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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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• (1535)

[English]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good afternoon, ladies and gentlemen. *Bienvenue à tous.* Welcome to the seventh meeting of the Standing Committee on Industry, Science and Technology.

Pursuant to the order of reference of Monday, October 28, 2013, we are considering Bill C-8, An Act to amend the Copyright Act and the Trade-marks Act and to make consequential amendments to other Acts. Today we'll be considering it clause by clause.

Pursuant to Standing Order 75(1), consideration of clause 1 shall be delayed.

First I'll go Ms. Charlton, who wants to raise a point. It was agreed among the parties that she would do that first.

Ms. Chris Charlton (Hamilton Mountain, NDP): Thank you very much, Mr. Chair.

I know we're still waiting for one of the members of the Conservative Party to arrive, and we've agreed to hold off from voting on clauses until that member does arrive. In the meantime, I do want to raise an issue that is of great concern to us on this side of the table and, I hope, to all members of this committee.

As you know, Mr. Chair, all members of the House have a right to be able to participate in the proceedings of this House in either official language. On Friday we received the full set of amendments at 3:30 in the afternoon.

While it's possible for all of us to read those amendments over the weekend, for us to participate in these discussions as a group, as a caucus, we need to be able not only to prepare our notes but to have them translated into both official languages.

That's impossible when we receive amendments at 3:30 on a Friday afternoon. It means reviewing those amendments over the course of the weekend and getting them to the translation of the House, at the earliest, first thing Monday morning, and then asking them to provide those translated notes on those amendments back to us by noon.

I think that puts unbelievable pressure on translators. They do a fantastic job in this House for us. They bend over backwards. Today, for example, some of the people who help us with the translation were sick, adding extra pressure on the workload of those staff.

We had an agreement in this committee that we would all get the amendments by noon on Friday. I know that three and a half hours

doesn't seem like a big deal, but it is when it comes to the workload of people who do translation for us in the House.

I wonder if we can arrive at some kind of consensus in this committee that we will either meet those deadlines or, if it's not possible, not proceed with clause-by-clause considerations of bills on Monday.

I've spoken to the parliamentary secretary. We had a conversation about it over the course of the weekend. I've agreed that we will go ahead today, but I think as a rule we should come to some kind of consensus in this committee about making sure that all documents are available, that we have appropriate time to caucus amendments, that this can also happen in both official languages, and that this requires some time.

Thank you, Mr. Chair.

The Chair: Ms. Quach.

[Translation]

Ms. Anne Minh-Thu Quach (Beauharnois—Salaberry, NDP): I would actually like to add to what our critic Ms. Charlton said. When we receive the documents on time, we can talk about the issues and amendments. As you can see, Ms. Charlton speaks English whereas I speak French. It is a challenge for us to communicate when we don't have enough time to work out a strategy. Regardless of which side you are sitting on in the House, being prepared clearly makes it easier to move things forward more effectively.

This is an important bill, and everyone agrees to work on it and to move things forward. However, if we don't have enough time to talk about the issues and amendments and figure out how to move things along, it is not appropriate to hold a committee meeting and a clause-by-clause consideration.

I therefore fully support the request to receive the documents by the deadlines we have agreed on. That would enable us to come prepared.

Thank you.

[English]

The Chair: Thank you, Ms. Quach.

Mr. Lake.

Hon. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): I did have a good conversation with Chris yesterday and over the weekend. I have a lot of sympathy for what she's saying. It seems there might have been a little bit of a technical glitch or whatever with the documents coming out on time, but I do understand the concerns she has.

We talked about the possibility of moving this meeting to Wednesday, but of course we have a meeting that has to happen on Wednesday, so that caused some complication this time around. We'll go through this meeting and maybe be patient, if Anne has some extra questions and wants to clarify some things, as we go through the process today.

But I want to back up what Chris is saying about making sure that we have the documents in time to ensure not only that the translation happens according to the rules of the committee and all of those things—which wasn't an issue in this case—but also, on the realistic side of things, in line with dealing within our caucuses, and needing to get things translated internally. The timing has to respect that too.

Just to reiterate, I'm not sure exactly what happened, but I don't think we need to get into that right now. It's just more something to be aware of as we move forward.

The Chair: Ms. Sgro.

Hon. Judy Sgro (York West, Lib.): Thank you, Mr. Chair.

The issue that just adds to that is why are we in such a rush on Bill C-8? It's an important piece of legislation, and I do think all of us probably would like to support it. This just adds another reason to ask if we have to start clause-by-clause today.

Can we not continue to seek some more information for another couple of meetings? Where's the deadline? And what's the pressure that this was to be done in three and a half or four meetings? Could someone explain that to me?

• (1540)

The Chair: I'm certainly not hearing any resistance to it, other than the translation issue.

Mr. Lake, did you want to speak to that?

Hon. Mike Lake: I think we agreed as a committee how we would proceed, and I think we're ready to go clause by clause now and should just proceed.

Hon. Judy Sgro: I don't think anybody agreed. At the first meeting, Mr. Lake suggested there would be four meetings. That was not something we voted on; it was just his statement. Of course, you have the majority so it's useless that we raise any issue, but if the intent is to produce good quality legislation, what is the rush? I don't know.

I have lots of quite serious questions that I hope we get answered today so that we can go forward and all of us can produce a good quality piece of legislation. I don't follow why there had to be only four meetings. One of them was half a meeting because there was a vote and we had to go back to the House.

The Chair: Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Chair.

First of all, I'd like to say how pleased I am to revisit this committee. I was here before you, Mr. Lake, I think. When I heard we were going to be doing clause by clause of the copyright bill, I was ecstatic because we were doing that way back in 2006.

So it's great to see you have made this progress, and I'd sure like to see this bill passed and moved forward. I know this is something the Canadian public has been waiting an awfully long time to have accomplished, so I'd encourage us to move forward.

The Chair: Ms. Charlton.

Ms. Chris Charlton: Thank you, Chair.

I obviously have some sympathy for what Ms. Sgro is saying. I'm not about to prejudge whether we'll actually finish clause by clause today or not. Like her, there are many things we want to discuss at some length.

I don't want that issue, though, to overshadow the issue I originally raised. I think they are two separate issues, and I hope we can move forward with some agreement that the deadlines we set here for the distribution of amendments in both official languages are dealt with as a deadline, not as some suggested timeframe. That part is really important to me, and I don't want that to get lost in the other discussion.

Thank you.

The Chair: It certainly isn't lost as far as the chair is concerned, Ms. Charlton. Thank you very much.

Seeing no other debate regarding this issue, we'll move then to clause by clause. I did mention to you already that we will be dealing with the short title later. I'll go to the members now.

(Clauses 2 to 4 inclusive agreed to)

(On clause 5)

The Chair: We have NDP-1.

Ms. Quach.

[*Translation*]

Ms. Anne Minh-Thu Quach: Thank you, Mr. Chair.

By introducing this amendment, we just wanted to point out that similar imports would no longer be included in Bill C-8. A number of experts and witnesses have made submissions asking the committee to clarify this point. We want to make sure that small and medium-sized businesses are not the only ones paying the price for this type of trade, which makes it possible to offer competitive prices to consumers. It is a legal trade that meets the health and safety standards.

The Chair: Thank you, Ms. Quach.

Mr. Lake, you have the floor.

[*English*]

Hon. Mike Lake: You will probably see a pattern today, but what I'm going to do is to go to the officials and get them to comment on the effect of this amendment, or whether this amendment is necessary in their view.

Mr. Paul Halucha (Director General, Marketplace Framework Policy Branch, Department of Industry): Thank you.

I'll start off by reminding the committee that parallel importation is the act of importing legitimate copies into Canada against the wishes of a copyright owner, authorized importer, or distributor, and which originate from the source having some relationship to the rights holder.

So parallel imports are by definition not pirated copies, not counterfeit copies, and Bill C-8 clearly exempts parallel imports from the application of the new border measures. I would point out that proposed paragraph 44.01(1)(a) does this by requiring the copies to have been made without the consent of the owner of the copyright in the country with which they were made.

In short, the legislation as it exists already has a clear exemption for parallel imports. They are not included, and having a second amendment would effectively do the same thing as has already been done in the legislation.

• (1545)

The Chair: Okay.

Go ahead, Madame Charlton.

Ms. Chris Charlton: Thank you.

I think from our perspective we're not disagreeing with the intent at all. I do think we heard some expert testimony, though, that has suggested that perhaps the initial legal drafting wasn't quite as clear as all of us in this room had hoped, so our amendment really is to tighten up that language. So are you saying that you're not comfortable with tightening up the language? Is it a misunderstanding? Because I think you're explaining the intent, and I think we're all onside with the intent.

Mr. Paul Halucha: Basically I'm saying that the amendment would not be necessary as it's effectively duplicating an exemption that already exists in the legislation. So it doesn't have the purpose of clarifying it, but effectively repeating it.

The Chair: Any other questions or debate?

Shall NDP-1 carry?

(Amendment negated [See *Minutes of Proceedings*])

The Chair: NDP-2.

Mr. Glenn Thibeault (Sudbury, NDP): Thank you, Mr. Chair.

This amendment, I think, would create a duty to use measures of the bill in good faith and it is meant to counter the potential for vexatious litigation.

The idea here is to prevent a rights holder from using detentions and delays to harm a competitor in cases where there is not a legitimate counterfeit or infringement concern, Mr. Chair. I think the main impetus in moving these amendments is to ensure that we are limiting as much as possible the cost that will be borne by small business owners who may be facing a malicious or bad faith claim by a rights holder, who may attempt to use this legislation as it is written as a means of acting anti-competitively.

The Chair: Thank you, Mr. Thibeault.

Mr. Lake.

Hon. Mike Lake: I'll just go back to the officials to comment on the effect of this.

Ms. Megan Imrie (Director General, Border Programs, Canada Border Services Agency): Bill C-8 as written does give the Minister of Public Safety and CBSA broad discretion with respect to addressing issues of bad faith from a request for assistance that may be frivolous or vexatious and which could—as you mentioned—have impacts on an importer. There is a process. The bill provides for a process for a rights-holder application, which CBSA has the discretion to accept or not. Therefore, if it is viewed that it would be a bad faith issue, we cannot accept a request for assistance. Also, we would have the discretion as written not to extend a request for assistance from a rights holder.

In terms of the liability clause that exists in C-8, we do also have the opportunity or the discretion not to action a request for assistance where, for instance, there would be an issue of bad faith. We will, as part of our FA process, ensure that there are safeguards in that process to prevent bad faith requests or abuse of the system. As well, we will ensure that we are doing appropriate tracking and monitoring of those requests for assistance to ensure that they are timely and responsive so that there are not undue impacts on the importer.

The Chair: Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): I'll just mention that the courts already have within their purview the power to do so, if they find there's been bad faith at some point in the litigation. They certainly can award special damages and indicate on those damage awards why that is so. It's not necessary; the courts already do that.

The Chair: Mr. Thibeault.

Mr. Glenn Thibeault: For clarification then, Mr. Jean is talking about the courts. So it's a delayed process, right? Small business owners would have to wait then until it's actually at the court level. Looking at this piece I heard a lot of “will ensures”. Maybe you can clarify this. Are there criteria in the bill right now to ensure that we're not just leaving it to the discretion of a minister? Are there things that the CBSA officers would have as criteria?

• (1550)

Mr. Christopher Nelligan (Counsel, Canada Border Services Agency): First of all, I should say that my minister is the Minister of Justice. I've been assigned to advise CBSA, so I'm here in that capacity. Of course, it's not my role to give legal advice to the Parliament of Canada, so if anything I say sounds like legal advice, I don't intend it to be.

Some hon. members: Oh, oh!

Mr. Glenn Thibeault: That's a very good clarification.

Mr. Christopher Nelligan: The grounds to give discretion to the minister in this regard were not specified.

One of the concerns is that if you begin to specify particular grounds in the statute, you limit the agency to those grounds and those grounds alone. At least that's the argument that will be made by people in court, that if you're finding some other good reason to deal with someone in this way, you're not allowed to do it because Parliament specified the only few reasons why you could.

The other concern that does arise is the presumption that if you put this into the statute specifically, that is then a statutory decision and it can be judicially reviewed, and the experience, at least with CBSA, tends to be that the more judicial reviews you have, the more time these processes take.

I hope that's helpful.

Mr. Glenn Thibeault: Just following up on all that, Mr. Chair, what we're talking about initially is that if you're looking at these amendments, I think they'd be seen as friendly. They're in keeping with the spirit of the legislation to improve the enforcement mechanisms without creating new barriers to competition.

We were talking about how the cost to small businesses will be borne in facing a malicious or bad-faith claim by a rights holder who may use it to try to slow down...and being anti-competitive. So I hope we'll look on these friendly amendments favourably.

Thank you, Chair.

The Chair: Well, we'll see how that goes.

Will NDP-2 carry?

(Amendment negated [See *Minutes of Proceedings*])

The Chair: Now we're on to amendment LIB-1.

Hon. Judy Sgro: Thank you very much, Mr. Chair.

This amendment proposes to create a simplified procedure that we heard mentioned by many of our witnesses and is designed to eliminate the need for legal proceedings where there is no dispute that the goods are counterfeit. It proposes to do this by including additional steps early in the process that will effectively create a simplified procedure when there is no dispute that the goods are counterfeit.

Stated generally, once the goods are detained, the process that follows would be that the information is provided to the rights holder, who is asked to determine whether or not the goods are counterfeit. The rights holder responds in writing as to whether or not the goods are counterfeit, and if the rights holder confirms that the goods are counterfeit, the minister provides notice to the importer of the goods that the goods are being detained because they are believed to be counterfeit.

For example, a customs officer has reasonable grounds to suspect that the importation or exportation of the goods is prohibited under subsection 53(1) of the Trade-marks Act, or that the importation or exportation of the copies is prohibited under section 44.1 of the Copyright Act, requiring that the importer provide written notice to the minister within a specified period of time if they wish to dispute this. If the importer does not provide such written notice, the goods are forfeited. If the importer provides such written notice, the brand owner would have to initiate legal proceedings in order for the detention to continue.

Mr. Chair, we heard a lot about the issues of how the U.S. and Europe deal with these counterfeit goods, and that without this, we're just going to create a huge amount of money for lawyers—with all due respect to the lawyers at the table, and any other lawyers in this country—but we're not going to achieve what we need to achieve with Bill C-8. Counterfeiters are not going to own up and go and

collect their goods, unless they really feel they have a solid case and the goods are not counterfeit.

So then you would have a difference between the brand owners and the so-called counterfeiters.

What we're going to get into without the simplified procedure is a whole lot of wrangling. It will involve lot of cost for the brand owners, and for many of them it's a huge cost. I'm surprised the department didn't put forward the simplified procedure as a recommendation, and I assume that now they're going to explain why they didn't, but I do think it's an important part of the procedure that we're going forward with.

• (1555)

The Chair: We'll go to Mr. Lake first, and then to the officials.

Hon. Mike Lake: That is where I was going to go anyway.

It strikes me, as we went through the aforementioned copyright legislation that we passed last year, and as we're dealing with this, that the word "balance" comes up a lot. Maybe you could speak to the impact of this amendment on the balance that is struck within this piece of legislation.

Mr. Paul Halucha: I'd be happy to do that.

Bill C-8 seeks to implement a cost-effective border enforcement regime that balances the interests of rights holders, importers and exporters, and individuals. A key component of the legislation is that when goods are detained at the border, they aren't determined as being counterfeit; they are only detained as suspect of being counterfeit or pirated. Only the court makes that final determination.

The amendment under discussion would alter this approach by making the rights holder's allegation stronger and by forcing an importer-exporter to go to court to disprove the allegation. Due to the complexity of international trade transactions, importers may have little incentive or ability to give timely notice of detention to the actual owner. If notified the actual owner may be able to establish that the goods are not infringing, while importers may lack information on the provenance or purposes of the goods. And the courts are well equipped.

A number of witnesses testified to the importance of not turning border guards into judge and jury on whether a good is counterfeit or not. The balance that we have in the bill is that if an allegation is made, the goods can be detained at the border. There is a sharing of information between the rights holders and the state. The state is accepting responsibility for dealing with the most grievous forms of counterfeit goods, either those where there is a criminal investigation or those cases where there could be health and safety risks, and then also supporting the information exchange with the rights holders. We're not turning the border agents essentially into judge and jury in a situation where they could be expropriating property from importers without having that go to court.

So that's effectively the balance in the legislation that we think could be disrupted by this amendment.

The Chair: Ms. Charlton.

Ms. Chris Charlton: Thank you, Chair. I'm reminded of the expert witness testimony that we heard from Mr. de Beer, who said:

I believe it would be impractical and excessively costly for taxpayers to impose further obligations on customs and border services officers than already provided for in the bill—certainly without increased budgetary support.

Members will have heard me question witnesses in this committee about the cutbacks to CBSA. So I find myself in the unusual position of actually agreeing with the government in this instance. Given those cutbacks to CBSA and the costs that are at stake here, I think we've actually arrived at an appropriate balance.

The Chair: Madam Sgro.

Hon. Judy Sgro: Could you tell me then why both Europe and the U.S., who are very aggressively moving towards trying to cut back on counterfeiting, felt that the simplified procedure was clean and cut and easy for them to deal with and yet in Canada we're going to put the onus on our rights owners to have to go to court and spend a whole lot of money that many of these businesses don't necessarily have to try to prove their case? I don't get why we're so holier than Europe and the U.S. Why can't we just have a simplified process for this?

Why is it, Mr. Halucha, that their process is great for them and not good enough for us?

Mr. Paul Halucha: First off, I think that both of those jurisdictions have only recently moved to a version of the simplified procedure. After experience we will see whether or not it works over time.

Second, I think Canada is not the United States or Europe from the perspective that many of the rights holders are actually European and American, so I think they have potentially a greater interest in the strength of their enforcement regimes on this issue than Canada. Also, from the perspective of balance, if you look at Canada on copyright we have struck a different balance around many things. For example, in the U.S. for many years they had large court rulings against people who didn't have the money when it turned out their son or daughter was doing downloads. We have struck a very different balance in the Canadian legislation.

So I think the balance really reflects Canadian values around the appropriate amount of enforcement that we want to have at the border and the role that we would like the courts to play in the system.

• (1600)

Hon. Judy Sgro: Lawyers are going to be making lots of money.

The Chair: Mr. Nelligan.

Mr. Christopher Nelligan: I might be able to add to that.

I had the honour of helping to represent Canada at the Anti-Counterfeiting Trade Agreement negotiations, and I've had some dealings as well on the comprehensive economic and trade agreement with the European Union. I certainly will not speak to their reasons for doing what they do, but one thing I did learn is that the laws of different countries are actually different in some very material particulars. That is one thing that treaties are all about—trying to come to a common agreement with different laws.

One of the issues here is consistency with other border legislation, and particularly the Customs Act. The Customs Act recognizes in several places that importers are not necessarily the owners of goods. Consignees are not necessarily the owners of goods. In fact, I dare say that there is probably a fairly high percentage of people in this room who are probably right now consignees. There are probably goods for Christmas or whatever on the way here from other countries—ordered online, given from relatives, and so on—and the consignee is the person who is entitled to receive delivery of that shipment under international law.

There may be many unwitting consignees who don't know that it's on the way. Depending on the commercial transaction, they may or may not be the owner. The transactions are complex and ownership can change at any stage in the shipment process, it seems.

If you have a very speedy, simplified process that just says, "Well, the owner disappeared. We're going to destroy those goods", you end up with what amounts to expropriation without notice in the context of a private dispute. The owner will perhaps ask a few days after the goods are destroyed what happened to his Christmas present, and it's gone. That is the one issue that we have to wrestle with when it comes to a simplified process. It does not quite jibe with how the Customs Act works.

Some courts have called the Customs Act draconian in the ways in which the government seizes and deals with property under that act, but even the Customs Act, when nothing is done, gives you far more time than what has been suggested for a simplified process.

The Chair: Thank you very much.

Mr. Warawa, do you have a comment?

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

I have a question.

I intend to support the government's position and the NDP's position not to support the amendment, but I do have a question on the amendment being proposed by my Liberal friend across the way.

We heard from Canada Goose as one of the witnesses. Its products have been counterfeited. Its jackets and vests are very popular international products known for their excellence in keeping people warm, and their product quality. Canada Goose did not say this, but it relates to what they had said. If there were a suspected container of counterfeit Canada Goose jackets and those counterfeit jackets were worth \$3,000 to \$4,000, if they had been the real product, the actual market value would have been 10, 15, or 20 times that amount.

There are a lot of ways that Canada Goose makes sure their products are very easily identified as real or counterfeit. They do this with little holographs, and they're very careful.

You used an anecdote so I want to give a scenario. If the container were opened and the products were missing all of these identifiers and Canada Goose said they believed the products were counterfeit and the CBSA officer also had a legitimate suspicion that the products were counterfeit, at this time they would have 10 days to detain the products. After 10 days it's gone, released to wherever it's going, unless Canada Goose wants to pay to have it detained longer.

In my hypothetical scenario, which may have a ring of truth to it, they may have to spend well in excess of the value of that container in order to have it detained, just to keep it out of the market. It may be one of many that has finally been caught.

In the scenario that I think Ms. Sgro is suggesting, the rights holder is paying to keep counterfeit goods from entering the Canadian market. In order to protect Canadians from buying junk instead of the real thing, they would have to detain those goods for how long at their cost? To detain something that may be worth \$5,000 they might have to pay legal fees and storage and whatnot, maybe hundreds of thousands of dollars, just to keep this from getting into the market.

I think that's what Ms. Sgro is trying to reach a balance on.

Could you speak to my scenario?

• (1605)

Ms. Megan Imrie: There's just one point of clarification I hadn't mentioned earlier. If they go through the court process, and, in fact, those goods are found to be infringing, they could be awarded damages through the court, which would include the cost of storage and holding onto those goods. If they are successful through the court process, they will be refunded those fees.

What we're saying, in terms of the way Bill C-8 is constructed to put the onus on the rights holder, is that they're the ones who have an incentive or a predominant interest in this. The danger with impacting the importer is that it may not turn out to be an infringing good or they may not be the actual owner of that property. We don't want to alter the balance in the way Bill C-8 is currently designed and put the onus elsewhere.

Mr. Mark Warawa: Mr. Chair, may I continue with a question on that?

The Chair: You may.

Mr. Mark Warawa: Thank you.

You've said that Canada Goose, in this scenario, would be paid back if they found that the goods were indeed counterfeit. But in my scenario, the importer and the manufacturer of these counterfeit goods have not been part of the process. Canada Goose has paid for the lawyer, gone to court, and had the courts deem that the goods are counterfeit, and they've paid a lot of money to store these and go through the process. You said they would be paid back. Who is paying them back when nobody's paying them back?

Mr. Paul Halucha: Are you asking if the importer...? Because in that situation, the court could award compensatory damages to the rights holder for the cost of detention and destruction.

Mr. Mark Warawa: That's providing the importer has assets to grab hold of.

Mr. Paul Halucha: That's providing they have money.

Mr. Mark Warawa: If they don't have it, in my scenario, the importer is not replying; the rights holder is going through the system; they've paid a lot of money to finally get permission to destroy the goods; and there's no money to come back to them to pay these costs because the importer has not been part of the process. They've refused to, because it's a cost of doing business.

Mr. Paul Halucha: So they have the value of having the goods removed from the market in that case. That's one thing.

Secondly, they do receive information as part of the exchange with customs officials. To the extent that they can arrive at an out-of-court settlement with the importer, there's nothing that prohibits that from happening. That can be done more effectively and efficiently than by going to court, if court is not viewed as something that the rights holder wants to pursue.

But, ultimately, it is a private right and the importer has rights as part of their... The crown cannot just seize their goods and destroy them based on an allegation without a court determination that they are indeed infringing.

Mr. Mark Warawa: Thank you.

The Chair: Are there any other questions or debate?

Shall amendment LIB-1 pass?

(Amendment negated [*See Minutes of Proceedings*])

An hon. member: Yes.

Voices: Oh, oh!

• (1610)

Hon. Judy Sgro: We should have recorded votes on these things.

Voices: Oh, oh!

Hon. Judy Sgro: Thank you, Mark. I appreciate your comments.

The Chair: On amendment G-1, go ahead, Mr. Lake.

Hon. Mike Lake: It's along the same lines as some of the discussion we've had, and it's a fairly straightforward amendment, so I'll throw the ball to the officials to give us just a quick explanation of it, if they could.

Mr. Paul Halucha: It follows along very nicely on the discussion we were having. This amendment proposes to provide clarity that the information that is shared between border officials and rights holders can be used for the purposes of reaching an out-of-court settlement. This goes to the point that was just raised by Mr. Warawa, in the context of a situation in which they want to avoid legal costs, and they would like to get the goods off the market.

The committee heard testimony from witnesses that in some cases one container is opened up and it has infringing goods or suspected infringing goods from many different rights holders. In that case, we wanted to make very clear that an out-of-court settlement would be provided and that there would be a mechanism for that to happen on a simplified basis. That's the purpose of this amendment: to clarify that the rights holders can use the information they receive from the border agents for the purposes of obtaining an out-of-court settlement.

The Chair: Ms. Sgro.

Hon. Judy Sgro: Let's run through that for a minute. A rights holder will see who has signed the bill of landing, the document that accompanies a truck load of suspected counterfeit goods. We'll use the Canada Goose jackets as the continuing example.

You're saying that once notified there's a possibility of having counterfeit merchandise in a particular container, the rights holder goes over and says he believes it is counterfeit based on his rights holding. Then you're suggesting that the rights holder tries to contact what you call an importer. I would call it the counterfeiter, but an "importer", as you call it. Then the rights holder is going to try to get in contact with the importer.

Mr. Paul Halucha: Yes.

Basically, a lot of the legal community that represents rights holders right now advise us that this is frequently how they clear goods at the border. They were concerned when they first read the bill that we hadn't made it explicit that an out-of-court settlement was one of the reasons for which the information could be provided. For example, it doesn't have to be a counterfeiter; it could be a supplier who doesn't know they have a bad supply deal with somebody. It turns out they've imported the stuff, it's detained at the border, and then they learn that they have a supply problem.

If a rights holder comes to them in that circumstance, it's most likely that if they haven't done anything wrong, or if they have done something wrong and they don't want to go to court, they will have an incentive at that point to turn the goods over. Then you have an expedited process, where the crown would provide those goods to the rights holder for storage and destruction.

A cease and desist letter is the format that they use, and it's a well-established practice.

Hon. Judy Sgro: Thank you.

Mr. Paul Halucha: Just to make it clear, it would be permitted under the act.

Hon. Judy Sgro: Thank you.

The Chair: Does G-1 carry?

(Amendment agreed to [See Minutes of Proceedings])

The Chair: The next is BQ-1.

[Translation]

Mr. Louis Plamondon (Bas-Richelieu—Nicolet—Bécancour, BQ): Thank you, Mr. Chair.

Witnesses and experts who appeared before this committee said that they were afraid that Bill C-8 would have some unexpected

negative consequences. For instance, one major consequence we can see is an unfair financial burden being imposed.

That is exactly what could happen as a result of subclause 44.07 (1). In those specific cases, the charges for storing, handling and, if applicable, destroying the samples could fall on the shoulders of a victim whose copyright has been stolen, rather than on the shoulders of the importer of the goods in question.

A witness from Canadian Manufacturers and Exporters said: "We believe that the importers should be responsible for these costs, since they are the ones introducing these goods..."

That is why I suggest replacing "The owner of copyright" with "The importer" in that subclause.

Since I unfortunately cannot discuss that with you, I hope you see my point of view.

• (1615)

The Chair: Thank you, Mr. Plamondon.

Ms. Quach, you have the floor.

Ms. Anne Minh-Thu Quach: Thank you, Mr. Chair.

I understand my colleague's concerns. However, I think the rights holders, not the importers, receive all the information about the products, whether or not they are counterfeit. They are the ones who get the information. The importer is often a small business. If Mr. Plamondon's amendment were passed, the burden would fall again on the shoulders of small and medium-sized businesses, although they do not have access to the information that would be disclosed to border services officers.

Having said that, the experts here can correct me if they need to.

Ms. Megan Imrie: May I answer in English?

Ms. Anne Minh-Thu Quach: We have simultaneous interpretation.

[English]

The Chair: It will be translated.

Ms. Megan Imrie: Great. Thank you.

I have a couple of points, and my colleague may have more to add. It's similar to our conversation previously.

In the cases of suspected goods, they are not necessarily infringing goods, so there is a process of determining through the court whether what is being imported is actually infringing. With regard to putting the onus on the importer, as we discussed earlier, it may be determined through the courts that they are not actually infringing goods. I think that's an important point.

The other point is that the rights holders are currently not responsible for the storage and destruction costs of suspected goods that are the subject of a criminal investigation. Likewise, if Health Canada is conducting an investigation, the costs for those are not assumed by the rights holders. That does mitigate the costs for the rights holder.

[Translation]

Mr. Louis Plamondon: Could you slow down a little, please? The interpreters are having trouble following you.

Ms. Megan Imrie: Okay, I am sorry.

[English]

Finally, at the end of the civil court action, rights-holder costs will typically be included, as I mentioned, in the final court judgment.

The Chair: Do you want to add to that?

Hon. Mike Lake: I'm going to go back to the officials for one last word on this. I don't really have anything to add. You can sense where this is going, given where we've been on the previous ones.

The Chair: I don't know. I think we just asked if there was anything else to add here.

Shall BQ-1 carry?

(Amendment negated [See Minutes of Proceedings])

The Chair: G-2.

Hon. Mike Lake: I think G-2 and G-3 are both really technical amendments. To save time, if you guys are okay with it, I'll have the official speak to both of them at the same time right now.

Mr. Michael Ryan (Senior Analyst, Copyright and Trade-mark Policy Directorate, Department of Industry): Thank you.

With respect to G-2, it seeks to amend a provision that allows the owner, importer, or exporter to pay security to the court after an action has been initiated to have the goods released. A court would determine on what security or conditions those goods could be released. It provides a balance to allow that they may be maintained. But a person who is interested, the owner of the goods, may seek the court's direction on getting them released pursuant to a payment of security. That's with respect to G-2.

G-3 is a clarification on a safeguard. If litigation proceeds, and if it is ultimately dismissed, it is not an infringing good. Not only is the owner, importer, or consignee able to recover damages for what was determined to be inappropriate seizure or detention, G-3 also adds reference to the exporter, since exporters can also have their goods detained, pursuant to Bill C-8.

•(1620)

The Chair: Mr. Jean.

Mr. Brian Jean: This sounds very similar to the Woodmen's Lien Act in Alberta, and other acts where a dispute about a product is available and people can put up a bond, in essence, in relation to this. It's very common in many pieces of legislation across the country. Is that fair to say?

Mr. Michael Ryan: I believe so, yes.

The Chair: Are there any other comments on G-2 or G-3?

Shall G-2 and G-3 carry?

(Amendments agreed to [See Minutes of Proceedings])

The Chair: NDP-3 is essentially the same as NDP-2, unless someone wants to make a case for that.

Mr. Glenn Thibeault: I'll definitely make a case for it.

The Chair: Mr. Thibeault, you're allowed to do that, then.

Mr. Glenn Thibeault: Thank you, Chair.

I'm being hopeful and optimistic that my friends across the way will be loving with this amendment.

I know it's similar to my previous amendment, but I think this addresses the cost that may be borne by small businesses for the wrongful or mistaken detention of goods. As it's currently written, Bill C-8 contains a no-liability provision for the crown and provides for the damages against rights-holders in cases where court proceedings are dismissed or discontinued.

In attempting to strike a balance between consumer and industry interests, I think Bill C-8 places the cost of detaining suspect goods on the rights-holders. However, as we heard during the testimony of Dr. Geist, C-8 is clearly lacking a misuse provision to ensure that actors are not engaging in frivolous claims as a means of acting anti-competitively.

I could speak to it further but I'd like to hear from the officials.

Thank you.

The Chair: Then we'll just go to the officials. I don't see any other comments.

Mr. Glenn Thibeault: I thought I'd take that away from Mike.

Mr. Michael Ryan: The distinction with the previous one, with respect to filing an RFA and actual litigation, is that during litigation this amendment seeks to explicitly include a reference to frivolous or vexatious litigation and grounds for compensation.

As it stands right now, with respect to federal court rules or various provincial court rules, there are explicit references to this type of litigation and ways of dismissing these actions through pleadings, statements of claim, extra security for costs, or, in the end, punitive damages or heightened attorney fees. Costs could be awarded at the end of a decision that's been decided to be vexatious or frivolous or done in bad faith. In that context, the objective of the amendment is fully covered within the federal or provincial court's rules of civil procedure.

The Chair: Thank you very much, Mr. Ryan.

Are there any other questions or comments?

(Amendment negated [See Minutes of Proceedings])

The Chair: We have NDP-4.

Ms. Chris Charlton: Thank you very much, Mr. Chair.

As you'll recall, we had asked a number of witnesses, including the minister, whether there was information available on the number of detentions, which this bill was trying to deal with. And we had heard from witnesses that in fact there is no number right now about how many Canadian manufacturers have been convicted of importing or exporting counterfeit goods and that, on the whole, while we have estimates about the magnitude of the problem, we don't have any certainty.

In fact, when Mr. Thibeault asked Superintendent Slinn for those numbers, he said he didn't have them with him but that he'd send us a written response. You'll recall that he did send that response to the committee, and it says: The RCMP information systems do not capture or track a sufficient level of details in order to provide the number of Canadian manufacturers convicted of importing or exporting counterfeit goods.

As a result of that, we feel pretty strongly that there has to be some kind of mechanism to evaluate the effectiveness of this bill and to see whether we're actually achieving what all of us around this table hope to achieve. As a result, our amendment would require an annual report to Parliament with information on detainments made under the scheme. In particular, we're looking for the number of detainments made under section 101 of the Customs Act for works or goods, and of those, the numbers that could have health and safety implications; the number of requests for assistance for copyright and trademark; the number of requests for assistance that are extended for copyright and trademark on a one-time basis, and repeatedly; and the number of inspections conducted.

I think all of us who take this issue of counterfeit goods coming into Canada seriously need to know (a) the extent of the problem, and (b) whether this bill is as effective as we all hope it will be. If not, give us the opportunity to come back and see if we can strengthen it either through better enforcement or perhaps through amendments to the bill. The only way we can do that is if we get some actual accounting of the magnitude.

Thank you, Chair.

• (1625)

The Chair: Mr. Lake.

Hon. Mike Lake: It's my understanding that there are mechanisms that already exist for reporting, and maybe I'd just ask the officials about that.

Ms. Megan Imrie: Thank you.

Yes, there are mechanisms currently that would allow departments to report annually on their activities. CBSA, as part of the Public Safety portfolio, would consider the implementation of this bill as part of that regular annual reporting. Therefore, it wouldn't be a requirement to include this in this legislation.

That being said, we will ensure that the points you have mentioned are...so that we having good tracking of the number of requests for assistance, for instance; the numbers that are extended; and the length of detention. Those would definitely be important pieces of data that we would want to ensure are tracked for the efficiency of the implementation of the RFA process.

[Translation]

The Chair: Ms. LeBlanc, you have the floor. Let me welcome you once again.

Ms. Hélène LeBlanc (LaSalle—Émard, NDP): Thank you.

I support amendment NDP-4 introduced by Ms. Charlton.

During the study of Bill C-56, we noted that it was very difficult to understand the scope of counterfeit products, be it in Canada, the

United States or anywhere else in the world. We also wondered whether this kind of bill was necessary. We thought so, but we had no solid evidence. Today, we want to ensure that we especially take into account counterfeit products that endanger people's health and safety.

I think an annual report to Parliament is important so that parliamentarians are truly informed as to the effectiveness of measures in place. As well, detailed data will help us have a better sense of the effectiveness of the measures in place and help us determine whether the problem is growing or diminishing.

That is why I wanted to add my voice in support of this NDP proposal.

[English]

The Chair: We have two more on the speakers list and then we'll go to the officials.

Madam Sgro.

Hon. Judy Sgro: Again to the staff, you indicated there are mechanisms to report yet no one knows how many cases we're going to see, or we've seen in the past, in spite of the fact that we were told there has been an increase of over 400% in counterfeiting. So what are the mechanisms? Somebody is tracking these cases or we wouldn't be sitting here dealing with Bill C-8 today.

The Chair: I'm going to allow you to answer all at once.

Madam Charlton.

Ms. Chris Charlton: Thank you. I appreciate your comments about the information already being collected and a number of different ministries doing bits and pieces of that collection of data.

If that's already being done, though, what's the barrier about actually reporting it out to Parliament as one source? I'm not understanding. It doesn't sound like it's a make-work project if it already exists. Perhaps that's not a fair question to you because you say it's being collected. Perhaps it's a question to the government, but if the information exists and will be collected, why not make it easily available, not just to parliamentarians, but to Canadians?

The Chair: Ms. Imrie.

Ms. Megan Imrie: I'll clarify my comment earlier. There are mechanisms that exist to report to Parliament annually on departmental operations. We would incorporate that reporting on the operationalization of IPR as part of that mechanism, the annual report to Parliament. It wasn't suggesting that there's currently reporting on IP by CBSA, because we don't have this bill in place yet.

Ms. Chris Charlton: So then, it would be desirable to have that as a result of this bill, and it's not impossible to do, right? It then becomes a political question: is the government willing to make it public through the House? That's not a fair question to you. That would be a question to Mr. Lake, and I guess we'll find the answer out by how he votes on this. You can't get anything past me.

The Chair: Any other questions or comments?

Shall NDP-4 carry?

(Amendment negated [See *Minutes of Proceedings*])

• (1630)

Hon. Mike Lake: On a point of order, Mr. Chair, I just noticed that NDP-1 to NDP-4 are pretty much the same amendments as NDP-6 to NDP-9, which modify the Trade-marks Act in the same way. Would the NDP members be willing to apply the votes for 1, 2, 3, and 4 to 6, 7, 8, and 9 in the interest of saving time and not making the same arguments over again?

Ms. Chris Charlton: Sorry, NDP-7 is not the same. It's definitely not the same.

The Chair: Are we talking about the same clause here?

Ms. Chris Charlton: Let's just go through them one at a time.

Hon. Mike Lake: So you're saying NDP-7 and NDP-2 aren't the same?

The Chair: We've exhausted all the amendments.

Hon. Mike Lake: The NDP amendments 6, 7, 8, and 9, unless I have different ones in my package....

Ms. Chris Charlton: NDP- 5 should still be coming up.

Hon. Mike Lake: Right, I'm just saying 6, 7, 8, and 9.

Ms. Chris Charlton: Let's wait until we get there.

Hon. Mike Lake: Okay. I just thought I'd bring it up at this time as it might make sense. That's okay.

The Chair: I'm sorry, Mr. Lake, we have different ways of tracking.

We are on clause 5.

(Clause 5 as amended agreed to)

(Clause 6 agreed to)

(On clause 7)

The Chair: We have amendment NDP-5.

Ms. Chris Charlton: Thank you, Chair.

I think this is an issue where we'll probably find some agreement. The generic pharmaceutical industry in particular was very concerned about the definition of "distinctive" under the proposed legislation. In particular, the concern was related to the issue of consumer confusion, particularly when it comes to medications.

Our amendment proposes to resolve those difficulties because I think the new definition had a number of unintended consequences. Our proposition is to return to that level of certainty that we'd achieved through case law, to return to the former definition of "distinctive". I believe the government's amendment is almost identical to that, so I hope that we'll actually find some agreement on our amendment.

The Chair: I guess I should tell the members here that there is a line conflict. If NDP-5 is adopted, then we cannot proceed with the other two amendments.

Ms. Chris Charlton: I think all of the amendments are roughly the same. Ours is the same as the government's, I think.

The Chair: There's a conflict in a line, so if this were adopted then we couldn't proceed with the other two amendments.

Mr. Lake and then Ms. Sgro.

Hon. Mike Lake: Maybe I'll just get the officials to comment on the difference between the three proposed amendments.

Mr. Paul Halucha: I'll refer to the three amendments as NDP-5, G-4, and LIB-2.

On NDP-5, I recall that when the committee heard from the generics industry, they made the argument that there was a risk when modernizing the legislation that the existing jurisprudence around trademarks in the pharmaceutical sector could be disrupted, and there could be an extension of trademarks to companies that may not have qualified before. The argument is to retain, as closely as possible, the existing definition in the act. In order to not disrupt jurisprudence, it makes sense to retain the current definition as closely as possible.

There is a very small difference between NDP-5 and G-4. NDP-5 adds the word "as", so it reads "or is adapted so as to distinguish them". G-4 does not add the word "as".

We have not obtained legal advice to determine whether the "as" kills this definition or results in a significant difference. I would go back to the original statement that, to the extent we want to maintain existing jurisprudence, there's a strong argument to retain the existing definition, which G-4 does.

LIB-2 does something slightly different from that.

Mike, do you want to expand on this one?

I'll read it out, and then we'll ask Mike to provide more detail on it.

LIB-2 says, "the goods or services in association with which it is used by the trademark's owner from those of others". So it eliminates the idea of a trademark that is inherently distinctive. Therefore, for example, a word like "Xerox", which of itself is inherently distinctive, could not be trademarked unless it were established through use. The Liberal amendment has the effect of removing a large component of what is currently admissible for trademarking.

Mike, do you want to explain?

• (1635)

Mr. Michael Ryan: You've exhausted my contribution.

Hon. Judy Sgro: That's fine. He's explained that. Okay.

The Chair: Mr. Nelligan, since you're not here for legal advice, I take it you wouldn't want to comment on the "as".

Voices: Oh, oh!

Mr. Christopher Nelligan: No, thank you.

The Chair: That's what I thought.

Any other comments or questions?

Does NDP-5 carry?

(Amendment negated [See *Minutes of Proceedings*])

The Chair: Shall G-4 carry?

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

The Chair: We can't proceed with LIB-2. Okay, that's fine.

Shall clause 7 carry as amended, then?

(Clause 7 as amended agreed to on division)

The Chair: Since we have no amendments for clauses 8 to 18, shall clauses 8 to 18 carry?

(Clauses 8 to 18 inclusive agreed to)

The Chair: On clause 19, then.

Mr. Mike MacPherson (Procedural Clerk): Actually, no, we're up to clause 20.

You can go to clauses 19 and 20.

The Chair: Shall clauses 19 and 20 carry?

(Clauses 19 and 20 agreed to)

(On clause 21)

The Chair: We have G-5.

Hon. Mike Lake: Since G-5 would just delete the clause, we'll just vote against the clause and it'll have the same effect.

The Chair: Okay.

Shall clause 21 carry?

Mr. Mike Lake: No.

The Chair: No? Okay, clause 21 is defeated.

(Clause 21 negatived)

Ms. Chris Charlton: I'm sorry, I just need to understand what we're doing here.

Hon. Mike Lake: Sure. G-5 was drafted to amend the bill by deleting a clause. The more proper way to do it is to vote against the clause and have it removed that way.

Ms. Chris Charlton: No, I understand that part, but we're deleting in G-5. G-6 then restructures the clause. The two are related to each other. I don't know, procedurally, whether—

Hon. Mike Lake: Do you have one of the officials comment?

Ms. Chris Charlton: I guess I'm linking a conversation about two amendments, G-5 and G-6, because I think they're interrelated. G-5 deletes a clause. G-6 then restructures the existing clause. When I look at those changes, I don't understand why that was necessary.

Can you explain it to me?

Mr. Michael Ryan: After the legislation was tabled, we received some comments, or I believe comments were supplied to the committee with respect to the exact drafting and whether it actually fulfilled the entire intention of the provision. I'll provide a bit of information on where the law stands as it is now, on what it would do unamended, and what the amendment seeks to do.

Currently with respect to a registered trademark, you have protection against a mark that is identical to or confusing in regard to that mark for the same goods that are listed on the trademark register or for goods that would be confusing with the list on the register. What Bill C-8 also sought to do, under clause 21, is that not only is that infringement at the time of sale, which it currently is, but it

would also seek it earlier in the supply chain, so that's importing for the purposes of sale or manufacturing for the purposes of sale.

However, the way it was drafted, it limited those new civil causes of action to only the explicitly registered goods or services on the registry. This created a bit of discord between what's an infringement to sell versus what's an infringement earlier in the supply chain.

It can be difficult to follow, so I think it would be best to use an example. Since it's everyone's favourite example, we'll look at Canada Goose. They registered their trademark for jackets, but they didn't—hypothetically—register it for mittens and gloves, for example, which are also winter attire. If somebody were selling a knock-off version with a counterfeit Canada Goose mark on gloves, that would be infringing, because it would be confusing with a registered trademark, even it weren't explicitly listed on the registry.

Bill C-8 sought to ensure that not only is that at the time of sale, but that it is also earlier in the supply chain. Bill C-8, if unamended, would allow an infringement for anyone importing for the purpose of sale, or manufacturing for the purpose of sale, for example, those coats or jackets, but not those gloves or mittens. What the restructuring ensures is that whatever is an infringement to sell is also an infringement to manufacture for the purposes of sale. It's filling a gap there in the protection for types of wares and services that aren't on the trademark registry.

• (1640)

Ms. Chris Charlton: I'm sorry. Maybe I'm not clear yet. You're saying that, through this change, it's now possible to go after goods that aren't in fact trademark protected in the first place?

Mr. Michael Ryan: They are protected, but they're not necessarily listed explicitly on the registry, so your scope of protection isn't limited only to the wares or services listed on the registry. If my good is a jacket but it would be confusing to sell gloves or mittens as well, then my scope of protection extends to those types of goods.

Ms. Chris Charlton: Who decides what the scope of that is?

Mr. Michael Ryan: That's left to the courts, but with respect to this, there's an analysis, which asks, is it confusing? Would a consumer looking at these in the marketplace think they are from the same source?

Ms. Chris Charlton: It's not easy for me to say whether I support this or not. This seems like a pretty significant change, and I didn't hear any witness testimony about it one way or the other. I'm not trying to give you a hard time; I'm just trying to get my head around something that seems more significant than technical.

Hon. Mike Lake: Could I just jump in for a second?

If you think about it for Canada Goose, Nike, or whatever, they have a brand that's valuable. It might make sense that someone counterfeits the trademark—basically uses the trademark—and makes gloves. They aren't made by Canada Goose, but they put the Canada Goose logo on those gloves. That's clearly an infringement. It clearly should be wrong. I think everybody would agree with that being wrong, but it's treated differently, the way the bill was drafted, than the way this change would take it. That's all it is.

It doesn't go, I think, judging from your question.... Of course, it's tough when we're in this context and trying to understand a change like this. I think you might be thinking that it's going a lot further than it's going. It's just saying that you can't use a name that isn't yours to sell something that Canada Goose doesn't make. You can't just use the Canada Goose brand to sell something that they happen not to make, right?

If I can get a clarification, I think that's what we're saying here: it should be treated the same way as if they were counterfeiting a Canada Goose jacket. The way it was drafted, it wasn't treated the same, and this is correcting that.

Ms. Chris Charlton: I'm having a hard time figuring out how broad this new power actually is. Again, I feel like I'm not in a position to say yes or no because I'm not certain about the breadth of these provisions. That's all.

I'm going to let others ask some questions.

The Chair: Madame LeBlanc.

[Translation]

Ms. Hélène LeBlanc: I sort of feel the same way as Ms. Charlton. The proposed provisions are still fairly long.

Bill C-8 amends the Copyright Act. Do these proposed provisions respect the spirit of that act? It covers a lot of things.

Let's take Canada Goose for example. It's a company that mainly makes coats. If someone made gloves that Canada Goose did not manufacture and puts the Canada Goose logo on them, that provision would make it possible to sue that person and seize the goods in question.

I would like to know whether this respects the provisions of the Copyright Act.

[English]

Mr. Paul Halucha: The point that you made about the gloves is exactly the point that Mr. Lake was making, which is the fact that they haven't selected gloves, and that protected gloves does not mean that their brand would not be impacted if gloves bearing the Canada Goose trademark appeared on the marketplace. This would effectively provide for them to undertake a civil course of action.

•(1645)

Mr. Michael Ryan: This clause is relating to the Trade-marks Act. You're asking about a cross-over with respect to the Copyright Act.

Currently, subsection 27(2) of the Copyright Act deals with importation for the purposes of selling, distributing, or by way of trade, distributing, or exposing for sale or rental. These are similar proposals within the Trade-marks Act.

Ultimately, one of the key messages I'd take home is that currently we're ensuring that if it's an infringement to sell, it's infringement to do the acts leading up to sale. That's what this is really getting at.

[Translation]

Ms. Hélène LeBlanc: Logos and trade-marks are protected. They cannot be used or affixed to anything in order to sell products more easily.

[English]

Mr. Christopher Nelligan: If it assists you to know, I came into all this as just the dumb customs lawyer who had to figure out intellectual property, so I had to simplify things a great deal.

When it comes to using a logo for a different product, to my understanding what is and is not confusing to consumers is ultimately determined in the market. To borrow Michael's analogy, yes, winter gloves would be confusing because that's winter wear generally. The general public would associate it with Canada Goose, the company, as opposed to this impostor. If, however, hypothetically there were some other old established company in Canada that had a circular logo, not too similar but close enough, maybe with a few snowflakes on it and so on, and they were called Canada Geese, and they sold frozen geese for Christmas dinners and so on, and their logo looked a bit like Canada Goose, the jacket company's, that would not be confusingly similar. The public would figure that one out and we would not have the problem. That's the general issue this is addressing.

The Chair: I'm suddenly getting hungry for Christmas dinner.

It appears we have exhausted the conversation on that.

We're on G-6 now. Shall it carry?

(Amendment agreed to)

The Chair: Shall clause 22 carry as amended?

(Clause 22 as amended agreed to)

(Clauses 23 to 27 inclusive agreed to)

(On clause 28)

The Chair: Okay, we have LIB-3.

Hon. Judy Sgro: Mr. Chair, this amendment eliminates the provision allowing for the destruction of records after six years. I'd be interested in the department's comments as to why they feel that six years is sufficient on something as important as this kind of information.

Mr. Paul Halucha: I have just a couple of points. This part of the act would provide the Canadian Intellectual Property Office with the flexibility to destroy trademark records six years after a file is no longer active, and once it is determined that the records have no business, legal, or financial value. Maintaining records is obviously an extremely important part of government administration, but there are points where business records are no longer of value, and at that point the cost of maintaining and guarding those files outweighs their value on the marketplace. This provision simply provides the flexibility to CIPPO, the Canadian Intellectual Property Office, to destroy files once they are determined to be dead, no longer useful, with no business value.

Hon. Mike Lake: That's okay.

The Chair: Madame Quach.

[Translation]

Ms. Anne Minh-Thu Quach: Thank you, Mr. Chair.

The lawyer for the International Trademark Association recommended that we keep electronic copies of documents. If we decided to do that, could we simply make a friendly amendment to the Liberals' amendment saying that it would be possible to destroy the documents after a digital copy was created? I imagine that operating that way would take less space and would be helpful.

Would Ms. Sgro consider that a friendly amendment? Could the department's representatives tell us if they think it would be helpful and sufficient?

• (1650)

[English]

Mr. Paul Halucha: Fundamentally, under the scenario where a file is destroyed, there has already been an assessment that it has no business value, and in that context, it's not free to digitize records and it could be quite expensive. So effectively, the crown would be incurring a cost on an on-going basis to undertake the digitization and then the perpetual storing of files for which there is no business value.

I note as well that there were discussions with INTA on the question of how long records should be maintained. Until very recently, they had been contending that these should be kept on a perpetual basis, that there should be no point at which records should be destroyed.

This section is limited to what are considered dead files. This would be, for example, a trademark application that's been filed and then never proceeds past the examiner, so it never becomes a trademark. It would include trademarks that are not renewed, so the individual rights holder who has taken the step to seek the trademark reduction has now determined that there is no value from the trademark, so they're not renewing the file. It is truly information that has no business value.

The Chair: Ms. Sgro.

Hon. Judy Sgro: I have a brief question. What if your assessment on that is wrong? Before you would destroy the records would you attempt to contact the individual to ensure that clearly nothing is happening on that issue? I think a lot of work goes into these particular applications.

Mr. Paul Halucha: Yes, I think that determination would be made, and six years would provide a window for a contact to happen. But, for example, if someone has made a determination not to renew their trademark, then effectively that is a form of communication. They're signalling to CIPO that there is no value to that and they're not going to be renewing it. And, ditto, if they have not undertaken to proceed with the examination of a trademark, they are making an assessment and communicating to CIPO that there is no value to their proceeding. So in both cases, there is an implicit form of communication. But it would be prohibitive to go back to a number of files and seek to have either a document or a signal that in fact they are not of value to the individual any more. But six years, I think, is the objective of providing that sort of a window if a rights holder were to determine two or three years later that they wanted to come forward. But there's a point at which, just from the sheer desire to want to limit the number of records you're maintaining on an ongoing basis and that cost to the crown, you need to declare that they're dead.

[Translation]

Ms. Hélène LeBlanc: But, does the Canadian Intellectual Property Office, or CIPO, keep statistics on, for example, the number of files abandoned or kept? That statistical data could help determine whether the office's process can be improved. Even if the documents are destroyed, are statistics still kept on the number of patents filed, for example?

[English]

Mr. Paul Halucha: I would need to check with CIPO in terms of whether they would be keeping statistics on how many files. I wouldn't know that.

[Translation]

Ms. Hélène LeBlanc: That's fine.

[English]

Mr. Paul Halucha: We do have somebody from CIPO here. If the committee would like to ask them to come to the table, they could potentially answer that question.

• (1655)

[Translation]

Ms. Hélène LeBlanc: I thought that question was interesting because when we were looking into intellectual property, questions were asked about the office's effectiveness and the proper functioning of the process.

[English]

Mr. Paul Halucha: We would be very pleased to provide that information to the committee, if that would be acceptable.

[Translation]

Ms. Hélène LeBlanc: Fine. Thank you.

[English]

The Chair: Seeing no other debate, shall Liberal-3 carry?

Ms. Charlton.

Ms. Chris Charlton: Sorry, Mr. Chair, just on a point of clarification, didn't Ms. Quach move a friendly amendment?

The Chair: There's no way to move a friendly amendment. She would have to actually put the amendment in writing and we'd have to debate it here. There's no such thing as a friendly amendment.

Ms. Chris Charlton: We can't move amendments off the floor during clause by clause? Sure we can.

A voice: In writing.

The Chair: Yes, in writing.

A voice: No.

Ms. Chris Charlton: No. We can do that verbally.

Mr. Mike MacPherson: It has to be in writing.

An hon. member: [Inaudible—Editor]

Ms. Chris Charlton: Did you think you could do it verbally as well?

I thought that was the whole point of clause by clause, that you could actually have a conversation about this and move amendments.

Hon. Judy Sgro: We know that's a waste of time anyway.

The Chair: It doesn't have to be in both official languages. It just needs to be in writing.

Hon. Judy Sgro: We might as well just move on.

Mr. Mike MacPherson: We need the wording.

The Chair: Yes, we just need the wording.

Hon. Judy Sgro: Mr. Chair, could I suggest that we hold that amendment while the member puts it in writing—

Ms. Chris Charlton: He has it in writing.

The Chair: It's in writing.

Hon. Judy Sgro: Did you get it already?

The Chair: Yes, we have it.

Ms. Chris Charlton: We write fast.

The Chair: This is not a subamendment. It's actually quite substantially different, so it would have to be a stand-alone amendment.

We'd have to defeat this—what's before us—and then we'd have to deal with that separately.

Do you want the paper back?

Ms. Chris Charlton: I do.

The Chair: You don't want to move it, then?

Ms. Chris Charlton: Well, we might, but we're dealing with something else right now, so I need the piece of paper back.

The Chair: All right.

Shall Liberal-3 carry?

(Amendment negated [See *Minutes of Proceedings*])

The Chair: Go ahead, Madame Quach.

[*Translation*]

Ms. Anne Minh-Thu Quach: I have another amendment to introduce regarding the recommendation requiring that electronic copies be kept. It would be quite simple, in fact. We could suggest an amendment so that the bill is amended by replacing the words on line 25 with “may destroy, after a digital copy has been created”.

Would you like me to reread it more slowly?

[*English*]

The Chair: Yes, once more.

Ms. Chris Charlton: It's worth the wait: this one will pass.

Some hon. members: Oh, oh!

• (1700)

Mr. Ed Holder (London West, CPC): Actually, Chris, I thought a verbal friendly amendment could take place. It seemed logical, but apparently not.

[*Translation*]

Ms. Anne Minh-Thu Quach: The amendment would read as follows:

That Bill C-8, in Clause 28, be amended by replacing line 22 on page 23 to line 26 on page 24 with “may destroy, after a digital copy has been created”.

[*English*]

The Chair: Madam Sgro.

Hon. Judy Sgro: I have a question for the staff. Was that not part of the intent as well? You're moving into doing things on a digital basis and you're not going to need the paper records. Was that not part of that same discussion?

Mr. Paul Halucha: The ability to actually have filings in electronic form is absolutely something that's supported by this legislation.

Hon. Judy Sgro: Right. So that's where we're going, anyway.

Mr. Paul Halucha: But it's the cost of moving documents from written form into digital form that have no value. I think that's the point.

Hon. Judy Sgro: Thank you.

The Chair: Any other questions or comments on the amendment?

Hon. Judy Sgro: Could you read the amendment again?

The Chair: Yes.

Madam Quach, could you read it once more.

[*Translation*]

Ms. Anne Minh-Thu Quach: Yes. Here it is:

That Bill C-8, in Clause 28, be amended by replacing line 25 on page 23 to line 19 on page 24 with “may destroy, after a digital copy has been created”.

[*English*]

The Chair: Okay?

(Amendment negated)

(Clause 28 agreed to)

(Clauses 29 to 37 inclusive agreed to)

(On clause 38)

The Chair: We have LIB-4.

Hon. Judy Sgro: Thank you, Mr. Chair.

This amendment alters the provisions allowing the registrar to correct mistakes on the register, removing ministerial discretion and correcting the mistakes and eliminating the time period for such corrections to be made.

Perhaps staff could respond to that amendment and what their thoughts are there.

Mr. Paul Halucha: Currently, only the Federal Court has the jurisdiction to correct any errors on the trademark register. The goal of Bill C-8 is to give the registrar the ability to correct errors without going to the Federal Court. Right now the circumstances are such that even if an error is determined right after a filing, in order to have it corrected once it's on the register, the commissioner of trademarks or the trademark owner has to go to Federal Court to have that correction made. So what the amendment does is provide for a six-month period during which, if an error is determined by the trademark owner, then the commissioner of trademarks has the ability to make that correction without going to Federal Court.

The amendment changes the flexibility the commissioner has in response to errors identified by the rights holder to a liability, so he or she would effectively be in a position of having, first off, to proactively correct all errors, and then, secondly, be responsible and liable in situations where they did not find the error.

From the perspective of analyzing this section, there's a legal community of trademark agents who have the strongest incentives to make sure that their trademarks are accurate. Our view is that they are best-positioned and most responsible to bring those errors forward to the commissioner, who can then correct them. To create a liability on behalf of the commissioner would substantively raise the bar.

• (1705)

Hon. Judy Sgro: Okay, that's fine. A good thing.

The Chair: Mr. Jean.

Mr. Brian Jean: If I may, Mr. Chair, my understanding is that it could be cured for six months. If there's a failure on the title, or in this case, it's not the title, but there's a six-month window, that gives the opportunity to lawyers, who of course are patent officers who register these, to send them off. When they bring them back, if they see that it's not a perfect registration, they have a six-month window to be able to perfect it, with a letter. If it's not within that six-month window, and they find out through negligence or some other challenge to their right in three or four years, then they have to go to court for a settlement of that.

Mr. Paul Halucha: Yes, that's an accurate description.

Part of the reason for the determination of a time-delineated period is that you want to have stability and certainty in the marketplace. If there were no certainty around a trademark—that it could be amended without a court process at any point ongoing—it would undermine that objection.

Mr. Brian Jean: This actually reflects perfectly what our society is built on, which is the [*Inaudible—Editor*] system of land and the perfection of registration of land titles.

Would that be fair to say?

Mr. Michael Ryan: Sure.

Mr. Paul Halucha: Michael agrees.

The Chair: Shall LIB-4 carry?

(Amendment negated [*See Minutes of Proceedings*])

(Clauses 38 to 41 inclusive agreed to)

(On clause 42)

The Chair: We have G-7.

Hon. Mike Lake: I'll get the officials to comment on this one. If you look at the amendment there are a bunch of different changes in there, but I'll get the officials to comment on the effect of the changes.

Mr. Paul Halucha: I'll start off and provide an overview of what the amendment does. Effectively, the amendment removes the requirement for the crown to prove that the accused knew that the trademark was registered and his or her actions were contrary to sections 19 and 20 of the Trade-marks Act.

This issue was raised before the committee by IPIC on November 6 and by INTA on November 18.

Obviously, in order to be found guilty of having committed a counterfeit offence, you've got to show that there's a *mens rea*, that it was done knowingly. The two components that are retained are the knowledge that the goods were infringing—it was a counterfeit good—and second, that there was no consent of the rights holders. The third component the amendment proposes to remove is knowledge that the trademark is registered and that it was contrary to sections 19 and 20 of the Trade-marks Act.

INTA and IPIC noted that this puts quite a high burden on the rights holders for them to be able to use the act effectively. We are essentially in agreement with them and are removing what we view as probably the most onerous part of the *mens rea*, a section that, in reflection, probably put a burden that was not necessary in terms of what the objective of this provision is.

The Chair: Mr. Thibeault.

Mr. Glenn Thibeault: Thanks, Mr. Chair.

To Mr. Lake and/or the analysts, does this proposed new subsection, 51.01(5) cancel out the knowledge requirement that is repeated five times throughout this amendment?

Does this create a risk of being prosecuted for small businesses who unknowingly or unintentionally import something counterfeit?

Mr. Michael Ryan: In essence what we're removing is the knowledge of violating the particulars with respect to 51.01(1)(c), the idea that it violates section 19 or 20. You now don't need to prove the accused knew they had violated those particular civil infringement provisions. But the crown needs to prove that they are infringing.

However, with respect to the knowledge requirement of those prosecuted, they do need to know that they have copied a mark and that they did not have the permission of the trademark owner. So in those contexts, they are doing these activities knowing they are not allowed and knowing they don't have the authorization from the right holder to copy these marks.

A voice: So there still is a knowledge component.

• (1710)

The Chair: Ms. May.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Mr. Chair.

Is it that they actually knew or they ought to have known? Isn't it a little bit looser than their actually having known?

The Chair: Mr. Jean, did you want to make a comment?

Mr. Michael Ryan: Just to clarify this, the requirement is that the accused knew they were copying and that they didn't have the authorization of the right holder.

Ms. Elizabeth May: I may be on the wrong section then. I was looking at proposed paragraph 19.1(3)(b). Am I just in the wrong section for ought to have known?

Thank you, Mr. Chair, for your latitude.

Mr. Michael Ryan: I believe you may be in the civil section and this is a criminal provision.

I want to verify.

Ms. Elizabeth May: I was on page 20.

Mr. Michael Ryan: Those are the civil provisions.

The Chair: Mr. Jean, did you still have a comment?

Mr. Brian Jean: I was just going to comment that, to my understanding, there was a strict liability clause, in that they had to have actually read the sections or knew the sections.

Is that correct?

Mr. Michael Ryan: That's the idea.

Mr. Brian Jean: My understanding is that's been taken out so that it's a general intent *mens rea* under the Criminal Code, which is standard with all Criminal Code offences. There can be specific knowledge or general knowledge, the idea that somebody would know because they ought to have known, which is the clause that I think you referred to generally.

Is that fair to say—my analysis?

Mr. Michael Ryan: Yes, I believe so.

The idea of section 19 and 20 is that they knew, not only that they were copying a mark and they didn't have authorization, but they also knew that it was going to be a civil infringement. So removing that...

Mr. Brian Jean: In fact, it makes it much better for prosecution. Under the old law my understanding is that it was just about impossible to get any kind of finding of guilt because of the nature of the specific strict liability offence.

Is that fair to say?

Mr. Michael Ryan: From the submissions we heard, yes that's true, as well as the current offences relating to fraud. It became very difficult.

The Chair: Seeing no other comments or questions, shall G-7 carry?

Mr. Mike Lake: No.

Oh, yes.

Some hon. members: Oh, oh!

An hon. member: I was going to say on division but we'll discuss it.

Mr. Ed Holder: Chair, I would like [*Inaudible—Editor*].

I'll carry the majority here.

The Chair: Okay.

Hon. Mike Lake: It threw me off with the Green Party weighing in with a G-7 there.

Some hon. members: Oh, oh!

Ms. Elizabeth May: All those G amendments; they're all green.

The Chair: Does G-7 carry?

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

The Chair: On G-8, then.

Mr. Lake, did you want to comment?

Hon. Mike Lake: I'll again throw the ball to the officials and let them explain the technical aspects. This one is pretty technical and grammatical.

This is a very, very important change, right, Michael?

Mr. Michael Ryan: They're all very important changes.

This language has been duplicated. The language as proposed by the amendment says, "has not consented to having the label or packaging bear the trademark". We're ensuring consistency with the previous criminal offence relating to labels and packaging.

The Chair: Shall G-8 carry?

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

(Clause 42 as amended agreed to)

(On clause 43)

The Chair: We have NDP-6.

[*Translation*]

Ms. Anne Minh-Thu Quach: I know that it is exactly the same as the provision proposed in amendment NDP-1. Mr. Halucha said earlier that it was already in Bill C-8. Yet a number of witnesses who were involved in the committee's study, including Mr. de Beer, a law professor, and Mr. Knopf, an intellectual property lawyer, told us that they consulted a number of intellectual property experts who expressed concern about the bill's vagueness when it came to parallel imports.

Those experts would like an amendment that states clearly that Bill C-8 will not target parallel imports. We added this so there would be no confusion in Bill C-8 between counterfeit products and parallel imports, which are legal.

●(1715)

[*English*]

The Chair: Did you want to comment on that, Mr. Halucha?

Mr. Paul Halucha: I would note, as well, that the committee has already voted against NDP-1, which is similar to this provision but applied to the Copyright Act.

Similar to my comments on that earlier amendment, I would note that this is not necessary, as Bill C-8 already clearly exempts parallel imports from the application of the border measures. In this case, the exemption can be found at clause 42, proposed paragraph 51.03(2) (a), which states that the prohibition does not apply if:

(a) the trade-mark was applied with the consent of the owner of the trade-mark in the country where it was applied;

That effectively is the definition of a parallel import. Given that parallel imports are made with the consent of the trademark owner in the country where they are made, the bill clearly excludes these grounds from the application of the border measures, and the language in Bill C-8 does not change the existing law dealing with parallel importation.

In our view, similar to the earlier ones, we agree strongly with the policy intent but would argue that the legislation already contains a very clear exemption.

The Chair: Madame LeBlanc.

[*Translation*]

Ms. H  l  ne LeBlanc: I would like to ask a brief question.

Is it easy for customs officers to identify parallel imports? When the merchandise arrives, is it clearly marked? Based on the documents presented, is it easy for them to recognize that they are parallel imports and, therefore, legal?

Ms. Megan Imrie: The powers the legislation currently gives us when it comes to forgeries is limited. We've already discussed this. To determine whether they really are parallel imports, the importers and copyright holders must be consulted. We are going to work with our external partners to establish an RFA rights holder system. Discussions with importers and copyright holders will help determine if the imports are parallel imports.

[*English*]

Mr. Christopher Nelligan: From my experience and education and negotiation of trade treaties and so on, I've picked up a little bit of knowledge in this area as well. We're talking about tens of thousands or hundreds of thousands of different types of goods in the world. There are many different types of commercial arrangements in the world whereby a brand may be manufactured here, there, and everywhere, and it's not always manufactured to the same standard in some other country as it might be in Canada or elsewhere.

So for some products, a parallel import may look absolutely identical to what is considered genuine in Canada, and you won't really know if you're at the border looking at it. With respect to some other products, it may be quite different and that may actually temporarily fool the customs officer into thinking this must be a counterfeit, and they may have to make some inquiries about whether this is actually an authentic parallel import or not. Presumably—hopefully—the importers will be able to enlighten them if the goods are detained for a short period. The importers may well come forward and say, “I can prove to you that this is a lawful parallel import” and then the customs officer has the discretion to release in that case. They will no longer have their reasonable suspicion to keep detaining those goods.

The Chair: Madam Sgro.

Hon. Judy Sgro: Just to go a bit further, Mr. Nelligan, on that, you keep saying the “importer” versus the counterfeiter. Do you think most counterfeiters, if they know what they're doing is counterfeit, will go and talk to the customs officials to try to explain to them and say, “Sorry, this is counterfeit”? Do you really think that anybody who's deliberately trying to pass counterfeit merchandise will speak to a customs officer?

• (1720)

Mr. Christopher Nelligan: Those are the types of people who often try anything. But with a parallel import, that's a lawful good. Those types of importers, if they know they have a legitimate parallel import, will come forward and say these are legitimate goods. With the counterfeiters, some of them will come forward and try anything. Others may well just disappear. We'll have to find out.

The Chair: Is there any further comment on amendment NDP-6?

(Amendment negated [*See Minutes of Proceedings*])

The Chair: We're on amendment LIB-5.

Hon. Judy Sgro: I will start by asking for comments.

This amendment eliminates the personal-use exemption. So what's the definition of personal use? Is it someone with three handbags that are counterfeit, or twenty-three counterfeit Coach bags?

Mr. Paul Halucha: In answer to your question, the bill does not include a definition of what is individual and what is commercial.

Hon. Judy Sgro: So how will you deal with it if I bring into the country boxes of counterfeit Coach purses and I say they're for personal use?

Mr. Paul Halucha: Ultimately it would be for a court to determine. First off, you wouldn't be detained if you were coming into the country at an airport with one Coach purse in your possession. I don't know at what point—two Coach purses, three Coach purses—but at some point you could trigger a commercial... you could be importing on a commercial scale.

It wouldn't be an individual coming into airports with small numbers of a good.

Mr. Christopher Nelligan: Perhaps I can add that the exemption was drafted to recognize that this is something where some judgment will have to be exercised, first of all at the border, and second of all if it ever gets through there, later on in a courtroom.

To put it one way, a commercial quantity for, say, marbles would be maybe a thousand of them or more. For ocean liners, it would be one. You really cannot set out particular criteria saying which circumstance is a personal use circumstance versus which circumstance is a commercial circumstance.

There are so many different goods, and so many different sets of circumstances, that this is something that will have to be determined at the border, using the judgment of customs officers. If they are of the view that this is a commercial situation and the person disagrees, they can then follow through with a courtroom and see what the court decides.

The Chair: Madam Sgro.

Hon. Judy Sgro: I find this difficult. We started this whole process of Bill C-8 saying that we have to get through this in four meetings and it's hugely important. I agree given that there's been a 400% increase in the amount of counterfeiting going on, with all kinds of issues. Canada's getting a black eye because we don't have legislation, even if it's the minimum that we're putting into this one....

I guess I should be talking through the chair here. Either we're going to deal it or we're not going to deal with it. It seems to me that we're just saying that we're going to get serious about counterfeiting—but it's okay if I bring back two Coach purses that are counterfeit.

When I was in Europe this summer, I was told that if I were to purchase any of the purses or other things that were being sold in various locations, I would be subject to a \$150 fine. They decided that the only way to deal with this was to go after the person purchasing it. That's what I'm told they decided in Europe. But we're going to say that it's okay if you bring back a half a dozen Coach purses or whatever it is, because we're only after the big guys.

I think it sends the wrong message. I think we should be getting tough on this stuff if it's having an impact on the government, if we want money. And we want people paying taxes. We want companies paying taxes. This way nobody is paying any taxes to the government and we're just going to allow it to go on.

I know we can all argue both sides of this issue. I just think if we're serious, then let's get serious.

• (1725)

The Chair: Madam Charlton and then Mr. Van Kesteren.

Ms. Chris Charlton: Thank you very much, Chair.

I actually thought this was one of the important provisions that brought some balance to the bill. As I've said—probably way too often for your colleagues' liking on that side of the floor—I'm really profoundly worried about the resources we have to bring to bear on this issue. I would much rather those scarce resources be brought to bear on those who are not just importing one bag for personal use but really bringing large amounts of counterfeit goods into the country.

Unfortunately, at this point, we are in a position where we have to prioritize, and I think the balance we're striking here is all right for the moment.

The Chair: Mr. Van Kesteren.

Mr. Dave Van Kesteren: I see what you're saying, Judy. I understand the concept. But as a little bit of a parallel, perhaps I can bring my own business into play.

In a car business, we need a licence to sell cars. But you as a private individual can sell a car. They allow for provisions for that, and they have a number: it's three. It seems kind of silly, and sometimes somebody is in business when they're selling three....

I guess I should be talking through the chair, but that's probably along the same lines. I see what you're saying about whether or not we should prosecute somebody, but I don't think we've taken that position. I think we feel as a government that we understand that some people really don't care, so long as it has the tag on it and it appears as though they are walking around with a....

What was the name of that purse again?

Hon. Judy Sgro: Coach, Gucci, you name it.

Mr. Dave Van Kesteren: Coach, yes; my wife has one of those too, I think.

I wonder if it's a knock-off.

Hon. Judy Sgro: Now we have to figure out if it's a knock-off.

Mr. Dave Van Kesteren: I'm starting to wonder.

It's more in the light of those things: we're going to allow it, but if you go beyond that, now you're bringing it in to sell it. That must be the provision of the government.

Hon. Judy Sgro: Do you want me to go?

The Chair: Madam Sgro.

Hon. Judy Sgro: The reality is that this is not going to be anywhere near as effective. We're cutting back on CBSA. We're cutting back with the RCMP and other areas.

We bring in this nice legislation that's going to crack down. I hope it cracks down on a lot of them. But if we're going to do this right, then we need to give them the resources at the border to really do their job, including the training.

The Chair: Does Liberal amendment 5 carry?

(Amendment negated)

The Chair: On NDP-7.

(Amendment 7 negated [*See Minutes of Proceedings*])

The Chair: Government amendments G-9, G-10, and G-11.

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

Mr. Glenn Thibeault: Judy Sgro has a question.

Hon. Judy Sgro: Hold on, I'm still back on amendment G-11.

The Chair: Well, we voted, but you can go ahead.

Hon. Judy Sgro: Well, you really didn't give anybody a chance to say a word one way or the other. Are we still just talking grammar? I'm talking about amendment G-11.

The Chair: You are?

Hon. Judy Sgro: It talked about correcting grammar, the same as amendments G-10, G-2, and G-3. It's basically housekeeping. Amendments 9, 10, and 11 are housekeeping issues, right?

Mr. Paul Halucha: It's parallel in the trademarks portion of the bill to what's already been agreed to by the committee on the copyright side.

Hon. Judy Sgro: Thank you.

It would be nice if everybody on this committee had also been here for the copyright legislation as well. Then it would have been a much easier process.

The Chair: On amendments NDP-8 and NDP-9.

(Amendments negated [*See Minutes of Proceedings*])

Ms. Chris Charlton: Oh, well....

The Chair: Shall clause 43 carry?

(Clause 43 as amended agreed to on division)

(Clause 44 agreed to)

Hon. Judy Sgro: It's now 5:30 on the clock, or are we going later tonight?

I have other commitments.

The Chair: We're scheduled to stop at 5:30. Is it the will of the committee to stop at 5:30?

Some hon. members: Agreed.

The Chair: Right. Then we're adjourned.

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