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CANADA

# **Standing Committee on Environment and Sustainable Development**

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**EVIDENCE**

**Wednesday, December 1, 2010**

—  
**Chair**

**Mr. James Bezan**



## Standing Committee on Environment and Sustainable Development

Wednesday, December 1, 2010

• (1530)

[English]

**The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)):** I'll bring this meeting to order. It's meeting number 39, and we're continuing with our committee business.

Mr. Warawa.

**Mr. Mark Warawa (Langley, CPC):** Chair, is it appropriate for me to move my motion?

**The Chair:** Yes.

**Mr. Mark Warawa:** All I'm going to do is read it into the record and call for the vote. I move:

That, pursuant to Standing Order 97.1(1), and after concluding hearings, the Committee recommends that the House of Commons do not proceed further with Bill C-469, an act to establish a Canadian Bill of Rights, because the Bill:

will enable any resident of Canada to challenge any regulatory standard, at any time, thereby trumping the existing regulatory process, creating regulatory and investment unpredictability;

will encroach on areas of provincial environmental jurisdiction;

does not allow for the balance of the Social, Economic and Environmental pillars of Sustainable Development;

overlaps with aspects of existing Federal legislation and policies which give rise to redundancy or conflict;

removes numerous safeguards which ensure that environmental rights do not overwhelm government capacity and judicial resources.

My hope is that we move right to the vote and that we have a recorded vote.

**Ms. Linda Duncan (Edmonton—Strathcona, NDP):** Mr. Chair, I didn't hear the last part of what he said. There was a lot happening at this end.

**The Chair:** Mr. Warawa wants to have a vote on this, but I do see hands flying.

Ms. Duncan, I saw you—

**Mr. Mark Warawa:** That's fine. If she couldn't hear what I said.... We have no intent to put up speakers; we'd like to go right to a vote and get this over. And I asked for a recorded vote.

**The Chair:** I do have a speakers list going. I have Ms. Duncan—

Point of order, Monsieur Ouellet.

**Mr. Christian Ouellet (Brome—Missisquoi, BQ):** Or it's just a point of information.

[Translation]

I thought we could not vote while there were still names left on the speakers list. It seems to me some names remained on that list the other night. So we cannot vote.

[English]

**The Chair:** That's what I said. I have people on the speakers list.

[Translation]

**Mr. Christian Ouellet:** We cannot vote for as long as names remain on the list.

[English]

**The Chair:** There's no vote. We have to go to the speakers list.

[Translation]

**Mr. Christian Ouellet:** Fine.

[English]

**The Chair:** I have Ms. Duncan, Mr. Woodworth, Mr. Scarpa-leggia, and then Monsieur Ouellet. Ms. Murray...?

Ms. Duncan, you have the floor.

**Ms. Linda Duncan:** So the motion, as I understand it, is that Mr. Warawa wants to reopen these hearings?

**Mr. Mark Warawa:** No, to put it aside.

**The Chair:** The motion Mr. Warawa has put on the floor at every meeting for the last three meetings now is that the committee recommend to the House that it does not proceed further with Bill C-469.

**Ms. Linda Duncan:** I'm confused, because—

**The Chair:** When we finished the last meeting we were debating Mr. Calkins' motion, which was tabled—

**Ms. Linda Duncan:** Right.

**The Chair:** —and which was that we continue hearings.

**Ms. Linda Duncan:** So how do we all of a sudden take another motion on the floor when we haven't voted on the motion that's already on the floor?

**The Chair:** Because at the end of every meeting—

**Ms. Linda Duncan:** You start—

**The Chair:** —we start fresh.

**Ms. Linda Duncan:** You read the motion in, so the motion dies?

**The Chair:** Yes. We start all over again.

**Ms. Linda Duncan:** Unless it's retabled?

**The Chair:** Right.

**Ms. Linda Duncan:** So Mr. Warawa is now asking that the bill essentially just be...

**The Chair:** Yes: that we recommend to the House not to proceed any further.

**Ms. Linda Duncan:** That we not proceed with this bill...?

**The Chair:** Yes.

**Ms. Linda Duncan:** Okay. Well, I would like to speak to that motion.

**The Chair:** You have the floor, Ms. Duncan.

**Ms. Linda Duncan:** Thank you.

A lot of people have taken the time to come in to speak to this bill. Different people have different positions on the bill. There have been considerable efforts on the behalf of some members of this committee on the other side to open up the hearings and to drag out the review by not going to clause-by-clause.

I feel very strongly that a good number of the members of this committee, having heard the witnesses, have taken time to consider the bill, to consider the testimony, and to prepare amendments, which are to be tabled before the committee. As a courtesy to the witnesses and to the efforts of the members of the committee, I think we should proceed to consider the amendments proposed.

I would agree that we should move forward and vote on their motion, but I feel very strongly that I want to recognize everything we've heard from people and the work done by members of the committee.

•(1535)

**The Chair:** Thank you.

Mr. Woodworth, you have the floor.

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Thank you.

I just want to very quickly make some points that I was prevented from making when we had the closure motion by Ms. Duncan the other day, just to review some of the things that I think Ms. Duncan has mischaracterized in her comments on this motion.

First of all, I have not heard, as she suggested, any criticism from this side of any member for making amendments. It's very clear that the criticism around amendments related to the fact that they disclosed the utter deficiency of this bill. In saying that there are so many amendments, I didn't hear anyone criticizing those who moved the amendments. But I'm simply pointing out that the reason for so many amendments is that it's a little like clearing the Augean stables to get this bill fixed up in some format.

Secondly, Ms. Duncan, in her comments the other day on this motion, suggested that the members on this side liked what we heard from industry. That is a mischaracterization. There is nothing in it about liking or disliking, but rather about taking seriously what we heard almost unanimously from industry and developers and hydro-power agencies, and the like. Whether we like it or not, their evidence is quite significant and ought to be taken seriously.

Also, the other day, I believe Ms. Duncan said...and this is one of the disadvantages of having had that closure motion foisted upon us:

it's hard to keep track of the various arguments that have been made. I believe Ms. Duncan said the other day that under this bill the government's right to revise regulations is subject to democratic governance, and that this bill is not retrospective and therefore there will be no uncertainty, as some of the witnesses have alleged.

I just want to point out that in fact this bill does give the courts considerable authority to revise regulations completely outside of democratic governance, and in fact to do so retrospectively, in the sense that the court can go back and revoke permits that might have been otherwise validly granted by the government or an agency. Therefore, it can in fact undo years of development that might have occurred prior to the court application. I think that's a key point and a very serious one.

So it is necessary for us to take into account these very real pitfalls that fatally flaw the bill.

I should say also that I take exception to the comments of Ms. Duncan today, in which she suggested that somehow the members on this side were trying to keep us from clause-by-clause. In point of fact, I don't think I have ever seen a debate, even in this committee, which is, by the way, notorious around the Hill for having difficulties, in which there were so many points of order raised, one after the other.

Mr. Chair, they were almost all raised by the members opposite with a view to trying to interrupt, intimidate, and otherwise keep government members from raising legitimate points in this debate. I would say, particularly when Ms. Duncan came up with her closure motion, that it's apparent to me that if there's a book around here on how to stall and mess up committee hearings, clearly the opposition has gotten hold of it and is reading from it play by play. I think that in fact we are simply trying to raise clear points.

I have other comments and will wait for further debate to speak to them.

•(1540)

**The Chair:** Mr. Scarpaleggia, you have the floor.

**Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.):** Can I call for a vote on Mr. Warawa's motion?

**The Chair:** You cannot, because I have a lot of people on the speakers list.

**Mr. Francis Scarpaleggia:** Okay. A lot of people...?

Well, I'll be very brief, because I don't want to prolong this. But I'm looking at two motions from the Conservative members, right here in front of me, and they are contradictory. One wants to—

**The Chair:** This has to be relevant to the motion before us.

**Mr. Francis Scarpaleggia:** The one before us is contradictory to the one that was—

**Mr. Gerard Kennedy (Parkdale—High Park, Lib.):** It's not debated—

**Mr. Mark Warawa:** Point of order—

**The Chair:** Point of order, Mr. Warawa?

**Mr. Francis Scarpaleggia:** Could you explain what the parameters are here, Chair?

**The Chair:** We need to be relevant to the motion before us, Mr. Warawa's motion.

**Mr. Francis Scarpaleggia:** Okay. What I would say is that I think it's important that we go clause-by-clause. I really and truly sincerely want to examine the meaning of each clause. I don't think anyone—on the Liberal side anyway—wants to create legal chaos for industry. We understand that it's important for industry to have certainty. I really want to explore each clause one at a time to see if all that has been said about the potential negative effects of this bill is correct—or not.

It may be that we get to a point where we need more information than has been supplied through the written briefs that have been submitted in the last few days. It may be that we decide in the middle of clause-by-clause that we need an extra witness to tell us about something or other. I really think it goes against the democratic spirit to try to suppress this bill without even going to clause-by-clause. I want to get into the meat of the bill and discuss it, so I will obviously be voting against Mr. Warawa's motion.

[*Translation*]

**The Chair:** Mr. Ouellet.

**Mr. Christian Ouellet:** I did not ask to take the floor.

[*English*]

**The Chair:** Mr. Bigras?

I had you at the beginning, Mr. Ouellet. You're good?

Ms. Murray and then Mr. Bigras.

**Ms. Joyce Murray (Vancouver Quadra, Lib.):** Thank you, Mr. Chair.

When I look at this notice of motion as well as the words of the Conservative members, clearly they don't believe there's a need for an environmental bill of rights. Beyond that—

**The Chair:** Point of order, Mr. Warawa.

**Mr. Mark Warawa:** Mr. Chair, the questions and testimony need to be accurate and relevant. I don't believe Ms. Murray is speaking to the bill, so what she's saying is not relevant, and she's making false statements. She knows very well that this government supports a cleaner environment, much cleaner than what was left by the previous Liberal government. What she says has to be relevant to the motion, and it was not.

**The Chair:** I think it's a matter of debate, but—

**Ms. Joyce Murray:** Excuse me, Mr. Chair. It is completely relevant to the motion. The motion is that “the Committee recommends that the House of Commons do not proceed further with” the bill, which is an act to establish a Canadian Bill of Rights, so if—

**The Chair:** That should be “a Canadian Environmental Bill of Rights”—

**Ms. Joyce Murray:** —the members opposite are arguing that this committee, without even going clause-by-clause, should sideline this bill, which I think is what we heard, or put aside this bill, it's because they don't believe this is an important aspect of Canadian jurisprudence.

Beyond that, the group, the Conservative members, argued again and again that this Canadian bill of rights would be a negative. They occupied many valuable hours of this committee's time, actually, in making the same points from the same briefing notes they had received to that effect. So on the—

**Mr. Mark Warawa:** Point of order, Chair.

**The Chair:** Mr. Warawa.

**Mr. Mark Warawa:** Mr. Chair, the statement Ms. Murray has made is repetition, and of course our manual very clearly prohibits repetition. You addressed that at our last meeting. So what Ms. Murray has said is not correct. There were new briefings that the committee received and those were referred to and quoted, but not the old, so I would just ask her to be accurate.

**The Chair:** Well, this is her first intervention. She can—

Ms. Murray, as long as you're being relevant and not repetitious, you're free to move forward.

**Ms. Joyce Murray:** Thank you, Mr. Chair.

In terms of this “point of order, point of order, point of order” interruption from Mr. Warawa, I would like to remind Mr. Warawa that in fact the chair did rule that various members could repeat what another member had said, but could not repeat themselves. We saw a wealth of repetition as each member covered points that the previous member had already made in the Conservative lineup.

One thing that I did hear from amongst the Conservative members is that this bill has “noble” intentions. I appreciate that comment, because what that tells me is that there is a recognition, an acknowledgement, that there's a gap in the current system of laws, policies, and practices to protect the environment, and that in fact our framework and our approach, while obviously doing some of the work of protecting the environment, are not perfect.

That's why these would be considered noble intentions to improve that framework. That's one of my arguments for why we do need to go ahead with the clause-by-clause with I hope the outcome that we will have an environmental bill of rights that every member of this committee can be proud of.

In the discussion about this motion, in arguing for the motion, especially by Mr. Warawa but from others, I heard a repeated claim that all of the organizations this committee has heard, except for the environmental groups, are completely against or would like to set aside the environmental bill of rights. In fact, that was completely inaccurate.

Although I missed some of the testimonies on some of the days, I was certainly here when the Environmental Commissioner of Ontario was. I wonder whether the member considers Mr. Miller's organization an ENGO, an environmental non-government organization, because I heard very strong support from Mr. Miller for the Environmental Bill of Rights of Ontario. I heard encouragement that we have an environmental bill of rights nationally. I heard positive feedback about some of the places where this would be more effective than the Ontario bill of rights, so I really wondered how Mr. Miller would feel about being characterized as one of all of the organizations that weren't ENGOs that were completely against this legislation. If I were the commissioner, I would think that the member across either was not paying attention or was wilfully revising and revisiting Mr. Miller's comments.

I also heard some commentary in support of the motion. This a motion that I will not be voting for, obviously. I heard some commentary that one of the problems with the bill is that businesses would move to other provinces. I think this was with respect to green energy.

I would like to point out that one of the basic benefits and purposes of an environmental bill of rights that's national is that, rather than having a patchwork of laws in different provinces, where you can have the risk of leakage from one province to another... If one province's regime is different or stronger than that of another province, there is the possibility of business moving into a province that doesn't have quite as strong a regime. This is actually intended to address that, so that there will be a level playing field across the provinces and territories. A level playing field in which there is not the motivation for businesses to leave their own province or territory for another one is a positive, as I think most members would agree.

There were also comments made in support of the motion that this bill, the Canadian Environmental Bill of Rights, will stop business investment and be very harmful. I would respond by saying that I think the members opposite, in making that claim, have perhaps very little confidence in the business community. Because I understand that the business community wants to be heard, has sent briefs, and has some aspects they would like to see amended, but from my perspective, the business community knows that the social license to operate is very important.

• (1545)

The environmental policies of businesses are becoming more and more a part of what the markets consider when the markets rate businesses, in terms of the bond-rating agencies. In fact, businesses have been leaders in the environment and respectful of the environment in many, many circumstances.

Businesses have banded together with the major environmental organizations, which have long been respected as defenders of good environmental practices. Industries have banded together with them and have come out with strategies that go above and beyond environmental regulations and compliance requirements. I think the forest industry is a good example, as the forest industry's major players have worked with conservation groups to address the concerns that citizens have about the protection of the environment.

So for the Conservative members to essentially say that businesses will withdraw investment if there are good, clear environmental

rights and responsibilities and options for citizens to be involved, I think it really undermines the business community and expresses a great lack of confidence in that community's own concern for the environment, and its desire to be a positive contributor to a sustainable economy and sustainable economic development.

Another point raised by the members opposite was the claim that a business that has lost out on a bid or a piece of business will possibly, under this environmental bill of rights, then come in and make frivolous claims and cause investigations that will tie up legal resources and slow down projects. Again I would say that the members opposite have a very poor view of the business community when they express that concern.

Not only do I think the vast majority of businesses are doing their best to be responsible citizens, but I would also point to subclause 15 (2) of the bill, which makes it clear that: "No investigation is required if the Minister determines that the application is frivolous or vexatious". Therefore, businesses cannot tie up the government with their claims and appeals. If an application for an investigation is frivolous or vexatious, it just won't go any further.

Moreover, subclause 23(2) states that "once the plaintiff has demonstrated a *prima facie* case of significant environmental harm... the onus is on the defendant...". That's exactly the situation in which we do want intervention. The bill requires that one show a *prima facie* case of significant environmental harm for these kinds of actions to be taken, so that's not consistent with the members' arguments that there will be a merry-go-round of frivolous claims that have nothing to do with protecting the environment and that are manoeuvres to gain competitive benefits.

Again, I'm discouraged by the absolute lack of confidence these members have in the business community. I would say that they're very cynical and jaded and that they have a black view in imputing to the business community motivations that I think are quite extreme.

Another thing I've heard from the members opposite is that with so many amendments, this must be a bad bill. Mr. Woodworth just reinforced that. We'd heard that already from other members, thus supporting my contention that there was a great deal of repetition as that group used up hours of this committee's valuable time. Mr. Woodworth even made scatological references in making that claim that the amendments...must be a bad bill.

• (1550)

I would say to the contrary. The fact there are so many amendments, none of which are on the substance of the bill but are there for fine-tuning, shows the deep interest of members of all parties around the table to get this right, so that when we have a Canadian Environmental Bill of Rights, it will be a positive thing for the sustainability of our economy and the protection of the environment. I would take that as a good sign, not as evidence that we should kill this bill without even having the clause-by-clause debate.

Having taken a few minutes to provide my opinion on some of the commentary made by the Conservative members, I will say that I support this bill going to clause-by-clause, because some of the principles are extremely important. There is the fact that it will enable more transparency. That's something that the Ontario commissioner was very clear about. It has had that effect in Ontario. As this bill is written, it will have an even more positive effect on that level, and in a national bill.

I would say that more transparency is something that the Canadian public wants. They want it in general and they want transparency in principle. The absence of transparency is a complaint the government receives on a regular basis, and transparency on the environment is even more important to the public.

Part of the challenge to the environment from human activities are externalities from which there are impacts on the environment that are not costed into the goods and services being produced, therefore making a motivation to produce those goods and services, because they're not including the full costs. Those costs, those externalities, are in the public domain, for the most part. When we pollute, it's everybody breathing that air, not the party that benefited from the production of the good that caused that pollution. It's in the public domain.

This is why it is so critical that we have more transparency, because the public goods and services provided by the environment—the air, the water, the land, the oceans—are being affected by environmental impacts. The public deserves to have more transparency, and that's what this bill is trying to provide.

People need to participate. That's why we also need to go to clause-by-clause. I understand that some of the concerns the members opposite have had and that some of their reasoning—

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

• (1555)

**The Chair:** We have a point of order.

**Mr. Mark Warawa:** Chair, the bells are ringing for a vote. I move that we adjourn.

**Ms. Linda Duncan:** They're ringing for votes—

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

**The Chair:** Well, we do have bells—

**Mr. Mark Warawa:** I move that we adjourn.

**An hon. member:** Interesting comments.

**The Chair:** You had a point of order, Mr. Warawa. You can't move a motion on a point of order.

**Mr. Mark Warawa:** Okay. I withdraw my point of order and I move that we—

**The Chair:** Unless we.... Anyway, the floor is Ms. Murray's. You guys know the procedure here when we have bells. Under Standing Order 115(5): Notwithstanding Standing Orders 108(1)(a) and 113(5), the Chair of a standing, special, legislative or joint committee shall suspend the meeting when the bells are sounded to call in the Members to a recorded division, unless there is unanimous consent of the members of the committee to continue to sit.

Is there consent to sit?

**Ms. Linda Duncan:** Mr. Chair, I understand that this is likely to be deferred. We could adjourn for a few minutes and just wait here and see what happens. My understanding is that it's going to be deferred.

**The Chair:** The bells are ringing.

**Ms. Linda Duncan:** Could we just wait?

**The Chair:** I have a standing order that I have to respect.

**Ms. Linda Duncan:** We'll suspend, not adjourn.

**The Chair:** Do I have unanimous consent?

**Mr. Steven Blaney (Lévis—Bellechasse, CPC):** No, no there's a vote.

**The Chair:** I don't have unanimous consent, so we shall suspend. You have a choice of either sitting here and waiting or going back to the House for votes.

**Ms. Linda Duncan:** I'll wait.

**The Chair:** We're suspended.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

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• (1645)

**The Chair:** I call this meeting back to order.

Ms. Murray, you had the floor.

**Ms. Joyce Murray:** Thank you, Mr. Chair.

I was speaking to the motion of Mr. Warawa. I have plenty more to say, but I think the best time and place to do that is in a clause-by-clause debate, so I'd like to move that the committee proceed to clause-by-clause consideration of Bill C-469.

• (1650)

**The Chair:** Okay. It's a dilatory motion. I'll call the question.

**Mr. Mark Warawa:** On a recorded vote?

**The Chair:** We'll have a recorded vote. All those in favour?

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

**The Chair:** The motion is carried, so we can go to clause-by-clause consideration of Bill C-469.

Pursuant to Standing Order 75(1), consideration of the preamble and clause 1 are postponed, so I will now call clause 2.

(On clause 2)

**The Chair:** I have been advised by our legislative clerk that I'm going to stand clause 2 because there are things later on in the bill that will affect clause 2. Since there are some repercussions down the road, we're going to stand clause 2 and move to clause 3.

(Clause 2 allowed to stand)

(On clause 3—*Interpretation*)

**Ms. Linda Duncan:** It's the same.

**The Chair:** Mr. Warawa.

**Mr. Mark Warawa:** Are we standing clause 3 or is it...?

**The Chair:** No, we're moving to clause 3.

**Mr. Mark Warawa:** Okay, I'd like to—

**Ms. Linda Duncan:** Clause 3 is also, as I recall, related to the amendment of clause—

**Mr. Stephen Woodworth:** On a point of order, Chair.

**The Chair:** Wait, please. I'm getting advice here.

We're not on amendment NDP-3. We're on clause 3 of the bill.

**Ms. Linda Duncan:** Okay.

**The Chair:** Mr. Woodworth, you had a point of order.

**Mr. Stephen Woodworth:** Only that Mr. Warawa had the floor and he was being interrupted by Ms. Duncan.

**The Chair:** Mr. Warawa.

**Mr. Mark Warawa:** Chair, would it be in order for me to move a motion that clause 3 be deferred until we have heard from additional witnesses? Would that motion be in order?

**Ms. Linda Duncan:** Point of order, Mr. Chair.

**The Chair:** Just hang on.

I'm going to have to rule that motion out of order because it changes the intent of clause 3, which is how clause 3 carries.... Let me just find this. I'm going to quote for you guys. I was looking at this in the House. It's at page 998 in chapter 20:

When a committee studies a bill, the Standing Orders state that consideration of the preamble of the bill, if any, is postponed to the very end of the process, as is consideration of the first clause if it contains only the short title. The rest of the clauses will be considered one by one in the order they appear in the bill. Some clauses may be "stood", which means that the committee has decided, for specific reasons, to postpone consideration of these clauses until later in the process. Clause-by-clause consideration of the bill is carried out in the following order:

clauses;

clauses allowed to stand (if any);

schedules;

clause 1 (short title, if any);

preamble (if any);

and title of the bill.

Amendments to the bill, if they are moved and deemed admissible by the Chair of the committee, are studied in the order of the lines of the bill they are to modify. They may be submitted in either official language, and must be submitted in writing. The committee may only consider one amendment at a time. Each amendment is debated and voted on by the committee. The committee then votes on the clause as amended, or not. It then moves on to the next clause and to the amendments that have been moved to it until all of the clauses of the bill have been considered. Subamendments, subject to debate, may be moved to the amendments. The committee may only consider one subamendment at a time and that subamendment cannot be amended in turn. When a subamendment is moved to an amendment, it is put to a vote first. Another subamendment may then be moved, or the committee may debate the main amendment and vote on it. Moreover, a committee may decide to group a certain number of clauses and vote on them together, such as those that were not the subject of any amendments.

...If the committee so decides, they may also be asked to appear during clause-by-clause consideration of a private Member's bill to provide, insofar as possible, the same type of technical expertise as in the case of government bills. For private Members' bills, some committees find it useful to request the presence of the bill's sponsor as an additional witness during clause-by-clause consideration.

And of course the author of the bill is here.

So it's fairly clear that you can move amendments and subamendments, but we wanted the amendments in writing. That doesn't preclude.... So we are on clause 3.

•(1655)

**Mr. Mark Warawa:** On a point of order, Chair, I think I still have the floor. Do I not?

**The Chair:** No. You moved a motion that I just—

**Mr. Mark Warawa:** No. I asked you, would a motion be in order...?

**The Chair:** Okay. Then you have the floor, Mr. Warawa.

**Mr. Mark Warawa:** Thank you.

**The Chair:** Who else wants speak?

**Mr. Mark Warawa:** Okay. You've answered that, no, it would not be.

I have one more question, Chair, and actually maybe more than one. For a motion that it be stood, do you need unanimous consent to do that, or is that at the discretion of the chair?

**The Chair:** We can.... Well—

**Mr. Mark Warawa:** Or would it be a vote to stand?

**The Chair:** We can postpone the consideration of a clause until later in the process, as I just did with clause 2.

Point of order.

**Ms. Linda Duncan:** I'd just like an explanation of why we're passing over clause 2.

**The Chair:** Okay.

Do you want to speak to that?

**Mr. Wayne Cole (Procedural Clerk):** Clause 2 is the interpretation clause of the bill. There are only limited circumstances in which amendments to the interpretation clause are admissible.

One of those conditions is that changes have been made to the bill that require amendment of the interpretation clause. We can't consider those amendments until we've been through the bill to see whether or not the committee has chosen to adopt amendments that may require amendment to the interpretation clause.

**The Chair:** Yes.

**Ms. Linda Duncan:** I have another question about that. I'm trying.

**The Chair:** Okay.

**Ms. Linda Duncan:** Is it also the case that you cannot amend the interpretation section of the bill, even to make it consistent with other current law? If you can't, that's fine. I'm just asking. It was suggested to me by the legislative drafters that that's appropriate

**Mr. Wayne Cole:** Amendments to the interpretation clause are ordinarily only admissible as a result of changes made to the bill or to clarify the interpretation clause, but not with respect to other legislation.

**Ms. Linda Duncan:** It could fall in that category, but that will come up later anyway.

**Mr. Wayne Cole:** Yes.



**The Chair:** So anyway, until we get through the rest of the bill... That may change the interpretation.

**Ms. Linda Duncan:** Sure. I just wanted an explanation.

**The Chair:** Then we'll move back to it, just like we will with clause 2.

On a point of order, Mr. Armstrong.

**Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC):** Again, for clarification, could the committee decide to consider clause 2 if it so wished?

**The Chair:** I'm making a recommendation that we don't. I think it would be presumptuous for us to deal with clause 2. Let's move on to clause 3.

**Mr. Scott Armstrong:** That wasn't my question. My question was, can the committee—

**The Chair:** You can challenge me at any time.

**Mr. Scott Armstrong:** Okay.

**The Chair:** If you guys want to do that, I'd be more than happy to step out of this chair for a while.

**Voices:** Oh, oh!

**Mr. Stephen Woodworth:** No—

**The Chair:** If I'm making rules-based decisions, I expect you guys to respect them.

Mr. Warawa, you have the floor.

**Mr. Mark Warawa:** Thank you.

Would a question to stand clause 3, with conditions, be appropriate? That would trigger a debate...

**The Chair:** I don't know if we need a motion for that. I just need consensus.

Do you want to speak to why you think you want to stand this clause?

**Mr. Mark Warawa:** Well, Chair—

• (1700)

**The Chair:** We're on clause 3, right?

I'll just read out clause 3. You all have it in front of you. It says:

This Act must be interpreted consistently with existing and emerging principles of environmental law, including but not limited to

- (a) the precautionary principle;
  - (b) the polluter pays principle;
  - (c) the principle of sustainable development;
  - (d) the principle of intergenerational equity;
- and
- (e) the principle of environmental justice.

That's what we have. We have no amendments proposed.

**Mr. Mark Warawa:** Chair, I'd appreciate the opportunity to speak to clause 3.

**The Chair:** Okay.

**Mr. Mark Warawa:** It says: "including, but not limited to...the principle of sustainable development". I want to focus on that.

What we heard from the commissioner is that all legislation is looked at through the lens of the Federal Sustainable Development Act. We also learned that if Bill C-469 should become law, it would set aside the principle of sustainable development, which has its four pillars of social, economic, and environmental impacts. It would primarily focus on the environment, setting aside the social and the economic.... This government is committed to protecting the environment, but also protecting jobs in a balanced way. This bill, this clause, does not permit that.

We've also heard from the witnesses, Chair, and we've heard from a number of the witnesses who have suggested that this bill be set aside. Ms. Murray, before she moved her motion to move us away from discussing whether or not this bill should be set aside... She has moved the dilatory motion to take away that discussion, to take away that opportunity for a decision, and we find ourselves moving to clause-by-clause, against what the witnesses had recommended.

Ms. Murray referred to Mr. Miller, the commissioner for Ontario. When I questioned the commissioners, both Mr. Vaughan and Mr. Miller, I began my comments by reminding the federal commissioner...I confirmed with him that his responsibility as the commissioner of the environment is to provide parliamentarians with objective independent analysis—not critiquing bills and legislation, but to critique existing legislation, existing law in Canada—and to provide an analysis as to whether or not we are living up to the responsibilities and focusing on the environment. So it is to provide parliamentarians with objective independent analysis and recommendations on the federal government's efforts—not recommendations on bills but on the government's efforts to protect the environment and foster sustainable development.

There it is again: sustainable development. This is the lens through which we now look at Canadian law—the lens of sustainable development.

The commissioner did confirm that it would be very inappropriate for the commissioner of the environment to be commenting on a bill, so he did not. He made that very clear.

Now, when that issue came up, it was actually Mr. Scarpaleggia who talked to Mr. Miller, and he said, "Going back, I guess, to Mr. Warawa's point—". Mr. Miller responded, "You didn't quite put it the way it's done". Again, I'm again referring to legislation and comments by a commissioner on the legislation. This is my understanding of what he was talking about. This is what he said: For instance, let's say we're talking about a piece of legislation. If there's an issue going on, I may... on my own initiative bring forward an issue on such things. But once it has progressed to the posting of a proposal on the environmental registry, and especially a proposal pursuant to a law, I cease comment until after it has gone through the entire consultation process and the legislature and is passed. It's only afterwards that I review it.

That is consistent with what we have with Mr. Vaughan, Canada's commissioner of the environment: that a commissioner of the environment does not critique legislation. The commissioner assesses whether or not the government is performing its responsibilities.

• (1705)

So what was left is—and hopefully that answers Ms. Murray's comments—

**Ms. Linda Duncan:** Mr. Chair, on a point of order, the member is speaking to a provision that comes much later in the bill.

**The Chair:** What provision would that be?

**Ms. Linda Duncan:** He's speaking to clause 26.

**The Chair:** I'd ask you to make sure that you're considering clause 3 and clause 3 only.

**Mr. Mark Warawa:** Correct, and I—

**The Chair:** We can't predict the expectations of the committee or the outcome of clauses further down. We're discussing the clause in front of us, which is clause 3.

**Mr. Mark Warawa:** Thank you, Chair.

Thank you, Ms. Duncan, for the interruption.

The focus was on the principle of sustainable development. I was referring to the Commissioner of the Environment and Sustainable Development, who was here, and to the appropriateness of a commissioner making comments on a bill before us. The commissioner was very careful not to comment on whether the bill was good or bad. The commissioner was commenting on—and will only comment on—performance of the government and assessments in that way.

Unfortunately, Bill C-469 will change the focus of sustainable development. We heard that very clearly. The focus changes from sustainable development to litigation, the big stick. I believe we need to hear from more witnesses, Mr. Chair. What we heard from the witnesses so far, as I had said in response to comments from Ms. Murray, was that, overwhelmingly, this bill should be set aside. Now, unfortunately, through some manoeuvring—

**Ms. Joyce Murray:** On a point of order, Mr. Chair, the comments that Mr. Warawa is making are not relevant to clause 3. If the argument is that the principle of sustainable development should not be in there, that argument has already been made. The rest of the commentary that he's currently undertaking is extraneous to this clause and is appropriate for a later clause.

**The Chair:** Please make sure you stay relevant to clause 3, Mr. Warawa.

**Mr. Mark Warawa:** Thank you, Chair.

I also want to thank Ms. Murray for her interruption.

Chair, we heard that it's very important that Bill C-469 create a balance; this is what we heard. And we heard that we have the principle of sustainable development mentioned in the bill, but in fact, it's not in the bill. Bill C-469 would usurp the principle of sustainable development; in spite of it being this clause, in clause 3, it does not address sustainable development.

Now, sustainable development is a term that we've heard often, particularly over the last couple of years, as this committee unanimously supported the Federal Sustainable Development Act and, as recently as earlier this year, the strategy. The commissioner had an opportunity to comment on the strategy from the government. Actually, this committee did too, and it was a good strategy: we now are looking at all legislation—all new bills, permits, everything—through the lens of sustainable development.

That would end if Bill C-469 were to become the law of Canada. The lens would change from sustainable development to a lens that is entitled an environmental bill of rights, but is anything but, and that's the other concern. It has the title, “environmental bill of rights”, but does it have that balance? It does not. We've heard that from the witnesses.

• (1710)

**The Chair:** Ms. Murray.

**Ms. Joyce Murray:** On a point of order, Mr. Chair, the debate is not concerning the principles (a) through (e) that are outlined in clause 3, so I would appreciate it...if this member would like to debate clause 3 itself, let's do that, but this member has some other debate going.

**The Chair:** Mr. Woodworth, on this point of order.

**Mr. Stephen Woodworth:** On this point of order, Mr. Chair, I may be reading this incorrectly, but it seems to me that paragraph 3 (c) talks about “the principle of sustainable development” and clause 3 itself is an interpretation clause, which requires the whole act to be interpreted consistently with these five principles.

What I hear Mr. Warawa doing is talking about how the principle of sustainable development may or may not be used to interpret this act in accordance with clause 3. Now, I admit that I'm doing two things at once here, but I didn't hear him say anything that went outside the discussion of the principle of sustainable development, and that seems to be entirely within the four corners of clause 3.

**The Chair:** A point of order, Monsieur Ouellet?

[*Translation*]

**Mr. Christian Ouellet:** On the same point of order, I do not understand why basic principles are now being called into question. That is what Mr. Warawa is doing. He is questioning basic principles environmental protection that have always been accepted. He is starting from scratch and says he is against this principle. Mr. Chair, this is sheer nonsense.

The basics of environmental protection are being questioned. The member is talking about the whole legislation and not clause 3 specifically. Let him tell us why he is against the precautionary principle and sustainable development. We could understand him better and grasp whatever he is saying.

[*English*]

**The Chair:** On the same point of order, Ms. Duncan.

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

Mr. Warawa is fully capable, when we get to the other clauses of the bill, of referring back to clause 3 and suggesting that a later clause is not consistent with a clause 3 principle, but what he's doing is conjecturing forward.

It's perfectly appropriate for him to speak to whether he wants to strike that full provision, or part of it, but what he can't do is conjecture at this point. He can't disagree with later clauses to which he has trouble applying clause 3. They are later clauses that we haven't got to yet.

The argument is perfectly valid, and he can make that argument, but he can't raise that argument when we're talking about clause 3. All we can talk about is clause 3. Does he agree with the provision that in applying the act we should consider those principles? What I'm finding really puzzling is that although he argued for two days that this principle should be found throughout the act, he is now arguing that this very principle shouldn't be there, or something.

It's out of order. His argument can be raised when we get to clause 4 or 5 or 6, or whatever clause he thinks is not consistent with one of the principles outlined in clause 3, but in my humble opinion it's inappropriate to raise that argument when we haven't even started to discuss the later part of the bill.

**The Chair:** Go ahead, Mr. Anderson, on this point of order.

**Mr. David Anderson (Cypress Hills—Grasslands, CPC):** Mr. Woodworth pointed out exactly what needs to be said here, and that is that this is an interpretation clause. Actually, rather than focusing on just one of the clauses, we should probably develop the arguments and implications of each of them prior to approving clause 3. I think it's appropriate to talk about the implications and consequences of how sustainable development is seen throughout the whole act, and that's what Mr. Warawa has been doing.

Each of those things needs to be examined in detail in order to understand the implications for the act, and I don't understand why the opposition would object to that approach, unless there is some reason they don't want that examination done. I think we're completely appropriate here.

It says that the act must be interpreted consistently using these principles, and it would seem logical and reasonable to discuss the implications of those principles before we move ahead any further.

**Ms. Linda Duncan:** I have a point of order.

**The Chair:** Go ahead, Ms. Duncan, again.

**Ms. Linda Duncan:** Mr. Chair, we heard testimony from witnesses. The witnesses could choose to speak to whatever part of this bill that they chose, and we had a good number of witnesses who spoke specifically to clause 3. I feel that we have had testimony supporting the inclusion of those principles from a number of witnesses already. If some witnesses said that the principles shouldn't be there or that one should be added or taken out, we can consider that testimony.

• (1715)

**The Chair:** Go ahead, Mr. Woodworth.

**Mr. Stephen Woodworth:** Thank you, Mr. Chair.

I'm a little surprised at the leeway you have given speakers on what is ostensibly a point of order. We now have Ms. Duncan claiming that witnesses said this or that about the point Mr. Warawa is trying to make.

Quite frankly, I've heard nothing but debate over what Mr. Warawa is trying to say. I've heard Mr. Ouellet debate what Mr.

Warawa is trying to say, and they'll have their chance; hopefully they'll get a chance to debate clause 3, but that's not what we're talking about right now. What we're talking about is whether or not what Mr. Warawa is saying is relevant to clause 3.

Even if you don't agree with what he is saying, you surely must be able to read the words on the page. Those words say that clause 3 requires that the act be interpreted in accordance with all five of these principles, including the principle of sustainable development.

Let Mr. Warawa talk about how he thinks clause 3 is going to work. If you disagree with him, let him finish, and then you'll have your chance to make your points and talk about what the witnesses had to say.

**The Chair:** Okay. We've heard a lot of discussion on this point of order.

Because the clause does start by saying, "This Act must be interpreted consistently with existing and emerging principles of environmental law", and as the principles are already in CEPA, as Mr. Ouellet has pointed out, I'm going to ask Mr. Warawa to make sure that he's talking....

You are going to have to be fairly careful. The clause is general, and you can provide those types of comments on a general basis, but you can't talk about clauses further on in the bill that we still haven't considered yet. But you are free to talk about the general aspects of the act and the supporting testimony, as well as your own ideas on clause 3.

**Mr. David Anderson:** Mr. Chair, on a point of order again, I was going to follow up on something Ms. Duncan said. She talked about the witnesses that you had here. I haven't been at committee, but I'm interested to know if you heard from the agricultural community, because from the little bit that I read—

**Ms. Joyce Murray:** That's not a point of order.

**Mr. David Anderson:** Well, I'm just following up on her.... She said you've heard a lot of witnesses. Have you heard from the agriculture community?

**Ms. Joyce Murray:** Point of order—

**Mr. David Anderson:** I ask because they are impacted by this probably more than anybody else, and certainly if they haven't been heard from—

**The Chair:** Order, order.

That's a point of debate. For your information, if you want some clarification, we did have an invitation out to I think the CFA, and they never came. They declined our invitation.

Mr. Warawa, you have the floor.

**Mr. Mark Warawa:** Thank you, Chair.

I think the record will show clearly that I am referring to paragraph 3(c), which speaks to the "principle of sustainable development". I will read clause 3. It says:

This Act must be interpreted consistently with existing and emerging principles of environmental law, including but not limited to

(a) the precautionary principle;

I'm trusting that others will speak to paragraph 3(a).

Paragraph 3(b) is the polluter pays principle; 3(c) is the principle of sustainable development; 3(d) is the principle of intergenerational equity; and 3(e) is the principle of environmental justice.

I'm speaking specifically to paragraph 3(c) and I'm perplexed that my defence of the importance of that principle of sustainable development, and my sharing of the importance of protecting recently passed legislation.... I'm sharing my concerns with the way Bill C-469 would, through the window dressing of clause 3, just mention the principle of sustainable development, but then within the bill have nothing to support it. That's the end of it. It just makes a window-dressing comment.

We heard from witnesses that the principle of sustainable development will be set aside and all legislation will be looked at through the lens of the environmental bill of rights, which would give any resident or entity the ability to launch an action. So I think it's very important.

As I said, clause 3 indicates in the bill that it is to be interpreted through the principle of sustainable development, but what does that mean? At the World Summit on Sustainable Development in 2002, eight years ago, all countries endorsed the concept of sustainable development as comprised of the three pillars: economic, social, and environmental protection. Yet the bill is silent on how the right of a healthy environment is to be balanced with the economic and social realities.

That's what we heard from the witnesses, Chair, that this is missing, other than for the window dressing.

We should have heard from the agricultural community. We should have heard from first nations.

**The Chair:** Ms. Duncan.

• (1720)

**Ms. Linda Duncan:** On a point of order, Mr. Chair, I finally figured out what's wrong with this discussion.

The member seems to be arguing that he doesn't like the definition of sustainable development provided in this bill in applying the principle of sustainable development. If that's the case, then he may raise that at the end of clause-by-clause consideration of the bill, in the same way that I or anybody else here is able to.... That's my understanding.

He is raising issues about the definition of sustainable development, which is actually provided in the bill. He doesn't seem to be arguing against applying the principle of sustainable development. In fact, he seems to be supporting it. He is arguing about the definition of sustainable development and how it will be applied, which occurs in clause 2. We have already been advised by our legal advisers that you can't argue the definitions of terms in the bill until the end, and if it's relevant, then we can go back to those. That's my understanding of how we were advised.

**The Chair:** Mr. Woodworth, on the same point of order.

**Mr. Stephen Woodworth:** Mr. Chair, this presents us with quite a dilemma if Ms. Duncan is correct, because we can't possibly understand section 3 without taking into account the definitions of the terms being used. It becomes rather farcical. I know there are always reasons for these rules—

**Ms. Linda Duncan:** Well, we need the legal—

**Mr. Stephen Woodworth:** I'm not quite through speaking, Mr. Chair—

**Ms. Linda Duncan:** I was just asking.

**Mr. Stephen Woodworth:** —but as you were momentarily engaged in other discussions, I waited.

**The Chair:** I was getting more information.

**Mr. Stephen Woodworth:** I understand that. I just didn't want to be disrespectful of—

**The Chair:** I was listening with my good ear—

**Mr. Stephen Woodworth:** —your consciousness.

What I'm saying is that if we cannot discuss clause 3 with reference to the meaning of the terms, then we're really at sea. If it really was a rule that we couldn't discuss clause 3 without discussing the meaning of the terms, then I'd suggest that we'd better stand down clause 3, too, until we can discuss the meaning of the terms. Because it would be a farcical discussion to talk about and to try to pass a section without knowing what it means, if Ms. Duncan is correct in her point. I don't know anything more about the rules than she does, I'm sure.

**The Chair:** This is why we stood clause 2, though, because these things may come up as we go through the bill in clause 3. If there is a concern about the definition of sustainable development, as Mr. Warawa has been talking about, we gather that as we move on. If we want to stand clause 3, as you suggest, Mr. Warawa, we can and move on.

**Mr. Stephen Woodworth:** Mr. Chair, I'm not suggesting it unless there's some rule that says we can't talk about what these terms mean.

**The Chair:** No, you definitely can talk about those, even though we haven't considered it on the basis of.... Until we do the full debate on the bill, clause-by-clause...that can change the outcome of clause 2.. So it is admissible to have the debate on what is sustainable development or any other definition that we have in clause 2.

**Ms. Linda Duncan:** Mr. Chair, I'm just trying to get clarity on what exactly he is asking to change in the provision. I'm just trying to understand what it is. If it's the definition—

**The Chair:** Mr. Woodworth, on a point of order.

**Mr. Stephen Woodworth:** Now that we've moved past Ms. Duncan's initial point of order, and, secondly, I haven't heard Mr. Warawa suggest that he's trying to change anything.... All I've heard him talk about is why he doesn't support this section. So it's a faulty premise for Ms. Duncan to suggest that he's suggesting a change.

• (1725)

**The Chair:** I'll agree with Mr. Woodworth on that point of order. He hasn't suggested an amendment. He's talking about how he's opposed to the clause. That's what I'm gathering from his presentation.

Mr. Warawa, you still have the floor.

**Mr. Mark Warawa:** Thank you, Chair.

I think it's very important.... Maybe I could ask for your guidance after what's just been said.... Would I be able to refer to...? We stood clause 2 because of uncertainty on definitions, but we do not want to put the cart before the horse. We want to be able to know what we're referring to. So are you suggesting that it would be appropriate for me to refer to or share what I would think "sustainable development" should include in the way of a definition?

**The Chair:** I would suggest that you may want to save that discussion for when we get back to clause 2. You can refer to clause 2, and refer to that definition, but I think you may want to find out briefly what some of those concerns are with clause 3 and how that may relate to clause 2. But I wouldn't get into a full-out debate on the substance of clause 2, which includes that definition.

**Mr. Mark Warawa:** Thank you.

Would it be appropriate for me to refer to what the witnesses had to say regarding sustainable development?

**The Chair:** Yes, it would be in line, as that relates to the interpretation of the act, to that principle.

**Mr. Mark Warawa:** Would it be okay to refer to clause 2, reading what is in here regarding sustainable development? Would it be appropriate for me to actually read the definition?

**The Chair:** You can read the definition if you want; it's right above clause 3 there.

**Mr. Mark Warawa:** Thank you. I will read that. It says: "sustainable development" means development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

Chair, what is missing in there—and this is the point I've been trying to make—is defending the principle of balance, which is what we've heard about from every witness. That is what's missing in Bill C-469. Just because something is called "the environmental bill of rights" doesn't mean it is an environmental bill of rights. It could very well be a Trojan horse that would be used by special interest groups to attack a balance. That is our concern. That's what we heard from the witnesses: that there needs to be a balance.

Chair, am I hearing interruptions again or...?

**The Chair:** Go ahead. You have the floor, Mr. Warawa.

**Mr. Mark Warawa:** Thank you.

Chair, I think it's imperative that Bill C-469 have that balance, and that is what's missing.

What I'm actually shocked to see is that members of the Bloc would be supporting a bill that doesn't have that balance, that would

actually attack their own province. I'm shocked that the Bloc is supporting U.S.-style legal actions against Hydro-Québec. That is shocking.

I'm surprised that the Bloc, using clause 3 and its lack of definition, would want massive tax increases against people living in Quebec, including a tax increase on heating oil, a massive tax increase on natural gas costs, a tax increase on electricity costs, a massive tax on iPods and on cars, and on it goes.

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

**Mr. Mark Warawa:** Chair, I'm shocked that the Bloc wants the federal government and the federal courts to have new powers over the Province of Quebec. How would the Bloc ever support this? But this is what we're actually seeing happening here.

**The Chair:** On a point of order, Monsieur Bigras.

[*Translation*]

**Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ):** Could you tell the parliamentary secretary to the Minister of the Environment that he should focus his remarks on clause 3 and stop attacking the opposition? I think he showed today that he has enough to say with his own arguments that he does not need to start blaming the opposition.

[*English*]

**The Chair:** Mr. Warawa, I suggest that you do stay on topic. In particular, "iPod" was not relevant to the debate.

Mr. Woodworth, on that point of order.

• (1730)

**Mr. Stephen Woodworth:** Chair, I would like to just point out for the record on this point of order that we've probably wasted more than half the time we've had this afternoon because of points of order that have been raised by the opposition.

Thank you.

**The Chair:** Okay. The bells are ringing. I have a duty to adjourn this meeting.

May I have a motion to adjourn, please?

**An hon. member:** So moved.

**The Chair:** We're out of here.





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