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Chair

Mr. James Bezan

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• (1535)

[English]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): I call this meeting to order.

We're having meeting number 35. We are televised, and we're dealing, of course, with Bill C-469, an act to establish a Canadian Environmental Bill of Rights, sponsored by Linda Duncan.

Joining us for the first hour is Matthew Firth, senior officer of health, safety, and environment, from the Canadian Union of Public Employees.

Welcome, Mr. Firth. I'll ask you for your opening comments. And please, if you could stay within ten minutes, we would appreciate that.

Mr. Matthew Firth (Senior Officer, Health, Safety and Environment, Canadian Union of Public Employees): Thank you very much for the opportunity to speak before the committee.

As stated, my name is Matthew Firth. I am a senior officer in the health, safety, and environment branch of the Canadian Union of Public Employees, CUPE, which is Canada's largest trade union, with approximately 600,000 members.

CUPE's national president, Paul Moist, wanted to meet with the committee today but could not because he's overseas at Public Services International meetings, so I am here in his place.

CUPE is a socially active union, and this social action extends to environmental issues. CUPE works to improve all facets of our members' quality of life. We see that enhancing the natural environment augments the quality of life of our members and, by extension, all Canadians. Therefore, CUPE supports Bill C-469.

Specifically, CUPE will put its support in context by pointing to the timeliness of this bill with respect to the state of the global natural environment and with respect to an emerging trend to enshrine environmental rights as a response to ecological stressors.

Secondly, CUPE supports the need for the bill because of Canada's declining environmental record, as shown via various indicators, as a way to improve Canada's protection and enrichment of the natural environment.

Lastly, CUPE will highlight the importance of certain key points of the bill that it supports.

Presently, the state of the Canadian and global natural environment is perilous. Various environmental factors show that more protection is called for due to decades of environmental degradation

and exploitation of the planet's natural resources. Climate change, diminishing biodiversity, deforestation, deteriorated water and air quality, as well as other environmental problems show the timely need for an environmental bill of rights.

There are indications that the world is moving toward enshrining the rights of the planet. For example, in April 2009 the United Nations General Assembly proclaimed April 22 to be International Mother Earth Day, a step up from Earth Day. Speaking to the declaration, Bolivian President Evo Morales said the world body had "taken a historic stand for Mother Earth". The UN declaration states that "the Earth and its ecosystems are our home" and "it is necessary to promote harmony with nature and the Earth". Furthermore, Morales dubbed the declaration a first step toward making the 21st century the "century of the rights of Mother Earth" in the same way the 20th century was characterized as the century of human rights.

A next step would be taking up this opportunity in Canada by laying out a declaration for an environmental bill of rights and for the planet. We use this example to show that Bill C-469 is in step with what is an international trend to integrate human rights with ecological rights to ensure human prosperity. Adopting Bill C-469 would be a progressive environmental move by Canada and would help further the movement toward linking ecological well-being and health with social and economic prosperity, rather than seeing the natural environment and the economy as being separate and/or at odds, which is an outdated viewpoint inadequate for the 21st century.

Closer to home, Ontario, the Northwest Territories, Quebec, and other jurisdictions have environmental statutes that call for environmental rights, as do dozens of other jurisdictions across the world.

Numerous environmental performance indices point to Canada's faltering environmental record. For example, Yale University's environmental performance index for 2010 assessed 163 countries on 25 performance indicators measured across ten policy categories, covering both environmental public health and ecosystem vitality. The indicators provide a gauge on a national government scale of how close countries are to meeting their established environmental policy goals. Overall, Canada ranked in 46th place out of 163 countries, with a score of 66.4%, a percentage score equivalent to a C grade. The ranking puts Canada in the middle of the pack, behind developing nations such as Mexico and Romania, and well behind other industrialized nations such as Switzerland and Sweden. Canada scored well on its water quality index, access to sanitation, access to water, and on indoor air pollution levels. Canada received failing grades on ecosystem vitality, fisheries, climate change, and air pollution.

Canada scores worse when environmental indicators are narrowed to, for example, climate change, which is presently the most serious global threat to environmental stability.

The social research centre Germanwatch, along with Climate Action Network International, issues yearly reports on the nations that are responsible for more than 90% of global energy-related carbon dioxide emissions. Countries are assessed on their emission levels, emission trends, and on their national and international climate policies. Canada's national climate change policy was assessed as "very poor" and is centred out for specific comment in the 2010 report. The report points to Canada's rising emission levels: 34% above its Kyoto target level. Overall, the report ranks Canada second to last, in 56th place of 57 countries, a ranking that is unchanged from the 2009 index. These results highlight that Canada needs to do more to improve its environmental performance, something Bill C-469 would help ameliorate.

Specific aspects of Bill C-469 will help strengthen and expand Canada's environmental performance. For example, the bill confirms that the Government of Canada has a public duty to protect the environment. The bill also takes a long-term, multi-generational approach by stating that future generations have a right to a healthy and ecologically balanced environment. Moreover, the bill recognizes the inherent value of essential ecological processes, meaning natural systems are viewed as vital, not simply from a resource or commodity perspective but implicitly and fundamentally. This marks a shift in thinking about the natural world, which will benefit all Canadians.

Another key facet of the bill is the precautionary principle, which is deemed a basis on which actions can be taken to address environmental wrongs. Too often, actions on environmental problems are shackled by what is construed as conflicting evidence. The precautionary principle would improve this standoff by allowing actions to be taken to preserve the integrity of the natural world simply by virtue of the fact that a threat is very likely apparent and/or imminent. Such an approach is proactive and progressive. Likewise, the principle of environmental justice described in Bill C-469 provides a democratic view of the natural world.

The foundation of this bill is the right to a healthy environment for all Canadians, another key point that CUPE supports. Ensuring accountability via making environmental information available to

the public in a reasonable, timely, and affordable fashion also shows the strength of the bill.

The process by which this bill would be enforced is credible, through investigations, judicial review, and subsequently through various remedial actions. The bill's language on reprisal could be bolstered to prohibit reprisals so that no employer or person acting on behalf of an employer or in a position of authority in respect of an employee of the employer shall dismiss, discipline, penalize, coerce, intimidate, or harass an employee because that employee has applied to the commissioner for an investigation under the terms of the Canadian environmental bill of rights. A provision like this would fully ensure worker protection.

Lastly, the proposed amendment to the Canadian Bill of Rights to ensure consistency with an environmental bill of rights indicates a more holistic perspective that is in step with current movement toward reintegrating humanity with ecology, as witnessed in the UN Mother Earth Declaration, other laws in other jurisdictions, and other actions.

In summary, Bill C-469 would expand the scope of environmental protection of the Government of Canada, which would help improve our country's environmental record and help advance the rights of the planet at a time of major ecological challenges.

Thank you very much for the opportunity to speak before the committee this afternoon.

● (1540)

The Chair: Thank you, Mr. Firth. You came within your time limit.

With that, we're going to go to our seven-minute round.

Mr. Kennedy, you can start us off.

Mr. Gerard Kennedy (Parkdale—High Park, Lib.): Thank you, Mr. Chair.

Thank you to Mr. Firth.

I know you weren't necessarily here to hear some of the concerns expressed about the bill. I was following this through Hansard: essentially, the existence of the bill, some of the rights for the environment, would be a direct affront to our ability to nourish the economy and generate jobs and so on. I don't, on the face of it, accept that argument. I think environmental protection actually can be reconciled. But I want to know, from the standpoint of your members and so on, whether you have considered those kinds of arguments and what you might say to that. I won't try to articulate exactly what was said, but I think you probably get the gist of people being concerned that this creates a disincentive compared to other jurisdictions, that kind of thing. I'm wondering how your organization has assessed those kinds of concerns.

Mr. Matthew Firth: I'll say right off the bat that sometimes people find it a bit of a strange marriage—someone working for a trade union and the environment. But CUPE in fact has done a lot of work on environmental issues and is actually in partnership with different environmental groups. We have pushed in many instances for environmental improvements on various issues. For instance, we have taken positions on climate change, and tried to make sure that they contain provisions such as a just transition for affected workers.

So we don't see this as being out of step with the principles of trade unionism. At the same time, if we recognize that our economy is moving to more sustainable methods of production and job growth, then it is clear that unions have an inherent interest in the environment. We want to be part of that process rather than an impediment to it.

•(1545)

Mr. Gerard Kennedy: Thank you.

This is a bill entitled a Canadian Environment Bill of Rights, though it is attached in part not to the charter, but to the older bill of rights. Some people have argued that this is inadequate, that it won't give it enough force or priority over other laws.

I'm wondering if your organization has considered this limitation, or whether you think it's a true limitation or not. I notice in your presentation you talk about this as being an effective means of getting at some of the responsibilities towards the environment. Was this possible constitutional limitation a concern in any of your discussions?

Mr. Matthew Firth: Sorry, what was the first part of the question?

Mr. Gerard Kennedy: I asked about the difference between the Charter of Rights in the Constitution and the reference in this bill, which is to the Canadian Bill of Rights brought in by Mr. Diefenbaker and having no constitutional status. Is this a source of concern for your organization?

Some other presenters have said they would like to see some of the clauses referenced to the Charter of Rights. This would be tantamount to constitutional change, but that's where they say they would like to see these references reside. I wonder if you considered that point.

Mr. Matthew Firth: No, we haven't. It's not something that CUPE has looked at. So I don't have much to add on that.

Mr. Gerard Kennedy: Part of what we're being asked to consider is how many tools we need in the tool box. When we look at the record and the stuff you tabled from the Yale study, we see that we have a sustainable development plan originating from a previous private member's bill. It passed and is now obligatory for government departments. We have a clock ticking when it comes to climate change.

Are there specific expectations that you have for this bill? What would it fix that isn't being fixed right now? Are there problems in Canada that would be solved by this bill, or is it just in its generality that you support it?

Mr. Matthew Firth: I cited various tables, and I don't think this bill is going to rocket us to the number one spot in them. I presented those indices more as context for where we are. Obviously there's

room for improvement. Is this bill going to be a silver bullet? Perhaps not, but it's certainly not going to hurt.

One of the best benefits of the bill would be that it would engage more citizens in the environmental debate. In a sense, I see it as a parallel to existing occupational health and safety legislation, under which workers in all jurisdictions, including the federal jurisdiction, have the right to know, the right to participate, and the right to refuse unsafe work.

I see parallels between that legislation and what this bill could be leading toward. It addresses the right to know about environmental issues and the right to participate, which is exactly parallel to existing occupational health and safety legislation.

If we're going to grant these rights to workers in the workplace, then why not extend that privilege to citizens? I think this would engage citizens more fully.

Mr. Gerard Kennedy: Coming back to the original question, you indicated that we're sitting fairly low in the standings. There are other rankings that support that idea. We have a threat to some of our water flow. We have a threat to our air quality, especially in certain parts of the country, and so on, and there's a sense that we're losing rather than gaining. Some people would set that up as the cost of the economy moving forward.

I guess our view would be that in fact there isn't a trade-off necessarily. There's a reconciling that has to happen, and if implemented this bill and other environmental protection measures could cost us some jobs in the short term. Our idea would be that in the long term we're going to have more jobs that we need to force ourselves to consider and that we need to get into some of the behaviours that make us more efficient.

We have a huge carbon footprint. It's like walking around in size 17 sneakers. We have a big water footprint—some people say two to three times the size of what is sustainable for our watersheds and our aquifers and so on.

At the end of the day, that means making decisions. Whether it's in the oil sands or here, we may have to slow the pace of development. We may have to do some things, but always, I think, with an eye to having a proper reconciliation.

I'm just coming back to your organization and your members. Do you think that people are ready for that idea? Ready for the fact that we need to take the environment, our children's heritage, into account in making those decisions? And it's not just how big an economic case you have, and therefore we go ahead and run ramshackle over the environment.

•(1550)

The Chair: Mr. Firth, you're going to have to give a quick response, because Mr. Kennedy's time is up.

Mr. Matthew Firth: Yes, our members are ready.

[Translation]

The Chair: Mr. Bigras, you have the floor.

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Thank you, Mr. Chair.

I would like to thank our witness for his brief and his presentation.

I suppose that, basically, the union you represent is interested in clauses 24 and 25 of the bill. I feel that these are very important provisions for your organization. We're talking about protecting whistleblowers here.

A few years ago, the government introduced a bill to protect public service employees. I understand that clauses 24 and 25 of the bill are fundamental for you, but I want to be sure. Clause 25 reads:

(2) For the purposes of this section, an employer has taken reprisals against an employee if the employer has dismissed, disciplined, penalized, coerced, intimidated or harassed, or attempted to coerce, intimidate or harass, the employee.

(3) For the purposes of this section, an employer has taken reprisals on a prohibited ground if the employee in good faith did or has attempted to do any of the following for the purpose of protecting the environment ...

Existing legislation aside, you feel you need clauses 24 and 25 to protect your employees. Is that what you were suggesting in the statements you made today?

[English]

Mr. Matthew Firth: Yes, I would say that clauses 24 and 25 about whistleblowers are important, but our support for this bill is not limited simply to those two clauses. In fact, it spans the bulk of the bill. We like to think of CUPE as being a very socially active and progressive trade union, which means extending our work beyond the core worker protection in the workplace things that some people traditionally associate with trade unions.

We are also interested in enhancing the full quality of life of our members, which extends beyond the workplace to our communities and to our natural environment. So clauses 24 and 25 are key, but so are many other clauses in the bill.

[Translation]

Mr. Bernard Bigras: Do you have examples to give us of federal employees from Environment Canada or Health Canada—probably more specifically Environment Canada—who, in the past few years, have been threatened with dismissal, reprisals, intimidation or harassment when carrying out their duties, in this case for wanting to apply the existing legislation? As for some Environment Canada reports, middle managers apparently stepped in with employees in that department and elsewhere to tell them not to make that information public.

I would like to know whether, in the past five or six years, some Environment Canada or Health Canada employees have been victims of intimidation or harassment, or have been threatened with dismissal for wanting to disclose environment-related information to the public.

[English]

Mr. Matthew Firth: I guess the most prudent answer is no, I can't provide examples because we don't represent workers in Health Canada and Environment Canada, number one. Those workers are

represented by the Public Service Alliance rather than by CUPE. So no, our own members have not been affected by that.

• (1555)

[Translation]

Mr. Bernard Bigras: Fine.

On page 4 of your document, near the end, you say:

Lastly, the proposed amendment to the Canadian Bill of Rights to ensure consistency with an environmental bill of rights indicates a more holistic perspective...

I am trying to understand what you said. An amendment to the Canadian Charter of Rights and Freedoms can be made through a constitutional amendment. But, I do not think that this is the purpose of the bill before us. Perhaps we are not interpreting it the same way, but I do not think that this bill can amend the Canadian Charter of Rights and Freedoms.

[English]

Mr. Matthew Firth: Perhaps the word "amendment" was the incorrect word. I forget which section it is in the bill. It's right toward the very end. By "holistic", I guess I was talking about expanding the definition, making it broader by bringing environmental considerations into it. But that's the only way in which I used the word "holistic".

[Translation]

Mr. Bernard Bigras: According to you, could clause 23, which aims to establish civil recourse against certain legal entities, have economic consequences and repercussions on your workers? Aren't you afraid that this clause will end up preventing projects from being completed and, in the end, inconveniencing your members?

[English]

Mr. Matthew Firth: Not if the actions that are brought forward are.... And I'm not even 100% sure on what the process would be. That would be the role of the commissioner to vet such actions, for lack of a better word. But I think there are instances of other jurisdictions that have legislation in place where the experience shows that the courts are not flooded with frivolous use of the bill. So no, that's not a fear that we have.

[Translation]

The Chair: Mr. Bigras, your time is up.

Ms. Duncan, the floor is yours.

[English]

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Thank you, Mr. Chair.

Mr. Firth, I'd like to thank you very much for your thoughtful presentation and your very thoughtful efforts at response. I understand that you're not a lawyer and sometimes it's tough to try to come up with a legal opinion to a rather legalistic bill. I think you've done an admirable attempt at that, so thank you for your efforts.

I really appreciated the approach that your union has taken in this brief. It's much more sort of a broad-based holistic approach. And I really appreciated the efforts that both your union and other union reps in the environment committee of the CLC have taken to give their feedback on the bill. I very much appreciate it.

I understand that there's a particular interest in this bill by your union members in having stronger commitments by the Government of Canada to the precautionary principle. I'm wondering if you'd like to elaborate a bit more on that aspect of the bill.

Mr. Matthew Firth: Yes, sure, I'm happy to do that, and thank you. I'm not a lawyer, obviously.

I guess the fact that the precautionary principle is built into the bill is something we're particularly pleased to see. In one way, again, it sort of integrates something we support, again, from an occupational health and safety perspective. Something we sort of push towards when looking at workplace hazards is that a precautionary principle approach be taken. Instead of taking a risk assessment view, which basically asks how much risk is acceptable, the precautionary principle tells us that we should act to do as little harm as possible, and in doing so, to consider a full spectrum of alternatives to prevent and minimize harm.

I was thinking about the precautionary principle this morning, actually, in a sort of philosophical way. You could look at it this way. If you were considering a development project or some sort of business venture, you wouldn't enter into a business venture only when you had 100% proof-positive evidence that your venture would be profitable. You would have a pretty good idea that your venture might be profitable. I was wondering why we can't use the same sort of reasoning to apply to environmental harm. I think that's exactly what the precautionary principle does. If you have a pretty good idea that some harm will result from the action, you should stop that action to mitigate it and minimize the harm as much as possible by looking at various alternatives.

I alluded to the occupational health foundation behind the precautionary principle. It actually goes back much further than that. There is actually a public health genesis behind the precautionary principle. If you'll allow me, I'll give a bit of a history lesson.

I don't know if anyone knows the story of the public health doctor Dr. Percival Pott, in London, England, in the late eighteenth century. This is the genesis behind what we call the precautionary principle, which is typically associated with environmental actions but was actually adopted from public health.

There was a cholera outbreak in London in the late eighteenth century in a particular neighbourhood where this one doctor worked. It was in industrial London. House after house was affected, with the exception of one building in this one neighbourhood in all of London, which was a brewery. Dr. Pott didn't have the benefit of 21st century medical technology at his disposal, but he saw that all of the residents of this neighbourhood were drawing their water from one public well. There was actually a tap or fountain or whatever they had back then. So he actually intervened, without knowing that this was the cause, and he physically removed the water supply from this neighbourhood. And subsequently, the cholera cases dropped off

considerably. That's considered the birthplace of the precautionary principle.

It also sort of suggests that you should drink beer instead of water, I suppose.

Voices: Oh, oh.

Mr. Matthew Firth: That idea, again, has been adopted from public health and applied to occupational health and safety. In this bill, it's being espoused as an approach to environmental issues. So it's something that's close to CUPE's heart, in that sense.

• (1600)

Ms. Linda Duncan: Thank you very much.

Actually, that was really a good presentation, because I understand from my study of environmental law that the genesis of environmental law, including federal environmental law, is public health law. That's where our first department of the environment was. So it's logical that the people who work in public health and occupational safety should be contributing to future development.

You spoke a fair bit about the concept of just transition and the right of workers to participate in environmental decision-making. I wonder if you could expand a bit more on how the rights and opportunities under this bill could potentially extend the right of workers to participate in decisions about the environment outside the scope of the immediate workplace. And how can just transition fit into moving towards a cleaner economy or greater consideration for environmental protection in decision-making on energy and development?

Mr. Matthew Firth: I guess the simple short answer is that if just transition programs are in place, workers are going to be much more enthusiastic about greening the economy. In just transition programs the basic idea is that with workers who would be affected because of changes in industry due to environmental improvements, or what have you, instead of being thrown out the door without any protection, they would be dealt with in a more just manner. They could be retrained, for example, and find work in greener and cleaner workplaces.

As far as greater participation, it gets back to what I was saying about the parallels between occupational health and safety law, and what is proposed in this bill. Because our members know they are protected or have certain rights granted to them by occupational health and safety law, their willingness to participate goes up. If they knew they had the same rights via this bill, I think their willingness to participate would increase.

I don't want to mislead people that the environment is precisely at the top of CUPE's agenda, but something like this that encourages greater citizen participation in environmental decision-making would only work to enhance how our members might participate in that process.

As I have said before, CUPE—both our organization and our members—looks beyond just wages and benefits to doing various things to improve our quality of life. That extends to improving environmental protection, the air we breathe in the atmosphere, and the rest of it.

•(1605)

The Chair: Thank you. Your time has expired, Ms. Duncan.

Mr. Warawa, you have the last of the seven minutes.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chair.

Thank you, Mr. Firth, for being here. You mentioned that you represent 600,000 members of CUPE, and you would like to improve the quality of life for your members. How did you determine the position of your members on Bill C-469?

Mr. Matthew Firth: I didn't talk to all 600,000 of them, if that's what you're asking.

Mr. Mark Warawa: Was there any type of consultation to determine their position on Bill C-469?

Mr. Matthew Firth: Yes, there was.

CUPE's structure includes an environment committee comprised of worker representatives from different parts of the country. They were shown the bill and were asked for input on the brief. In that sense, those people are environmental worker representatives from each of the different provinces and divisions that we represent. They're tasked with providing guidance to the staff at the committee's national office.

Mr. Mark Warawa: Keep your answers short, please, because I have a limited amount of time.

Mr. Matthew Firth: They are gateway members. They are real workers who have read the bill and the brief and provided input.

Mr. Mark Warawa: As far as the actual 600,000 members, a survey was not sent out. It was the smaller groups. Is that correct?

Mr. Matthew Firth: Yes.

Mr. Mark Warawa: Did you seek a legal position?

Mr. Matthew Firth: No.

Mr. Mark Warawa: This is just from those people.

Are they professionals like scientists or lawyers, or are they general members?

Mr. Matthew Firth: They are general members, but our membership is—

Mr. Mark Warawa: Are they scientists?

Mr. Matthew Firth: In some cases they are. We have members who work in natural resources, for example.

Mr. Mark Warawa: What percentage of the people who came up with this position are scientists?

Mr. Matthew Firth: You know...not the majority.

Mr. Mark Warawa: Were there any suggested amendments to Bill C-469?

Mr. Matthew Firth: There were none, except for the point I made about bolstering the prohibition of reprisals.

Mr. Mark Warawa: You used the word “citizen” a number of times. Bill C-469 uses the term “resident”. Would you support a resident retroactively challenging existing regulations or permits?

Do you I understand my question?

Mr. Matthew Firth: I understand it a little bit.

Mr. Mark Warawa: I'll give an example: a permit is issued for the oil sands, or a permit is issued for Hydro-Québec. These are existing facilities.

•(1610)

Mr. Matthew Firth: I think that in that case, possibly I would need a legal opinion before answering the question.

Ms. Linda Duncan: I have a point of order, Mr. Chair.

The Chair: Go ahead, Ms. Duncan.

Ms. Linda Duncan: The bill does not provide any provision to challenge a permit; the challenge is the enforcement.

Mr. Mark Warawa: It's not a point of order, Chair.

The Chair: It's a point of debate. Mr. Warawa, you have the floor.

Mr. Mark Warawa: Thank you.

We heard from witnesses, esteemed lawyers, who provided input that Bill C-469 encroaches on provincial environmental jurisdiction and would cause a dramatic increase in litigation. Some of the special groups that were here in support of Bill C-469 were looking at it as a big stick that would intimidate, and although it maybe would not necessarily cause a legal action, there would be the threat of that.

We heard from business. Business creates jobs. They said uncertainty over the possibility that even existing legislation could be challenged—permits could be challenged, everything could be challenged—would remove certainty. Along with the loss of certainty, there's always another appeal option from any resident on any facility, which would cause a loss of investment, which would cause a loss of jobs, which would mean creating worker uncertainty and loss of protection for workers.

I'll come back to my example of an existing permit for the oil sands or for Hydro-Québec. If Bill C-469 gave that kind of power for an unending appeal process to any resident in Canada, would you want to see that amended so as to provide a balance?

Mr. Matthew Firth: I don't think it does, first of all.

Mr. Mark Warawa: Are you a lawyer?

Mr. Matthew Firth: No, I'm not a lawyer. If you let me finish, I'll answer the question.

The Chair: Mr. Warawa, let him finish.

Mr. Matthew Firth: I would flip the question back at you, in a sense, and say I know that there are other countries in the world that have enshrined environmental rights in their—

Mr. Mark Warawa: Chair, the witness is here to answer questions, not to ask questions.

The Chair: I think he's trying to answer your question, Mr. Warawa.

Mr. Matthew Firth: As I stated, and as I think everyone in the room is well aware, dozens of other jurisdictions in the world have similar legislation; as an example, it hasn't caused the economy of France, which has integrated environmental rights into their Constitution, to grind to a halt.

Mr. Mark Warawa: Have you compared the legislation of France and Bill C-469?

Mr. Matthew Firth: No, not specifically, line by line.

Mr. Mark Warawa: Then why would you use that example?

Mr. Matthew Firth: I used that example because, as I stated, you seem to be suggesting that a barrage of litigation will follow. France has had something on the books in their Constitution for four or five years, and it hasn't happened in France.

Mr. Mark Warawa: We had heard from witnesses on Monday that people need to know what the law is. Would you agree with that?

Mr. Matthew Firth: Yes.

Mr. Mark Warawa: Do you think that there needs to be a respect for the rule of law?

Mr. Matthew Firth: Yes.

Mr. Mark Warawa: Do you think that this would provide lack of clarity? That's what we heard from the witnesses: that Bill C-469 would provide lack of clarity, because the existing legislation and existing permits could be challenged.

Mr. Matthew Firth: Sorry, what's the question? Do I think it would create lack of clarity?

Mr. Mark Warawa: Would you agree that Bill C-469 would provide lack of clarity?

Mr. Matthew Firth: No, I don't agree with that.

Mr. Mark Warawa: Why is that?

Mr. Matthew Firth: I don't find it to be ambiguous, if that's what you're asking me.

Mr. Mark Warawa: Would you agree that Bill C-469 would impose a private agenda on all Canadians?

Mr. Matthew Firth: Would I agree with that? No. I'm not sure what you mean by "a private agenda".

Mr. Mark Warawa: Basically anybody, any resident in Canada.... Were you aware that the bill reads "any resident", which doesn't necessarily refer to a Canadian? Were you aware of that?

Mr. Matthew Firth: I was using the word "citizen"; you're saying "resident". Okay.

Mr. Mark Warawa: Are you familiar that it's what the bill says?

Mr. Matthew Firth: Yes.

Mr. Mark Warawa: So there could be an action taken by any resident on any legislation, any permit. Do you think that should happen?

Mr. Matthew Firth: Do I think any action by any resident should take place? Is that the question?

Mr. Mark Warawa: Do you think they should be able to have that right?

Mr. Matthew Firth: You're asking if they should have the right....

Mr. Mark Warawa: After years of consultation, we come up with a permit or with legislation. Do you think that legislation arrived at after years of consultation with first nations, environmentalists, labour unions, and legislators should be overturned or stalled or challenged by anyone—

• (1615)

The Chair: Mr. Warawa, your time has expired.

Mr. Firth, you can respond to that.

Mr. Matthew Firth: That's a daunting question. I am not trying to be evasive, but perhaps this is something for the CUPE lawyer to handle rather than myself, because, as has been pointed out a couple of times, I am not a lawyer. I'm not in a position to answer that question. But as I said, evidence seems to suggest that this stampede to the courts because of this bill would not take place. That was the point I was trying to make with the example from France.

The Chair: The time has expired. We're going to move on to the next round of questions.

Mr. Firth, you referred to the CUPE order. If you want to submit a written response to that question, I'd encourage you to do that in an expedient fashion, since we will be moving to clause-by-clause by next Wednesday.

With that, we'll go to our five-minute round.

Do you have a point of order, Mr. Blaney?

Mr. Steven Blaney (Lévis—Bellechasse, CPC): It's a point of information.

The Chair: No, a point of information I won't take. You'll have your chance.

Mr. Scarpaleggia, you have five minutes.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you, Chair.

Mr. Firth, your title is senior officer, health, safety and environment. What proportion of your work or what proportion of the threat to a worker's well-being is related to occupational hazards at work versus what is going on in the general environment? Obviously there is no precise figure on this. I'm just trying to get a feel for it.

Do you understand my question?

Mr. Matthew Firth: Yes, I do. I do about 25% occupational health and safety, and 75% environment work.

Mr. Francis Scarpaleggia: When you say environment work, what are you looking at?

Mr. Matthew Firth: A lot of that ranges from simple environmental actions that we take within the workplace. For example, we negotiate environmental provisions into collective agreements. We work to establish workplace environment committees, green stewards, workplace environment policies, workplace—

Mr. Francis Scarpaleggia: I understand.

You are talking about the environment in a kind of limited sense, I guess. Would those kinds of things be covered by this bill? When we talk about this bill, we're talking about the broader environment, the air quality, and damage done by an industry to the natural environment.

I don't know if you understand where I'm coming from. I'm trying to understand whether the word "environment" in your title has to do more with the workplace environment, which is outside the scope of this bill, versus the general pollution that we see in the broader environment around us.

Mr. Matthew Firth: No, I would disagree with you. I don't—

Mr. Francis Scarpaleggia: I'm not saying that's my point of view. I'm just asking if it is possible to look at it that way.

Mr. Matthew Firth: That's sort of where I was going with my initial response. I was looking at actions within the workplace, but that is where we start and then we go out from there, so that we are looking at broader environmental considerations, as an organization.

Mr. Francis Scarpaleggia: Like particulate matter in the air or pollution of waterways in and around government office buildings?

Mr. Matthew Firth: In terms of broader environmental issues, water, climate change, sure, we do work in those areas, but by particulate matter, I'm not exactly sure how specific you want me to be with respect to the nature of—

Mr. Francis Scarpaleggia: It's okay. I better understand the work that you do now.

You were mentioning Canada's very poor global environmental record compared to other countries. You mentioned a figure. We're 156th.... Do you recall what that figure was?

Mr. Matthew Firth: There is the climate change index, which affects about 57 countries.

Mr. Francis Scarpaleggia: In terms of occupational health and safety, where do we rank on the global scale?

Mr. Matthew Firth: I'm not exactly sure of the precise ranking, but I would think it would be better than that.

Mr. Francis Scarpaleggia: Some witnesses who came before the committee said that one of their primary objections with the bill was that we already have a democratic process to create environmental laws and regulations. They and the rest of society work within this process and they felt that this bill was sort of a back-door mechanism for making law outside the democratic process. They had an objection in principle to that. How do you see it?

• (1620)

Mr. Matthew Firth: No, I don't object to that. It seems to me that this proposed law or bill is being taken forward through the normal channels, is it not?

Mr. Francis Scarpaleggia: Yes, but for example, the way it's written, as I understand it, it gives the power to a resident or citizen or whoever to take civil action against the company that is following the law or following regulations that were made democratically—not maybe in a perfect democratic system, but that were made democratically. I want to gauge your reaction to that argument.

Mr. Matthew Firth: It sounds like a similar question to what I was just asked previously, and I was advised by the chair to submit a legal opinion from CUPE's lawyer, so I'll....

Mr. Francis Scarpaleggia: Okay, that's fine.

The Chair: Your time has expired.

I do encourage you, Mr. Firth, if you're more comfortable with having your lawyer prepare a response on behalf of CUPE, that it would be the appropriate way to respond to the questions that are being asked.

Moving on.... Mr. Calkins, you have five minutes.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thanks, Mr. Chair.

I don't know whether you were asked this question directly, Mr. Firth. Did your committee, your leadership, in any way consult or ask for a legal opinion with respect to the potential impact of this bill on your membership? Did you ask for a second party...?

Nobody has done it? So you haven't done a study as to whether or not—

Mr. Matthew Firth: No.

Mr. Blaine Calkins: —the implications of this proposed legislation, if it was brought to bear...what impact it would have on your membership?

Mr. Matthew Firth: No.

Mr. Blaine Calkins: No? Okay.

I'm going to go back to use some of the numbers you used and just draw some comparisons, and I'm going to ask you some questions.

You said that Canada ranked 46 out of 163 countries, with a score of 66.4 on.... This is that Yale University study—

Mr. Matthew Firth: Yes.

Mr. Blaine Calkins: —to which you gave a C grade. You said it puts us in the middle of the pack.

Well, actually, 46th out of 163 is the 72nd percentile. Even if you're using mean or median averages, this would mean we're well above the middle of the pack, which I guess would be around 81st or 82nd.

We're behind developing nations such as Mexico and Romania. According to the International Monetary Fund, the Mexican GDP is \$13,000, the Romanian is \$11,000. Are you arguing that maybe Canada needs to slow its economy down in favour of environmental considerations and move towards a GDP similar to Mexico's and Romania's?

Mr. Matthew Firth: No, I—

Mr. Blaine Calkins: No, I'm not done, Mr. Firth. I'll just keep going here.

In the corruption index, Canada scores eighth out of 149, which means that we're pretty good at following the rule of law in our own country. If we take a look at Mexico, they're 69th out of 149, and Romania is 53rd.

I'm guessing that you're probably not arguing that we should be following them on that particular scale but should be following them on an environmental scale. Is that right?

Mr. Matthew Firth: No. In fact the point I'm trying to make is that I would expect, given our economic standing in the world, that we would be much higher in that ranking. That's the simple point I'm proposing there.

Look at the countries who are at the top of that table. That's the company that we should be keeping.

Mr. Blaine Calkins: Well, it is the company we're keeping when it comes to such things as following the rule of law or when it comes to things such as corruption, or things such as GDP. I mean, we're ahead of Sweden and we're basically tied with Switzerland. We're basically second to none when it comes to following the rule of law. We already have extensive and expansive legislation in this country dealing with environmental factors. So I don't understand what the point might be.

But I'm going to ask you a question, and it pertains to the Shipping Federation of Canada, who testified before this committee. They're talking about the bill. I'll spare you the preliminaries, but they say:

In view of the foregoing, we are concerned that Bill C-469 would enable anyone to challenge any regulatory standard at any time, thereby trumping the existing regulatory process and creating regulatory unpredictability. We therefore submit that a new subsection should be added to section 16, in order to provide that the proposed judicial review remedy does not apply to a regulatory standard.

Now, Ms. Duncan piped up, in an attempted point of order, to try to basically say—perhaps she hasn't read her own bill—that it doesn't apply to permits. Yet clause 19—

• (1625)

Ms. Linda Duncan: Excuse me, Mr. Chair, I have a point of order here.

The Chair: Ms. Duncan is on a point of order.

Ms. Linda Duncan: There's no need to be insulting.

Mr. Blaine Calkins: I'm not; I'm just wondering. It would seem to me that the author of the bill would know what the wording is.

Ms. Linda Duncan: Read the bill.

Mr. Blaine Calkins: Paragraph 19(2)(a) says “suspend or cancel a permit or authorization issued to the defendant or the defendant’s right to obtain or hold a permit or authorization” in any undertaking that might be challenged pursuant to the balance of tests in section 16 of this bill, thereby putting potential projects that have already been permitted—already existing projects—in a perilous situation, should this law come to pass. Also, it would put any proposed permits or projects that might be before any regulatory body in a perilous position as well.

Do you really believe that the membership, the 600,000 workers you represent, if they knew the gravity of the potential of this legislation, would actually support this bill?

Mr. Matthew Firth: I think this is the third time I'm being asked the same sort of question, and I've already given a response to it.

The Chair: You have about a minute left.

Mr. Blaine Calkins: I'm fine, thanks.

The Chair: Okay. Thank you, Mr. Calkins.

We have about four minutes left. Mr. Ouellet, you can use part of that time, and then we'll suspend.

I'm going to give you about three minutes, Mr. Ouellet.

[*Translation*]

Mr. Christian Ouellet (Brome—Missisquoi, BQ): Thank you for appearing as a witness today. Your take on the bill is very interesting. Other individuals have certainly made it clear to you that some witnesses that we had at the last session asked questions about the bill that were much more difficult than yours.

Are your 600,000 members from all the provinces? If there are some in Quebec, what name do they go by? What do they do?

[*English*]

Mr. Matthew Firth: We have members in all provinces—none of the territories, but all provinces—including Quebec: hydro workers, health care workers, municipal workers throughout the province of Quebec. I'm not exactly sure how many members we have in Quebec.

[*Translation*]

Mr. Christian Ouellet: It isn't necessary. I do not want to know that. I would like to know if you have consulted...

[*English*]

Mr. Mark Warawa: On a point of order, I couldn't quite hear. Did the witness say that he represents people in Hydro-Québec?

Mr. Christian Ouellet: Yes. Listen well, and you will hear.

It's not a point of order. He's not listening.

The Chair: I think there's a problem with translation.

Mr. Ouellet, you have the floor.

[*Translation*]

Mr. Christian Ouellet: Have you consulted your members in Quebec about this bill? Have the people who work in your organization given you their opinion about this?

[*English*]

Mr. Matthew Firth: It's the same answer I gave to the last question: that the workers who were consulted were members of CUPE's national environment committee, which includes two members from Quebec. So yes, they were consulted.

[*Translation*]

Mr. Christian Ouellet: Okay. As I don't see this element in your summary of discussions, I would like to know whether provincial jurisdiction was brought up. Were people working for your union aware that jurisdiction issues could arise between a provincial ministry of the environment and the federal government regarding this bill?

[*English*]

Mr. Matthew Firth: In terms of the consultation, they were aware that this bill refers only to federal jurisdiction.

[*Translation*]

Mr. Christian Ouellet: Okay.

Do I have any time left?

[English]

The Chair: It's three minutes right now.

Mr. Christian Ouellet: Okay, I have one minute left.

The Chair: No. I gave you three minutes. We only have one minute to the bottom of the hour and we have to change witnesses. I'm going to cut it off here in the interest of time.

I'm sorry, Mr. Ouellet.

Mr. Firth, thank you so much for appearing on behalf of CUPE. If the lawyer for CUPE can provide us with a response to a couple of the questions that were given, we would appreciate it.

I'm going to suspend the meeting quickly so that we can change witnesses.

We are suspended.

• (1625) _____ (Pause) _____

• (1630)

The Chair: We'll call this meeting back to order.

We welcome to the table now as witnesses for our second hour the Canadian Hydropower Association. Joining us is Mr. Jacob Irving, who is the president, and Mr. Ian Kerr, who is the vice-president in charge of development of Canadian operations in Brookfield Power Services.

We'll turn it over to you. If you can keep your opening comments to less than ten minutes, we'd appreciate it. Then we'd have more time for conversation after your opening comments.

Mr. Irving.

[Translation]

Mr. Jacob Irving (President, Canadian Hydropower Association): Thank you, Mr. Chair.

I am bilingual, but since my first language is English, I would like to make my presentation in English. Then, I could answer questions in French.

[English]

Again, thank you, Mr. Chair.

My name is Jacob Irving and I'm the president of the Canadian Hydropower Association. With me here today is Ian Kerr, vice-president of development for Brookfield Renewable Power, a member of the Canadian Hydropower Association and a private developer and operator of hydropower projects across Canada.

The Canadian Hydropower Association, or the CHA, is the national trade association dedicated to representing the interests of the hydropower industry. Our members are hydropower producers, manufacturers, developers, engineering firms, organizations, and individuals. The CHA members represent more than 95% of the hydropower production in Canada. Hydro power provides 60% of Canada's electricity, making ours one of the cleanest and most renewable generation systems in the world. We have the ability to more than double our current hydropower capacity, providing Canada with the solid opportunity to fight air pollution, climate

change, and global warming. Hydro power has over 120 years of history in Canada. We are pioneers and world leaders in this form of energy and our future is even more promising than our past.

I'd like to provide you with a perspective on Bill C-469 from a clean and renewable energy industry perspective, where environmental stewardship is always top of mind. It is important to mention from the outset that we support many of the goals and intentions of the bill. We believe the aim of the bill is laudable; however, we have serious reservations with the more detailed and procedural aspects of the proposed legislation.

The CHA believes Bill C-469 would be harmful and potentially destructive to the current system of environmental regulations that we have all worked so hard to adopt and improve. We are concerned that without significant amendments this bill will create unacceptable levels of uncertainty, invite unproductive and vexatious litigation, and reduce industry's ability to proactively engage in additional environmental stewardship initiatives. It would ultimately frustrate the development of clean and renewable energy not only from hydro power, but also from other renewable sources, such as wind and solar as well. These clean, renewable energy sources are some of Canada's best options for fighting air pollution and climate change.

The greatest challenge to unlocking Canada's hydro power lies in the amount of regulation we must manage both at the provincial and federal levels. It already takes eight to fourteen years to build a hydropower project. We have to devote much of this time to ensuring projects meet the environmental goals of various pieces of federal and provincial legislation. It's interesting when you consider that non-renewable and higher-emitting thermal generation projects in Canada can generally be built in three to five years, as they generally face lighter regulatory requirements.

A new hydropower project takes up to fourteen years to permit, build, and authorize. Having proved itself against current rigorous environmental regulations, the project would then begin operating in a new, even more uncertain context. If Bill C-469 were to pass in its current form, all the permits and authorizations that took up to fourteen years to obtain would suddenly be unreliable and an entirely new avenue for legal challenge would be opened. For hydropower developers, this truly represents an "out of the frying pan and into the fire" scenario. Indeed, it is our commitment to environmental principles that compels us to urge this committee to thoroughly assess Bill C-469 and all of its implications. We maintain that the bill's stated purpose is cohesive with existing regulatory schemes, but the mechanisms fundamentally are not.

It is within this context that I'd like to offer a few high-level comments on our overriding concerns of the bill. One of the reasons we can confidently state that CHA supports the intention and goals of the bill is that the current regulatory scheme already advances responsible environmental decision-making and reflects many of its principles. For example, the precautionary principles, sustainable development principles, and polluter pays principles are woven into many of the existing acts and permeate the entire federal environmental regulatory regime. We believe concentrating energy and resources on improving existing laws, such as the Species at Risk Act and Canadian Environmental Assessment Act, is preferable to adopting an entirely new approach to protecting and enhancing the environment. This bill creates a wholesale change in the way we would approach environmental regulation in Canada.

CHA has serious concerns regarding several of its proposed mechanisms. Perhaps the most significant change to the current regulatory system would be the fact that under Bill C-469 the courts would be required to decide on environmental protection actions against the federal government, environmental civil actions, and judicial reviews relating to environmental protection. We are very concerned that this would essentially bypass the system of environmental regulations described above by handing over the final decision-making to federal courts and private litigants.

• (1635)

The Chair: Mr. Irving, can I ask you just to slow down a bit for our interpreters so they can keep up?

Mr. Jacob Irving: Sure. Sorry.

We believe this represents a regression in environmental law for the following reasons:

It effectively takes decision-making authority out of the hands of the subject-matter experts in the agencies such as Environment Canada, Fisheries and Oceans Canada, and Natural Resources Canada, and transfers it to judges. The parameters of judicial review set out in the bill ignore the fact that such decision-making requires careful balancing of environmental, economic, and social considerations, which is the proper purview of parliamentarians and civil servants, not judges.

Additionally, we are concerned that it ignores the careful balance and recognition of the shared provincial and federal jurisdiction over the environment by vesting this authority in the federal courts. We anticipate that allowing any entity or resident of Canada to seek recourse in federal courts will open the floodgates to vexatious, obstructionist, and interminable legal challenges.

Finally, granting federal courts the power to suspend or cancel a permit or authorization and making injunctions substantially easier to obtain could have significant and far-reaching effects on the reliability of Canada's hydropower supply. This in turn will lead to negative impacts on Canadian consumers and businesses.

We do not perceive enough safeguards to ensure that antagonistic lawsuits are not brought against projects. At any rate, we believe these changes should not be accepted merely on the basis of the obvious good intentions of the bill. CHA would recommend to this committee that it carefully review the legal analysis of the effect of these changes on judicial resources.

I am not a lawyer, but my members have advised me that a very serious problem runs throughout part 2 of Bill C-469. Although entitled "Judicial Review", it actually isn't. Clause 16 under part 2 creates an environmental protection action and allows the plaintiff to prove its case on a balance of probabilities basis. This means that every time an individual or entity disagrees with an authorization or permit under any environmental legislation, they could file a claim, which would result in a trial to see if the court agrees with the government's action or inaction.

In a judicial review, the court is determining whether the official acted within the powers allowed by the statute and with a correct understanding of the law. In an action file, according to the provisions of Bill C-469, any individual or an entity could attack a decision based on a brand-new, vague standard even though the decision was correct according to the applicable statute. The courts currently exercise significant powers of judicial review over agency decision-making. This all adds up to a fundamental change to both the application of administrative law and to Canada's entire approach to environmental stewardship. The nature of this sea change approach demands more in-depth consideration than I believe has occurred. These are obviously complex issues that need to be better explored by legal experts.

But let me return to Canadian Hydropower Association's fundamental concern. Based on our reading of this bill, this legislation would mean that no business, no industry large or small, could operate securely in the knowledge that they are on safe ground even if they're fully compliant with the general law and any permits and licences that have been issued. An action can still be brought before the federal courts, and compliance with permits and licences is not a defence. It does not matter whether those permits and licences have been issued under federal, provincial, or territorial law. We believe this makes Bill C-469 substantively different from other jurisdictions that have adopted an environmental bill of rights approach.

For example, Quebec's Charte des droits et libertés, which specifies that everyone has the right to live in a healthy environment, includes the presumption that this right is met whether or not relevant environmental authorizations and permits have been acquired. It does not allow individuals to challenge the permits themselves and in this way avoids the potential for vexatious litigation that Bill C-469 would create. We believe this type of necessary safeguard is missing from Bill C-469.

In closing, I'd like to reiterate that the intentions behind the bill, as we understand them, are laudable from an environmental protection standpoint. As I mentioned before, CHA is an association populated by developers who approach and discharge their environmental responsibilities with the utmost seriousness. Again, CHA values the intentions and goals that guide this draft legislation. While Bill C-469 may offer more procedural mechanisms to allow more people to engage in environmental protection efforts, from a practical perspective it is destined to duplicate and functionally replace numerous aspects of existing federal legislation and policy.

Moreover, from the CHA's perspective it inappropriately transfers environmental decision-making authority from the executive and legislative branches of government to the judiciary while introducing a suite of ambiguous terms and concepts into an already complex environmental regime.

• (1640)

From the point of view of Canada's hydropower producers, this bill would create massive uncertainty for the operation of our facilities. Our members would experience a disincentive to undertake programs or measures that would have an overall positive effect on ecosystems. Instead, developers would be compelled to focus solely on minimizing specific impacts directly linked to their activities. Moreover, it presents a high potential for frustrating the future development of clean and renewable energy, thereby depriving Canadians of proven methods for fighting air pollution and climate change.

No form of energy development is perfect, but I am confident in saying that for Canada hydro power is our best option. From both a socio-economic and an environmental perspective, hydro power can offer Canada a sustainable net benefit. Hydropower developers are naturally concerned by any measure that might further complicate, obstruct, delay, defer, or defeat hydropower development, and we believe Canadians should be concerned as well. It is for this reason that although we respect the goals and intention of Bill C-469, we must voice our strong concerns regarding the institutional change and negative consequences it could create.

Thank you very much, and I'd be happy to take any questions at this time.

The Chair: Thank you, sir.

We're going to go with a seven-minute round that kicks off, again, with Mr. Kennedy.

Mr. Gerard Kennedy: Thank you, Mr. Chair.

Thank you for your testimony. I have a sympathy for the quick talking. We're a limited option here, but I think you'll find you'll have more than enough time to elaborate.

I want to go a bit to the heart of your presentation, to the idea that everything is good, that there is not anything further needed. We were told by other witnesses that 160 of 192 countries have some form of rights for environmental protection frameworks. Presumably, that's where either your members are also operating or potentially competing with operations. I wonder if there's something specifically about this framework, compared to some of those other ones, some of which seemed to bear real constitutional and therefore hierarchical legal authority. Why would this one be so much more difficult, more

onerous, and unacceptable, as you seem to be saying to your members?

Mr. Jacob Irving: Thanks for the question.

I think our members are focused on the constant improvement nature of environmental regulation and legislation, and I think many of them would never contend that we be complacent by any stretch. Environmental protection is an evolving issue and we must stay vigilant on it. Our members are dedicated to this.

When you mention that there are many other countries around the world that have this form of protection or legislation, true, from our understanding, and indeed even at the provincial level, as was mentioned, the province of Quebec, at a provincial level, has a component of this in their charter of freedom and liberties.

The difference is that in our reading of the bill and examining it, we do not feel there are enough safeguards to prevent obstructionist attempts through litigation to our projects or to any other projects, and that's the part that concerns us, I think, most gravely in this. In the Quebec context, as I was mentioning, there's a provision there that you can bring challenges but you can't challenge the permits that have been issued, for example. You can challenge other aspects. Our member companies operate within that. They operate comfortably within it. But this piece seems to be missing some of that.

• (1645)

Mr. Gerard Kennedy: Thank you for focusing our attentions.

If you believe that it is obstructionist in potential, are there regimes where you've seen this to be the case—in other words, where we know these kinds of provisions will bring on that behaviour? I know you're saying in the alternative Quebec restricts that.

I can understand the business case—you don't want anything to be slowed down, deferred, and so on. But if we're going to reconcile our environmental obligations to the next generation, the best way of understanding that is we're ripping off a generation if we despoil the water, the air, and the land in a way that they get it in damaged form. That's sustainable development. Most of your members would probably subscribe to that. So the question is what does this add to or detract from our consideration of those kinds of things? Invariably, we need to slow down long enough to understand that, and it is posed here that this is an infill. This will fill in where we don't have protection.

Do you have any places that would lead us to believe that these kinds of provisions will lead to obstructionist behaviour? And I'll add a second question so that you can just answer. If you want us to continuously improve our existing thing, where are the gaps that should be addressed that your association believes exist in environmental protection? And what laws and so on would you like us to look at as the alternative in terms of closing some of the gaps?

Mr. Jacob Irving: I can't say that it's for the Canadian Hydropower Association that I have done a global review of different jurisdictions in the in-depth manner you're asking for. So I'd have to say that I can't give you the examples you're looking for off the top. Ian may have some ideas from the global operations of Brookfield Power. Of course many of our operators, as you know, are provincially based, so they are not really able to draw on international expertise in hydropower development around the world. In general, Hydro-Québec generates and produces projects in Quebec, Manitoba Hydro produces projects in Manitoba, etc.

But our reading is that there is a potential for this to occur. So I think it is a legitimate concern. This is a proposed law, a bill that's speculating on outcomes by definition. It's a proposed piece of work. We of course are then brought in to speculate a little ourselves. We're not usually in the business of speculating. But this is a proposed piece of legislation, and we're trying to provide some possible outcomes that we see as worrisome to us. So I think that's where the comments come from largely, at a general level.

To the second question, of where we would like to see improvement and where we think improvement can be achieved in terms of environmental legislation overall, I would say that being involved with this committee in the past on the Species at Risk Act review and the seven-year review of the Canadian Environmental Assessment Act, these are all things that our industry is actually quite encouraged by. We appreciate that a lot of what I would call the "newer" pieces of environmental legislation that have come to the fore—again the Species at Risk Act and the Canadian Environmental Assessment Act—have built-in processes for review that acknowledge that this is a whole new area and that we all need to get together every so often, every five or seven years, to check on the intended and unintended consequences of the legislation.

So I think focusing our efforts there, as we have in the past, is quite productive and helpful in that respect. We believe that we have achieved some changes, some practical changes at the enforcement level, and we've also had a great opportunity to present our concerns at the legislative level to this committee as well in the past. So I would say that's where there's great opportunity for great improvement.

•(1650)

The Chair: Your time has expired.

[*Translation*]

You have the floor, Mr. Bigras.

Mr. Bernard Bigras: Thank you very much, Mr. Chair.

First, I want to thank the association representatives for their testimony. We now have a better idea of the bill's scope. At the beginning of your presentation, you said that the bill's aim is

laudable, and we agree. Despite that fact, the bill's scope seems to be problematic. From the outset, the bill has been compared by some of our witnesses to the legislation of certain provinces. Quebec legislation, and Ontario and Yukon charters, have been mentioned. It appears that the further our study progresses, the easier it becomes to make these comparisons. However, the fact is that the legislations differ in scope.

I will start with clause 9 of the bill, which concerns the right to a healthy environment. Subclause 9(1) of Bill C-469 states the following:

9. (1) Every resident of Canada has a right to a healthy and ecologically balanced environment.

However, section 19.1 of the Quebec Environment Quality Act, in Division III.1 on environmental quality, states:

Every person has a right to a healthy environment and to its protection, and to the protection of the living species inhabiting it, to the extent provided for by this Act and the regulations, orders, approvals and the authorizations issued under any section [...]

I want to draw your attention to the last point, as it's probably important to you.

So, is it wrong to claim that the scope of the bill before us is not the same as the scope of the Quebec act, since the provincial legislation sets out a number of parameters, which are absent from the bill?

Mr. Jacob Irving: There you have it. The bill before the committee and the current Quebec act are slightly different. The main difference is that the Quebec legislation provides clear directions for hydropower project developers and for other projects as well.

We feel that this is the main difference. This approach is somewhat rigorous, and so people are given the opportunity to get involved in provincial environmental policies a little more. In addition, contractors can undertake with confidence hydropower, mining or other projects.

Mr. Bernard Bigras: I would like to focus on another component concerning civil action. I'm talking about the bill's subclause 23(1), which states the following:

23. (1) Every resident of Canada [...] may seek recourse in the [courts] of the relevant province to protect the environment by bringing a civil action against the person who has contravened, or is likely to contravene, an Act [...]

The provision does explicitly state: "or is likely to contravene, an Act."

I would also like to draw a parallel between the bill and the Ontario Environmental Bill of Rights. Section 84(1), which concerns right of action, states the following:

[...] any person resident in Ontario may bring an action against the person in the court in respect of the harm and is entitled to judgment if successful.

Section 83 of the bill of rights specifies that section 84 applies only in respect of a contravention of an act. It says nothing about people likely to contravene an act. So, an act must be contravened in order for someone to bring an action against a person in the court.

Is this not an example of another parameter contained in the Ontario charter, but absent from Bill C-469?

•(1655)

Mr. Jacob Irving: This analysis leads me to believe that we need clear directions to promote projects. If we make things too difficult and if there's too much uncertainty in our project planning, it will be more difficult to carry out energy projects that could help tackle greenhouse gases and other related problems. That's something that hasn't been taken into consideration.

Mr. Bernard Bigras: If the person sponsoring the bill decided to amend it by including parameters and safeguards as the provinces have done, would you be more likely to recommend that we support the bill? Would you be more likely to make that recommendation if you were given some assurance about not only the two components I just talked about, but also other aspects I had no time to get to?

Mr. Jacob Irving: We are obviously able to carry out projects in provinces where similar legislation and parameters apply. Logically speaking, if federal legislation with similar parameters were adopted, it would be easier to be even more supportive of the bill we are currently studying.

Mr. Bernard Bigras: I have nothing further, Mr. Chair.

The Chair: Thank you.

[English]

Ms. Duncan.

Ms. Linda Duncan: Thank you, Mr. Chair.

I thank the witnesses for their testimony.

Mr. Irving, in making your presentation have you familiarized yourself with other federal environmental laws? Are you aware that many of the rights and opportunities accorded under Bill C-469 are already accorded under CEPA?

For example, section 22 provides for an environmental protection action. Section 39 provides for any individual to seek an injunction. Section 40 allows for any individual to seek an action for civil damages, which Bill C-469 doesn't. It precludes damages and simply seeks an order for restoration, and so forth. Section 17 of CEPA allows any resident—not citizen—to seek an investigation.

Are you seeking changes to those laws to take away those rights from CEPA as well?

Mr. Jacob Irving: No, we haven't been seeking those types of changes. Indeed, I think elements of this bill that can be found in existing legislation throughout are not areas of contention for us. It's the sum total of the bill that gives us cause for concern after we've received our permits, after we've complied with all those existing pieces of legislation that we must deal with and that we do operate within.

This is another after-the-fact opportunity for our projects to be potentially delayed, and we do believe there is a potential for obstructionist approaches to be taken. For us, as I mentioned earlier, it's eight to fourteen years under current legislation. We do abide within it. We do manage to build projects under that framework, for sure. Now that it can be after the fact, the question we have is what

this will potentially represent in terms of further delay. We see many different new avenues and opportunities for that. That's our concern.

•(1700)

Ms. Linda Duncan: So I guess what I'm understanding is that you don't object to those rights being accorded to citizens under CEPA; you just object to those rights being accorded under other environmental laws.

Can you share with the committee examples of where frivolous and vexatious litigation has been taken against operations in say British Columbia, Manitoba, Yukon, or Quebec, where they have an environmental bill of rights?

Mr. Jacob Irving: I can't. I don't have those listed. But again the way we read and understand those frameworks is quite different from the way we read and understand the one we're studying here today. That's where our speculation comes from.

Ms. Linda Duncan: I guess I'm still waiting to hear which details are different.

One thing I would bring to your attention, regarding your reply to the question raised by my colleague Monsieur Bigras, is that in fact this bill before us, which you are speaking to, does provide a constraint right up front under clause 8. I would encourage you to take a look at that where it says,

The provisions of this Act apply to all decisions emanating from a federal source or related to federal land or a federal work or undertaking.

So in fact it provides a very close constraint on the application of the bill, which might give you a little level of comfort.

You did raise a matter that has been raised by some of the other industrial witnesses. You testified that the courts have no ability to consider scientific evidence. Are you then suggesting that the courts are also incapable of considering environmental evidence, including under prosecution of environmental laws?

Mr. Jacob Irving: I don't think we said that they're incapable of considering this. We're saying we feel it's more appropriate that this decision-making rest in existing parliamentary bodies that were created through Parliament and that reside within the civil service. We have professional departments that have been built up over the past number of years based on the legislation that has been passed, such as the Canadian Environmental Assessment Agency and others. We feel that's where the expert opinion lies, and that's where the resources lie to be able to provide some of the best possible judgments.

Ms. Linda Duncan: So you're suggesting that all applications for judicial review of legislation should go before government scientists, not before the courts?

Mr. Jacob Irving: I'm not saying "all". What we're saying is that in this case, we feel the existing system provides the necessary measure of protection and enforcement of the regulations that would help our industry achieve the certainty that it needs.

Ms. Linda Duncan: I'm just trying to seek clarification. You've said you're not going to seek repeal of exactly the same provisions under CEPA, and yet you don't believe that these provisions—the right, say, for a citizen to seek an investigation if they think there's an alleged offence occurring, or the right to seek judicial review if they believe that an environmental law is not being enforced by an agency—should apply to other environmental statutes? You don't believe there should be recourse to the courts in those matters or that a citizen should have recourse to file a request for an investigation of an environmental offence?

Mr. Jacob Irving: It's really not up to us as an industry to have an opinion on when and where people should be able to have recourse to the courts.

Ms. Linda Duncan: I wasn't speaking about the courts, sir. I was talking about the right to file an investigation. You've spoken against the bill, so I'm asking you a question: Do you support the aspects of this bill—for example, the right of a resident to file a request for investigation of an alleged offence?

Mr. Jacob Irving: I understand that this is where it's an investigation to the minister. Is it that portion of the bill?

Ms. Linda Duncan: That portion of the bill provides the right, which is identical to that under CEPA, of an individual to request an investigation where they have information that comes to them that there may be an alleged offence under a federal environmental law.

Mr. Jacob Irving: No, we're not seeking that under CEPA. But under the auspices of this bill, we find that there's increased uncertainty compared to that one.

Ms. Linda Duncan: So are you of the view in your industry that at no time should environmental changes to your industry be advanced?

For example, I was advised last evening, by an American expert, that the United States Army Corps of Engineers are actually revisiting their dams to examine whether it's possible to operate them in a more environmentally benign manner but to still proceed with the operation of the dams. Are you opposed to any opportunity to reopen environmental approvals to perhaps allow for operation in a more environmentally benign way?

• (1705)

Mr. Jacob Irving: No.

Mr. Ian Kerr (Vice-President of Development, Brookfield Power Services Inc.; Canadian Hydropower Association): Perhaps I can offer some comment.

There already are those provisions in all of the jurisdictions in Canada I work with.

Ms. Linda Duncan: Can you give an example in law where that right is important?

Mr. Ian Kerr: Certainly in the provisions for approvals under the Fisheries Act, for instance, there is a requirement for what's known as adaptive management. Those are usually conditions of approval, under the act, that for certain parameters for which there is some uncertainty at the time of the approval the proponent has to be willing to adopt an adaptive management approach whereby as impacts are better understood throughout the operation of the facility—

Ms. Linda Duncan: Right, you're 100%—

The Chair: Thank you. Your time has expired.

[*Translation*]

Mr. Blaney, go ahead.

Mr. Steven Blaney: Thank you very much, Mr. Chair.

I would like to thank Messrs. Irving and Kerr for appearing on such short notice.

You have just confirmed my worst fears about the bill currently before our committee. We can't blame you for exploiting fossil energies and being polluters involved in oil or shale gas, which are found in Quebec. While I have a lot of respect for those two industries, the truth is that they are not exactly getting good press.

You are an industry leader in the field of renewable energy in Canada. Hydropower is our greatest resource, especially in Quebec.

Your testimony is crystal clear, if you'll forgive the expression. You pull no punches. You're already saying that this bill could compromise hydropower projects. There are several projects currently under way in Quebec, and we'd like to have more. You say that it normally takes 8 to 14 years to carry out a hydropower project, and that this bill would introduce a level of uncertainty. Unless I've misunderstood, you're saying that this period could become even longer. Did I understand you properly?

Mr. Jacob Irving: That's how we interpret the bill's provisions. It would add another level of uncertainty, a new way to slow down projects. We are not against changing or improving the way the environment is taken care of. However, we are not completely sure that this approach will help us reach that goal. It's more likely to slow down most of our projects.

Mr. Steven Blaney: You were very clear during your presentation. You say that the bill would raise the level of uncertainty and the risk of litigation, and would thus prevent you from playing your stewardship role, as you put it. I would call you a champion of project development monitoring.

I see this bill, especially from a Quebecker's point of view, as the New Democrats trying to pull the wool over Quebec's eyes. It appears that the bill is clearly interfering in provincial areas of jurisdiction. As it was shown earlier, the bill's scope is overly broad, and I find that fact extremely worrisome.

I would like to hear what you think about this quote from a Shipping Federation of Canada submission presented to us by an industry representative:

[...] we are concerned that Bill C-469 would enable anyone to challenge any regulatory standard at any time, thereby trumping the existing regulatory process and creating regulatory unpredictability.

As my colleague Blaine Calkins said, we have spent decades implementing an extremely strict and complex environmental regulatory framework. Now, a new element is being added to the framework and is creating a kind of a “twilight zone” situation. As things stand, anything is possible. It seems that the bill will create a potential risk for developers like yourself who want to carry out sustainable development projects.

What's your reaction to this situation? Could it negatively affect investments? Could this bill compromise the funding provided for sustainable development projects?

● (1710)

Mr. Jacob Irving: That's how we see it. The bill would introduce uncertainty, and that's why I say that it could interfere with our other efforts to promote environmental improvement. Our industry has been especially successful in adopting various measures for improving the environment. We are well aware that our development activities have consequences and that many things must be done in compliance with the regulations. Other measures, unrelated to the regulations, must also be adopted to improve the situation.

The problem is that this costs money, of course, and it requires and diverts resources. Improving the environment is something we take seriously and are committed to. If a bill were to introduce a new level of uncertainty, it would force us to reassess our additional efforts, and would perhaps bring us to question whether we should be involved in environmental improvement initiatives. If something like this were done, we could end up wondering...

Mr. Steven Blaney: Mr. Irving, I apologize for interrupting you, but we're running out of time.

We were provided with a legal opinion at the beginning of the week. The opinion states that the bill goes against sustainable development because such development requires a balance between the economy and the environment. You are something of a sustainable development champion in Canada. Do you feel that this bill creates an imbalance because it stands in the way of the economic support needed for carrying out sustainable development projects?

Mr. Jacob Irving: That is the potential risk and the reason why we are very pleased to be here today.

Mr. Steven Blaney: Mr. Chair, you signaled that my time is almost up, so I would like to wrap up my comments.

You said that this bill is extremely harmful and devastating for sustainable development projects, right? You said this in English. Did I understand you correctly?

Mr. Jacob Irving: Yes, this is what could happen if the bill is not amended.

Mr. Steven Blaney: Great, thank you very much.

I'm done.

The Chair: Thank you.

[English]

Mr. Scarpaleggia, you can kick us off on the five-minute round.

Mr. Francis Scarpaleggia: Thank you, Chair.

I'm trying to sort out this issue of whether this bill can require the suspension of a permit or not. I believe, if I'm not mistaken, Ms. Duncan said it doesn't and someone else here said it does. I think I found the clause that talks about suspending or cancelling permits, and it's subclause 19(2).

I was told, however, by a lawyer that in fact this should be removed, because it doesn't really make sense, because we're talking about judicial review with respect to the Government of Canada, and the way this clause is worded it's really referring to defendants other than the Government of Canada. Anyway, I'm going to be proposing an amendment to remove this clause.

Mr. Irving, if we were to remove this clause, would you feel more comfortable?

Mr. Jacob Irving: According to the analyses I've had from my members, I'd say that would increase our comfort.

Mr. Francis Scarpaleggia: That's good to know.

The other amendment I will be proposing is to remove subclause 23.(3), which is causing a lot of consternation among industries that have contacted us about the bill. It says it is not a defence to civil action under subclause 23.(1) that the activity was authorized by an act or a regulation. In other words, as I understand it, removing this would take a lot of the uncertainty away. Industry feels that even if it conforms to regulations and laws it's still vulnerable. If we took that out, would it make the bill more acceptable to you?

● (1715)

Mr. Jacob Irving: Yes, that's another complicating clause.

Mr. Francis Scarpaleggia: Great.

As to frivolous lawsuits, do you feel there's sufficient protection? I'm sure you've been asked this question before, but maybe you could just revisit it with me. Do you feel there is sufficient protection against frivolous lawsuits in the bill as it is currently drafted?

Mr. Jacob Irving: No, according to our reading, we see next to no protection. We see a desire to open the courts to more actions based on environmental protection or improvement.

Mr. Francis Scarpaleggia: Subclause 21.(1) seems to say that people found to have brought frivolous, vexatious, or harassing lawsuits may be ordered to pay court costs.

Mr. Jacob Irving: Yes, but we are concerned that our projects could be adversely affected by the uncertainty arising from the amount of time it takes these suits to get to court and be resolved.

Mr. Francis Scarpaleggia: You might have to go to court and pay a lawyer, but you're representing big industries that can afford that.

In addition, you may be underestimating environmental NGOs. I don't think they have any interest in bringing frivolous lawsuits and having to pay costs. They do not have a lot of money at their disposal. So they tend to pick and choose cases that can be won and that are significant in case law.

I think there's a problem under the civil action clause. Clause 21 is not referred to under the civil action clause. So I'm going to bring in an amendment to add something like clause 21 under the civil action clause. That would add some protection for you. I imagine that would make you feel more comfortable.

Mr. Jacob Irving: Improvements are always appreciated.

For us, however, it's not so much a matter of money and having to pay to go to court. Rather, it's the time involved and the uncertainty surrounding it. As for predicting who would bring suits against us, we can't determine that. I'm not trying to prejudge any of that.

The Chair: Time has ended. It goes by so fast when you're having fun.

Mr. Armstrong, you're on.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you, Mr. Irving, for your presentation. I found it interesting. It supports what we've heard from several of the witnesses who have been here.

I'm from Atlantic Canada, and we like to think that Atlantic Canada will become a green-energy superpower in the next couple of decades. Would you agree that there's huge green-energy potential in my region of the country?

Mr. Jacob Irving: Yes, we benefit from membership in Nalcor, the crown corporation that develops all forms of energy in Newfoundland, hydro power in particular. Newfoundland has huge hydropower potential. It's known to many. I think there's some exciting potential there that could be brought to the benefit of many.

Mr. Scott Armstrong: Of course you're aware of the Lower Churchill Falls project, which probably has one of the highest potential yields of clean green energy, perpetual energy, in this country for the next generation. Would you agree with that statement?

Mr. Jacob Irving: By all accounts, we have seen that there's a lot of potential there, and it could bring a lot of benefits.

Mr. Scott Armstrong: Do you feel that if this bill is passed unamended, as it sits now, the project could be impeded by someone intervening from Alberta, for example, or British Columbia or Ontario or other provinces, which would slow down this green energy potential in Atlantic Canada?

● (1720)

Mr. Jacob Irving: My understanding is that yes, this really does open up quite widely the opportunity for others to second-guess, I would almost put it, permits or authorizations that were put in afterwards. And I see no restriction on who could do it from within Canada.

Mr. Scott Armstrong: It says "every resident". Could you see that foreign citizens who happen to reside in Canada could throw a wrench into the Lower Churchill project in Atlantic Canada?

Mr. Jacob Irving: That's an interesting piece that I actually hadn't clued in on. Yes, "resident" does seem to be a key word.

Mr. Scott Armstrong: If you were working for some other sort of energy producer that would see Lower Churchill coming into competition over the next 25, 30, or 40 years.... Do you think there is a potential for this bill to be abused by some foreign energy producer

that could send residents in to actually challenge that? I'm not saying that it would happen, but would the potential be there if this bill were passed unamended?

Mr. Jacob Irving: Actually, that probably is a follow-up to the last question. You know, when you talk about vexatious lawsuits, there is that potential. I followed some of the comments made by the Canadian Chamber of Commerce earlier this week, and it would seem to me that there is that likely potential.

Mr. Scott Armstrong: People could abuse the bill in its current form to actually derail clean, green, perpetual energy projects and hold Canada hostage to being tied to fossil fuel production.

Mr. Jacob Irving: It sounds like an example of vexatious litigation, yes.

Mr. Scott Armstrong: In the end, this bill could actually harm the environment in the long term in this country, not help it.

Mr. Jacob Irving: Our worry constantly, as the Canadian Hydropower Association, is our ability to bring clean, renewable energy to bear on the global problems of climate change and air pollution. I think what you're saying isn't entirely unreasonable.

Mr. Scott Armstrong: Thank you.

I'm going to cede the rest of my time to my colleague, Mr. Calkins.

Mr. Blaine Calkins: Thank you.

If you've reviewed the previous testimony, you'll know the question I'm about to ask, because I've asked it several times.

I used to be a member of the Standing Committee on Fisheries and Oceans. A few years ago, a couple of Bloc Québécois members on that committee brought the Chisasibi First Nation to the committee to talk about the massive ecological damage they're claiming happened on the east side of James Bay as a result of the James Bay hydroelectric projects. They say that the eelgrass has disappeared, the migratory birds no longer come there, and the fish and all the other aquatic species have changed.

If this legislation were to pass in its current form, according to the test that is provided for in clause 16, which is about a balance of probabilities, and the paragraphs in clause 19, which are about the powers of the Federal Court, do you read paragraphs 19(1)(b) and 19(1)(e) and paragraphs 19(2)(a) and 19(2)(b) the same way I do? Should the first nation find a judge that would agree with them, the judge could actually order a permit that was granted years ago to Hydro-Québec to stop, cease, and desist. From the clauses I see here, a judge could "suspend or cancel the permit for authorization", "order the defendant to provide financial collateral", order the defendant to restore or rehabilitate any part of the environment, or "grant an injunction to halt the contravention".

Do you see this potentially happening if this bill were to become law?

Mr. Ian Kerr: I think that is certainly one of the issues we've identified and that I think Mr. Irving spoke to in his opening remarks. It is a significant concern. At the moment, given the development timeline for new hydroelectric facilities, the risks associated with operating them, and their capital-intensive nature, a very limited number of organizations have the technical and financial capacity to undertake and operate these facilities.

I think some additional layering on of risk associated with the operation stage would reduce that group even further and would certainly eliminate some people from the pool of competitors.

Mr. Blaine Calkins: Thank you.

The Chair: Thank you, Mr. Calkins. Your time has expired.

[Translation]

Go ahead, Mr. Ouellet.

Mr. Christian Ouellet: I yield the floor to Mr. Bigras.

The Chair: Go ahead, Mr. Bigras.

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

In response to my questions, Ms. Duncan took the time to specify that her bill's area of jurisdiction is strictly federal. After analyzing the bill, do you feel that it is interfering in provincial areas of jurisdiction?

Section 23, which sets out civil action recourse, states the following:

23. (1) Every resident of Canada or entity may seek recourse in the superior courts of the relevant province to protect the environment by bringing a civil action against the person who has contravened, or is likely to contravene [...]

Does this not imply a conflict with provincial areas of jurisdiction? I believe that civil issues usually fall under provincial jurisdiction.

• (1725)

Mr. Jacob Irving: We think that if the federal courts were to force the federal government to change our projects in the provinces more substantially, this might well cause some friction between the relevant province and the federal government. According to the Constitution, the management of natural resources falls under provincial jurisdiction. If the federal courts were to force the federal government to assume greater control, take on new powers or powers that could be seen as new, tensions could erupt. We anticipate this turn of events.

Mr. Bernard Bigras: Okay.

I have no further questions.

[English]

The Chair: Merci.

Mr. Preston, it's your turn.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): I have nothing, thank you.

The Chair: You can pass it off to Mr. Calkins, if you wish.

Yes, go ahead.

Mr. Blaine Calkins: That would be great. Thanks, Joe.

Just following up on some lines of questioning, I think this may have already been brought up, but I can see some other issues with this bill, not to mention the rampant opportunity for judicial activism. This is being sold and trumpeted by members of Parliament, all of whom I think love to go home and wave the bill saying that we have an environmental bill of rights. But this isn't about the environment; these are the rights of environmentalists. In my opinion, this skews the balance of sustainable development, as talked about by my colleagues in the Liberal Party, and of a sustainable future.

The three pillars of sustainability are social factors, economic factors, and environmental factors. Does this bill throw out of balance those three pillars?

Mr. Ian Kerr: I don't know to what extent it would throw it out of balance. I guess it's perhaps favouring the social side. That's where I think we've seen some examples of obstructionist practices and vexatious litigation in areas. We develop not only hydroelectric power but also wind power. Certainly in wind power developments in Ontario, we have seen, I think, obstructionist behaviour that perhaps favours the social side, despite the fulsome environmental, social, and economic reviews these projects have undertaken through a lot of the existing processes and assessments.

Mr. Blaine Calkins: The fact that some others around this table have already brought up the fact that some of the provisions already exist, doesn't that speak to the redundancy and unnecessary application of this proposed legislation?

Mr. Ian Kerr: Again, in my experience in multiple Canadian jurisdictions, I've yet to see an instance when legitimate concerns have not had the opportunity to be aired and be addressed through the existing approval processes.

Mr. Blaine Calkins: If this legislation were actually brought to bear, I can see it being an opportunity for competing business interests. I think we've already discussed that a little bit at this table. But I'm thinking that if a solar company doesn't get a permit or a capital grant through the government, or various levels of government, and let's say that a wind project or hydro project did, isn't this legislation providing a perfect opportunity for the solar company, through this legislation, to try to block that permit and get an injunction for purely competitive reasons?

In looking at this bill, how hard would that be, if it were passed, with the various tests? The main test is the balance of probabilities, which is not a really tough test to pass. But how hard would it be to get a temporary injunction, or to halt the development of any project?

• (1730)

Mr. Ian Kerr: From our reading of it and the advice we're getting, it would not be very hard at all. It appears that's quite a likely outcome.

The Chair: Thank you, Mr. Calkins. Your time has expired, and so has our time for this meeting.

I just want one clarification as chair. In your presentation and in your responses, you definitely had reservations about the bill. Would the Canadian Hydropower Association prefer that the bill be set aside or be amended?

Mr. Jacob Irving: There is probably opportunity for amendment, but it depends. Ideally one would like to see amendments come through that deal with all of our issues, and then that's fine. But if those amendments don't come to the fore, setting the bill set aside would have to be the logical choice.

The Chair: Mr. Kerr.

Mr. Ian Kerr: Just to build on that, the amendments that we feel are needed to make this workable and to have the intended impact would be significant.

The Chair: Thank you very much for appearing today on behalf of the Canadian Hydropower Association. Your testimony today, Mr. Irving, and Mr. Kerr, will help us form our decisions as we get into clause-by-clause consideration next week.

With that, I will have a motion to adjourn, please.

An hon. member: I so move.

The Chair: The meeting is adjourned.

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