable development”. This amendment would change paragraph (h)—and I certainly hope we get the opportunity to vote this time, Mr. Chair—and it would say: “promote sustainable development to protect the environment and natural resources of Canada and the Republic of Colombia”.

Mr. Chair, that would change the wording. It would provide for environmental protection. It would be a very small part of fixing a very, very bad agreement that people across the country are very clearly concerned about. This amendment is a small step in changing what is bad and egregious.

**The Acting Chair (Mr. Larry Miller):** Thank you.

Is there further discussion on the amendment?

**Mr. Peter Julian:** I ask that the vote be recorded, Mr. Chair.

**The Acting Chair (Mr. Larry Miller):** Thank you.

Madam Clerk, we have a recorded vote requested by Mr. Julian. Please call the vote.

[*Translation*]

**Mr. Peter Julian:** I'm glad we have an opportunity to vote on this, Mr. Chairman. We didn't vote on union rights, and that is extremely bad. Nevertheless, I will be voting yes on this motion.

[*English*]

**The Acting Chair (Mr. Larry Miller):** Is that a yes or a no?

**Mr. Peter Julian:** It's a yes, Mr. Chair.

(Amendment negatived: nays 6; yeas 3)

**The Acting Chair (Mr. Larry Miller):** The amendment is defeated. We'll move on to NDP-4.

**An hon. member:** We're on clause 7, Mr. Chair.

**The Chair:** Yes. The question now is actually on clause 7. Is there any debate on clause 7?

**Mr. Peter Julian:** Yes, Mr. Chair.

**The Chair:** Well, go ahead.

**Mr. Peter Julian:** Thank you, Mr. Chair.

[*Translation*]

**Mr. Claude Guimond:** Point of order, Mr. Chairman.

[*English*]

**The Chair:** We have a point of order.

[*Translation*]

**Mr. Claude Guimond:** Mr. Chairman, I have a point of order. I'm sorry, but we do not have the French translation. It's in English on both sides. It will be difficult for us to vote for or against it.

[*English*]

**The Chair:** That's shocking.

What are you doing, Mr. Julian? You don't give them a translation...?

[*Translation*]

**Mr. Claude Guimond:** The day is unfolding quite well; we're ending the same way we began.

**Mr. Jean-Yves Laforest:** It's only in the English version.

**The Chair:** Do you understand, Mr. Guimond?

**Mr. Claude Guimond:** Yes, that's fine. Thank you.

[*English*]

**The Chair:** Mr. Julian, go ahead.

•(2155)

**Mr. Peter Julian:** Thank you, Mr. Chair.

We're now on clause 7, and what was offered and what has been rejected, without even the right to vote on it, is collective bargaining rights.

Mr. Chair, as you know, given the witnesses who have come before this committee and those who wanted to come before this committee and have not been able to come forward because of the aborted committee process, we had, fundamentally, the question of collective bargaining and labour rights come up again and again and again.

Why? Because of the number of murders, of the repeated intimidation in the workplace, and the fact that people who do things in Canada that are legal put their lives on the line in Colombia.

So, Mr. Chair, to say that we would—after this despicable action around collective bargaining, and excluding even a free vote on collective bargaining in clause 7—then adopt this clause 7, when we know very clearly that those who fight for labour rights and for a bettering of working conditions of working women and men across Canada and around the world are very concerned about the lack of bolstering of collective bargaining.... They don't see the labour side agreement as credible. They certainly don't see any amendment that's been brought forward as credible. Now, again, Mr. Chair, we're seeing a situation where even a minor clause around purpose has been gutted and there has been a refusal to allow members to vote on the record on this issue.

For all those reasons, I'm opposed to clause 7 and I will be voting against it.

**The Chair:** Thank you.

Is there any further debate on clause 7?

Well, we have some dissent, so we'll ask for a vote on clause 7.

**Mr. Peter Julian:** Mr. Chair, I'd like to ask for a recorded vote on clause 7, please.

**The Chair:** We'd be pleased to do that. There will be a recorded vote.

(Clause 7 agreed to: yeas 6; nays 3)

**The Chair:** Clause 7 carries.

I just need to have clarification of the timing here. I beg the indulgence of the committee for a minute. I just wanted to see the timing of our motion that says "...and that six (6) hours following the start of clause-by-clause consideration...". There is a bit of a discrepancy in the points of view. We passed the motion at 4:01 p. m., six hours ago, but we had a minor point of order or something that delayed the commencement of clause-by-clause. We started clause-by-clause at about 4:30, I think.

Did somebody take note of the time? I'm now told that it was 4:30. There may be some debate on the motion, but for the difference of 29 minutes—and I'm sure we would probably have that talked out anyway—I think we'll just rule that we'll go until 10:30 p.m. to begin the vote.

So we have another half an hour of the pleasure of our departmental witnesses to respond to any questions. I thank you for your patience. Mr. Julian has kindly offered to contribute to babysitters tonight. And we'll proceed to clause 8.

(On clause 8—*Causes of action under Part 1*)

**The Chair:** We have an amendment from the NDP on clause 8.  
● (2200)

I think that is NDP-4, is it not?

**Mr. Peter Julian:** Well, first, of course, Mr. Chair, we have the explanation of the text for clause 8. I'd like to ask our witnesses for an explanation on the causes of action and what is contained in clause 8.

**Mr. Matthew Kronby:** Briefly, clause 8 prevents anyone from bringing a civil action or other legal proceeding based on a power or duty arising under part 1. In particular, the focus is on clause 15, the suspension of benefits under the bill, or from the free trade agreement itself, or a related agreement, without the consent of the Attorney General.

This is to prevent private lawsuits from being brought against governments or administrative bodies by private parties to enforce what they see to be obligations under the act. There is an exception in subclause 8(2), of course, and that exception is to permit two things. One is to permit investor-state dispute settlement as provided for in the free trade agreement. It also permits proceedings to enforce monetary assessment as provided under the agreement on labour cooperation.

**The Chair:** Thank you.

Mr. Julian, do you have anything further?

Okay. I think we've heard the debate.

Monsieur Laforest.

[*Translation*]

**Mr. Jean-Yves Laforest:** Mr. Chairman, I have a question for Mr. Julian regarding the amendment he is proposing to the English version, by adding the words: "No person, party or government".

What does that mean, given that his amendment does not amend the French version? I would like him to explain why the same words are not being added in French and what might be the effect of their absence in the French version.

[*English*]

**The Chair:** Mr. Julian, you've been asked a question. Would you give us the pleasure of an answer?

**Mr. Peter Julian:** I would be pleased to.

**The Chair:** We haven't heard enough from you tonight.

**Mr. Peter Julian:** I'm glad to hear you say that, Mr. Chair, though I'm not sure everyone on the other side would agree.

**The Chair:** I was away for a while.

[*Translation*]

**Mr. Peter Julian:** That's a good question and I'm going to answer it. In fact, if you compare the French and English versions, you will see there is a difference between the two. In the French version, subclause 8(1) says: "*Le droit de poursuite, relativement aux droits et obligations fondés uniquement sur la partie I ou sur les décrets d'application de celle-ci, ne peut être exercé qu'avec le consentement du procureur général du Canada.*" There is no cause of action without the consent of the Attorney General of Canada.

In the English version, it says "no person", but does not necessarily refer to a party or government. There is an imbalance between the two in terms of the legal basis in French and English—a problem that could be addressed by adding the words "party or government" after the words "no person". The construction of the two clauses is different and this would make them consistent.

● (2205)

[*English*]

**The Chair:** Monsieur Guimond.

[*Translation*]

**Mr. Claude Guimond:** Thank you, Mr. Chairman.

As I understand it, we run the risk of passing laws in this Parliament which are different, depending on whether they are drafted in English or in French. Is that right?

[*English*]

**The Chair:** Mr. Julian, could you explain?

[*Translation*]

**Mr. Claude Guimond:** I was asking you that question, Mr. Chairman. If I understand correctly, we have laws in this Parliament that are drafted in English and have a certain meaning. The same law, when drafted in French, has a different meaning. That's a little surprising! Is that a common practice?

[*English*]

**The Chair:** I recognize that. I don't know if that's the case. I wonder why—

[*Translation*]

**Mr. Claude Guimond:** I hope that we will have the correct answer before we vote on this bill.

[*English*]

**The Chair:** The difference seems to be in the amendment and not the bill, so I wonder why you would ask me. It's Mr. Julian who is proposing the amendment.

[Translation]

**Mr. Claude Guimond:** According to what Mr. Julian said, he is proposing an amendment because the English version is different from the French version. Did I get that right?

**Mr. Peter Julian:** The construction is different.

**Mr. Claude Guimond:** Well, that's not right.

**Mr. Jean-Yves Laforest:** I have a question for the witnesses, Mr. Chairman, if you don't mind.

[English]

**The Chair:** I understand what you're saying, but it really is a linguistic question. It's just a different interpretation of the words. There isn't a word in French for what is proposed in English.

[Translation]

**Mr. Claude Guimond:** This is important, Mr. Chairman.

[English]

**The Chair:** Monsieur Laforest.

[Translation]

**Mr. Jean-Yves Laforest:** I'd like to go back to Mr. Guimond's question, Mr. Chairman, and put it to our witnesses.

In the English version, it says "no person" has any cause of action, as I understand it, without the consent of the Attorney General of Canada. That is what this means.

In the English version, it says that no person has any cause of action whereas, in the French version, the word "person", is not mentioned; it only talks about a cause of action. It does not refer to someone, it only says "*le droit de poursuite*", but I imagine the same thing could have been said in English, or vice versa.

Why is that? In any case, the translation is wrong, in my opinion. Mind you, I am no expert. There may not be a big difference, but there definitely is a difference.

[English]

**The Chair:** No. Really, it's legal jargon.

Let me ask Mr. Kronby to explain.

**Mr. Matthew Kronby:** Thanks.

I'll say at the outset that it's not a question of translation. The bill, as with all government bills, is drafted concurrently in both official languages, with the involvement of expert drafters.

So what you're looking at is a matter of drafting convention. This is the way these ideas are expressed in each official language. The same wording or form of expression was used since this is a standard provision that was used in previous legislation, such as the Canada-Peru Free Trade Agreement Implementation Act.

I suggest, without being an expert myself on the fine nuances of French versus English, that this is something that has been examined carefully and is simply a question of drafting convention in the two languages.

**The Chair:** Mr. Julian.

**Mr. Peter Julian:** Thank you.

As you are well aware, there is an issue around the ability of judges in the Supreme Court to switch back and forth from English to French; in other words, to understand French as they understand English, and the person—

And yes, to understand English as they do French; Mr. Keddy is quite right.

So the issue is the person who did the editing or the revising of this text. Was it somebody who was able to edit and perfectly bilingually able legally to read through both clauses and understand that the...to eliminate the differences that exist, even if they are slight?

• (2210)

**Mr. Matthew Kronby:** As I say, I'm not an authority on the individual qualities or expertise of those particular drafters and reviewers at the Department of Justice who examined this legislation, but I can say that as a matter of course the people who engage in these exercises have a very high capacity in both official languages. That is a prerequisite for involvement in those activities.

**The Chair:** Okay. I think we get the point. It's really only legalese and jargon; it says the same thing. Anybody who is interpreting it in either official language would get it. It says you can't take action without consent of the Attorney General. It's pretty straightforward.

In any event, I think we've heard all we need to hear on that. Unless there's further debate, we'll call the question.

**Mr. Peter Julian:** I'd like to make it a recorded vote.

**The Chair:** Okay. So we're clear, we're voting on the amendment of Mr. Julian, which is NDP-4.

Mr. Julian, just a moment. I'm looking at your next one, NDP-5, and it seems to me it's consequential. Would you agree that a vote on NDP-4 would apply to NDP-5? It's a similar context; it seems to be consequential.

**Mr. Peter Julian:** You're right.

**The Chair:** All right. Thank you.

So we're voting on amendment NDP-4. It's my view that NDP-5 is consequential, so essentially we're voting on the same two at once here. Yippee.

Those in favour...? We're going to again have a recorded vote. Was that your request, Mr. Julian?

**Mr. Peter Julian:** Actually, Mr. Chair, given that it's a consequential vote, I'll withdraw my request for a recorded vote on this particular clause.

**The Chair:** Thank you.

Those in favour of amendments NDP-4 and NDP-5 of Mr. Julian, please raise your hand. Those opposed?

(Amendments negated)

**The Chair:** We're still on clause 8.

Is there any further discussion on clause 8? Shall clause 8 carry?

(Clause 8 agreed to)

(On clause 9—*Agreements approved*)

**The Chair:** Shall clause 9 carry?

What's the next amendment?

**Mr. Peter Julian:** I'm going to ask for a recorded vote.

**The Chair:** Okay. On clause 9 we're having a recorded vote. I'll ask the clerk to call the names.

(Clause 9 agreed to: yeas 6; nays 3)

This time it's yeas, 6, and nays, 3. I'll give you time to catch your breath.

(On clause 10—*Canadian representative on Joint Commission*)

• (2215)

**The Chair:** We have an amendment to clause 10.

Mr. Julian.

**Mr. Peter Julian:** Well, first off, I'd like our witnesses to provide some explanation of clause 10.

**The Chair:** On NDP-6, Mr. Julian is going to give us an explanation of his proposed amendment.

**Mr. Peter Julian:** No, on clause 10 without the amendment, from the witnesses.

**The Chair:** All right. Carry on.

**Mr. Matthew Kronby:** In keeping with the architecture of the agreement, and like many of our other free trade agreements, the Canada-Colombia FTA provides for the establishment of a joint commission that has overall oversight of the operation and implementation of the agreement. It supervises the implementation of the agreement. It oversees further elaboration of the agreement. It has the power to consider any measure that may affect the operation of the agreement.

That joint commission is established at the ministerial level under article 2001 of the agreement. Clause 10 makes the minister here, the Minister for International Trade, the principal representative of Canada on that commission.

**The Chair:** Go ahead, Mr. Julian.

**Mr. Peter Julian:** Thank you for that.

I'm moving an amendment, Mr. Chair, that would affect clause 10: "The Minister is the principal representative of Canada on the Joint Commission". It adds, "In performing this function, the Minister shall consult on a regular basis with representatives of Canadian labour and trade unions".

Mr. Chair, we've had repeated interventions from union organizations in Canada, all of which have expressed concerns around this agreement, around the labour side agreement, and around the so-called amendment that was brought forward just a few days ago. In each and every case, we've had representatives of Canadian labour and trade unions expressing concerns.

Mr. Chair, it's not just the unions that came before us from Canada; it's also the fact that there were so many unions that have been denied the opportunity to come before this committee and speak. We've referred to some of them.

There is the Canadian Labour Congress, the big umbrella group that represents the vast majority of organized workingmen and working women in this country. There is NUPGE, which is the largest union, the national union of provincial government employees, and there is also the Public Service Alliance of Canada, which represents our hard-working civil servants. All of them have said that they want to come before committee; all of them are being denied the opportunity to come before committee.

**The Chair:** I think, Mr. Julian, you'll recall that Mr. Georgetti did appear before the committee. He's with the Canadian Labour Congress.

**Mr. Peter Julian:** It was not on Bill C-2, Mr. Chair. It was not on Bill C-2. In fact, he requested to come before the committee. The Labour Congress—

**The Chair:** Oh, no, no. He appeared before the committee. He was on the witness list.

**Mr. Peter Julian:** They asked to come before the committee on Bill C-2, Mr. Chair.

So what we have—

**The Chair:** Now you're splitting hairs. He appeared before the committee on the Canada-Colombia Free Trade Agreement, as many did. We can't hear from every unionist in Canada. We heard from most of them, but I'm sorry to tell you that we can't hear from all of them.

**Mr. Peter Julian:** If I may continue, Mr. Chair, we certainly were able to hear from a number of people, both in the fall and again in the spring, who said the same thing. Even though we were having hearings that indicated this amendment, some people initially thought, might have some merit, we have had labour unions wanting to come before this committee, and we have seen as well that the representatives of working women and workingmen across the country have expressed strong concerns about this overall agreement.

So how do we address that, Mr. Chair? How do we address the fact that millions of people, those individuals who are Canadians, who work within labour unions, who are organized, and who have the benefit, fortunately, of having collective responses to health and safety issues, wage issues, and all of those other issues, have not been able to testify on Bill C-2?

It seems to me, Mr. Chair, that the least we can do to address this inequity is push the minister—and we say the words "shall consult"—to consult on a regular basis with representatives of Canadian labour and trade unions. What this means is that the point of view of those millions of working women and workingmen who are engaged in the trade union movement would be able to move forward and hopefully be heard by the government.

I think it's fair to say, Mr. Chair, that the vast majority of unionized workers across the country do not feel that they've been heard during this process. They have not had the opportunity to testify on Bill C-2. Given the fact that we're not even putting collective bargaining and the ability to develop free and fair collective bargaining rights in Colombia as a purpose in this amendment—

• (2220)

**The Chair:** Okay, I think we're drifting off this particular amendment—

**Mr. Peter Julian:** —it's very clear that we need to have this amendment.

**The Chair:** You were doing fine for a while.

**Mr. Peter Julian:** So, Mr. Chair, “having a regular basis”, what does that mean? And “with representatives”—

**Hon. Scott Brison:** Mr. Chair, point of order.

**The Chair:** Excuse me.

We have a point of order here.

**Hon. Scott Brison:** Mr. Chair, on a point of order, there was a vote on the provision on collective bargaining, and the honourable member didn't vote on it. As such, it was rejected unanimously by the committee, so I don't know what he's speaking about. If he had felt strongly about the amendment at the time, he ought to have voted for it.

**The Chair:** Apparently.

Well, I think he was just about to wrap up anyway, was he not, Mr. Julian?

**Mr. Peter Julian:** Chair, thank you. Yes, momentarily, in just a few moments.

But of course Mr. Brison forgets that this is a public meeting and so that transcript will go out across the country. People will be able to see exactly what went on in this meeting.

So what does “on a regular basis” mean? It certainly doesn't mean every few years. It means on a regular and substantive basis. Normally that would be every quarter, every trimester. And “with representatives of Canadian labour and trade unions”, well, that would mean, certainly, representatives of the CLC, representatives of some of the largest unions that exist in our country, which were shut out from coming in front of this committee, and it means that the spectrum of Canadian trade unionists and labour activists would actually have an effective word next to the minister's, Mr. Chair.

**The Chair:** A great idea.

Monsieur Laforest.

[*Translation*]

**Mr. Jean-Yves Laforest:** Thank you, Mr. Chairman.

Mr. Chairman, with respect to his amendment, Mr. Julian spoke quite a bit about representatives from Canada's large unions, but that doesn't cover every union. There are not only large unions; there are also many union groups that are not necessarily considered to be large unions. One example would be the UPA in Quebec.

In terms of the way he sees or defines large unions, would a group like the Union des producteurs agricoles be considered a large union? For instance, I am thinking of a small union that might not represent the majority of construction workers. Would that be a large union? I think this is an important point in the debate. If there are to be consultations and the Minister is going to be consulting Canadian unions, I think the other unions should also be included.

I would also like to know a little more about the Joint Commission mentioned in clause 10. My question is addressed to Mr. Kronby.

What is the purpose of this Commission and what will it be doing? Will it have a duty of representation or be required to report to another group? Is the Minister, as the senior representative, according to this clause, also accountable, and to whom is he accountable?

• (2225)

[*English*]

**The Chair:** Mr. Kronby.

**Mr. Matthew Kronby:** I refer you, sir, to article 2001 of the FTA itself, which sets out what the joint commission is, what it does, what it must do, and what it may do. In the interest of time, I don't propose to read through the different paragraphs of the article, but I think the answer is there as to what the roles and responsibilities of the commission are.

**The Chair:** Okay.

*D'accord?*

[*Translation*]

**Mr. Jean-Yves Laforest:** Which clause is this, Mr. Chairman?

**Mr. Matthew Kronby:** It's article 2001.

[*English*]

It's in the free trade agreement, in the FTA. We're talking about the FTA. Are you in the FTA or the bill?

**The Chair:** Monsieur Laforest.

[*Translation*]

**Mr. Jean-Yves Laforest:** With respect to the bill.

**Mr. Matthew Kronby:** No, this is not in the bill.

**Mr. Jean-Yves Laforest:** Then it's in the Free Trade Agreement.

**Mr. Matthew Kronby:** Yes, it's in the Free Trade Agreement.

[*English*]

**The Chair:** Okay.

Monsieur Laforest.

[*Translation*]

**Mr. Jean-Yves Laforest:** You could at least have read me some excerpts, by way of a summary.

[*English*]

**Mr. Matthew Kronby:** It starts out by saying that the joint commission consists of the cabinet level representatives of the parties or their designees; hence, clause 10 makes the Minister of International Trade the “principal representative” of Canada on the commission. It goes on to say in paragraph 2 that the commission shall supervise the implementation of the agreement; review the general functioning of the agreement; assess the outcomes of the application of the agreement; oversee the further elaboration of the agreement; supervise the work of all committees, working groups, and country coordinators established under the agreement; approve model rules of procedure—and that's for dispute settlement; and consider any other matter that may affect the operation of the agreement.



Then it goes on to permit the commission to do additional things, in paragraph 3, including adopting interpretive decisions concerning the agreement that are binding on dispute settlement panels. That's the same function that exists and has been used in NAFTA in the case of chapter 11.

Then, perhaps of interest to you, is that it can seek the advice of non-governmental persons or groups. The commission does have the power to do that. It can also take any other action in the exercise of its functions as the parties may agree.

The powers of the commission are quite broad.

[*Translation*]

**Mr. Jean-Yves Laforest:** It's okay.

[*English*]

**The Chair:** Okay.

[*Translation*]

**Mr. Jean-Yves Laforest:** As far as I'm concerned, that's fine, Mr. Chairman. I just wanted some additional detail with respect to the Joint Commission.

I understand that we can't read every single part as we go through this. That may not be necessary; at the same time, based on my own understanding, this highlights to an even greater extent the importance of Mr. Julian's amendment regarding regular consultations with Canadian unions.

[*English*]

**The Chair:** Is there any further debate on this matter?

Mr. Julian, do you have anything further or should we call the question?

**Mr. Peter Julian:** I'd like to have a recorded vote, please, Mr. Chair.

**The Chair:** This vote is on NDP amendment 6 to clause 10.

(Amendment negatived: nays 6; yeas 3)

**The Chair:** We are now moving to the main clause, clause 10.

The amendment is defeated, I'm sorry to advise you, Mr. Julian. I know it would come as a shock.

I should just advise the committee at this point that we have reached the magic hour of no further debate on these clauses. That does give me the pleasure of thanking our representatives from the departments who have come to assist us. I appreciate your coming and staying until this late hour. You are now at liberty to leave. I'm sure you'd like to stay and enjoy the festivities, but thank you for your time.

**Some hon. members:** Hear, hear!

**The Chair:** Thank you for coming.

We'll take a two-minute break here while we bid our witnesses adieu.

- \_\_\_\_\_ (Pause) \_\_\_\_\_
- 
- (2235)

**The Chair:** We'll reconvene. It appears that we're all here. We're going to continue.

Thank you for your patience. I know how anxious everyone is to move on.

(On clause 11—*Payment of Expenditures*)

**The Chair:** We have proceeded to clause 11 under administrative and institutional provisions. There are no proposed amendments, so I will ask if clause 11 shall carry.

Oh, sorry. We didn't vote on clause 10.

**Mr. Peter Julian:** Yes. Mr. Chair, Mr. Miller, the acting chair, was requesting that for nominal votes—

**The Chair:** He's a great Canadian.

**Mr. Peter Julian:** He's a great Canadian, I would agree. I think everyone around the table is a great Canadian, Mr. Chair.

He suggested that we request a recorded vote for each and every vote—

**The Chair:** He did?

**Mr. Peter Julian:** Now, certainly I can do that. I can move having a recorded vote. What I would like to suggest to you, Mr. Chair, is that all votes be recorded, both on amendments and on clauses.

If you want to slow things down, I could certainly propose it for each and every vote, but I—

**The Chair:** But it's your desire that we have a recorded vote on each clause...?

**Mr. Peter Julian:** Yes.

**The Chair:** Okay.

**Mr. Peter Julian:** That's my request. The question is whether you'd prefer that I raise it each time.

**The Chair:** You know that whenever I can, I accede to your requests, Mr. Julian. You're so gracious—

**Mr. Peter Julian:** I wish that were true, Mr. Chair.

**The Chair:** —and such a gentleman tonight, but we will proceed on that basis.

I'm going to go back to clause 10. I'm sorry I neglected to call the vote on clause 10 before our brief adjournment when we reached the hour.

We're back to clause 10. Again, I'll remind the committee, subject to a previous vote, that these clauses are now votable without debate. However, in each case, we are going to request a recorded vote, simply because we're going to pay the staff overtime.

(Clauses 10 and 11 agreed to: yeas 6; nays 3)

(On clause 12—*Powers of Minister*)

**The Chair:** All right. I'm moving now to clause 12, but before we vote on clause 12 we're going to vote on the NDP amendment.

I presume we'll have a recorded vote on the proposed amendment as well, Mr. Julian? Would that be your—

• (2240)

**Mr. Peter Julian:** Thank you for asking, Mr. Chair—

**The Chair:** Well, anything I can do to make your day a little easier.

**Mr. Peter Julian:** —just to mention how illegitimate this process is that we can't even debate or discuss this important amendment—

**The Chair:** No, no—

**Mr. Peter Julian:** —which actually allows for an impartial and independent human rights evaluation.

**The Chair:** Exactly.

We're having a recorded vote on proposed amendment NDP-7 to clause 12.

(Amendment negatived: nays 6; yeas 3)

(Clause 12 agreed to: yeas 6; nays 3)

(Clauses 13 to 15 inclusive agreed to: yeas 6; nays 3)

**The Chair:** We have a new clause. This is a result of a Liberal amendment. This is clause 15.1.

This is your amendment, I take it, Mr. Brison?

There's a point of order by Mr. Julian.

**Mr. Peter Julian:** Mr. Chair, we've adopted clause 15, so the amendment would be out of order.

**The Chair:** No. It's a separate question. It's clause 15.1

**Mr. Peter Julian:** There is a 15.1 already.

**The Chair:** No, no. That's subclause 15(1), but thank you for your note.

Now we're going to vote on proposed clause 15.1. It's a new clause.

**Hon. Scott Brison:** I move the amendment.

**The Chair:** Monsieur Laforest.

[*Translation*]

**Mr. Jean-Yves Laforest:** Point of order, Mr. Chairman. I don't see how an amendment can be moved to clause 15 when we just passed it. That amendment cannot be tabled now; we just passed clause 15 on a recorded vote. It was passed, I voted against, and there were three of us who voted against.

• (2245)

[*English*]

**The Chair:** Mr. Julian, you have point of order.

**Mr. Peter Julian:** Mr. Chair, we've adopted clause 15. We move on to clause 16.

**The Chair:** Well, you do what you like, but the committee is going to vote on a new clause called 15.1, or whatever you want to call it. But it's a different clause from what we've already voted on; it

is a new clause. It was submitted just as your amendments have been submitted. The motion that was passed at the beginning of the meeting said that all of the amendments submitted shall be voted on after six hours. We're in the middle of that.

Thank you for your comments. It's a recorded vote on proposed clause 15.1.

**An hon. member:** We have another amendment, sir.

**The Chair:** I'm not sure we can take any other amendments at this point if they have not already been submitted.

Now we'll go to clause 15.1, as we are referring to Liberal amendment 1. It's actually a new clause.

(Amendment agreed to: yeas 6; nays 3)

**The Chair:** Look at us go.

(Clause 16 agreed to: yeas 6; nays 3)

**The Chair:** Now, may I note that we have a lot of amendments and clauses to go. We have 94 amendments and we have 48 clauses.

The next number of clauses, that is, from 17 through to about 46, have no amendments. I wonder, because there is no conflict here and we've had adequate debate, if I could ask unanimous consent of the committee to group the next 30 clauses, from 17 to 46, and vote on them as one.

Do I have unanimous consent of the committee to do that, in the goodwill expression of the committee? We've all been cooperating so eloquently.

Mr. Julian.

**Mr. Peter Julian:** No. I'm sorry, Mr. Chair.

**The Chair:** Could we have a recorded vote on that request?

**Some hon. members:** Oh, oh!

**The Chair:** All right.

• (2250)

(Clause 17 agreed to: yeas 6; nays 3)

(Clause 18 agreed to: yeas 6; nays 3)

(Clause 19 agreed to: yeas 6; nays 3)

(Clause 20 agreed to: yeas 6; nays 3)

(Clause 21 agreed to: yeas 6; nays 3)

(Clause 22 agreed to: yeas 6; nays 3)

(Clause 23 agreed to: yeas 6; nays 3)

(Clause 24 agreed to: yeas 6; nays 3)

(Clause 25 agreed to: yeas 6; nays 3)

(Clause 26 agreed to: yeas 6; nays 3)

(Clause 27 agreed to: yeas 6; nays 3)

(Clause 28 agreed to: yeas 6; nays 3)

(Clause 29 agreed to: yeas 6; nays 3)

(Clause 30 agreed to: yeas 6; nays 3)

(Clause 31 agreed to: yeas 6; nays 3)

(Clause 32 agreed to: yeas 6; nays 3)

(Clause 33 agreed to: yeas 6; nays 3)

(Clause 34 agreed to: yeas 6; nays 3)

(Clause 35 agreed to: yeas 6; nays 3)

(Clause 36 agreed to: yeas 6; nays 3)

(Clause 37 agreed to: yeas 6; nays 3)

(Clause 38 agreed to: yeas 6; nays 3)

(Clause 39 agreed to: yeas 6; nays 3)

(Clause 40 agreed to: yeas 6; nays 3)

(Clause 41 agreed to: yeas 6; nays 3)

(Clause 42 agreed to: yeas 6; nays 3)

(Clause 43 agreed to: yeas 6; nays 3)

• (2255)

(Clause 44 agreed to: yeas 6; nays 3)

(Clause 45 agreed to: yeas 6; nays 3)

(Clause 46 agreed to: yeas 6; nays 3)

(Clause 47 agreed to: yeas 6; nays 3)

**The Chair:** If there is no objection, I will call the next one, new clause 47.1. This is an NDP clause.

**Mr. Gerald Keddy:** I don't know if you can do that.

• (2300)

**The Chair:** Shall new clause 47.1 carry?

**Mr. Gerald Keddy:** As a point of clarification, Mr. Chair, this is the NDP amendment on 47.1.

**Hon. Scott Brison:** We can't have a 47.1; we've already passed clause 47.

**The Chair:** We've had that concern. We did pass clause 47. It carried, and we're now on 47.1, a new and improved clause submitted by the NDP.

For the sake of clarity to the committee, this would be NDP amendment 8, otherwise known as new clause 47.1, the clause previously known as NDP-8.

We have a recorded vote.

(Amendment negated: nays 6; yeas 3)

**The Chair:** We are now going to NDP amendment 9, otherwise known as subclause 47.1(1), for further confusion. That is one and the same.

(Amendment negated: nays 6; yeas 3)

**The Chair:** I'm sorry. The amendment is defeated.

(On clause 48—*Order in council* )

**The Chair:** To continue the fun, we'll now go to clause 48.

Let me tell you for clarification that we have a couple of amendments on clause 48. We'll vote on the NDP amendment 10 first. Then we'll vote on the Liberal amendment L-2. Then we'll vote on the clause.

The first vote with regard to clause 48 is proposed amendment NDP-10.

Shall NDP-10 carry?

(Amendment negated: nays 6; yeas 3)

**The Chair:** NDP-10 fails.

The next amendment to clause 48 would be the Liberal amendment L-2. Shall L-2 carry?

(Amendment agreed to: yeas 6; nays 3 )

• (2305)

**The Chair:** The amendment carried, so we are now voting on amended clause 48.

Shall clause 48 carry as amended?

(Clause 48 as amended agreed to: yeas 6; nays 3)

**The Chair:** Now we'll move to the schedules. We have no proposed amendments on Schedule 1.

Shall schedule 1 carry?

(Schedule 1 agreed to: yeas 7; nays 3)

(On schedule 2)

**The Chair:** Moving along to schedule 2, we have a few amendments here—no more than 80-some. I wonder if we could get the unanimous consent of the committee to group NDP amendments 11 to 96.

Can we have unanimous consent to group NDP amendments 11 to 96?

Mr. Julian.

**Mr. Peter Julian:** I have a point of order.

**The Chair:** I'm sure you do.

**Mr. Peter Julian:** I will make the point of order. I would appreciate not being interrupted.

However, I think I can say that at the end of the point of order, if I am not interrupted, members of the committee may be happy. So here's my point of order, Mr. Chair.

This has been, to say the least, a circus tonight. There's no doubt that there have been systematic violations of our rights as members of Parliament. Mr. Laforest and Mr. Guimond have also spoken to this.

There is no doubt that this issue is not going to end here. I've mentioned that before. I will be—and I believe others will be—taking this to the Speaker. This very controversial agreement will continue to be debated hotly for weeks to come, if not months to come, in the House of Commons.

So there is no doubt that the problems—

**The Chair:** Is the soliloquy continuing?

**Mr. Peter Julian:** I was simply wondering if Mr. Brison was going to interrupt.... It sounded like he was.

**The Chair:** Carry on, Mr. Julian.

**Mr. Peter Julian:** So I protest in the strongest possible terms what happened tonight. You know, Mr. Chair, I've raised this issue, points of order and the points of privilege. So have two of my colleagues at this table, Mr. Laforest and Mr. Guimond. This issue will continue to be discussed in other fora.

That being said, since I have not been interrupted—and I welcome that, for once this evening—what I'm going to do, in consideration for the staff and the interpreters who have been working hard all evening, not necessarily having known that they would be here until twenty minutes after eleven, and knowing that going through the NDP amendments would add probably at least one hour on to our committee time in voting, is consent to regrouping all of the amendments NDP-11 to NDP-96 into one motion that would be voted on *par appel nominal*.

• (2310)

**The Chair:** Shall amendments NDP-11 to NDP-96 to schedule 2 carry?

[*Translation*]

**Mr. Jean-Yves Laforest:** Mr. Chairman, there must be unanimous consent regarding the amendment Mr. Julian has proposed. I will be supporting it.

I said it had to be unanimous, and I want to let you know that I agree with Mr. Julian's proposal.

[*English*]

**The Chair:** Well, thank you. You, too, will get a bouquet of roses.

[*Translation*]

**Mr. Jean-Yves Laforest:** I agree, because it has to be unanimous.

[*English*]

**The Chair:** Okay. We have a motion on the floor. Would you like a recorded vote, Mr. Julian?

**Mr. Peter Julian:** Yes. I would like a recorded vote, but it would be on amendments NDP-11 to NDP-96.

**The Chair:** Yes. Shall amendments NDP-11 to NDP-96 carry?

(Amendments negatived: nays 7; yeas 3 [See *Minutes of Proceedings*])

**The Chair:** NDP amendments 11 through 96 are defeated.

Shall schedule 2 carry?

(Schedule 2 agreed to: yeas 7; nays 3)

**The Chair:** Schedule 2 carries.

Shall the short title carry?

(Clause 1 agreed to: yeas 7; nays 3)

**The Chair:** The short title carries.

Shall the title carry?

(Title agreed to: yeas 7; nays 3)

**The Chair:** The title carries.

Shall the bill as amended carry?

(Bill C-2 as amended agreed to: yeas 7; nays 3)

**The Chair:** The bill as amended carries.

Shall the chair report the bill as amended to the House?

(Agreed: yeas 7; nays 3)

**The Chair:** The chair shall report the bill as amended to the House, as requested by the committee.

Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

(Agreed: yeas 7; nays 3)

**The Chair:** With that, ladies and gentlemen, I appreciate your courtesy tonight and your eloquence.

I'll hear from Mr. Cannis before we wrap up.

**Mr. John Cannis:** I just want to comment, Mr. Chairman, on a job well done by everybody.

I would like to say that this meeting tonight takes me back to the ancient agora in Greece, where democracy fully unfolded. It was done in a democratic way. We all had the right to express our views, vote according to our wishes—

**An hon. member:** A point of order.

• (2315)

**The Chair:** We're hearing one right now.

**Mr. John Cannis:** We all had the opportunity to express our views on behalf of our constituents. We voted according to their wishes. That's what happened here tonight.

**The Chair:** Thank you, Mr. Cannis.

Mr. Julian, you'll have to forgive him. Greece worked at one point.

**Voices:** Oh, oh!

**Mr. John Cannis:** Thank you, sir.

**The Chair:** With that, kids, we're adjourned.

Thank you.







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